

Court No.3

Case :- Case :- WRIT - C No. - 36361 of 2019

Petitioner :- M/S Nishant Traders

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Devbrat Mukherjee

Counsel for Respondent :- C.S.C.

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Case :- WRIT - C No. - 4812 of 2020

Petitioner :- M/S Nishant Traders

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Devbrat Mukherjee

Counsel for Respondent :- C.S.C.

Hon'ble Siddhartha Varma, J.

Hon'ble Manoj Bajaj, J.

1. As on 14.8.2017 the State of Uttar Pradesh had taken a decision to grant all leases for minor minerals by way of e-tendering-cum-e-auction, tenders were invited from bidders at large with regard to mining leases of various mining areas of the district of Basti. The petitioner was interested to get the mining lease of the plots situate in village Mahua Kalan, Khand-II having plot nos.757, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 810, 811 and 812 the area of which was 4.249 hectares. Though a certain minimum reserve price was given for price to be offered by the participants in the e-auction, the petitioner made an offer of Rs.557/- per cubic meter for the mineral which was available. The petitioner being the highest bidder was offered a Letter of Intent on 13.11.2017 stating therein

that he was required to deposit immediately within two days the 25% of the royalty of the first year as security money and 25% of the royalty of the first year as the first installment.

2. For making the bid the petitioner had deposited Rs.19,33,295/- as earnest money as was the requirement of the advertisement in pursuance of which the petitioner had applied for participating in the auction. 118972 cubic meters of sand was supposedly available for mining. However, when knowledge dawned on the petitioner that in fact the quantity of mineral as was given out in the advertisement was not present at the site and that the mineral was in agricultural land of various private persons and also that there was a river which would be an impediment in the excavation, the petitioner on 18.1.2018 applied to the Director of Geology and Mining that in view of the problems which the petitioner was facing, appropriate action be taken by him. When despite repeated requests nothing was done from the side of the State, the petitioner filed a Revision before the State Government under Rule 78 of the U.P. Minor Mineral (Concession) Rules, 1963 (hereinafter referred to as the "**1963 Rules**") and before the Revisional Court a specific prayer was made that the representation of the petitioner for taking action on the application of the petitioner dated 18.1.2018 be decided. In effect the Revision was filed with virtually the same prayers as were there in the application dated 18.1.2018. During the pendency of the Revision, a direction was issued to the District

Magistrate to conduct an inquiry for ascertaining the quantity of mineral over the plot in question and in pursuance of that direction the Revenue Officials submitted a report on 26.2.2019. The petitioner, learned counsel has submitted, was never shown the report which was submitted by the Revenue Authorities on 26.2.2019 but the Revision itself was disposed of on 16.9.2019 basing its order on the report dated 26.2.2019. From the order dated 16.9.2019, the crux of the report dated 26.2.2019 can be found which had stated that the petitioner's allegation that there was no mineral/sand available was wrong. Ultimately the petitioner's application dated 18.1.2018 stood rejected. Thereafter on 30.9.019 the petitioner once again represented to the District Magistrate/Collector, Basti that mining was not possible and that the amount of Rs.3,12,00,407/- which the petitioner had deposited in advance be refunded to him. However, no order was passed on the application but on 23.10.2019, the District Magistrate, Basti gave a notice to the petitioner that in view of the order dated 16.9.2019 of the Revisional Court, the petitioner may provide the environmental clearance and get the lease executed otherwise the Letter of Intent dated 13.11.2017 would be cancelled; the mine in question would be re-auctioned and all the amounts which the petitioner had deposited would stand forfeited.

3. Disturbed by this notice, the petitioner filed a writ petition being Writ-C No.36361 of 2019 (M/s. Nishant Traders vs. State of U.P. & Ors.) with a prayer that the amount which the petitioner

had deposited after the issuing of the Letter of Intent be refunded to the petitioner and also that the amount which the petitioner had deposited be not forfeited.

