

(1986) 03 KAR CK 0058

In the Karnataka High Court

Case No : W.A. No. 1117 of 1981 and W.P. No. 20489 of 1984

State of Karnataka

APPELLANT

Vs

Shivalingaiah
 Abbas Ahmed Vs State of Karnataka

RESPONDENT

Date of Decision : 12-03-1986

Acts Referred:

Mineral Concession Rules, 1960 — Rule 54, 58, 59, 60

Citation : (1986) ILR (Kar) 2922

Hon'ble Judges : Ramakrishna, J; Rama Jois, J

Bench : Division Bench

Advocate : M.R. Achar, Government Advocate and D.L.N. Rao, for the Appellant; Kadidal Manjappa and K.T. Mohan and M.R. Achar, Government Advocate, for the Respondent

Judgement

Rama Jois, J.—The Writ Appeal is presented by the State of Karnataka and the Director of Mines and Geology against the order of the learned Single Judge allowing the Writ Petition of the respondent and directing the State Government to consider his application for the grant of mining lease in respect of land in Sl.No. 19 of Honnanaikanahalli Village in Channapatna taluk W P. No. 20489/84 is presented by the petitioner therein questioning the legality of the Notification issued by the State Government dated 7th April, 1983 under Rule 58 of the Mineral Concession Rules reserving the entire area within the taluk of Channapatna in Bangalore District for the purpose of exploitation of corundum and ruby corundum minerals by the Mysore Minerals Ltd., Bangalore.

2. W.P. 20489/84 was not in the hearing list. But it is taken up at the request of the Counsel appearing for the parties as it is connected with Writ Appeal No. 1117/81.

3. The facts and circumstances of the case are these : On 27-3-1975 the State Government issued a Notification under Rule 58 of the Mineral Concession Rules, as it stood at that point of time, inviting applications from persons desirous of taking mining lease for exploitation of corundum mineral in an area of 44. 52

hectares in Sy. No. 19 of Honnayakanahalli of Channapatna taluk. In response to the said advertisement, four persons including the respondent in W.A. 1117/81 and the petitioner in W.P. 20489/84 applied. The application of the petitioner in the Writ Petition was granted by the State Government on 17-10-1975. That order was challenged in Revision Petition by the respondent in the Writ Appeal before the Central Government u/s 54 of the Rules. His Revision Petition was rejected. Aggrieved by the said order, he presented Writ Petition No. 2078/77. The petitioner in the Writ Petition also presented a Writ Petition as he was aggrieved by the order of the Central Government setting aside the mining lease in his favour at the instance of one Sri Munawar who had also presented a revision Petition under Rule 54 of the Rules, before the Central Government. All the Writ Petitions were considered by the learned Single Judge and disposed of by a Common Order dated 4-9-1979. A direction was issued to the State Government by the learned Single Judge directing it to dispose of all the applications in accordance with law. After the above direction was issued, the State Government issued an endorsement dated 2-5-1980 to all the four applicants. It reads :

Karnataka Government Secretariat Vidhana Soudha, No. CT. 170 EMO 77
Bangalore : 2nd May, 1980

From

The Secretary, Government of Karnataka, Commerce & Industries Dept.

To

1. Sri M. Shivalingaiah, B.A. B.L., Major, Avverahalli, Hamlet of Honnayakanahalli Village post ; Channapatna Tq. Bangalore Dist.
2. Sri C. Kadaiah Shetty, son of Sri Channaiah Setty, Mine Owner, Honnayakanahalli Village Post ; Channapatna, Bangalore Dist.
3. Sri K-M. Abbas Ahmed S/o K.M. Mohammed Asgar Paira, Channapatna, Bangalore Dist.
4. Sri Syed Munavar, Prop : Karnataka Traders, No. 356, B.M. Street, Channapatna, Bangalore Dist.

Sir,

Sub : Grant of mineral concession over the area of 44.52 hectares in Honnayakanahalli Village, Channapatna Taluk, Bangalore Dist.

