THE HONOURABLE SRI JUSTICE D.RAMESH

WRIT PETITION Nos.13676 of 2020, 13700 of 2020, 13647 of 2020, 13648 of 2020, 13655 of 2020, 13675 of 2020, 17468 of 2020, 17519 of 2020, 13646 of 2020, 17511 of 2020, 8515 of 2020, 8516 of 2020, 8517 of 2020, 8293 of 2020, 8803 of 2020, 8300 of 2020 and 8501 of 2020.

COMMON ORDER:

Heard learned Senior Counsel Sri A.Sudarshan Reddy for Sri G.Madhusudhan Reddy, learned Counsel Sri N.Subba Rao and Sri P.Roy Reddy for petitioners and Sri P.Sudhakara Reddy, Additional Advocate General for respondents.

2. W.P.No.13676 of 2020 is filed for:

The writ petition is filed under Article 226 of the Constitution of India seeking to call for the records relating to the 2nd respondent's proceedings dt.31.7.2020 in Notice No.873/V & E/2020-7 in respect of the lease covering 4.100 hectares in Sy.No.107/1, 108/P, 95/P, 112/2P, 113/2P and 113/3P of Gurijepalli (V), Santhamaguluru (M), Prakasam District.

3. W.P.No.13700 of 2020 filed for:

The writ petition is filed under Article 226 of the Constitution of India seeking to call for the records connected to and in relation with the 2nd respondent's show cause notice No.873/V&E/2020-6 dated 31.7.2020 in respect of the lease covering 3.093 hectares in Sy.No.103/P, Konidena Village, Ballikurava Mandal of Prakasam District.

4. W.P.No.13647 of 2020 filed for:

The writ petition is filed under Article 226 of the Constitution of India seeking to call for the records relating to the 2nd respondent's proceedings dt.31.7.2020 in notice No.873/V&E/2020-9 in respect of the lease covering 6.400 hectares in Sy.No.103/P, Konidena Village, Ballikurava Mandal of Prakasam District.

5. W.P.No.13648 of 2020 filed for:

The writ petition is filed under Article 226 of the Constitution of India seeking to call for the records relating to the 2nd respondent's proceedings dt.31.7.2020 in notice No.873/V&E/2020-8 in respect of the lease covering 3.791 hectares in Sy.No.103/2A, 104/1 to 5 and 104/6B of Gurijepalli Village, Santhamaaguluru Mandal, Prakasam District.

6. W.P.No.13655 of 2020 filed for:

The writ petition is filed under Article 226 of the Constitution of India seeking to call for the records connected to and in relation with the 2nd respondent's show cause notice No.873/V&E/2020-13 dated 31.7.2020 in respect of the lease covering 7.251 hectares in Sy.No.58/P, Budavada (V), Cheemakurthi (M), Prakasam District.

7. W.P.No.13675 of 2020 filed for:

The writ petition is filed under Article 226 of the Constitution of India seeking to call for the records of the 2nd respondent's proceedings dt.31.7.2020 in notice No.873/V&E/2020-2 in respect of the lease covering 4.500 hectares in Sy.No.872/1P&2 and 873/1 of Konidena (V), Ballikuruva (M), Prakasam District.

8. W.P.No.17468 of 2020 filed for:

The writ petition is filed under Article 226 of the Constitution of India seeking to declare the action of the respondents 2 and 3 in preventing the petitioner from obtaining dispatch permits in respect of mineral excavated by it from the quarry covered by an extent of over 4.100 hectares in Sy.No.107/1, 108/P, 95/P, 112/2P, 113/2P and 113/3P of Gurijepalli (V), Santhamaguluru (M), Prakasam District.

9. W.P.No.17519 of 2020 filed for:

The writ petition is filed under Article 226 of the Constitution of India seeking to declare the action of the respondents 2 and 3 in preventing the petitioner from obtaining dispatch permits in respect of

mineral excavated by it from the quarry covered by an extent of over 3.093 hectares in Sy.No.103/P of Konidena (V), Ballikuruva (M), Prakasam District.

10. W.P.No.13646 of 2020 filed for:

The writ petition is filed under Article 226 of the Constitution of India seeking to call for the records connected to and in relation with the 2nd respondent's show cause notice No.873/V&E/2020-1 dated 31.7.2020 in respect of the lease covering 4.000 hectares in Sy.No.103 of Konidena(V), Ballikuruva (M), Prakasam District.

11. W.P.No.17511 of 2020 filed for:

The writ petition is filed under Article 226 of the Constitution of India seeking to declare the action of the respondents 2 and 3 in preventing the petitioner from obtaining dispatch permits in respect of mineral excavated by it from the quarry covered by an extent of over 4.000 hectares in Sy.No.103 of Konidena (V), Ballikuruva (M), Prakasam District and in not issuing dispatch permits for the same.

12. W.P.No.8515 of 2020 filed for:

The writ petition is filed under Article 226 of the Constitution of India seeking to call for the records connected to and in relation with the 2nd respondent's show cause notice No.873/V&E/2020-6 dated 20.3.2020 (served on 21.4.2020) in respect of the lease covering 3.093 hectares, Sy.No.103/P, Konidena (V), Ballikuruva (M), Prakasam District and quash the same.

13. W.P.No.8516 of 2020 filed for:

The writ petition is filed under Article 226 of the Constitution of India seeking to call for the records connected to and in relation with the 2nd respondent's show cause notice No.873/V&E/2020-1 dated 13.3.2020 in respect of the lease covering 4.000 hectares in Sy.No.103 of Konidena(V), Ballikuruva (M), Prakasam District and quash the same.

14. W.P.No.8517 of 2020 filed for:

The writ petition is filed under Article 226 of the Constitution of India seeking to call for the records connected to and in relation with the 2nd respondent's show cause notice No.873/V&E/2020-8 dated 21.3.2020 (served on 21.4.2020 by e-mail and on 05.5.2020 by registered post) in respect of the lease covering 3.791 hectares, Sy.No.103/2A, 104/1 to 5, 104/6B, Gurijepalli(V), Santhamaguluru (M), Prakasam District and quash the same.

15. W.P.No.8293 of 2020 filed for:

The writ petition is filed under Article 226 of the Constitution of India seeking to call for the records connected to and in relation with the 2nd respondent's show cause notice No.873/V&E/2020-7 dated 19.3.2020 (served on 21.4.2020) in respect of the lease covering 4.100 hectares, Sy.No.107/1, 108/P, 95/P, 112/2P, 113/2P and 113/3P of Gurijepalli (V), Santhamangaguluru (M), Prakasam District and quash the same.

16. W.P.No.8803 of 2020 filed for:

The writ petition is filed under Article 226 of the Constitution of India seeking to call for the records connected to and in relation with the 2nd respondent's show cause notice No.873/V&E/2020-9 dated 19.3.2020 (served on 21.4.2020) in respect of the lease covering 6.400 hectares, Sy.No.103/P, Konidena (V), Ballikurava (M), Prakasam District and quash the same.

17. W.P.No.8300 of 2020 filed for:

The writ petition is filed under Article 226 of the Constitution of India seeking to call for the records connected to and in relation with the 2nd respondent's show cause notice No.873/V&E/2020-2 dated 21.3.2020 (served on 21.4.2020) in respect of the lease covering 4.500 hectares, Sy.No.872/1P&2 and 873/1 of Konidena (V), Ballikurava (M), Prakasam District and quash the same.

18. W.P.No.8501 of 2020 filed for:

The writ petition is filed under Article 226 of the Constitution of India seeking to call for the records connected to and in relation with the 2nd respondent's show cause notice No.873/V&E/2020-13 dated 21.3.2020 (served on 21.4.2020 through e-mail and on 01.5.2020 through registered post) in respect of the lease covering 7.251 hectares, Sy.No.58/P, Budavada (V), Cheemakurthi (M), Prakasam District and quash the same.

For the sake of convenience the following tabular forms are noted.

S.No.	Name of the learned Advocate	Writ Petition number
1.	Sri P.Roy Reddy	W.P.No.13676 of 2020
2.		W.P.No.13700 of 2020
3.		W.P.No.13647 of 2020
4.		W.P.No.13648 of 2020
5.		W.P.No.13655 of 2020
6.		W.P.No.13675 of 2020
7.		W.P.No.17468 of 2020
8.		W.P.No.17519 of 2020
9.	Sri N.Subba Rao	W.P.No.13646 of 2020
10.		W.P.No.17511 of 2020
11.		W.P.No.8515 of 2020
12.		W.P.No.8516 of 2020
13.		W.P.No.8517 of 2020
14.	Sri G.Madhusudhan Reddy	W.P.No.8293 of 2020
15.		W.P.No.8803 of 2020
16.		W.P.No.8300 of 2020
17.		W.P.No.8501 of 2020

SNo.	W.P.Number	Name of the petitioner	Extent, survey number, village etc
1.	13676 of 2020	M/s. Kishore Granites Pvt. Ltd represented by its Managing Director Sri Gottipati Ravi Kumar	4.100 hectares, Sy.No.107/1, 108/P, 95/P, 112/2P, 113/2P and 113/3P, Gurijepalli(V), Santhamaguluru (M), Prakasam District.
2.	13700 of 2020	-do-	3.093 hectares, Sy.No.103/P of Konidena (V), Ballikuruva (M), Prakasam District.
3.	13647 of 2020	M/s. Kishore Slabs and Tiles, rep. by its Proprietrix, Smt. Gottipati Jhansi	6.400 hectares, Sy.No.103/P of Konidena (V), Ballikuruva (M), Prakasam District.
4.	13648 of 2020	M/s. Kamepalli Granites and Exports rep. by its Managing Partner Kamepalli Lakshmi	3.791 hectares, Sy.No.103/2A, 104/1 to 5 and 104/6B, Gurijepalli (V),

