

(1986) 10 KAR CK 0028

In the Karnataka High Court

Case No : Writ Petition No's. 14841 and 16100 of 1986

T.R.N. Swamy

APPELLANT

Vs

Director of Mines and Geology

RESPONDENT

Date of Decision : 16-10-1986

Acts Referred:

Karnataka Minor Minerals Concession Rules, 1969 — Rule 3, 61 (1) (a), 62, 64

Citation : (1987) ILR (Kar) 262

Hon'ble Judges : Murlidher Rao, J

Bench : Single Bench

Advocate : D.L.N. Rao, for the Appellant; N. Santosh Hegde, General and R.J. Babu, for the Respondent

Judgement

Murlidher Rao, J.—Petitioner has filed these two petitions. Common set of facts have given rise to two causes of action. Reliefs asked for are separate but concerning a common transaction.

Facts :

Petitioner applied for grant of quarry lease in an area of 280 acres in S. No. 421 of Maralkuppa Village in Kanakapura taluk. The application was filed on 3-12-1981, for "GREY GNEISS". The Deputy Director of Mines and Geology, being the competent officer, granted by 150 acres and in pursuance thereof, lease deed was executed on 15-5-1982. In the lease deed, the mineral was mentioned as "GREY GRANITE" instead of "GREY GNEISS" as sought for by the petitioner. Petitioner commenced his operations.

2. After one year, petitioner, realising the discrepancy, applied for rectification of mineral in the lease deed. He contended that he had applied for "GREY GNEISS" and that is the mineral found in the quarry, therefore, "GREY GRANITE" which is mentioned in the lease deed, having not been found in the quarry, needs to be corrected and be brought in conformity with the mineral mentioned by him in his application. Application was filed under Rule 64 of the Karnataka Minor Minerals

Concession Rules, 1969.

3. On 8-7-1983, the said application was rejected, so the discrepancy continued and the dispute remained un-resolved. Petitioner filed W.P. 16266/1983. The factual controversy that existed between the parties is aptly described thus :

"..... Some time in June 1983, disputes arose between the petitioner and the department, the former contending that what, had been applied for by him viz., "Grey Gneiss" had been granted and he was lawfully extracting that mineral and the latter contending that what had been granted by the Deputy Director was only "Grey Granite" and not "Grey Gneiss" and therefore, it was not open to him to extract the mineral called "Grey Gneiss" which was found in the area for which he had not been granted the lease..... "

On the basis of the return filed in that case, the objection of the respondent is summarised thus :

"..... the respondents has asserted that though the petitioner applied for "Grey Gneiss" the competent authority had deliberately granted a lease for a mineral called "Grey Granite" only. On this premises the respondents have asserted that the "Grey Gneiss" he had extracted "Grey Granite" for which only he had been granted permission by the Deputy Director. Apart from this, the respondents have contended that the application made by the petitioner under Rule 64 of the Rules had been properly examined and had been rightly rejected by the Deputy Director".

Ultimately, the Court while setting aside the order of rejection of the petitioner's application for rectification, ordered as follows :

"In these circumstances, it would be proper to direct the Deputy Director to restore the application made by the petitioner on 6-6-1983, to its original file and dispose of the same with all such expedition as is possible in the circumstances of the case and in any event within three weeks from this day. Before disposing of the application made by the petitioner, it would be desirable for the Dy. Director to afford an opportunity of hearing to the petitioner and permit him to place all such material as he may propose to place, in support of his case, inspect the area and obtain the report of any other authority as may be found necessary in that behalf."

The above order was passed on 7/8th March 1984.

In pursuance of the above directions, the competent officer visited the quarry on 29-3-1984 ; his report is filed as Annexure "R" in W.P. 16100/1986. After examining the quarried blocks, his conclusions are as follows :

"..... I concur with the observations made by the Assistant Geologist and probably by oversight he has mentioned as "Grey Granites" instead of "Grey Gneisses". The field observations made by me on the virgin blocks also concludes that the area consist of "Grey Gneisses"."

On the same day (29-3-1984), corrigendum was issued under Rule 64, which reads thus :

"In exercise of the powers vested in me under Rule 64 of Karnataka Minor Mineral Concession Rules, 1969; the mineral sanctioned in this office Notification No. QLS/486/NTN/81-82/ 37765 dated 23-1-1982 and executed by the grantee under quarry late deeds No. 3510 on 15-5-1982 may be read as GREY .GNEISS instead of GREY GRANITE."

4. It is relevant to refer to the report of inspection by Senior Geologist dated 20-1-1982, which had preceded the execution of lease deed dated 15-5-1982, and for which there is concurrence by the Competent Officer in his inspection report dated 29-3-1984, (referred to above as Annexure "R"). This document is marked as Annexure "Q" in W.P. 16100/ 1986. The quarry was inspected on 13-1-1982, by this Officer; in his report he has stated that "applied area consists of "Grey Granite" to which irregular pink granites are intruded as veins .. .The pink granite cannot be quarried separately".

