(1991) 03 AP CK 0004

Andhra Pradesh High Court

Case No: Writ Petition No. 200 of 1991

C.M. Ramanath Reddy		APPELLANT
	Vs	
State of Andhra Pradesh and Others		RESPONDENT

Date of Decision: March 15, 1991

Acts Referred:

- Constitution of India, 1950 - Article 226
- Mineral Concession Rules, 1960 - Rule 37

Citation: (1991) 2 ALT 32

Hon'ble Judges: Syed Shah Mohammed Quadri, J

Bench: Single Bench

Advocate: V. Venkataramanaiah, T. Jagadish and K.G.K. Prasad, for the Appellant; Govt. Pleader and A.G., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Syed Shah Mohammed Quadri, J.
Cuddapah District in Andhra Pradesh contains largest deposits of barytes in the world. This mineral wealth of the nation in the villages of Mangampet and Anantharajupet, was reserved for exploitation by public sector by G.O.Ms. No. 27 dated 7-1-1974. The State of Andhra Pradesh, the 1st respondent herein granted mining lease for barytes over an extent of 22.799 Hectares in the said villages for 20 years in favour of the Andhra Pradesh Mineral Development Corporation Ltd.'', a State Government undertaking, the 2nd respondent herein, in G.O.Ms. No. 151, dt. 10-2-1975. In pursuance of the said orders, the 1st respondent executed mining lease deed in favour of the 2nd respondent on 19-2-1975 in respect of the said extent of 22.7990 Hectares. Pattedars of the land who were having surface rights in the land granted on lease by the 1st respondent to the 2nd respondent under the

above G.O.Ms. No. 151, filed revisions before the Central Government under Rule 54 of the Mineral Concession Rules 1960 and obtained stay of implementation of the order of the 1st respondent. In view of the rights claimed by the Pattedars, the 2nd respondent was unable to carry out mining operation. On 16-5-1975 a tripartite agreement was entered into among the 1st respondent, the 2nd respondent and the Pattedars, under which the Pattedars agreed to give up their surface rights in respect of their land and withdraw the revision petitions on condition of the 2nd respondent granting sub-lease of its rights and liability under the mining lease granted by the 1st respondent to it in favour of the respective Pattedars for exploitation of barytes. Consequently Pattedars gave letters on 9-6-1975 giving up their respective surface rights in respect of their land and withdrawing the revision petition filed by them before the Central Government. In furtherance of the said tripartite agreement, the 1st respondent granted permission to the 2nd respondent to sub-lease the land under Rule 37 (1) of the Mineral Concession Rules in G.O.Ms. No. 215 dated 22-4-1980. There after, the petitioner represented to the Government for grant of sub-leate by the Corporation over an extent of 5.06 acres in S No. 75/2 to 75/5, 112, 111/P, 78/2, 78/8 78/9 and 78/10 of Mangampet village in his favour in lieu of 2.6508 hectares of land in S. Nos. 61/2 to 61/16 of Mangampet village and S. Nos. 4, 5 and 14 (part) of Anantharaju-pet and surrendered surface rights over Acs. 3.30. by the orders issued in G.O.Ms. No. 441, dated 5-1-1990 the 1st respondent permitted the 2nd respondent for subleasing mining rights of barytes over an extent of Acs. 4.92 in the said Survey No. of Mangampet village of Obulavaripalli Mandal in favour of the petitioner in exchange of lands covered by S. No. 61/2 to 61/16 measuring Acs. 3.30 of Mangampet village and S. Nos. 4, 5 and 14 (part) measuring Acs. 3.25 in Anantharajupet village on the basis of the tripartite agreement. In turn, a sub-lease deed was executed by the 2nd respondent in favour of the petitioner on 8.11-1990 The petitioner started mining operation pursuant to the sub-lease granted in its favour. On 21-1-1991 the 1st respondent addressed a letter to the2nd respondent (letter No. 2532/M. III/90-1) informing that the orders issued in G.O.Ms. No. 441, dated 5-11-1990 were kept in abeyance pending further examination. This was communicated by the 2nd respondent to the petitioner by telegram dated 3-1-1991 informing him to desist from taking any further action in pursuance of G.O.Ms. No 441, dated 5-11-1990 and the sub-lease deed dated 8-11-1990. This was followed by letter dated 3-1-1991. On these facts the petitioner seeks a declaration that the action of the 1st respondent in issuing letter No. 2532/M. III/90-1, dated 2-1-1991 as viod ab initio, illegal and for consequential direction to the respondents not to interfere with the mining operations of the petitioner in respect of the rights granted in G.O.Ms. No. 441 dated 5-11-1990.

