THE HON'BLE DR.JUSTICE K. MANMADHA RAO

W.P.Nos.29067 and 28102 of 2021

COMMON ORDER:-

The Writ Petition No.29067 of 2021 is filed under Article 226 of the Constitution of India, seeking the following relief:

> *"….. to issue a Writ, Order or Direction more particularly one in the nature of Certiorari by calling for the 2nd respondents Demand Notice No.873/V&E/2020-1, dt.27.10.2021 in respect of the lease hold rights of the petitioner over an extent of 4.00 Hectares in Sy.No.103 of Konidena (V), Ballikuruva (M), Prakasam District and quash the same……."*

The Writ Petition No.28102 of 2021 is filed under Article 226 of the Constitution of India, seeking the following relief:

> *"…..to issue a Writ, Order or Direction more particularly one in the nature of Certiorari by calling for the 2nd respondents Proceedings No.873/V&E/2020-1, dt.27.10.2021 whereby determination (cancellation) was effected of the petitioners Mining Leasehold rights pertaining to excavation of colour granite over an extent of 4.00 Hectares in Sy.No.103 of Konidena(V), Ballikuruva (M), Prakasam District and quash the same……."*

2. Since the petitioner, facts and issues involved in both the writ petitions are one and the same, this Court find it expedient to decide these matters by a common order.

3. The facts in both the writ petitions are similar and identical, therefore, W.P.No.29067 of 2021 is taken as lead case, and the facts therein are referred to for convenience.

4. Brief facts of the case are that the petitioner was granted quarry lease dated 07.03.2009 for a period of 20 years i.e., upto 06.03.2029, for excavation of colour granite over 4.00 Hectares in Survey No.103 of Konidena Village, Ballikuruva Mandal, Prakasam district, under the provisions of the Mines and Minerals (Development and Regulation) Act, 1956 and the AP Mines Mineral Concession Rules, 1966. While so, a show-cause notice was issued by the Additional Director of Mines and Geology on 13.02.2020, seeking to cancel the quarry lease that had been granted to the petitioner. The same was challenged before this Court in W.P.No.5073 of 2020 and the same was disposed of on 28.02.2020, setting aside the said show-cause notice, while giving opportunity to the competent authority. Therefore, another show-cause notice dated 13.03.2020 was issued by the Director of Mines and Geology-2nd respondent, pursuant to the instructions contained in Government Memo dated 29.01.2020 and also a pre-meditated “Alert Note”, dated 03.01.2020 of the Director General, Vigilance and Enforcement (an authority extraneous to the MMDR Act), 1956 and the statutory rules frameed thereunder). Aggrieved by the same, the petitioner filed W.P.No.8516 of 2020 and the same was allowed on 04.03.2020 along with a batch of writ petitions, including W.P.No.13646 of 2020, wherein the Demand Notice dated 31.07.2020 issued to the petitioner, was challenged and the said writ petition was allowed on 04.03.2021. Then, another Demand Notice dated 31.07.2020 was issued by 2nd respondent, inspite of pendency of W.P.No.8516 of 2020 and subsistence

of interim order therein, calling upon the petitioner to pay seigniorage fee and penalty. The same was challenged in W.P.No.13646 of 2020 and this Court after hearing both sides, suspended the aforesaid demand notice dated 31.07.2020.

5. Again the 2nd respondent issued proceedings dated 20.08.2020, determing (cancelling) the lease of the petitioner. The same was challenged in W.P.No.15076 of 2020 and the same was allowed by this Court on 27.08.2020, setting aside the lease determination proceedings. Against the W.P.Nos.8516 of 2020 and 13646 of 2020, the State preferred W.A.No.350 of 2021 and the same was disposed of by a Division Bench (along with batch of Writ Appeals), by order dated 04.10.2021, upholding the issuance of show-cause notice dated 13.03.2020 to the petitioner, in respect of subject lease. Further, the Division Bench permitted a reply to the said show-cause notice, to be submitted within a period of three weeks. Against the order of the Division Bench, the petitioner filed an Appeal in SLP (Civil) No.018330 of 2021. While thing stood thus, a fresh Demand Notice No.873/V&E/2020-1, dated 27.10.2021 was issued to the petitioner by 2nd respondent, calling upon to pay an amount of Rs.34,39,35,343/- within 15 days from the date of receipt of notice, towards Normal Seignorage Fee, along with five times penalty and allied levies for Colour Granite for having excavated and transported 25,761 cum of Colour Granite from the lease held by the petitioner over the subject property. Further, two of the writ petitioners and the Hon'ble Supreme Court

by filing SLPs and the Hon'ble Supreme Court pleased to grant an interim direction, staying the order dated 04.10.2021, passed by the Division Bench and making it clear that the order of the learned Single Judge shall continue to be operative. Further, along with the impugned Demand Notice dated 27.10.2021, a parallel and simultaneous Determination (Cancellation of lease) proceedings were also issued by 2nd respondent on the same day. Hence, the present writ petition has been filed.