		Prasad	Santhamagulur (M), Prakasam District.
5.	13655 of 2020	M/s. Kishore Black Gold Granites Pvt. Ltd rep by its Managing Director Gottipati Ravi Kumar	7.251 hectares, Sy.No.58/P, Budavada (V), Cheemakurthi (M), Prakasam District.
6.	13675 of 2020	M/s. Sri Sai Lakshmi Granites, rep. by its Managing Partner Kamepalli Lakshmi Prasad.	4.500 hectares, Sy.No.872/1P & 2, 873/1 of Konidena (V), Ballikuruva (M), Prakasam District.
7.	17468 of 2020	M/s. Kishore Granites Pvt. Ltd represented by its Managing Director Sri Gottipati Ravi Kumar	4.100 hectares, Sy.No.107/1, 108/P, 95/P, 112/2P, 113/2P and 113/3P, Gurijepalli(V), Santhamaguluru (M), Prakasam District.
8.	17519 of 2020	M/s. Kishore Granites Pvt. Ltd represented by its Managing Director Sri Gottipati Ravi Kumar	3.093 hectares, Sy.No.103/P of Konidena (V), Ballikuruva (M), Prakasam District.
9.	13646 of 2020	G.Ankamma Chowdary,	4.000 hectares, Sy.No.103 of Konidena(V), Ballikuruva (M), Prakasam District.
10.	17511 of 2020	G.Ankamma Chowdary,	4.000 hectares, Sy.No.103 of Konidena(V), Ballikuruva (M), Prakasam District.
11.	8515 of 2020	M/s. Kishore Granites Pvt. Ltd represented by its Managing Director Smt. Gottipati Radhika	3.093 hectares, Sy.No.103/P, Konidena (V), Ballikuruva (M), Prakasam District.
12.	8516 of 2020	G.Ankamma Chowdary,	4.000 hectares, Sy.No.103 of Konidena(V), Ballikuruva (M), Prakasam District.
13.	8517 of 2020	M/s. Kamepalli Granites and Exports rep. by its Managing Partner Kamepalli Lakshmi Prasad	3.791 hectares, Sy.No.103/2A, 104/1 to 5, 104/6B, Gurijepalli(V), Santhamaguluru (M), Prakasam District.
14.	8293 of 2020	M/s. Kishore Granites Pvt. Ltd represented by its Managing Director Smt. Gottipati Radhika	4.100 hectares, Sy.No.107/1, 108/P, 95/P, 112/2P, 113/2P and 113/3P of Gurijepalli (V), Santhamangaguluru (M), Prakasam District.
15.	8803 of 2020	M/s. Kishore Slabs and Tiles, rep. by its proprietrix Smt. Gottipati Jhansi	6.400 hectares, Sy.No.103/P, Konidena (V), Ballikuruva (M), Prakasam District.
16.	8300 of 2020	M/s. Sri Sai Lakshmi Granites, rep. by its Managing Partner, Kamepalli Lakshmi Prasad.	4.500 hectares, Sy.No.872/1P, 873/1 of Konidena(V), Ballikuruva (M), Prakasam District.
17.	8501 of 2020	M/s. Kishore Black Gold Granites Pvt. Ltd rep by its Managing Director Gottipati Ravi Kumar	7.251 hectares, Sy.No.58/P, Budavada (V), Cheemakurthi (M), Prakasam District.

As issue involved in all the writ petitions is identical, hence all the writ petitions were heard together and disposed of with a common order.

19. The petitioners were granted quarry lease for black galaxy granite over different extents in various survey numbers at various places in Prakasam District for a period of 20 years and the same is valid up to 24.2.2024. Pursuant to the said grant, petitioners have been extracting mining black galaxy granite strictly in accordance with the terms and conditions of the lease as well as the provisions of the Mines and Minerals (Development and Regulation Act, 1957) and the rules made there under i.e. under A.P.Mining and Minerals Concession Rules 1966. While that being the position, the Additional Director of Mines and Geology had issued show cause notices on 13.02.2020. Challenging the same, the petitioner has filed W.P.No.5068 of 2020. The same was disposed of along with batch of matters by a common order of this Court dated 28.02.2020 with the following directions:

> *6. A perusal of the above memo shows that it was stated to be issued by the Secretary to Government stating that Additional Director, Mines and Geology was authorized to issue notices and take decision on the matters of urgent nature and immediate decision warranted under relevant Rules of Mines and Minerals till further orders. No doubt, this memo reads as if power is granted to Additional Director to issue notices and take other immediate decisions. However, learned Government Pleader, on the question of the Court as to where from the Secretary to Government has drawn the authority to issue such memo, could not convincingly clarified. It is to be noted that Statute has not specifically mentioned the Additional Director for taking certain actions including issuance or determination of lease. Ergo, an executive fiat in the form of a memo cannot confer any power on any authority other than the Director to do certain acts. In that view, this Court is of the considered opinion that by virtue of the Memo No.24438/E1/2017, dated 03.01.2020, the Secretary to the Government cannot confer power on Sri K.C.L.Narasimha Reddy, Additional Director, to issue notice and take decisions on matters of urgent nature and immediate decisions as mentioned in the memo. Thus, the Additional Director has no statutory power to issue show-cause notices in the above writ petitions.*
>
> *7. Accordingly, in view of the legal infirmity stated supra, the impugned notices are hereby set aside. However, this order will not preclude the authorities from issuing fresh show-cause notices to the petitioners through proper authority by enclosing all the relevant documents, in which case, the petitioners will have right to submit*

their explanation by taking all the factual and legal pleas which are available to them. These writ petition are disposed of accordingly.

20. Pursuant to the above orders, the present show cause notice was issued on 21.3.2020 by the 2nd respondent herein and the same was served on the petitioners on 21.4.2020 by e-mail and the hard copy was received by the petitioner by way of registered post on 25.4.2020 on the following grounds:

Action will be initiated under Rule 26(1) of APMMC Rules 1966, Rule 12(5)(h)(iii) of APMMC, 1966 for having excavated and transported 749 cum of Colour Granite without payment of seigniorage fee in contravention to condition 5 of grant read with Rule 12(5)(h)(iii) of APMMC, 1966 and under Rule 47 of Granite Conservation Development Rules, 1999 as they have conducted mining operations which is gross violation in accordance with Rule 18(2), 19(1), 31(1), 37 and 41(a)&(b) of Granite Conservation and Development Rules, 1999.

Accordingly, issued show cause notice vide ref 5th cited, to show cause within (15) days from the date of receipt of this notice, as to why action should not be taken against you/on your lease in the subject area as per Rule 12(5)(h)(xii) of APMMC Rules 1966.

"The Hon'ble High Court of A.P in W.P.No.4894 of 2020 and batch pronounced the following Common Judgment on 28.02.2020 stating that the Additional Director has no statutory power to issue show cause notices. In view of legal informality, the impugned notices were set aside. However the order will not preclude the authorities from issuing fresh show cause notices to the petitioners through proper authority by enclosing all the relevant documents, in which case, the petitioners will have right to submit their explanation by taking all the factual and legal pleas which are available to them. The writ petitions are disposed of accordingly". Therefore fresh show cause notice is being issued.

In view of above circumstances, M/s Kishore Black Gold Granite Pvt. Ltd. Mg.D Sri Gottipati Ravi Kumar is here by directed to show cause within (15) days from the date of receipt of this notice, as to why action should not be taken against you/on your lease in accordance with Rule 12(5)(h)(xii) of APMMC Rules 1966 for the aforesaid violations committed by you/your company. In case, no reply is received within the stipulated time of (15) days, from the date of receipt of the notice, it will be construed that the lessee/company has no reply to be offered and necessary action will be taken as per APMMC Rules, 1966 based on the material available on record.

21. Assailing the said show cause notice raising several grounds filed the present writ petition. At the stage of admission after hearing parties, this Court has passed the following order on 11.5.2020

"Hence in this case also, there shall be liberty to the petitioner to submit his explanation to show cause notice, dated 21.3.2020 within a period of two weeks from the date of lifting of lockdown. The respondents shall not take any coercive steps against the petitioner till such time".

Said interim orders are extended by this Court time to time.

22. It is not out of place to mention that whereas national wide lockdown to combat the spread of Covid-19, taking the prevailing situation into consideration, the Division Bench of this Court has issued the following general directions.

> *(i) All the cases in which interim orders were passed by the High Court, District Courts, Civil Courts, Family Courts, Labour Courts, Industrial and other Tribunals, functioning in the State of Andhra Pradesh, over which the High Court has the power of superintendence and the stay has expired two weeks prior or are due to expire within a period of one month, shall continue to operate for a further period of one month from today. It is made clear here that interim orders which are having a limited duration shall continue to operate until further orders;*

In view of the above, the petitioners could not submit their explanation/reply, but without taking the above circumstances into consideration, the respondents have straight away issued demand notice for payment of Rs.1,35,19,000/- on 31.7.2020. Assailing the said notice, the petitioner has filed writ petition i.e. W.P.No.13655 of 2020. After hearing the arguments of the learned counsel for the petitioner, this Court passed the following interim order on 11.8.2020:

> *"The contentions raised in the Writ Petition can be decided only after the counter-affidavit is filed. As the validity of the show cause notice is itself in issue in the previous writ petition and as the interim direction granted therein not to take any coercive steps, is still in force and is not vacated and as the present impugned demand notice dated 31.07.2020 is a consequence of the said show cause notice, the impugned demand notice dated 31.07.2020, is suspended until further orders".*

23. The writ petitioner has different mining areas/leases. Hence various show cause notices as well as consequential demand notices were issued. Assailing the same he has filed various writ petitions i.e. W.P.No.8300, 8501, 8803, 13647, 13648, 13655, 13675, 17468, 17519 and 13700 of 2020.

24. The 2nd respondent has filed their counter on behalf of the 1st respondent. In these batch of writ petitions M/s. Kishore Granites private

limited has different extents and different mining leases in their favour. In fact the 2nd respondent in his proceedings dated 17.8.2020 granted permission for clubbing of three quarry leases held by M/s. Kishore Granites for black granite under various survey numbers in Prakasam District for an extent of 4.100 hectares and the same was executed by the Assistant Director of Mines and Geology on 11.11.2014 and the lease is in force up to 07.4.2028. The petitioner has already quarry lease in the said area. The officials of the Vigilance & Enforcement, Mines and Geology on 24.11.2019 has conducted an inspection of the leased area of the petitioner in the presence of one C.Kowndinya, Mines Manager of the petitioner. According to the said inspection, the authorities have found various violations committed by the petitioner.

25. Subsequent to disposal of batch of writ petitions by this Court vide orders dated 28.2.2020, the 2nd respondent herein has issued show cause notice to various lease holders in different dates, requesting the petitioners to submit their explanation on the violations committed in conducting quarry operations as mentioned in the show cause notice. The said show cause notices were questioned by the petitioners in various writ petitions. Even though the notices were approved on 19.3.2020 but the same was not served on the petitioners in view of the covid conditions. After relaxation of the conditions of lockdown imposed by the Government of India, notices on different dates were served on the petitioners in the month of April and May through Assistant Director of Mines and Geology and also to their personal e-mails. Keeping in view of the several relaxations for operating mines and implementation of lockdown due to covid-19 pandemic, the Government of Andhra Pradesh has issued orders on 08.5.2020 according permission to operate all the mines and quarries duly following the standard operating procedure by petitioner by giving self certification/undertaking in the place of NOC at

work places of mines and quarries. Accordingly, the 2nd respondent has issued circular memo dated 08.5.2020 to the Additional Director of Mines and Geology and Deputy Director of Mines and Geology in the State with a direction to communicate the said instructions and guidelines to all the lease holders. As per the report of the Assistant Director of Mines and Geology, Ongole vide letter dated 17.6.2020 after submitting the self certification of undertaking the petitioners have been operating the quarry lease since 12.5.2020 after the lockdown period.

