

Court No. - 17

Case :- WRIT - C No. - 10393 of 2023

Petitioner :- M/S Sakcham Contractor And Suppliers, Jhansi Thru. Prop. Devendra Kumar Gupta And Another

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Geology And Mining, Lko. And 2 Others

Counsel for Petitioner :- Rahul Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard Mr. Rahul Srivastava, learned counsel for petitioner and learned State Counsel for opposite parties.

2. Under challenge is order dated 27.03.2019 passed under Rule 80 of the U.P. Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as the Rules of 1963) whereby petitioner's licence for sand mining has been cancelled and forfeiture of the security amount has also been directed. Also under challenge is the revisional order dated 14.07.2023 whereby revision has also been rejected.

3. It has been submitted that initially, petitioner was granted a mining lease on 28.05.2018 for a period of five years till 27.05.2023. While executing the mining work, impugned order dated 27.03.2019 has been passed on the basis of a spot inspection report dated 18.03.2019 in which it was stated that petitioner was conducting mining operations in violation of the Rules of 1963 and the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the Act of 1957) since implements which were barred were being utilized by petitioner for the purposes of additional mining.

4. It has been submitted that although there is no procedure regulating the enquiry proceedings pertaining to such allegations, a Division Bench of this Court in **Ranveer Singh v.**

State of U.P. and others, reported in 2017(1) ADJ 240 has clearly laid down the procedure which is required to be followed in such cases that principle of natural justice and for acting fairly with regard to such proceedings has been made sine qua-non.

5. It is submitted that a bare perusal of impugned order dated 27.03.2019 will make it evident that the same has been passed only on the basis of spot inspection report dated 18.03.2019 without even issuing show cause notice to petitioner or providing him opportunity of hearing. Learned counsel has drawn attention to memorandum of revision to submit that violation of aforesaid judgment as well as of Rule 60 of Rules of 1963 was clearly indicated in the Revision, which however has been completely ignored while passing the revisional order.

6. It has also been submitted that in terms of Rule 59(4) of Rules of 1963, only an amount of Rs.5,00,000/- per occasion of contravening act even otherwise can be imposed whereas in the present case, the entire security amount of Rs.1,53,00,000/- has been forfeited.

7. Learned State Counsel has refuted the submissions advanced by learned counsel for petitioner on the basis of counter affidavit filed with the submission that inspection of the area in which mining lease was granted to petitioner was conducted along with other abutting areas between 28.01.2019 and 31.01.2019 whereafter the joint inspection report was submitted on 05.02.2019 in which it was indicated that petitioner had conducted additional mining of 1778 cubic meter of sand in the sanctioned area and in view thereof, a notice dated 23.02.19 was issued to petitioner whereafter petitioner submitted reply on 05.03.2019 which was not found satisfactory. It is submitted that again on 18.03.2019, an inspection was done and petitioner

was found lifting sand through a lifter machine in the sanctioned mining area which is against the provisions of not only the Rules of 1963 but also the Act of 1957. It is submitted that since conduct of petitioner was in violation of terms and conditions of the lease agreement and Environmental Clearance Certificate, the impugned orders have been passed also considering the violation of Government Order dated 14.08.2017.

8. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is evident that petitioner's mining lease has been cancelled vide impugned order dated 27.03.2019 forfeiting an amount of Rs.1,53,00,000/- of security deposit as well. It is admitted that there are no rules governing the procedure relating to enquiry in such matters but the same is now required to be conducted in terms of judgment rendered by a Division Bench of this Court in **Ranveer Singh**(supra) which specifically prescribes that principles of natural justice are required to be followed with opportunity of hearing being provided to the lease holder. The relevant portions of the judgment are as follows:-

"30. Thus law on the subject is clear that in case no procedure has been provided for as to in what way and manner the authority is to be exercised, then at the said point of time, the exercise of power by public authority has to be properly discharged i.e. it has to be decided with fairness and after following the principle of natural justice and the sense of justice and equity should continue to guide the Authorities concerned while conducting such proceedings in deciding the dispute on merit as the said decision in question would have large scale financial repercussions on the incumbent against whom proceedings in question have been initiated."