I am directed to state that your application for grant of Mining Lease over the above area is rejected for the reason that the Government is not in favour of "granting leases for this mineral".

4. According to the above endorsement, the State Government rejected all the four applications including the application of the Writ Petitioner in whose favour the lease had been granted earlier but had been set aside by the Central

Government and which was upheld by the learned Single Judge. Writ Petition 8834/80 was presented by the Respondent in the Writ Appeal questioning the legality of the decision not to consider any of the applications for the grant of the lease on the ground that it had reserved the land in question in favour of Mysore Minerals, for exploitation of corundum mineral. The contention of the Respondent in the Writ Petition was that when the State Government itself issued Notification and invited applications under Rule 58 of the then existing Rules and also having proceeded to grant the the lease in favour of one of the applicants it had no other alternative than to consider all the four applications on merits as directed by this Court and make the grant, as it considered expedient, but it had decided to reject the application on the ground that it was not in favour of granting mining lease in respect of corundum mineral. The learned Single Judge while upholding the right of the Government to reserve any area for exploitation of any mineral for itself was of the view that the Government could do so only by issue of a proper Notification under the relevant Rules, but could not take an adhoc decision and reject all the applications when the Government itself had invited applications by issuing a Notification under Rule 58 of the Rules. Aggrieved by the said order, the State and the Director of Mines & Geology have presented this Writ Appeal.

5. During the pendency of this Writ Appeal, the State Government issued a Notification in exercise of the power under Rule 58 of the Mineral Concession Rules as it existed on the date of the issue of the Notification. The Notification reads :

"Notification No. Cl. 148 MMN 81

Bangalore, dated 7th April, 1983

In exercise of the powers conferred by Rule 58 of the Mineral Concession Rules 1960, the Government of Karnataka hereby reserve the area comprised within the taluk of Channapatna, Bangalore District for the purpose of the said rule, for the exploitation of corundum and ruby corundum by the Mysore Minerals Ltd., Bangalore."

Aggrieved by the above Notification, the Writ Petition has been presented. As a consequence of the said Notification, neither the application of the Writ Petitioner nor the application of the competing applicants made pursuant to the earlier Notification, could be considered by the State Government on merits.

6. Sri M.R. Achar, learned Counsel appearing for the State made common submissions not only in support of the Writ Appeal but also in opposition to the Writ Petition. His submissions may be summarised thus : Rule 58 of the Rules, as amended, expressly authorises the State Government to reserve any area for exploitation of minerals by the Government or a Corporation established by the Central Government or State Government. It was in exercise of the power under the said Rule, the State Government had taken the decision which was formally notified by the Notification extracted earlier. As a consequence of the issue of

statutory Notification under Rule 58, the compliance with the direction issued for consideration of the applications had become impossible for, it was not now open to the Government to consider any application for grant of mining lease in the area reserved in terms of the Notification issued under Rule 58 of the Rules. In support of his submission that the State as the owner of minerals had the absolute right to reserve any area for exploitation by the State or instrumentalities of the State, the learned Counsel relied on a Judgment of the Supreme Court in *Amritlal Nathubhai Shah and Others Vs. Union Government of India and Another*, . The relevant portion of the Judgment reads thus :

"We have gone through sub-sections (2) and (4) of Section 17 of the Act to which our attention has been invited by Mr. Sen on behalf of the appellants for the argument that they are the only provisions for specifying the boundaries of the reserved areas, and as they relate to prospecting or mining operations to be undertaken by the Central Government, they are enough to show that the Act does not contemplate or provide for reservation by any other authority or for any other purpose. The argument is however untenable because the aforesaid sub-sections of Section 17 do not cover the entire field of the authority of refusing to grant a prospecting licence or a mining lease to any one else, and do not deal with the State Government's authority to reserve any area for itself. As has been stated, the authority to order reservation flows from the fact that the State is the owner of the mines and the minerals within its territory which vest in it. But quite apart from that, we find that Rule 59 of the Rules, which have been made u/s 13 of the Act, clearly contemplates such reservation by an order of the State Government. That rule deals with the availability of areas for the grant of a prospecting licence or a mining lease in such cases, and provides as follows :

