

(1995) 04 AP CK 0041

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 9513/93 and 7725/94

Samatha

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 28-04-1995

Acts Referred:

Andhra Pradesh Forest Act, 1967 — Section 15
Andhra Pradesh General Clauses Act, 1891 — Section 23, 3(22)
Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959 — Section 3, 3(1), 3(2)
Constitution of India, 1950 — Article 244(1)
Forest (Conservation) Act, 1980 — Section 2
Hyderabad General Clauses Act, 1908 — Section 2(43)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 11(5)

Citation : (1995) 2 ALT 233 : (1995) 1 APLJ 441

Hon'ble Judges : Y. Bhaskar Rao, J;A. Gopal Rao, J

Bench : Division Bench

Advocate : G. Manohar, for A. Ramalingeswar Rao, for the Appellant; Govt. Pleader, P. Innayya Reddy, S.C. for Central Government, V.S. Rao, M. Ravindranath Reddy, V. Rajagopal Reddy, A. Sudershan Reddy, Sadana Bhaskar Rao, G. Raghuram, Badana Bhaskar Rao and P. Venugopal, for the Respondent

Final Decision : Dismissed

Judgement

Y. Bhaskar Rao, J.—Samatha, a Rural Development Society of Peda Mallapuram Sankhavaram Mandal, E.G. district filed writ petitions seeking a writ of mandamus directing respondents 1 to 4 to terminate the mining leases in existence in the Borram Gram Panchayat Area of Ananthagiri Mandal, Visakhapatnam district and to prosecute the persons responsible for violation, of Section 2 of Forest (Conservation) Act, 1980 and Section 3 of Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959.

2. The petitioner-society was formed for implementation of various welfare schemes of the Government, creating awareness among the tribal people regarding their rights and duties etc.

3. The village Borra is a village lying in Ananthagiri hills of Visakhapatnam in the north-west corner of S. Kota. The area is particularly characterised by occurrence of mica and crystallising limestone (calcite). the mining activity in the area was started, in the year 1946 and currently there are five organisations operating in an area of 1250 acres and the same is notified as reserve forest in Borra Block vide G. O. Ms. 2997, dated 31-10-1988 notifying an area of 1072 hectares. The Andhra Pradesh Scheduled Areas Land Transfer Regulation of 1959 covering the agency area was brought into effect on 4-3-1959 covering Visakhapatnam and East Godavari Districts. Thereafter Regulation I of 1959 was brought in, prohibiting the transfer of the land by tribals to non-tribals. It is stated that respondents 1 to 4 have granted mining leases in favour of lessees-respondents by violating the provisions of Forest (Conservation) Act, 1980, and, therefore, they have no right to carry on the operations in the agency area.

4. Respondent No. 2 filed counter admitting the grant of lease to respondents 6 to 10. It is stated that the leases were granted prior to the notification issued in G. O. Ms. No. 2997, dated 21-10-1988; that the provisions of Forest (Conservation) Act and the provisions of Regulation I of 1959 are not violated in granting the leases or in renewal of the leases from time to time to the lessee-respondents and that there is neither illegal nor illicit mining operations going on in the area and that after promulgation of the notification issued by the Government under para 5 (1) of the V Schedule of the Constitution, amending Section 11(5) of the Mines and Minerals (Regulation and Development) Act, the Government has not granted any mining lease in favour of the non-tribals.

5. Respondent No. 4 filed counter stating that the Borra forest block was notified as reserve forest u/s 4 of Andhra Pradesh (Andhra Area) Forest Act, 1982 and that some of the respondents have encroached into the reserve forest area and to that extent their operations are illegal and in violation of the Forest (Conservation) Act.

6. Respondent No. 13 filed counter-affidavit contending that the writ petition is not maintainable as there is no tribal in the society registered by the petitioner; that granting of leases is not in violation of the Scheduled Area Land Transfer Regulation I of 1959 or the provisions of the Forest (Conservation) Act and that the area where they are carrying mining operations is not at all a reserve forest area. The leases were granted in favour of leasees-respondents much earlier to the promulgation of the Forest (Conservation) Act of 1980 and so they cannot be declared as void or illegal. It is further stated that the mines and minerals are enumerated under Entry 54 of List I of Schedule VII of the Constitution and as per the provisions of the Mines and Minerals Regulation, the entire mining operations are vested in the Central Government. Therefore, the State Government has no power to deal with any regulation concerned with the mining activities. Hence the Governor of the State has no power to issue any notification or regulation prohibiting the grant of mining lease even in the Scheduled areas. Further, there is no provision in Regulation I of 1959 prohibiting grant of mining

leases in the Scheduled areas by the Government, but transfer of immovable property in the agency areas by the tribal to the nontribals is prohibited.

