(1998) 07 KAR CK 0065

Karnataka High Court

Case No: Writ Petition NO. 1772 of 1998

G.V. Sreerama Reddy		APPELLANT
	Vs	
State of Karnataka and Others		RESPONDENT

Date of Decision: July 10, 1998

Acts Referred:

- Karnataka Minor Mineral Concession Rules, 1994 - Rule 31A, 56, 8-B

Citation: (1998) ILR (Kar) 2667

Hon'ble Judges: R.P. Sethi, C.J; V. Gopala Gowda, J

Bench: Division Bench

Advocate: Sri H.N. Nagamohandas, for the Appellant; Sri S. Vijaya Shankar, General, Sri Abdul Khader, A.G.A., Sri R.N. Narasimha Murthy, Senior Advocate for Sri K.N. Phaninder and Smt. Latha Prasad, Sri Parasaran, Senior Advocate for Sri D.L.N. Rao, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. In this public interest litigation the petitioner, who is claiming to be a political worker dedicated himself to the cause of ameliorating the conditions of the poor and downtrodden and having worked among the students, youths and peasants during the relevant periods, has sought for quashing of the Government Order at Annexure-F dated 27-3-1997 by which the State Government in exercise of the powers conferred u/s 56 of the Karnataka Minor Mineral Concession Rules, (hereinafter referred to as ''the Rules'') had accorded working permission to the 4th respondent M/s. Gem Granites for undertaking quarrying activities in an extent of 266 acres in Sy. Nos. 293/1B1; and 296/1A of Balakundi Village, Hungund Taluk, Bijapur District, for a period of two years or until the litigation is finally decided by the Courts. The petitioner has also sought for a direction to the first respondent to recover the loss caused by the 4th respondent to the Government and to order for C.B.I, enquiry to find out the circumstances that led to pass the impugned order at Annexure-F and to take appropriate action against the concerned.

2. The writ petition has been filed in the following background.--

The Deputy Commissioner, Bijapur, in exercise of the powers conferred under Sections 2, 4 and 7 of the Bombay Personal Inams Abolition Act, 1952 (hereinafter referred to as ''the Act'') has passed an order as per Annexure-A dated 5-8-1995 that the provisions of Section 7 read with Section 4 of the Act are applicable to un-assessed waste land in Sy. No. 296/1 measuring 280 acres 26 guntas of Balakundi Village, Hun-gund Taluk, Bijapur District. According to the Deputy Commissioner, the said land had vested with the Government and therefore he has ordered to notify the name of the Government in all the Government records. Respondents 3 and 4 herein challenged the said order by filing Writ Petition Nos. 32197 and 32198 of 1995 and connected petitions. The contention raised was that the 3rd respondent is the owner of the land in question and it leased the land in question in favour of 4th respondent. This Court vide order at Annexure-B dated 27-6-1996 has disposed of those writ petitions by observing that it is for the party disputing vesting of the property in the Government to establish the same before a competent Civil Court. The said order was challenged by respondents 3 and 4 before the Apex Court by filing SLP Nos. 13884 and 13885 of 1996. On 30-7-1996 the Apex Court dismissed the Special Leave Petitions vide order at Annexure-C confirming the order of this Court. Thereafter, respondents 3 and 4 have filed suit in Original Suit No. 109 of 1996 on the file of the Principal Civil Judge, Bagalkot, seeking cancellation of the order of the Deputy Commissioner at Annexure-A, for declaration of title in respect of the lands in question and for permanent injunction restraining the Government and the Deputy Commissioner from interfering with the quarrying operations and transportation of granite. The said suit is stated to be pending.

3. Petitioner contends that during the pendency of Writ Petition Nos. 32197 and 32198 of 1995, by virtue of the interim order dated 1-9-1995 staying the operation of the order of the Deputy Commissioner at Annexure-A, respondents 3 and 4 continued quarrying operations and transportation of granite blocks subject to payment of royalty and furnishing Bank guarantee for the value of the quarried blocks. The said order came to be modified on 26-9-1995 permitting respondents 3 and 4 herein to furnish Bank guarantee equal to 25% of the value of quarried blocks on F.O.B. rates. According to the petitioner, the 4th respondent has furnished Bank guarantee of Rs. 22.50 crores and extracted and transported huge quantity of granite worth about Rs. 90.00 crores. It is the specific case of the petitioner that after the disposal of special leave petitions also, respondents 1 and 2 have not realised the Bank guarantee as also the balance F.O.B. value of granite blocks, thereby they have conspired with respondents 3 and 4 and in collusion with them, have cheated the State exchequer to the tune of Rs. 90.00 crores. It is alleged that after dismissal of Writ Petition Nos. 32197 and 32198 of 1995, respondents 1 and 2 seized 13000 cubic meters of granite blocks from the lands. According to the petitioner, the same were required to be sold in public auction but respondents 1 and 2, in collusion with the 4th respondent allowed to remove the same by

collecting only royalty and without recovering F.O.B. value. The petitioner has estimated the loss to the tune of Rs. 55 crores on account of this.

4. When the things stood thus, it appears the 4th respondent approached respondents 1 and 2 seeking permission for quarrying operations in the lands in question through a representation dated 18-10-1996. The 2nd respondent, exercising the powers under Rule 56 of the Karnataka Minor Mineral Concession Rules, 1994, accorded working permission to the 4th respondent for doing quarrying operations in an extent of 266 acres in Sy. Nos. 293/1B/1 and 296/1A of Balakundi Village, for a period of two years or until the case is finally decided by the Courts, whichever is earlier. While according such a permission, the 2nd respondent imposed certain conditions. One of the conditions is that the 4th respondent shall pay Security Deposit of Rs. 10.64 crores on or before 31-3-1997. The case of the petitioner is that this order has been passed by the 2nd respondent abusing the power vested with him and the same is violative of statutory obligations and there is a colourable and mala fide exercise of power. According to him, by passing the impugned order the respondents have caused huge financial loss to the tune of several crores of rupees to the State exchequer. Various other grounds have been raised in the writ petition in support of the case and the same will be dealt in due course to the extent required.

