Verigamto Naveen vs Government Of Andhra Pradesh & Ors on 18 September, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3609, 2001 (8) SCC 344, 2001 AIR SCW 3701, 2001 (6) SCALE 363, 2001 (9) SRJ 402, (2001) 8 JT 29 (SC), 2001 (8) JT 29, 2002 (1) ALL CJ 300, (2001) 3 SCJ 606, (2001) 7 SUPREME 170, (2001) 6 SCALE 363

Bench: S. Rajendra Babu, D.P. Mohapatra

CASE NO.:
Appeal (civil) 6656-6657 of 1994
Appeal (civil) 5115-5117 of 1996
Appeal (civil) 5118-5120 of 1996

PETITIONER:
VERIGAMTO NAVEEN

Vs.

RESPONDENT:
GOVERNMENT OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT: 18/09/2001

BENCH:
S. Rajendra Babu & D.P. Mohapatra.

JUDGMENT:

[With C.A.Nos. 6658-6659/94, 6642-6646/94, 6647-6650/94 & 6651-6655/94] J U D G M E N T RAJENDRA BABU, J. :

In these two sets of appeals, the appellants are calling in question two orders made by two Full Benches of the High Court one on September 2, 1994 and the other on March 4, 1996. CIVIL APPEAL NOS. 6656-6657/94, 6658-6659/94, 6642-6646/94, 6647-6650/94 & 6651-6655/94 The Government of Andhra Pradesh declared, on 7.1.1974, that the barytes ore bearing areas in Mangampett and Anandarajpet of Cuddapah District are reserved exclusively for exploitation in the public sector however excluding the lands that had already been leased to private persons. By two notifications issued on 10.2.1975 and 19.2.1983, the Government of Andhra Pradesh

granted mining leases over an extent of different areas in favour of the Andhra Pradesh Mineral Development Corporation [hereinafter referred to as the Corporation]. On 6.1.1991, the Government of Andhra Pradesh accorded permission for grant of sub-lease by the Corporation subject to certain terms and conditions mentioned in G.O.Ms.No. 215 dated 22.4.1980. The Government of Andhra Pradesh by different orders accorded permission for grant of sub- lease for further extent of lands in the month of May 1991. The Government of Andhra Pradesh on 1.12.1993 took decision to put an end to all the existing sub-leases in order to enable the Corporation to carry on the mining operations directly and on 7.12.1993, the Government withdrew permission granted earlier to the Corporation to grant sub-leases in respect of certain areas.

The appellants in the first set of appeals challenged, by way of writ petitions before the High Court on the various grounds, the validity and legality of the said notifications withdrawing the permission granted earlier to sub-lease the mining lands in question. The learned Single Judge of the High Court allowed the writ petitions on the basis that the Government had not followed due procedure as contemplated under Section 4-A of the Mines & Minerals (Regulation & Development) Act, 1957 [hereinafter referred to as the Act] and Rule 37 of the Mineral Concession Rules, 1960 [hereinafter referred to as the Rules]. Writ appeals were preferred against the same and the Division Bench referred the matter to a Full Bench.

In writ appeals Nos. 131/94 to 134/94 and 169/94 to 175/94, the Full Bench of the High Court examined the questions raised before it by an order made on 2.9.1994. The Full Bench first considered the effect of clauses 15 and 16 in the deed of sub-lease executed by the Corporation. It was observed by the Full Bench that clause 15 reserved the right of the lessee Corporation to terminate the sub-lease if there is any violation of terms and conditions of the lease or default or any breach of contract and, therefore, the High Court felt that it was nobodys case that the Corporation has taken steps to pre-maturely terminate the sub-leases because none of the conditions for exercise of that right having arisen. It was also held that Clause 16 merely provided that in the event of termination of sub-leases any damage was to arise by reason of the State Government withdrawing the permission under Rule 37A of the Rules during the tenure of the leases or on account of any other governmental action, the sub-lessee is precluded from claiming damages from the lessee Corporation. Therefore, the Full Bench felt that neither Clause 15 nor Clause 16 is attracted to the case.