7. The lessee-respondents filed counter-affidavits adopting the contentions raised in the counter-affidavit filed by respondent No. 13 in Writ Petition No. 7725/1994.

8. The learned Counsel for the petitioner-society contended that Regulation I of 1959 was promulgated prohibiting transfer of lands from tribals to nontribals and Regulation I of 1970 was brought in prohibiting the transfer of land by tribals to non-tribals and also by non-tribals to non-tribals. Section 2 (g) of the Regulation I of 1959 defines transfer which includes the grant of tease, mortgage etc. He further contended that as per Section 2 of the Forest (Conservation) Act, 1980, no mining operation can be carried on in the reserve forest area unless the consent of the Central Government is obtained. Therefore, the authority who granted such leases is liable for prosecution as the interests of tribals is the utmost and within the purview of the Constitutional framework. In view of all these, the writ petitions have to be allowed as prayed for.

9. Mr. G. Raghuram, the learned Counsel appearing for respondent No. 13 contended that the State Government or the Governor of a State has no power to enact any law or regulation, muchless the power vested under Article 244 read with V Schedule of the Constitution. He further contended that as per Section 3 of Regulation I of 1959 as amended by Regulation I of 1970 there, is prohibition of transfer of lands by the tribals to non-tribals and non-tribals to non-tribals; that the definition "a person" contained in Section 3 of Regulation I of 1959 does not include Government and that the State Government being the authority to control and administer tribal areas is empowered to grant mining leases by transferring the lands to tribals.

10. The contentions raised by Mr. V. V. S. Rao, learned Counsel for respondent No. 1 are to the same effect.

11. Mr. M. V Ramana Reddy, the learned senior Counsel, contended that there is no specific averment regarding the encroachment of his clients in the reserve forest area and the lease granted to respondent No. 8 is not hit by Regulation I of 1959 as the same is not applicable to mining leases. This contention was adopted by all the other learned Advocates appearing in the cases.

12. In view of the above contentions, the point for consideration is that, "Whether the Government is barred from granting mining leases in the Scheduled Areas of Andhra Pradesh to non-tribals in view of Section 3 of the A.P. Scheduled Areas Land Transfer Regulation 1 of 1959."

13. The scheduled areas in Andhra Pradesh State were notified by the president through the Schedule Area (Part-A States) Order of 1950. According to Article 244(1) of the Constitution, the provisions of the V Schedule shall apply to the administration and control of the Scheduled Areas and Schedule Tribes in any State other than the State of Assam, Meghalaya, Tripura and Mizoram, Para 5

(1) of V Schedule of the Constitution empowers the Governor to direct by notification that any particular Act of Parliament or of the legislature shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify and may also give direction to have retrospective effect. Para 5 (2) of V Schedule empowers the Governor of the State to make regulations for the peace and good Government of any area in a State, which is a Scheduled Area. It is further provided therein that such regulations may prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area, regulate allotment of land to members of the Scheduled Tribes in such area and regulate the carrying on of business as money lender by persons who lend money to members of the Scheduled Tribes in such area. The Governor is also empowered to repeal the existing enactments of the Parliament or the State. It is incumbent on the Governor to submit such regulations to the President and until the President gives his assent the same shall not be enforced. Thus, the Governor has got power, notwithstanding anything in the Constitution, to issue notifications and to promulgate regulations for the peace and good Government of any area in a State, which is a Scheduled Area, and Scheduled Tribes. The nature of powers of the Governor has come up for consideration before the Supreme Court in *Ram Kirpal Bhagat and Others Vs. The State of Bihar*, and the question before the Supreme Court was whether Bihar Regulation 1 of 1951 was in excess of the Governor's powers. In para 21 of the said decision, the Supreme Court referred to the provisions 91 and 92 of the Government of India Act, 1935 vis-a-vis the powers conferred under V Schedule of the Constitution and held:

