Andhra High Court
Sudha Ramaiah vs The Government Of Andhra Pradesh ... on 16 January, 1974
Equivalent citations: AIR 1974 AP 250
Author: G R Ekbote
Bench: G R Ekbote, C Reddy
JUDGMENT Gopal Rao Ekbote, C.J.

1. This is an appeal from the order of a learned single Judge given in W. P. No. 4635 of 1972 on 6-2-1973.

2. The necessary facts are that by G. O. No. 1030 dated 20-11-1969 the Government declared certain land to be available for mining lease with effect from 12-1-1970.

3. On 12-1-1970 the petitioner applied for grant of prospecting licence over acres 12.50 cents of land.

4. On the same day, the 4th respondent herein filed an application for the grant of a lease of mining for 20 years.

5. Before the application of the petitioner filed an application on 5-3-1970 to convert his previous application for the grant of prospecting licence to that of granting of lease for 20 years.

6. The State Government , however , refused to convert the application . But nevertheless it treated the new application as an application for grant of lease for 20 years .

7. Since the Government had not disposed of the applications , the petitioner filed a revision to the Central Government . The Central Government called for the remarks of the State Government and asked also the parties to comment thereon if they so choose.

8. The State Government submitted its report on 26-4-1971 giving various reasons incorporated therein under Section 11 (4) of the Mines and Minerals (Regulation and Development) Act , 1957 (hereinafter referred to as the Act).

9. The petitioner also offered his counter remarks .

10. The Central Government considered the revision petition in the light of the remarks offered by the State Government and the counter comments made by the writ petitioner and by their State Government to dispose of the applications pending before it within a period of four months therefrom .

11. It is pertinent to note that in the said order , the Central Government said :

"It may be stated that an Act of the Union Parliament remains on the Statute Book until removed by the process of law , and in the absence of any other supporting judgment from another High Court it is not possible to accept the position that sub-sec. (2) of Section 11 of the Act has no effect or , in

other words , has ceased to exist . So far as the Central Government is concerned sub-section (2) of Section 11 of the Act is still in force ....."

It should be mentioned that the validity of Section 11 (2) was challenged in this High Court in W. P. No. 5363 of 1968 (Andh . Pra). A learned Single Judge of this Court declared the said section as ultra vires .

12. The State Government as well as the Central Government referred to this decision and it is in the context of this decision that the abovesaid observations are made by the Central Government .

13. When the matter came back to the State Government , the State Government by the impugned order , granted the lease for two years to respondent 4 the Central Government. It is to challenge the correctness of this order that the Writ Petition was filed .

14. The learned Judge , before whom the writ petition came up for hearing , dismissed the writ petition mainly on the ground that the Central Government seems to have considered all aspects of the case and therefore there was no reason to interfere with the impugned order .

15. In this appeal Sri. K. Mahaipathi Rao , the learned counsel for the appellant argued that in the light of the judgment given in W. A. Nos. 600, 601 of 1969 , W. A. 11/70 and W. P. No. 3056 of 1967 , D/- 1-4-1971 (Andh . Pra) the impugned order of the State Government will have to be quashed and the State Government will have to be directed to dispose of the applications in the light of what is stated about Section 11 (2) in the said decisions .

16. Against the learned single Judge's decision given in W. P. No. 5363 of 1968 (Andh . Pra .) appeals were preferred . It was held by the Bench that Section 11 (2) is not ultra vires. It was decided that all the applications filed for the grant of mining lease will have to be considered under Section 10 (3) of the Act. On such considerations , if it is found that all the applications are otherwise equal , it is only then that the question arise. The present position therefore is that wherever more than one application for grant of mining lease for filed , the first step for the State Government or for the Central Government is to consider all those applications under Sec. 10 (3) . In case the Government comes to the conclusion that all the applications stand on an equal footing it is only then that the question of preference under Section 11 (2) would be attracted and not otherwise . The use of Section 11 (2) is not mechanical .

17. Respectfully following the said decisions , we have to consider whether the State Government has considered the applications of the petitioner as well as respondent No. 4 in the light of the observations made in the said judgment. It could not has so considered the applications. On the other hand the lease was granted to the 4th respondent more or less mechanically only on the ground that his application was filed earlier than the application of the petitioner . It cannot be in doubt that such an approach to the disposal of the applications under Section 10 (3) read with Section 11 (2) in the light of the abovesaid Bench decision is bad in law.

18. It was however , contended by the learned Central Government Pleader as well as the advocate for the 4th respondent that the petitioner has not challenged the central Government's direction given to the State Government and parties and consequently it is urged that the State Government cannot be permitted to be questioned in a writ proceeding under Art. 226 of the Constitution.

19. We are not impressed with this argument . It is true that if the Central Government's order passed in revision which is a quasi-judicial order is also questioned in the writ petition it would have been better . But on that account the power of judicial review of the effective order passed by the State Government , in our judgment , is not taken away . The illegal order of the State Government does not get immunity from attack merely because it was passed in pursuance of another illegal order of the Central Government . That the order of the Central Government is bad in law cannot be disputed. The approach of the Central Government that the State High Court cannot strike down a central enactment is , to say the least, misconceived . It is also curious that the Central Government should say that in such a case unless two High Court hold the Central legislation ultra vires , it cannot be effective. It is extraordinary to read in the Central Government's order that while the striking down of a provision of a Central enactment may be good as far as the State is concerned , but so far as the Central Government is concerned , is not effective. This approach clearly indicates that the position of law was not correctly appreciated by the Central Government .

20. Moreover , while the State Government had recommended the case a special case under Section 11 (4) of the Act, the Central Government completely ignored that aspect of the case and made the above said observations in respect of Section 11 (2) and gave the abovesaid instructions .

21. If the judgment in the appeal given by the Bench of this court were to be brought to the notice of the Central Government , which judgment was given much earlier than the order of the Central Government, we have no doubt that the Central Government would not have made such observations as abovementioned .

22. It must be remembered that any order of this Court if brings back to life or continues the operation of an order which is ex facie illegal , it should not be permitted to have that effect. It is the function of this Court under Art, 226 of the Constitution to remove , for purposes of quashing, the orders which are on the face of them illegal.

23. If we look at the impugned order the State Government from what is stated above , it could not be validly disputed that the correct criteria laid down in the abovesaid Bench decision of this Court were not at all borne in mind and applied by the State Government . The order therefore is patently inconsistent with the provisions of the Act and cannot be allowed to remain on record.

24. Our attentions was drawn to a single Judge's decision reported in Dastgir Saheb v. Union of India , AIR 1964 Punj 432. It is the same decision which was considered by the State Government making its recommendation to the Central Government . We do not think that in the light of the said decision , we should refuse to interfere with the State Government 's order which , as stated earlier , is patently wrong .

25. Then what is the relief which we can grant to the petitioner ? In the light of what is stated above we can only direct the State Government to keep the position of law as indicated in the abovesaid Bench decision in view and dispose of the case remitted by the central government for the grant of mining lease .

26. For the reasons stated above. We would allow the appeal , and quash , the impugned order of the state Government and a direction will be issued to the State and a direction to dispose of the petitions Government to dispose , of the petitions filed by the petitioner and the 4th respondent expeditiously in the light of the Bench decision referred to above and in accordance with law. In the circumstances of the case we leave the parties to bear their own costs throughout. Advocate's fee Rs. 100 in each court.

27. Appeal allowed .