2. As the relevant facts are not in dispute, it may not be necessary to extract the averments in the counter-affidavits of the 1st respondent, respondents 2 and 3 and the 4th respondent. The pleas urged by the parties will be referred to while dealing with the respective contentions.

3. The first contention of Sri V. Venkataramanaiah, the learned counsel for the petitioner, is that the impugned letter of the 1st respondent keeping the permission granted in G O.Ms. No. 441 in abeyance is without any statutory power either under the Act or under the Rules and as such would be illegal and without jurisdiction.

4. The learned Advocate General appearing for the respondents has contended that the rights of the petitioner, if any, arise out of the sublease--a contract, and the remedy of Article 226 of the Constitution is not available to the petitioner, therefore the writ petition has to be dismissed on that ground. The learned Advocate General further submits that the withdrawal of the permission granting sub-lease has been within the contemplation of the lessee and the sub-lessee, and further as the Government is the authority to grant permission it must be taken that the suspension of the order granting permission is within the competence of the Government.

5. Before taking up the contention of the learned counsel for the petitioner it would be appropriate to consider the contention of the learned Advocate General which is in the nature of a preliminary objection. The rights of the petitioner, if any, submits the learned Advocate General, arise out of contract and interference by the impugned action relates to contractual obligation, as such the remedy of the petitioner does not lie under Article 226 of the Constitution.

6. From the resume of the facts stated above, it is clear that the 2nd respondent was granted lease to exploit barytes pursuant to orders passed by the 1st respondent in G.O.Ms. No. 151, dated 10-2-1975 and thereafter the first respondent executed lease-deed in favour of the 2nd respondent on 19-2-1975. In GO. Ms.No. 215 dated 22-4-1980 the first respondent granted permission to the 2nd respondent to grant sub-lease of the mining rights out of the area leased out to it pursuant to G.O.Ms. No. 1 51 dated 10-2-1975. At the request of the petitioner, the first respondent further permitted lease of the land for exploitation of barytes in respect of the land mentioned in G.O.Ms. No. 441, dated 5-11-1990. The first respondent granted permission in G.O.Ms. No. 215 dated 22-4-1980 and in G.O.Ms. No. 441 dated 5-11-1990 under Rule 37 of the Mineral Concession Rules, 1960. Accordingly sub-lease deed was executed by the 2nd respondent in favour of the petitioner on 8-11-1990. The first respondent is not a party to the sub-lease deed. There is no contractual relationship of lessor and lessee between the 1st respondent and the petitioner. Under Rule 37, referred to above, the first respondent is the authority whose consent in writing is a precondition for the grant of sub-lease by the 2nd respondent-lessee and the first respondent gave its consent in G.O.Ms. No. 441 dated 5-11-1990. Rule 37 also does not provide or create a statutory relationship of lessor and lessee between the 1st respondent and the petitioner. Therefore, in my view, the impugned action of the 1st respondent which is alleged to interfere with the contractual rights of the petitioner, cannot be said to be an action by virtue of any power or obligation arising under the contract. It could be either an action

under statutory power conferred under Rule 37 as claimed, or an executive action not authorised by law but certainly it does not spring out of any contractual obligations of the first respondent. A person may have a constitutional right or a statutory right, he may have a customary right or a contractual right. So also State may have constitutional right and obligations or statutory rights and obligations or even contractual rights and obligations. What is relevant here is not merely the source of right of a person but also source of power of the State of an authority within the meaning of ''State'' under Article 12 of the Constitution. Where the State acts under a contractual right or power or commits breach of a contractual obligation and where a person seeks to enforce a commercial contractual right against another person or the State, generally the High Court will not adjudicate such causes exercising its jurisdiction under Article 226 of the Constitution and will leave the parties to work out their rights in a competent civil court. This is not an absolute rule of law creating bar on the exercise of jurisdiction under Article 226 but a factor which the High Court takes into consideration in the exercise of its extraordinary and discretionary writ jurisdiction.