"In the present case, it cannot be said that the Bihar Regulation I of 1951 is either a piece of delegated legislation or conditional legislation. The Governor had full power to make regulations which are laws and just as Parliament can enact that a piece of legislation will apply to a particular State, similarly, the Governor under paragraph 5 of the V Schedule can apply specified laws to a Scheduled area. The Bihar Regulation I of 1951. is an instance of a valid piece of legislation emanating from the legislative authority in the plenitude of power and there is no aspect of delegated or conditional legislation."

14. The Governor of Andhra Pradesh by virtue of the power conferred under para 5 (2) of the V Schedule to the Constitution promulgated Regulation I of 1959 which came into force on 4-3-1959. The said regulation was promulgated to see that the tribals are not parted with their lands and where the lands of tribals were transferred after the commencement of the regulation to declare the said transfer as null and void and to eject the non-tribals and restore the possession to the tribals. As the Government experienced difficulty in implementing the regulation and restoring possession to the tribals and finding out the right of possession of non-tribals and its origin, etc., an amendment was brought substituting Section 3(1) of Regulation I of 1959 by Regulation I of 1970. Amended Section 3 (1) of Regulation I of 1959 prohibits transfer of immovable

property situated in the Agency tracts from tribal or non-tribal to non-tribals. There is no provision in Regulation I of 1959, as amended from time to time, prohibiting transfer or lease of the lands by the Government. As per Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as "Act No. 67 of 1957"), the State Government is empowered to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. The controversial question that is now raised is whether the Government can lease out the lands in agency areas to non-tribals for mining operations or not. There is no provision either in Regulation I of 1959 or the Act No. 67 of 1957 prohibiting grant of leases in the lands in agency area for the purpose of mining operations, until Section 11 (5) of the Act No. 67 of 1957 was amended by a notification issued by Governor prohibiting grant of leases to non-tribals in agency areas.

15. The contention of the learned Counsel for the petitioner is that it is evident from a reading of Sections 2(g) and 3(1) of Regulation I of 1959 that the Government is also prohibited from transferring the lands in the agency areas to non-tribals because the word "person" used in Section 3(1) includes the Government and that therefore the leases granted in favour of the respondents 6 to 14 are void and in contravention of Section 3(1) of Regulation I of 1959. The learned Counsel for the respondents, Sri G. Raghuram, Sri V.V.S. Rao and Sri M.V. Ramana Reddy, on the other hand, contended that transfer of land is prohibited only in respect of tribal or non-tribal to non-tribals and such prohibition cannot be imposed on the Government.

16. To deal with the above contention, it is necessary to know meaning of "a person" to find out whether it includes the Government or not. It is relevant to refer to the principles regarding interpretation of word or phrase of statute or the provisions of the statute. The following is the introduction of a statutory interpretation adopted by Francis Bennion:

" Purposive construction is the new idiom of interpretation process. To aspire to direct, for years into future, the endless varied actions of the people, the myriad complexities of a vast changing and technologically exploding society, by a number of verbal formula, necessarily bearing the tramping impress of its own day, is remarkably ambitious and often productive of anamoly. When all that can be said has been said, and the human best has been done, we are forced to acknowledge that Acts used only words. Yet we are obliged respectfully to recognise humbly to accept, that principles of interpretation, when not laid down by Parliament itself, are devised or adopted by the Court and no one else. Expressed words of every act have, the shadow accompaniment of a host of implicit statements. Either these statements are taken to be implied by law, or they arise from the words of the enactment or its context. Between the grammatical meaning and the over-all legal meaning, the Courts now draw a conceptual distinction. The two usually corresponds but sometimes there is

doubt. In searching for the legal meaning of a doubtful enactment, the Court now proceeds by identifying, determining and weighing".

17. It is a settled principle of law as laid down in Poppatlal Shah Vs. The State of Madras, , that every clause of a statute should be construed with reference to the context and other clauses of the Act, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter.

