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Neutral Citation No. - 2025:AHC:142600-DB

Court No. - 40**Case :-** WRIT - C No. - 1860 of 2020**Petitioner :-** Rahul Panwar**Respondent :-** State Of U.P. And 2 Others**Counsel for Petitioner :-** Ashish Malhotra**Counsel for Respondent :-** C.S.C.**Hon'ble Saral Srivastava,J.****Hon'ble Arun Kumar Singh Deshwal,J.**

1. Heard learned counsel for the petitioner and Sri Rajeshwar Tripathi, learned Additional Chief Standing Counsel-II for State-respondents.
2. The petitioner, by means of the present writ petition, has assailed the order dated 08.02.2019 passed by the respondent no.3-District Magistrate, Saharanpur to the extent of forfeiting 25% of the security and 25% of the first installment amounting to Rs 10,38,46,500/-.
3. The facts, in brief, are that an advertisement was issued by respondent no.1 for E-tender-cum-E-auction for the grant of mining lease in district Saharanpur on 14.08.2017 on Gata No.3, Plot No.3, area 8.05 hectares, i.e., 138462 cubic square meters in Tehsil-Behat situated at Yamuna River, Village Rehna, District Saharanpur. The petitioner participated in the E-tender process and was selected as the highest bidder. The letter of intent was issued to the petitioner on 15.03.2018. As per the terms and conditions of the letter of intent, the petitioner deposited 25% of the security and 25% of the first installment of the royalty with the treasury through Challan No.Z-23 on 26.03.2018. The petitioner was issued an environmental clearance certificate on 22.11.2018. The petitioner, thereafter, submitted the environmental clearance certificate dated 22.11.2018 to the department.

4. It appears that the environmental clearance certificate granted to the petitioner was challenged by one Sunil Kumar in an Appeal No.258 of 2018 before the National Green Tribunal, Principal Bench, New Delhi. In the said appeal, the National Green Tribunal on 13.12.2018 passed the following order:-

"ORDER

Challenge in this appeal is to the order of Environmental clearance dated 22.11.2018 passed by the State Level Environment Impact Assessment Authority, Uttar Pradesh.

The case of the appellant is that no public consultation was held in terms of judgment of this Tribunal dated 13.09.2018 in Satendra Pandey vs. Ministry of Environment, Forest and Climate Change & Anr, O.A No. 186 of 2016. No replenishment study has been conducted. The District Survey Report has not been prepared in accordance with law. The appellant also states that the mining site is an Eco-Sensitive Zone of the Kalesar National Park.

To consider the matter further, we consider it is necessary to have the response from the respondent no.2, Uttar Pradesh State Environment Impact Assessment Authority and respondent no.4, District Environment Impact Assessment Authority, Saharanpur, within one month from the receipt of copy of this order.

The appellant is also at liberty to furnish a set of papers to respondent nos.2 & 4 and file a proof of service, to enable them to furnish response to this Tribunal. It is made clear that if the respondent nos.2 & 4 are satisfied that the clearance has been given illegally, it will be open to them to take further remedial steps in accordance with law.

List again on 12.02.2019."

5. Under Rule 29 of U.P. Minor Minerals (Concession) Rules, 1963, amended on 14.08.2017 by Uttar Pradesh Minor Minerals (Concession) (Forty Third Amendment) Rules, 2017, a bidder was to produce an approved mining plan and a clean environment clearance certificate prescribed as per rules. Thereafter, the lease deed is to be executed.

6. The petitioner did not execute the lease deed which led the respondent no.3 to issue notice dated 14.12.2018 directing the petitioner to deposit Rs.2,53,39,740/- towards stamp duty and District Mineral Fund (DMF) etc. and get the lease deed executed, and in case, the aforesaid deposit is not made, an ex-parte proceedings may be initiated for cancelling the letter of intent, forfeiting security deposit and black-listing the name of petitioner for five years.

7. The petitioner in response to the aforesaid notice submitted his reply on 17.12.2018 which has been referred to by the Mineral Officer, Saharanpur in his letter dated 26.12.2018 wherein the Mineral Officer noted that the petitioner has stated in his objection that the information may be provided to the petitioner as to whether any proceeding in respect to the allotment of mines and minerals lease is pending before the Apex Court or before the National Green Tribunal, New Delhi. The said letter further recites that the petitioner, in his objection, has also stated that he had come to know that some proceeding in respect to land allotted to the petitioner for mining is pending, and whether the pendency of the proceeding would affect the mining operation of the petitioner.

8. The Mineral Officer in the said letter has further stated that the stay order operating in respect to mining in the area of village Rehna has been lifted, and there is no stay order by any of the Courts or National Green Tribunal in respect to the land allotted to the petitioner.

9. Thereafter, the petitioner again submitted a reply on 05.01.2019 stating therein that the State Government cannot execute the lease deed without conducting replenishment study, therefore, an information may be provided to the petitioner as to whether any replenishment study has been conducted by the State Government by any authorised agency, and if there is any such report, the same may be provided to the petitioner so that he may file the same before the Court. In the reply, the petitioner has also stated that the environmental clearance certificate has been challenged by one Sunil Kumar before the National Green Tribunal, New Delhi.