"32. Here, the petitioner has been denying his indulgence in the activity of illegal mining and what we find from the decision making process and from the record is that rule of fair play has been breached with impunity, inasmuch as, after liberty has been accorded by the Apex Court, the petitioner has proceeded to file a detailed and exhaustive reply wherein each and every facet of the matter was sought to be denied/disputed and most conveniently, it is sought to be mentioned by the District Magistrate that the reply submitted by the petitioner was not satisfactory and in the earlier part of the order while dealing with respective notices, it has been mentioned that petitioner has not proceeded to place sufficient material to rebut the allegation. Decision maker in the present case has ignored the weight of reply available on record as extracted above and has dealt with the same in perfunctory manner with closed mind, whereas while exercising quasi-judicial authority was required to be free from bias i.e. there should be absence of conscious or unconscious prejudice to either of the parties. Here the tenor of proceedings are speaking for itself that District Magistrate while dealing with the matter was proceeding with pre-conceived notion that petitioner in-fact has indulged in illegal mining, whereas the said opinion could have been formed, only after enquiry was held."

"33. Once the liability was to be fastened on the shoulder of petitioner, then it was the obligation of the State to prove by way of credible evidence available that it was the petitioner, who has indulged in illegal mining and in the said direction, apart from issuing show cause notice, all the evidence that was sought to be relied upon i.e. the incumbents who have carried out the search and survey and the incumbents who have come forward to depose against petitioner, their names ought to have been disclosed and they ought to have been produced to support the case of State that petitioner in-fact has indulged in illegal mining. Not only this as a part of process, petitioner was entitled to have reasonable opportunity of defending himself by questioning the veracity of evidence produced against him and by adducing his own defence evidence, if any. Decision maker is bound to act fairly, as under the scheme of things provided for, the determination made by him will entail civil consequences, as qua the person charged with illegal mining on charges being proved financial liability would be shouldered and in contra situation, the State would be at loss."

9. Upon applicability of aforesaid judgment in the present facts and circumstances of the case, it is quite evident that impugned order dated 27.03.2019 adverts only to spot inspection report dated 18.03.2019. There is absolutely no mention of any show cause notice having been issued to petitioner in pursuance of aforesaid report. The order also does not indicate any opportunity of hearing being provided to petitioner. No evidence whatsoever has been considered by the District Magistrate whereby allegations levelled against petitioner could be corroborated by any evidence. The order impugned therefore has clearly been passed in violation of the judgment rendered in **Ranveer Singh**(supra).

10. It is also evident that in the memorandum of revision, a specific ground has been raised that the inspection was done on an ex parte basis and order dated 27.03.2019 has been passed without providing any opportunity or show cause notice in violation of Rule 60 of the Rules 1963.

11. A perusal of the revisional order also makes it evident that specific plea raised by petitioner as indicated herein above has been completely ignored by the revisional authority who in turn has also placed reliance on the same ex parte inspection report.

12. Rule 60 of the Rules of 1963 provides the consequences of contravention of Rules and conditions of lease generally with specific stipulation that in case of any breach or contravention by a lessee of any of the rules or conditions and covenants

except for those pertaining to payment of royalty, rent or other sums due to the State Government, the State Government may, after giving the lessee a reasonable opportunity to state his case, terminate the lease.

13. As noticed herein above, the impugned orders have been passed clearly in contravention of not only of Rule 60 of the Rules of 1963 but also in violation of judgment rendered in **Ranveer Singh**(supra).

14. In view of aforesaid, impugned orders dated 27.03.2019 and 14.07.2023 being unsustainable are hereby quashed by issuance of a writ in the nature of Certiorari. However, since the period of mining lease granted to petitioner has already expired, the petitioner shall be entitled to refund of security amount deposited by him forthwith along with interest at the rate of 6% per annum from the date of forfeiture till the date of its actual payment.

15. Resultantly, the petition succeeds and is **allowed**. The parties to bear their own costs.

Order Date :- 9.4.2024

kvg/-