"59. Availability of certain areas for grant to be notified :- In the case of any land which is otherwise available for the grant of a prospecting licence or a mining lease but in respect of which the State Government has refused to grant a prospecting licence or a mining lease on the ground that the land should be reserved for any purpose, the State Government shall, as soon as such land becomes again available for the grant of a prospecting or mining lease, grant the licence or lease after following the procedure laid down in Rule 58."

Mr. Sen has conceded that it is a valid rule. It clearly contemplates reservation of land for any purpose, by the State Government, and its consequent non-availability for the grant of a prospecting license or mining lease during the period it remains under reservation by an order of the State Government. A reading of rules 58, 59 and 60 makes it quite clear that it is not permissible for any person to apply for a license or lease in respect of a reserved area until after it becomes available for such grant, and the availability is notified by the State Government in the Official Gazette. Rule 60 provides that an application for the grant of a prospecting license or a mining lease in respect of an area for which no such notification has been issued, *Inter alia*, under Rule 59, for making the area available for grant of a licence or a lease, would be premature and "shall not

be entertained and the fee, if any, paid in respect of any such application shall be refunded." It would therefore follow that as the areas which are the subject matter of the present appeals had been reserved by the State Government for the purpose stated in its notifications, and as those lands did not become available again for the grant of a prospecting licence or a mining lease, the State Government was well within its rights in rejecting the applications of the appellants under Rule 60 as premature. The Central Government was thus justified in rejecting the revision petitions which were filed against the orders of rejection passed by the State Government."

He, therefore, submitted that not only the Judgment of the learned Single Judge which is the subject matter of the Writ Appeal should be reversed, the Writ Petition should also be dismissed.

7. Sri D.L.N. Rao, learned Counsel for the Writ Petitioner per contra submitted that at the relevant point of time, namely, at the time when the Notification inviting the applications for grant of mining lease in the area in question were invited, there was no Rule which expressly conferred any power on the State Government to reserve any area for itself for exploitation of minerals. Assuming that the Government had such a power even in the absence of the Rule as indicated in the Judgment of the Supreme Court on which the learned Counsel for the State relied, the Government had the option of reserving the area for itself before issuing the Notification inviting the applications or not. Further, in the present case not only applications were invited but the lease was also granted in favour of one of the applicants though it was set aside in the proceedings before the Central Government and by this Court. In the circumstance on the principle of promissory estoppel, the State Government should be prevented from reserving the area for exploitation of minerals by itself and to reject the applications. Further, when the Central Government on the Revision Petition of Sri Munawar had directed the State Government to reconsider the application of Sri Munawar and of the Writ Petitioner after setting aside the order of the grant in favour of the Writ Petitioner, the State Government could not have disregarded the said order by taking a decision by reserving the area for exploitation of minerals by itself. He further submitted that as there was also a direction by this Court in the Writ Petition in addition to the order of the Central Government to consider the applications, the State Government could not avoid considering the applications by reserving the area for exploiting the mineral by itself or by a State owned Corporation, Sri M. R. Achar, learned Counsel appearing for the respondent in the Writ Appeal also supports the submissions of Sri D. L. N. Rao.

8. In our opinion the answer to both the submissions made by the learned Counsel for the respondents in the Appeal and the Writ Petition lies in the Rules 58 and 59 of the Rules introduced into the Rules by the Central Government. They read :

58. "Reservation of areas for exploitation in the public sector, etc. The State

Government may by notification in the Official Gazette, reserve any area for exploitation by the Government, a Corporation established by any Central, State or Provincial Act or a Government company within the meaning of Section 617 of the Companies Act, 1957.