18. Keeping the above principles in view, we have to examine whether "a person" includes the Government also.

19. Regulation I of 1959 has not defined "person". When meaning of a word or phrase of the statute is not defined, one way to find out the meaning is to look into the dictionary. Black's Law Dictionary, VI Edition, by Henry Campbell Black, defines "person" as under:

"In general usage, a human being (i.e., natural person), though by statute term may include labour organisations, partnerships, associations, corporations, legal representatives, partnerships, trustees, trustees in bankruptcy or receiver".

20. In the Dictionary of Law, IV Edition by L.B. Curzon "person" is defined as under:

"Person - a natural person is a human being capable or attracting rights and duties".

21. "Person" in the Oxford Companion to Law by David M. Walker is defined to mean:

"Person. In law, a person is any entity recognised as having an existence in law capable of suing and being sued, and otherwise having rights and being subject to duties and liabilities. The category of legal persons includes most living natural persons and also legal or jurisdic person, such as corporations, which have legal existence quite independently of the persons who, for the time being, are members of the corporation".

22. And in the Law Lexicon by P. Ramanatha Aiyar, "person" is defined to be: "person. A man or woman; also the state or condition whereby one man differs from another".

23. Thus, from the above dictionaries, it is clear that "government" is quite different from "person" and therefore it cannot be said that "person" includes "government".

24. To understand the meaning of a word used in statute, which has not been defined, the provision should be read in the context of the scheme of other relevant provisions in the Act or the Rules as laid down by the Supreme Court in O.P. Singla and Another Vs. Union of India (UOI) and Others, It has also been laid down by the Supreme Court in Reserve Bank of India v. Peerless General

Finance & Investment Co. Ltd. AIR 1987 SC 1023 that statute should be construed after ascertaining legislative intent and in the context and scheme of the Act. Keeping these principles in view, we will now examine the provisions of the Regulation I of 1959.

25. Section 3(1) of the Regulation prohibits the transfer of immovable property whether by a tribal or non-tribal to non-tribal and further provides the presumption that where a non-tribal in possession of the immovable property in agency tracts shall be presumed to have acquired, or his predecessor in possession, through a transfer made to him by a member of a Scheduled Tribe as per sub-clause (b) of Section 3(1). Sub-clause 2(a) of Section 3 empowers the agent or the Agency Divisional Officer on conducting enquiry into an application filed by the aggrieved person alleging that the transfer is made in contravention, can restore back the possession. The authority can exercise such powers suo motu. when such tribal is not willing to take back the property or whereabouts of such tribal are not known, the Agency Divisional Officer or agent may assign the land to a member of Scheduled Tribe or a Society registered under any law of the Cooperative Society in the schedule area which consists of members belonging to Schedule Tribe only or otherwise the property can be disposed of by the State. Thus, by reading sub-clause (b) of clause 2 of Section 3, it is evident that the State is the controlling authority which can take possession of the land from a nontribal where the transfer is in violation of Section 3 and restore back to the original transferor or his heirs. If they are not available, the Government can assign "the same to a member of member of Scheduled Tribe or to a Society which consists of members of Scheduled Tribe or otherwise it can dispose it of. That means the State is empowered to administer the entire land for the peace and good governance of the scheduled areas. For effectively implementing the Regulation, it restores the lands to the displaced tribals. Therefore, if the Government is also read to include in the definition of "a person", it leads to absurdity.

26. For interpretation of a word or phrase in a statute or the statute itself, and to find out correct meaning of a word or phrase, it is relevant to consider the historical background of the statute. Regulation I of 1959 came into force on 4-3-1959. Section 3(1) of Regulation I of 1959, prior to amendment, was as under:

"Notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a member of a Scheduled Tribe, shall be absolutely null and void unless made-

(i) in favour of any other member of a Scheduled Tribe or a registered society as defined in clause (f) of Section 2 of the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932), composed solely of members of the Scheduled Tribes, or

(ii) with the previous sanction of the State Government, or subject to rules made in this behalf, with the previous consent in writing of the agent or of any

prescribed officer."