5. Respondents 1 and 2 have filed statement of objections mentioning the facts narrated above, In addition to that it is stated in paragraph 4 of the counter statement that the Principal Civil Judge, Bagalkot, Bijapur, has passed interim order on 26-10-1996 in Original Suit No. 109 of 1996 filed by respondents 3 and 4 herein restraining these respondents from interfering with the peaceful possession and exercise of quarrying operations and transportation of granite blocks from the lands in question with certain conditions. Against that order M.F.A. No. 4759 of 1996 was filed and in that the plaintiffs were restrained from transporting the quarried blocks. Thereafter the plaintiffs were permitted to transport the quarried blocks vide order dated 4-1-1997 and in view of the said order the respondents 3 and 4 herein transported the quarried blocks without obtaining valid permits under the rules. In the meantime the 4th respondent sought working permission from the Government and the same was accorded under the impugned order. After referring to the circumstances which led to the passing of the impugned order, respondents 1 and 2 have assigned the reasons justifying the impugned order. Furnishing the break-up figures of royalty paid by the 4th respondent from April 1997 to January 1998, respondents 1 and 2 maintained that the impugned order is neither arbitrary nor violative of Article 14 of the Constitution of India. It is stated that the Bank guarantee could not be realised in view of the interim order of injunction granted by the Civil Court at Chennai in Original Suit No. 13323 of 1996 restraining the Bank from making any payments. It is stated that for the recovery of remaining 75% of F.O.B. value, the matter is being pursued. The averments of the petitioner that the seized 13000 cu. mtrs of granite blocks should have been sold in public auction and

that these respondents have colluded with the 4th respondent, are all emphatically denied. It is contended that the various allegations made against them in the writ petition are false, baseless and untenable. All other allegations made against these respondents have been denied. Respondents 1 and 2 have prayed for dismissal of the writ petition with costs.

6. Respondent 3 filed objections and produced certain documents. It is stated that the petition has been filed by making false allegations for personal and political gains by suppressing the facts. Respondent 3 contended that the lands in question belongs to it. According to it, it is the owner of 150 acres of land in the two survey numbers involved in this case. It is stated that the entire Balakundi village was originally an inam land granted to one Krishna Rao Jahagirdar in 1832. The grant order is produced as Annexure-R1. The Bombay Government passed a resolution on 25-4-1867 vide Annexure-R2 directing the said Jahagirdar to pay lumpsum amount of Rs. 14,995-00 to free the land once for all and to declare as a private property. On such payment being made, Sannad had been issued as per Annexure R-3 declaring the lands as private properties. Thereafter, the owner Jahagirdar gave an extent of 370-22 acres in Sy. No. 293/1 to one Ramachandrappa Parappa Karadi in the year 1935. After referring to various provisions of certain laws, it is stated that the owner R.P. Karadi gifted the land in Sy. No. 293/1B to the 3rd respondent under a registered deed. However, the said document has not been produced. It is claimed that Sri Jahagirdar gifted 150 acres in Sy. No. 296/1 to the 3rd respondent allegedly under a registered deed. The 3rd respondent in turn leased-out the lands to the 4th respondent. It is asserted that the impugned order has been passed in public interest. The various allegations with regard to collusion, loss caused to the State exchequer etc., have been denied. The 3rd respondent also prayed for the dismissal of the writ petition.

7. 4th respondent filed an elaborate statement of objections along with several documents justifying the impugned order. It is contended that the writ petition is not filed in public interest and the petitioner has no locus standi being a political leader. It is stated that the petition has been filed to tarnish the image of the 4th respondent who is a pioneer in granite field in India and International Trade. It is alleged that the petitioner has suppressed the true facts and has made false allegations. The subject-matter of the properties is pending in original suit. Since there is a dispute that the lands vested in the Government, the same should be resolved in the suit. It is stated that absolutely there are no bona fides on the part of the petitioner. The petition has been filed with political motive and the same should not be entertained under the umbrella of public interest litigation. Reference is made to the various proceedings. It is claimed that since the lands are inam lands, the rights of respondents 3 and 4 are protected. It is pleaded that substantial investment has been made by this respondent and that the livelihood of 2500 employees would be affected if relief sought by the petitioner is granted in favour of the petitioner. The various allegations in the petition are denied and it is stated that

the impugned order is perfectly valid and no public policy is violated. Since there is no violation of rules, question of calling tenders does not arise. It is claimed that neither the lands nor the mineral therein belongs to the State Government. It is stated that the Civil Court has granted interim order of temporary injunction by holding that the 4th respondent is entitled to transport the granite blocks.

8. Mr. Nagamohandas, learned Counsel appearing for petitioner vehemently argued that in view of the order passed by this Court asking the parties to approach the Civil Court with regard to the title and ownership of the lands in question, which order has been confirmed by the Apex Court, the 2nd respondent should not have passed the impugned order exercising his power under Rule 56 of the Rules. He submits that relaxation of the said rule amounts to mala fide, arbitrary and colourable exercise of power in collusion with respondents 3 and 4 without taking into account the order at Annexure-A. It is stated that in the impugned order no public interest is involved nor it is mentioned so. What is the public interest involved is not forthcoming. He invited our attention to the decision in M/s. Muddureshwara Mining Industries Vs. P.G.R. Scindia and others, . In paragraph 21 therein it is held that rule cannot be invoked to relax grant of lease. The impugned order passed under Rule 56 of the Rules is without the authority of law and is contrary to the provisions of the rules. It is further contended that if tenders had been invited for granting lease for quarrying the granite, the first respondent would have got highest price. In not doing so, the public interest is affected. The first respondent is not the Competent Authority to grant the working permission. The impugned order is tainted with mala fides and suffers from legal malice. The 2nd respondent has misused the power resulting in loss of crores of rupees to the State exchequer and confers largess in favour of the 4th respondent.