7. I shall now refer to the cases cited by the learned Advocate General.

8. Radhakrishna Agarwal v. State of Bihar, AIR 1977 SC 1406 :-- In this case, the State Government leased out some forest land to the appellants therein to collect and exploit sale seeds for 15 years on payment of royalty at certain rate. The State Government under the terms of the lease revised the rates of royalty and later cancelled the lease for breach of the conditions. The order of revision of rates and cancellation of the lease was questioned before the High Court. The High Court dismissed the writ petition. So the petitioner carried the matter to the Supreme Court in appeal. It was held on those facts that the contract did not contain any statutory terms of obligations and no statutory power or obligation which would attract the application of Article 14 of the Constitution was involved and that it was the-contract and not the executive power regulated by the Constitution which governed the relations of the parties and that the facts apparent in that case involve questions of pure alleged breaches of contract. The Supreme Court further held :

"It is thus clear that the Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, involved discrimination at the very threshold or at the time of entry into the field of consideration of persons with whom the Government could contract at all. At this stage, no doubt, the State acts purely in its executive capacity and is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in exercise of its constitutional powers. But, after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract parties inter se. No question arises of violation of Article 14 or of any other constitutional provision when the State or its agents purporting to act within this field, perform any act. In this sphere, they can only claim rights

conferred upon them by contract only unless some statute steps in and confers some special statutory power of obligation on the State in the contractual trield which is apart from contract.

In the cases before us the contracts do not contain any statutory terms or obligations and no statutory power or obligation which could attract the application of Article 14 of the Constitution is involved here..... Such proceedings (Proceedings under Article 226) are summary proceedings reserved for extraordinary cases where the exceptional and what are described as, perhaps not quite accurately, "prerogative" powers of the Court are invoked. We are certain that the cases before us are not such in which powers under Article 226 of the-Constitution could be invoked "

9. Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . That case arose out of contract of service, terms of which were contained in the Rules framed by Central Inland Water Transport Corporation which took over the services of the employees of a company which was dissolved under the scheme of arrangement entered into by the company with the corporation and was approved by the High Court of Calcutta. Rule 9 (i) of the Rules provided for termination of employment of a permanent employee on three months'' notice on either side ; the company has a right to pay salary for 3 months in lieu of notice. Services of two permanent employees were terminated for different reasons under Rule 9 (i). They challenged the validity of the said Rule. The Supreme Court declared the said Rule void as being opposed to public policy u/s 23 of the Contract Act and violative of Article 14 of the Constitution besides being arbitrary and unreasonable. In that case Radhakrishna Agarwal''s case (1 supra) was cited and was distinguished on the ground that it has no relevance to the case before the Supreme Court (i.e., Central Inland Water Transport''s case). (2 supra). The Supreme Court observed thus :

" Employees of a large organization form a separate and distinct class and we are unable to equate a contract of employment in a stereotype from entered into by "The State" with each of such employees with the "lease" executed in Radhakrishna Agarwal and Others Vs. State of Bihar and Others, ."

The learned Advocate General, however, submits that the law laid down by the Supreme Court in Radhakrishna Agarwal''s case (1 Supra) is still applicable to cases of contract and therefore the rights arising out of the contract cannot be enforced in writ proceedings.

10. Y.S. Raja Reddy v. A.P. Mining Corporation, 1988 2 ALT 722: This case arose under the Mines and Minerals (Regulation & Development) Act, 1957. The sublease was granted with the written consent of the Government in favour of the petitioner. The sub-lease was not executed in Form ''O'', but in a form near thereto. The petitioner sought a declaration that the lease deed as executed was invalid not being in Form

O''. The Division Bench of our High Court held that G.O. Ms. No. 215 under which consent was given and some of the clauses which were agreed upon by the party cannot be declared invalid while exercising the jurisdiction of Article 226. The Bench further held that the State or an instrumentality of the State will not be amenable to writ jurisdiction in respect of simple and pure contracts when there is no statutory power or flavour involved in implementing the conditions.

11. Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, :--In this case Bareilly Development Authority undertook construction of dwelling houses for the people belonging to different groups. The prices were notified and it was also mentioned in the brochure that the actual cost might increase or decrease. The allottees challenged the increase of prices. The Supreme Court held that when the contract entered into by the State is non-statutory and purely contractual, the relations are no longer governed by the Constitutional provisions but by legally valid contract which determines the rights and obligations of the parties inter se, and that in that sphere, the parties can only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the authority in the said contractual field. The Supreme Court has further observed that it is also settled that no writ or order can be issued under Article 226 of the Constitution so as to compel the authorities to remedy a breach of contract pure and simple.