4. While this writ petition was pending, an order was passed by the District Magistrate on 22.1.2020 by which the Letter of Intent dated 13.11.2017 was cancelled and also the earnest money along with the first installment which the petitioner had deposited amounting to Rs.3,31,33,731.50 p were to be forfeited. Aggrieved by the order dated 22.1.2020, the petitioner filed another writ petition being Writ-C No.4812 of 2020.

5. Since both the matters in Writ-C No.36361 of 2019 and in Writ-C No.4812 of 2020 were with regard to the same subject-matter, they were heard together and are, therefore, being decided together.

6. Learned counsel for the petitioner relying upon Rule 59 of the 1963 Rules had submitted that the respondents could have penalized the petitioner for not having approached the respondents for the execution of the lease after submission of the lease plan and the environmental clearance within a period of one month by imposing a penalty of Rs.1,00,000/- and he submits that if this amount of Rs.1,00,000/- was not deposited then that amount could be deducted from the security money which the petitioner had deposited. He, therefore, submits that in the absence of any forfeiture clause either in the Mines and Minerals (Regulation and Development) Act, 1957 or in the 1963 Rules or

in the Letter of Intent, no forfeiture of the earnest money; the security money and the first installment could have been done. Since learned counsel for the petitioner has very heavily relied upon Rule 59 of the 1963 Rules, the same is being reproduced here as under :-

"59. Consequences of contravention of certain conditions--(1) The proponent who has received Letter of Intent however has not produced mining plan within the stipulated period, of one month as per the provisions mentioned in Rule 34 be liable for penalty of Rs. one lakh on failure to deposit the amount of penalty the same shall be deducted by the District Magistrate from the security money deposited against the concerned lease.

2) The lessee who does mining works contravening the terms and conditions mentioned in the approved mining plan and clean environment certificate issued as per the provisions provided under Rule 34, then he will be liable for penalty at the rate of Rs. 50,000/- per occasion of default that shall be recovered by the District Magistrate.

(3) If the lease holder disobeys the provisions of Rule 35 then penalty at the rate of rupees twenty five thousand per day for each and every default shall be levied by the concerned District Magistrate. In case of default on deposit of such levied penalty the concerned District Magistrate will deduct the said amount from the amount of security deposited against the said mining lease.

(4) According to the provisions provided under Rule 41-H mining work through suction machine/lifter into the water stream will be prohibited. If any lessee is found contravening the provisions of the said rule then he will be liable for penalty at the rate of of Rs. five lakh per occasion of contravening act, which will be recovered on the order of District Magistrate or Director, Geology and Mining. On failure to deposit of the above mentioned amount of penalty the same shall be deducted by the District Magistrate from the security money deposited against the concerned lease.

(5) Any lessee holding a mining lease who commits a breach of any of the conditions provided in Rule 44 shall be liable for levy/penalty of Rs. fifty thousand. On failure to deposit the said amount of penalty the same

shall be deducted by the District Magistrate from the security money deposited against the concerned lease."

(emphasis supplied)

7. Learned counsel for the petitioner further stated that even if Rule 59 as it stood amended on 13.8.2019 by the 47th Amendment is taken into account then also if the petitioner i.e. the proponent who had received the Letter of Intent was not producing the mining plan or was not applying for the grant of environmental clearance within the period of one month as per the provisions mentioned in Rule 59 then the proponent would be liable for a penalty of Rs.10,000/- per day for a period of one month. Learned counsel for the petitioner has argued that the amended Rule had two parts; one was with regard to non production of the mining plan within one month and for non-application of the grant of environmental clearance within one month as stipulated in Rule 34 of the 1963 Rules and the other was that if the proponent i.e. the person who had got the Letter of Intent failed to execute the lease within one month of obtaining the environmental clearance certificate.

8. In the first case, if the proponent did not deposit the amount of penalty for one month then the same could be deducted from the security money deposited by the proponent and in the second case i.e. if after obtaining of the environmental clearance, the lease was not got executed then the District Magistrate could cancel the Letter of Intent and also could forfeit the first installment and the security money.

