

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

***DATED THIS THE 14<sup>th</sup> DAY OF FEBRUARY, 2020***

**PRESENT**

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

**AND**

**THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR**

**WRIT PETITION No.57619 OF 2015 (GM-MM)**

**BETWEEN:**

M/S. KUMAR ENTERPRISES  
A REGISTERD PARTNERSHIP FIRM  
HAVING ITS REGISTERED OFFICE AT  
# 25, 9<sup>TH</sup> CROSS, KUMARA PARK  
WEST, BANAGLORE – 560 020  
REPRESENTED BY ITS MANAGER  
SRI MR. R. SHIVAKUMAR  
AGED ABOUT 61 YEARS

... PETITIONER

(BY SRI.ANANT MANDGI, SENIOR COUNSEL FOR  
SRI. AMIT MANDGI, ADVOCATE)

**AND:**

1. UNION OF INDIA  
REPRESENTED BY ITS SECRETARY  
MINISTRY OF COAL AND MINES  
DEPARTMENT OF MINES  
SHASTRI BHAVAN  
NEW DELHI – 110 001
2. THE STATE OF KARNATAKA  
REPRESENTED BY ITS SECRETARY  
COMMERCE AND INDUSTRIES DEPARTMENT  
M.S. BUILDING, BANGALORE – 560 001

3. THE UNDER SECRETARY  
DEPARTMENT OF COMMERCE AND  
INDUSTRIES (MINES)  
M.S. BUILDING, BANGALORE – 560 001

4. THE DIRECTOR  
DEPARTMENT OF MINES AND  
GEOLOGY, KHANIJA BHAVAN  
RACE COURSE ROAD  
BANGALORE – 560 001

...RESPONDENTS

(BY SRI.Y.H.VIJAYAKUMAR, PRL. GOVT. ADV. FOR R2 TO R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI, QUASHING THE GOVERNMENT ORDER BAERING NO.CI 407 MMM 2014, BENGALURU, DATED 27.05.2015 PASSED BY THE 3<sup>RD</sup> RESPONDENT VIDE ANNEXURE-A AND ISSUE A WRIT OF MANDAMUS, DIRECTING THE 2<sup>ND</sup> RESPONDENT TO EXECUTE MINING LEASE IN FAVOUR OF THE PETITIONER UNDER SECTION 10A(2)(c) OF THE MMRD ACT, 1957 IN TERMS OF THE LETTER NO.5/85/2008-M.IV DATED 20.08.2008.

THIS PETITION BEING HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, **S.R.KRISHNA KUMAR J**, PRONOUNCED THE FOLLOWING:-

### **ORDER**

This writ petition is filed seeking quashing of the impugned order dated 27<sup>th</sup> May 2015 at Annexure-A passed by the third respondent and for consequential direction directing the second respondent to execute a mining lease in favour of the petitioner under Section 10-A (2)(c) of the Mines

and Minerals (Development & Regulation) Act, 1957 (for short 'the said Act of 1957') and for other reliefs.

2. The brief facts giving rise to the above petition are as follows:

(i) The petitioner submitted an application dated 4<sup>th</sup> August 2004 to the third respondent seeking grant of mining lease in respect of 165 acres of land in Ramgad village, Sandur Taluk, Bellary district. Pursuant thereto, the said application submitted by the petitioner was processed by the fourth respondent and on 16<sup>th</sup> January 2007, the Indian Bureau of Mines (IBM) approved the mining plan of the petitioner for grant of mining lease. Thereafter, on 8<sup>th</sup> October 2007, based on an order passed by the Chief Minister dated 8<sup>th</sup> August 2007, the second respondent issued a letter to the fourth respondent to forward the application to the first respondent by making necessary recommendation for grant of lease.