26. And further stated that the quarry lease of the petitioner was inspected jointly by the officials of Vigilance & Enforcement Department and Mines & Geology Department in the presence of Mines manager of the petitioner and recorded proceedings along with statements. The said facts have been recorded in the form of a report in alert notes and vigilance reports which are being signed by the Director General, GA (Vigilance & Enforcement) Department duly indicating the violation of the rules committed by the lease holders, and communicated to the Government, in turn the 1st respondent being forwarded to the Director of Mines and Geology and Assistant Director of Mines and Geology for taking necessary further action in accordance with rules.

27. Basing on the report submitted by the Vigilance and Enforcement department, the 2nd respondent has prepared a show cause notice on the violation noticed by the inspecting authorities. In the said report, Vigilance and Enforcement Department has pointed about violations of Rules and conditions of lease by the various lease holders. Therefore only inspections and survey reports along with statements recorded from the employees of the petitioners are enclosed along with show cause notice. Hence the alert note of the General Administration (Vigilance & Enforcement) Department and the Government memo dated 29.01.2020 were not communicated to the petitioner. In fact the show cause notice

was issued to offer explanation from the lease holders giving a reasonable time under the principles of natural justice. After examination of the reply given by the lease holders and if the said explanation is found not satisfactory or if no reply is received with in the stipulated time, then only the petitioner will be issued demand notice or determination orders by the department.

28. In fact the proceedings of the joint inspection was conducted by the officials of Mines & Geology and Enforcement Department dated 24.11.2019 in the presence of Sri T.Srinivasulu, Foreman of the quarry held by the petitioners. Basing on the inspection report only show cause notice has been issued to the petition on violations noticed during the course of inspection. Infact as per section 23(v) and 24 of M.M.D.R.Act 1957 and Rules 26(3) (i) of A.P.M.M.C.Rules 1966, the officials of Vigilance and Enforcement, Mines and Geology authorizes any person to find out the position of payment of mineral revenue to the Government by any of the lease holders. However the inspection was carried out in the presence of employees of the petitioner company, therefore there is no necessity to issue prior notice to the petitioner to carry out the survey and inspection. Hence the show cause notice issued to the petitioner on violations of the rules, reported by the Director of Mines and Geology Department are in accordance with law.

29. The Kishore Granites has filed his reply affidavit, to the counter affidavit filed by the 2nd respondent. In the counter affidavit filed by the 2nd respondent clearly indicates that the 2nd respondent has acted only in terms of alert note dated 03.01.2020 of the Director General (Vigilance & Enforcement) and the Government memo dated 29.01.2020. On perusal of the counter filed by the respondents, it clearly indicates that the 2nd respondent has not applied his mind independently to the issue in question. The entire counter affidavit filed by the 2nd respondent has

admitted that by relying the report/alert note of the Vigilance and Enforcement Department and the directions issued by the 1st respondent in his memo dated 29.01.2020, they have initiated action against petitioners. Further as contended by the 2nd respondent in his counter that taking advantage of lifting of lockdown without submitting a reply to the show cause notice, has started mining operation by the petitioners is without any basis and the same is untenable, in fact the petitioner has specifically stated that he has not conducted any quarrying activity as alleged by the respondent in his counter in fact the seigniorage fee that had been paid earlier in lump sum for that dispatch permits were issued.

30. Further, the 2nd respondent in his counter mainly relied on section 23(b) of M.M.D.R.Act is wholly mis-conceived and with a misconception. Reading of the said provision clearly indicates that there should be a specific order under section 23(b), authorizing any gazetted officer to conduct search for all search materials documents or things. But in the instant case, there is no such notification issued in favour of the Director General (Vigilance & Enforcement) or his subordinates has been authorized by the Government. Hence the reliance under section 23(b) of M.M.D.R.Act or 24 of M.M.D.R.Act is not at all applicable to the present case.

31. Further the counter filed by the 2nd respondent relied on the Government order relating to establishment of the Vigilance and Enforcement Department (G.O.Ms.No.269 dated 11.6.1985) and relating to the role of the said department (G.O.Ms.No.504 dated 25.11.1997) did not support the stand taken in the counter affidavit in any manner. These are only executive instructions issued under Article 162 of the Constitution of India and these executive instructions did not empower the said authority to interfere in the matter of operations of lease granted under M.M.D.R.Act, 1957 or A.P.M.M.C.Rules, 1966. Further the entire

case of the 2nd respondent is based on the confessions which were taken forcibly from the staff of the petitioner under coertion and threat cannot be empowered under Article 20(3) of Constitution of India.

32. The writ petitioners has raised the following grounds assailing the impugned notices. The impugned notices were issued by the 2nd respondent are illegal, arbitrary and malafide and are not in consonance with the Mines and Minerals Development Regulation Act 1957 and also the A.P.M.M.C.Rules, 1966. The impugned proceedings are issued based on the Government memo dated 29.01.2020 and in turn based on alert note dated 03.01.2020 from the Vigilance and Enforcement Department. The same is evidently demonstrated in issuing the cyclostyle notices to all the petitioners which shows that the said notices preceded by Government memo, as well as the alert note, resulted in total surrendering the statutory jurisdiction by 2nd respondent. Show cause notice issued by the 2nd respondent has not issued based on the inspection conducted independently by the parent Department. Without applying the mind by the competent authority just based on the alert note dated 03.01.2020 and also memo dated 29.01.2020 of the 1st respondent has issued the notices for extraneous reasons. The notices issued by the 2nd respondent are pre-decided and pre-judged as per the alert note dated 03.01.2020. Hence the said notices are not issued by applying mind as per the Rules of the A.P.M.M.C.Rules, 1966.

33. In view of the directions of the Government in its memo dated 29.01.2020 and the alert note dated 03.01.2020, the 2nd respondent had no other option except to adhere to the directions of the said authorities. Hence notices are prepared and signed at the behest of the external authorities i.e. the Director General of Vigilance and Enforcement who is also an ex-officio Principal Secretary to the Government.

34. Demand notices are issued by the 2nd respondent is contrary to the interim directions of this court, in all the writ petitions filed questioning show cause notices. In fact in all the matters this court while granting interim directions directed respondent not to take any coercive steps pursuant to the show cause notices. In fact the petitioners were benefited by the general directions issued by this Court considering the orders of the Hon'ble Apex Court in the circumstances of pandemic.

35. The demand notices issued by the respondents are not only the violation of interim directions of the Hon'ble High Court in various writ petitions but also general directions given by the Apex Court as well as orders of the Division Bench of this High Court.

36. In fact the alert notes are prepared only based on confessions made by various individuals. Hence the statements recorded by the Vigilance and Enforcement cannot be a ground for issuance of impugned notices.

37. The confessions made before the officials are inadmissible by virtue of Indian Evidence Act 1872. Hence pressing the same into the service in to the statutory lis would not arise. Hence the alert notes are prepared based on presumptions. In view of the above it is clear that the 2nd respondent has failed to exercise the power independently, in fact the impugned proceedings are issued under the supervisory control i.e. the directions of the Government as well as the Director General, Vigilance and Enforcement.

38. Considering the above pleadings, the following provisions of the A.P.M.M.C.Rules 1966 are necessary to decide the matter. In view of the better appreciation, the same is extracted.

The Mines and Minerals (Development and Regulation) Act, 1957

23B. Power to search.— If any gazetted officer of the Central or a State Government authorized by the Central Government3[or a State Government, as the case may be,] in this behalf by genera! or special order has reason to believe that any mineral has been raised in contravention of the provisions of this Act or

rules made thereunder or any document or thing in relation to such mineral is secreted in any place3[or vehicle], he may search for such mineral, document or thing and the provisions of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to every such search.

*24. Power of entry and inspection.—(1) For the purpose of ascertaining the position of the working, actual or prospective, of any mine or abandoned mine or for any other purpose connected with this Act or the rules made thereunder, any person authorized by the1[Central Government or a State Government] in this behalf, by general2*** order, may—(a) enter and inspect any mine;(b) survey and take measurements in any such mine;(c) weigh, measure or take measurements of the stocks of minerals lying at any mine;(d) examine any document, book, register, or record in the possession or power of any person having the control of, or connected with, any mine and place marks of identification thereon, and take extracts from or make copies of such document, book, register or record;(e) order the production of any such document, book, register, record, as is referred to in clause (d); and(f) examine any person having the control of, or connected with, any mine.(2) Every person authorized by the1[Central Government or a State Government] under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, and every person to whom an order or summons is issued by virtue of the powers conferred by clause (e) or clause (f) of that sub-section shall be legally bound to comply with such order or summons, as the case may be*

The A.P.Minor Mineral Concession Rules, 1966

20. Rights under a Lease:–Subject to a contract to the contrary, a quarry lease granted under the rules shall confer on the lessee, the right to quarry, carry away, sell or dispose of the minor mineral or minerals specified in the lease deed and found upon under the lands specified therein

26. Penalty for unauthorised quarrying:–

(3)(i) For the purpose of ascertaining the position of payment of Mineral Revenue due to the Government or for any other purpose under these rules, the person authorized under sub-rule (2) may–(a) enter and inspect any premises ;(b) survey and take measurements ;(c) weigh, measure or take measurements of stocks of minerals ;(d) examine any document, book, register or record in the possession or power of any person having the control of, or connected with any mineral including the processed mineral and place marks of identification thereon and take extracts from, or make copies of such document, book, register or record ; and(e) order the production of any such document, book, register, record as is referred in Clause (d).(ii) If no documentary proof is produced in token of having paid the mineral revenue due to the Government by any person who used or consumed or in possession of any mineral including the processed mineral, he shall notwithstanding anything contained in sub-rule (1) be liable to pay 2[five times] of the normal seigniorage fee as penalty in addition to normal seigniorage fee leviable under the rules.

