

**(1999) 12 AP CK 0077**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No's. 9710 and 13418 of 1992 and WP No. 23395 of 1998

V. Murali

APPELLANT

Vs

Government of Andhra Pradesh and others

RESPONDENT

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**Date of Decision :** 21-12-1999

**Acts Referred:**

Andhra Pradesh Minor Mineral Concession Rules, 1966 — Rule 35

**Citation :** (2000) 1 ALD 658 : (2000) 1 ALT 199

**Hon'ble Judges :** B. Sudershan Reddy, J

**Bench :** Single Bench

**Advocate :** Mr. M. Chandrasekhara Reddy and Mr. K.V. Subrahmanya Nasru, for the Appellant; Government Pleader for Industries, for the Respondent

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**Judgement**

1. These three writ petitions may be disposed of by a common order, as they are inter-related and the subject matter that arises for consideration is one and the same.

2. The petitioner in WP No.9710 of 1992 obtained a quarry lease for Road Metal and building stone over an extent of 1.00 Hectar in Sy.No.4 of Pokeru village, Bheemunipatnam Taluk Visakhapatnam District for a period of five years under proceedings dated 24-9-1985 from the Assistant Director of Mines and Geology, Visakhapatnam. The lease deed was executed on 21-12-1985 for a period of five years and valid upto 20-12-1990. The Assistant Director by an order dated 24-9-1990 rejected the request of the petitioner for grant of renewal on the ground that the petitioner was in arrears of Rs.20,017/- payable to the Government. The petitioner filed an appeal before the Director of Mines and Geology. The Director by an order dated 20-12-1991 rejected the appeal.

3. Thereafter the petitioner claims to have filed an appeal to the Principal Secretary on 5-3-1991. The order passed by the Appellate Authority was confirmed by the Government on 13-11-1991 and communicated the same to the petitioner. The order rightly refers to the so called appeal preferred by the

petitioner as a revision for the simple reason that no further appeal lies to the Government under the Rules against the order passed by the Appellate Authority.

4. It appears, thereafter, the petitioner filed some representation on 28-11-1991 addressed to the Minister for Mines and Geology. The Minister not only entertained the said representation, but passed an order setting aside the order passed by the Government on 13-11-1991 and directed the Director of Mines and Geology to grant renewal of quarry lease for road metal in Sy.No.4 of Pokeru village, Anandapuram Mandal of Visakhapatnam to the petitioner subject to the conditions that he should remit mineral revenue to a time of Rs.20,000/-due to the Government before execution of lease deed.

5. In the meanwhile, the Assistant Director of Mines and Geology submitted proposal for grant of quarry lease in favour of one M. Surya Rao (Writ petitioner in WP No.13418 of 1992 and impleaded as respondent No.5 in WP No.9710 of 1992), as the area was free for grant. The Deputy Director, having considered the request of the 5th respondent in WP No.9710 of 1992 granted lease on 22-12-1991 over an extent of 1.00 Hectare in Sy.No.4 for a period of five years. The lease deed was also executed in favour of the said M. Surya Rao on 27-12-1991- The said Surya Rao started working in the said quarry from 27-12-1991 onwards.

6. The writ petition in WP No.9710 of 1992 has been filed seeking writ of mandamus declaring the action of the respondents in not complying with the orders of the Government of Andhra Pradesh in proceedings dated 19-2-1992 directing renewal of lease in favour of the petitioner therein. The petitioner also obtained an interim order on 11-8-1992 directing the Director and other authorities to implement the order passed by the Government dated 19-2-1992. The Deputy Director of Mines and Geology, Visakhapatnam perhaps with a view to implement the directions of this Court issued show-cause notice dated 16-9-1992 to the said Surya Rao directing him to show-cause as to why the lease earlier granted to him on 27-12-1991 should not be cancelled. The said Surya Rao accordingly submitted his reply, inter alia contending that the quarry lease cannot be cancelled by the Deputy Director, inasmuch as there was no legal impediment for granting the lease as on the date when it was granted to him. However, by an order dated 13-10-1992 the Deputy Director cancelled the lease granted to the said Surya Rao on 27-12-1991. The said Surya Rao filed WPNo.13418 of 1992 challenging the said order of cancellation. This Court by an order dated 16-10-1992 passed an interim order suspending the order of cancellation of lease. The said order has been made absolute subsequently.

7. In the meanwhile, during the pendency of these writ petitions, the quarry lease granted to the petitioner in WPNo.13418 of 1992 came to an end by afflux of time. Accordingly, he made an application for grant of first renewal of the quarry lease held by him. The Deputy Director of Mines and Geology accordingly granted renewal of the quarry lease to writ petitioner in WP No.13418 of 1992 by an order dated 19-11-1996. The renewal was granted for a period of ten years.