9. Per contra, Sri S. Vijaya Shankar, learned Advocate General, Mr. R.N. Narasimha Murthy and Mr. Parasaran, learned Senior Counsel appearing for respondents 3 and 4 have argued supporting the impugned order reiterating what has been stated in their respective statement of objections. It is not necessary to state their arguments elaborately since the point to be decided revolves round the legality, validity and correctness of the impugned order.

10. There is no dispute that the impugned order at Annexure-F has been passed by the 2nd respondent exercising the power under Rule 56 of the Rules. In order to find out the validity and correctness of the impugned order, it is necessary to look into Rule 56 of the Rules.. The relevant portion of it reads thus.--

"56. Relaxation of rules in special cases.--

(1) In case where the State Government is of the opinion that public interest so requires it may authorise the grant of a quarrying lease or licence for quarrying or reserve any land on such terms and conditions other than those prescribed in these rules as the State Government may by order specify".

A plain reading of the above rule amply makes it clear that if the public interest requires, the Government may authorise the grant of a quarrying lease or licence for quarrying. But, in the impugned order the 2nd respondent did not authorise the grant of quarrying lease or licence for quarrying in favour of the 4th respondent. What he did in the impugned order is that he has accorded working permission for undertaking quarrying activities. Power is not conferred for according working permission for undertaking quarrying activities under Rule 56 of the Rules. It empowers only to authorise the grant of quarrying lease or licence for quarrying. Thus, the working permission accorded for undertaking the quarrying activities in favour of the 4th respondent is without the authority of law and the same is contrary to Rule 56 of the Rules. It follows that the impugned order is bad in law and is unsustainable.

11. Rule 8-B incorporated by Karnataka Minor Mineral Concession (Amendment) Rules, 1995 is categorical and it reads thus.--

"8-B. Notifying the area for grant of lease by tender-cum -auction.--

(1) Notwithstanding anything contained in these rules, the Competent Authority may by notification direct that quarrying leases to quarry specified or non-specified minor mineral in any area belonging to the State Government and available for grant, as may be specified in such notification, shall be granted by tender-cum-auction in accordance with the provisions of Chapter IV-A.

(2) Where any area is notified under sub-rule (1), no quarrying lease to quarry specified or as the case may be, non-specified minor mineral in such area shall be granted in accordance with the provisions of Chapter III or Chapter IV, as the case may be".

The above Rule clearly spells-out that the Competent Authority by notification direct that the Government land available for quarrying shall be granted by tender-cum-notification for quarrying leases. In the instant case, even though there is dispute as to whom the lands in question belongs to and the same is pending before the Civil Court, the 2nd respondent proceeded to accord working permission in favour of the 4th respondent as if the lands are Government lands. In the first place, since the ownership of the lands are sub-judice, the 2nd respondent ought not to have accorded working permission in favour of the 4th respondent. In the second place, even if it is assumed that the lands in question belongs to Government in view of the order at Annexure-A dated 5-8-1995, quarrying lease of the lands should have been given by tender-cum-auction as provided under Rule 8-B read with Rule 31-A of the Rules after notifying the same as provided under Rule 8-A. Thirdly, the question of relaxation of Rule 8-B under Rule 56 of the Rules does not arise since Rule 8-B starts with a non obstante clause "notwithstanding anything contained in these rules". It means irrespective of what is provided under the rules, the Government lands available for quarrying should be given for quarrying only by

tender-cum-auction in accordance with the provisions of Chapter IV-A after notifying the same as prescribed under Rule 8-A. In this view of the matter also, the impugned order passed exercising the power under Rule 56 of the Rules is bad in law and contrary to Rules 8-A and 8-B. There is no option left to the Government except following the procedure of tender-cum-auction as provided under Rule 8-B. In fact, Rule 8-B and Rule 56 are conflict with each other. The reason is, while Rule 8-B commences with "notwithstanding anything contained in these rules", Rule 56 provides that the Government may authorise grant of a quarrying lease or licence on such terms and conditions other than those prescribed in these rules. If Rule 56 is given effect to, Rule 8-B would become redundant and even all other provisions of the rules would become inoperative.

12. In M/s. Muddureshwara Mining Industries''s case, supra, a Division Bench of this .Court had occasion to consider a similar case as the one on hand. In that case Rule 66 of the Karnataka Minor Mineral Concession Rules, 1969, which is analogous to Rule 56 of the Rules, came up for consideration. In that judgment it is held as under.--

"20.....It is necessary to notice here that the rules prescribe as to whom all leases can be granted. The rules also prescribe the terms and conditions under which such leases can be granted. In that context, it appears to us that the expression "terms and conditions other than those prescribed in the rules" employed in Rule 66 cannot be stretched to the extent canvassed by the learned Senior Counsel. If such was the intention of the rule making authority as canvassed by the learned Senior Counsel Sri Chidambaram, the wording would have been indeed different. If the intention was to vest in the Government, the power to exempt grant of lease from the operation of every provision in certain cases, the language would have been indeed different. xxx

21. It was argued by the learned Counsel Sri Ramesh that the correct interpretation of Rule 66 would be to tag the expression "terms and conditions other than those prescribed in these rules" to Rule 20, which prescribed the conditions for quarrying. We find some force in the submission made by Sri Ramesh. However, it is not necessary to dilate further since as we have pointed out earlier Rule 66 cannot be invoked to relax the eligibility as to the grant of lease. We are indeed of the view that the expression "terms and conditions other than those prescribed in the rules" is referable to the terms and conditions attached to lease and does not refer to a condition precedent for eligibility. ... If the submission made by the learned Senior Counsel is carried to its logical conclusion, it may even mean that it would be permissible for the Government to relax the entire body of rule and to allow the grant of lease entirely on the basis of a Government order. It is needless to say that an interpretation which may lead to an anamolous situation, will have to be avoided".

22. Thus, for the reasons stated hereinabove, we have no hesitation to hold that the Government had no power to issue the order impugned in the aforesaid writ petitions".

The order impugned in the above case is similar to the order impugned in this petition and the rule under which the power was exercised in that case is analogous to the rule in exercise of which the impugned order is passed. Even the other provisions that were considered in that decision are also analogous to the provisions contained in the rules. Therefore, we are in full agreement with the aforesaid decision and hold that there was no power either for the 2nd respondent or the Government to issue the impugned order. It follows that the impugned order is wholly without jurisdiction.