34. Despatch permit:–2[(1) No minor mineral shall be dispatched from any of the leased areas without a valid permit issued by the Assistant Director of Mines and Geology concerned or an officer authorized in this behalf by the Director of Mines and Geology:3[Provided that any misuse of the transit forms without paying Seigniorage Fee and not accompanied by the transit forms used by the Assistant Director of Mines & Geology concerned or an officer authorized in this behalf by the Director of Mines & Geology and any other contravention, shall result in forfeiture of Security Deposit and levy of normal Seigniorage Fee along with "five times" penalty by the Assistant Director of Mines & Geology concerned or the Officer as authorized by the Director of Mines & Geology.]](2) The application for the despatch permit under sub-rule (1) shall be made by

the lessee to the Assistant Director concerned in Form-K by duly enclosing challans towards advance payment of seigniorage fee for the proposed quantity to be despatched atleast ten days before the proposed date of dispatch of the mineral. The permit shall be issued by the competent authority in Form-

Based on the above pleadings learned Senior Counsel Sri A.Sudarshan Reddy appearing on behalf of the learned counsel for petitioners in W.P.No.8501 and 13655 of 2020 has mainly argued that the impugned orders are not independent orders, and the 2nd respondent without applying his mind, solely on the directions of the 1st respondent, the impugned orders are issued. Secondly, he contended that the impugned show cause notice issued on 21.3.2020 are contrary to the directions of this Court in W.P.No.4894 of 2020 and batch. Thirdly he contended that the impugned orders are pre-determined/pre-decisive and in view of the above no purpose would serve even if the petitioners submits any reply or explanation to the said show cause notice.

39. To substantiate the above arguments, the learned Senior Counsel has pointed out the references made in the impugned order dated 21.3.2020. References 1 to 6:

1. *DMG grant proceedings No.22745/R3-2/2015 dt.16.4.2018.*
2. *ADM&G, Ongole, proceedings No.7677/Q/2015 dt.02.5.2018.*
3. *From GA(V&E) Dept. Alert Note No.04(C.No.4145/V&E/NR.1/2019.*
4. *Govt.(Ind.Comm.Dept)Memo No.460/Vig.A1/2020 dt.29.01.2020*
5. *This Office Show Cause Notice No.873/V&E/2020-8 dt.13.2.2020*
6. *Judgment pronounced by the Hon'ble High Court of A.P, in W.P.No.4894 of 2020 dt.28.02.2020.*
7.

According to the third reference, Alert Note No.04(C.No.4145/V&E/NR.1/2019 is from General Administration (Vigilance & Enforcement) Department, and reference no.4 is Government memo dated 29.01.2020. On perusal of the references in the impugned notice, clearly indicates that the said notice is issued only basing on the alert note submitted by Vigilance and Enforcement Department. Based on the said alert note, Government has issued memo on 29.01.2020. Even on perusal of the Government memo dated

29.01.2020 clearly indicates that the Government has specifically directed to initiate necessary action in the matter, immediately. If the Government memo is read with alert note, the 2nd respondent Director who is the competent authority has no option except to initiate action against the petitioners. In view of the above it clearly indicates that the impugned notice issued by the 2nd respondent is only at the behest of 1st respondent basing on the alert note. On this ground, the impugned notice has to be set aside.

40. Secondly the earlier show cause notice was issued basing on the said alert note. While disposing the batch of writ petitions, this Court has categorically directed while setting aside the notice, to issue fresh show cause notice to the petitioners through proper authority by enclosing all relevant documents to the petitioners to submit their explanations by taking all the factual and legal pleas available to them. Despite the specific directions given by this Court, the authorities have not supplied the documents which are relied by the authorities in the impugned notice. According to the references made in the impugned notice, the basis for issuance of impugned show cause notice is a report from the Director General Vigilance & Enforcement Department, alert note dated 03.01.2020 and also the Government memo dated 29.01.2020. But the authorities have not supplied the said documents along with the notice to submit their replies as directed by this Court in batch of writ petitions. Hence the impugned notice is contrary to the specific directions of this court dated 28.02.2020.

41. Finally, the learned Senior Counsel has contended that the impugned notice issued by the 2nd respondent has already decided the lapses and the quantum of penalty. Hence it is a pre-decided notice. When the authorities have decided the lapses as well as the quantum of penalty, no purpose would serve, in submitting the reply/explanation by

the petitioners. Hence the impugned notice is a pre-decided notice which is contrary to law decided by the Hon'ble Apex Court in various judgments. And further argued that questioning the impugned show cause notice assailed in writ petition no.8501 of 2020, at the initial stage, this Court has granted interim direction and the same was extended time and again apart from that as per the general directions issued by the Division Bench of this Court, the subsequent demand notice issued by the respondents, is nothing but violation of the interim directions granted by this Court. Hence the said demand notices are illegal and void.

42. To support the above contentions, the learned Senior Counsel had relied on the following judgments.

Siemens Ltd. V. State of Maharashtra and others[1]

> *Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma and Anr. AIR 1987 SC 943, Special Director and Another v. Mohd. Ghulam Ghouse and Another, (2004) 3 SCC 440 and Union of India and Another v. Kunisetty Satyanarayana, 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I. Shephard and Others v. Union of India and Others (1987) 4 SCC 431 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause.*
>
> *The said principle has been followed by this Court in V.C. Banaras Hindu University and Ors. v. Shrikant [2006 (6) SCALE 66], stating:*
>
> *"The Vice Chancellor appears to have made up his mind to impose the punishment of dismissal on the Respondent herein. A post decisional hearing given by the High Court was illusory in this case.*
>
> *In K.I. Shephard & Ors. etc. etc. v. Union of India & Ors. [AIR 1988 SC 686], this Court held :*
>
> *"It is common experience that once a decision has been taken, there is tendency to uphold it and a representation may not really yield any fruitful purpose."*
>
> *[See also Shri Shekhar Ghosh v. Union of India & Anr. 2006 (11) SCALE 363 and Rajesh Kumar & Ors. v. D.C.I.T. & Ors. 2006 (11) SCALE 409] A bare perusal of the order impugned before the High Court as also the statements made before us in the counter affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof,*

[1] (2006) 12 SCC 33

the same does not remain in the realm of a show cause notice. The writ petition, in our opinion, was maintainable.

Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others[2]

The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficarious remedy is available, the High Court would nor normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

Devinder Singh and others v. State of Punjab and others[3]

When an order is passed without jurisdiction, it amounts to colourable exercise of power. Formation of opinion must precede application of mind. Such application of mind must be on the materials brought on record. The materials should be such which are required to be collected by the authorities entitled therefore. The authorities must act within the four corners of the statute. An opinion formed even on the basis of an advice by an authority which is not contemplated under the statute renders the decision bad in law. A statutory authority is bound by the procedure laid down in the statute and must act within the four corners thereof.

D.Ramesh Sinha v. Cadre authority for Key Personnel of Co-operative Central Banks/Apex Bank[4]

Having regard to the aforementioned notings in the records, we have no doubt whatsoever that the impugned orders of suspension have been passed pursuant to and in furtherance of the directions issued by the State Government. Power to initiate disciplinary proceedings against an employee or place him under suspension emanates from a statute. While exercising such statutory power, the competent authority, must therefore, apply its mind independently as to whether the conditions precedent for exercising such power exist. It is now trite that if a statutory authority acts at the behest of some other authority, however high he may be, who has no statutory role to play in the matter, then such action/or any order passed by him, would be a nonest in the eye of law. It is also well settled that while passing an order, if the statutory authority ignores the relevant factors or takes into considerations, factors not germane for the passing of the order, then such action or the order flowing from such action, would be vitiated in law. Equally well settled is the principle that the statutory authority while exercising statutory powers, must pose correct questions so as to apply correct legal principles and arrive at correct conclusions basing on the actual and exact state of

[2] (1998) 8 SCC 1
[3] (2008) 1 SCC 728
[4] 2001 SCC OnLine AP 1206

> *affairs, and if he fails to do so, the same would amount to misdirection in law. Although decisions on this score are galore, suffice it to refer to the decision of the Apex Court in Commissioner of Police v. Gordhandas, AIR 1952 SC 16 and the decision of the Court of Appeal, Civil division, in Secretary of State v. Tameside, (1976) 3 All. ER 665*

43. Sri N.Subba Rao, learned Counsel for the petitioner in W.P.13646 of 2020, 17511 of 2020, 8515 of 2020, 8516 of 2020 and 8517 of 2020 adopted the arguments of the learned Senior Counsel and supplementing to the said arguments, he submitted that the show cause notice is pre-determined and the said show cause notice issued as per the directions of the Appellate authority which is contrary to sections 35 and 35-A of A.P.M.M.C.Rules 1966. As per sections 35 and 35-A, the Director is the primary authority and Government is the appellate authority. But contrary to the same as directed by the appellate authority, the primary authority has issued show cause notice. Hence the notice issued as directed by the appellate authority is contrary to the settled principle of law. In fact as per section 35 if any order is passed by the Assistant Director or Deputy Director under these rules an appeal lies to the Director and as against the order of the appeal a revision lies to the Government. According to section 35-A the Government may either suo-moto or an application made may examine the record relating to the orders passed or proceedings taken by the Director. But in the instant case, the impugned orders are issued as directed by the 1st respondent being an appellate or Revisional authority. Hence the said notices are contrary to Rule 35 and 35-A.

44. Further the learned counsel has argued that even though in their counter, the respondents are relying that the inspection was done as per the provisions of the Act by the officials of the Mining Department along with Vigilance and Enforcement Department. But the impugned notices neither issued nor stated, anywhere that, the action has been initiated as per the inspection or survey conducted by the Department. Hence the

impugned notices are issued not on the basis of the inspection or survey reports of the parent department and only relying on the alert note sent by the Vigilance and Enforcement Department. In the entire impugned notice as well as in the counter their sole ground for issuance of show cause notice is based on the alert note submitted by the Vigilance and Enforcement Department and there is no reference of survey or inspection conducted by the Department. Hence the said notices are contravention to the rules more particularly Rule 35 and 35-A of the A.P.M.M.C.Rules. He further contended that the impugned notices are issued contrary to the directions of the Hon'ble High Court in a batch of matter and apart from that in all the matters initial interim directions were granted not to take any coercive steps pursuant to the show cause notice and the same were extended time and again. Despite the said directions even before filing counter, the authorities have issued demand notice which are against to the interim directions granted by this Court in all the matters. To support his contentions he has relied on the judgment reported in ***Kalari Nagabhushana Rao v. The Collector, Panchayat Wing, Guntur and Ors***[5].