(ii) On 13<sup>th</sup> May 2008, the second respondent placed the file for orders, pursuant to which, an order dated 24<sup>th</sup> May

2008 was passed by the State Government to the effect that the petitioner's application for lease can be recommended to the first respondent. Thereafter, on 27<sup>th</sup> May 2008, the second respondent addressed a letter to the first respondent making recommendation for grant of lease in favour of the petitioner and sought for prior approval from the first respondent as required under Section 5(1) of the said Act of 1957. The first respondent granted the said prior approval sought for by the second respondent by issuing a letter dated 20<sup>th</sup> August 2008 addressed to the second respondent.

3. It is contended on behalf of the petitioner that prior approval being granted in favour of the petitioner herein, the State Level Single Window Clearance Committee accorded its clearance to the petitioner for setting up 'Sponge Iron plant – 300 TPD' which was communicated to the petitioner on 28<sup>th</sup> August 2009. It is also contended by the petitioner that despite continuous repeated request and demands made by him to the second to fourth respondents as well as the State Government and the Chief Minister between 2009 to 2014, the

authorities did not execute the mining lease in favour of the petitioner.

4. The petitioner contends that all of a sudden, on 17<sup>th</sup> January 2015, he received a notice calling upon him to be present before the second respondent on 20<sup>th</sup> January 2015 with regard to the said mining lease. After enquiry, the petitioner learnt that on 21<sup>st</sup> October 2010, the fourth respondent had sent a letter to the second respondent to return the aforesaid recommendation dated 27<sup>th</sup> May 2008 issued in favour of the petitioner. Based on the said letter dated 21<sup>st</sup> October 2010, the proceedings were taken up by the second respondent on 20<sup>th</sup> January 2015. It is contended by the petitioner that he learnt about the aforesaid letter dated 21<sup>st</sup> October 2010 for the first time on receipt of the aforesaid notice dated 17<sup>th</sup> January 2015. The petitioner was informed that there was some overlap with the area recommended in his favour and that the re-survey had to be conducted to ascertain the same. On 27<sup>th</sup> January 2015, the Government officials were directed to submit the re-survey report by 13<sup>th</sup>

February 2015 and the proceedings were adjourned to 16<sup>th</sup> February 2015.

5. On 16<sup>th</sup> February 2015, the second respondent perused the re-survey report dated 13<sup>th</sup> February 2015, which states that there was an overlap in an extent of only 3.75 acres. The petitioner accepted the said overlap and requested the second respondent to delete the said extent of overlap out of total extent of 165 acres and to execute the lease deed in favour of the petitioner in respect of the remaining extent of 161.25 acres. Accordingly, the same was accepted by the second respondent, who closed the hearing as having been completed.

6. The petitioner has contended that to his shock and surprise, the third respondent passed the impugned order dated 27<sup>th</sup> May 2015 purporting to accept the letter dated 21<sup>st</sup> October 2010 written by the fourth respondent and thereby recommended to the first respondent to withdraw their prior approval dated 20<sup>th</sup> August 2008 issued by the first

respondent in favour of the petitioner under Section 5(1) of the said Act of 1957.

7. Aggrieved by the impugned order at Annexure-A dated 27<sup>th</sup> May 2015, the petitioner is before this Court by way of the present writ petition,

8. It is relevant to state that despite having entered appearance in the matter, the respondents did not file their statement of objections to the writ petition.

9. We have heard Sri Anant Madagi, the learned Senior counsel for the petitioner as well as Sri Y.H.Vijayakumar, the learned Principal Government Advocate for second to fourth respondents and perused the material on record.

10. The learned Senior counsel on behalf of the petitioner submits that the impugned order passed by the third respondent is erroneous and suffers from several legal and factual infirmities. It is contended that having regard to the undisputed fact that the prior approval granted in favour of the petitioner by the first respondent vide letter dated 20<sup>th</sup> August

2008, had been issued and communicated prior to the amendment to Section 10-A (2) (c) of the said Act of 1957, which was inserted by way of amendment with effect from 12<sup>th</sup> January 2015, the said prior approval stood expressly saved by virtue of the said provision.