13. Since it is held that relaxation of Rule 56 of the Rules cannot be done in view of Rule 8-B, it follows that the lease for quarrying should be given in accordance with the various provisions contained in the rules, especially as prescribed in Rules 8-A and 8-B. Consequently, the working permission accorded under the impugned order for undertaking quarrying activities is bad in law.

14. The grant of working permission for quarrying in an extent of 266 acres is also contrary to Rule 15 of the Rules since the said rule imposes a restriction that the total area of one or more quarry leases shall not exceed fifty acres. Even assuming that everything is in favour of the Government, the grant of working permission for quarrying in excess of 50 acres is illegal and bad in law. The impugned order is liable to be quashed as the same has been passed without application of mind and contrary to the rules and exercising the power not vested with the Government under Rule 56 of the Rules.

15. What is more important is, in order to exercise the power under Rule 56 of the rules, the Government should form a opinion that the public interest requires grant of quarrying lease or licence on such terms and conditions other than those prescribed in the rules as the State Government may by order specify. In the instant case, the Government has not specified in any order that public interest warranted grant of working permission for quarrying in the lands in question on the terms and conditions other than those prescribed in the rules. In the impugned order it is not stated that in public interest the working permission has been accorded in favour of the 4th respondent to undertake the quarrying operations. What prompted to pass the impugned order is reflected in the order itself and the same is reproduced herein.--

"The Director of Mines and Geology who was consulted to offer the remarks in regard to grant of working permission to M/s. Gem Granites, recommended to Government vide his letter dated 28-11-1996 read at (2) above to consider the case by invoking the provision of Rule 56 of KMMC Rules, 1994 having regard to the offer made by the company by taking into account the following factors and also subject

to certain conditions.--

(a) M/s. Gem Granites had identified the granite deposits in Balakundi Village in late seventies and the quarries are fully developed by the firm by investing huge amount of money. M/s. Gem Granites had also invested in Modern Machinery imported from other countries. They have a 100% export oriented unit at Balakundi village, Hungund Taluk, Bijapur District;

(b) About 2000 people are employed in the quarry site of M/s. Gem Granites;

(c) Infrastructure facilities like roads, clinic, canteens for the workers, stock yard, loading/unloading yard, inspection and storing yard etc., are also set up in the quarry;

(d) M/s. Gem Granites are also exporters of granite resulting in earning of foreign exchange to the country and they are also recipients of various export awards;

(e) Stoppage of the quarry has resulted in loss of revenue to the State in the form of Royalty to the tune of Rs. 40-50 lakhs per month.

Government of India vide their communications dated 27-8-1996 and 9-9-1996 indicated that suspension of mining leases would render investments insecure and operations uncertain and that the established export market would be lost.

Taking note of this and also after deliberating with M/s. Gem Granites, the request of the company was examined in all its aspects. Resultantly, the following orders are passed".

Thus, taking into consideration the above factors the impugned order has been passed by the 2nd respondent as if those factors constitute public interest.

16. Now, we proceed to examine whether the aforementioned factors constitute public interest. The first reason is that M/s. Gem Granites had identified the granite deposits in the lands and the quarries are fully developed by investing huge amounts. Question of identification of granite deposits by M/s. Gem Granites does not arise since they are exploiters of granites in the lands leased to them. The leasing of lands for quarry should be done by following the procedure prescribed under the rules. Such lease can be granted only if existence of granite deposits are known to the lessor. Such being the position, the 4th respondent cannot be said to have identified the granite deposits. Even if they have identified such deposits, the same will not constitute public interest.

17. The second factor stated is about 2000 people are employed in the quarry. Merely because of this a private firm cannot be allowed to amass wealth by quarrying the most valuable granites on the basis of an illegal order. It is an admitted fact that M/s. Gem Granites are pioneers in the field of quarrying. It is implied that they may not and cannot depend solely on the quarry in these lands. Their employees can be made to work in their other quarrying units. Working of

2000 employees in the unit cannot be a factor which could be considered as public interest is involved. The third factor mentioned is with regard to roads, clinic, canteen etc., provided to the workers and stock yard, loading/unloading yard, inspection and storing yard etc., set up in the quarry. This ig again not in public interest. The same have been done in order to do the quarrying activities and the facilities provided to the workers are as per the requirements of various labour laws and certainly not in public interest. These cannot be treated as relevant considerations in public interest.

18. The fourth factor is M/s. Gem Granites are exporters of granite earning foreign exchange to the country and they are recipients of various export awards. It is to be noted that when the local Government itself is not deriving any benefit in view of the fact that the 3rd respondent is claiming ownership of the lands and the matter is pending in the Civil Court, the country earning foreign exchange shall not be a relevant consideration in the facts and circumstances of the case. The reason is, if not M/s. Gem Granites, others also can earn foreign exchange if they are allowed to quarry the granites in the lands in question. It cannot be said that the 4th respondent alone is earning foreign exchange. It should be said that in the guise of public interest the 4th respondent is making huge profits. Earning of foreign exchange through the export of granites made by the 4th respondent may be a part of the foreign exchange earning. The entire foreign exchange earning is not depending solely on the exports made by the 4th respondent out of the quarry of granites made in these lands.

19. As regards the receipt of various export awards by the 4th respondent is concerned, it should be said that it only earns a fame to the 4th respondent and no public interest is involved in this. The 4th respondent has to be proud for itself and it is not a matter of proudness so far as the citizens of the country are concerned. If this is a consideration of public interest according to the Government, we have no other option but to hold that the self interest of 4th respondent has been wrongly taken as public interest. We fail to understand what public interest is involved in this. The 2nd respondent who has passed the impugned order alone has to think about it. Even a layman can say that there is no public interest involved in this factor.