12. In a recent judgment in K.S. Vidyarthi v. State of U.P., 1990 (2) Scale. 561 the Supreme Court struck slightly different note. In this case, the Government of Uttar Pradesh terminated, by a general order, the appointment of all Government counsel in all the districts of the State and directed preparation of a fresh panel. That order was questioned before the Supreme Court. The Supreme Court quashed the impugned order. Dealing with the question that after the contract is entered into between the parties, the rights are governed by the terms of the contract and Article 14 has no application, the Supreme Court observed thus :

"Even otherwise and sans the public element so obvious in these appointments, the appointment and its concomitants viewed as purely contractual matters after the appointment is made, also attract Article 14 and exclude arbitrariness permitting judicial review of the impugned State action. This aspect is dealt with hereafter.

. . . . . .
. . . . . .

It is now too well-settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in

the mind."

This case also provides an example that the Supreme Court treated the question of contract of employment differently from commercial contracts.

13. A reading of the decisions extracted above makes it clear that contractual obligations arising out of contract which are neither statutory nor have statutory flavour, cannot be enforced under writ proceedings, that in matters of contract relating to service conditions the principles governing the commercial contract have no application.

14. In the instant case, as stated above, no right or obligation of a party of the contract arising out of the contract i.e , sub-lease executed by the 2nd respondent in favour of the petitioner, is sought to be enforced against the 1st respondent which is not a party to the contract. What is questioned is the executive action of the 1st respondent which interferes with the rights of the petitioner, which, no doubt, arise under a contract. Therefore, the judgments referred to above have no direct bearing on the facts of this case.

15. In view of the above discussion, the preliminary objection of the learned Advocate General cannot be sustained.

16. Now I shall refer to the first contention of the learned counsel for the petitioner viz., that the impugned action of the 1st respondent keeping, the permission granted in G.O. Ms. No. 441 dated 5-11-1990 in abeyance, is without any statutory power under either the Act or the Rules. The power of the 1st respondent in issuing the impugned order is sought to be sustained on the ground that the authority which has the power to grant permission has also the power to suspend or withdraw the same. It is on that premise that it is slated that the power of suspension being ancillary to the power of concellation, the impugned order of the 1st respondent does not suffer from lack of power.

17. Rule 37 of the Rules, among other things, provides that the lessee shall not assign, sublet, mortgage, the mining lease or any right, title or interest therein without the previous consent in writing of the State Government. Sub-rule (3) of Rule 37 empowers the State Government to terminate any lease at any time, if in the opinion of the State Government the lessee has committed a breach of any of the provisions of Sub-rule (1) or Sub-rule (1-A) or Sub-rule (1-B) or has transferred any lease or any right, title or interest therein otherwise than in accordance with Sub-rule (2). Proviso to Sub-rule (3) enjoins compliance of the principles of natural justice. A close reading of Sub-rule (3) makes it clear that the power of the State Government to determine lease under Sub-rule (3) is not absolute. The power can be exercised only if the State Government is of the opinion that (1) the lessee has committed a breach of the provisions of Sub-rules (1), (1-A) or (1-B) or (b) the lessee transferred any lease or any right, title or interest therein otherwise than in accordance with Sub-rule (2). In the instant case, it is nobody''s case that the reasons

for which the permission granted to sub-lease under G.O. Ms. No. 441, was suspended constitute breach of Sub-rules (1), (1-A) or (1-B) by the 2nd respondent or that the 2nd respondent transferred any lease or any right, title or inteiest in the lease granted by the 1st respondent otherwise than in accordance with Sub-rule (2). Therefore, in my view, having regard to the power of the first respondent to terminate the lease under Sub-rule (3) of Rule 37, no power to suspend the permission granted under Rule 37, can be inferred.

18. It may also be noticed here that though permission to grant sublease by a lessee requires prior consent of the State Government, no power is conferred on the State Government under the Rules to cancel the consent granted to the lessee to sub-lease any of the rights, title or interest in the lease.

19. For these reasons, the contention of the learned Advocate General that power to grant permission under Rule 37 carries with it the power to suspend the permission, cannot be accepted.

20. It is next contended by Sri Venkataramanaiah that pursuant to the granting of permission to sub-lease the mining rights by the 2nd respondent in favour of the petitioner, the 2nd respondent executed lease deed on 18-11-1990 in favour of the petitioner, the petitioner has already commenced mining operations and therefore, the impugned order is illegal. It is not disputed by the respondents that in terms of G.O. Ms. No. 441 dated 5-11-1990, the sub-lease deed was executed by the 2nd respondent in favour of the petitioner on 18-11-1990 and the petitioner has commenced the-operation. Once the sub-lease is granted pursuant to the consent of the first respondent given in G.O. Ms. No. 441. the order issued by the Government in the said G.O. has worked out itself. There remains nothing to be suspended and the impugned order of the Government dated 2-1-1991 cannot have the effect of interdicting the mining operations by the petitioner which have already commenced under sub-lease dated 18-11-1990.

