

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE MOHAMMAD NAWAZ

WRIT PETITION NO.14301 OF 2017 (GM-MM- S) DATED:11-09-2019

D. RAMESH SON OF MR. D. PULLAIAH VS. . STATE OF KARNATAKA COMMERCE AND INDUSTRIES DEPARTMENT
VIKASA SOUDHA BANGALORE-560 001 REPRESENTED BY ITS SECRETARY AND OTHERS

ORDER

CHIEF JUSTICE

The dispute involved in this writ petition under Article 226 of the Constitution of India is in a very narrow compass.

2. With a view to appreciate the legal issue which arises for consideration in this petition, a brief reference to the factual aspects is necessary.

In the year 1997, an application was made by the petitioner for grant of iron ore mining lease over an area of 14.59 acres more particularly described in the petition. On 4th April 2008, the State Government recommended the grant of the mining lease to the petitioner and made a request to the Government of India to issue prior approval under sub-section (1) of Section 5 of the Mines and Mineral (Development and Regulation) Act, 1957 (for short ' the said Act of 1957 ').On the basis of the said recommendation, on 3rd June 2008 prior approval under sub-section (1) of Section 5 of the said Act of 1957 was granted by the Government of India. The petitioner has set out the steps taken by him thereafter by making an application for grant of Forest Clearance in respect of the subject land for which the petitioner had applied for grant of mining lease. The petitioner has referred to the report of the Central Empowered Committee which was submitted before the Apex Court. We are not dealing with the same as by clause 12 of the judgment and order dated 18th April 2013 in Writ Petition (Civil) No.562/2009 in the case of SAMAJ PARIVARTANA SAMUDAYA & ORS. VS. STATE OF KARNATAKA & ORS., the Apex Court has lifted an embargo on grant of the fresh mining leases provided the applications are dealt with in accordance with law and in accordance with the directions contained in the said judgment as well as the spirit thereof.

3. According to the case of the petitioner, on 25th March 2015, the Department of Mines and Geology of the State Government opined that the case of the petitioner will fall in clause (c) of sub-section (2) of Section 10-A of the said Act of 1957.An order was made on 10th November 2016 by the State of Karnataka holding that prior approval under sub-section (1) of Section 5 of the said Act of 1957 has been obtained on the premises and processes which are now proved beyond doubt to be erroneous, flawed and in contravention of law.The order further mentions that the Government of India should be requested to withdraw the prior approval

granted to the petitioner under sub-section (1) of Section 5 of the said Act of 1957. A writ petition was filed by the petitioner challenging the said order dated 10th November 2016. Subsequently, an email dated 3rd January 2017 was issued by the Under Secretary of Ministry of Mines to the Government of Karnataka. The said email deals with the request of the Government of Karnataka to withdraw prior approval under sub-section (1) Section 5 of the said Act of 1957. The email records that since it is the State Government which had erred in the process, it is for the State Government to withdraw the recommendation made by it. It was further observed that once the recommendation letter is withdrawn by the State Government, the Central Government's letter conveying its prior approval approval suo motu becomes infructuous. Subsequently, by a communication dated 4th January 2017, the Government of Karnataka informed the petitioner that the recommendation for grant of previous approval made by the State Government was withdrawn for the reasons stated therein. In the light of the email dated 3rd January 2017, the Government of Karnataka observed in the said letter that the grant of approval under sub-section (1) of Section 5 of the said Act of 1957 had become infructuous.

4. We must note here that in the present petition, the challenge is to the order dated 10th November 2016, email dated 3rd January 2017 and the communication dated 4th January 2017.

5. The learned Senior Counsel appearing for the petitioner has taken us through the aforesaid order as well as the contents of the email and the impugned letter issued by the Government. He also pointed out as to how the findings recorded in the order dated 10th November 2016 are erroneous. He pointed out that apart from the fact that prior approval is withdrawn without giving an opportunity of being heard to the petitioner, the prior approval creates a legitimate expectation. He submitted that the withdrawal of the prior approval cannot be automatic on the basis of the action of the State Government of simply withdrawing the recommendation.

6. We must note here that the prayer clause (e) in the petition wherein the challenge is to the validity of clause (c) of sub-section (2) of Section 10- A of the said Act of 1957 is not pressed by the petitioner.