20. The fifth factor mentioned is that the stoppage of quarry has resulted in loss of revenue to the State in the form of royalty to the tune of Rs. 40-50 lakhs per month. It is significant to point out here that the suit with regard to ownership of the lands is pending in the Civil Court. Ultimately if the Civil Court decides that Government is not the owner but 3rd respondent is the owner of the lands in question, as stated in the operative portion of the impugned order the Security Deposit will have to be refunded to the 4th respondent. The stoppage of royalty may be a temporary one. After the ownership of the lands is decided, the royalty shall be payable thereafter by the person quarrying in the lands. Loss of royalty being temporary, the same will not cause any logs or damage to public interest. This has been considered as public

interest without application of mind. Public interest will not suffer by the stoppage of quarrying in the lands for the time being. It should be observed at this juncture that at page 26 of the statement of objections filed on behalf of the 4th respondent it is stated that in the event respondents 3 and 4 succeed in the Civil suit, the 4th respondent would be entitled to refund of the entire royalty paid.

21. The other reason furnished for passing the impugned order is that the Government of India in their communications dated 27-8-1996 and 9-9-1996 have indicated that suspension of mining leases would render investments insecure and operations uncertain and that the established export would be lost. It should be noted that the apprehension indicated therein is general in nature as it does not pertain to the mining lease of 4th respondent but it refers to all the mining leases. Even otherwise, it does not pertain to public interest as the words used are "suspension of mining leases would render investments insecure and operations uncertain". The reference made is with regard to the investments and operations of 4th respondent which cannot be said to be made in "public interest" but the private interest of 4th respondent is taken into consideration. Thus, none of the reasons mentioned in the impugned order attract public interest.

22. So far as the huge investments stated to have been made to fully develop the quarries is concerned, if one wants to start or continue the profession or business, invariably investment has to be made. That will not be in public interest but it will be in self interest for making profit. Private interests cannot be considered as public interest.

23. Even with regard to the 100% export oriented unit possessed by M/s. Gem Granites also, it is to be stated that the same does not constitute public interest. Merely because a private firm possess 100% export oriented unit, by no stretch of imagination it could be said that it is in public interest.

24. In New India Public School and other etc. Vs. HUDA and others etc., , the Hon''ble Supreme Court has laid down how the public duty to be discharged by a public authority for public purpose. In paragraph 4 of the judgment it is held as follows.--

..... "When public authority discharges its public duty, the word ''otherwise'' would be construed to be consistent with the public purpose and clear and unequivocal guidelines or rules are necessary and not at the whim and fancy of the public authorities or under their garb or cloak for any extraneous consideration..... In all cases relevant criterion should be predetermined by specific rules or regulations and published for the public. Therefore, the public authorities are required to make necessary specific regulations or valid guidelines to exercise their discretionary powers, otherwise, the salutary procedure would be by public auction".

From the above decision it is clear that for exercising the discretionary power by a public authority, specific regulations or valid guidelines are to be made. In the instant case, the power exercised is undoubtedly discretionary by a public authority.

If it is construed as not a discretionary power, the procedure prescribed under the rules ought to have been followed. For exercising such discretionary power, no valid guidelines or specific regulations are made as held in the above decision. In view of the aforesaid dictum of the Apex Court, it has to be construed that the power exercised is for extraneous considerations. This is more clear when looked into selection of only 4th respondent for granting the im- pugned permission without notifying the availability of Government land for quarrying lease as envisaged under Rule 8-A and the failure to follow tender-cum-auction prescribed under Rule 8-B of the Rules.

25. In the statement of objections filed on behalf of respondents 1 and 2 at paragraph 5 it is stated on 9-9-1996 the Additional Secretary to Government of India requested the State Government to permit respondent 4 to operate the quarry, the lease pending final decision by the Civil Court. It is further stated on 26-9-1996 the Secretary to Commerce, Government of India sent a telex message to the State Government stating that pending settlement of the dispute with regard to the title of the lands, the 4th respondent may be permitted to quarry in the area. It is stated that in that background and considering the factors mentioned above the impugned order has been passed. It is thus clear that the impugned order has not been passed in public interest but the same has been passed based on the letters referred to above. There is no independent application of mind while passing the impugned order. In Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , it has been held as under.--

"We are clear that this roundabout language would not have been used if the order of cancellation had been that of the Commissioner. We do not mean to suggest that it would have been improper for him to take into consideration the views and wishes of Government provided he did not surrender his own judgment and provided he made the order, but we hold on the material before us that order of cancellation came from Government and that the Commissioner acted only as a transmitting agent".

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"It is evident from these facts that the Commissioner had before him objections which called for the exercise of the discretion regarding cancellation specifically vested in him by Rule 250. He was therefore bound to exercise it and bring to hear on the matter his own independent and unfettered judgment and decide for himself....."

26. What is required under Rule 56 for relaxation of rules is formation of opinion by the Government about public interest. From what is observed above, it is clear that the Government has not formed a opinion that in public interest the lease or licence for quarrying should be granted. What is done by the impugned order is working permission for quarrying activities is granted, which is not authorised either under

Rule 56 of the Rules or any other provision. Undoubtedly the impugned order has been passed taking into consideration the reputation of the 4th respondent and on the basis of the letters sent by the Officers of Government of India to keep its quarrying operations on. Added to this, the Telex sent by the Government of India to the first respondent to consider the representation of the 4th respondent and to pass orders makes it clear that the 2nd respondent has not applied his mind independently but was guided by the aforesaid letters and Telex message of Government of India. There is colourable exercise of power deliberately to safeguard the interest of the 4th respondent. This being the position, the strong voice raised by the learned Senior Counsel for respondents 3 and 4 referring to the various judgments of the Apex Court and this Court with regard to maintainability of the writ petition and the locus standi of the petitioner has disappeared in front of the roaring sound of public interest litigation. The action impugned has affected the interest of the State and the public. By granting working permission for quarrying to the 4th respondent the provisions of the rules have been violated. There is blatant deviation from the procedure prescribed under the rules. Viewed from any angle, this impugned action cannot be sustained. The impugned action is, therefore, liable to be quashed as it is without the authority of law.