21. The third contention of the learned counsel for the petitioner is, pursuant to the permission granted by the first respondent in G.O. Ms. No. 441 dated 5-11-1990 the sub-lease deed has been executed by the 2nd respondent in favour of the petitioner, the petitioner has altered its position by acting upon it, commenced operation and therefore the first respondent is estopped from issuing the impugned order. The learned Advocate General submits that the doctrine of promissory estoppel has no application when the promise has been fulfilled and it has riped into a contract.

22. This contention of Sri Venkataramanaiah is founded on the doctrine of promissory estoppel. In Halsbury''s Laws of England, fourth edition, Volume-16 paragraph 1514 explans "promissory estoppel" as under:

"When one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations

between them and to be acted on accordingly then once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced".

In Snell''s Principles of Enquiry, 28th Edition at page 556, the doctrine of promissory estoppel is stated in the following terms :

"The Rule. Where by his words or conduct one party to a transaction freely makes to the other an unambiguous promise or assurance which is intended to affect the legal relations between them (whether contractual or otherwise) and the other party acted upon it altering his position to his detriment, the party making the promise or assurance will not be permitted to act inconsistently with it."

In Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, the Supreme Court elucidated the doctrine of promissory estoppel in the following words :

"Doctrine of promissory estoppel has been variously called ''promissory estoppel'', ''requisite estoppel'', quasi estoppel'' and ''new estoppel''. It is a principle evolved by equity to avoid injustice and though commonly named ''promissory estoppel'', it is neither in the realm of contract nor in the realm of estoppel. The true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not."

23. Thus it is seen that to attract the doctrine of promissory estoppel, there has to be representation by one party to another either in writing or by words or even by conduct, but it must be clear and unequivocal making a promise or giving an assurance with the intention to affect the legal relation between them and to be acted upon accordingly, and the party to whom it is made must have acted upon it; then the party making the promise or giving the assurance will not be allowed to revert to his original position as if no such promise or assurance was given and would be compelled by the courts to accept the legal relations arising out of the promise or assurance subject, of course, to the condition, if any, contained in the promise or assurance.

24. The learned Advocate General however contended that the doctrine of promissory estoppel cannot be invoked when the promise has culminated into a

contract as in the instant case. I am unable to accede to the contention of the learned Advocate General. By the mere fact that the promise has been converted into a legal contract, the promissor is not left free to back out of his promise. The principle of equitable estoppel was applied by the Supreme Court in a recent case in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., wherein an agreement in terms of the promise was also executed. In that case the Gujarat State Financial Corporation by letter dated 24-7-1978 agreed to advance loan to M/s. Lotus Hotels Private Ltd. Thereafter the parties entered into an agreement for advancing the loan of Rs. 30,00,000/-. The Financial Corporation backed out of the promise. The Supreme Court applying the principle of promissory estoppel observed:

"By its letter of offer dated July 24, 1978 and the subsequent agreement dated February 1, 1979 the appellant entered into a solemn agreement in performance of, its statutory duty to advance the loan of Rupees 30 lakhs to the respondent. Acting on the solemn undertaking, the respondent proceeded to undertake and execute the project of setting up a 4 Star Hotel at Baroda. The agreement to advance the loan was entered into in performance of the statutory duty cast on the Corporation by the statute under which it was created and set up. On its solemn documents, the respondent incurred expenses, suffered liabilities to set up a hotel. Presumably if the loan was not forthcoming, the respondent may not have undertaken such a huge project. Acting on the promise of the appellant evidenced by documents, the respondent proceeded to suffer further liabilities to implement and execute the project. In the back drop of this incontrovertible fact situation, the principle of promissory estoppel would come into play."

From the dicta of the Supreme Court in this case applying the principle of promissory estoppel to a case where the promise has riped into an agreement, it follows that for the application of the principle, the fact that the promise culminated into a contract is immaterial ; the written agreement furnishes the evidence of promise but does not bar the application of the principle.