59. Availability of area for regrant to be notified-(1) No area,

(a) which was previously held or which is being held under a prospecting licence or a mining lease ; or

(b) in respect of which an order had been made for the grant of a prospecting licence or mining lease, but the applicant has died before the grant of the licence or the execution of the lease, as the case may be, or

(c) in respect of which the order granting of lease has been revoked under Sub-rule (1) of Rule 15 or Sub-rule (1) of Rule 31 ; or

(d) in respect of which a notification has been issued under Sub-section 27 ; or

(e) which has been reserved by Government under Rule 58, shall be available for grant unless ;

(i) an entry to the effect that the area is available for grant is made in the register referred to in Sub-rule (2) of Rule 21 or Sub-rule (2) of Rule 40, as the case may be in ink; and ;

(ii) the availability of the area for grant is notified in the Official Gazette and specifying a date (being a date not earlier than thirty days from the date of the publication of such notification in the Official Gazette) from which such area shall be available for grant ;

Provided that nothing in this rule shall apply to the renewal of a lease in favour of the original lessee or his legal heirs notwithstanding the fact that the lease has already expired ;

Provided further that where an area reserved under Rule 58 is proposed to be granted to a Government company, no notification under Clause (ii) shall be required to be issued :

The Central Government may, for reasons to be recorded in writing relax the provisions of Sub-rule (1) in any special case."

9. It may be seen from Rule 58 that it confers the power on the State Government to reserve any area for exploitation of the minerals by the Government or a Corporation owned or established by the Government. Rule 59 provides that no area so reserved can be the subject-matter of grant of mining lease. Therefore, it is clear that if an area is reserved by the Government under Rule 58, unless a further Notification de-reserving the area is issued by the Government, it would not be available for being leased. There can, however, be no doubt that if an area had already been leased in favour of a private individual and the necessary documents had been executed, it would not be open for the

Government to issue a Notification under Rule 58 as such a decision deprives the right which has already accrued to a party, as it is well settled that a right accrued cannot be taken away either by a subordinate legislation or by an order made under subordinate legislation. Therefore, in the present case, if the grant made in favour of the Writ Petitioner was in force, the submission made by the learned Counsel for the Petitioner that the State Government would have had no power to issue a Notification under Rule 58 of the Rules and deprive him of his leasehold right would have been unexceptionable. But from the facts set out earlier, it may be seen that the grant made in favour of the Writ Petitioner was set aside by the Central Government. This Court also on the Writ Petition presented by two other competing applications, came to the conclusion that the grant made without considering the cases of other competing applicants was illegal. Therefore, on the date when the State Government issued the endorsement dated 2-5-1980 in which it informed all the applicants that the Government was not desirous of granting mining lease in respect of the land in question in favour of any one as also when it issued the Notification dated 7-4-1983 there were no subsisting grant of mining lease in respect of the land in question in favour of any one. We are unable to agree just because the Government had issued a Notification inviting the applications and the parties concerned had made the applications, the State Government would have no right under Rule 58 of the Rules to reserve an area which has been the subject matter of the Notification inviting the applications, to itself, and to say it would not consider any of the applications presented by any one pursuant to the advertisement inviting the applications. The position which emerged as a result of the order of the Central Government on the Revision Petition of Sri Munawar and the order of this Court was the grant made earlier was set aside and all the four applications had to be considered by the Government. At that stage, it was open for the Government to grant one or more of the applications or reject all the applications.

