

(1987) 04 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4597 of 1986

T. Nandagopal

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 24-04-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Mines and Minerals (Development and Regulation) Act, 1957 — Section 11, 11(2),
11(4), 30

Citation : AIR 1988 AP 199

Hon'ble Judges : Upendralal Waghray, J;Raghuvir, J;Jeevan Reddy, J

Bench : Full Bench

Advocate : P. Ramachandra Reddy, for the Appellant; A.G. S. Venkateswara Rao for Central Government and B.V. Subbaiah, for the Respondent

Judgement

Jeevan Reddy, J.

(On difference of opinion between Raghuvir, J. and Waghray J. agreeing with Raghuvir, J.)

1. This matter has been referred to me under Clause 36 of the letters Patent on a difference of opinion arising between two members of the Division Bench who heard the writ petition. Raghuvir", J. was inclined to allow the writ petition directing the State Government to accord a mining lease, to the petitioner over an area of 150 acres in survey No. 876, while Waghray. J. was inclined to dismiss the writ petition.

2. Survey Nos. 874 and 876 in village Myallacheruvu in Nalgonda District contain lime-stone which is a raw material for producing cement. The total extent of these two survey-numbers is about 500 acres. The lands adjacent to these lands also contain lime-stone, though not of the same quality. Those adjacent lands are situated in Madhavaram village. The petitioner, Dr. Nandagopal applied for a mining lease on 2-11-1983 for the entire extent in survey Nos. 874 and 876. The 2nd respondent, M/s. Suvarna Cements Ltd., applied for a prospecting licence

on,7-11-1983 in respect of lime-stone in these very lands. On the date of its application the 2nd respondent was having a licence for cement plant with a capacity of 200 tonnes per day, at Kurnool, and had applied for shifting the same to the present site, near the said survey-numbers. So far as the petitioner is concerned. he intended to set up a cement plant with a capacity of 100 tonnes per day, and had applied to the Government for increasing its capacity to 200 tonnes per day. He undertook to set up the plant within three years of the grant of mining lease to him.

3. There were two other earlier applicants, namely, Remesh Reddy and M/s. Essar Cements, in respect of these very lands. On 18-9-1984 the State Government sought the prior approval of the Central Government under S. 11(4) of the Mines & Minerals (Regulation and Development) Act. 1957, inasmuch as it proposed to grant the mining lease in respect of the entire extent in both the survey numbers in favour of the petitioner, overlooking the said earlier applicants. Ramesh Reddy and M/s. Essar Cements. At this stage, it appears Ramesh Reddy and Essar cements went out of the picture."They were no longer in termed in obtaining a mining lease in respect of the Lands. Hence no further reference to them is necessary. Only two contenders remained in the field, namely, the petitioner and the 2nd respondent.

4. On 26-11-1984 the State Government sent revised proposals to the Central Government, proposing that out of the 500 Acres comprised in the said two survey numbers, 350 Acres should be granted to the 2nd respondent and 150 Acres to "the petitioner. The Central Government heard all the parties on 29-5-1985, and by its proceedings dt. 1-6-1985, accorded its approval for granting 400 Acres to the petitioner and 100 Acres to " the 2nd respondent. (it may be remembered that as between the petitioner and the 2nd respondent, the petitioner was the earlier applicant and was, there "fore, entitled to preference under S. 11(2) of the Act).

5. After receiving the Central Government's prior approval contained in its proceedings dt. 1-6-1985, the State Government again sent revised proposals to the Central Government on 18-7-1985, proposing to grant the entire-500 acres in the said survey numbers to the 2nd respondent. At this stage, the petitioner filed two writ petitions, W.P.No. 7167/85 was filed for a direction to the State Government to implement and act upon the Central Government's proceedings dt. 1-6-1985, and W.P.No. 11001/85 to quash the modified proposal sent by the State Government on 18-7-1985. Both the writ petitions were dismissed by a learned single Judge of this court on 6-12-1985 with the observation that it is for the concerned authorities to consider all the proposals and pass appropriate orders and that the writ petitions are premature and misconceived. The petitioner filed two writ appeals, being W.A.Nos. 1228 and 1229 of 1985, against the order of the learned single Judge, which writ appeals are now said to be pending.