27. The above provision states transfer of immovable property in agency area by a tribal to non-tribal only. When the authorities felt difficulty in effectively implementing the regulation, restore the land to the displaced tribals and in tracing the origin of the non-tribals included in the Tribal areas, an amendment was brought by way of Regulation I of 1970. Section 3(1) of the Regulation I of 1959 after amendment through Regulation I of 1970 reads as under:

"(a) Notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person, who is a member of a Scheduled Tribe or a Society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964), which is composed solely of members of the Schedule Tribes.

(b) Until the contrary is proved, any immovable property situated in the Agency tracts, and in the possession of a person who is not a member of a Scheduled Tribe, shall be presumed to have been acquired by such person or his predecessor in possession through a transfer made to him by a member of Scheduled Tribe.

(c) Where a person intending to sell his land is not able to effect such sale, by reason of the fact that no member of a Scheduled Tribe is willing to purchase the land on the terms offered by such person, then such person may apply to the Agent, the Agency Divisional Officer or any other prescribed officer, for the acquisition of such land by the State Government, and the Agent, Agency Divisional Officer or the prescribed officer, as the case may be, may, by order, take over such land on payment of compensation in accordance with the principles specified in Section 10 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Act X of 1961), and such land shall thereupon vest in the State Government free from all encumbrances and shall be disposed of in favour of members of the Scheduled Tribes or a society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964 (Act 7 of 1964) composed solely of members of the Scheduled Tribes or in such other manner and subject to such conditions as may be prescribed."

28. According to the above provision, prohibition was imposed on transferring lands in agency areas by a non-tribal to non-tribal also. Clause (b) of Section 3 (1) provides that it has to be presumed that a non-tribal, who is in possession of the land in scheduled area or agency area, is deemed to be in possession by virtue of a transfer by a tribal unless he disproves the same. After the said amendment, a person whether he is a Scheduled Tribe or not is prohibited from transferring the land in agency area to non-tribal. In Section 3(1) of Regulation I of 1959, prior to amendment by Regulation I of 1970, there was prohibition of transfer by a tribal to non-tribal. There is no provision in Regulation I of 1959 prohibiting transfer of land by Government to tribal or non-tribal. Even after

amendment, no provision is included prohibiting transfer of land by Government to tribal or non-tribal. On the other hand, the Government is assigning lands in favour of non-tribals. Therefore, by reading the legislative history, it is evident that there is no prohibition imposed by the Regulation on the Government in transferring or leasing out the land to non-tribals or tribals. Thus, legislative history also supports our view that the person does not include the Government.

29. Another way of understanding the meaning of the word or phrase of a provision in a statute, which was not defined in the Act, is to look into the General Clauses Act.

30. It is also settled principle of law that where the word is not defined, the Court interpreting the provisions of the statutes have to look into the General Clauses Act. Section 3 Clause (22) of the A.P. General Clauses Act defines the word "person" as:

"Person shall include any company or association of individuals, whether incorporated or not."

31. Therefore, by reading the definition provided in the A.P. General Clauses Act it is not possible to read the Government as "person" as the same is not provided under the Act. Regarding the application of the A.P. General Clauses Act to Regulations and Ordinance, Section 23 (b) of the A.P. General Clauses Act provides:

"The provisions of this Act shall apply-

(a) xx xx xx

(b) in relation to any Ordinance promulgated by the Governor under Article 213 of the Constitution or any Regulation made by him under paragraph 5 of the Fifth Schedule to the Constitution, in like manner as they apply in relation to the Acts made by the State Legislature."

32. Therefore, the above definition of the A.P. General Clauses Act does not include the Government in "person" and further the provisions of the A.P. General Clauses Act are also applicable to the regulation made by the Governor under para 5 of V Schedule to the Constitution.

33. A similar provision, as defined u/s 2(43) of the Hyderabad General Clauses Act was considered by this Court in Zaria Nazim Athar AIR 1957 A.P. 714. Observing that the same is similar to the definition of "a person" defined in Section 3(22) of the A.P. General Clauses Act, this Court held that the Definition "a person" does not include the Government while interpreting the person as defined in Section 2(43) of the Hyderabad General Clauses Act. Therefore, by virtue of this decision it is clear that unless a statute specifically provides, it cannot be read to include the Government as "a person". A similar view was taken in Shiv Parshad Vs. Punjab State, holding that the expression "person" includes natural person or artificial person like corporation and joint stock

company, but it does not include a State or Government.