Questioning the said renewal, the petitioner in WP No.9710 of 1992 filed WP No.23395 of 1998. However, fortunately there is no interim order in that writ petition.

8. As on today, the fact remains that the petitioner in WP No.13418 of 1992 is in possession of the land and carrying on his business pursuant to the order of renewal granted to him on 27-12-1991. It may be noticed that there was no legal impediment whatsoever for grant of quarry lease in favour of Surya Rao on 27-12-1991, inasmuch as the Government also has rejected the revision petition preferred by the petitioner in WP No.9710 of 1992 by an order dated 5-3-1991. The whole trouble had arisen because of the order passed by the Government of Andhra Pradesh on 19-2-1992 reviewing its earlier order dated 13-11-1991 on the basis of a representation purported to have been filed by the writ petitioner in WP No.9710 of 1992.

9. The question that arises for consideration in the instant writ petition is as to whether the petitioner in WP No.9710 of 1992 is entitled for any relief?

10. The petitioner therein prayed for a writ of mandamus compelling the respondents to implement the order passed by the Government of Andhra Pradesh in proceedings dated 19-2-1992. This Court with a view to know as to how and in what circumstances, such a representation dated 28-11-1991 was entertained by the Government to review its own order, directed the first respondent-Government to produce the records. The learned Government Pleader for Industries made available a memo dated 20-9-1999 informing the learned Government Pleader that the original disposal of the Government memo dated 19-2-1992 and the earlier proceedings dated 13-11-1991 have already been destroyed due to afflux of time. In the circumstances, this Court by an order dated 22-9-1999 initiated suo motu contempt proceedings against the first respondent-Government requiring its explanation in the matter as to how the records could have been destroyed after the Rule Nisi was issued by this Court in WP No.9710 of 1992. Some explanation is offered but more about it later.

11. In the affidavit filed in support of the WP No.9710 of 1992 it is stated that the petitioner preferred an appeal to the Principal Secretary on 5-3-1991 against the order passed by the Director dated 20-2-1991 confirming the order passed by the third respondent rejecting the request of the petitioner for renewal of the lease. How an appeal could have been preferred by the petitioner is not explained. The remedy of appeal and revision are provided and regulated by statutory provisions known as Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short "the Rules"). Rule 35 of the said Rules provides for an appeal against any order passed by the Assistant Director or Deputy Director under the Rules to the director within a period of two months from the date of communication of such order. The Rule of course, provides an appeal to the Government against an order passed by the Director in like manner. The rule does not provide for any second appeal as such. The appeal shall lie to the Government against an order passed by the Director, provided, such an order

has been passed by the Director not in exercise of appellate jurisdiction. Rule 35-A of the said Rules provides for a revision against any order or proceeding taken by the Director, Deputy Director or the Assistant Director. The Government may suo matu also call for and examine the record relating to any order or proceeding taken by the authorities under the rules. Therefore, the averment made in the affidavit that the petitioner in WP No.9710 of 1992 preferred an appeal before the Principal Secretary is absolutely untenable and unsustainable. The petitioner obviously preferred revision before the Government and the Government having considered the revision accordingly rejected the same by an order dated 13-11-1991. In fact, the order dated 13-11-1991 itself would reveal that the petitioner filed revision application on 5-3-1991. The Government passed orders rejecting the revision application.

12. The petitioner in WP No.9710 of 1992-thereafter preferred the so called representation dated 28-11-1991 addressed to the concerned Minister for Mines and Geology. The concerned Minister having entertained the representation reviewed the order passed by the Government on 13-11-1991 and accordingly directed the renewal of quarry lease in favour of the petitioner subject to certain conditions. In my considered opinion, the orders dated 19-2-1992 suffer from incurable jurisdictional errors and legal infirmities. The Minor Mineral Concession Rules, 1966 do not confer any such jurisdiction upon the Government to review its own order. There is no provision in the rules under which a review application could have been preferred by an aggrieved person. The order passed by the Government in exercise of its revisional jurisdiction under Rule 35-A is final. It is entirely a different matter that even an order passed under revision can be reopened if such an order has been obtained by a person by playing fraud. Fraud vitiates everything. But the Government under no circumstances can review its own order. The power to interfere with the order of the Director, Deputy Director, Assistant Director is conferred upon the Government by the statutory rules. That power of revision conferred upon the Government can be exercised only in accordance with rules. The power of the Government is regulated and structured by statutory rules. Therefore, the order passed by the Government in exercise of revisional jurisdiction cannot be reviewed by the Government, as the said rules do not confer any such power of review upon the Government.