6. After receiving the revised proposals of the State Government dt. 18-7-1985.

the Central Government again heard all the interested parties on 25-11-1985, and accorded prior approval in its proceedings dt. 12-2-1986 for grant of 350 acres to the 2nd respondent in survey No. 874. and 150 Acres to the petitioner in S.No. 876. The State Government was also asked to demarcate the respective extents granted to both the parties separately. On the basis of the said prior approval the State Government issued G.O.Ms. No. 219, Industries & Commerce, dt. 11-4-1986. granting a prospecting licence in respect of 350 Acres in survey Nos. 874 and 87.6 in favour of the 2nd respondent. Subsequently, on 22-11-1986. a mining lease was also granted to the 2nd respondent in respect of the said extent, in G.O.Ms. No. 225.

7. On 21-4-1986, the petitioner filed the present writ petition for a direction to the State Government to implement the orders of the Central Government dt. 12-2-1986. In this writ petition he filed WPMP.NO. 6334/86. in which a Bench of this Court passed orders on 25-4-1986 directing the State Government to pass orders with respect to 150 Acres in survey No. 876, with in one month. This period of one month was extended by one more month on 27-5-1986. However, no orders were passed by the State Government even within the extended time. On the other hand, on 15-7-1986 the State Government sent another revised proposal to the Central Government for granting the said 150 Acres in Survey No. 876 also to the 2nd respondent. whereupon the petitioner filed a Contempt Case being C.C. No. 2,32/1986, in which notice was directed to the respondents.

8. Against the order of the Division Bench dt. 25-4-1986 in WPMP.NO. 6334/86 (filed in this writ petition) the State Government filed a SLP before the Supreme Court (5. L P. No. 10(X)6/86). By its order dt. 8-9-1986 (reported in 1986 (Supp) SCC SM), the Supreme Court refused to interfere in the matter. It directed the order of the Division Bench of this court to be implemented within two weeks. It also directed the expeditious disposal of the writ petition.

9. On 19-9-1986 the Government issued G.O.Ms. No. 498 rejecting the petitioner's application for grant of mining lease in respect of the said 150 acres, subject, of course, to the result of the writ petition. Pending the writ petition this court directed the State Government not to grant the lease in respect of the said extent to any one.

10. When the writ petition came up for bearing before the Division Bench the petitioner impleaded the Central Government as well. The Central Government, however. could not file a counter for the reason, according to its Standing Counsel, that there was no time for preparing and filing the same before the matter was heard.

11. After hearing the parties, Raghuvir. J. was of the opinion that the rights of the petitioner have been crystallized in the Central Government's order dt. 12-2-1986 and that. therefore, he is entitled to grant of mining lease in respect of the said extent. The learned Judge, however, observed that his order does not preclude the State Government from making any other recommendation to the

Central Government, nor does it prevent the Central Government from reconsidering the same. Accordingly, the learned Judge, was inclined to issue a direction to the State Government to accord a mining lease in favour of the petitioner for the said extent. The other learned Judge, Waghray, J. was however not inclined to express any final opinion on the merits of the case. The learned Judge was of the opinion that this is a matter which should best be considered by the Central Government in a revision preferred under S. 30 of the Act. In view of the availability of the said alternative remedy, the learned Judge thought that no relief ought to be granted in this writ petition, and that it should be dismissed.