25. In the instant case there has been a tripartite agreement among the parties under which the Pattedars of the land having surface rights in the land having barytes deposits, have to give up their rights in the surface of the land and withdraw the revision filed by them before the Government of India on the promise that the 2nd respondent would grant sublease of the land in question in favour of the petitioner from out of the land leased out to it by the first respondent in favour of the 2nd respondent and the first respondent would give its consent to grant sub-lease. Acting on the promise or the assurance of the first respondent that it would sanction the sub-lease of the land granted by the 2nd respondent in favour of the petitioner, the petitioner gave up his surface rights and withdrew the revision petition; the 1st respondent in fact gave its consent required under Rule 37 of the Rules in G.O.Ms. No. 441 dated 5-11-1990 and a sub-lease deed of the land mentioned in the said G.O. was also executed by the 2nd respondent in favour of

the petitioner. There has been no backing out of its obligation by the 1st respondent, nor does the impugned order suspending the G.O. amount to backing out of the promise. In fact, no decision is reached by the 1st respondent to back out so far, as such the facts of this case do not justify invoking the doctrine of promissory estoppel at this stage.

26. The learned counsel for the petitioner contended that before passing the impugned order suspending the G.O. the first respondent has not given an opportunity to the petitioner of being heard, therefore, the principles of natural justice are violated rendering the impugned order void.

The doctrine of the learned Advocate General is that by an interim arrangement there has been freezing of the position as a reasonable step before making enquiry into the matter, and the question of observing this principle at this stage does not arise.

27. The doctrine of natural justice contains twin principles. They are : Nemo debet esse judex in propria causa i.e., no one shall be a judge in his own cause ; and audi alteram pattern i.e., no one should be condemned unheard. The arguments in this case refer to the second principle. This principle is the keystone of the edifice of our administrative law. The requirement to observe this principle before taking any action against any person is so much emphsised by the courts that even when such requirement is absent in any statute, the Courts infer a duty to observe the principle unless the application of the principle is specifically excluded by the statute. The substance of the contention of the learned counsel for the petitioner is that before passing the impugned order no opportunity of being heard was afforded to the petitioner. This fact is not in dispute. The question is whether for that reason the order is bad. The impugned order reads as follows :

"GOVERNMENT OF ANDHRA PRADESH

Letter No. 2532/M.III/90.1 Dated 2-1-1991

From

R.P. Agarwal, I.A.S.,
Secretary to Government
Industries & Commerce Dept.,
Secretariat, Hyderabad-22.

To

The Managing Director,
A.P. Mineral Development Corporation Ltd.,
Hyderabad.

Sir,

Sub : Mines--Sub-leasing of the mining lease for barytes over an extent of 4-92 acres in S. Nos. 75/2, 75/3, 75/4, 75/5, 111 (part), 112, 78/2, 78/8, 78/9 and/78/10 in Mangampet village, Obulavaripalli (M), Cuddapah District in exchange of areas covered by S. Nos. 61/2 to 16 extent of 3.30 acres in Mangampet village and S. Nos. 4, 5 and 14 (part) of Anantarajupet village extent of 3.25 acres on the basis of Tripartite Agreement in favour of Sri CM. Ramanatha Reddy-- Orders issued - Kept in abeyance -instructions issued.

Ref : G.O.Ms. No. 441, Ind. & Com. Dept., dt. 5-11-1990.

I am to inform that Government hereby place the orders issued in G.O.Ms.No. 441, Industries & Commerce Department, dt. 5-11-1990 in abeyance pending further examination.

Yours faithfully,
Sd/ K. Sreemannarayana
For Secretary to Government".

A perusal of the impugned order shows that it is only an interim order passed pending further examination of the matter by the 1st respondent. In the counter-affidavit two reasons are given for passing the said Orders-(1) examination of the grant of sub-lease in Mangampet has become imperative since an enquiry has been conducted in the last few months relating to certain allegations and the activities of the barytes exploitation in Mangampet by a commission headed by Sri K.V. Natarajan. Commissioner of Land Revenue and Special Chief Secretary to Government who has submitted his report to the Government on 22-11-90; and (2) the rights of the parties under the tripartite agreement and their entitlement for the lease should be more clearly studied and, added to this, there is also some confusion about the area to which the share of C.M. Harischandra Reddy has been transferred and granted to C.M. Ramantha Reddy. These are the reasons which made the 1st respondent to re-examine the case and keep the orders passed by it in G.O.Ms. No. 441 dated 5-11-1990 in abeyance pending further examination. I do not propose to express any opinion on the question whether the above reasons are valid for reopening the issue as the 1st respondent itself has not examined these aspects and finally determined the issue. What all it did is to freeze the situation as on the date of the order dated 3-1-1991. Inasmuch as the process of decision making has not even started and an enquiry is contemplated and the order is only interim order pending investigation, whether the principles of natural justice can be said to have been violated by not giving notice before passing the impugned orders.
28. I shall now refer to the cases relied upon by the learned counsel for the parties on the aspect of observance of principles of natural justice.