13. In *Srinadhu Mallappa v. Board of Revenue, State of Andhra Pradesh* 1966 (1) ALT 31, the question as to whether the Board of Revenue can review its own order granting pattas in purported exercise of power u/s 11 of the Estates (Abolition and Conversion in Ryotwari) Act came up for consideration. This Court held that against any order passed by the Board of Revenue a revision has been provided to the Government by the rules. This Court-observed that "the power being a statutory provision, the Board of Revenue once it has passed an order granting patta, it had become functus officio, and no power of revision is vested in it and unless it be on grounds of fraud, misrepresentation or other similar grounds, it could not review its own orders."

14. In *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, , the Supreme Court while dealing with the question as to whether the Government under Saurashtra Land Reforms Act can review its own order observed that "it is well settled that the power to review is not an Inherent power. It must be conferred by law either specifically or by necessary implication. The same view has been reiterated in *Mehar Singh Nanak Chand Vs. Shri Naunihal Thakar Das and Others*, .

15. In *P. Satyanarayana Vs. The Land Reforms Tribunal and Others*, , the question arose for consideration as to whether the Land Reforms Tribunal can review its own order or judgment under the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act and the Rules framed thereunder. A Division Bench of this Court took the view that a Tribunal cannot review its own order or judgment unless there is a statutory provision providing for the same. However, a Court or Tribunal has inherent power to recall orders obtained by practising fraud.

16. On a conspectus of case law, it becomes quite evident that the statutory authority cannot review its own order unless statute confers such powers and provides for review of its own order. There is no provision in Andhra Pradesh Minor Mineral Concession Rules, 1966 under which the statutory authorities including the Government can review their own order. However, Sri M. Chandrasekhara Reddy, learned Counsel appearing on behalf of the petitioner relies upon a Division Bench judgment of this Court in *Kanigiri Vaddera Stone Quarrying Labour-Contract Co-op, Society, Kanigiri Vs. State of A.P. and Others*, , and contends that the Government has inherent discretionary jurisdiction to review its own order. The said judgment upon which reliance is placed by the learned Counsel for the petitioner does not lay down any such proposition as urged by the learned Counsel for the petitioner. In the said case, there was a delay of eight days in filing the second renewal application. The Government condoned the said delay and directed the competent authority to reconsider the case of the 5th respondent therein for renewal of the lease as well as the case of the petitioner for grant of lease. The competent authority considered the case of the writ petitioner as well as the 5th respondent therein and accordingly granted renewal of the lease in favour of the 5th respondent. The writ petition was filed raising a contention that the competent authority has no power to condone the delay in filing the renewal of lease and the application having been considered filed with a delay of eight days, lease could not have been renewed in favour of the 5th respondent therein. This Court came to the conclusion that in the factual context of the case, there is no delay as such. But however, observed that even assuming that it is a renewal of lease it is inherent in the lessor to grant a lease after the expiry of the period of limitation as a matter of right under "its inherent discretionary jurisdiction." Such an observation was made by the Court having arrived at the conclusion that it was not a fit case to invoke the equitable writ jurisdiction to interfere in the impugned order even if there is some irregularity in granting the lease to 5th respondent therein for the reason that substantial

justice has been done in regulating the lease because the 5th respondent is a Society of the Scheduled Tribes i.e., the weaker section of the Society constituted with 1350 members whereas the appellant-society is only constituted with 33 members, thus providing livelihood to a larger number of members. Thus it is obvious that the Court refused to interfere in the matter as lease is granted in favour of the weaker sections of the society by condoning the delay in filing the renewal application. In my considered opinion, the Court has not laid down any general principle holding that the Government has any inherent jurisdiction to pass any order including reviewing its decisions. Therefore, the said judgment does not support the proposition put-forth by the learned Counsel for the petitioner.

17. For all the aforesaid reasons, I hold that the Government has no power to review its own order passed under Rule 35-A of the Andhra Pradesh Minor Mineral Concession Rules, 1966. No such power is conferred upon the Government to review its own order. It is well settled that a writ does not lie to enforce an illegal order. Therefore, the petitioner in WP No.9710 of 1992 is not entitled for any relief. The WP No. 9710 of 1992 shall stand accordingly dismissed. But in the circumstances of the case without costs.

18. For the very same reasons, WPNo.23395 of 1998 also shall stand dismissed.

19. In the aforesaid circumstances and in view of the conclusions reached, WP No. 13418 of 1992 has to be allowed. The impugned order dated 13-10-1992 passed by the first respondent is declared illegal and without any authority of law. The same is accordingly set aside. Let a writ of mandamus be issued. The writ petition is accordingly allowed. No order as to costs.