45. Sri P.Roy Reddy, Counsel appearing in W.P.No.13700 of 2020, 13676 of 2020, 13647 of 2020, 13648 of 2020, 13655 of 2020, 13675 of 2020, 17468 of 2020 and 17519 of 2020, in addition to the above grounds has contended that the series of notices issued to the petitioner is nothing but malice in law. The writ petitioner being a sitting M.L.A. belong to a particular political party, the respondents have issued several notices. By seeing these notices it is nothing but abuse of process. He submitted that initially show cause notice was issued on 29.01.2020 and the second show cause notice on 20.3.2020, and the demand notice was issued on 31.7.2020, and stop production orders were passed on

[5] AIR 1978 AP 444

14.8.2020, and determination orders were passed on 20.8.2020. In all these notices initial notice dated 29.01.2020 was set aside by this Court and subsequently in the second notice 20.3.2020, this Court granted interim direction and further directed not to take any coercive steps pursuant to the said notice. Despite the said directions are existing the authorities have passed demand notice on 30.7.2020 wherein the said notices were stayed, then they have issued stop production orders on 14.8.2020. The said orders were set aside by this Court in W.P.No.15077 of 2020 on 27.8.2020. After that the authorities have passed finally determining the lease on 20.8.2020. So the action of the respondents is nothing but malice in law and sheer abuse of powers of the respondents. In fact this court in W.P.No.15077 of 2020 has also observed while setting aside the stop production orders, that when the interim orders were granted in W.P.No.8515 of 2020 restricting the respondents with regard to taking any coercive steps against the petitioner which includes the determination of lease. It appears that the respondents are ill advised on what should be their course of action. The interpretation of first order of the stay is not subject to any ambiguity but yet the respondents seems to be figuring ignorance and proceedings with issuance of one notice after the other. This court exercise some restraint saying in further on the account of respondent. It only wishes that the respondent would act with proper understanding of the Court orders. In view of the observations made by the Court it clearly establishes that the vindictive attitude of the respondents against the petitioner.

46. He further contended that the appellate authority has no jurisdiction to act as an original authority. In the instant case, the Government as directed vide memo dated 29.01.2020, the 2nd respondent has issued the present impugned notice and all further consequential actions. Even though the notice issued by the 2nd

respondent basing on the directions of the first respondent hence the said notice cannot be treated as issued by the primary authority. Further contended that when there is an interim direction, all consequential notices and orders passed by the authorities are ultra vires and not in existence in the eye of law. Finally he has stated that as contended by the respondents in their counter that the alternative remedy is not a bar to file a writ petition under Article 226 of the Constitution of India. To support his contentions the learned Counsel has relied on the following judgments.

State of Punjab and another v Gurdial Singh and others[6]

> *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 satisfactions-is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment 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.*
>
> *By these canons it is easy to hold that where one of the requisites of s. 4 or s. 6, viz., that the particular land is needed for the public purpose in view, is shown to be not the goal pursued but the private satisfaction of wreaking vengeance, if the moving consideration in the selection of the land is an extraneous one, the law is derailed and the exercise is bad. No that this land is needed for the mandi, in the judgment of Government, but that the mandi need is hijacked to reach the private destination of depriving an enemy of his land through back- seat driving of the statutory engine ! To reach this conclusion, there is a big 'if' to be proved-if the real object is the illegitimate one of taking away the lands of the respondents 1 to 21 to vent the hostility of Respondent 22, under the mark of acquistion for the mandi.*
>
> *This is a question of fact and the High Court, twice over, within a period of seven years, held so, although the second time no specific finding of mala fides was made. I do not quite see how else the acquisition can fail and infer,*

[6] (1980) 2 SCC 471

not res judicata nor contempt of court but repetition of mala fide acquisition as the real ground behind the High Court's holding. This court does not upset a factual finding unless it is upset by perverse assessment, absence of evidence and the like. None such exists and I concur. But what have respondents 1 to 21 made out ? When power runs haywire under statutory cover, more needs to be said to make good the exposure. This takes me to a projection, in detail, on the screen of time, of the alleged politicking behind the taking of property challenged in this case.

Rajaram Jaiswal v Collector (District Magistrate) Allahabad and another[7]

The High Court disposed of the contention by an over- simplification of this tangled web of facts without making the least attempt at unearthing the real motives of the Sammelan- The tell tale facts disclose motives and unravel hidden objects- The High Court by passed them by simply observing that there is nothing on record to indicate that the Collector or the State Government are inclined to act against the petitioner for any improper motives. The High Court unfortunately missed the real contention of legal mala fides, as also an important piece of evidence that the Collector on whom the statute confers power to initiate proceeding for acquisition himself was satisfied that Sammellan sought acquisition not because it requires the land but it wants to stop or do away with the cinema theatre. This becomes evident from the letter of the District Magistrate dated November 8, 1971.

It is well-settled that where power is conferred to achieve a certain purpose, the power can be exercised only for achieving that purpose. Sec. 4 (1) confers power on the Government and the Collector to acquire land needed for a public purpose. The power to acquire land is to be exercised for carrying out a public purpose. If the authorities of the Sammelan cannot tolerate the existence of a cinema theatre in its vicinity, can it be said that such a purpose would be a public purpose ? May be the authority of the Sammelan may honestly believe that the existence of a cinema theatre may have the pernicious tendency to vitiate the equcational and cultural environment of the institution and therefore, it would like to wish away a cinema theatre in its vicinity. That hardly constitutes public purpose. We have already said about its proclaimed need of land for putting up Sangrahalya. It is an easy escape route whenever Sammelan wants to take over some piece of land. Therefore, it can be fairly concluded that the Sammelan was actuated by extraneous and irrelevant considerations in seeking acquisition of the land the statutory authority having known this fact yet proceeded to exercise statutory power and initiated the process of acquisition. Does this constitute legal mala fides Where power is conferred to achieve a purpose it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to effectuate the purpose. And in this context 'in good faith' means 'for legitimate reasons'. Where power is exercised for extraneous or irrelevant considerations or reasons, it is unquestionably a colourableq exercise of power or fraud on power and the exercise of power is vitiated. If the power to acquire land is to be exercised, it must be exercised bona fide for the statutory purpose and for none other. If it is exercised for an extraneous, irrelevant or non-germane consideration, the acquiring authority can be charged with legal mala fides In such a situation there is no question of any personal ill- will or motive. In Municipal Council of Sydney v. Compbell(1) it was observed that irrelevant considerations on which power to acquire land is exercised, would vitiate compulsory purchase orders or scheme depending on them. In State of Punjab v. Gurdial Singh & Ors (2) acquisition of land for constructing a grain market was challenged on the ground of legal malafides Upholding the challenge this Court speaking through Krishna Iyer, J. explained the concept of legal malafides in his hitherto inimitable language, diction and style and observed as under:

"Pithily put, bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions-is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If

[7] (1985) 3 Supreme Court Cases 1

the use of the power is for the fulfilment of a legimate 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." After analysing the factual matrix, it was concluded that the land was not needed for a Mandi which was the ostensible purpose for which the land was sought to be acquired but in truth and reality, the Mandi need was hijacked to reach the private destination of depriving an enemy of his land through back-seat driving of the statutory engine. The notification was declared invalid on the ground that it suffers from legal mala fides. The case before us is much stronger, far more disturbing and unparalelled in influencing official decision by sheer weight of personal clout. The District Magistrate was chagrined to swallow the bitter pill that he was forced to acquire land even though he was personally convinced there was no need but a pretence- Therefore, disagreeing with the High Court, we are of the opinion that the power to acquire land was exercised for an extraneous and irrelevant purpose and it was colourable exercise of power, namely, to satisfy the chagrin and anguish of the Sammelan at the coming up of a cinema theatre in the vicinity of its campus, which it vowed to destroy. Therefore, the impugned notification has to be declared illegal and invalid for this additional ground.

Anirudhsinhji Karansinhji Jadeja and another v. State of Gujarat[8]

7. Therefore, condition precedent for recording an information about the commission of an offence under TADA is the approval of the District Superintendent of Police and cognizance of any offence under TADA cannot be taken by any court "without the previous sanction of the Inspector General of Police, or, as the case may be, the Commissioner of Police". The provision of the statute is clear that the District Superintendent of Police under sub-section (1) can grant approval/sanction for recording of any information about commission of an offence under TADA. The jurisdiction under Section 20-A(1) to grant approval for recording of any. information about the commission of an offence under TADA, has been vested in the District Superintendent of Police

9. This ground appears to be of substance. The DSP did not exercise the jurisdiction vested in him under Section 20-A(1). On the contrary, he abdicated his jurisdiction and referred the matter to the Additional Chief Secretary, Home Department, on 17-3-1995, requesting for permission to invoke the provisions of Sections 3 and 5 of TADA by sending a report for this purpose as unde"In the matter of Gondal City Police Station ICR No. 34 of 1995 under Sections 302, 120-B of the Indian Penal Code and Indian Arms Act Section 25(1) (c) of the Indian Arms Act the facts are that the victim i.e., the deceased Jayantibhai Mohanbhai Vadodaria, aged 32, resident of Yoginagar, Gondal was an active member of BJP and was a leader of Patel community. In past, fie was member of Gondal Municipality and was also a Director in Gondal Nagrik Sahakari Bank Ltd., which is managed by BJP

On 15-3-1995 when the first Chief Minister of BJP Government took oath and installation ceremony was being performed at Gandhinagar, on that very day in the evening at 14.30, Jayantibhai Vadodaria was killed on Ashapura Dam by firing shots and by sharp weapons. The complaint of this murder is lodged by Shri Nanalal Kalabhai Patel, the uncle of deceased and on the strength of that complaint, on making investigation, it is revealed that the murderers had come in white coloured Ambassador Car No. GRG 375 and had fired twice on him and had also caused injuries by sharp weapons and killed Jayantibhai and then they had absconded. In this case during the investigations, the names of following persons are disclose

1. Dinubhai alias Dineshsinh Kiritsinh Jadeja, resident of Gondal

[8] (1995) 5 Supreme Court Cases 302

2. Harshyamsinh Jalamsinh Jadeja, dismissed Constable of SRP resident of Sindhavadar. Ta : Gondal
3. Veshubha Abhesing Jadeja, (SRP Constable), resident of Gondal
4. Jitendrasinh Chandrasinh Chudasama, resident of Virpur (Jetpur)

During the course of investigation, on 16-3-1995 at 21.15 all the four accused are arrested from the limits of Jamkandorna Police Station along with the car used in the offence

All the four accused declared during investigation that they reside in Gondal and when Accused 2 and 3 were in need of loan from Gondal Nagrik Sahkari Bank and had contacted the deceased who was Director of the said Bank at that time, the deceased had told the applicant, i.e., Accused 2 and 3 herein that 'Go go, this Bank is not meant for Darbars; for getting loans, only Patels may come to me and no Darbar can get loan'. On this talk, there was quarrel. This quarrel had taken place before about 10 or 12 days and since then the said four Darbars had decided to kill Jayantibhai, else, the strength of Patels will be increasing, therefore, since last 10 days, they were planning to kill Jayantibhai and on 15-3-1995 on finding an opportunity, they had killed him. In past also the murder of MLA of Gondal, Popatbhai Sorathia was done by the member of Darbar community. Therefore, on happening of the present incident, the members of Patel community are feared and frightened and nobody dared to come to the Police Station. Later on Jayantibhai Dhol, a leader of Patel community, informed us on telephone at Rajkot and told about the incident and requested to make some arrangement and to direct the local police to reach at the scene of offence. Therefore, we informed the local police and after the local police reached on the scene of offence, the family members of the deceased could go there All the accused who have committed the murder belong to Darbar community and by committing murder of Patel leader, they have created enmity between the two communities. In Gondal City in past also the Darbar community have committed the murder of Patel leader and now also Jayantibhai is murdered mercilessly by firing shots and knife blows and they have spread the atmosphere of terror and fear. Therefore, the harmony between the two communities is very seriously and adversely affected. Because of this incident, the people in that area had started running and moving here and there and the hawkers doing business in hand-crafts were also frightened and ran away. The police force in large number was put on patrolling and numerous vehicles and police officers were put to patrolling and only thereafter public could dare to come out of their homes From the above facts, it is clear that the accused have committed offence under Sections 3 and 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 by keeping illegal weapons and by keeping ammunition and therewith murdering the citizen, they have done the act of terrorist and offence under Section 5 of the said Act is committed. CID, IB of Gujarat State has also reported that due to this incident and as a reaction of this incident, the enmity prevailing in Saurashtra between Darbar and Patel communities may intensify and opposite party, i.e., Patels may also indulge in such activities

Considering the situation which has arisen permission may please be given to invoke the provisions of Sections 3 and 5 of the TADA in this matter Sd/-in English District Police Superintendent Rajkot Rural, Camp at Gondal."

