In the High Court of Punjab and Haryana at Chandigarh

CWP No. 26793 of 2018
Reserved on : 27.2.2024
Date of Decision: 06.3.2024

D.C.Taneja and sons .....Petitioner

Versus

State of Punjab and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Argued by: Mr. Atul Lakhanpal, Senior Advocate with
Mr. Arjun Lakhanpal, Advocate
for the petitioner.

Mr. Maninder Singh, Sr. DAG, Punjab.

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SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioner seeks quashing of the letter, issued by respondent No. 2 dated 27.5.2017 (Annexure P-3), and, the letter dated 31.5.2017 (Annexure P-4) issued by respondent No. 4. Furthermore, the petitioner prays that a mandamus be made, upon the respondent concerned, to grant to the petitioner the benefit of the orders dated 7.5.2018 and dated 10.5.2018, as became rendered by the Hon'ble Apex Court in SLP No. 1798 of 2018, and, to which respectively Annexure P-7 and Annexure P-8 became assigned.

2. Annexure P-3 carries a communication from the Director Mining, Industries and Commerce Department, Punjab, whereby a reference is made to the meeting of the Cabinet, Government of Punjab, as, held on 19.4.2017, wherebys a decision was taken for holding the auction of quarries, through progressive bidding procedure instead of the prior thereto auctions rather adopting the reverse bidding procedure, thus for allotments of sites being made to the mineral concessionaire(s) concerned.

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3. The petitioner became aggrieved from Annexure P-3, and, thereby through Annexure P-5 addressed to (i) the District Mining Punjab, Office Director Industry and Commerce Punjab, Sector-17, Chandigarh, and, to (ii) the General Manager-cum-Mining Officer, District Industries Centre, Ferozepur, he asked that his case be re-considered.

4. It appears that through Annexure P-5, the present petitioner did lay a challenge to Annexure P-3. The challenge made by the present petitioner to Annexure P-3, was also raised by the aggrieved therefrom through theirs instituting CWP-12664-2017, and, other connected therewith writ petitions. In the petitions (supra), a challenge was made to the constitutional vires of the decision of the cabinet, which finds reference in Annexure P-3, whereby a change was made to the hitherto procedure relating to auction of mining sites, inasmuch as, the reverse bidding procedure becoming altered to progressive bidding procedure.

5. However, through a decision made on the said connected writ petitions, on 12.1.2018, this Court after making expostulations, in paragraph 41 thereof, para whereof becomes extracted hereinafter, thus concluded that the policy decision, (Annexure P-4) rather is uninterferable in the exercise of writ jurisdiction, and, ultimately declared the policy decision, to be not ultra vires the constitution. Resultantly, this Court dismissed the challenge, as became laid in the writ petitions (supra).

> *"41. It is also settled that writ Courts rarely interfere with policy decisions unless a policy suffers from want of authority or is patently arbitrary, capricious and not informed by reason. The onus is upon the petitioners to satisfy the conditions referred to and unless they are able to discharge this burden, the writ Court will not exercise its powers to set-aside a policy decision. The petitioners herein have miserably failed in this regard. Moreover, the Courts are not equipped to examine the merits and de-merits of different economic policies (procedure of auction is in the realm economic policy) and therefore, interference in such a decision can be extremely*

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risky."

6. The aggrieved therefrom made a challenge thereto, before the Hon'ble Apex Court, but as unfolded by Annexure P-7, the Hon'ble Apex Court made thereons, the hereinafter extracted speakings, and, subsequently ordered for the listing of the apposite SLP on 10.5.2018.