In column 19 of this report, he has stated that no other mineral is found.

5. The above facts reveal that the authorities having ascertained the mineral, on inspection, have concluded that it is "Grey Gneisses" that is found, and as per the competent officer, the "Assistant Geologist" by oversight has mentioned "Grey Granite" instead of "Grey Gneisses".

Relevant Legislative Amendments Re : Minor Minerals:

"Minor Mineral" is defined in the Act; it reads thus :

"Minor mineral means building stones, gravel ordinary clay, ordinary sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral."

There is no definition of building stone or its varieties, and as such, it depends on the opinion of the Geologist whose opinion would be "scientific" and "technical".

6. Rule 3 deals with restrictions on grant of quarrying lease. The rule, as it originally stood, did not refer to any particular mineral. However, on 13-9-1979, Rule 3A was inserted which reads thus :

"3A. A lease of quarries in respect of Black Granite to Government Corporation etc.,--

(1) Notwithstanding anything to the contrary contained in these rules, no lease for quarrying black granite shall be granted to private persons.

(2) The State Government themselves may engage in quarrying black granite or grant leases for quarrying black granite in favour of any Corporation wholly owned by the State Government:--

Provided that in respect of any land belonging to any private person, the consent

of such person shall be obtained for such quarrying or granting of lease."

On 29-5-1980, an Explanation was added to this Rule, which reads thus:

"Explanation:-- For the purpose of this rule, Black Granite includes dyke rocks of dolerite and related rock dyke."

The above rule, with the Explanation, makes it clear that lease of quarrying Black Granite, which included dyke rocks of dolerite and related rock dyke, was not to be granted to private persons.

On 2-7-1981, the above rule was further amended and for the words "Black Granite", wherever occurred, the words "Black Granite" or "Pink Granite" were substituted.

These provisions did not affect the petitioner's mineral, because what he was extracting was "Grey Gneisses" for which he had applied on 3-12-1981, and lease was sanctioned on 23-1-1982, and lease deed was executed on 15-5-82.

Rule 3A was further amended by notification No. CI 441 EMO 77 dated 27-3-1982 ; this was published in the Gazette on 8-4-1982, and it came into force at once, the said rule reads thus :

"Amendment of Rule 3A : In Rule 3A of the Karnataka Minor Mineral Concession Rules, 1969,....

(i) in the heading, for the words, "Black Granite", the words "Black Granite" or "Pink Granite" shall be substituted ;

(ii) in Sub-rules (1) and (2), excluding the explanation, for the words "Black Granite" wherever they occur, the words "Black Granite" shall be substituted ;

(iii) in the explanation, after the words "Rock Dyke", the words "and Pink Granite includes a granite of red colour and related shades, brown colour and related shades, different shades and admixture of pink, red, brown, red, rose and black colour gneissic granite with different black and patches of pink, red, brown, rose and black colour, grey granite with pink, red, brown and rose felspar-quartz" shall be inserted "

The words "pink granite" were defined to include several other varieties, which embraced black colour gneissic granite with different black and patches of pink and "grey granite with pink".

By this date (i.e. 8-4-1982, the lease had been sanctioned In favour of the petitioner i.e. 23-1-1982).

By the issue of "corrigendum" dated 29 3-1984, in pursuance of the orders of this Court in W.P. No. 16266 of 1983, the mineral, the extraction of which was leased to the petitioner stood finally settled as "Grey Gneisses." After amendment dated 8-4-1982, leases to private persons in respect of "Black Granite" "Pink Granite" with its inclusive character was prohibited and it could be

given only to Corporation wholly owned by the State Government. Similar rule in Tamil Nadu is upheld by the Supreme Court in *State of Tamil Nadu Vs. Hind Stone and Others*, . Following the said decision, this Court has upheld the validity of the above amendment in the case reported in *Laxmidevi v. State of Karnataka* 1981(2) K.L.J. 595.

7. Reverting to facts, on 10th November 1983, Mysore Minerals Limited-respondent-2 in W.P. 14841/1986, which is a State Government undertaking, applied for grant of lease in 52 acres in Survey No. 421. It was stated that area is covered under lease deed granted to petitioner (Annexure "K"). On 13-12-1983, respondent-2 was informed that the area, applied for, is not free for grant, as it is covered by the lease granted to petitioner; application was rejected. Against this order of rejection, Mysore Minerals, filed a revision petition, on 12-3-1984, before the Controlling Officer, under Rule 61(1)(a) of the Minor Mineral Concession Rules, 1969. In this petition it was stated that:-

"T.R.N. Swamy is reportedly exploiting the grey granite and whereas the area actually contains pink banded gneisses a commodity reserved for exploitation by the State Government or its Corporation."