11. It is contended that after issuance of the prior approval by the first respondent under Section 5(1) of the said Act of 1957, the second and third respondents had become *functus officio* and they were neither competent nor entitled to seek withdrawal of the said approval granted by the first respondent. Elaborating his submissions, the learned Senior counsel contends that once the prior approval had been granted by the first respondent under Section 5(1) of the said Act of 1957 on 20<sup>th</sup> August 2008, the execution of a mining lease was only a formality subject to the terms and conditions of the said prior approval. It is therefore contended that once the approval had been granted by the first respondent, the second and third respondents were legally duty bound to execute the mining lease in favour of the petitioner.



12. It is also contended that there are several factual errors contained not only in the impugned order at Annexure-A but also in the letter dated 21<sup>st</sup> October 2010 in relation to the alleged overlap of the land said to have been recommended in favour of M.A.Rahim and Bharamanna and the said factual mistakes and errors clearly render the impugned order illegal and the same deserves to be set aside on this ground alone.

13. The learned Senior counsel also submits that the impugned order is violative and contrary to the principles of natural justice in that no opportunity was given to the petitioner before passing of the impugned order. It is contended that in the absence of any provision in the said Act of 1957 or the Rules which permit the State Government to withdraw its recommendation or to request the first respondent to withdraw his prior approval, the impugned order seeking to review its earlier order of recommendation passed by the third respondent was *per se* illegal and without jurisdiction or authority of law and the same deserves to be set aside.

14. The learned Senior counsel has placed reliance upon the judgment of the Apex Court in the case of ***Bhushan Power and Steel Limited vs. S.L.Seal, Additional Secretary (Steel and Mines), State of Odisha and others***<sup>1</sup> in support of his contentions.

15. Per contra, the learned Principal Additional Government Advocate would support the impugned order. He placed reliance upon the judgment of Apex court in the case of ***State of Kerala & Another vs. B.Six Holiday Resorts Private Limited***<sup>2</sup> in order to contend that the petitioner did not acquire a vested right by the prior approval granted in his favour by the first respondent and the same was not saved by Section 10-A(2)(c) as amended in 2015 to the said Act of 1957.

16. We have given our anxious consideration to the rival contentions and perused the material on record.

---

<sup>1</sup> (2017) 2 SCC 125

<sup>2</sup> (2010)5 SCC 186

17. The following points arise for consideration in the present writ petition;

“(i) Whether the prior approval granted by the first respondent in favour of the petitioner under Section 5(1) of the said Act of 1957 vide letter dated 20<sup>th</sup> August 2008 (Annexure-M), was saved by Section 10-A(2)(c) of the said Act of 1957 with effect from 12<sup>th</sup> January 2015?

(ii) Whether the impugned order dated 27<sup>th</sup> May 2015 (Annexure-A) is in accordance with law?”

**Re.Point No.1:-**

18. Before we deal with the provisions contained in Section 10-A(2)(c) of the said Act of 1957, it is necessary to advert to a few undisputed facts. Pursuant to the petitioner’s application for grant of mining lease, the State Government Authorities made a recommendation dated 26<sup>th</sup> May 2008 to the first respondent for grant of mining lease in favour of the petitioner. After examining the entire material placed before it, the first respondent proceeded to grant prior approval in

favour of the petitioner vide letter dated 20<sup>th</sup> August 2008 issued under Section 5(1) of the said Act of 1957.

19. On 12<sup>th</sup> January 2015, Section 10-A was inserted by way of amendment by Act No.10 of 2015 w.e.f.12.01.2015.

Section 10-A reads as follows:

**10-A – Rights of existing concession holders and applicants** – (1) All applications received prior to commencement of the Mines and Minerals (Development and Regulation) (Amendment) Act, 2015, shall become ineligible.

(2) Without prejudice to sub-Section (1), the following shall remain eligible on and from the date of commencement of the Mines and Minerals (Development and Regulation) (Amendment) Act 2015.

(a) xxxxxx

(b) xxxxxx

(c) where the Central Government has communicated previous approval as required under sub-Section(1) of Section 5 for grant of mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the

commencement of Mines and Minerals (Development and Regulation) (Amendment) Act, 2015, the mining lease shall be granted subject to fulfillment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this sub-section except with the previous approval of the Central Government.

