

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.Nos.16298/08 & 1234/09

COMMON ORDER:

Since these two Writ Petitions are connected, this Court deems it appropriate to dispose of these writ petitions by way of this common order. For the sake of convenience, this Court deems it appropriate to refer to the status of the parties as arrayed in W.P.No.16298 of 2008.

2. W.P.16298 of 2008 is filed under Article 226 of the Constitution of India, for the following relief:

“To issue writ order or direction more particularly one in the nature of writ of mandamus declaring the proceedings of the 1st respondent vide Memo No.5336/M.II(1)/2008-2 dated 11.7.2008 wherein according permission to the 5th respondent to reject quarry lease application of petitioner and further according permission under Rule 12(5) (b) of A.P.M.M.C.Rules, 1966 to the 5th respondent for overlooking the priority and considering the application of 6th respondent for grant of Quarry lease for quarrying black granite over an extent of 4.916 hectares in Ingurthy Reserve Forest, Warangal District as illegal, and arbitrary.”

3. W.P.No.1234 of 2009 is filed under Article 226 of the Constitution of India, for the following relief:

“To issue writ, order or direction, more particularly in the nature of Writ of Mandamus, declaring the grant of forest clearance in favour of 3rd respondent by communication No. 4apb-100/2005-BAN/1748, dated 22-12-2006 as illegal, arbitrary and set aside the same; and (ii) direct the 1st respondent to consider the proposals of the petitioner herein for grant of forest clearance in respect of 4.90 hectares in Compt. No. 1148 of Ingurthi Village (RF), K. Samudram Mandal, Warangal Dist., under Forest (Conservation) Act.”

4. The facts and circumstances leading to the filing of the present writ petition are as under:

5. The petitioner herein submitted an application to the Assistant Director of Mines and Geology, Warangal on 02.12.2002 for grant of black granite quarry lease over an extent of 10 Hectares of forest land situated in Compartment No.1148 of Ingurthi Reserve Forest Area of Kesamudram Mandal, Warangal district. The said land is situated in Survey Nos.202 and 204/1. The said application was forwarded to the Divisional Forest Officer, Warangal for necessary action under Section 2 of the Forest (Conservation) Act, 1980. A joint survey was conducted by the Forest Department and Mines Department on 16.12.2002. The land available was found to be 4.916 Hectares. Thereafter, revised application was submitted by the petitioner on 25.3.2003 to the said extent before the Assistant Director of Mines and Geology and the same was forwarded to the Divisional Forest Officer, Warangal and subsequently the same was processed to the Principal Chief Conservator of Forest-3rd respondent herein on 4.11.2003 under Rule 6(1) of the Forest (Conservation) Rules, 2003. Thereafter, vide letter bearing No.723/For.I(1)2005-4 dated 27.6.2005, the 2nd respondent-State Government made a request to the Chief Conservator of Forests (Central), Government of India, requesting to obtain and communicate the approval of Government of India for diversion of the applied forest area in favour of petitioner herein for extraction of black granite. The Government of India vide letter bearing No.APB100/2005-BAN/489 dated 27.6.2006 accorded Stage-I approval in favour of the petitioner for diversion of 4.916 Hectares of forest land for extraction of black granite in favour of the petitioner subject to the conditions stipulated therein. In pursuance of the said approval, the Divisional Forest Officer, Warangal, South Division, by virtue of proceedings Rc.No.10244/2004/DM dated 31.7.2006 directed the petitioner herein to

deposit a sum of Rs.44,60,974/- towards the cost of afforestation, free generation of safety zone area and for net present value of the forest area of 4.916 hectares. In pursuance of the said proceedings, petitioner herein deposited the amount indicated in the above said proceedings dated 31.7.2006 by way of demand draft and the petitioner also purchased 1.64 Hectares of land in Nagaram village and 4.31 Hectares of land in Katrapalli village of Warangal district and registered the same in favour of the State Government by way of sale deeds bearing document Nos.1016 and 1017 of 2006 dated 2.8.2006. Subsequently, on 30.11.2006, the Principal Chief Conservator of Forest, Hyderabad submitted a compliance report to the State Government-2nd respondent herein. Vide proceedings No.APB100/2005-BAN/124 dated 22.12.2006, the Government of India, Ministry of Environment and Forests granted Stage-II approval in favour of petitioner herein. Subsequently, vide G.O.Ms.No.8, Environment, Forests, Science and Technology (FOR.I) Department dated 11.1.2007, the 2nd respondent-State Government accorded permission to the Principal Chief Conservator of Forests, Hyderabad-3rd respondent herein for diversion of applied forest area. On 31.7.2007, petitioner herein made a representation to the Director of Mines and Geology, Hyderabad for grant of quarry lease.