8. The Chairman and Managing Director, Mysore Minerals Ltd., (Mr. Y.K. Puttaswami Gowda) has addressed a letter to the Director of Mines & Geology (i.e. Controlling Officer) on 21-5-1984; a photostat copy of this letter is produced as Annexure "C" in W. P. 14841 of 1986. The said letter reads thus:

"May I draw your attention to above referred letters, wherein he had requested to consider our application in our favour which has been sanctioned to Shri T.R. Narayana Swamy for grey granite even though the area contain pink granitic gneiss which has been reserved by the Government for exploitation in the public section. In other words all pink granitic rocks including pink gneiss and pink granite are reserved.

It appears the Department of Mines and Geology in turn took action against the private party Shri T.R. Narayana Swamy. But unfortunately action seems to have been taken by the Department in terms of "grey gneiss" v. "Grey Granite" instead of Pink gneiss v. Grey gneiss. We further learn that the private party went on Writ (Writ Petition No. 16266 of 1983) in the High Court of Karnataka, Bangalore against the sanctioning authorities and won the case in his favour.

Our main contention is that the area contains pink gneiss which has been reserved for exploitation by the State Government or its Corporation, has been leased to the private party. Accordingly action should have been taken against the private party concerned in terms of pink v. grey granitic rock which we feel would not have given room for exploitation of the situation leading to the Court decision in his favour.

May I therefore request you to reconsider the whole matter and institute proceedings against the private lessee concerned afresh in terms of pink v. grey

granitic rocks. It may be recalled that the area sanctioned to the said private party consists of pink gneiss and not grey granite or grey granite or grey gneiss.

We have information in the meanwhile that the private party concerned has commenced operations and moving the pink granitic rock for which he has no Q. L. and Q. L. cannot be granted to him.

I request you to take immediate action and grant the area in our favour so as to see that the very cause of reservation of pick granitie rocks by the Government is not defeated.

With regards."

(underlining is mine)

9. It is indeed unfortunate that the Chairman should have addressed this communication, when the revision filed by the Mysore Minerals was pending. Mysore Minerals Ltd., being the revision petitioner, such a communication by its Chairman is improper and is an attempt to influence the mind of the revisional authority. The contents of the letter, while finding fault with the stand of the Department in W.P. 16266 of 1983, has directly dealt with the nature of Mineral. The Counsel for the petitioner severely criticised this step and characterised it as "judicial impropriety" and "impinging in the course of justice". The fact that such a letter is written is not denied, but it is explained thus :

".... There is no truth in the averments of the petitioner that the letter dated 21-5-84 from the second respondent to the first respondent requesting him to reopen the issue of nature of mineral and institute proceedings has led to the impugned action by the respondents. A persual of the letter only indicates that the mineral exploited by the petitioner is pink granite and, therefore, action should be taken in view of Rule 3A of the Rules, which reserves such minerals to be exploited by the State agencies....."

10. The letter dated 21-5-1984, makes reference to two earlier letters dated 30-1-1984 and 10-3-1984. Revision petition is filed on 12-3-1984 i.e. subsequent to the above letters. These letters are not forthcoming in the records made available be learned High Court Government Pleader. In fairness either the first respondent or the second respondent should have filed these letters to eliminate the possibility of adverse inference.

11. In these proceedings, petitioner appeared and filed his objections. He has urged that the proceedings are initiated on the letter addressed by Chairman and Managing Director dated 21-5-1984. In these proceedings, Counsel appearing for Mysore Minerals Ltd., appears to have orally suggested the appointment of committee to visit the area and submit a report to find out whether the area consists of pink granite material or grey granite material. In a latter dated 16-7-1986, addressed to petitioner (page 65 to 68 of the records), it is stated thus:

"You have cited the decision of the High Court in this regard. But it may please be noted that the decision of the High Court is to restore your application for grey gneiss as against the grant by the Deputy Director for grey granite. Accordingly the grant was revised by issue of a corrigendum by the Deputy Director...."

This is factually incorrect. On an earlier occasion this Court had not directed the respondent to "restore" the grant of "Grey Gneisses", on the other hand, it had restored the application for correction which had been rejected; the Court directed the competent officer to dispose of the application after inspecting the area and after obtaining the report of any other authority in that behalf, provide opportunity to the petitioner and finally pass orders. Ultimate decision in the matter, which culminated in the issue of corrigendum was by the competent officer. The decision of the competent officer can be revised, or set aside only by a procedure known to law.

12. The Controlling Officer nominated Deputy Director (Plan Monitoring) to act as Liaison Officer and 2 officers, one representative of Indian Bureau of Mines and the other representative of AMSE Wing, Geological Survey of India to visit the area for colour identification.