7. The learned High Court Government Pleader submitted that the Government of India was well within its powers to withdraw the prior approval on the basis of the withdrawal of the recommendation made by the State Government. He relied upon the observations made by the Apex Court in paragraph 264 of the decision in the case of *MONNET ISPAT AND ENERGY LIMITED Vs. UNION OF INDIA AND OTHERS*¹. He also invited our attention to the findings recorded in the order of the State Government recommending to the Central Government to withdraw the prior approval. He submitted that the State was well within its powers to withdraw its recommendation in the light of the findings recorded in the order passed on 10th November 2016. He also invited our attention to clause (c) of sub-section (2) of Section 10- A of the said Act of 1957 which imposes embargo on the execution of the lease after a lapse of specific time.

8. The learned counsel representing the Union of India also supported the action of the Union of India. He submitted that prior approval under sub-section (1) of Section 5 of the said Act of 1957 is granted on the basis

of the recommendation of the State Government and, therefore, once the recommendation is withdrawn, the prior approval does not survive. The learned HCGP also submitted that there is no vested right in the petitioner to grant of the mining lease and the grant is naturally subject to the provisions of the said Act of 1957 and therefore, no interference is called for.

9. We have given careful consideration to the submissions.10. Sub-section (1) of Section 5 of the said Act of 1957 reads thus:

" Restrictions on the grant of prospecting licences or mining leases

(1) A State Government shall not grant a reconnaissance permit, prospecting licence or mining lease to any person unless such person (a) is an Indian national, or a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013); and (b) satisfies such conditions as may be prescribed Provided that in respect of any mineral specified in Part A and Part B of the First Schedule, no reconnaissance permit, prospecting licence or mining lease shall be granted except with the previous approval of the Central Government.

Explanation. For the purposes of this sub section, a person shall be deemed to be an Indian national,-

(a) in the case of a firm or other association of individuals, only if all the members of the firm or members of the association are citizens of

India; and

(b) in the case of an individual, only if he is a citizen of India. "(underline supplied)

11. Sub-section (2) of Section 5 of the said Act of 1957 lays down the condition precedent for the State Government for grant of mining lease. In the facts of the case, there is no dispute that prior approval of the Government of India under sub-section (1) of Section 5 of the said Act of 1957 was necessary to enable the State to consider the application for grant of mining lease.

12. It is true that there was a recommendation made by the State Government to the Government of India for grant of prior approval under the proviso to sub-section (1) of Section 5 the said Act of 1957.The proviso, as reproduced above, shows that the mining lease shall not be granted except with previous approval of the Central Government. The very fact that the prior approval of the Government of India under proviso to sub section (1) of Section 5 of the said Act of 1957 is a condition precedent for the State to consider the application for grant of mining lease, it is obvious that the recommendation made by the State Government will never bind the Government of India for granting previous approval. An application of mind is required by the Government of India before issuing previous approval. Obviously, the Government of India has to examine all the aspects of the recommendations made by the State Government on the application made for grant of mining lease.If there are legal impediments in the way of grant of mining lease, the Government of

India will be well within its powers to decline to grant previous approval on the basis of the recommendation made by the State Government. In short, the recommendation made by the State Government will not be binding on the Government of India and notwithstanding the recommendation, it will be always open for the Government of India to deny grant of previous approval.

13. Now coming to the facts of the case, the order dated 10th November 2016 records a finding that in the instant case, Section 19 of the said Act of 1957 is applicable. Section 19 reads thus:

" Prospecting Licences and mining leases to be void if in contravention of Act Any reconnaissance permit, prospecting licence or mining lease granted, renewed or acquired in contravention of the provisions of this Act or any rules or orders made thereunder shall be void and of no effect. "

14. Section 19 comes into picture only after prospecting licence or mining lease is renewed or acquired. If the same is granted, renewed or acquired in contravention of the provisions of the said Act of 1957 or Rules framed thereunder, it becomes void. In the present case when the order dated 10th November 2016 was passed, the application made by the petitioner was at the stage of consideration by the State Government. Further the finding recorded in the said order is that the approval granted by sub-section (1) of Section 5 of the said Act of 1957 stands withdrawn for the reason that on the premises or processes that are erroneous, flawed and against the law. Thus, the finding is not that the process of submitting the recommendation for the application of the petitioner was erroneous or flawed, the finding is that the approval granted by the Government of India stands on the premises and processes that are erroneous or flawed and against law.