6. Counter affidavit was filed by respondent No.2 denying all the allegations made in the writ petition. It is further stated that the lease area of the petitioner was inspected by the officials of the Vigilance & Enforcement and Mines and Geology departments on 23.11.2019 & 24.11.2019 in the presence of Mines Manager of the petitioner and found that the petitioner has committed a few violations with respect to Andhra Pradesh Minor Mineral Concession Rules, 1966 and Granite Conservation and Development Rules(GCDR), 1999. A show-cause notice No.873/V&E/2020-6, dated 13.02.2020 was issued to the petitioner to show cause within 15 days from the date of receipt of the notice, as to why action should not be initiated against the petitioner leased area as per Rule 12(5)(h)(xii) of APMMC Rules, 1966. Aggrieved by the same, the petitioner filed W.P.No.4894 of 2020 and this Court vide common judgment dated 28.02.2020 in W.P.No.4894 of 2020 and batch issued orders that *"the Additional Director of Mines and Geology has no statutory powers 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 petitioner through proper authority by enclosing all the relevant documents, in which case, the petitioner 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". In obedience of orders of this Court, the Director of Mines and Geology issued a fresh show cause notice No.873/V&E/2020-1, dated 13.03.2020 to the petitioner to show cause within 15 days from the date of receipt of the notice, why action should not be initiated against the petitioner leased area as per Rule 12(5)(h)(xii) of APMMC Rules, 1966. Aggrieved by the same, the petitioner filed W.P.No.8516 of 2020 vide dated 08.05.2020 issued orders that *"as the impugned order is only a show cause notice, petitioner is directed to send a requisition, by email along with the list of documents required for submitting reply to the show cause notice, within a week from 08.05.2020, on submission of such requisition, the respondents shall furnish copies of those documents, by email, enabling the petitioner to submit his detailed explanation to the show cause notice impugned in the Writ Petition. However, the respondents are directed not to take any coercive steps against the petitioner"*.

7. It is further stated in the counter affidavit that, in pursuance of the orders of this Court, the 2nd respondent vide Lr.No.873/V&E/2020-1, dated 25.06.2020 has furnished the following documents as desired by the

petitioner, through the 3rd respondent by e-mail i.e., Alert Note No.04 (c.No.4145/V&E/NR.1/2019), dated 03.01.2020 and Government Memo No.460/Vi9.A1/2020, dated 29.01.2020 and the same has been acknowledged by the petitioner on 26.06.2020. But the petitioner has not submitted any reply to the office. Hence, the 2nd respondent issued Demand Notice No.873/V&E/2020-1, dated 31.07.2020 to the petitioner. This Court vide order dated 04.10.2021 in W.A.Nos.218, 220, 221, 284, 287, 296, 339, 346, 347 and 350 of 2021 filed by the Government against the Judgment dated 04.03.2021 in W.P.Nos.17519, 8515, 8517, 8293, 17511, 8300, 8501, 17468 and 8516 of 2020 reads as follows:

> *"The findings recorded by the learned single Judge in respect of the show-cause notices having not been accepted by this Court, the decision rendered in respect of writ petitioners in W.P.Nos.8516, 8501, 8300, 8293, 8517 and 8515 of 2020 allowing the writ petitions and setting aside the show-cause notices is interfered with and the writ petitions are dismissed. However, petitioners are at liberty to file reply to the show cause notices within a period of (3) weeks from today, if so advised".*

It is further stated that the petitioner has not submitted any reply to the office of the 2nd respondent against the show-cause notice within (3) weeks time as per this Court orders dated 04.10.2021. The stipulated time of (3) weeks was over by 25.10.2021. It is construed that the petitioner has no remarks to offer the Show-Cause notice issued by 2nd respondent. Thus, it is established that the petitioner has wilfully violated the grant conditions, Andhra Pradesh Minor Mineral Concession Rules, 1966 and Granite Conservation & Development Rules, 1999 and as such, the lessee is liable for payment of Rs.34,39,35,343/- towards Normal Seignorage Fee, along with five times

penalty and allied levies for differential quantity of 25,761 cum of Colour Granite from the lease held by the petitioner over the subject property. Hence, the Demand Notice vide No.873/V&E/2020-1, dated 27.10.2021 issued to the petitioner. The petitioner has an alternative remedy under Rule 35 (A) of APMMC Rules, 1966 with a provision to file a revision before the Government on any order passed by the respondent No.2, but the petitioner without having the above remedial measures provide under APMMC Rules, 1966, directly filed the present writ petition which is not warranted at this juncture.