27. Mr. Parasaran, learned Senior Counsel for respondent-4 has strongly relied upon the interim order of Civil Court in Original Suit Nos. 109 of 1996 and 113 of 1996 dated 26-10-1996 as per Annexure R-1 granted by the Civil Court restraining the authorities from interfering with the quarrying operations in the lands in question subject to payment of royalty. The said suits have been filed by respondents 3 and 4 herein.

(i) It is to be noted here that against the interim orders of the Civil Court referred to above, the defendants in the suit (respondents 1 and 2 herein) filed M.F.A. Nos. 4759 and 4834 of 1996 before this Court. But surprisingly, joint memo has been filed and on 5-2-1997 an order was passed in M.F.A. No. 4759 of 1996. In the said order it is observed as under.--

"The appellant and the 2nd respondent have filed a joint memo agreeing upon certain terms and requesting the Court to pass an interim order in accordance with the joint memo. The learned Counsel for the first respondent has not objected to the joint memo. It is submitted that the respondents 3 and 4 are formal parties".

This Court passed interim order as per the joint memo. When the authorities have challenged the interim order of the Civil Court by filing the appeals, it is not known why such a compromise has been entered into during the pendency of the appeal. This clearly indicates collusion of respondents 1 and 2 with respondents 3 and 4 in order to favour the latter.

(ii) Added to the above, on 2-4-1997 a common memo was filed on behalf of the respondents in M.F.A. Nos. 4759 and 4834 of 1996 as per Annexure-R3 to the

following effect.--

"Subsequent to the filing of the appeal, the State Government has issued an order permitting the mining operations being carried on by the respondent and that too on payment of security deposit. The said amount has also been deposited. It is also agreed between the parties that the question of title should be decided in the suit.

2. In view of the matter, it is submitted that the present appeals filed against the interim orders do not survive. The same may kindly be disposed of with a further direction to the Trial Court to dispose of the suit within six months from today.

On this memo, this Court passed the following judgment in M.F.A. No. 4759 of 1996 on 16-4-1997.--

"In this appeal the learned Advocate for the respondents has filed a memo to the effect that the present appeal filed against the interim order does not survive. Learned Advocate for the appellant who had taken time to make his submission on this memo, also concedes this fact. He also fairly submits that in view of the Government order, the appeal filed by the appellant may not survive.

The submission made on both sides as well as the memo filed by the learned Advocate for the respondents are placed on record. The appeal is accordingly disposed of as it does not survive for the reasons mentioned in the memo and in view of the Government Order referred to in the memo".

The Director of Mines and Geology and the State had rightly challenged the interim order passed by the Civil Court by filing the appeals. During the pendency of those appeals the impugned order at Annexure-F came to be passed and consequently the appeals have been made infructuous. The action of the State is nothing, but blowing hot and cold simultaneously. Instead of proving in the Civil Court that the lands in question belong to the Government and not to respondent 3, the Government ventured to permit respondent 4 to carry on the quarrying operations in the lands when the matter relating to title is sub-judice. The exercise of power is not bona fide and we have no doubt that it is not in public interest envisaged in Rule 56 of the Rules. It is a mala fide exercise of power as held by the Supreme Court in State of Punjab and Another Vs. Gurdial Singh and Others, . The relevant portion of the decision reads as under:

"The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power -- sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfaction -- is the attainment of ends beyond the sanctioned purpose of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to

reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested, the Court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated : "I repeat.....that all power is a trust -- that we are accountable for its exercise -- that, from the people and for the people, all springs, and all must exist".

Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action mala fides or fraud on power, vitiates the acquisition or other official act".

28. After the interim order passed in the suit and when the same was pending challenge in the appeals before this Court, the impugned order came to be passed resulting in those appeals becoming infructuous. It shows how bona fide the Government has acted. There was no need for the Government to surrender its interests in favour of the 4th respondent. The reasons regarding the revenue loss and the so-called factors mentioned in the impugned order which are referred to above, are not germane to exercise the power under Rule 56 of the Rules. The exercise of power under Rule 56 of the Rules in respect of the lands, whose title is a subject-matter of civil suit, clearly indicates that the State''s interest is not safeguarded in the manner it ought to have been done. Further, it was not expedient for the State to exercise its power to pass the impugned order conferring largess in favour of the 4th respondent.

29. On the basis of the order at Annexure-A the Government assumed that the lands in question belongs to it. In that event, in view of the nan obstante clause in Rule 8-B of the Rules, the Government should not have ventured to grant working permission for quarrying in favour of the 4th respondent. The Government should have followed procedure contained in Rules 8-A and 8-B of the Rules. Instead of following the same, the rules have been flouted.

30. The Civil Court has not applied its mind'' while granting the interim order. When the title with regard to the properties are yet to be decided, it was not proper on the part of the Civil Court in granting such an order. The right to quarry flows from the impugned order. If the impugned order is quashed, that right will extinguish. Consequently, the interim order of the Civil Court would become inoperative.

31. One of the contentions raised by the respondents is that the petition is not filed in public interest but it is politically motivated and the petitioner has no locus standi

to file the writ petition in public interest being a politician. According to respondents 3 and 4, there is no public interest at all in this petition since the petitioner has raised the issue in the Legislature and failed in that attempt. In support of this contention, Mr. Parasaran, learned Senior Counsel has placed reliance on the decision of this Court in the case of K.V. Amarnath and Another Vs. State of Karnataka and Others, . In paragraph 23 thereof it is held as under.--

"The institution of the judiciary cannot and should not be, permitted to be utilised by the politicians for the purposes of enforcement or propagation of their policies or put in obstacles in the enforcement of the policies of their political opponents".

This decision will not be helpful to the respondents since in the very same decision it has been held in paragraph 27 as under.--

"Despite holding that the petitioner has no right to file and prosecute this petition, we are of the opinion that this petition cannot be dismissed in view of the public interest involved in it, which is shown to have resulted in huge losses to the State exchequer.....As public interest litigation cannot be permitted to be withdrawn, the same cannot be dismissed only on the ground of the fact that a wrong person has initiated the action particularly when the violation of the Constitutional and legal provisions are writ large. While protecting the public interest and being aware of the abuse of the process by the authorities, this Court cannot abdicate its role as a sentinel of the fundamental rights and liberties of the citizens..... The important questions of law affecting the State exchequer and the public at large which were addressed before us for days together cannot be shelved or buried under the debris of locus standi".