10. The record further reveals that the petitioner has approached this Court by filing Writ-C No.5098 of 2019, wherein he has assailed the notice dated 11.01.2019.

11. It has also come on record that the National Green Tribunal, New Delhi, in Appeal No.258 of 2018, passed the following order on 29.03.2019:-

"ORDER

Issue for consideration is compliance of the order of this Tribunal dated 13.9.2018 requiring preparation of District Survey Report before issuance of the leases and recall of leases granted in violation of the said order.

Vide order dated 13.12.2018, a report was sought from the Uttar Pradesh State Environment Impact Assessment Authority which has been filed on 12.03.2019 accepting that the leases in question are hit by the order of this Tribunal dated 13.09.2018 in Satendra Pandey Vs. Ministry of Environment, Forest and Climate Change & Anr., O.A. No.186/2016.

Learned Counsel for the State of Uttar Pradesh fairly states that appropriate remedial action will be now taken within one month to recall the Environmental Clearance granted in violation of order of this Tribunal dated 13.9.2018. An appropriate order will be passed in the matter.

In view of above, if the Environmental Clearance is being acted upon, the same may not be acted upon till an appropriate order is passed by the concerned authority.

The application is disposed of."

12. Thereafter, the respondent no.3, by order dated 08.02.2019, cancelled the letter of intent of the petitioner and further imposed penalty of Rs 10,38,46,500/- against the petitioner. The order dated 08.02.2019 is impugned in the present petition.

13. A counter affidavit has been filed by the State Government contending inter-alia that before the notice dated 14.12.2018, a notice dated 03.12.2018 was issued to the petitioner by which he was asked to get the lease deed executed by depositing stamp duty and after complying with the other formalities. It is also stated that since the petitioner did not take any action, therefore, the final notice dated 11.01.2019 was issued. It is stated that in pursuance of the said notice, the petitioner has not deposited the stamp duty nor has paid other dues; therefore, the District Magistrate, Saharanpur, has passed the impugned order dated 08.02.2019.

14. The respondent has further stated that the petitioner vide letter dated 17.12.2018 has sought certain information which has been supplied to the petitioner by the respondent by letter dated 26.12.2018, specifically stating that no interim order/stay order has been granted by the National Green Tribunal. The respondent further stated that despite

specific information being supplied to the petitioner, he neither deposited the stamp duty nor executed the lease deed. This shows that the petitioner was not willing to execute the lease deed, and his intention was to get the proposed mining area in abeyance, and this action of the petitioner has caused loss of revenue to the State Government.

15. It is further stated that under Rule 60(1) of U.P. Minor Minerals (Concession) Rules, 1963, it is provided that if, within a period of one month from the date of issuance of the environmental clearance certificate, the lease deed is not executed, then the security money and first installment shall be forfeited.

16. A rejoinder affidavit has been filed by the petitioner denying the averments made in the counter affidavit.

17. The petitioner alongwith rejoinder affidavit has filed reply of the State Level Environment Impact Assessment Authority, Uttar Pradesh in Execution Application No.19 of 2020 in Appeal No.258 of 2018 before the National Green Tribunal, New Delhi in which it has been categorically stated in paragraph no.6 that in compliance of the order dated 29.03.2019, a Joint Committee took remedial action and revoked the original EC. Dated 22.11.2018, issued in favour of the petitioner. In the said paragraph, it is stated that the order dated 29.03.2019 stands complied with.

18. Challenging the aforesaid order, learned counsel for the petitioner has contended that in the instant case, the environmental clearance certificate was issued by the authority, namely, State Environment Impact Assessment Authority (SEIAA), which is a special agency constituted for granting environmental clearance certificates. It is submitted that the petitioner has obtained an environmental clearance certificate on 22.11.2018, which was assailed by one Sunil Kumar before the National Green Tribunal, New Delhi, in Appeal No.258 of 2018. It is contended that without having environmental clearance certificate, the petitioner could not carryout any mining operation and could not execute the lease deed in view of Rule 29 of amended Rules

of 1963, and in such view of the fact, there was no fault on the part of the petitioner in not getting the lease deed executed as per the directions given by the respondent no.3.

19. It is contended that the defect in granting environmental clearance certificate was not because of the fault of the petitioner, but it was the fault of the authority namely State Environment Impact Assessment Authority which had granted environmental clearance certificate to the petitioner without following due procedure of law which led the National Green Tribunal to pass an order the order dated 13.12.2018, extracted above, directing the authority concerned to verify if the environmental clearance certificate had been granted to the petitioner illegally, it is open to the authority to take further remedial measures in accordance with law.

20. It is further submitted that since no remedial steps were taken, therefore, the National Green Tribunal passed an interim order restraining the parties from acting upon environmental clearance till an appropriate order is passed by the concerned authority.