The order of reference dated 23-5-1986, to the expert committee reads thus :

"..... The committee constituted may be informed to examine the material available in the above leased area, confining to Sy. No. 421 whether it is Grey Granite or Pink Granite or multicoloured granite, with reference to the amendment issued to 3A as per pink granite etc..."

At this stage it is relevant to bear in mind that the definition of Pink Granite which came into force on 8-4-1982, was prospective, and the lease granted to the petitioner was earlier i.e. on 23-1-1982. 7-4-1986, was fixed for inspection by the experts ; it is at this stage, petitioner filed W.P. 14841 of 1986. On 6-8-1986, the following interim order was passed:

"Heard. Mr. Abdul Khader, HCGP directed to take notice for respondents. Copies to be furnished.

The committee may visit the petitioner's quarry on 7th August 1986 as scheduled ; but no further proceedings or steps shall be taken, so as to affect the rights of the petitioner, until further orders from this Court."

13. In W.P. 16100/1986, the stand of the Department is that the petitioner has operated in area outside the area leased to him. The area leased to the petitioner is fixed with boundary marks A, B, C and D. It appears that the area was resurveyed on 23-6-1983, and it was found 9 workings are outside the block leased to the petitioner. On 11-7-1986, petitioner was informed that his actions are violative of the Karnataka Minor Mineral Concession Rules, 1969, and he was asked to furnish reply. The survey number and date of survey is a typographical mistake, as admitted in letter dated 1-8-1986 (Annexure "E"). On 25-7-1986,

petitioner gave a reply ; he contended that the sketch is wrong and boundary marks fixed with reference to the sketch is also wrong. On 1-8-1986, Deputy Director reiterated the earlier stand. On 8-8-1986, notice was given to the petitioner alleging that he has quarried granite blocks in Government land of Marale Village, without obtaining license. In the last portion of the notice it is stated thus :

"Therefore, now you are hereby directed not to transport the marked blocks in both the areas i.e., Marale village and Sy.No. 421 of Maralebekuppe village, till such time you rectify the breach and violation of KMMC rules 1969 and make good of the Royalty/Penalty to the Government applicable on this material quarried unauthorisedly."

In his reply dated 20-8-1986, petitioner denied the allegation that he has worked in Government land in Marale Village. He contended that he has not violated the rules. On 20-8-1986, Senior Geologist, while dealing with the petitioner's application for permit, informed him that the said application will be considered only after the receipt of satisfactory explanation from the petitioner regarding the notice dated 8-8-1986. It is alleged that petitioner had transported 4 loads on 15-8-1986, and 5 loads on 16-8-1986, without valid permit. On 28-8-1986, petitioner denied these allegations. In a mildly worded representation he has stated thus :

".....However, since the practice of applying for permits is prevalent in the department, I have applied for permit to move the blocks. In my application dated 13-8-1986, I have applied for 2000 metric tonnes and paid a sum of Rs. 40,000/-. I have in good faith and anticipation of the permit moved about 330 M. Tonnes from the Q. L. Block which comprises 30 truck loads for which I have already paid the royalty. You may be aware that I am filing monthly statements regularly regarding production and despatches of granite from the Q. L. Block. I am maintaining regular accounts of production and movement of blocks and at the end of the month, I will be submitting the statement in the usual course. Whatever blocks I have moved, I have kept an account and I have already paid royalty in respect of the said blocks. However, out of respect for your instructions to stop transportation till permit is issued, I have stopped the transportation of the blocks quarried in my leased area. I shall resume transporting the blocks after receipt of the permit from you. I earnestly request you immediately to grant me the permit in pursuance of my application dated 13-8-1986."

His application for permit was finally refused as per An. "M" dated 27-8-1986, on the ground that the Department has filed a case against the petitioner in Magistrate's Court Kanakapura. This order is challenged in W.P. 16100/1986.

Defence in W.P. 14841/1986

Respondents 1 and 2 have filed their returns. In the return filed by the first respondent, it is asserted that the petitioner is exploiting pink granite, which is impermissible after the amendment of Rule 3A. It is asserted that Chief

Controlling Authority--the Director - has the competence to ascertain the real mineral that is exploited. In regard to the decision of the Deputy Director after the matter had been remanded in W.P. 16266/1983, and on the basis of which corrigendum is issued, it stated that the decision arrived at by the Deputy Director of Mines and Geology that the mineral in question is grey gneiss and therefore the respondents are estopped from reopening the issue does not merit consideration." It is also asserted that in terms of Rule 20(1)(vi), the petitioner is required to inform the authorities whenever he discovers a mineral different from the one for which lease is granted.

In the statement of respondent-2, it is stated that he was not a party to the previous proceedings. The order of rejection of his application could not have been decided without determining the colour of the mineral.