Next the Full Bench examined as to whether the order directing the premature determination of the sub-lease without complying with Section 4A(3) of the Act or withdrawing consent for sub-lease without notice is invalid in law. On examination of the scheme of the Act, the Full Bench found that undisputedly barytes is a major mineral and Section 4A(1) of the Act is attracted only in cases of major minerals and

> in the present cases, the State Government could not have exercised that power as available under Section 4A of the Act because that was reserved only to the Central Government.
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> Thereafter, the Full Bench considered the withdrawal of consent given for granting the sub-leases to the Corporation in favour of the writ petitioners. This aspect was examined with respect to the scope of Rule 37 of the Rules. Rule 37, as such, does not provide for withdrawal of the consent once given and, therefore, the Government and the Corporation relied upon the executive power of the Government to withdraw the same or whatever could be done under the Rules could be undone as provided under the General Clauses Act. On this aspect also, the Full Bench felt that inasmuch as barytes being a major mineral coming under the exclusive jurisdiction of the Central Government under the Act, the executive power of the State could extend only to the extent of the legislative power to be exercised by the State and, therefore, no executive power was available to the State Government. On the argument raised on the basis of the General Clauses Act, it was held that this is not a simple case of mere grant of permission and withdrawal without any other consequences. Further the same procedure as provided in the matter of grant of permission should have been followed in the matter of withdrawal of permission, but such procedure had not been followed.

The High Court did not agree that the exercise of power was under that provision and that was sufficient for the Full Bench to proceed to dispose the matter.

However, the Full Bench noticed certain other arguments, namely, [1] that no consent under Rule 37 of the Rules could have been granted by the State Government and no sub-lease could have been entered into between the lessee Corporation and the writ petitioners in respect of any part of the area reserved under Rule 58 of the Rules having regard to the provisions of Rule 59(1) of the Rules; [2] that prior approval of the Central Government as contemplated under Rule 37 of the Rules had not been obtained; [3] the infirmities and irregularities pointed out in the House Committee Report will be perpetuated resulting in immense public harm unless the leases are cancelled and consent is withdrawn. The Full Bench did not express any opinion on these three aspects. The Full Bench declined to examine these aspects because these were not grounds indicated in the course of the order of the Government while withdrawing consent or order of Corporation in cancelling the sub-leases.

The Full Bench dismissed the writ appeals in the following terms:

> We leave it open to the appellants if they propose to terminate the sub-leases or withdraw the consent, to issue notices to the sub-leases to show cause as to why such an action should not be taken, grant them reasonable time for submitting their explanation, consider the same and pass appropriate orders in accordance with law. For this purpose, we consider it just to direct the parties to maintain status-quo obtaining as on this day for a period of 3 months from today. If no fresh orders are

passed within the said period of three months pursuant to the show cause notice, it would be open to the sub-leases to proceed with the mining operations in accordance with the sub- leases granted to them. The orders under appeals are accordingly modified and subject to the above modification and observations, the appeals are dismissed, but in the circumstances of the case, we direct the parties to bear their own costs.

The decision of the Full Bench is reported in AIR 1995 AP 1 (Government of Andhra Pradesh vs. Y.S. Vivekananda Reddy).

Against this order the writ petitioners, the Government and the Corporation have come up in appeal and this Court while granting leave made an order on 6.10.1994 in the following terms:

As a result of the cancellation of the sub-leases and withdrawal by the State Government of its consent for grant of the sub-leases by the Corporation being held by the High Court to be void in its judgment, the operation of the further direction given by the Full Bench of the High Court to maintain status quo for a period of three months from the date of the judgment meaning thereby that the sub-leases would not be entitled to carry on the mining operations till then, shall remain stayed. The sub-lessees shall, however, maintain true and faithful account of the mining operation which would be verified by the appropriate Mining Officer every fortnight. It is clarified that the exercise of the right of the Corporation as well as the State Government to proceed in accordance with law as a result of the High Courts judgment is not stayed.

Thereafter, during the pendency of these proceedings, the Government of Andhra Pradesh issued notices and on receipt of replies thereto, heard the appellants, who are the original writ petitioners, and decided against them. Against that decision, revision petitions were filed under Section 30 of the Act read with Rule 35 of the Rules before the Central Government [Tribunal] and the Central Government [Tribunal] by its order made on 9.9.1998 dismissed the said revision petitions. It appears that only one petitioner, C.M.Ramanath Reddy alone filed W.P.Nos.36884/98 and 366885/98 against that order of the Central Government [Tribunal] before the High Court and the same are pending. The sub-leases granted in favour of the writ petitioners are detailed as under:

Name of the Sub Lessee State Govt.

permission No. & Date Survey Numbers Extent Date of execut- of Sub lease Deed Date of Expiry

1. Sri K. Sivananda Reddy (Legal heir of Late Sri K.Obul Reddy Memo No. 1515/M.III/80-1 Dt. 28-8-1980 70/5 B and C 0.8741 hectares 3-9-1980 21-9-1998