9. In the case at hand, learned counsel for the petitioner submitted that the lease was yet not executed. The petitioner by a letter dated 18.1.2018 had informed the District Magistrate and the other State Officials that they may take action as the petitioner was not able to provide the mining plan and the environmental clearance. He, therefore, submits that the forfeiture could not have been done.

10. Furthermore, learned counsel for the petitioner submitted that the amended Rule 59 would not apply to the case of the petitioner. The petitioner's Letter of Intent was dated 13.11.2017 and the petitioner had written on 18.1.2018 that he would not be able to do mining work. He submits that within one month of 13.11.2017, the petitioner had to provide the mining plan and if he did not do that then as per the un-amended provisions he was liable for a penalty of Rs.1,00,000/- and a reading of the un-amended Rule 59 clearly shows that the production of the mining plan had to be done within one month. Therefore, learned counsel for the petitioner states that the District Magistrate had not to wait for more than one month and had to deduct Rs.1,00,000/- from the deposit of security amount and had to return the remaining security amount. He, therefore, submits that his case had to be confined to the earlier unamended provisions of Rule 59 of the 1963 Rules and that at the most the District Magistrate could have penalize the petitioner for Rs.1,00,000/-.

11. Rule 59 as it existed before the coming of the amendment has been reproduced in the judgment above. Relevant portion of Rule 59, which came after 13.8.2019 i.e. after the 47th Amendment, reads as under :-

"59. Consequences of contravention of certain conditions--(1) The proponent who has received letter of intent however has not produced mining plan or has not applied for grant of Environment Clearance within the stipulated period of one month as per the provisions mentioned in Rule-34 shall be liable for penalty of Rs. Ten thousand per day. On failure to deposit the amount of penalty, the same shall be deducted by the District Magistrate from the security money deposited against the concerned lease. In case the proponent fails to execute the lease deed within one month of obtaining environment clearance certificate, the District Magistrate shall, subsequent to cancelling the letter of intent, forfeit the first installment and security money deposited by the proponent in favour of the State Government.

(2) The lessee who does mining works contravening the terms and conditions mentioned in the approved mining plan and clean environment certificate issued as per the provisions provided under Rule 34, then he will be liable for penalty at the rate of Rs. 50,000/- per occasion of default that shall be recovered by the District Magistrate.

(3) If the lease holder disobeys the provisions of Rule-35 then penalty at the rate of rupees twenty five thousand per day for each and every default shall be levied by the concerned District Magistrate. In case of default on deposit of such levied penalty the concerned District Magistrate will deduct the said amount from the amount of security deposited against the said mining lease.

(4) According to the provisions provided under Rule 41-H mining work through suction machine/lifter into the water stream will be prohibited. If any lessee is found contravening the provisions of the said rule then he will be liable for penalty at the rate of Rs. five lakh per occasion of contravening act, which will be recovered on the order of District Magistrate or Director, Geology and Mining. On failure to deposit of the above mentioned amount of penalty the same shall be deducted by the District Magistrate from the security money deposited against the concerned lease.

5) Any lessee holding a mining lease who commits a breach of any of the (conditions provided in Rule 44 shall be liable for levy/penalty of Rs. fifty thousand. On failure to deposit the said amount of penalty the same shall be deducted by the District Magistrate from the security money deposited against the concerned lease.

(6) Where the lease holder fails to conform to the prescribed loading norms, penalty of Rs. 25,000.00 per occasion of default shall be imposed by the District Magistrate. Upon failure to deposit the said penalty, the same shall be deducted by the District Magistrate from the security money deposited against the concerned lease.

(7) Where the proponent fails to complete all desired formalities for obtaining Environment Clearance as required by the competent authority within the stipulated time frame, District Magistrate may cancel the letter of intent issued in his favour."