6. While the things being so, the 1st respondent-State Government, on the request made by the Director of Mines and Geology, to prefer grant of quarry lease in favour of A.P. Mineral Development Corporation Limited (6th respondent herein) under Rule 12(5)(b) of A.P. Minor Mineral Concessions Rules, 1960, directed the Mines and Geology Department to overlook the prior applications and to grant quarry lease for black granite in favour of 6th respondent-APMDC. Thereafter, by way of G.O.Ms.No.135, Environment, Forests, Science and Technology (FOR.I) Department dated 4.12.2007, ordered cancellation of orders issued earlier in favour of petitioner herein vide

G.O.Ms.No.8 dated 11.1.2007, while directing the Principal Conservator of Forests to submit proposals under Forest (Conservation) Act for re-diversion of the said area for extraction of black granite in favour of APMDC. Assailing the validity of the said memo dated 16.3.2007 and G.O.Ms.No.135 dated 4.12.2007, petitioner herein filed W.P.No.7355 of 2007. This Court, by way of order dated 26.3.2008, quashed the said memo, while remanding the matter to the authorities for fresh consideration, after giving notice and for calling objections.

7. Subsequently, the 1st respondent-State Government issued a show cause notice vide Memo No.5336/M.II(1)/2008-1 dated 14.5.2008, asking the petitioner to show cause as to why the application of 6th respondent-APMDC should not be preferred over the application of the petitioner. In response to the said show cause notice, the petitioner herein submitted its objections dated 4.6.2008. Thereafter, the 1st respondent-State Government by virtue of Memo bearing No.5336/M.II(1)/2008-2 dated 11.7.2008 accorded permission to the Director of Mines and Geology to reject the application of the petitioner and to accord permission for overlooking priority and to consider the application of the 6th respondent-APMDC under Rule 12(5)(b) of APMDC Rules, 1966.

8. In the above background, pleading that the said order dated 11.7.2008 passed by the 1st respondent illegal, arbitrary, the present writ petition came to be instituted.

9. This Court while issuing rule nisi on 30.7.2008, granted interim stay of all further proceedings pursuant to the impugned order, while making it clear that the order shall not preclude processing of prior approval by the Ministry of Environment and Forest under the provisions of Forest (Conservation) Act, 1980 in favour of 6th respondent-Corporation.

10. Responding to the rule nisi issued by this Court, counter affidavits have been filed by the respondents, denying the averments and allegations made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

11. Heard Sri T.Sreedhar, learned counsel for petitioner, learned Government Pleaders for Mines and Geology and Forests for Respondents 1 to 3 and 5, Sri B.Narayana Reddy, learned Assistant Solicitor General for Respondent No.4 and learned Advocate General for Respondent No.6, apart from perusing the material available on record.

12. It is contended by the learned counsel for petitioner that the questioned order passed by the 1st respondent vide Memo No. 5336/M.II(1)/2008-2 dated 11.7.2008 is highly erroneous, contrary to law and violative of Articles 14 and 19(1)(g) of the Constitution of India. It is further submitted that since the Central Government already granted approval in favour of the petitioner herein under Section 2 of Forest (Conservation) Act, 1980, the very action of the 1st respondent in according permission under Rule 12(5)(b) of A.P. Minor Mineral Concession Rules, 1966 is highly irregular and opposed to the very spirit and object of the provisions of Mines and Mineral Development and Regulation Act, 1957, A.P. Minor Mineral Concession Rules, 1966 and Forest (Conservation) Act, 1980 and that the action of the Respondents is a patent contravention to Rule 6(3) of Forest (Conservation) Rules.