The gist of both returns is that the mineral exploited by the petitioner is not "Grey Gneiss" but pink granite, which being a prohibited mineral for the private persons, the sanction order needs review, so as to reflect the reality.

Defence in W.P. 16100/1986.

In this return the respondent has sought to justify the endorsement on two grounds :

- 1) Mineral having been quarried outside the leased area ; and
- 2) it is a pink granite.

It is admitted that in the charge sheet filed before JMFC, Kanakapura, the charge of pink granite is not mentioned; the reason assigned is the existence of stay order of further proceedings, after inspection, in this petition. It is also asserted that "these are questions of fact which can be established only before a Civil Court."

14. Petitioner has filed reply statements reiterating his stand. Briefly put his contentions are :

- (i) Authorities had no competence to reopen colour controversy.
- (ii) The Revision before the Controlling officer was confined to the order of rejection and it did not question the lease granted in his favour.
- (iii) The finding of the competent officer after remand in W. P. 16266/1983, is final and binding.
- (iv) The controlling officer is biased and is influenced by the opinion of Chairman and Managing Director of Mysore Minerals Ltd.
- (v) The action is arbitrary and violative of Article 14 of the Constitution of India.

15. Heard Sri D.L.N. Rao for the petitioner and the learned Advocate General for respondents :-

Following points arise for consideration : W.P. 14841/1986.

1. Whether in exercise of revisional jurisdiction, the Controlling Officer could open the colour controversy, having not taken such a plea in W.P. 16266/83 ?
2. What is the effect and evidentiary value of the Competent Officer's finding, which ultimately resulted in the issue of corrigendum ?
3. Whether in appointing the expert committee, the Controlling Officer is influenced by the letter of Chairman and Managing Director of Mysore Minerals Ltd ?
4. What is the scope of enquiry in the revision petition filed by Mytore Minerals Ltd ?

W.P. 16100/1986.

Whether the Senior Geologist's order refusing permits, till the disposal of the case before the Magistrate, Kanakapura, could be justified and sustained as valid ?

16. To decide the revisional jurisdiction of the Controlling Officer, it would be necessary to refer to certain provisions of the Minor Mineral Concession Rules, 1969. These Rules are framed u/s 15 of the Mines and Mineral (Regulation and Development) Act, 1957. Under these rules, apart from the State Government, powers are given to "Competent Officer" and "Controlling Officer". By Notification No. CI 189 EMM 79 dated 5-7-1976, the Deputy Director (Plan Scheme) Mines and Geology, Bangalore, is appointed as Competent Officer in respect of areas, other than forests. Rule 2(c) defines Director of Mines and Geology as the Controlling Officer. Rules provide for the duties and functions to be discharged by these two authorities. Competent Officer's duties and functions :--

Applications for quarrying lease have to be made to the Competent Officer (Rule 4); Rules 5, 6, 7 and 8 deal with the procedural matters. Rule 9 requires the Competent Officer, to make enquiries, as he deems fit and either sanction or refuse the application. Under Rule 9 (2) the Competent Officer has to execute the lease deed within three months or within such period as the Competent Officer may allow. He is required to send a copy of the lease deed to the Controlling Officer i.e. Director of Mines and Geology. Rule 11 requires-the Competent Officer to arrange for survey and demarcation of the leased area. Rules 8 and 12 require the Competent Officer to maintain registers of applications and grantees. These registers are open for inspection by any applicant for quarrying; the intention being to know, before hand, whether the area is covered by the lease. Under Rule 16, the power of renewal of lease is given to the Component Officer. Rule 20 prescribes the conditions which are required to be incorporated in the lease deed. Rule 21 authorises the Competent Officer to issue a certificate for the recovery of the amounts due, as arrears of land revenue. Rule 24 refers to surrender of lease to the Competent Officer.

17. The above being the provisions, it is manifest that in matters of quarrying lease, Competent Officer is the original authority for its sanction, execution of deed, surrender, and recovery of dues.

18. Similarly regarding grant of permits under Rules 34, 35, 37, the authority is vested in the Competent Officer. Under Rule 56, the disposal of minor mineral is also entrusted to Competent Officer. In case of tender or the bid offered, the final authority is the Controlling Officer.

19. Under Rule 61, the power of revision is given to the Government or the Controlling Officer, as the case may be. In its very nature, this is a power of supervision or superintendence, distinct from original power. Rule 62 is a power of entry and inspection given to Controlling Officer. In exercise of this power, the Controlling Officer shall do the following :-

"(a) enter and inspect any quarrying lease or quarrying licence block ;

(b) survey and take measurements in any such workings ;

(c) weigh, measure or take measurements of the stocks of the minor minerals lying at any quarry or quarry blocks ;

(d) examine any document book, register, or records in the possession or power of any person having the control of, or connected with any quarrying lease or quarrying licence blocks and place marks of identification thereon and take extracts from or make copies of such document, book, register or record ;

(e) order the production of any such document, book, register, record, as is referred in Clause (d); and

(f) examine any person having the control of, or connected with, any quarry or quarrying block."