(emphasis supplied)

12. For a better understanding, it would also be necessary to reproduce Rule 34 of the 1963 Rules, which reads as under :

"34. Mining Operations to commence within six months-The 'Selected Applicant' before the execution of mining lease deed under the provision of Chapters II, IV and IX or issuing a mining permit under Chapter VI of these rules, shall get prepared a mining plan by the person, recognized and registered by the Director, having the qualification and experience namely

(i) a degree in Mining Engineering or post-graduate degree in Geology granted by university established or incorporated by or under Central Act or a Provincial Act or a State Act, including any institution recognized by the University Grants Commission established under Section 4 of the University Grants Commission Act, 1956; and

ii) Professional experience of 05 years of working in a supervisory capacity in the field of mining after obtaining the degree.

(2) The selected applicant/e-tender/bidder of e-auction shall submit the mining plan for approval to the officer authorized by notification in this behalf by the State Government who may within 30 days from the date of receipt of mining plan approve, modify or reject it positively.

(3) The mining plan once approved shall be valid for entire duration of the mining lease/permit or for five years whichever is earlier. If the lease period is more than five years then in that case the lease holder will resubmit mining plan before the officer authorized by notification in this behalf by the State Government.

(4) Mining operations shall in respect of all minor mineral be undertaken in accordance with the mining plan, detailing yearly development schemes, aspect of reclamation and rehabilitation of mined out areas including progressive mine closure scheme duly approved by the officer authorized by notification in this behalf by the State Government.

Provided that the lessee shall start the mining operation after obtaining environmental clearance if required under the provisions of Environment Impact Assessment Notification, dated September 14, 2006 issued by the Ministry of Environment, Forest and Climate change Government of India as amended from time to time:

Provided further that an application seeking prior environmental clearance in all cases shall be made by the project proponent or end user agency as the case may be, in as provided in Paragraph 6 of the Environment Impact Assessment Notification, dated September 14, 2006 as amended from time to time.

(5) The mining lease deed will be executed only after approval of mining plan by the officer authorized by notification in this behalf by the State Government after which the lessee shall commence mining operation within six months from the date of execution of the lease deed and shall thereafter conduct such operations without deliberate intermission in a proper, skillful in work man like manner.

(6) Financial assurance has to be furnished by every lease holder. The amount of financial assurance shall be Rupees twenty five thousand for insitu-rock deposit and Rupees fifteen thousand for sand or morrum or bajari or boulder or any of these in mixed state exclusively found in the river bed mines per acres of the mining lease area put to use for mining and allied activities However, the minimum amount of financial assurance to be furnished in any of the forms referred to in sub-rule (7) shall be Rupees two lakhs for each category of mines be respective of area:

Provided that a lease holder shall be required to enhance the amount of financial assurance with the increase in the area of mining and allied activities:

Provided further that where a leaseholder undertakes reclamation and rehabilitation measures as part of the progressive closure of mine, the amount so spent shall be reckoned as sum of the financial assurance already spent by the leaseholder and the total amount of financial assurance, to be furnished by the lessee, shall be reduced to that extent.

(7) The Financial assurance shall be submitted by the lessee before the execution of lease deed in one of the following forms to the District officer or the officer authorised by the State Government in this behalf, as the case may be, or any amendment to it:

(a) Letter of Credit from any Scheduled Bank;

(b) Performance or surety bond;

(c) any other form of security or any other guarantees acceptable to the competent authority.

(8) Release of financial assurance shall be effective upon the notice given by the lessee for the satisfactory compliance of the provisions contained in the mine closure scheme and certified by the District Officer or the Officer authorised by the State Government in this behalf, as the case may be.

(9) If the District Officer or the Officer authorised by the State Government in this behalf, has reasonable grounds for believing that the protective, reclamation and rehabilitation measures as envisaged in the approved 'mine closure scheme' as given in mining plan in respect of which financial assurance was given has not been or will not be carried out in accordance with the 'mine closure scheme' either fully or partially, the District Officer or the Officer authorised by the State Government in this behalf shall give the lessee a written notice of his intention to issue the orders for forfeiting the sum assured at least thirty days prior to the date of the order to be issued.