34. In *State of West Bengal Vs. Union of India*, the question before the Supreme Court was whether the person does include the Government; whereby it was held that the person does not include the Government. In the present case also, though there is no specific exclusion of the Government from the definition of a person in Regulation I of 1959 as stated supra, by tracing the legislative history of the Regulation as well as scrutinising the literal meaning of the word "person"., it vividly appears that the Government is impliedly excluded from the definition of "a person". .

35. Regulation I of 1959 and the Act No. 67 of 1957 have not prohibited transfer of a lease by Government in the agency or scheduled area. As stated supra, "a person" cannot mean to include "the Government" so as to read that the Government is prohibited from transferring the lands to non-tribals. The Governor of Andhra Pradesh issued a notification on 7-8-1991 in exercise of his powers under Para 5(1) of V Schedule to the Constitution directing that the Mines and Minerals (Regulation and Development) Act, 1957 shall apply to the Scheduled areas in the State of Andhra Pradesh subject to the modification, by inserting Section 11(5), that no prospecting licence or mining lease shall be granted in the scheduled areas to any person who is not member of the Scheduled Tribe. Section 11(5) was provided to be not applicable in respect of an undertaking owned or controlled by the State or Central Government or to a Society registered under the A.P. Co-operative Societies Act, 1964 which is composed solely of members of Scheduled Tribes. If "person" in Section 3 includes the Government, there was no necessity for the Governor to issue notification prohibiting the Government also from granting mining leases in agency areas to non-tribals. Because there is no prohibition for grant of leases by the Government, the Governor issued the notification to protect the interest of tribals prohibiting grant of such leases to non-tribals in agency areas. This also supports our view that the "government" cannot be read as "person".

36. Alleging that the person must be interpreted to include the Government, reliance is placed in the decisions reported in *Maharaj Singh Vs. State of Uttar Pradesh and Others*, . *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, and *Union of India (UOI) Vs. Jubbi and Dunia*, etc.,

37. It is settled principle of law and as per the law laid down by the Supreme Court in *Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation of Calcutta*, . it is clear that a statute must be read to find out whether there is any express exclusion or implied exclusion. By reading Regulation 1 of 1959 and the literal meaning of "person", we are of the view that the word "person" does not include the Government. The facts of those cases relied upon to interpret to include the Government, are not applicable to the present set of facts of the cases on hand.

38. The learned Counsel for the petitioner contended that a Division Bench of

this Court in W.P. No. 3734/1993 dt. 27-8-1993 has considered Section 3(1) of Regulation 1 of 1959 and held that "person" includes the Government; therefore a different view than the one already taken cannot be taken now. On the other hand, Mr. Raghuram, Mr. V.V.S. Rao contended that the judgment without referring to the provisions of the Regulation and without giving reasons for coming to such conclusion cannot be said binding and the observations made therein cannot be said to operate as "ratio decidendi" binding on the subsequent cases. He further submits that the judgment of the earlier Division Bench is "per incuriam" and so the judgment in W.P. No. 3734/93 is not binding nor it has to be followed.

39. We have gone through the judgment of the Division Bench in W.P. No. 3734/93 which was filed seeking a direction to terminate the mining leases in existence in the Scheduled areas of East Codavari District and to prosecute the persons responsible for violation of Section 2 of the Forest (Conservation) Act, 1980. In that case Section 3(1) of Regulation I of 1959 and the provisions of Forest (Conservation) Act were referred together with the provisions contained in Section 2(g) and held that the grant of lease is void and further observed that "the argument of the learned Counsel for the respondents that it applies only to a transfer by a person other than the Government cannot be accepted as Section 3 says any transfer by a person and a person includes Government" and therefore any lease granted by the State Government in scheduled area to a nontribal is void. Before the Division Bench the legislative history of the Regulation nor the entire provisions of the Regulation or at least the entire sub-clauses of Section 3 of the Regulation were brought to the notice of the Court nor any judgment concerning the interpretation of the principles of the statutes were brought and also the definition of person under the General Clauses Act was brought to the notice of the Court. In those circumstances the Division Bench held that the "person" includes the Government. Therefore the finding or observation of the Court in that case cannot be said as ratio decidendi which will be binding on the subsequent cases. It is pertinent to note here that in Zaria Nazim's case (5 supra) it was held that the word "person" does not include the Government. Even this judgment was also not brought to the notice of the Division Bench of this Court while considering the case in W.P. No. 3734/93. In S.P. Gupta Vs. President of India and Others, , it was held that it is elementary that what is binding on the Court in a subsequent case is not the conclusion arrived at in a previous decision but the ratio of that decision, for it is the ratio which binds as a precedent and not the conclusion.