20. The mineral wealth of the Country vests in the Union. State, as a delegated authority, is empowered to frame rules. Rules have prescribed two authorities apart from the State Government. Each of the authorities has to perform such duties and discharge such functions as are mentioned in the Rules. They act for and on behalf of the Union. The decision taken by each of these authorities is the decision of Union. In other words it is an "institutional" decision, as distinct from personal decision. Such decision can be varied, modified, reversed or set aside only by the authority empowered to do so and in a manner prescribed by Rules. The Competent Officer scrutinizes the application, holds an enquiry and thereafter sanctions the lease. He has the power to rectify the mistakes. Once the lease is executed, rights are created in favour of the lessee. Though the Controlling Officer is a superior authority he has no suo moto power of revision. The aggrieved party can file revision, in two months. If no such revision is filed, the order of the Competent Officer becomes final, unless the Controlling Officer acts under the proviso and satisfies himself that the petitioner had sufficient cause for not making the application within the time. The scheme of these rules

makes it clear that Controlling Officer has no inherent powers, his powers are those that are specified in Rule 62. Thus analysed, I proceed to examine the contentions.

21. Points 1 and 2 which deal with colour controversy have to be dealt with in the light of the above provisions and the defence taken in W.P. 16266/1983. As mentioned above, the respondent contended in the previous case that the material extracted is "Grey Granite". The controversy, as extracted earlier, was restricted between "Grey Gneiss" and "Grey Granite". In this proceeding, it is contended that nothing precludes the Controlling Officer to raise the said controversy. As between the petitioner and the authorities, the matter stands concluded, for more than one reason.

Firstly, the respondent having taken such a defence in the earlier Writ Petition, is precluded from raising that issue, on the principles of constructive res judicata. Dealing with the application of this principle to Writ proceedings, the Supreme Court, in *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others*, ; observed thus:

"... Explanation IV to Section 11 C.P.C. provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided...."

Again in *G.K. Dudani and Others Vs. S.D. Sharma and Others*, , it was observed thus :

"In view of this categorical finding in *Chauhan*'s case, it was not open to the direct recruits to reagitate this point. Although by reason of the explanation which was inserted in Section 141 of the Code of Civil Procedure, 1908, by the CPC (Amendment) Act, 1976, Section 11 of the Code does not in terms apply to any proceeding under Article 226 of the Constitution, the principle of res judicata does apply to all Writ Petitions under Article 226. This point was, therefore, barred by the principle of res judicata and should never have been allowed by the High Court to be reagitated.."

Secondly, under the Minor Mineral Concession Rules, 1969, the Competent Officer, to whom an application for grant of lease is made, has to decide this

issue before granting the lease. In W.P. 16266 of 1983, a specific direction was given to the Deputy Director of Mines to reinvestigate the matter and decide. The Deputy Director complied with the direction and has recorded a finding that the mineral extracted is "Grey Gneiss". This finding is recorded in his capacity as Competent Officer. This finding has not been set aside, nor has it been revised. Under the Rules, if it had been challenged in revision, it could have been revised, admittedly that is not done. Further the finding has culminated in the issue of corrigendum, which dates back to the execution of the lease i.e. 15-4-1982. Annexure "A" indicates that it is issued by the "Office of the Director, Department of Mines and Geology." These are acts which are done in exercise of the powers given to the Competent Officer, under the Rules, and in compliance with the mandate of this Court; question is has it no legal value? Can it be brushed aside?. What is the competence of the Controlling Officer to ignore this document or go behind it? He could revise it, if and only if, aggrieved party had challenged it under Rule 61. He has no suo moto power; he is bound by these acts and findings. No justifiable reasons are pleaded to ignore this finding, which has held the field till it is "discovered" by the Chairman and M.D. of Mysore Minerals Ltd. As against the opinion of the Chairman and M.D., Mysore Minerals Ltd, the Controlling Officer (Director) should have attached more importance to what is done by the Competent Officer, in exercise of his powers under the statutory rules end in compliance with the mandate of this Court. After all the Competent Officer is also Geologist and is a responsible officer with expertise knowledge.

22. As held by the Supreme Court in *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*, , where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are forbidden. Therefore the Controlling Officer could not have re-opened the colour controversy except by a process known to law. The contention that "the Controlling Officer is competent to take action as he deems necessary in the interest of justice," cannot be accepted. Under the Rules he has no such powers. As mentioned above, he has no inherent powers and what he can not do by resorting to his powers under Rule 61, he cannot do under any other provision. In the statement of objections no malafides or corrupt practice are attributed to the Deputy Director (Competent Officer), his finding and actions cannot be treated as vitiated.