12. Mr. P. Ramachandra Reddy, the learned counsel for the petitioner urged the following contentions before me, the petitioner being the earlier applicant is entitled to statutory preference under S. 11(2) of the Act., the said right conferred upon him by a statute can be undone only in the manner prescribed by sub-sec. (4) of S. 11; under S. 11(4) two conditions are to be satisfied, viz., the State Government must record its reasons for overlooking the said statutory preference, and the Central Government must accord prior approval therefore. In this case, though the first condition can be said to have been satisfied, the second condition, viz., the prior approval of the Central Government, is not satisfied so far as the extent of 150 Acres is concerned. In other words, the Central Government was prepared to overlook the petitioner's claim for priority only in respect of 350 acres, but not in respect of 150 Acres. In such a situation, the petitioner is entitled to enforce his statutory right of preference through a writ of mandamus. Moreover, this is not a case where the Government is seeking to reserve the said 150 Acres for its own purposes, it wants to grant a lease in respect of the said extent as well but to the 2nd respondent, which it cannot do, in view of the Central Government's proceedings dt. 12-2-1986. Moreover, the revised proposals sent by the State Government on 15-7-1986 have also been rejected by the Central Government on 15-9-1986, which has reaffirmed its earlier proceedings dt. 12-2-1986. In view of the Central Government's proceedings dt. 15-9-1986 there is no further hurdle in the way of the petitioner's claim, and that, in all the circumstances of the case and having regard to what all has transpired in this case, this is a fit case where a mandamus ought to issue as prayed for by the petitioner.

13. The learned Advocate-General, appearing for the State Government, opposed the grant of any relief in the writ petition. He submitted that even if the Central Government refuses to grant prior approval for overriding the petitioner's claim for priority, the State Government is not bound to grant a lease to the petitioner in respect of the said 150 Acres. The terms and directions given by the Central Government in its proceedings of prior approval are not binding upon the State Government in law. The State Government is the owner of all the minerals, and it is for it to decide whether to grant a lease or not; the State Government is entitled to, and has in fact rejected the claim for grant of lease to the petitioner for the said extent. In such a situation the only remedy available to the petitioner is to file a revision under S. 30 of the Act. Of course, if the Central Government

allows the revision and directs the State Government to grant a lease, such an order being an order of the revising authority is binding upon the State Government. The learned Advocate-General further submitted that the order of the State Government cannot be said to be arbitrary in the facts and circumstances of the case; it has given reasons in its order for refusing the grant of lease to the petitioner; it is not as if the only ground for rejecting the petitioner's application for lease is the proposal to grant the said extent in favour of the 2nd respondent; there are other independent reasons also for which the State Government was of the opinion that the petitioner is not entitled to a lease, even if the said reasons are characterized as not sustainable, that is a matter which should be agitated in a revision under S. 30, and that no writ of mandamus ought to issue in this case.

14. The learned Addl. Central Government Standing Counsel submitted that the approval and the terms of approval accorded by the Central Government under S. 11(4) of the Act are binding upon the State Government, and it is bound to implement the same. The learned Addl. Standing Counsel affirmed that the Central Government has rejected the revised proposals sent by the State Government on 15-7-1986, by its proceedings dt. 16-9-1986, affirming its earlier order dt. 12-2-1986. The learned Addl. Standing Counsel promised to produce the record for which indeed, I waited till today; but so far he has not been able to produce the record. I do not, however, think it necessary to wait further because even G.O.Ms. No. 498 dt. 19-9-1986 issued by the State Government clearly refers to this decision of the Central Government, dt. 16-9-1986.

15. Mr. B. V. Subbaiah, the learned counsel for the 2nd respondent, submitted that no mandamus can issue in this case in respect of the mining lease to the petitioner for the said 150 Acres, as on today, there is no final decision by the State Government to grant such a lease. The Central Government has not so far passed final orders on the revised proposals sent by the State Government on 15-7-1986. The writ petition is, therefore, premature, Counsel further submitted that even if the Central Government can be said to have rejected the revised proposals sent by the State Government on 15-7-1986, and even if it is assumed that the State Government is bound by the terms of the said prior approval granted by the Central Government under S. 11(4), what would happen is that the State Government would grant a lease to the petitioner in respect of the said 150 acres; if and when the State Government grants such a lease to the petitioner, the 2nd respondent would immediately get a right to file a revision u/s 30 of the Act to the Central Government, where he can agitate that the Central Government ought to have granted prior approval for the State Government's proposal to grant the said 150 Acres also to the 2nd respondent. Counsel submitted that the opinion formed by the Central Government at the stage of S. 11(4) is not final, or binding upon the Central Government while acting as a quasi-judicial authority i.e., as a revising authority under S. 30 of the Act, it can come to a different or contrary conclusion even. Now if a mandamus is issued by this court directing the grant of a lease to the petitioner, the right of revision

available to the 2nd respondent would be nullified. For all these reasons, counsel submitted, this court should not interfere at this stage, and should allow the parties to exhaust the remedies provided by the statute.