(10) Within the thirty days of the receipt of notice referred in sub-rule (9), if no satisfactory reply has been received in writing from the lessee, the District Officer or the Officer authorised by the State Government in this behalf, as the case may be, shall pass an order for forfeiting the surety amount and a copy of such order shall be endorsed to the State Government.

(11) Upon the issuance or order District Officer or the officer authorised by the State Government in this

behalf, the State Government may realise any letter of credit or bond or any other surety, guarantee provided or obtained as financial assurance for the purpose of performance of protective reclamation, rehabilitation measures and shall carry out those measures, or appoint an agent to do so.

Explanation-- For the purpose of this rule mining operations shall include the erection of machinery, use of machine laying of a tramway or construction of road in connection with the working of the mines. "

13. Learned counsel for the petitioner, therefore, submitted that nothing more than Rs.1,00,000/- could have been deducted from the security money of the petitioner.

14. Learned counsel for the petitioner relying upon the judgment of the Supreme Court in **Commissioner of Income Tax, U.P.-II, Lucknow vs. Bajpur Co-operative Sugar Factory Ltd., Bajpur, District Nainital** reported in (1988) 3 SCC 553 submitted that when the amended provisions had not stated that the provisions would be retrospective then definitely the provisions would not be retrospective and, therefore, in the petitioner's case, the un-amended Rule would apply. For strengthening his arguments further, learned counsel for the petitioner also relied upon the decisions of the Supreme Court in **N.T. Devin Katti & Ors. vs. Karnataka Public Service Commission & Ors.** reported in (1990) 3 SCC 157 and in **P. Mahendran & Ors. vs. State of Karnataka & Ors.** reported in (1990) 1 SCC 411.

15. When Sri Sandeep Kumar Singh, learned Additional Chief Standing Counsel had on 2.8.2023 stated that the penalty could be

imposed as per the amended Rule 59 of the 1963 Rules as was amended on 13.8.2019, the Court had asked the learned Additional Chief Standing Counsel to calculate the amount as was recoverable. In pursuance thereof, learned Additional Chief Standing Counsel filed an affidavit on behalf of respondent nos.2 and 3 and in paragraph 17 of the affidavit, calculated the amount which was payable to the State Government by the petitioner and stated that the petitioner had to pay Rs.80,10,000/-. The relevant paragraphs of the affidavit i.e. paragraph nos.17 and 18 are being reproduced here as under :-

"17. That the letter of intent was issued on 13.11.2017 and the same was cancelled on 22.1.2020. On the date of cancellation, the 47th Amendment incorporated in the Uttar Pradesh Minor Minerals (Concession) Rules, 1963 was in force and therefore, the petitioner is liable to pay a penalty of Rs.10000/- per day from the date of the issuance of letter of intent to the cancellation of letter of intent. The chart is being reproduced below :-

Sn.	Particulars	Date
1.	Date of issuance of letter of intent.	13.11.2017
2.	Date of production of approved mining plan before the competent authority	13.12.2017
3.	Date of cancellation of letter of intent	22.01.2020

Number of days, through which the letter of intent was effective from the date of production of approved mining plan till the cancellation of letter of intent.

Sn.	Year	Number of Days
1.	2017	49
2.	2018	365
3.	2019	365
4.	2020	22
	Total number of days	801

Rate of penalty per day - Rs.10000/-
Total penalty Rs.10000x801= 8010000/-

18. That as per the above calculation, the petitioner is liable to pay Rs.8010000/- as per the provisions contained in Rule 59(1) inserted through 47th Amendment w.e.f. 13.8.2019 under the Uttar Pradesh Minor Minerals (Concession) Rules, 1963."