11. The case against the appellants originally was registered on 19-3-1995 under the Arms Act. The DSP did not give any prior approval on his own to record any information about the commission of an offence under TADA. On the contrary, he made a report to the Additional Chief Secretary and asked for permission to proceed under TADA. Why? Was it because he was reluctant to exercise jurisdiction vested in him by the provision of Section 20-A(1)? This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether. In other words, the discretion vested in the DSP in this case by Section 20-A(1) was not exercised by the DSP at all

12. Reference may be made in this connection to Commr. of Police v. Gordhandas Bhanji, in which the action of Commissioner of Police in cancelling the permission granted to the respondent for construction of cinema in Greater Bombay at the behest of the State Government was not upheld, as the rules concerned had conferred this power on the Commissioner, because of which it

was stated that the Commissioner was bound to bear his own independent and unfettered judgment and decide the matter for himself, instead of forwarding an order which another authority had purported to pass

14. The present was thus a clear case of exercise of power on the basis of external dictation. That the dictation came on the prayer of the DSP will not make any difference to the principle. The DSP did not exercise the jurisdiction vested in him by the statute and did not grant approval to the recording of information under TADA in exercise of his discretion

Manohar Lal (dead) by Lrs v. Ugrasen (dead) by Lrs. And others[9]

Therefore, the law on the question can be summarised to the effect that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor the superior authority can mortgage its wisdom and direct the statutory authority to act in a particular manner. If the appellate or revisional Authority takes upon itself the task of the statutory authority and passes an order, it remains unenforceable for the reason that it cannot be termed to be an order passed under the Act.

23. In Mulraj Vs. Murti Raghunathji Maharaj, AIR 1967 SC 1386, this Court considered the effect of action taken subsequent to passing of an interim order in its disobedience and held that any action taken in disobedience of the order passed by the Court would be illegal. Subsequent action would be a nullity.

24. In Surjit Singh Vs. Harbans Singh, AIR 1996 SC 135, this Court while dealing with the similar issue held as under:

"In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes."

25. In All Bengal Excise Licensees Association Vs. Raghabendra Singh & Ors, AIR 2007 SC 1386, this court held as under:

"A party to the litigation cannot be allowed to take an unfair advantage by committing breach of an interim order and escape the consequences thereof..... the wrong perpetrated by the respondents in utter disregard of the order of the High Court should not be permitted to hold good."

26. In Delhi Development Authority Vs. Skipper Construction Co. (P) Ltd. & Anr. AIR 1996 SC 2005, this court after making reference to many of the earlier judgments held:

"On principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them."

The State Government, being the revisional authority, could not entertain directly the applications by the said applicants, namely, Sh.Ugrasen and Sh. Manohar Lal. The action of the State Government smacks of arbitrariness and is nothing but abuse of power as the State Government deprived GDA to exercise its power under the Act, and deprived the aggrieved party to file appeal against the order of allotment. Thus, orders passed by the State Government stood vitiated. More so, it was a clear cut case of colourable exercise of power.

Ram and Shyam Company v. State of Haryana and others[10]

[9] (2010) 11 Supreme Court Cases 557
[10] (1985) 3 Supreme Court Cases 267

> *Before we deal with the larger issue, let me put out of the way the contention that found favour with the High Court in rejecting the writ petition. The learned Single Judge as well as the Division Bench recalling the observations of this Court in Assistant Collector of Central Excise v. Jainson Hosiery Industries rejected the writ petition observing that 'the petitioner who invokes the extraordinary jurisdiction of the court under Art. 226 of the Constitution must have exhausted the normal statutory remedies available to him'. We remain unimpressed. Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Art. 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in The State of Uttar Pradesh v. Mohammad Nooh it is observed that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the in stance of person adversely affected by it, would lie to the High Court under Art. 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister? The clutch of appeal from Ceasar to Ceasar wife can only be bettered by appeal from one's own order to oneself. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister. There was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court.*

47. The learned Counsel appearing on behalf of the petitioners have further contended that as per Rule 20 of A.P.M.M.C.Rules 1966 when the lease is subsisting, the authorities have no option except to consider and issue dispatch permits as per Rule 34(1) of A.P.M.M.C.Rules 1966. They have brought to the notice of this Court against all the show cause notices of the petitioners and other consequential orders were interfered by this Court. Hence the authorities have to consider and issue dispatch permits to the petitioners as per the applications made under Rule 34(1) of A.P.M.M.C.Rules 1966. Considering the same this Court has passed interim orders, which reads as follows:

> *21.10.2020:*
>
> *Heard both sides.*
>
> *Learned counsel for the petitioner stated that earlier, a show cause notice was issued by the Additional Director of Mines and Geology on 13.02.2020 seeking to cancel the petitioner's quarry lease, which was challenged in W.P.No.4993 of 2020. The same*

was disposed of on 28.02.2020 setting aside the show cause notice. Another show cause notice was issued by the Director of Mines and Geology (DMG-R2) on 19.03.2020 for cancellation of the quarry lease, which was again challenged in W.P.No.8293 of 2020. On 29.04.2020, by issuing notice, this Court directed the respondents not to take any coercive steps.

The material on record shows that W.P.No.13676 of 2020 was filed by the petitioner challenging the show cause notice proceedings, dated 31.07.2020, issued by the 2nd respondent calling upon him to pay the seigniorage fee and penalty and an inter order came to be passed on 11.08.2020 suspending the aforesaid proceedings. Again, respondent No.2 issued proceedings, dated 20.08.2020, cancelling the lease of the petitioner. Challenging the same, W.P.No.15064 of 2020 was filed and the same was allowed on 28.08.2020.

In similar circumstances, when Stop Production Order came to be issued by the A.P. Pollution Control Board, the petitioner therein filed W.P.No.11953 of 2020 wherein an interim order was passed on 22.07.2020 directing issuance of dispatch permits to the petitioner therein in respect of the mineral already excavated and lying over the subject area.

As the respondents herein are not issuing the dispatch permits to the petitioner in spite of the earlier orders, the same is being challenged in the present writ petition.

In view of the orders passed earlier, respondent No.3 is directed to issue dispatch permits to the petitioner in respect of mineral already excavated and lying over the area admeasuring 2.355 Hectares in Sy.Nos.59/P, 60/P, 101/1P, 102/1P, 102/P, 103/P and 988/2P of RL Puram Village of Cheemakurthy Mandal of Prakasam District.

48. It is brought to the notice of this Court by the learned counsel for the petitioner that despite the directions of this Court on 21.10.2020, the authorities have not considered and not issued the dispatch permits. Considering the said submissions the matter is posted to 20.01.2021 directing the 2nd respondent i.e. Director of Mines and Geology to appear in Court on 20.01.2021

49. On the said date the Director appeared, and the learned Additional Advocate General appearing for respondents stated that they have filed counter and vacate stay petitions and despite their efforts the matters were not being taken up for hearing and requested to hear the matters and pass appropriate orders. Considering the same the matters were heard together.

50. Learned Additional Advocate General appearing on behalf of the State refuting the arguments of the petitioners, had mainly relied on

G.O.Ms.No.504 dated 25.11.1997, wherein the General Administrative Department (Vigilance and Enforcement) to conduct enquiries by Vigilance and Enforcement Department directives are issued. According to the said G.O, the Vigilance and Enforcement Department as an agency which was constituted vide G.O.Ms.No.269, GA (SCD) Department dated 11.6.1985 by the Government to conduct enquiries/investigations into specific allegations affecting before interest and to take effective measures through its own machinery and with the help of other vigilance bodies, organizations and departments to achieve the following activities. The first and foremost is prevention of leakage of revenue due to the Government and prevention of loss of State's wealth and natural resources. And the jurisdiction of the commission is that the Vigilance and Enforcement has the powers through out the State of Andhra Pradesh in respective of the matters which are executive authority of the said extents. The jurisdiction of the Vigilance and Enforcement Department extends to all the departments of the State Government, Public sector undertakings of State Governments and all local bodies like municipalities and Zilla parishads and quasi-government bodies and organizations receiving the aid for assistance of State Government in firm. As far as the powers of the Vigilance and Enforcement commission is that, the Department will not normally take up any enquiry on anonymous petitions and on petitions containing allegations corruptions of individual officers. However such petitions contain specific or factual allegations may be of being verified a suo-motu enquiry may be undertaken on the specific orders of the Director General (Vigilance and Enforcement) and on complaint received from the Vigilance and Enforcement Secretary members to the Director General Vigilance and Enforcement will be enquired into and to submit report. In view of the powers and jurisdiction of the Vigilance and Enforcement can conduct

inspections into the allegations pertaining to any department in the State.