> *"It is stated by Mr. P. Chidambaram, the learned senior counsel appearing on behalf of State of Punjab that the offer is made to the petitioners to resolve the entire controversy. This offer was also made before the High Court and forms part of the impugned judgment of the High Court. It is mentioned in para 6 of the impugned judgment and order of the High Court.*
>
> > *The offer is to the following effect:*
> >
> > *"The petitioners will surrender their respective contracts after receiving in advance the profit for the balance term of their respective contract as per the agreement. This could be worked out by multiplying the quantity of balance extractable minor mineral by the bid price and subtracting the expenses from it."*
>
> *It is stated by learned senior counsel of the State of Punjab that this is a firm offer and will be put down on affidavit. The affidavit will be filed on or before 9.5.2018. The petitioners may proceed to take instructions on the basis of this firm offer without waiting for the affidavit.*
>
> *List the matter on 10.5.2018."*

7. It is clear from the above extracted order, as made by the Hon'ble Apex Court, that an offer was permitted to be made by the Hon'ble Apex Court, by the respondents concerned, to the mineral concessionaire concerned, to the effect that the mineral concessionaires will surrender their prospective contracts, but after receiving in advance the profit for the balance term of their respective contracts as per the agreement. The said could be worked out by multiplying the quantity of balance extractable minor mineral by the bid price and subtracting the expenses from it.

8. Subsequently, on 10.5.2018, as revealed by Annexure P-8, the Hon'ble Apex Court, on a statement made by the learned counsel for the State of Punjab, that within a week from the said date i.e. on or before 18.5.2018, the necessary calculations and assessments would be made with

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regard to each of the petitioner, and, the quantum that is required to be paid, thus being paid, within a week thereafter i.e. on or before 25.5.2018 by the State of Punjab to the respective mineral concessionaires concerned, through necessary cheques. However, the petitioners in the apposite SLP were directed to stop mining activities with effect from 10.5.2018, and, were also directed to take away their machinery on or before 18.5.2018. It was further ordered, that if any amount was required to be refunded to the petitioners, thereupon, the State of Punjab was directed to look into the said fact, and, any delay in calculating the refundable amount was also directed to not come in the way of implementation of the orders (supra).

9. Apparently, the present petitioner did not then access the Hon'ble Apex Court. However, he subsequently accessed the Hon'ble Apex Court through raising SLP (Civil) Dairy No. 29580 of 2018, yet on the said SLP, the hereinafter order was passed.

> *"Learned counsel for the petitioner(s) seeks leave to withdraw the petitions. He says that he would like to approach the High Court.*
>
> *The Special Leave Petitions are dismissed as withdrawn".*

10. Therefore, thereby the directions alike to the one, as became passed in Annexure P-7, and, in Annexure P-8 rather did not become so passed in favour of the present petitioner, thus thereby the present petitioner cannot claim parity with the petitioners, in respect of whom the orders, enclosed in Annexures P-7, and, P-8, thus became passed.

11. Be that as it may, yet the present petitioner claims parity with the petitioners, in respect of whom Annexure P-7, and, Annexure P-8 became passed by the Hon'ble Apex Court. However, for the reasons to be assigned hereinafter, the present petitioner is not entitled to claim parity with the petitioners in the SLP (supra).

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12. The reason for drawing the above conclusion stems, from the factum, that the said asserted parity could become well leveraged by the present petitioner, only when the offer made to the petitioner, that he surrenders his respective contract, after receiving in advance the profit for the balance term of their respective contracts as per the agreement, but obviously became accepted by the present petitioner. However, the said offer remained unaccepted by the petitioner despite its being made to the present petitioner, thereby the benefit of the verdict (supra), thus was not accordable to the present petitioner. The factum of the respondent concerned, in terms of the extractions (supra), making an offer to the present petitioner, is unfolded in the relevant paragraph of the reply on affidavit, furnished to the instant petition, para whereof becomes extracted hereinafter.

> "*That in view of the submissions made in the foregoing paras, it is stated that the petitioner was given ample opportunity to either surrender the mining contract or to transfer his contract as per progressive bidding policy. The contract of the petitioner was cancelled as he had not applied for either. Therefore, the claim of the petitioner to grant the benefit as per the order dated 7.5.2018 and 10.5.2018 of the Hon'ble Supreme Court of India is not tenable and the present petition deserved to be dismissed, in the interest of justice.*"

13. It is also apparent on a reading of the above para, that despite the said offer becoming made to the present petitioner to either surrender the mining contract or to transfer his contract as per progressive bidding policy, yet the said offer remaining unresponded. Furthermore, it is stated in the reply, on affidavit, furnished to the instant petition, that the petitioner was informed vide letter dated 29.1.2018, that the Government has determined the rate of progressive bid @ Rs. 1032/- per tone, and, if he is so agrees, he was asked to furnish his consent by 30.1.2018, so that further action in the matter is taken. Nonetheless, it is stated in the reply, on affidavit, that neither the petitioner surrendered the contract, nor he asked for transferring

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the contract, as per the progressive bidding policy, and, as such the General Manager-cum-Mining Officer, District Industries Centre, Ferozezpur cancelled the mining contract of the petitioner vide letter No. 1425 dated 11.5.2018.