16. Learned counsel for the petitioner has stated that first of all the amended provision would not apply and also he submitted that the amended provisions even if applied then the petitioner could be charged for Rs.10,000/- for a period of one month only i.e. he could have been penalized for Rs.3,00,000/- and if that amount was not paid then that amount could be deducted from the security money and the remaining security money should be returned to the petitioner. Learned counsel for the petitioner relied upon the affidavit filed by respondent nos.2 and 3 and submitted that whatever be the case, the deponent of the affidavit i.e. Sri Prashant Raj Karan Yadav who is the Mines Officer at Basti had admitted that only a certain amount had to be deducted and the entire security money which comprises the earnest money and the security money and the first installment could not be forfeited by the Government.

17. Learned Additional Chief Standing Counsel has, however, in reply submitted that if Rule 59 of the 1963 Rules which stood prior to 13.8.2019 is perused and if the subsequent Rule 59 as it stood amended by the 47th Amendment dated 13.8.2019 is perused, it becomes clear that the penalty for non-compliance of the provisions of Rule 34 were definite and they were to the effect that the petitioner had to be penalized by paying certain

amount which would discourage non-serious applicants from making applications for mining purposes. He further submitted that the initiation of the auction proceedings entailed a lot of expenditure and if non-serious individuals were not discouraged then a lot of financial pressure would be exerted on the State exchequer and the State's time would also be wasted. Learned Additional Chief Standing Counsel once again took the Court through the provisions of the unamended Rule 59 of the 1963 Rules and the amended Rule 59 of the 1963 Rules and tried to convince the Court that as per the amended Rule 59 definitely the security amount along with the first installment and the earnest money could be forfeited.

18. Having heard learned counsel for the petitioner Sri Devbrat Mukherjee and learned Additional Chief Standing Counsel Sri Sandeep Kumar Singh, we are of the view that when the petitioner i.e. the proponent who had got the Letter of Intent on 13.11.2017 had not been able to provide the mining plan as is provided under Rule 34 of the 1963 Rules within one month then definitely Rule 59 of the 1963 Rules came into play and after the completion of 30 days, the District Magistrate ought to have cancelled the Letter of Intent and ought to have imposed the penalty of Rs.1,00,000/-. Definitely we are of the view that since the Letter of Intent was granted on 13.11.2017 and the application of the petitioner dated 18.1.2018 stating that he was not able to continue with the mining was given much before the amended

Rule 59 came into existence on 13.8.2019, the law as prevailed on the date when one month expired after the Letter of Intent dated 13.11.2017, would prevail and, therefore, we are of the view that the petitioner could have been penalized at the most by imposition of penalty of Rs.1,00,000/- and the remaining amount comprising the earnest money, security money and the first installment should have been returned to the petitioner. Further from the affidavit which the State has filed on 13.10.2023, we find that even the State is of the view that the earnest money, the security money to the first installment and the first installment of the first year which the petitioner had deposited could not be forfeited and the deponent of the affidavit has only stated that, from the petitioner as per the amended provision of Rule 59 of the 1963 Rules Rs.80,10,000/- had to be taken. Thus, even as per the own saying of the State Authorities, the petitioner had only to pay a certain penalty. As held earlier, we definitely hold that the petitioner, for the non-compliance of the provisions of Rule 34 of the 1963 Rules within one month of the issuance of the Letter of Intent, could be penalized only by the imposition of a penalty of Rs.1,00,000/-.

19. We, thus, hold that the order dated 22.1.2020 which has been challenged in Writ-C No.4812 of 2020 cannot be sustained in the eyes of law. As per the provisions of law which were in existence on the date when one month expired after the Letter of Intent was given on 13.11.2017, the petitioner could have been

penalized by imposing a penalty of Rs.1,00,000/- only. The order dated 22.1.2020 impugned in Writ-C No.4812 of 2020 is thus quashed and is set aside.

20. Under such circumstances, we direct the respondent-District Magistrate to refund the entire amount which was deposited by the petitioner at the time of making his application for participating in the auction i.e. the security money and the first installment of the first year which he had given after the Letter of Intent was issued.

21. For what has been stated above, the writ petitions succeed and are allowed to the extent indicated above.

Order Date :- 14.12.2023
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(Siddhartha Varma, J.)

(Manoj Bajaj, J.)