16. The resume" of facts given above discloses an unhappy state of affairs. Both the Governments, and in particular the State Government has been repeatedly changing its stand. On 18-9-1984 it recommended the grant of entire 500 acres to the petitioner. On 26-11-1984 it submitted revised proposals proposing 350 acres for the 2nd respondent and 150 acres for the petitioner. When the Central Government after bearing all the part in directed for grant of 400 Acres to the petitioner and 100 Acres to the 2nd respondent, the State Government submitted the second revised proposal on 18-7-1985 proposing to grant the entire SW acres to the 2nd respondent. On receiving this proposal, the Central Government again beard all the parties and directed in its proceedings dt. 12-2-1986 that 350 Acres should be granted to the 2nd respondent and 150 Acres to the petitioner. After receiving the said proceedings, the State Government implemented the same to the extent it was in favour of the 2nd respondent and granted a prospecting hence and then a lease in respect of 350 acres to the 2nd respondent. But, so far as the petitioner is concerned it refused to pass any orders not even when this court directed the State Government on 27-5-1986 to pass orders within one month. On 15-7-1986 it again submitted a third revised proposal for grant of the said 150 acres as well to the 2nd respondent. Now, the Central Government has rejected this proposal again, affirming its earlier order dt. 12-2-1986. It is significant to notice that the Central Government's decision dt. 16-2-1986, reiterated on 16-9-1986 is the same as the revised proposal sent by the State Government on 26-11-1984. Under these proposals, the State. Government had proposed grant of 350 acres to the 2nd respondent and 150 acres to the petitioner. Another factor which is relevant to be noticed is that before according its prior approval, the Central Government, on both the occasions, i.e. before according its prior approval dt. 1-6-1985, as well as before according its prior approval on 12-2-1986, beard both the petitioner and the 2nd respondent. It stood by the same opinion, which is evident from its latest proceedings dt. 16-9-1986 whereby it has affirmed its earlier proceedings dt. 12-2-1986.

17. The factual position today is this. Though the State Government wants to grant a prospecting licence/mining lease in respect of the said 150 Acres as well to the 2nd respondent, it cannot do so because the Central Government has refused to accord its prior approval under S. 11(4) of the Act. Unless the Central Government accords its prior approval, the statutory preference available to the petitioner cannot be overlooked by the State Government. Again, this is not a case where the State Government is seeking to reserve the said 150 acres for its own purposes, or for exploitation in public sector. It wants to grant a lease in respect of the said extent as well to private parties i. e to the 2nd respondent. Indeed initially it wanted to grant the entire 500 Acres to the petitioner, which it later reduced to 150 Acres. Now it wants to give nothing to the petitioner,

whereas the Central Government is saying, under S. 11(4) of the Act,. that 150 Acres should be granted to the petitioner.

18. I will first deal with the contention of the learned Advocate-General that inasmuch as, the ownership of the minerals vests in the State Government, it is not bound to grant a lease to the petitioner just because the Central Government has not accorded its prior approval to its proposal to overlook the priority claim of the petitioner. The contention is that the terms of the prior approval accorded by the Central Government under S. 11(4) of the Act are not binding on the State Government. He submitted that the rejection of the petitioner application by the State Government, under G.O.Ms. No. 498 dt. 1-9-1986, in the circumstances, is perfectly valid, and the only remedy available to the petitioner is to file a revision to the Central Government against the said order, u/s 30 of the Act.