10. The learned Counsel for the Writ Petitioner submitted that issue of Notification by the State Government in the year 1975 inviting applications for leasing of the area for exploiting corundum mineral amounts to a promise made to the Writ Petitioner and others that the area would be leased and therefore on the principle of promissory estoppel the State Government was prevented from reserving the area for exploitation of the minerals by the State owned undertaking. In support of the submission, he relied on the Judgments of the Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, and *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, We see no force in the contention. The issue of a Notification inviting applications constituted no promise at all to any one that the area would be leased. It was open for the Government to reject all the applications. Similarly, once the grant made in favour of the Writ Petitioner was set aside by the Central Government and that decision was also confirmed by this Court, the matter reverted back to the original position, that is, the applications of all the four

persons were pending before the State Government for its decision. Therefore, it was competent for the Government to reject all the applications after consideration. It was equally open for the Government to take a decision that the area should be reserved for exploitation of the mineral by itself or by any instrumentality of the State. The principle of promissory estoppel is hardly applicable to a case of this type. The invoking of the principle in this case by the Writ Petitioner is also untenable for the reason that even if the area had not been reserved, the Government, after consideration of the four applications, could have granted the lease to any other applicant and not necessarily to the Writ Petitioner.

11. Learned Counsel, however, strenuously contended that as held by a Division Bench of the Patna High Court in *S. Lal and Co. Ltd. Vs. The Union of India (UOI) and Others*, the order passed in revision by the Central Government under the Mineral Concession Rules being a quasi-judicial order was binding on the State Government and the State Government in exercise of its executive power could not disregard the direction so issued by the Central Government. He also submitted that, as held in the said decision, the State Government could not in exercise of its executive power, disregard or disobey the quasi-judicial order of the Central Government made in exercise of its power under Rule 54, and if done the action has to be struck down and a direction to obey the order of Central Government has to issue.

12. The contention based upon Lal's case raised in this case, in our opinion is fallacious. The State Government has not made any order in exercise of its executive power to nullify the quasi-judicial order of the Central Government made under Rule 54 of the Rules. What has happened in this case is, during the interregnum, i.e., after the order in revision was made by the Central Government under Rule 54 of the Rules on the Revision Petition of Sri Munawar and before the consideration of the four applications for grant of mining lease by the State Government, the Central Government itself in exercise of its subordinate legislative power under the Act, introduced new Rules 58 and 59 into the Mineral Concession Rules. Rule 58 empowered the State Government to issue a Notification reserving any area to itself or in favour of any instrumentality of the State or the Union Government for exploitation of any mineral. In issuing the impugned notification, the State Government was not at all exercising its executive power. It was exercising the statutory power to issue a statutory Notification conferred on it by Rule 58 framed by the Central Government in exercise of the rule making power. Therefore, once by the issue of a statutory notification in exercise of power under a statutory provision, the area in question is reserved for exploitation of mineral by the State, the question of granting the area on lease in favour of a private person became impossible, Any direction issued by the Central Government earlier or even a direction issued by this Court to consider all the pending applications together would be incapable of implementation for the reason that the statutory rules bars the Government from considering any application for grant of mining lease in the area in question.

13. As far as Patna case⁴ is concerned, at the relevant point of time Rule 58 was not there and therefore there was no statutory power vested in the State Government to issue any Notification reserving the area for itself. The Division Bench found that in the said case the State Government was exercising only its executive power and naturally the Division Bench held that the executive power could not be exercised when there was a quasi-judicial direction to grant the lease. A clear distinction exists between the exercise of the executive power which means that the matter is not covered by a statutory power and the exercise of a statutory power conferred under a statutory provision. In the present case, the impugned Notification is issued in the exercise of statutory power conferred under a statutory provision incorporated into the Rules by an amendment made to the Rules by the Central Government. Therefore, it cannot be said that in the present case the State Government in exercise of its executive power had contravened the direction issued by the Central Government or had disobeyed the Writ issued by this Court, Therefore, there is no substance in this contention also.

14. In the result, we make the following :

ORDER

i) Writ Petition No. 20489 of 1984 is dismissed.

ii) Writ Appeal No. 1117/81 is allowed. The order of the learned Single Judge is set aside without going into the points decided in the Writ Petition for the reason that they do not survive for consideration, in view of the Notification issued under Rule 58 of the Rules.