51. The learned Additional Advocate General has emphasized his arguments on the ground that the main object of establishing Vigilance and Enforcement Department is for prevention of leakage of revenues due to the Government and prevention of loss of State's wealth and natural resources. In the instant case, it is not in dispute that the Vigilance and Enforcement Department has every right to conduct an enquiry and inspection to prevent loss to the State's wealth and natural resources. As per the powers conferred by G.O.Ms.No.504 dated 25.11.1997, the Vigilance and Enforcement Department has every right to conduct visits and accordingly they have inspected the leased premises of the petitioners and submitted alert note dated 03.01.2020. The learned Additional Advocate General has further contended that the Vigilance Department has conducted inspections along with the officials of Mines and Geology Department, and in fact in the alert note, it clearly indicate that inspection of quarry leases has been taken up on 22.11.2019 and 01.12.2019 on the quarry leases of the petitioners and also illegal transportation of granite blocks. As per the inspection conducted along with the mining department and as per the statements/confessions made by the employees of the lease holder companies finally the enforcement and vigilance department has given their findings which reads as follows:

Findings:

1. *The lease holders, granite cutting and polishing unit holders and transporters are hand in glove and resorted for illegal transportation of granite blocks.*
2. *The polishing unit holders have failed to produce documentary evidence for the stocks available and hence the stocks are to be treated as illegally procured. The seigniorage fee involved is Rs.27.78lakhs and market value involved is Rs.97.04lakhs.*
3. *The quarry leases involved in illegal supply of raw blocks also inspected, volume of mineral extracted arrived and stock of blocks measure. Similarly, the other adjacent leases were also*

inspected. The seigniorage fee involved is Rs.55.24crores and market value involved is Rs.427.14crores.

4. *total seigniorage fee involved on account of the illegal activity by the polishing unit holders and the quarry lease holders is Rs.55.52crores and the market value involved is Rs.428.11crores. Thus, there is a net loss of Rs.483.63croes to the State Exchequer.*
5. *It is clearly established that the vehicle owners/drivers, the Quarry lease holders and the polishing unit (MDL) holders resorted to illegal transportation of Granite blocks in connivance with each other causing huge revenue loss to the State Exchequer.*
6. *Common violations noticed at the polishing units are:*
   i) No records are maintained as required under Rule 7 of A.P.Mineral Dealers Rules, 2017
   ii) Mineral Dealer licenses are not displayed.
   iii) The person stated to be the supervisor of the unit failed to produce letter to his appointment issued by the unit holder.
7. *Common violations noticed at the quarry leases are:*
   i) No records are maintained as required under Rule 41 of Granite Conservation & Development Rules, 1999.
   ii) Details of lease order, Environmental Clearance and Certificate issued by APPCB are not displayed.
   iii) Boundary pillars are not properly maintained.
   iv) workings are not in consonance with the approved mining plan.
8. *The mining schemes proposed by the lease holders were not properly reviewed by the owner, agent, mining engineer or manager with respect to the mining operations carried during previous period with special reference to the quantum of rock mass excavated, mineral waste generated and quantity of saleable granite produced (chapter: Review of mining plan/geology and exploration) in violation to Rule 18 (2) of Granite Conservation and Development Rules, 1999.*
9. *The lease holders failed to store dumps of granite rejects separately for future use in violation to Rule 22(2) of Granite conservation and Development Rules, 1999.*
10. *The lease holders or their managers are not maintaining year wise plans and sections and failed to produce the same at the time of inspection in violation to Rule 27 and 28(1) to (3) of Granite conservation and development Rules, 1999.*

Finally they have recommended for recovery of recommendations

Sl. No.	*Name of the lease holder, location and extent*	*Action to be initiated*
1	*Sri G.Ankamamma Chowdary, Sy.No.103, Konidena (V), Ballikurava (M), Ext.4.000Hectares*	1. *Rs.54,22,59,350/- shall be recovered towards normal seigniorage fee (Rs.5,59,69,950/-) and market value (Rs.48,62,89,400/-) under Rule 12 (5)(h)(iii) r/s Rule 26(1) of APMMC Rules, 1966.* 2. *Criminal action shall be initiated under Sec.21 (1) of MMDR Act, 1957 r/w.Rule 26(1) of APMMC, 1966, Rule 12(5)(h)(iii) of APMMC, 1966 for having excavated and transported 25,761 cum of colour granite without payment of seigniorage fee in contravention to condition 5 of grant r/w Rule*

		12(5)(h)(iii) of APMMC, 1966. *3. Lease shall be determined/cancelled and security deposit shall be forfeited under Rule 12(5)(h)(iii) r/w Rule 26(1) of APMMC Rules, 1966.* *4. Criminal action shall be initiated under Rule 47 of Granite Conservation Development Rules, 1966 as they have conducted mining operations in gross violation of Rule 18(2), 19(1), 31(1), 37 and 41 (a) & (b) of Granite Conservation and Development Rules, 1999.*
2.	*M/s. Kishore Black Gold Granites Pvt. Ltd., Mg. Director, Sri Gottipati Ravi Kumar, Sy.No.58/P, Budawada (V), Chimakurthy (M), Ext.7.251 Hect.*	*1. Rs.1,55,53,594/- shall be recovered towards normal seigniorage fee (Rs.21,68,234/-) and market value (Rs.1,31,85,360/-) under Rule 12 (5)(h)(iii) r/s Rule 26(1) of APMMC Rules, 1966 for having misused dispatch permits without actually extracting the mineral.* *2. Criminal action shall be initiated under Rule 12(5)(h)(iii) of APMMC, 1966 for having misused dispatch permits.* *3. Lease shall be determined/cancelled and security deposit shall be forfeited under Rule 12(5)(h)(iii) r/w Rule 26(1) of APMMC Rules, 1966 for having kept the mine idle for more than two years.*

52. As per the recommendations made in the alert note the Government has insisted the Director of Mines and Geology, who is the competent authority as per the rules and accordingly they have issued notices. The impugned notices issued by the competent authority i.e. Director of Mines and Geology is in conformity with rules and provisions of the Act. Further the notices were issued to the concerned lessees and also along with notices, reports of inspection done on 22.11.2019 and 01.12.2019 were supplied to the petitioners to submit their explanation. Subsequently as directed by this Court, the authorities have supplied the alert note, as well as the Government memo also. Despite the same, the petitioners have not submitted their explanation so far. Hence left with no option consequential orders were passed by the authorities. It is not in dispute that as per section 23(b) of M.M.D.R.Act any gazetted officer of the Central or State Government authorized by the Central

Government in this behalf by general or special order has reason to believe that any mineral has been raised in contravention of provisions of this Act or Rules, he may search for such mineral document or thing and the provisions of section 100 of CPC. Accordingly the Vigilance and Enforcement officers have every power as per the said section to inspect and conduct investigation. Hence the inspection conducted on 23.11.2019 and 24.11.2019 by the Assistant Geologist, O/o the Assistant Director, Mining in the presence of mining manager of the petitioner and based on the statements issued, the employees of the petitioner's company the report has been submitted by the Vigilance and Enforcement Department, through alert note, to the Government and based on the same, the Government has requested the 2nd respondent to initiate action. Hence there is no specific directions by the Government to the 2nd respondent, it is only a request to take appropriate action as per rules. Further the learned Additional Advocate General has submitted that when, there is an alternative remedy, against the show cause notice, the writ petition is not maintainable and to support his contention he relied on the Judgment of the Hon'ble Apex Court in ***Union Bank of India & others v Coastal Container Transporters Association & others***[11]

> *10. Precisely, it was the case of the appellants that once members of the respondent-association undertake the responsibility to deliver goods from consignor to consignee and more particularly, when they are also providing cargo handling service, with the help of other service providers, the service provided by them would fall within the ambit of cargo handling service, inasmuch as the help from other service providers does not change the nature of service that is being provided by them. It was also stated that shipping lines raise bills in the name of respondents and if any service tax has been charged, the respondents would be within their rights to take cenvat credit of the same in accordance with the rules and regulations. However, that would not change the nature of services rendered by them.*
>
> *11. While considering the contentions advanced on both sides, the High Court has over-ruled the objection of maintainability of the*

[11] Civil Appeal No.2276 of 2019

petition and has recorded a finding that the services rendered by the members of the respondent-association are classifiable under "goods transport agency" but not under "cargo handling service". High Court has referred to the definition of "cargo handling service" under Section 65(23) of the Act, Circular No.B11/1/2002-TRU dated 01.08.2002 and by referring to the instructions dated 06.08.2008 issued in circular no.104/7/2008-S.T. and circular bearing no.186/5/2015-S.T. dated 05.10.2015, has held that even after introduction of new regime w.e.f. 01st July 2012, the activity of the respondents falls within the classified category of "goods transport agency" but not "cargo handling service". High Court has further held that so far as the service of loading and unloading at the port and shipping of goods from one port to other is concerned, the respondents are the recipients of such service from the shipping lines and/or cargo handling service on behalf of the customers. The High Court has held that so far as the service rendered by shipping line is concerned, the shipping line issues invoice in favour of the respondents, who, in turn, issue debit note to the customer without adding any charge in respect of such service. Further, it is held that, if transportation is to be included in "cargo handling service", packing is an essential ingredient of the same. In conclusion, it is held by the High Court that in view of the binding circulars issued by the CBEC, the service rendered by the respondents has to be considered on the basis of main service provided by them, viz., good transport agency and it is not permissible for the appellants to take a stand contrary to such circulars. The High Court has held that the notices impugned in the writ petition, are contrary to the binding circulars issued by the CBEC, in such circumstances, respondents are entitled to invoke the writ jurisdiction of the court. Further, it is held that as there are no factual disputes and only legal issue is required to be decided and by placing reliance on the judgment of this Court in the case of Deputy Commissioner, Central Excise & Anr. v. Sushil and Company1, has over-ruled the objection of maintainability 1 (2016) 13 SCC 223 of the writ petition raised by the appellants. With the aforesaid findings, the High Court has taken the view that no useful purpose would be served in relegating the respondents - original writ petitioners to the adjudicating authority for adjudication pursuant to show cause notices which were issued without any legal basis, while allowing the writ petition filed by the respondents, quashed the notices dated 08.10.2015 and 30.09.2015 and further rejected Civil Application No.6679 of 2016 filed by the appellants raising the preliminary objection with regard to maintainability of the writ petition.