13. It is further submitted by the learned counsel that the application of 6th respondent is a subsequent one and the 6th respondent submitted its application for quarry lease on 04.8.2003 and on 05.8.2003 and the said application was returned on 03.6.2004 for re-submission and the

6th respondent represented the same with a delay of 274 days on 18.3.2005 and the said application ought not to have been processed as the same being contrary to Rule 6(3)(a) and (f) of Forest (Conservation) Rules. It is further submitted that notwithstanding the said statutory bar, the 2nd respondent-State Government forwarded the proposals to the Chief Conservator of Forests, Ministry of Environment and Forests, Union of India on 26.3.2008. It is further submitted by the learned counsel that the impugned orders issued by the 1st respondent vide Memo dated 11.7.2008 are in the nature of reviewing the earlier orders issued vide G.O.Ms.No.8 dated 11.1.2007 and the same is without jurisdiction in the absence of any power of review expressly provided under the statute and the rules.

14. It is further submitted by the learned counsel that there is no clearance in favour of 6th respondent so far under Section 2 of Forest (Conservation) Act, 1980 read with Rule 6(3)(a) and (b) of the Rules. It is further submitted by the learned counsel that the petitioner herein submitted objections; to the show cause notice dated 14.5.2008 on 4.6.2008, but the 1st respondent did not consider the contents of the said objections. It is further submitted by the learned counsel that when once No Objection Certificate is issued in favour of one user agency, there is no question of Forest Department considering and granting No Objection Certificate in favour of another user agency for the same area or a part of it. He further submitted that the application made by the 6th respondent to the Central Government is dated 14.8.2003 and the same was returned on 3.6.2004, but the 6th respondent re-submitted the application on 18.3.2005 i.e. after 274 days after its return. The limitation for processing the application is 210 days as per Rule 6(3)(a) of the Forest (Conservation) Rules. Therefore, the application of the 6th respondent is void application in the eye of law.

15. It is further contended by the learned counsel for the petitioner that vide notification dated 17.03.2005 the Mineral Development Corporation proposed for private participation, as such, the Corporation cannot claim any exemption under Section 2 (iii) of the Forest Conservation Act, 1980. It is further submitted that the contention that the proposal was not forwarded through the mines and Geological Development was neither pleaded in the counter affidavit nor there is any material available on record to substantiate the same. It is further contended that the impugned action is unsustainable in view of the provisions of Section 115 of the Indian Evidence Act, which deals with Promissory Estoppel.

In support of his submissions and contentions learned counsel for the petitioner places reliance on the judgments of Hon'ble Apex Court in *UNION OF INDIA (UOI) AND ORS. v. INDO-AFGHAN AGENCIES LTD¹*, *PATEL NARSHI THAKERSHI AND ORS. v. SHRI PRADYUMANSINGHJI ARJUNSINGHJI²*, *DHARAMPAL PREMCHAND LIMITED v. UNION OF INDIA³* and the Judgments of this Court in *M/S. S.V.A. STEEL RE-ROLLING MILLS LTD. ETC. ETC. v. STATE OF KERALA AND ORS. ETC. ETC.⁴*, *KATTA RAMESH AND ANR. v. THE BRANCH MANAGER, STATE BANK OF INDIA AND ORS.⁵* and *V. MURALI v. GOVERNMENT OF ANDHRA PRADESH AND OTHERS⁶*.

16. Per contra, the learned Special Government Pleader, appearing for the Telangana State Mineral Development Corporation, contends emphatically that there is no illegality nor there is any procedural lapses nor infirmity in the impugned action, as such, the questioned action is not amenable for any judicial review under Article 226 of the Constitution of India. It is further