32. What is required to be examined is, whether the petitioner has got oblique motive of redressing his personal or political grievance against the respondents since the petitioner, being a political leader, has approached this Court by filing this petition in public interest. This has to be tested in the background of the decisions of the Apex Court and this Court on the subject with reference to the facts of this case and the legality and validity of the power exercised in passing the impugned order.

33. It is to be noted that respondents 3 and 4 have not pointed out as to what is the personal or political gain the petitioner get in prosecuting this public interest litigation. He being a representative of the people, raised the issue in the Legislature in public interest in the first place. Since it was not successful, he has filed the writ petition. This clearly indicates that the petitioner is espousing the public cause. The very fact that having failed on the floor of the Legislative Assembly the petitioner has knocked the doors of this Court on the same issue clearly establish the public interest and the petitioner''s concern towards the State interest and public interest. Since the interest of the State is involved, any person can question the illegal action of the State and its authorities. It cannot be said that merely because the petitioner is a politician he has no locus standi to file the writ petition in public interest. What is

required to be tested is whether the action impugned is legal and valid. If it is illegal and invalid or if there is colourable exercise of power or the action impugned is done on extraneous considerations, the writ petition cannot be thrown away on the ground of maintainability or locus standi. The public interest spirit exposed by the petitioner has to be appreciated in the light of the above context. The manner in which the impugned order is passed by the 2nd respondent giving a go-bye to all well established norms for the exercise of power in the interest of public would certainly amount to surrendering to the 4th respondent by not following the procedure prescribed under the rules in the garb of exercising the power under Rule 56 of the Rules. Undoubtedly the public interest and State interest is recklessly ignored in this case and that pricks the conscience of the Court.

34. So far as the extent of loss alleged to have been caused to the State exchequer is concerned, it is a matter of arithmetical calculation and this Court need not venture in detail in that regard. Prima facie it is found that the impugned order has been passed exercising the power not vested with the 2nd respondent. That is sufficient to quash the impugned order. Since the issue pertaining to the ownership of the lands and the rights of the Government vis-a-vis respondents 3 and 4 are pending in the civil suit, the Government should not have ventured to pass the impugned order exercising the power not vested with it.

35. Another contention raised by respondents 3 and 4 in their statement of objections is with regard to suppression of facts. Respondent 3 has stated that the petitioner has suppressed the previous W.P. No. 32197 of 1995 and the Special Leave Petition. The allegation is totally misconceived. The petitioner himself has referred to these proceedings and has in fact produced the copies of the orders as per Annexures-''B'' and ''C'' to the writ petition. They are self-explanatory. The petitioner has referred to the civil suit in O.S. No. 109 of 1996. Whatever information the petitioner had with him have been highlighted. Neither the petitioner nor any person can be expected to have the knowledge of up to date information of various litigations in various Courts. He cannot be expected to be a watchdog of all the proceedings merely because he has filed the petition in public interest. As already observed, what is required to be looked into is, whether the action complained of is arbitrary, unreasonable, unjust, illegal, bad in law and whether the power has been exercised in accordance with the rules without any mala fides and colourable exercise of power. If the action complained of is found to be true, there ends the matter. When the Court is prime facie satisfied that the impugned action is bad and the power has been exercised by the public authority contrary to what is vested with them coupled with legal malice and colourable exercise of power and favouritism, the petition cannot be thrown away even if few facts, which are not relevant for deciding the real issue in controversy, are not mentioned in the petition. If the petition is dismissed on the ground of suppression of fact or nonmentioning of certain information which are irrelevant even after finding prima facie the impugned action cannot be sustained for various reasons, in our view, it amounts to Court

affixing its stamp to an action which is bad and unsustainable and tantamounts to perpetuating an illegal action. The Court should not allow the illegal, arbitrary, mala fide and unreasonable action. When an illegal or arbitrary action of State or its authorities is brought to the notice of the Court, the Court is required to go into the root of the matter and find out the truth and it cannot stand on mere technicalities and refrain from exercising its power allowing the illegal action of the State to remain in force. In this view of the matter, the decisions relied upon by Mr. Parasaran, learned Senior Counsel for respondent 4 in this regard will not have much help to respondents 3 and 4 and the contention raised in this regard cannot be accepted.

36. As regards the public interest espoused by the petitioner, it is to be noted that in paragraph 8 of the statement of objections filed on behalf of the 4th respondent it is admitted that the Hon''ble Supreme Court directed respondents 3 and 4 to approach the Civil Court. Accordingly they have approached the Civil Court and filed O.S. No. 109 of 1996. Having approached the Civil Court, they should have awaited the final decision. However, in the meantime they have approached the Government seeking working permission and the same had been granted under the impugned order. We fail to understand as to how they can do this during the pendency of the suit. Neither should they have approached the Government nor should the impugned order be passed in their favour by the 2nd respondent. Added to this, the filing of appeals against the interim order of the Civil Court and making them to become infructuous on account of the impugned order, will clearly demonstrate that the Government was hand-in-glove with respondents 3 and 4. These factors alone constitute public interest espoused by the petitioner.