14. It is further candidly stated in the reply on affidavit, that the said fact has been suppressed in the instant writ petition. In consequence, it is stated in reply, on affidavit, that the present petitioner rather on account of his suppressing the above fact, thus is to be declined the writ relief. There is no material on record suggestive, that the respondent did not, in terms of the speakings made in the orders drawn by the Hon'ble Apex Court in Annexure P-7, and, Annexure P-8, thus make the relevant offer to the present petitioner. Therefore, it has to be concluded, that the relevant offer, as made to the present petitioner, also became declined. Resultantly, when only with the petitioner favourably responding to the said offer, inasmuch as, his either opting for the mutation of the mining contract from the hitherto reverse bidding to progressive bidding, or his opting for surrendering of contract on reverse bidding, rather whereafters the speakings (supra), made in Annexures P-7 and P-8 were to favourably ensue to the present petitioner. In other words, if only the petitioner had favourably responded to the letter (supra) drawn in terms of the speakings (supra) made in Annexure P-4, that thereby the petitioner could, if he had not taken to accept the mutation of the mining contract from reverse bidding to progressive bidding, but had opted or had accepted the offer of the respondent concerned, thus to make the determinations of monetary recompenses qua him, rather in terms of the speakings (supra), made in the Annexures P-7 and P-8. Contrarily, the lack of response to the relevant offers made by the respondent to the petitioner, thereby estops the petitioner to claim parity with the petitioners in respect of

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whom Annexures P-7 and P-8 became passed.

15. The learned senior counsel for the petitioner has drawn the attention of this Court, that the petitioner had accessed the Hon'ble Apex Cout, and, the Hon'ble Apex Court had permitted him to withdraw the SLP concerned, but with liberty to approach this Court. However, since in the order (supra), as became drawn on the apposite SLP, as became preferred by the petitioner, rather no relief became granted to the present petitioner in tandem with the relief, as became granted to the petitioners in Annexures P-7 and P-8, thereby the present petitioner cannot claim parity with the petitioners in respect of whom, the orders, as embodied in Annexures P-7 and P-8, thus became passed by the Hon'ble Apex Court.

16. Since the *sine qua non* for the petitioner claiming parity was but embedded in the trite factum of his favourably responding to the relevant offers, as became made by the respondent to him, whereas, his remaining unresponsive thereto, rather his concealing the factum of his receiving the said offers, and, yet his not making response thereto, besides his also concealing the factum, that for failure of his making any response to the relevant offers, as became made to him by the respondent concerned, thus had led to the cancellation of his contract. Resultantly, the above suppression debars the present petitioner from his claiming, that the equitable writ jurisdiction be favourably exercised in his favour.

17. Even otherwise, after rescission of the contract taking place, factum whereof has been suppressed in the petition by the petitioner, thus wherefroms the equitable writ jurisdiction vested in this Court but has been fouled. Resultantly, when the contract after its rescission but becomes terminated, therebys when only before termination of the mining contract, the speakings (supra), as made by the Hon'ble Apex Court in Annexures P-7

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and P-8, remained enlivened, and, not thereafter. Consequently, therebys also the petitioner cannot claim parity with the petitioners, in respect of whom the orders, enclosed in Annexures P-7, and, P-8, thus became passed. Therefore, this Court finds no merit in the instant petition, and, is constrained to dismiss it.

Final order

18. Consequently, finding no merit in the instant petition, the same is hereby dismissed. Accordingly, the impugned orders are maintained, and, affirmed.

19. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

March 06, 2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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