¹ AIR 1968 SC 718

² AIR 1970 SC 1273

³ 2016 SCC ON LINE TRI 14

⁴ 2014 (3) ALD 130

⁵ 2011 (5) ALD 335 AP

⁶ 2000 (1) ALD 658

argued by the learned Special Government Pleader that by way of G.O.Ms.No.8, Environment, Forests, Science and Technology (FOR.I) Department dated 11.1.2007, the State Government granted permission to the Principal Chief Conservator of Forests only for diversion of applied forest area, but did not grant lease in favour of the petitioner to claim any sort of vested right, as such, the contention of the learned counsel for the writ petitioner that by way of G.O.Ms.No.135, Environment, Forests, Science and Technology (FOR.I) Department dated 4.12.2007, the State Government illegally and unauthorisedly reviewed its earlier order vide G.O.Ms.No.8, Environment, Forests, Science and Technology (FOR.I) Department dated 11.1.2007 is neither sustainable nor tenable in the eye of law. It is further argued by the learned Special Government Pleader that the impugned action does not amount to reviewing the approvals granted by the Union of India for diversion of forest area vide orders dated 27.06.2006 and 22.12.2006. It is further submitted that the case of the petitioner does not attract the provisions of Section 115 of the Indian Evidence Act. It is further contended that vide G.O.Ms.No.135, Environment, Forests, Science and Technology (FOR.I) Department dated 4.12.2007, the State Government only cancelled the permission for diversion of forest area and since the earlier orders, granting approval are only administrative in nature, the State Government is empowered to cancel the same as per Section 21 of the General Clauses Act. It is further submitted that non-adherence to limitation as stipulated under Rule 6 (3) of the Forest (Conservation) Rules, 2003 is not fatal and the said stipulation is only directory in nature but not mandatory and on the said ground the Telangana State Mineral Development Corporation cannot be non-suited. It is further submitted that the petitioner herein cannot claim legitimate expectation as the State Government never proposed to grant lease in favour of the petitioner and did not pass any final order under

Section 2 of the Forest Conservation Act, 1980 and the petitioner never invested anything subsequent to the approvals granted by the Union of India under Section 2 of the Forests Conservation Act, 1980; that the application of the petitioner in W.P.No.16298 of 2008 was not forwarded through the Mines and Geology Department of the State Government; that the respondents resorted to the impugned action in public interest and as per Rule 12 (5) (b) of the A.P.Minor Mineral Concessions Rules, 1966; that in view of expiry of the period of 10 years for which approval under Section 2 of the Forest Conservation Act was granted, the parties are required to make application afresh. It is further submitted by the learned Government Pleader that no approval in favour of the Mineral Development Corporation is necessary under Section 2 of the Forests Conservator Act, since it is a Corporation.

The learned Special Government Pleader in support of his submissions and contentions places reliance on *G. RAGHAVA DAS AND ETC. ETC. VS. GOVERNMENT OF ANDHRA PRADESH AND ORS.* And *B.V. JOSHI VS. STATE OF ANDHRA PRADESH AND ORS.*⁷.

17. In the above backdrop, the issues that emerge for consideration and which this Court is called upon to answer in the present writ petitions are:

1. Whether the action of the State Government in cancelling the proposal sent to the Government of India vide G.O.Ms.No.8, Environment, Forests, Science and Technology (FOR.I) Department dated 11.1.2007 for diversion of reserved forest area by way of the order vide G.O.Ms.No.135, Environment, Forests, Science and Technology (FOR.I) Department dated 4.12.2007 is justified, authorised, legal, valid and permissible and whether such action has legal sanctity?
2. Whether the action of the State Government in sending the proposals for diversion of forest area in favour of the Mineral Development Corporation is in accordance with law or whether the same is barred

⁷ AIR 1987 AP 166

by limitation as stipulated under Rule 6 (3) of the Forests Conservation Rules, 2003?

3. Whether the action of the State government is contrary to the principle of promissory estoppel and is opposed to the doctrine of legitimate expectation?
4. Whether the impugned action is in accordance with Rule 12 (5) (b) of the A.P. Minor Mineral Concession Rules, 1966?

Issues 1 and 3

18. There is absolutely no controversy as regards the reality that the application of the petitioner in W.P.No.16298 of 2008 is the first application.

Be it noted, that since the subject area is a forest area, the State Government referred the matter for necessary approval under Section 2 of the Forest Conservation Act, 1980. The said provision of law reads as under:

“2. Restriction on the dereservation of forests or use of forest land for non-forest purpose:- Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-

(i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.]

[Explanation.—For the purposes of this section “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for—

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

(b) any purpose other than reafforestation,

but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.]”

19. It is very much evident from a reading of the above provisions of law that prior approval of the Central Government is mandatory and indispensable before proceeding further with the consideration of the mining lease application by the State Government. In the instant case, the respondent state government appositely sought such approval on the application made by the petitioner. The Union of India granted approval in two stages viz., Stage One and Stage two. For according such stage wise approvals, the respondents directed the petitioner to comply with various requirements such as deposit of Rs.44,60,974/- towards the cost of afforestation and to register the alternative land in favour of the State Government. There is absolutely no dispute that the petitioner scrupulously followed the said directions and acted accordingly by depositing the said amount and by registering the land in favour of the State Government. Thereafter only the Union of India granted second stage approval in favour of the petitioner herein. Thereafter, the application of the sixth respondent came into picture and the State Government while cancelling G.O.Ms.No.8 dated 11.01.2007 vide G.O.ms.No.135 dated 04.12.2007 directed the Principal Conservator of Forests to submit proposals under the Forest