19. On the other hand, we find force in the contention of the learned senior counsel, Sri Radhakrishnan, appearing for the appellants that the High Court has committed error in entertaining the writ petition under Article 226 of Constitution of India at the stage of show cause notices. Though there is no bar as such for entertaining the writ petitions at the stage of show cause notice, but it is settled by number of decisions of this Court, where writ petitions can be entertained at the show cause notice stage. Neither it is a case of lack of jurisdiction nor any violation of principles of natural justice is alleged so as to entertain the writ petition at the stage of notice. High Court ought not to have entertained the writ petition, more so, when against the final orders appeal lies to this Court. The judgment of this Court in the case of Union of India & Anr. v. Guwahati Carbon Ltd. (supra) relied on by the learned senior counsel for the appellants also supports their case. In the aforesaid judgment, arising out of Central Excise Act, 1944, this Court has held that excise law is a complete code in order to seek redress in excise matters and held that entertaining writ petition is not proper where alternative remedy under statute is available. When there is a serious dispute with regard to classification of service, the respondents ought to have responded to the show cause notices by

> *placing material in support of their stand but at the same time, there is no reason to approach the High Court questioning the very show cause notices. Further, as held by the High Court, it cannot be said that even from the contents of show cause notices there are no factual disputes. Further, the judgment of this Court in the case of Malladi Drugs & Pharma Ltd. v. Union of India 5, relied on by the learned senior counsel for the appellants also supports their case where this Court has upheld the judgment of the High Court which refused to interfere at show cause notice stage.*

53. Having heard all the counsel, and on perusal of the records and provisions of the Act and Rules, though the learned Additional Advocate General has strongly relied on the G.O.Ms.No.504 dated 25.11.1997 and submitted that the Vigilance and Enforcement Department has every power to conduct inspection and take action against the persons who contravenes/violate the Rules of any Department in the State. Learned Counsel appearing on behalf of the petitioners has contended that the G.O issued is only an executive order passed in under Article 162 of the Constitution of India and such order cannot overwrite the provisions of the Statute. Hence the Vigilance and Enforcement Department has no right to interfere with the business of the petitioners and only the competent authorities, has right to interfere and inspect the premises of the petitioners as per Rules. But at this stage, this Court is not inclined to decide, the issue, whether the Vigilance and Enforcement Department has jurisdiction to conduct inspection of the premises of the petitioner or not in consonance with the Rules. But fact remains that, the impugned orders are issued basing on the alert note dated 03.01.2020 submitted by the Vigilance and Enforcement Department and in the said report the Vigilance and Enforcement Department has also determined penalty against the petitioners and directed the respondents to take action. Even the stand of the respondents as indicated in the affidavit filed by them, would make it clear that the impugned orders are issued basing on the alert note submitted by the Vigilance and Enforcement Department. A reading of Rule 35 and 35(a) of A.P.M.M.C.Rules 1966 makes it clear that

the impugned orders are issued by the 2nd respondent are, as directed by the 1st respondent, hence the same is contrary to Rule 35 and 35(a) of the A.P.M.M.C.Rules 1966 and also contrary to the ratio laid down by the Hon'ble Apex Court as mentioned supra in ***Devindeer Singh and others v. State of Punjab and others*** and in ***Manohar Lal (dead) by Lrs v. Ugrasen (dead) by Lrs. And others.*** No higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority. It is a clear case of exercise of powers on the basis of external dictation/direction. That the decision of the Hon'ble Apex Court referred to supra and the principle laid down, in substance is applicable to the present case.

54. As contended by the parties, the impugned notices were issued with a pre-decisive/pre-determinative. No doubt it is to be held that, the show cause notices are followed by decisions. Hence they are contrary to the principles laid down in the Hon'ble Apex Court as mentioned above in ***Siemens Ltd. V.State of Maharashtra and others*** wherein the Hon'ble Apex Court has categorically held that when notice is issued with pre-determination writ petition would maintainable and the same is evident in the instant case. A bare reading of the impugned notices and the statements made in the counter affidavit clearly establishes that the authorities have already applied their mind and formed an opinion regarding penalty, even before issuing notices. Hence the same is held as contrary to the law laid down by the Apex Court in the above judgment.

55. As per the stand taken by the respondents in their counter that as per section 23(b) of The Mines and Minerals (Development and Regulation)Act, 1957 if any gazetted officer of a Central or State authorized by the State in this behalf by general or special order has power to inspect and search. On careful scrutiny of G.O.Ms.504 and the

Rules governing the filed as far as the position is concerned, this Court satisfied that the State Government has not issued any special order/general orders authorizing any particular officer to search for contraventions to the Act or rules with regard to the mineral or document in these batch of cases. So without there being any specific order, the said provision is not applicable to the present batch of cases.

57. Given the circumstances, as contended by the petitioners that subsequent to the interim directions granted by this Court, the authorities have passed consequential orders. Hence the same is contrary to the principle laid down by Hon'ble Apex Court as referred above in ***Manohar Lal (dead) by Lrs v. Ugrasen (dead) by Lrs. And others*** wherein the Hon'ble Apex Court has categorically held that any party to the litigation cannot be allowed to take an unfair advantage by committing a breach of an interim order and escape the consequences three of and held that any action taken disobedience on orders passed by the Court would be illegal and subsequent action would be a nullity. The said principle is squarely applicable to the present batch of cases.

58. Learned Additional Advocate General has placed reliance on the judgment of the Hon'ble Apex Court in ***Union Bank of India & Others v Coastal Container Transporters Association & Others*** as mentioned above, to rebut his contention that the writ is not maintainable against the show cause notice. Even though in the said case, the Hon'ble Apex court held that normally as against a show cause notice writ petitions are not maintainable but in specific circumstances held as maintainable. Hence the facts of the present are different to the said case.

59. In view of the above stated reasons, this Court is of the considered opinion that the impugned show cause notices issued by the 2nd respondent dt.20.3.2020 in W.P.No.8515 of 2020, dt.13.3.2020 in W.P.No.8516 of 2020, dt.21.3.2020 in W.P.No.8517 of 2020,

dt.21.3.2020 in W.P.No.8501 of 2020, dt.19.3.2020 in W.P.No.8293 of 2020, dt.19.3.2020 in W.P.No.8803 of 2020, dt.21.3.2020 in W.P.No.8300 of 2020 are set aside and further as per the ratio decided by the Hon'ble Apex Court as referred to above in ***Manohar Lal (dead) by Lrs v. Ugrasen (dead) by Lrs. And others,*** the consequential demand notices issued on 31.7.2020, are held as illegal and non-est in the eye of law.

60. In view of the setting aside the orders of the show cause notice the competent authorities are directed to consider the applications made by the petitioners as per rule 34(1) of A.P.M.M.C.Rules 1966 and pass appropriate orders for dispatch permits, forthwith. Accordingly, all the writ petitions are allowed.

As a sequel thereto, the miscellaneous petitions, if any, pending in both the Writ Petitions shall stand closed.

JUSTICE D. RAMESH

Date:02.03.2021
RD

THE HONOURABLE SRI JUSTICE D.RAMESH

WRIT PETITION Nos.13676 of 2020, 13700 of 2020, 13647 of 2020, 13648 of 2020, 13655 of 2020, 13675 of 2020, 17468 of 2020, 17519 of 2020, 13646 of 2020, 17511 of 2020, 8515 of 2020, 8516 of 2020, 8517 of 2020, 8293 of 2020, 8803 of 2020, 8300 of 2020 and 8501 of 2020

Dated 02.03.2021

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(ii).In criminal matters where bail/suspension has been granted by the Court either anticipatory or regular for a limited period, which are likely to expire within one month from today, shall be automatically extended for a further period of one month from today;

(iii).In the matters in which demolition, dispossession, eviction, auction is in question, in those cases, if limited stay is granted, it be treated to be extended for one month or otherwise, the instrumentalities shall not proceed for the above until one month from today;

(iv).In the matters of tenders, if they have not been finalized, they shall not be given effect to for a period of one month and the process may be made after expiry of the lock-down period.

(v).As this Court feels that the citizens are not in a position to reach the Court on account of lock-down of the boundaries and surveillance by the Police, however, for redressal of their grievance, we have been developing a URL, which shall be notified by Registrar General. Publishing URL in the official website of the High Court for e-filing to Advocates is only with regard to genuine grievances. They may submit their petitions by way of e-mail, viz., regjudaphc@nic.in on the same lines till then. On submission of the petitions, the Government may submit their objections and they shall be considered for the purpose of interim relief by the High Court through the Benches constituted by the Chief Justice, by way of Video Conference and if necessary opportunity of personal hearing may be offered on demand. Otherwise, interim relief may be considered on the facts and circumstances of the case;

(vi).The State Government is directed to ensure and provide all necessary equipment like N-95 masks, sterile medical gloves, starch apparels, personal protection equipment and all other necessary things to the Doctors in the dispensaries and other Paramedical staff, thereby they may be in a position to provide medical aid to the citizens;

(vii).The issue regarding entry on boundaries of the State of Andhra Pradesh is concerned, it is directed that no mass gathering shall be allowed by the authorities of both the States. The officers of both the States shall follow National Protocol or otherwise looking to the peculiar situation in which the citizens of the State of Andhra Pradesh have been left over by the Telangana State, to go to their homes, taking due steps for quarantine process, by staying at their homes through such undertaking, on necessary tests, the National Protocol shall be observed by them. In any case, care of females with children and pregnant women must be undertaken by the authorities with humanity; however, officers of both the States shall observe National Protocol applying exceptional circumstances with due care.

(viii).As per the resolution of the committee formulated by the Supreme Court, dated 26.03.2020, it is directed that the convicts or under-trial offenders for the offences to which maximum sentence prescribed is not more than (7) years, may be released on interim bail on furnishing adequate bail bonds if they are not second offenders and also not offenders under Section 376 of IPC and POCSO Act, for a period of one month. For the purpose of bail bond, it is however directed that the Principal District and Sessions Judge shall assign the Judicial Magistrate to reach the District Jails on being asked by the Superintendent of the Central Jail of his area, for furnishing/accepting adequate bail bonds to the satisfaction of the Magistrate, for their release to a limited period. The undertaking shall be taken from them for having quarantine for 14 days at their home under the surveillance of the Doctor with the help of the Police.

(ix).Violation of conditions would entail cancellation of the interim bail/suspension and such persons who violate the conditions may be taken to custody immediately;

(x).As stated by the Director of Social Welfare, Ms.Kritika Shukla, that limited number of inmates are in the remand homes, however, due care and caution be taken for social distancing to those children in the

remand homes. The said social distancing must be maintained in the CCIs., and SAAs., in the State.

(xi).In the case of health check up, the State shall protect the confidentiality regarding patients and the poor patients shall not be discriminated with others. It is further to direct that marginalised and poor must have access to healthcare and they should be provided adequate food facilities; thereby they should not sleep with empty stomach in the night;

(xii).Essential items may be made available to the citizens as specified in the circular issued by the Ministry of Home Affairs dated 24.03.2020 specifying the protocol to those vendors;

(xiii).The Police, Doctors, paramedical staff and other persons engaged in these days may be provided adequate facilities on account of rendering emergent services by them.

(xiv).Because of the fact that flights, trains have been stopped and the road transportation has also been checked due to lock-down, but in the State of Andhra Pradesh, there is a coastal area, where ships are coming to the ports, however, due care and caution as directed by the Central Government must be taken by the authorities in the ports at Visakhapatnam, Kakinada, Machilipatnam, Kalingapatnam and other sea ports and the port authorities are directed to take special measures in this regard in coordination with the State authorities".

Reliance made by the learned Additional Advocate General in the judgment of the Hon'ble Apex Court as mentioned above in ***Union Bank of India & Others v Coastal Container Transporters Association & Others*** is not applicable to the present facts of the case.