40. In Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs., Krishna Iyer. J., while interpreting the principles of per incuriam observed thus:

"Certainty of the law, consistency of rulings and comity of courts, all flowing from the same principle, coverage to the conclusion that a decision once rendered must later bind like cases. It is no doubt true that in exceptional instances, where, by obvious inadvertence or oversight, a judgment fails to

notice a plain statutory provision or obligatory authority, running counter to the reasoning and result reached, it may not have the sway of binding precedents. But it should be a glaring case, an obstructive omission."

41. The Supreme Court in *State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another*, thus:

"The High Court, in our view, was clearly in error in striking down the impugned provision which undoubtedly falls within the legislative competence of the State, being referable to Entry 54 of List II,.....The reference to sales tax in paragraph 86 of that judgment was merely accidental or per incuriam and has, therefore, no effect on the impugned levy".

....The question was if the State Legislature could levy the vend fee or excise duty on industrial alcohol. The Bench answered the question in the negative as industrial alcohol being unfit for human consumption, the State legislation was incompetent to levy any duty of excise either under Entry 51 or Entry 8 of List 11 of VIII Schedule.....It was not preceded by any discussion. No reason or rationale could be found in the order. This gives rise to an important question if the conclusion is law declared under Article 141 of the Constitution or it is per incuriam and is liable to be ignored.

Incuria literally means "carelessness". In practice per incuriam appears to mean per ignoratum. English courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law" is avoided and ignored if it is rendered, "in ignoratum of a statute or other binding authority", same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law".

.....Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent.

.....Therefore, the conclusion of law by the Constitution Bench that no sales or purchase tax could be levied on industrial alcohol with utmost respect fell in both the exceptions, namely, rule of sub-silentio and being in per incuriam, to the binding authority of the precedents".

42. In *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, the Supreme Court held that the reasons are links between the material on record with which certain conclusions are based and the actual conclusions reached. Section 23 (b) and Section 3(22) of the A.P. General Clauses Act, the contextual interpretation of Section 3 and the subclauses thereof of Regulation I of 1959, literal meaning of the term "person" and the subsequent notification issued by the Governor in exercise of his powers under para 5 (1) of V Schedule to the Constitution were not brought before the Division Bench of this court while deciding the case in W.P.No. 3734/1993 nor the previous decisions on the point to interpret the definition "person". Therefore, the decision has to be held to be not based on

reasons. Hence, with great respect, we are constrained to hold that the decision in the above judgment, including the Government under the definition of "a person" is not a binding ratio decidendi and it is per incuriam.

43. The learned Counsel for the petitioner further contended that Regulation I of 1959 has not excluded application of the regulation to the Government and that unless there is specific exclusion the Regulation applies to the Government also. He relied on a decision of the Supreme Court in Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation of Calcutta, and contended that as the Government is not specifically excluded, the Regulation applies to the Government and it cannot grant mining leases in the agency areas.

44. The facts in the above stated decision are that in the State of Bihar, there were some tenants in the Government land. The question that arose was whether such tenants will get the tenancy rights in the Government land. The Supreme Court held that unless there is specific exclusion, the tenants will have their rights as per the tenancy laws. While considering the provisions of that Act, the Supreme Court observed:

" On the other hand the normal construction, namely, that the general Act applies to citizens as well as to State unless it expressly or by necessary implication exempts the State from its operation, Steers clear of all the said anomalies. It prima facie applies to all States and subjects alike, a construction consistent with the philosophy of equality enshrined in our Constitution. This natural approach avoids the archaic rule and moves with the modern trends. This will not cause any hardship to the State. The State can make an Act, if it chooses, providing for its exemption from its operation. Though the State is not expressly exempted from the operation of an Act, under certain circumstances such an exemption may necessarily be implied. Such an Act, provided it does not infringe fundamental rights, will give the necessary relief to the State."

