

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE SRI MANOJ KUMAR TIWARI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

WRIT PETITION (PIL) NO. 176 OF 2023

07TH NOVEMBER, 2023

Tarun Sharma

.....Petitioner.

Versus

State of Uttarakhand & others

....Respondents.

Counsel for the Petitioner : Mr. B.D. Upadhyaya, learned Senior Counsel assisted by Mr. Anil K. Joshi, learned counsel.

Counsel for the Respondent Nos.1 to 3 : Mr. C.S. Rawat, learned Chief Standing Counsel assisted by Mr. Gajendra Tripathi, learned Standing Counsel.

Counsel for the Respondent No.4 : Dr. Aman Rab and Mr. Shiv Pandey, learned counsel.

Counsel for the Respondent No.5 : Mr. Aditya Pratap Singh, learned counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Acting Chief Justice Sri Manoj Kumar Tiwari)

In this writ petition, filed in public interest, petitioner has challenged E-auction Notice dated 26.09.2023, issued by Director, Geology and Mining Unit, Government of Uttarakhand, whereby bids were invited for allotment of mining lots in four districts of State of Uttarakhand.

2. Petitioner has challenged the said E-auction notice on the ground that without obtaining Environmental Clearance from the Central Government, mining lots cannot be allotted. In support of this contention, petitioner has relied

upon notification dated 14.09.2006, issued by Ministry of Environment and Forests, Government of India.

3. Learned State Counsel, however, has drawn our attention to another notification dated 28.03.2020, whereby earlier notification was amended. Relevant extract of the notification dated 28.03.2020 is reproduced below for ready reference:-

"In the said notification:-

(i) in paragraph 11, after sub-paragraph (2), the following sub-paragraph shall be inserted, namely:-

(3) The successful bidder of the mining leases, expiring under the provisions of sub-sections (5) and (6) of section 8A of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) and selected through auction as per the procedure provided under that Act and the rules made thereunder, shall be deemed to have acquired valid prior environmental clearance vested with the previous lessee for a period of two years, from the date of commencement of new lease and it shall be lawful for the new lessee to continue mining operations as per the same terms and conditions of environmental clearance granted to the previous lessee on the said lease area for a period of two years from the date of commencement of new lease or till the new lessee obtains a fresh environmental clearance with the terms and conditions mentioned therein, whichever is earlier:-

Provided that the successful bidder shall apply and obtain prior environmental clearance from the regulatory authority within a period of two years from the date of grant of new lease".

4. From the proviso contained in Notification dated 28.03.2020, it is apparent that the successful bidder can apply and obtain environmental clearance from the regulatory authority, within two years from the date of grant of new

lease. Thus, the challenge made by petitioner to the bidding process on the ground that prior environmental clearance from the regulatory authority was not obtained, is without any substance.

5. Learned State Counsel has also relied upon Rule 8(b) of Uttarakhand Minor Minerals (Concessions) Rules, 2023, which reads as follows:-

“खनन पट्टे के स्वीकृति:-

(क)

(ख) खनन पट्टे हेतु निर्गत आशय पत्र में उल्लिखित समस्त शर्तों तथा खनन योजना, पर्यावरणीय अनुमति एवं अन्य वांछित अनुमतियां प्राप्त हो जाने के उपरान्त महानिदेशक की संस्तुति के उपरान्त शासन द्वारा खनन पट्टा स्वीकृत किया जायेगा।”

6. Rule 8(b) of the Uttarakhand Minor Minerals (Concession) Rules, 2023 also provides that ‘*mining lease shall be executed in favour of any person only when all conditions, mentioned in the Letter of Intent, are fulfilled and necessary permission, including environmental clearance, is obtained from the Competent Authority*’. We, therefore, find substance in the contention raised by learned State Counsel that apprehension expressed by the petitioner that mining operation would start without obtaining environmental clearance from the Competent Authority is baseless.

7. Director, Mining has merely issued a pre-auction notice, whereby interested persons were invited to participate in the bidding process. As per the notification issued by Central Government, the environmental clearance has to be obtained by the successful bidder, therefore, challenge to the bidding process thrown by petitioner is premature. Thus, there is no scope for interference and this writ petition filed in public interest is, therefore, closed.

8. However, it goes without saying that respondents shall not permit any mining operation from the lots in question without prior environmental clearance from the Competent Authority. Respondent nos. 1 & 2 shall be personally responsible for ensuring that no illegal mining is undertaken from the lots in question.

9. Pending application(s), if any, also stands disposed of.

(MANOJ KUMAR TIWARI, A.C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 07th November, 2023

NISHANT