23. Mr. R.J. Babu, Counsel for Mysore Minerals maintained that his client was not a party to the previous Writ Petition and as such the principle of constructive res judicata will not apply. It is no doubt true that Mysore Minerals was not a party, but in these transactions, Mysore Minerals Limited will be taking the lease of area and mineral, which belongs to the Government. Once the lease is granted, he steps into the shoes of the lessor, for the limited purpose of excavating and for a particular period. If the authorities cannot urge, it is difficult to appreciate the argument that Mysore Minerals can urge. Further on 21-1-1984, the Deputy Director has informed the Mysore Minerals that the area is leased to petitioner. Nothing prevented the Mysore Minerals to challenge the grant by filing a revision,

treating this as date of knowledge. They have kept quiet. Thus till to-day there is no challenge to the grant made in favour of petitioner. In addition, petitioner had applied for 280 acres, out of which, he is granted 150 acres ; Mysore Minerals' application was for 52 acres, which could have been considered without affecting petitioner's lease. Therefore, in these circumstances, the Controlling Officer could not have re-opened the controversy. The finding recorded by the Deputy Director, and the corrigendum, are binding on him, unless they are set aside or revised, by a process known to law.

24. This takes me to the question of appointment of Expert Committee by the Controlling Officer. Neither the Learned Advocate General nor Mr. R.J. Babu could tell me the specific provision of law, under which this is done. How ever the Learned Advocate General sought to justify the appointment under Rule 62, but the object for which the committee is appointed is not covered by Clauses (a) to (f). The order of reference dated 23-5-1986, the relevant portion of which is extracted above, is to examine material available in the leased area in S. No. 421 to find out whether it is grey granite, or pink granite or multi coloured granite with reference to the amendment issued to Rule 3A, as per the definition of pink granite.

25. Mr. R.J. Babu was fair enough to admit that it is not happily worded ; it appears to me that it is so worded that the Expert Committee had to give the desired answer. The answer is implicit in the question. To be fair, the Committee being of experts, should have been simply asked to examine the mineral and give the opinion, without reference to other details. Such an attempt on the part of the Controlling Officer has given room for the criticism that he is influenced by the Chairman and M.D. of Mysore Minerals Limited. The mentioning of categories of granites and reference to the definition of pink granite is an attempt to put the answer in the mouth of experts. Indeed, the Controlling Officer has failed to notice that the said definition came into force on 8-4-1982, and the lease had been sanctioned in January 1982. Further, to avoid the criticism of "favouritism" and "bias" the earlier report of the Deputy Director should have been made available. That document cannot be brushed aside. From the foregoing, it has to be held that the Controlling Officer's direction to refer the matter to Expert Committee was arbitrary and capricious. In administration, every action of the Officer must be capable of being legally justified. That is the essence of rule of law. In Bachan Singh, Sher Singh and Another and Ujagar Singh and Another Vs. State of Punjab and Others, , Bhagwati, J. explained thus:

".... The rule of law excludes arbitrariness; its postulate is "intelligence without passion" and "reason freed from desire". Wherever we find arbitrariness or unreasonableness there is denial of the rule of law".

26. During arguments, the report of Expert Committee was made available. Since I have held that the reference itself was illegal, I refrain from referring to its contents.

Letter of Chairman and Managing Director of Mysore Minerals Ltd.

The contents of the above letter are extracted. I have already mentioned that being a revision petitioner, the Chairman should not have addressed such a communication. In the objection statement, it is explained thus :

"The letter sent by the second respondent to the first respondent is in substance only to decide the petitioner's revision expeditiously".

The affidavit in support of this statement is sworn to by Mr. V. T. Rangarajan, Senior Executive Officer, Mysore Minerals Limited. The letter is written by an I.A.S. Officer. To say that it was only to expedite the proceedings cannot be accepted. It is not an accurate explanation. The contents belie the explanation. The Chairman should have restrained himself in addressing a letter to an authority before whom the revision was pending. Further, being the author, he should have filed his affidavit explaining his intentions in addressing this letter.

27. Mysore Minerals is impleaded as respondent. If he could address a letter in his capacity as Chairman, he should have come forward to explain the circumstances in which the letter was addressed. In this situation, the letter cannot be said to be unintentional and without any motive. It has influenced the Controlling Officer to appoint a Committee of Experts and collect fresh material, quite contrary to the existing report of the Competent Officer (Deputy Director) to be made use of for the disposal of revision petition. This is clearly violative of Article 14 of the Constitution.