45. The Supreme Court itself made it clear that it has to be examined whether there is an implied exclusion of the State or not while interpreting the statute. When we examine in the light of the above principles, we have to come to only conclusion that merely the State is not expressly excluded in the Regulation, it cannot be said that "a person" defined under the Act includes the Government, because it has to be inferred by the provisions of the Regulation that the Regulation has impliedly excluded its application to the Government.

46. The learned Counsel for the respondents raised a number of constitutional questions stating that the Governor has no power to issue regulations touching mining leases and that the power of the Governor provided under V Schedule to the Constitution has to be read down holding that the Governor can issue notifications or promulgate Ordinances in respect of subjects enumerated in Lists II and III of VII Schedule to the Constitution but he has no power to issue notifications touching the subjects enumerated in List I of the Constitution, which is within the exclusive power of the Parliament.

46-A. As we have already held that Regulation I of 1959 does not prohibit the transfer of land in the agency area by the Government to non-tribals, it is not necessary to decide the above question. It is settled principle of law that where it is not necessary to decide the constitutional questions in deciding the case, the Courts will restrain from deciding them. In view of that, we do not want to go into that question.

47. The learned Counsel for the petitioner also contended that without the consent of the Central Government as provided u/s 2 of the Forest (Conservation) Act, 1980, no land can be used for purposes other than for the forest purposes. Therefore, granting of mining leases is not valid.

48. We have gone through all the counter-affidavits filed by the Government wherein there is no specific mention regarding the extent of the area occupied by the lease-holders which in fact reserved for forest purposes. Further, a joint survey was conducted in some of the cases and found that there is no lessee occupying the reserve forest area. Except in one case where to an extent of two thousand metres of the land was in illegal occupation in the reserve forest area, there is nothing on record to show about the illegal occupations in the reserve forest area. When there is no specific material before this Court showing that there is any inclusion of lessees in the reserve forest area or the lease granted to the lessees is part and parcel of the reserve forest area, the question of contravention of Section 2 of the Forest (Conservation) Act does not arise. Further, in these cases the leases were granted long back and they are operating. The Supreme Court also held that where the land is already broken in pursuance of a lease, the consent of the Central Government as provided u/s 2 of the Forest (Conservation) Act is not required. This view is fortified in the decisions rendered in State of Bihar Vs. Bansi Ram Modi and Others, and Thuraka Onnuramma and Another Vs. Tahsildar, Kadiri and Others, . Therefore, we do not want to go into the controversy at all. If there is any ingress or encroachment on the reserved forest, it is open to the petitioner to file such a petition before the concerned authorities seeking necessary relief. On filing such petition, the authorities concerned will examine the same and pass appropriate orders keeping in view the provisions of Section 2 of the Forest (Conservation) Act.

49. It is nextly contended that the Borra Group of villages in Ananthagiri Mandal wherein the leases were granted to respondents 6 to 14 are declared as reserve forest to an extent of 1,072.40 hectares of land u/s 15 of the Andhra Pradesh Forest Act vide G.O.Ms. 152, dated 28-6-1993. It has to be noticed that this will not have any retrospective effect and the same will not hit the leases already granted. It is also not the case of the petitioner that in violation of the Forest (Conservation) Act any leases were renewed permitting to use the area declared as reserve forest by breaking the land for carrying out the mining operations.

50. In view of the above discussion, we hold that there is no prohibition for grant of mining leases by the Government either under Regulation I of 1959 or the Act No. 67 of 1957 until the issuance of the notification by the Governor on

7-8-1991. The said notification does not direct imposition of restriction retrospectively, though the V Schedule of the Constitution empowers the Governor to direct regulations to have retrospective effect. Therefore, in the absence of any retrospective effect of the notification issued by the Governor on 7-8-1991, the notification comes into effect prospectively. We, therefore, see no force in the contention of the learned Counsel for the petitioners that the leases granted earlier to the notification also have to be declared as void.

51. In the result, the writ petitions are dismissed. But in the circumstances of the case without any order as to costs.