19. It is true that the minerals vest in the State Government, but, it goes without saying that the State Government cannot act arbitrarily. Now, take the facts of this case. More than one person applied for mining lease in respect of the lands concerned herein. The State Government wants to grant a lease. It has been changing its mind from time to time. Now it wants to grant the entire 500 Acres to the 2nd respondent. That is not possible because the Central Government has not accorded its prior approval for overlooking the petitioner's priority claim for the entire extent. The Central Government has agreed to overlook the petitioner's priority claim only in respect of 350 acres. While doing so, it has directed that the remaining 150 Acres should be granted to the petitioner. The State Government has, in pursuance of the said proceedings of the Central Government, already, granted 350 Acres to the 2nd respondent. But, so far as 150 acres is concerned, since it is stultified by the Central Government in its proposed move, it now wants to take the stand that it does not propose to grant the said 150 Acres to any one. This is nothing but an arbitrary stand. So far as the argument of binding nature of the terms of Prior approval accorded by the Central Government under S. 11(4) is concerned, the very contention is rather misplaced. There is no question of the Central Government's prior approval being binding upon the State Government. One must keep in mind the context of S. 11(4). According to S. 11 of the Act, the person who applies first is entitled to a preference, and if that preference is proposed to be overlooked by the State Government, it has to obtain the Prior approval of the Central Government, besides recording special reasons for such overlooking. Unless the Central Government accords its prior approval for such overlooking, the State Government is not competent to overlook the priority claim of the earlier applicant. In other words, the prior approval of the Central Government is one of the conditions precedent for overlooking the priority claim of the earlier applicant. In such a situation, the argument of the learned Advocate-General that the terms of the prior approval accorded by the Central Government are not binding upon the State Government and similarly the converse argument of the learned Additional Standing Counsel for the Central Government that the terms

of such prior approval are binding upon the State Government, must both be held to be misplaced.

20. Now coming to the other argument which indeed is the main arguments of the learned Advocate-General and Mr. B. V. Subbaiah - I am of the opinion that it does not merit acceptance in the particular facts and circumstances of this case. The argument of Mr. Subbaiah, which is really hypothetical, as this : if the State Government grants a mining lease to the petitioner in respect of the said 150 Acres, the 2nd respondent would be entitled to question the same before the Central Government by way of a revision entitled to question the under S. 30 of the Act, where he can agitate hat the refusal to grant prior approval for Overlooking the Petitioners claim to the entire extent of SW Acres was not justified. In other words, the submission is that the 2nd respondent in such a revision would be entitled argue that the grant of 150 Acres, to the petitioner should be set aside, and that the Central Government should grant prior approval to the State Government for overlooking the petitioner's priority claim in respect of the remaining 150 Acres also, so as to enable the State Government to grant a mining lease in respect of the same to the 2nd respondent. In my opinion, this is wholly a hypothetical and untenable argument. Now the fact is that the State Government has rejected the petitioner's application for grant of mining lease in respect of the remaining 150 Acres. In such a case, there is no question of the 2nd respondent filing a revision against the said order to the Central Government. If at all, the petitioner must file a revision. Moreover, I am not convinced about the correctness of Mr. B. V. Subbaiah's argument that in case a mining lease is granted by the State Government to the petitioner, the 2nd respondent would be entitled, in a revision filed against such order, to contend that the refusal of the Central Government in the earlier proceedings u/S. 11 (4) to accord prior approval for overlooking the petitioner's priority claim for the remaining 150 Acres, is not correct and that it should grant such prior approval in that revision. I am of the opinion that such an argument would be outside the scope of the revision. In such a revision, the Central Government can either say that the grant is proper, or that it is not proper; but it cannot certainly re-open the issue of prior approval under S. 11(4) which is concluded long age, nor can it grant such prior approval in such a revision. If this is what the 2nd respondent wanted to do, he ought to have filed a revision against the order of the State Government in G.O.Ms. No. 219 dt. 11-4-1986. Under this G.O., lease of only 350 Acres was granted to him as against 500 Acres applied for by him which means that his application was rejected in so far as 150 acres was concerned. In such a case, he could have argued that the Central Government ought to have granted prior approval under S. 11(4) and at any rate, it should now grant such prior approval so as to enable the State Government to grant a lease to him for the 150 Acres as well. Having not done that, the 2nd respondent cannot now put forward the above-mentioned plea which merely hypothetical besides being incorrect in law. I am therefore, unable to agree with Mr. B. V. Subbaiah that by granting a mandamus as prayed for by the petitioner in this writ petition, the 2nd

respondent's right of revision under S. 30 would be nullified and rendered nugatory.