37. It is an admitted fact that the granites available in the lands in question are of high potential value both in domestic and foreign markets. Such a valuable mineral has been allowed to be exploited by respondents 3 and 4 when the title to the lands is yet to be decided by the Civil Court. Such an action on the part of the Government is unwarranted and public interest demands an end to such an illegal, arbitrary and unwarranted action by colourable exercise of power tainted with legal malice, favouritism and nepotism. Such an action is highly deplorable. The Court cannot be a silent spectator when such an action is brought to its notice. The action complained of is of much public importance in that even though this Court ordered to furnish Bank guarantee, as admitted in paragraph 3 of the statement of objections filed on behalf of respondents 1 and 2, the Bank guarantee furnished by the 4th respondent could not be realised on account of the interim order passed by the Civil Court at Chennai in O.S. No. 13323 of 1996. But there is no whisper as to what is the latest position in that suit and whether State''s interest has been properly defended. The written statement is silent on these aspects. Admittedly the Bank guarantee was furnished pursuant to the order passed by this Court on 1-9-1995 and 21-6-1995. SLP Nos. 13884 and 13885 of 1996 preferred by respondents 3 and 4 before the Hon''ble Supreme Court had been dismissed on

30-7-1996. When the matter culminated in such dismissal, how the respondents 3 and 4 obtained interim order against realising the Bank guarantee from the Civil Court at Chennai is understandable. Even a layman can easily understand that State''s interest has not been safeguarded having regard to the manner in which the matter is being tackled. It is quite natural that public interest affects if State''s interest is neglected. In paragraph 8 of the statement of objections respondents 1 and 2 have sought to justify the impugned action by furnishing the break-up figures of the royalty paid by the 4th respondent to the State Government. It is contended that the working permission was granted to the 4th respondent for earning better revenue for developmental activities and also in the interest of mineral development in the State. We are constrained to observe that how there could be mineral development in the State when the mineral is allowed to be exploited by the 4th respondent alone contrary to the rules and in exercise of the power which is not vested in the Government. As regards the earning of better revenue is concerned, as provided under Rules 8-A and 8-B if quarrying lease was granted by notifying and through tender-cum-auction, the State would have definitely earned much revenue in view of the competition. Why the 4th respondent alone has been chosen is a matter to be questioned. If at all better revenue was to be earned to the State, the Government could have permitted its own agencies like the Mineral Development Corporation or the Mysore Minerals Limited to exploit the granites in question. Instead of doing so, the permission granted to a private entrepreneur to amass wealth by exploiting the valuable granite contrary to the rules is definitely a loss to the Government. By virtue of the impugned order, the State has unnecessarily invited various litigations in different Courts resulting in diversion of funds for such litigations and wastage of manpower by various officers and officials at various levels, thereby public interest has suffered a lot. It is to be noticed that at page 26 of the statement of objections filed on behalf of 4th respondent a stand is taken that in the event they succeed in the civil suit, the 4th respondent would be entitled to refund of the entire royalty paid. In such an event, what benefit the State derives is ununderstandable. On the other hand, it would be a total loss to the State on account of the litigations.

38. In the statement of objections filed on behalf of respondents 1 and 2 it is stated that a lumpsum deposit of Rs. 10.64 crores was obtained from the 4th respondent and granted working permission. According to them, the said figure has been arrived at in the following manner:

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 266 acres x 2 lakhs per acre =Rs.5.32 crores
5.32 crores x 2 years   =Rs. 10.64 crores.
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It is asserted that the maximum amount realised by tender-cum-auction earned only Rs. 0.66 lakhs but by virtue of the present action Rs. 2.00 lakhs per acre per year has been fixed. No material is placed in this regard by respondents 1 and 2. In the writ petition at paragraph 9 the petitioner has contended as under:--

"The petitioner respectfully submits that by accepting a meagre amount of Rs. 10.56 crores as deposit the 4th respondent is permitted to extract granite in an area of 266 acres for a period of two years..... It is further submitted that this deposit of Rs. 10.56 crores is subject to the result in civil litigation in Original Suit No. 109 of 1996. This approach is not only arbitrary and illegal, the same has resulted in huge financial loss to the State exchequer. It is respectfully submitted that the fourth respondent has furnished a Bank guarantee of Rs. 22,50 crores being the 25% value of the FOB during the period from 26-9-1995 to 27-6-1996, that is for a period of 9 months only. On the basis of this it can be easily concluded that the deposit of Rs. 10.56 crores for a period of two years in an area of 266 acres will not stand to the reason".

For the above, the 4th respondent in the statement of objections has replied as under:--

"It is respectfully submitted that the Director of Mines and Geology insisted on respondents 3 and 4 to furnish Bank guarantee approximately at 1,500 U.S. Dollars per every cubic meter subject to adjustment based on actual FOB rates..... Respondents agreed to do so and furnished the guarantee to the tune of Rs. 22.50 crores at approximate figure of 1,500 U.S. Dollars as FOB rates. As per the actual FOB rates based on shipping documents, the value of mineral at 25% of FOB rates comes to Rs. 13.17 crores and the Director of Mines and Geology is in fact holding an excess of Rs. 9.33 crores in the form of Bank guarantee".

Thus, even according to the calculation furnished by the 4th respondent the FOB rate comes to Rs. 13.17 crores for 9 months. Working permission is granted under the impugned order for a period of two years. For 9 months if the FOB rate is Rs. 13.17 crores, for 24 months/2 years the amount of Rs. 10.64 crores fixed in the impugned order is very meagre. It is less than the amount of Rs. 13.17 crores admitted by the 4th respondent. On the basis of the figure furnished by the 4th respondent, the approximate amount for two years comes to 34.40 crores as under:--

For 9 months Rs. 13.17 crores.	
For 18 months	= Rs. 26.34crores
For the remaining 6 months:	
(2/3rd of Rs. 13.17 crores)	= Rs. 8.06 crores
Total:	34.40 crores.

But the amount fixed by the 2nd respondent in the impugned order is one-third of the above figure. Thus, it becomes clear that what the petitioner has asserted in the petition with regard to the loss to the exchequer is more or less true. This would be a loss to the State exchequer and the said loss affect the public interest. Therefore, the contention of re- spondents that there is no public interest involved in this petition, is wholly untenable.

39. For the reasons stated above, the writ petition is allowed and the impugned order at Annexure-F is quashed. Respondents are directed to stop immediately the quarrying activities in the lands in question. The Government is directed to dispose of the seized granite or the granite quarried from the lands in question in the manner provided under Chapter VIII of the rules.

40. Taking into consideration the public interest espoused by the petitioner right from the beginning, we direct first respondent for payment of costs of Rs. 10,000/- to the petitioner within a period of four weeks.