29. S.L. Kapoor Vs. Jagmohan and Others, : New Delhi Municipal Council was superseded u/s 238 of the Punjab Municipal Act. Before passing the order of supersession no notice was given to the committee. It was held by the Supreme

Court that the status and office and the rights and responsibilities and the expectation of the Committee to serve its full term of office certainly creates sufficient interest in the Municipal Committee and their loss, if superseded, entails civil consequences so as to justify the insistence upon the observance of the principles of natural justice before an order of supersession is passed. In the instant case, the rights of the petitioner under sub-lease granted pursuant to G.O.Ms. No. 441 which is suspended have not been determined. In fact, nothing adverse is pronounced upon those rights by the 1st respondent, so this case has no application to the facts of the present case.

30. The learned Advocates General supports the order on the ground that the enquiry in the matter has not yet commenced and that if the Government decide to take appropriate action, the principle will be observed by the first respondent. This is merely an interim order to maintain the status quo till a decision is taken whether to proceed with the enquiry or not. What the learned Advocate-General submits is, in a situation where only an interim order is given, the principles of natural justice need not be observed.

31. Like other doctrines, the principle of natural justice also has some well recognised exception. Though some academicians or judges are reluctant to call such situations as exceptions yet in my view there cannot be a serious objection to using the expression "exception" to describe the situations where non-observance of the principles of natural justice has been held to be justified. In De Smith''s Judicial Review of Administrative Action (4th Edition) under the heading "Exclusion of the audi alterant partem rule" situations where the rule excluded have been dealt with. At page 184 the principle is stated as follows :

"In administrative law a prima facie right to prior notice and opportunity to be heard may be held to be excluded by implication if any of the following factors is present, singly or in combination with another."

The 6th factor reads as follows :

"Where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt action, especially action of a preventive or remedial nature."

Under this heading it is stated : "That urgency may warrant disregard of the audi alterant partem rule in other situations is generally conceded: there will be disagreement, however, about the circumstances in which a deviation ought to be permissible".

32. The learned counsel for the petitioner contended that whether the impugned order is an interim order, or an order passed at the preliminary stage, or at the final stage or in the course of investigation, the principles of natural justice are to be observed and cannot be dispensed with. As the impugned order, submits the learned counsel, results in irremedial consequences, viz., by cutting short the period

of lease for the period for which the interim order continues to be in force and the petitioner is precluded from claiming any compensation, therefore, before any such action is taken the principles of natural justice require that a hearing should be given, so the principle should have been observed. Reliance is placed on a judgment of the Court of Appeal in re Pergamon Press Ltd., Law Reports 1971 (1) Chancery Division, 388. In that case Inspectors were appointed to investigate into the affairs of Pergamon Press and report to the Board of Trade. The Director refused to answer questions before the Inspectors unless assurances sought by them, are given by the Inspectors. On reporting the matter to the Chancery Judge, it was held that the Directors were not entitled to the assurances. The matter was taken in appeal. In the Court of Appeal, it was contended by the counsel for the Inspectors that as there was no determination or decision but only an investigation or enquiry by the Inspectors the rule of natural justice did not apply, Rejecting this contention Lord Denning M. R. held that though the Inspectors are not a Court of Law, the proceedings are not judicial proceedings, not even quasi-judicial for they decide nothing not even whether there is a prima facie case; they only investigate and report, yet as the report may have wide repercussions, either it may contain finding of fact which may be damaging to those whom they name; they may accuse some, they may condemn others; they may ruin reputation or careers; their report may lead to judicial proceedings--both civil and criminal; even before they make a report they may inform the Board of Trade of the facts which may tend to show that an offence has been committed; so the principle applies. The learned Law Lord observed :

"Seeing that their work and their report may lead to such consequences, I am clearly of the opinion that the Inspector must act fairly. This is a duty which rests on them, as on many other bodies, even though they are not judicial, nor quasi-judicial, but only administrative : See Reg. Gamind Board for Great Britain, Ex-parte Benaim and Khaida (1970) 2 Q. B 417. The Inspector can obtain information in any way they think best, but before they condemn or criticise a man, they must give him a fair opportunity for correcting or contradicting what is said [against him. They need not quote chapter and verse. An outline of the charge will usually suffice."