21. Now coming to the argument of the learned Advocate-General that inasmuch as a revision lies under S. 30 of the Act against the order of the State Government rejecting the petitioner's application for lease, this court should not interfere, I am of the opinion that adopting such a course in the particular facts and circumstances of this case, would be unfair and unjust. Normally speaking the contention of the learned Advocate-General is right. When the petitioner has got an alternative remedy by way of revision, provided by the statute itself, this court normally would not exercise its extraordinary jurisdiction under Art. 226 of the Constitution. But it is only a rule of cautious and not an absolute bar. It is well settled that an alternative remedy is not a bar where the principles of natural justice are violated, or where an order is without jurisdiction. In this case, the alternative remedy is one of revision to the Central Government. It I hold that the reason, or reasons given by the State Government for rejecting the petitioner's application are ex facie arbitrary and unreasonable, it would not be a proper exercise of discretion on the part of this court to refuse to interfere even in such a case, more particularly in view of the fact that the Central Government has repeatedly made it clear that the petitioner ought to be granted lease in respect of the said 150 Acres. Indeed, on 1-6-1985 it said 400 Acres should be granted to the petitioner. Subsequently, on 12-2-1986 it said 150 Acres should be granted to the petitioner. Again, on 16-9-1986 the Central Government reiterated that the petitioner should be granted this 150 Acres. Before issuing the proceedings dt. 1-6-1985 and 12-2-1986 the Central Government heard both the parties, viz., the petitioner and the 2nd respondent herein. It looked into all the relevant material which was placed before it by the State Government, as well as by the parties. There is one more circumstance when on an earlier occasion the petitioner approached this court to implement the prior approval of the Central Government and to direct the State Government to grant the lease in respect of 150 Acres as per the Central Government's prior approval proceedings dt. 1-6-1985 (A.P.Nos. 7167 & 11001/85) this court directed him back to the State Government and Central Government observing that it is for the two governments to consider all the relevant facts and circumstances and pass appropriate orders. Now, the Central Government is repeatedly saying that 150 Acres should be given to the petitioner, while directing grant of 350 Acres to the 2nd respondent. The Central Government has stated in its proceedings dt. 12-2-1986 that it has further examined the matter in the light of the High Court's observations, and that taking equitable considerations into account, it has decided upon the said apportionment. In such a situation, driving the petitioner again to the Central Government by way of a revision would be more or less an empty formality. It is true that, while disposing of a revision, under S. 30 the Central Government acts as a quasi-judicial authority, whereas, while according its prior approval under s. 11(4) it does not act as a quasi-judicial authority, but, in the circumstances of this case, the said distinction is of no

consequence, because before according its prior approval on both the said occasions, the Central Government has heard the parties and considered the entire material before it, before issuing its proceedings.

22. Now coming to the reasons recorded by the State Government in its order dt. 19-9-1986 for rejecting the petitioner's application, I am of the opinion that they are ex facie unsustainable and must therefore, be held to be arbitrary. The reasons for rejection are recorded in para 4 of G.O.Ms. No. 498. I may as well extract the entire para 4. It reads thus : -