20. A plain reading of the aforesaid provisions will indicate that;

(i) All applications received prior to 12<sup>th</sup> January 2015 (when the amendment came into force) stand lapsed as having become ineligible.

(ii) Applicants in whose favour previous approval under Section 5(1) of the said Act of 1957, has been granted by the Central Government prior to 12<sup>th</sup> January 2015 will become entitled to obtain grant of a mining lease.

(c) Applicants in whose favour a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease shall be entitled to obtain grant of a mining lease.

21. The Apex Court in the case of ***Bhushan Power and Steel*** (supra), has held as under:

22.3. Third category is that category of applicants where the Central Government had already communicated previous approval under Section 5(1) of the Act for grant of mining lease or the State Government had issued letter of intent to grant a mining lease before coming into force of the Amendment Act, 2015. Here again, the *raison de^tre* is that certain right had accrued to these applicants in as much as all the necessary procedures and formalities were complied with under the unamended provisions and only formal lease deed remained to be executed.

22.4 It would, thus, be seen that in all the three cases, some kind of right, in law, came to be vested in these categories of cases which led Parliament to make such a provision saving those rights and understandably so.

22. It is therefore clear that the Apex court has categorically held that if the prior approval under Section 5(1) of the said Act of 1957 has been granted and communicated, then the right of the applicant to obtain a lease stands saved and execution of a lease deed in favour of such an applicant was only a formality.

23. In the facts of the instant case, it is not in dispute that the prior approval of the Central Government - first respondent herein in favour of the petitioner was communicated as long back as on 20<sup>th</sup> August 2008 much prior to the (Amendment) Act, 2015. Under these circumstances, as held by the Apex Court in ***Bhushan Power and Steel*** (supra), the vested right to obtain a lease that stood accrued in favour of the petitioner by virtue of the prior approval dated 20<sup>th</sup> August 2008 issued by the first respondent stood expressly saved by Section 10-A (2) (c) of the (Amendment) Act, 2015 and consequently, the petitioner became entitled to obtain a lease of the land in his favour from the State Government Authorities.

**Point No.1** is answered accordingly in favour of the petitioner.

**Re-point No.2:**

24. As stated above, on 17<sup>th</sup> January 2015, the second respondent issued a notice to the petitioner intimating him that the proceedings in relation to his application for lease would be taken up pursuant to a letter dated 21<sup>st</sup> October 2010 written by the fourth respondent. A perusal of the impugned order at Annexure-A will indicate that the proposal / request contained in the said letter dated 21<sup>st</sup> October 2010 was accepted by the third respondent resulting in the impugned order.

25. In this context, a perusal of the said letter dated 21<sup>st</sup> October 2010 will indicate that the fourth respondent has made an absolutely false statement to the effect that the recommendation dated 27<sup>th</sup> May 2008 made by the State Government to the Central Government had not yet been granted prior approval by the Central Government. This



statement in the letter dated 21<sup>st</sup> August 2010 is clearly false in the light of the prior approval having been granted by the Central Government in favour of the petitioner on 20<sup>th</sup> August 2008 much prior to the letter dated 21<sup>st</sup> August 2010. It is this letter dated 21<sup>st</sup> October 2010 which forms the basis for the third respondent to pass the impugned order. Under these circumstances, it is clear that the impugned order which is passed on the basis of the letter dated 21<sup>st</sup> October 2010 written by the fourth respondent is clearly vitiated and illegal.

26. Both in the letter dated 21<sup>st</sup> October 2010 as well as in the impugned order, the main reason stated by the State Government to seek withdrawal of their recommendation is that one application of M.A.Rahim was pending as on the date when the State Government recommended the application of the petitioner. It is therefore stated that since M.A.Rahim was the prior applicant and the area recommended in his favour overlapped with the area recommended in favour of the petitioner herein, the recommendation in favour of the petitioner is to be withdrawn.