2. Sri Y.S. Raja Reddy Dt. 19-7-1982 133/1 to 9 parts 134/1 to 6 parts 3.102 hectares 20-7-1982 18-2-1995

3. Sri C.M. Ramanatha Reddy Memo No. 1935/M.III/80-1 Dt. 19-9-1984 70/1, 71/2 part 0.2064 hectares 29-9-1984 19-9-1998

4. Sri C.M. Ramanatha Reddy Memo No.1973/M.III/8 0-1 dt. 19-9-1984 70/6 part, 74/4, 74/5, 70/7, 69/3 part & 70/5 part 0.1660 hectares 29-9-1984 19-9-1998

5. Sri C.M. Ramanatha Reddy Memo No.1940/M.III/8 0-1 Dt. 19-9-1984 74/1 part, 74/2 part & 74/8 0.8503 hectares 29-9-1984 21-9-1998

6. Sri C.M. Ramanatha Reddy Memo No.1614/M.III/80

-1 Dt. 19-9-1984 0.3800 hectares 29-9-1984 1-9-1998

7. Sri C.M. Ramanatha Reddy Memo No.2085/M.III/80

-1 Dt. 19-9-1984 0.8800 hectares 29-9-1984 17-6-1998

8. Sri C.M. Ramanatha Reddy Dt. 5-11-1990 75/2 to 5, 78/8 to 10, 111 part, Acres 4.845 (1.9607 hectares) 8-11-1990 18-2-1995

9. Sri Y.S. Vivekananda Reddy M/S Vijayalakshmi Minerals Trading Co.

Dt. 1-6-1991 71/1, 72/3A part, 72/6 part, 37/6 part, 37/4 part, 124 part, 114 part, 115 part Acres 4.49 Cents (1.8170 hectares) 4-6-1991 18-2-1995

10. Sri K. Raja Mohan Reddy Dt. 25-4-1991 Acres 1.90 (0.7525 hectares 8-5-1991 18-2-1995 The sub-leases granted in all these cases except one in favour of the V.Ramalingaiah comprised in Survey Nos.83/1, 8 to 10, 84/2, 20 and 22, measuring about 1 acre 89 cents, have expired either in the year 1985 or 1988 and in case of C.M.Ramanatha Reddy it had expired in the month of June, 1998 while in case of others it had expired in the month of September 1998. The relief sought for in the writ petitions is in relation to cancellation of the sub-leases. On that aspect the writ petitioners succeeded while the Government and the Corporation could not sustain the action taken by them. Now when the mining leases have come to an end by efflux of time and the term of those sub-leases have already expired, it will be an academic exercise to examine the various contentions urged in these appeals. Therefore, we are of the view that these appeals filed either by the private parties or by the Government and the Corporation have become infructuous.

Thus the first set of appeals are disposed as having become infructuous, except to the extent indicated in case of Sri V. Ramalingaiah.

From the facts available on record Sri V. Ramalingaiah obtained sub-lease pertaining to land comprised in Survey Nos. 83/1, 8 to 10, 84/2, 20 and 22, measuring about 1 acre 89 cents on 17.5.1991. It is not clear as to whether this lease is granted pursuant to the earlier general permission obtained from the Government in respect of all sub- leases under Rule 37 or any separate permission was secured from the Government and on what date. Therefore, it becomes necessary to examine as to when the consent was given in his case. Let the Government determine if the consent in this case has been given subsequent to the amendment of Rule 37 of the Rules. The sub-lease may get affected if it is later than 20.2.1991, when amended Rule 37 of the Rules came into effect, and if it is earlier than 20.2.1991, it may not, and it is open to the Government to take appropriate steps in his case.

CIVIL APPEAL NOS. 5115-5117/96 & 5118-5120/96 The period of sub-leases in each of these cases expired on 18.2.1995 or in September 1998 on different dates or in case of one lease on 17.6.1998. Thereafter another set of writ petitions was filed before the High Court. In that batch of cases, the contention put forth is that on account of illegal cancellation of the sub-leases and withdrawal of the consent by the State Government, the writ petitioners could not work the mines for a substantial period and they could not do so on account of the orders made by the High Court to maintain status quo and started operating only after this Court gave direction on 6.10.1994, after which alone they could resume mining operations and they claimed that they are entitled for exclusion of the period and appropriate relief. The High Court based its decision on the findings recorded by the Full Bench in Y.S.Vivekananda Reddys case and held that the withdrawal of the consent by the State Government for grant of sub-leases and their cancellation is void.