Conservation Act for re-diversion of the subject area in favour of the Mineral Development Corporation. While referring to the said orders, it is the specific contention of the learned counsel for the petitioner that in view of the approval already granted in favour of the petitioner by the Union of India, the State Government has no power to send the proposal once again in favour of the Mineral Development Corporation and the said action tantamounts to reviewing its own decision and the said action has no legal sanctity.

20. Resisting the said contention, it is the stand of the learned Special Government Pleader that earlier orders are only administrative in nature and as per the provisions of Section 21 of the General Clauses Act, the impugned action is permissible. In this context, it may be appropriate to refer to the provisions of Section 21 of the General Clauses Act, 1897, which reads as under:

“21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws:- Where, by any ³⁶ [Central Act] or Regulations a power to ³⁷ [issue notifications,] orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any ³⁸ [notifications,] orders, rules or bye-laws so ³⁹ [issued].”

21. There is no dispute on the legal principle that power to issue an administrative order is inclusive of the power to cancel the same. But, in the instant case, the impugned action, by any stretch of imagination, cannot be justified under the said provision of law. In the present case, in discharge of statutory function, the State Government secured the approval from the Union of India in favour of the petitioner under Section 2 of the Forest Conservation Act, 1980. G.O.Ms.No.8 dated 11.1.2007 is undoubtedly a consequence of and in furtherance of the said statutory function under the A.P. Mineral Concession Rules, 1966. It is a settled and well established

principle of law that the power of review cannot be exercised by the authorities unless the same is expressly provided under the law. The contention of the learned Government Pleader that there is no final order issued by the State Government under the provisions of Section 2 of the Forests Conservation Act cannot be sustained in the eye of law in view of the clear language employed under the said provision of law, which confers jurisdiction only on the Union of India to grant such approval.

22. In this connection, it may be appropriate to refer to the judgments of this Court and the Hon'ble Apex Court in the case of *PATEL NARSHI THAKERSHI AND ORS* (*supra 2*) and *V. MURALI* (*supra 6*).

23. In *PATEL NARSHI THAKERSHI AND ORS* (*supra 2*), the Hon'ble Apex Court at paragraph No.4, held as follows:

"4. The first question that we have to consider is whether Mr. Mankodi had competence to quash the order made by the Saurashtra Government on October 22, 1956. It must be remembered that Mr. Mankodi was functioning as the delegate of the State Government. The order passed by Mr. Mankodi, in law amounted to a review of the order made by Saurashtra Government. 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. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government's order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the same cannot be ignored. The Subordinate Tribunals have to carry out that order. For this reason alone the order of Mr. Mankodi was liable to be set aside."

24. In *V. MURALI* (*supra 6*), this Court at paragraph 12, held as follows:

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.

25. In the instant writ petition, it is not the case of the respondent authorities that such power of review is expressly conferred on the State Government either under the Act or the Rules. Therefore, the very action of issuance of G.O.Ms.No.135, dated 04.12.2007, asking the Principal Chief Conservator of Forests to submit the proposal under Forest Conservation Act, 1980 for re-diversion of the above said area for extraction of black granite in favour of APMDC Limited, in the absence of any enabling provision of law, is totally one without jurisdiction. It is also significant to note that by asking the said proposals to be sent in favour of the Mineral Development Corporation, the State Government obviously sought the review of the approval granted already by the Union of India in favour of the writ petitioner. Forests Conservation Act or the Rules framed there-under do not authorise the Central Government to reconsider and revoke the approvals already granted.

26. According to the learned counsel for the petitioner the impugned action is contrary to the Principle of Promissory Estoppel and the doctrine of legitimate expectation. In this connection, it may be apt to refer to the judgments cited by the learned counsel for the petitioner.

27. In the case of *UNION OF INDIA (UOI) AND ORS.(Supra 1)*, the Hon'ble Apex Court at paragraphs 21 and 24, held as under:

“21. This case is, in our judgment a clear authority that even though the case does not fall within the terms of s. 115 of the Evidence Act, it is still open to a party who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the promise is not recorded in the form of a formal contract as required by the Constitution.

24. Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen. We agree with the High Court that the impugned order passed by the Textile Commissioner and confirmed by the Central Government imposing cut in the import entitlement by the respondents should be set aside and quashed and that the Textile Commissioner and the Joint Chief Controller of Imports and Exports be directed to issue to the respondents import certificates for the total amount equal to 100% of the f.o.b. value of the goods exported by them, unless there is some decision which falls within clause 10 of the Scheme in question.”

28. In the case of *M/ S. S.V.A. STEEL RE-ROLLING MILLS LTD. ETC. ETC. (Supra 4)*, the Hon'ble Apex Court at paragraphs 30, 31 and 35 held thus:

“30. It is true that Section 22B of the Act enables the State Government to regulate the supply, distribution and consumption of electricity for the purpose of maintenance and supply of equitable distribution of energy but in our opinion, provisions of the said section are not much relevant for the reason that in the instant case, the Respondent State had given an assurance with regard to uninterrupted supply of electricity and therefore, the Respondents ought to have made provision for uninterrupted supply of electricity to the Appellants and other similarly situated persons by regulating electricity supply in a proper manner.

31. Framing such policies and doing the needful for its implementation are administrative functions of the Respondent-State and therefore, normally this Court would not like to interfere with its policies but looking at the peculiar facts of the case, where an assurance had been given for uninterrupted supply of electricity, one would presume that the Respondent-State must have made necessary arrangements to provide 100% uninterrupted supply of electricity for 5 years to the new units. If for any reason it was not possible to supply electricity as assured, the Respondent-State ought to have extended the period of 5 years by the period during which assured electricity was not supplied. By doing so, the Respondent-State could have made an effort to fulfill its promise and satisfied the persons who had acted on an assurance given by the State and set up their manufacturing units in the State of Kerala.

35. If an assurance was given to the Appellants and similarly situated persons that they would be given 100% electricity supply for five years, the Respondents can not wriggle out of their liability by making a policy to the effect that the benefit by way of incentive would be extended only if the electricity supply was reduced to less than 50% on a particular day. A steel industry, for example, which cannot function without electricity or power in any other form, would be put to enormous inconvenience and loss if the power supply is not continuous. So as to reactivate or to restart the machines or to start the process afresh, the industry has to spend something more than what it would have spent if the supply or power namely, electricity was uninterrupted. Stoppage of manufacturing process would mean losses under several heads. The labour employed has to be paid even when the employer does not get work from the labour force. Very often, so as to bring a required temperature for the purpose of carrying on certain processes, more fuel is to be injected so as to attain the condition which was prevailing prior to electricity supply being disconnected. Moreover, there would be several overhead expenses which one has to incur even if there is no production or stoppage of manufacturing process.”⁸

29. In the case of *KATTA RAMESH AND ANR. (Supra 5)*, this Court at paragraph 8 held as under:

“8. The law on doctrine of promissory estoppel is too well settled. Where a person makes a promise on the basis of which another person acted and altered his position, the promisor cannot be permitted to wriggle out of the promise so made to the detriment of the promisee (See *Union of India v. Indo-Afghan Agencies* : AIR 1968 SC 718, *Motilal Padampat Sugar Mills Company, Ltd., v. State of U.P.* : (1979) 2 SCC 409, *D.C.M. Ltd., v. Union of India* : (1996) 5 SCC 468, *Pawan Alloys & Casting (P) Ltd., v. U.P.S.E.B.* : (1997) 7 SCC 251).”

30. In the case of *DHARAMPAL PREMCHAND LIMITED (supra 3)*, the High Court of Tripura at paragraph 25, held as under:

“25. In *Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh and Ors.*, reported in : AIR 1979 SC 621, the apex court while dwelling upon the doctrine of promissory estoppel as the principle, evolved on equity to avoid injustice, has held that it is neither in the realm of contract nor in the realm of estoppel. The true principle of promissory estoppels seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relation or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise as made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, it would be inequitable to allow him to do so having regard to the positional change that had taken place between the parties, and this would be so irrespective of whether there is pre-existing relationship between the parties or not. The doctrine of promissory estoppel need not be inhabited by same limitation as of estoppel in the strict sense of term. It is an equitable principle evolved by the courts for doing justice and there is no reason why it should be given only a limited application by way of defence. There is no reason in logic or principle why promissory estoppels should not be available as a cause of action, if necessary to satisfy the equity. The apex court has further elucidated the law as under:

"19. When we turn to the Indian law on the subject it is heartening to find that in India not only has the doctrine of promissory estoppel been adopted in its fullness but it has been recognized as affording a cause of action to the person to whom the promise is made. The requirement of consideration has not been allowed to stand in the way of enforcement of such promise. The doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negated. It is remarkable that as far back as 1880, long before the doctrine of promissory estoppel was formulated by Denning, J., in England, A Division Bench of two English Judges in the Calcutta High Court applied the doctrine of promissory estoppel and recognised a cause of action founded upon it in the *Ganges Manufacturing Co. v. Surajmuli and other* : (1880) ILR 5 Cal 669. The doctrine of promissory estoppel was also applied against the Government in a case subsequently decided by the Bombay High Court in *Municipal Corporation of Bombay v. The, Secretary of State*: (1905) ILR 29 Bom."

Issue No.2:

31. The contention of the learned counsel for the petitioner is that the State Government grossly erred in sending the proposal in favour of the Mineral Development Corporation after expiry of time as stipulated under Rule 6 (3) of the Forests Conservation Rules, 2003. Opposing the said contention, it is argued by the learned Special Government Pleader that the inaction on the part of the State Government in sending the proposals, as per the said Rule cannot be a ground for non-suiting the Mineral Development Corporation. In order to consider the said aspect, it may be appropriate to refer to Rule 6 of the Forests Conservation Rules, 2003, which deals with the submission of the proposals, seeking approval of the Central Government under Section 2 of the Act. Rule 6 (3) (a) to (f) read as under:

“6. Submission of the proposals seeking approval of the Central Government under section 2 of the Act.-

(3) (a) After having received the proposal, the State Government or, the Union Territory Administration, as the case may be, shall process and forward it to the Central Government within a period of two hundred and ten days of the receipt of the proposal including the transit period.

(b) The Nodal Officer of State Government or as the case may be, the Union Territory Administration, after having received the proposal under sub-rule (1) and on being satisfied that the proposal is completed in all respects and require prior approval under Section 2 of the Act, shall send the proposal to the concerned Divisional Forest Officer within a period of 10 days of the receipt of the proposal :

Provided that on the determination regarding completeness of the proposal or the expiry of the days, whichever is earlier, the question of completeness or otherwise of the proposal shall not be raised.

(c) If the Nodal Officer of the State Government or the Union Territory Administration, as the case may be, find that the proposal is incomplete, he shall return it within the period of ten days as specified under clause (b), to the User Agency and this time period shall not be counted for any future reference.

(d) The Divisional Forest Officer or the Conservator of Forests shall examine the factual details and feasibility of the proposal, certify the maps, carry out site inspection and enumeration of the trees and forward his findings in the Format specified in this regard to the Nodal Officer within a period of ninety days of the receipt of such proposal from him.

(e) (i) The Nodal Officer, through the Principal Chief Conservator of Forests, shall forward the proposal to the State Government or the Union Territory Administration, as the case may be, along with recommendations, within a

period of thirty days of the receipt of such proposal from the Divisional Forest Officer or the Conservator of Forests.

(ii) The State Government or the Union Territory Administration, as the case may be shall forward the complete proposal, along with its recommendations, to the Regional Office or the Ministry of Environment and Forests, Paryavaran Bhawan, CGO Complex, New Delhi- 100 003, as the case may be, in the specified Forms within a period of sixty days of the receipt of the proposal from the Nodal Officer.

Provided that all proposals involving clearing of naturally grown trees on the forest land or a portion thereof for the purpose of using it for reforestation shall be sent in the form of Working Plan or Management Plan. Provided further that the concerned State Government or as the case may be, the Union Territory Administration, shall simultaneously send the intimation to the User Agency about forwarding of the proposal, along with its recommendation, to the Regional Office or the Ministry of Environment and Forests, as the case may be.