27. In this context, it is relevant to note that pursuant to the application submitted by the petitioner, the proposal of the petitioner was placed before the Chief Minister along with the application of M.A.Rahim. Thereafter, the Chief Minister after verifying the entire material on record, passed a specific order dated 8<sup>th</sup> October 2007 to the effect that an area of 165 acres is to be recommended to be granted in favour of the petitioner, 59 Acres to BNR minerals and balance to M.A.Rahim.

28. The proceedings of the State Government as evidenced by the note sheets at Annexures-E, F and G will clearly establish that the application of the petitioner herein as well as the applications of the other applicants i.e., M.A.Rahim and BNR Minerals were considered which ultimately culminated in the letter dated 2<sup>nd</sup> January 2008 by the fourth respondent to the third respondent confirming the grant of lease in favour of the petitioner.

29. A perusal of the said letter dated 2<sup>nd</sup> January 2008 at Annexure-H will indicate that in the Annexure to the letter,

there is a clear reference to the earlier applications received by the State Government which overlaps with the area applied for by the petitioner.

30. Similarly, even subsequent to the said letter dated 2<sup>nd</sup> January 2008, the proceedings of the State Government as evidenced by the note sheets at Annexures - J and K dated 13<sup>th</sup> May 2008 and 24<sup>th</sup> May 2008 will also indicate that the application of not only the petitioner but also the applications of M.A.Rahim and BNR Minerals were considered by the State Government till they ultimately issued a recommendation in favour of the petitioner vide letter dated 27<sup>th</sup> May 2008, thereby recommending grant of lease in favour of the petitioner to an extent of 165 acres.

31. The aforesaid facts and circumstances clearly establish that the reasons assigned by the third respondent in the impugned order that the applications of M.A.Rahim, BNR Minerals and S.Bharamanna were not considered by the State Government authorities before they issued a recommendation

dated 27<sup>th</sup> May 2008 is completely false and incorrect. Consequently, the finding recorded in the impugned order that due procedure was not followed before issuing recommendation in favour of the petitioner is erroneous and the same deserves to be set aside.

32. In this context, it is relevant to note that in all the documents, procedures and formalities that occurred prior to the Central Government approval, the name of Bharamanna is conspicuously absent. The name of the said Bharamanna appears for the first time in the impugned order without any previous reference whatsoever. As such, the impugned order seeking withdrawal of the earlier recommendation is illegal and erroneous on this ground also.

33. On 17<sup>th</sup> January 2015, the second respondent issues a notice to the petitioner asking him to appear for the proceedings pursuant to the letter dated 21<sup>st</sup> October 2010 issued by fourth respondent. On 27<sup>th</sup> January 2015, the second respondent directs re-survey to be conducted on

account of overlapping of area of M.A.Rahim as stated in the letter dated 21<sup>st</sup> October 2010. The re-survey having been conducted, the report dated 13<sup>th</sup> February 2015 is perused by the second respondent on 16<sup>th</sup> February 2015. During the course of hearing, the said re-survey report along with the letter dated 13<sup>th</sup> February 2015 issued by the fourth respondent is placed before the second respondent. A perusal of the said letter dated 13<sup>th</sup> February 2015 (Annexure-S) will indicate that the fourth respondent has categorically stated that only an extent of 3.75 acres overlaps with the area of 165 acres applied for by the petitioner.

34. In paragraph-3 of the said letter dated 13<sup>th</sup> February 2015, it is clearly stated that insofar as the applications of M.A.Rahim and Bharamanna are concerned, the Central Government has not granted prior approval as required under Section 5(1) of the said Act of 1957. The fourth respondent has also stated that on account of lack / want of prior approval, the applications of M.A.Rahim and Bharamanna have become invalid and the same having stood lapsed, the

said two persons are no longer eligible to seek grant of lease. In other words, in view of the undisputed fact that the applications of M.A.Rahim and Bharamanna stood lapsed and their alleged rights stood extinguished since no prior approval was obtained by them from the Central Government, irrespective of the fact that the lands applied for by them overlapped with the lands sought for by the petitioner, there was no impediment or obstacle to grant lease in favour of the petitioner in respect of the entire extent of 165 acres excluding 3.75 acres as noted by the second respondent in his order dated 16<sup>th</sup> February 2015.