15. We must note that this finding is recorded not by the Government of India but by the State Government. No doubt, there are reasons recorded in the said order such as the land is a forest land and that the State Government treated the application of the petitioner as the sole application though there were other applications pending. The relevant part of the email dated 3rd January 2017 addressed by the Government of India to the State Government reads thus:

" As regards your request for withdrawal of the Central Govt, it is informed that it is the primary responsibility of the State Govt. to withdraw their letter of recommending the proposal (CL,; MMM:2005 DATED 4.4.2008) for prior approval by the Central Govt under section 5 (1) of MMDR Act 1957, since it is the State Govt who had erred in the process of the application and there is a change in the basic information affecting the very recommendation made by them. Once the recommendation letter is withdrawn by the State Govt. the Central Govts letter conveying the prior approval 5/45/2008-mIV dtd.03.06.2008, suo moto, becomes infructuous. ""

16. What is stated is completely an over simplification. It records that once a recommendation letter is withdrawn by the State Government for withdrawal of its recommendation, prior approval becomes infructuous. Taking a clue from what is stated in the email, a communication dated 4th January 2017 was issued by the State Government to the petitioner informing him that the recommendation made by the State

Government stands withdrawn. Therefore, the State Government informed the petitioner that the prior approval under sub-section (1) of Section 5 of the said Act of 1957 suo motu becomes infructuous. There is no communication issued to that effect by the Central Government to the petitioner after purported withdrawal of the recommendation by the State Government.

17. As we have held earlier, grant of prior approval under sub-section (1) of Section 5 of the said Act of 1957 is not an empty formality for the Government of India. The recommendation made by the State Government is not binding on it. The Government of India has to apply its mind and it is well within its power to reject the prayer for grant of prior approval. After having granted prior approval on consideration of the request made by the State Government, the prior approval cannot be withdrawn mechanically without application of mind. As can be seen from sub-section (1) of Section 5 of the said Act of 1957, the Section itself does not require the State Government's recommendation to the Central Government for grant of previous approval. The Government of India, from the email dated 3rd January 2017 seems to be under an impression that once the recommendation is withdrawn, the prior approval granted by it becomes infructuous. This approach is completely contrary to sub section (1) of Section 5 of the said Act of 1957. Once the prior approval is granted under sub-section (1) of Section 5 of the said Act of 1957, it cannot be mechanically withdrawn only on the basis of a letter of the State Government recording the withdrawal of the recommendation. The prior approval does not automatically become infructuous as contended by the Government of India. Before prior approval is withdrawn, the examination on the merits is required. The examination of reasons given by the State Government for withdrawal of previous approval is required. After application of mind, the Government of India will be well within its powers to withdraw its recommendation under sub-section (1) of Section 5 of the said Act of 1957. In the facts of the case, the Government of India has taken a view which is not supported by law that when a recommendation of the State Government is withdrawn, the prior approval automatically becomes infructuous. The reason is that a recommendation of the State Government is not binding on the Government of India. Even the order dated 10th November 2016 is not binding on the Government of India. On the prayer made by the State Government seeking withdrawal of the recommendation, the Government of India will have to apply its mind and then take a decision on the question of withdrawal of the previous approval.

18. Therefore, in our considered view, the contention raised in the email dated 3rd January 2017 by the Government of India is erroneous and cannot be supported by law. As far as the letter dated 4th January 2017 is concerned, obviously the said letter by itself will not amount to withdrawal of the previous approval of the Central Government. The said letter will have to be treated as a request to the Government of India to withdraw its previous approval. In the light of what we have observed, the Government of India will have to take a decision on the withdrawal of the previous approval. As withdrawal of the previous approval will affect the rights of the petitioner, it will be appropriate if the Government of India issues a show cause notice and permits the petitioner to file a reply to the same and pass orders thereafter after taking into consideration the stand taken by the petitioner.

19. Accordingly, we dispose of the petition by passing the following order:

(i) We hold that withdrawal of the recommendation made by the State Government to the Government of India for grant of previous approval under proviso to sub-section (1) of Section 5 of the said Act of 1957 does not render previous approval granted by the Government of India infructuous and on the basis of the request for withdrawal of the previous approval, the Government of India will have to take appropriate decision in the light of what is observed in this judgment and order;

(ii) We, therefore, direct that the letter dated 4th January 2017 (Annexure- A) shall be treated as a request made by the State Government for withdrawal of the previous approval. While dealing with the request made by the State Government, the Government of India will take into consideration the order dated 10th November 2016;

(iii) We make it clear that we have made no adjudication on the correctness of the reasons mentioned in the aforesaid order dated 10th November 2016 as well as the reasons mentioned in the letter dated 4th January 2019 as the same will not bind the Government of India;

(iv) As observed earlier, the request of the State Government shall be decided by the Government of India after issuing a show-cause notice and after giving an opportunity to the petitioner to file a reply and to produce the documents; (v) Appropriate order shall be passed by the Government of India within a period of three months from today;

(v) We make it clear that we have made no adjudication on the applicability of the time line provided in clause (e) of sub-section (2) of Section 10 of the said Act of 1957 and the said issue is kept open;

(vi) The petition is partly allowed on the above terms.