(f) If the proposal, along with the recommendations, is not received from the concerned State Government or the Union Territory Administration, as the case may be, till fifteen days of the expiry of the time limit as specified under clause (a), it shall be construed that the concerned State Government or as the case may be, the Union Territory Administration, has rejected the proposal and the concerned State Government or the Union Territory Administration shall inform the User Agency accordingly :

Provided that in case the State Government or the Union Territory Administration, as the case may be, subsequently forward the proposal, along with its recommendations, to the Regional Office or the Ministry of Environment and Forests, as the case may be the proposal shall not be considered by the Central Government unless an explanation for the delay to the satisfaction of the Central Government is furnished,

together with action taken against any individual held to be responsible for the delay.”

32. The information available before this Court vividly reveals that the Mineral Development Corporation submitted its application on 04.08.2003 and on 03.06.2004 the said application was returned with certain objections and the Mineral Development Corporation represented its application on 18.03.2005 and the State Government forwarded the proposals to the Chief Conservator of Forests. But as per Rule 6 (3) of the above mentioned Rules it is incumbent and obligatory that the application is required to be sent to the Union of India within 210 days. Admittedly the same was sent beyond the said statutory period. No plausible explanation is forthcoming as to why the said mandatory requirement was not adhered to. It is a settled law that when the law directs a particular aspect to be performed in a particular manner, the same is required to be performed in accordance with the said manner only and any deviation from the said mode and manner would render the entire exercise invalid. Therefore issue No.2 is also answered in favour of the petitioner and against the respondents.

Issue No.3:

33. Yet another submission of the learned counsel for the petitioner is that the impugned action is contrary to the principle of Promissory Estoppel and Doctrine of Legitimate Expectation. Section 115 of the Indian Evidence Act, 1872 deals with Estoppel and it reads as under:

“115 Estoppel. —When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or

proceeding between himself and such person or his representative, to deny the truth of that thing. Illustration A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.”

34. In the instant case, the respondents by their actions and conduct made the petitioner to part with a sum of Rs.44,60,974/- and also made him to purchase an extent of 1-64 hectares of land in Nagaram Village and 4-31 Hectares in Katrapally village and there is absolutely no dispute that the petitioner registered the said land in favour of the State Government by way of Sale Deeds bearing Doc.Nos.1016 and 1017 of 2006 dated 02.08.2006. In this connection, it would be apt to refer to the judgments cited by the learned counsel for the petitioner. The principles laid down in the above judgments are squarely applicable to the case on hand because in the present case also the conduct of the respondents compelled and made the petitioner to pay the amounts and to purchase the lands for afforestation. Therefore, the impugned action is contrary to the principle of Estoppel and the Doctrine of Legitimate Expectation. Therefore, the issue No.3 is also answered in favour of the petitioner and against the respondents.

Issue NO.4:

35. The contention of the learned Special Government Pleader that the proposal of the petitioner was not sent through the Mines and Geology Department in the State Government, as such, it was invalid proposal. In this connection, it may be appropriate to refer to the contents of the counter deposed by the Deputy Conservator of Forests, Government of India, Regional Office, Bangalore wherein it is stated that the Government of Andhra Pradesh vide letter No.3137/FOR (2007-5 dated 26.03.2008

forwarded the proposal for re-diversion of 4.916 Hectares of Forest land for mining lease for approval. Therefore, the said contention, in the considered opinion of this Court, is highly unreasonable and cannot be approved having regard to the facts and circumstances of the case. Another significant aspect which needs mention in this context is that the Mineral Development Corporation vide notification dated 17.03.2005 invited applications for private participation under the Joint Venture. Therefore, the Mineral Development Corporation is not entitled to claim under Rule 12 (5) (b) of the APMMC Rules 1966. Once the private participation is invited the Mineral Development Corporation cannot be treated specially for consideration on priority basis under 12 (5) (b) of the aid Rules. Therefore, issue No.4 is also answered in favour of the petitioner and against the respondents.

36. Having regard to the facts and circumstances of the case, the Judgments cited by the learned Government Pleader would not render any assistance to the respondent authorities to support their case.

37. For the aforesaid reasons, writ petition No.16298 of 2008 is allowed, setting aside the proceedings of the 1st respondent vide Memo No.5336/M.II(1)/2008-2, dated 11.7.2008, and consequently the respondents are directed to consider the application of the petitioner for grant, as per law. As a consequence of this order and having regard to the reasons recorded *supra*, W.P.No.1234 of 2009 is dismissed. No costs.

A. V. SESA SAI, J

Date:27.01.2017
DA/grk

THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.Nos.16298/08 & 1234/09

27.01.2017

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