Two issues were posed before the High Court by the writ petitions in the following terms:

> 1. Whether the sub-leasees are entitled to be compensated for the loss of the period of the mining operation/work by them on account of illegal withdrawal of the consent and the cancellation of the sub-leases by the State Government? And
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> 2. If it is held that they are entitled to be compensated, whether the compensation will be by treating the period of lease completed by adding to it the period lost by illegal interruptions?

The writ petitioners contended that there were interruptions for the period 17.12.1993 to 6.10.1994 and in writ petition No. 22730/94 there was an additional loss of period of six months and sixteen days from 2.1.1991 to 18.6.1991 by an order of stay of the sub-leases granted in their favour by the State Government and the Corporation. In answering the contention urged on behalf of the State that the State Government shall not grant to any person a mining lease except with the previous approval of the Central Government, the High Court proceeded to hold that the restriction is upon the grant of mining lease on the State Government and the State Government had already granted sub-leases in favour of the Corporation and the State Government is not leasing the lands in question in favour of the writ petitioners. The sub- lease is granted by the Corporation, to which the lease has already been granted and, therefore, sub-lease made is in order. However, reliance was placed on Rule 37 of the Rules, which was amended substantially on 20.2.1991 and imposed the

condition that the lessee shall not without the previous consent in writing of the State Government and in the case of mining lease in respect of any mineral specified in the First Schedule to the Act, without the previous approval of the Central Government, assign, sublet, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein or enter into or make any bona fide arrangement, contract or understanding. Sub-leases having been granted prior to February 20, 1991, the High Court took the view that Rule 37 was not attracted to the case of the writ petitioners. Thereafter, the High Court proceeded to consider as to in what manner the writ petitioners should be compensated and held that any speculative compensation, in their opinion, in the form of damages, will not be proper and appropriate and further held that the Government and the Corporation were liable to put the writ petitioners in possession of the leasehold property to continue their mining operations for the periods which they have lost in all cases from 17.12.1993 to 6.10.1994 and in the case of petitioner in writ petition no. 22730/94 from 2.1.1991 to 18.6.1991. It is this order, which is in challenge before us in this set of appeals.

On behalf of the Government and the Corporation, the following contentions have been raised :

1. No prior permission having been obtained from the Central Government to grant the sub-lease, which is also a kind of lease, is void ab initio either under Section 4-A of the Act or under Rule 37 of the Rules.

2. In the decision rendered in W.A. No. 131 of 1994 and connected matters by the Full Bench no question was decided and the Full Bench of the High Court could not presume that validity or otherwise of the leases has been decided.

3. Even under the terms of the contract of sub-lease, the writ petitioners are not entitled to damages.

4. The order for specific performance could not have been passed at all, which is a matter arising purely in a contractual field.

5. After the expiry of the lease restoration of property is not available at all.

Under Section 4A of the Act the restriction to grant lease without permission of the Central Government is upon the State Government and not upon the Corporation to which the State Government had already granted lease. Hence, lease being void ab initio would not arise. The consent to grant the sub-leases had been given a long before to coming into force of the amendment to Rule 37 of the Rules and inasmuch as in all sub-leases (except in the case of V.Ramalingaiah, which came into existence only in the month of May, 1991, i.e., after 20.2.1991, the date of amendment) this amended rule which required a prior approval of the Central Government is not required and, therefore, the contention that the sub-leases are void ab initio would not arise. Therefore, the view taken by the Full Bench on this aspect is correct.

On the question that the relief as sought for and granted by the High Court arises purely in the contractual field and, therefore, the High Court ought not to have exercised its power under Article