4. The Government examined the matter of grant of mining lease over the remaining extent of 150 acres in question, having regard to the field reports received on the progress of implementation of the cement plant by Dr. T. Nandagopal and other relevant facts like viability, contiguity etc. it was found that there was not much of construction activity on the project site of Dr. T. Nandagopal. As per the norms of Cement Research Institute and the recommendations of the working group of Mini Cement Plants, an area of 200 acres containing limestone is initially required for a cement plant of 200 TPD and more area have to be made available over and above 200 acres depending on the actual demand. Further, as per the instructions issued by the Government of India in their letter No.M.II.152(53)/62, dt. 29-9-1964 it has to be ensured that no prospecting License/Mining, lease is granted in respect of uneconomic areas. The 150.00 Acres in question will hardly be sufficient to feed and support the proposed mini cement plant of Dr. T. Nandagopal and we will anyhow have to go in for additional area elsewhere. Likewise, the area of 350.00 acres already granted on Prospecting Licence to Suvarna Cements which was later granted mining lease over the same area in the G. O. 9th read above will not also fully meet the requirements of its 200 TPD capacity cement plant. Grant of the remaining extent of 150 acres also to Suvarna Cements will only facilitate its cement plant to draw sizable raw material from a single large source in view of the contiguity of the area to its existing case hold for sustained production of cement which otherwise has to be obtained from elsewhere. This grant to Suvarana Cements could not also affect the interests of the requirement plant of Dr. T. Nandagopal which is to be set up as there is sizable area containing limestone available in the neighbouring village of Yepalamadhavaram to meet its full requirements and which can be considered for grant if applied for. The Government therefore considered that the balance of convenience lay in requesting the Government of India to reconsider the matter and convey approval under S.11(4) of the act as already sought for in the letter 6th read above for grant of the remaining extent of 150.00 Acres to M/s Survarna Cements Ltd., as the area available in the neighbouring Yepalamadhavaran village can be considered for Dr. T. Nandagopal. The Government of India have accordingly been addressed in the letter 12th read above and that Government their telex dt. 16-9-1986 have reiterated their stand in their earlier letter dt. 12-2-1986.

The first reason is that according to the field reports received, there is not much

of construction activity on the project site of the petitioner. But, the petitioner has been saying that he would set up the plant within two years of the grant of lime; he had obtained a letter of intent dt. 20-6-1984 for a 100 TPD cement plant, which was later raised to 200 TPD by Govt. of India, Department of Industrial Development, "on 11-9-1985". The petitioner cannot be expected to set up the plant when the State Government has been resolutely opposed to the grant of lease to him over any extent in this village. The Central Government indeed directed in its proceedings dt. 12-2-1986 that the grant of mining lease to the petitioner shall be conditional upon his setting up the plant within two years from the date of grant, and also directed that if he fails to do so, the lease will be cancelled without prior notice to him. The other ground given by the State Government is that inasmuch as, according to the norms of the Cement Research Institute and the recommendations of the working group of Mini Cement Plants, an area of 500 Acres containing limestone is initially required for a cement plant of 200 TPD, the grant of 150 Acres to the petitioner would be uneconomic. It, therefore, opined that the petitioner can be granted the requisite land in the adjoining village. But if the norms of the Cement Research Institute and the recommendations of the working group of Mini Cement Plants are to be followed, the grant of 350 Acres to the 2nd respondent is equally uneconomic. If so, the State Government ought not to have granted 350 Acres to the 2nd respondent. The third reason is that the remaining 150 Acres also should be granted to the 2nd respondent since that would facilitate its cement plant to draw sizable raw material from a single large source. But, that is not possible in view of the repeated refusal of the Central Government to accord prior approval under S. 11(4). Just as the petitioner can be granted some extent in the adjoining village, the 2nd respondent also can be granted some more extent in the adjoining village. In this connection, it is relevant to mention that the Government's order itself takes notice of the Government of India's decision dt. 16-9-1986 communicated by Telex, reiterating their earlier view expressed on 12-2-1986 which means that the State Government's proposal to grant this 150 Acres to the 2nd respondent is not possible of realisation. If so, there is no point or purpose in rejecting the petitioner's application. In this connection, it should be noticed that the Central Government has repeatedly expressed its opinion while according its prior approval for overlooking the petitioner's claim to the extent of 350 Acres that 150 Acres should be leased to the petitioner. May be that this is not strictly binding upon the State Government; but, in view of the fact that the Central Government has, after hearing all the parties thought it fit to apportion the extent of 500 Acres between both the parties in a certain manner, the State Government ought to have given due weight to such opinion. In this connection, I may also refer to the opinion expressed by a learned single Judge of this Court in this very matter, which is referred to in the Central Government's proceedings dt. 12-2-1986. The observation of the High Court reads thus : -