33. The learned Advocate-General, however, contended that in the situation as the one in the present case, principles of natural justice are not applicable and it is for the court to see whether observance of that rule was necessary for a just decision on the facts of the case. He relied on a judgment of the Supreme Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, wherein it is held by the Supreme Court that the aim of rule of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The same principle is reiterated in Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, .

34. In regard to the application of the rule of audi alterant pattern the requirement of the rule as well as the duty to act fairly demands that if the rights of a person are likely to be affected by the proposed action the person affected should be given an opportunity of being heard. By passing the impugned order of suspension the petitioner''s term of lease will no doubt be cut short and for the same he is not entitled to compensation in view of Clause 15 of the sub-lease which provides that the Sub-lessee shall not claim any damages from the lessee in the event of the State Government withdrawing the permission under Rule 37(1) of the sub-lease during the tenure of this lease, or on account of any other Governmental action having a direct bearing on this contract. The petitioner is, therefore, precluded from claiming damages. Even assuming that the first respondent has power to suspend the permission granted so as to cause suspension of the mining operation by the Sub-lessee, it cannot be disputed that by passing an order in the nature of the impugned order, the rights of the sublessee would be adversely affected; apart from the above two factors, he will commit himself to defaults and will be liable to answer to the other contracts with whom he has commitment. Further, the staff and other establishment set up by the Sub-lessee will have to be maintained and the absence of the operation will also cause considerable loss and prejudice to the petitioner. As noted above, the impugned order will be in force pending further examination by the first respondent. It cannot be postulated as to how long will it take for the first respondent to examine the issue. The order does not also say that the post-decisional hearing will be given to the petitioner on the question whether to keep the suspension in abeyance or not. Further, it is only in limited situations, the operation of the rule of natural justice is held by the courts to be inapplicable. Such situations are where grave emergency exists and if the requirement of notice is observed, the very purpose will be frustrated, for example, summary action for the maintenance of public security or public order an order prohibiting the holding of all public processions, if the police have reasonable ground for apprehending serious public disorder, or to abate any dangeious nuisance which, if allowed to remain, would pose serious problem for public health; prohibiting smoking in a theatre or in aircraft or public carrier also falls in this category. In this instant case, no immediate harm would have ensued to the public or the first respondent if notice is given before passing the impugned order. Further no grave situation of emergency exists. I am, therefore, of the view that an order of the nature impugned in this writ petition ought to be declared as violative of the principles of natural justice, as neither any pre-decisional nor any post-decisional hearing is provided. (See Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another,

35. Lastly it is contended by the learned counsel for the petitioner that the impugned order is also otherwise arbitrary and illegal. There are no sufficient grounds, submits the lenrned counsel, to pass the impugned order and that the existence of some confusion as alleged, or the ground of reexamination does not satisfy the test of reasonableness. The learned Advocate-General submits that the

grant of sub-lease is not pursuant to the tripartite agreement, therefore, once the matter is brought to the notice of the Government, it requires the examination. Natarajan Commission also pointed out that the petitioner is one of the persons who had encroached into the leasehold area of the A.P. Mineral Development Corporation and was involved in illicit mining of barytes, therefore, it was surprising that he had been granted a sub-lease, The report of the Natarajan Commission was submitted on 22-11-1990 after the issuance of G.O.Ms. No. 441 was passed on 5-11-1990. Therefore, this reason which promoted the Governmem to make further enquiry cannot, in my view be said to be arbitrary, The other reason given is that the rights of the parties under the tripartite agreement and their entitlement for the lease should be more carefully studied. I do not consider it necessary to go into the details of the tripartite agreement and the subsequent developments which led to the exchange of land for the land originally proposed for sub-lease, and express any opinion as that is a matter now pending consideration by the first respondent. Be that as it may, in my view, it cannot be said that this reason does not provide any basis for the first respondent for further examination Therefore the first respondent has sufficient reasons to examine the issue, but that does not clothe the first respondent with any power to pass the impugned order.

36. For the above reasons, the letter of the 1st respondent letter No. 2532/M. III/90-1, dated 2-1-1991 and the consequential communication issued by the 2nd respondent to the petitioner are declared to be illegal and not binding on the petitioner. The Writ petition is accordingly allowed with costs. Advocate''s fee : Rs. 500/-