35. In view of the aforesaid facts and circumstances, it is clear that the letter dated 21<sup>st</sup> October 2010 issued by the fourth respondent clearly stood superceded by the subsequent letter dated 13<sup>th</sup> February 2015 also issued by the fourth respondent himself and consequently, the letter dated 21<sup>st</sup> October 2010 could not have been made the basis by the third respondent herein to pass the impugned order which is vitiated on this ground also.

36. As rightly contended by the learned Senior counsel for the petitioner, subsequent to the order at Annexure-T dated 16<sup>th</sup> February 2015, whereby the right of the petitioner to obtain a lease was confirmed by the second respondent, absolutely no opportunity of hearing was given to the petitioner before the impugned order dated 27<sup>th</sup> May 2015 was passed by the third respondent.

37. In this context, it is relevant to state that despite this Court by order dated 28<sup>th</sup> September 2019 specifically directing the second to fourth respondents to produce the file, the said respondents did not produce the file before the hearing was concluded. Under these circumstances, having regard to the material on record, we are of the considered opinion that the impugned order at Annexure-A passed by the third respondent without giving any opportunity to the petitioner is violative of principles of natural justice and the same deserves to be quashed on this ground also.

38. The learned Senior counsel for the petitioner is also correct in submitting that neither the said Act of 1957 nor the

Karnataka Minor Mineral Concession Rules, 1994, enables the second to fourth respondents to review its earlier recommendation dated 27<sup>th</sup> May 2008 issued by them in favour of the petitioner.

39. It is well settled that in the absence of any statutory provision which provides for review of an administrative order by an authority, the authorities are not entitled to review their own orders. Viewed from this angle also, the impugned order is illegal and perverse and deserves to be set aside.

40. In the case of ***D.Ramesh vs. State of Karnataka & others*** passed in ***W.P.14304/2017*** dated 11<sup>th</sup> September 2019, a Division Bench of this Court has already held that an order granting prior approval by the Government of India is not empty formality and the same is passed after application of mind and after consideration of the entire material on record.

41. As stated above, before the first respondent granted approval under Section 5(1) of the said Act of 1957, the entire material including the applications of M.A.Rahim



and BNR minerals were placed before the first respondent which has proceeded to grant the approval in favour of the petitioner. Under these circumstances, in the light of the material on record that the applications of M.A.Rahim, BNR minerals and Bharamanna were not only considered before the grant of approval but all of them were held to be ineligible as on 16<sup>th</sup> February 2015, since they did not possess a prior approval under Section 5(1) of the said Act of 1957, the second respondent was fully justified in passing the order dated 16<sup>th</sup> February 2016 confirming the recommendation issued in favour of the petitioner.

42. It is therefore clear that the impugned order at Annexure-A deserves to be quashed for the several reasons set out herein before. It also has to be stated that in view of our findings that the petitioner is entitled to grant of lease in his favour by quashing the impugned order and since both M.A.Rahim and Bharamanna have become ineligible on account of their applications having stood lapsed for want of previous approval by the first respondent prior to 12.01.2015

as stated *supra*, we do not consider it necessary to remit the matter back to the State Government.

**Point No.2** is accordingly answered in favour of the petitioner.

43. In the result, we pass the following order:

(i) The writ petition is hereby allowed.

(ii) The impugned order at Annexure-A dated 27<sup>th</sup> May 2015 bearing No.CI 407 MMM 2014 passed by the third respondent is hereby quashed.

(iii) The second respondent is hereby directed to execute the mining lease in favour of the petitioner after complying with all procedures and formalities in terms of the letter dated 20<sup>th</sup> August 2008 bearing No.5/85/2008-M.IV issued by the first respondent within a period of two months from the date of receipt of a copy of this order.

**Sd/-  
CHIEF JUSTICE**

**Sd/-  
JUDGE**

Srl.