It is submitted that equity demands that both the petitioner and the respondent should be given some land in the village of Cheruvu (Myallacheruvu) where

limestone is of superior quality and also for the reason that the, 3rd respondent is the only applicant for land in the other village Madhavaram. These are all matters to be taken into account by the concerned authorities and I have no doubt in my mind that the Central Government would do so

(vide judgment dt. 6-12-1985 in W.P. Nos. 7167/85 and 11001/1985). It is in the light of the said observations that the Central Government opined, after bearing both the parties, that 350 Acres should be granted to the 2nd respondent and 150 Acres to the petitioner; (vide Central Government's proceedings dt. 12-2-1986). Indeed, the argument of Sri P. Ramachandra Reddy, the learned counsel for the petitioner, is that the granting of prior approval by the Central Government for overlooking the petitioner's priority claim in respect of 250 Acres, with a view to enable the State Government to grant the same to the 2nd respondent, is conditional upon, and is indivisibly connected with the direction to grant 150 Acres to the petitioner. His submission is that the State Government having acted upon the said approval in part (so far as it is, in favour of the 2nd respondent) cannot reasonably and justifiably refuse to act Upon the other part (in so far as it is in favour of the petitioner). It cannot be said that this argument is without any substance. As a matter of fact, the Central Government in its proceedings dt/- 12-2-1986 has pointedly mentioned that the direction contained in the said proceedings (viz., grant of 350 Acres to the 2nd respondent and 150 acres to the petitioner) is in consonance with the proposal of the State Government contained in its letter dt. 26-11-1984. It also took note of the fact that at earlier stages, even M/s. Suvarna Cements Ltd. have earlier expressed themselves, several times that they would be satisfied even if 350 acres is given to them on lease". The Central Government further requested the State Government "to implement the above decision of the Central Government in its entirety and a copy of the orders so passed by the State Government in the matter may kindly be furnished to this Department for record...

23. For the above reasons, I am of the opinion that this is a proper case where a direction under Art. 226 of the Constitution ought to issue to the State Government to grant a lease in respect of the remaining extent of 150 Acres in Survey No. 876, in favour of the petitioner, subject to the condition specified by the Central Government in paragraph 10 of its proceedings dt. 12-2-1986. I am, therefore, in agreement with the opinion expressed by Raghuvir, J.

24. Before parting with this case, however, I must refer to one aspect. Raghuvir, J. has in his opinion, disagreed with the view expressed by me in Raghunatha Reddy v. Govt. of India (1982) 2 An WR 162. and proceeded to declare that "it is reversed". Inasmuch as the judgment in Raghunatha Reddy's case had become final (as no appeal was preferred against it), it could not have been "reversed" while bearing the present writ petition more so, by one of the two Judges comprising the Division Bench and that too when they were disagreeing and referring the matter to a third Judge. Waghray, J. did not concur with Raghuvir, J. in this view. I may also point out that Amareswari, J. has agreed with the view

expressed in Raghunatha Reddy's case(supra), in this very case: (vide judgment of Amareswari, J. dt. 6-12-1985 in W.P. Nos. 7167 and 1 1001 of 1985), which is a decision between these very parties. Further the said question did not really arise for consideration in this writ petition, for the reason that, before granting its prior approval both on 1-6-1985 and 12-2-1986, the Central Government did, as a fact. hear both the parties. Hence the question whether the parties are entitled to a hearing or not, at the stage of S. 11(4) (i.e. by the Central Government). was merely of academic interest in the case. For this reason, I desist from going into the said question.

25. The matter may now be posted before the Division Bench for appropriate orders, as contemplated by Cl. 36 of the letters Patent.

FINAL ORDER OF DIVISION BENCH:

26. In view of the opinion of B.P.J.R., J. we shall be a direction as contained in the order passed by A. R.. J.

27. No question of law of general importance is involved in the writ petition, which requires consideration by the Supreme Court of India. Oral leave to appeal to Supreme Court refused.

28. Order accordingly.