28. The petitioner has prayed for quashing the entire proceedings before the Controlling Officer; it is not possible to do so. Right of revision is given to the Mysore Minerals and power is given to the Controlling Officer to decide the same, as per rules. Therefore, ends of justice would be met, if the Controlling Officer is directed to confine the adjudication to the order of rejection; which is challenged by Mysore Minerals Ltd.; in doing so, the Controlling Officer shall consider the existing material on record and exclude the letter of the Chairman, Mysore Minerals Ltd., and the report of the Expert Committee, appointed by him. The lease granted to the petitioner shall remain undisturbed and intact, as long as it is not terminated in accordance with law.

29. Turning now to W.P. 16100/1986, the allegation against the petitioner is that he has removed the blocks from outside the leased area. On 8-8-1986, notice is issued to him alleging that he has quarried granite in Government land of Marale village. Petitioner has been granted lease in Survey No. 421 of Maralakuppe. The quarrying in Survey No. 421 cannot be said to be impermissible and there can be no offence so far as quarrying in S. No. 421 is concerned. Assuming that the Department has filed a case under Rule 25, would that justify refusal of permit ? In the statement of objections colour controversy is raised which is not the subject matter of charge before the Magistrate. Even otherwise it is not shown under what provision of law Annexure "M" is issued. Merely because case is filed for contravention under Rule 25, it cannot be assumed that contravention is

established. That has to be decided by the Criminal Court. In similar circumstances, in *Obli Granite, Mettur Dam, Salem District v. The State of Karnataka* ILR 1981 Kar 49, it was observed thus :

"Earlier, I have noticed that the State Government has granted a lease and has also executed a lease deed specifying the area granted to the petitioner. When a lease is granted and a lease deed is executed, the licensee or the lessee is entitled to exploit the material found in the area on the terms and conditions of the licence and lease granted thereto. The Mines and Minerals (Regulation and Development) Act of 1957 or the Rules framed under the said Act, does not authorise the State Government or any of its officers to interfere with the working of the mines in the manner that has been done from time to time. An authority, however high it may be, must exercise its powers in conformity with the provisions of the Constitution and the Laws made and cannot exercise its power in an arbitrary manner. Whatever may be the dispute raised by M/s. Hind Nippon Rural Industries (P) Ltd., Government cannot exercise its powers in an arbitrary manner. Sri Devadar has not been able to point out any provision of the Act or the Rules enabling the State Government to stop the quarrying operations from time to time. In my opinion, the criticism of Sri Achar that the power exercised by the State Government, besides being arbitrary, is wholly unauthorised and is liable to be interfered with by this Court, is well founded. I am pained to observe that Government had exercised its power in a very casual manner without any regard to the rights of the petitioner and injury that would be caused to it."

30. In the above case, a telegram had been sent to the petitioner to stop the quarrying operations, which was quashed.

In the instant case, the Department's interest can be safeguarded if the petitioner is directed to give an undertaking that in the event of his conviction, he shall make good the market value as it existed on the date of transportation; in addition he should furnish a surety for such sum, which will cover the value of the commodity to be transported, as determined by the Competent Officer within a week from to day. On fulfilment of these terms, the petitioner may be permitted to transport the quarried material. A copy of this portion of the order shall be sent to Magistrate's Court, Kanakapura, with a direction to decide the case on his file within three months, after the receipt of this order.

For the foregoing, I make the following order:

1. In W.P. 4841/1986 rule is made absolute : W. P. partly allowed. The nomination of Liaison Officer, representatives Indian Bureau of Mines and Geological Survey of India, is declared invalid ; Annexures F and F-1 are quashed. Report submitted by the above committee is declared as nonest.
2. The Controlling Officer is directed to dispose of the revision filed by the Mysore Minerals Ltd., as per Rules, confining it to the existing material on record, without reference to the letter of the Chairman dated 21-5-1984 (Annexure-C)

and the report of the committee, referred to in para 1.

3. In W.P. 16100/1986 Rule is made absolute; W.P. is allowed ; the impugned order at Annexure "M" is quashed. Petitioner is directed to give an undertaking to the satisfaction of the competent officer that in the event of conviction he would make good the estimated market value of mineral on the date of transportation ; in addition, he will furnish a solvent surety, for the market value as determined by the Competent Officer, which shall be done within one week from to-day, only in respect of the mineral alleged as having been quarried outside the leased area i.e. S. No. 421. No costs.

After the pronouncement of the order in these Writ Petitions, Mr. U. Abdul Khader, learned HCGP requested that the operation of this order be stayed for two weeks.

In view of my conclusion on facts, I do not think it will be permissible to do so. So far as the revision petition filed by the Mysore Minerals Limited is concerned, I have directed the authority to hear and dispose of the matter in accordance with the Rules and so far as the transportation of the extracted mineral in an area beyond the leased area is concerned, certain conditions have been imposed to safeguard the interest of the State. In this view of the matter, the request is rejected.