8. Heard Mr.P.Roy Reddy, learned counsel for the petitioners and learned Assistant Government Pleader for Mines and Geology for the respondents.

9. On hearing, learned counsel for the petitioners submits that the impugned orders are pre-determined/pre-decisive and no purpose would serve even if the petitioners submits any reply or explanation to the said show-cause notice. Hence the impugned notce is a pre-decided notice which is contrary to law decided by the Hon'ble Apex Court in various judgments and the demand notice is illegal and void.

10. To support the above contentions, learned counsel for the petitioners relief on the following judgments.

Seimens 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*

[1] (2006) 12 SCC 33

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, the samde 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

[2] (1998) 8 SCC 1

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 arder 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 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 AII. ER 665

11. Learned counsel for the petitioners further submits 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

[3] (2008) 1 SCC 728

[4] 2001 SCC OnLine AP 1206

issued nor stated, anywhere that, the action has been initiated as per the inspection or survey conducted by the Department. To support his contentions, he has relied on the judgment reported in ***Kalari Nagabhushana Rao v. The Collector, Panchayat Wing, Guntur and Ors[5].***

12. Learned counsel for the petitioner further submits 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, learned counsel relied on the following judgments.

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

> *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".*
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> *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.*
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> *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*

[5] AIR 1978 AP 444
[6] (1980) 2 SCC 471

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, 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 sald 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

[7] (1985) 3 SCC 1

the exercise of power is vitlated. 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 vitlate 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 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 Karansinhi 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

[8] (1995) 5 SCC 302

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 Le., the deceased Jayantibhal 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, Jayantibhal 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 Jayantibhal 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*
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, l.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 Jayantibhal, else, the strength of Patels will be increasing, therefore, since last 10 days, they were planning to kill Jayantibhal and on 15-3- 1995 on finding an opportunity, they had killed him. In past also the murder of MLA of Gondal, Popatbhal Sorathla 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 Jayantibhal 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 purport

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 grand 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 doobedience of the order passed by the Court would be illegal. Subsequent action would be a nullity.

[9] (2010) 11 SCC 557

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 allienation/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 drcumstances 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 theref 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 daim 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]

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

[10] (1985) 3 SCC 267

> *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.*

13. Learned counsel for the petitioners submits 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. Therefore, learned counsel requests this Court to pass appropriate orders.

14. Learned Assistant Government Pleader for Mines and Geology submits that as per 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 11.06.1985 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

leakage of revenue due to the Government and prevention of loss of State's wealth and natural resources. He further submits that, when there is an alternative remedy, against the show cause notice, the writ petition is not maintainable and to support his contention he relief 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.*
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> *11. While considering the contentions advanced on both sides, the High Court has over-ruled the objection of maintainability of the petition and has recorded a finding that the services rendered by the members of the respondent association are classiflable under "goods transport agency but not under "carge handling service". High Court has referred to the definition of "cargo handling service" under Section 65(23) of the Act, Circular No.811/1/2002-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. dabed 05.10.2015, has held that even after introduction of new regime w.e.. 01 July 2012, the activity of the respondents falls within the classified category of "goods transport agency but not "carge handling service". High Court has further held that so far as the service of loading and unleading 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, whe, 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 helld 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*

[11] Civil Appeal No.2276 of 2019

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 Companyl, 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 ne 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 dabed 08.10.2015 and 30.09.2015 and further rejected Civil Applicabion 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) relled on by the learned senior counsel for the appellants alse supports theil 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 petibion is net 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.

15. Having heard all the counsel, and on perusal of the records and provisions of the Act and Rules, though the learned Assistant Government Pleader 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 for 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.

16. 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.

17. Learned Assistant Government Pleader 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.

18. In view of the above stated reasons, this Court is of the considered opinion that the demand notice vide No.873/V&E/2020-1, issued on 27.10.2021 and consequential determination proceedings, are held as illegal and non-est in the eye of law and the same are liable to be set aside.

19. Having regard to the facts and circumstances of the case and submissions of both the counsel, the demand notice No.873/V&E/2020-1, dated 27.10.2021 and consequential determination proceedings are hereby set aside.

20. With the above observations, the Writ Petitions are allowed. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dr. K. MANMADHA RAO, J

Date: 12.08.2024
BMS