226 of the Constitution placed very heavy reliance on the decision of the Andhra Pradesh High Court in Y.S.Raja Reddy vs. A.P.Mining Corporation Ltd., 1988(2) ALT 722, and the decisions of this Court in Harshankar vs. Deputy Excise & Taxation Commissioner, 1975 (1) SCC 737; Radhakrishna Agarwal vs. State of Bihar, AIR 1977 SC 1496; Ram Lal & Sons vs. State of Rajasthan, AIR 1976 SC 54; Shiv Shankar Dal Mills vs. State of Haryana, AIR 1980 SC 1037; Ramana vs. I.A.Authority of India, AIR 1979 SC 1628; Basheeshar Nath vs. Income Tax Commissioner, AIR 1959 SC 149. Though there is one set of cases rendered by this Court of the type arising in Radhakrishna Agarwals case, much water has flown in the stream of judicial review in contractual field. In cases where the decision making authority exceeded its statutory power or committed breach of rules or principles of natural justice in exercise of such power or its decision is perverse or passed an irrational order, this Court has interceded even after the contract was entered into between the parties and the Government and its agencies. We may advert to three decisions of this Court in M/s Dwarkadas Marfatia & Sons vs. Board of Trustees of the Port of Bombay, 1989(3) SCC 293; Mahabir Auto Stores & Ors. vs. Indian Oil Corporation & Ors., 1990(3) SCC 752; and Srilekha Vidyarthi vs. State of U.P., AIR 1991 SC 537. Where the breach of contract involves breach of statutory obligation when the order complained of was made in exercise of statutory power by a statutory authority, though cause of action arises out of or pertains to contract, brings within the sphere of public law because the power exercised is apart from contract. The freedom of the Government to enter into business with anybody it likes is subject to the condition of reasonableness and fair play as well as public interest. After entering into a contract, in cancelling the contract which is subject to terms of the statutory provisions, as in the present case, it cannot be said that the matter falls purely in a contractual field. Therefore, we do not think it would be appropriate to suggest that the case on hand is a matter arising purely out of a contract and, therefore, interference under Article 226 of the Constitution is not called for. This contention also stands rejected.

The fact that the cancellation of sub-leases or withdrawal of consent being void flowing from the order of the Full Bench decision of the High Court has also been noticed by this Court in its interim order dated 6.10.1994 and hence the High Court proceeding on that basis in its order is not incorrect.

There was, therefore, no impediment for the High Court to find out whether there is breach of contract so as to enable the parties to claim damages or the liability of the Corporation or the Government to make good the same.

For the sake of convenience, we will proceed to examine first the question as to the exercise of discretion by the High Court in extending the period of lease or sub-lease after its original period had expired. In Kalyanpur Lime Works Ltd. vs. State of Bihar & Anr., AIR 1954 SC 165, the Government had entered into a contract with Lime Company and when it entered into the said contract it had an imperfect title inasmuch as it could not grant a fresh lease to anyone during the existence of the previous lease in favour of another party and when the lease in favour of another party expired the impediment in the way of the Government to grant stood removed and the Lime companys right to get the lease revived in its favour was urged. It was held that though Section 18 of the Specific Relief Act, 1877 was attracted to the case but as substantial period of lease had already expired, relief could be given only under Section 15 of the Specific Relief Act. Therefore, in that case

this Court did not think that it was a fit case for grant of decree for specific performance as there are only a few months left before unexpired portion of the lease will run out. Indeed by the time the lease comes to be extended in pursuance of the Courts order it would be scarcely worthwhile to carry on quarrying operations.

There are at least three weighty reasons as to why the period of sub-lease could not have been extended after the expiry of period of original lease and they are :-

> (i) In most of the present cases, the interruptions in respect of which the claim is made is for a period of about 10 months and in one other case an additional period of 6½ months. In some cases the lease having expired as early as in the year 1995 or in others in 1998, it would not be appropriate to direct the extension of lease in the year 2001 particularly when the sub-leases have expired as a result of which the parties have to re-establish their infrastructure and put in great deal of logistical support though for a short period once over again, to work the mines which will have a pernicious effect on the mines and the parties concerned.
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> (ii) The claim for renewal of leases has been refused already as the policy of the Government is not to grant lease or sub-lease in favour of private parties. Now to ask to the Government to enter into fresh contracts will be contrary to its policy.
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> (iii) When several malpractices had been pointed out by House Committee, it would not be in public interest to extend the period of lease which will perpetuate the same.

Therefore, the High Court ought not to have exercised its discretion for extension of period of sub-lease.

For the reasons aforesaid, we think, it would be appropriate to set aside the order made by the High Court and allow these appeals to the extent the High Court has granted the relief of extension of the sub- leases.

Insofar as claim for damages is concerned, it is unnecessary for us to decide the same inasmuch as it would be appropriate for the parties to work out their respective rights by making an appropriate claim in a civil suit to be filed by each one of them. We have refused the relief of restitution by way of extension of lease period without examining the question as to whether there is breach of contract as a consequence of which the party aggrieved is entitled to damages. That aspect is left open to be considered or be dealt with in the civil suit irrespective of and uninfluenced by the observations or findings of the High Court on this aspect. If such a civil suit is filed, the cause of action should be reckoned only from the date of this order when we finally pronounced upon the rights of the parties, which protection will adequately take care of the interests of the writ petitioners.

Subject to the aforesaid observations, the second set of appeals shall stand partly allowed. No costs.

...J. [S. RAJENDRA BABU] ...J. [D.P.MOHAPATRA] SEPTEMBER 18, 2001.