21. It is further submitted that it is evident from paragraph no.6 of the reply filed by the State Level Environment Impact Assessment Authority that the environmental clearance certificate was cancelled by the competent authority. Accordingly, it is submitted that once the validity/legality of the environmental clearance certificate was sub-judice before the Court, the petitioner could not get any lease deed executed in view of Rule 29 of amended Rules of 1963 and thus, the petitioner could not be faulted for non-executing the lease deed, and since, there was no fault on the part of the petitioner in executing the lease deed, the respondent no.3 has erred in law in forfeiting 25% of the security and 25% of the first installment.

22. It is further contended that even the impugned order has been passed without considering the effect of Rule 29 of the amended Rules of 1963, which specifically states that the security can be forfeited only if the bidder is at fault in not getting the lease deed executed.

Accordingly, it is submitted that the order passed by the respondent no.3 forfeiting 25% of the security and 25% of the first installment is illegal inasmuch as no finding has been returned by the respondent no.3 that fault was on the part of the petitioner in not executing the lease deed.

23. Per contra, learned Additional Chief Standing Counsel-II would contend that in the instant case, the letter of intent was given to the petitioner, and the petitioner was asked to comply with the requirement vis-à-vis depositing the stamp duty and other dues which the petitioner is liable to pay for execution of the lease deed. It is submitted that on the date the letter of intent was issued, there was no interim order operating against the environmental clearance certificate, and in such view of the fact, the petitioner was at fault in not getting the lease deed executed and forfeiture of security by the respondent no.3 is in compliance of Rule 29 of amended Rules of 1963, therefore, there is no illegality in the impugned order. He further submits that if the petitioner had executed the lease deed, he could easily carry out the mining operation till any order had been passed by the National Green Tribunal staying the environmental clearance certificate.

24. He further submits that if there was any injunction order passed by the National Green Tribunal or any competent Court staying the effect of environmental clearance certificate, the State Government would not have charged any royalty for the period for which mining operation could not be conducted by the petitioner for not having environmental clearance certificate, and thereafter, the defect in environmental clearance could be removed and the mining operation could be re-started. Accordingly, it is submitted that the conduct of the petitioner reflects that he was not at all interested in carrying out the mining operation, which was detrimental to the interest of the Revenue Department, as the action of the respondent has caused loss of revenue to the State Government.

25. We have considered the rival submissions of the parties and perused the record.

26. Before proceeding to deal with the contention of the parties, it would be apt to reproduce Rule 29 of the amended Rules of 1963:-

*"29. **Execution of lease deed** (1). The successful bidder/tenderer after receiving letter of intent of concerned e-tender/e-auction/e-tender cum e-auction shall produce, approved Mining Plan and Clean Environment Certificate prescribed as per rule, and a lease deed concerning the same will be executed in form MM-6 or in similar format. The registration of the said executed lease deed will be registered within three months period. The period of lease will be counted from the date of execution of the concerned lease deed. If due to fault on the part of lease holder, registration of the said executed lease deed is not registered within three months, then the said lease deed will be treated as null and void and the amount of security will be seized by the District Magistrate.*

(2). Omitted.

(3). A copy of the lease deed together with the map of the area shall be sent by the District Officer or the Committee, as the case may be, to the Director, Geology and Mining, Uttar Pradesh, within fifteen days from the date of execution thereof."

27. Rule 29(1) provides that the successful bidder, after receiving the letter of intent, shall produce the approved mining plan and clean environmental certificate as per the rules and execute a lease deed in terms of MM-6 or in a similar format. The said rule further provides for registration of the lease deed within three months. The period of lease will be counted from the date of execution of the lease deed. The said rule confers power upon the authority to forfeit the security of the bidder in the event the lease deed is not registered within three months due to the fault of the bidder. Therefore, in order to forfeit the security, the respondent authority has to establish that there was fault on the part of the bidder in not getting the lease deed registered despite complying with all formalities required for the execution of the lease deed.

28. In the instant case, the petitioner was a successful bidder and was issued a letter of intent on 15.03.2018. The petitioner obtained environmental clearance certificate from the department namely, State Environment Impact Assessment Authority on 22.11.2018 which was assailed by one Sunil Kumar before the National Green Tribunal in Appeal No.258 of 2018, and while taking cognizance on the appeal of Sunil Kumar challenging the environmental clearance certificate, the National Green Tribunal granted liberty by order dated 13.12.2018 to

the competent authority to take remedial measures in accordance with law, if environmental clearance certificate has been granted to the petitioner illegally.

29. At this stage, it is pertinent to note that the petitioner has to apply for the grant of an environmental clearance certificate, but the issuance of an environmental clearance certificate is within the domain of the SEIAA, and the petitioner has no role whatsoever in the issuance of an environmental clearance certificate. If any defect or infirmity is found in the environmental clearance certificate, the petitioner cannot be faulted for the defect or infirmity in the environmental clearance certificate, and the fault is solely of the department that is competent to issue such a certificate.

30. In the instant case, the environmental clearance certificate was assailed by one Sunil Kumar, on which the National Green Tribunal has taken cognizance and passed an order dated 13.12.2018, which has already been extracted. When the State Government did not take any action, the National Green Tribunal passed an order of injunction on 29.03.2019 restraining the concerned authority not to act upon the environmental clearance certificate if the environmental clearance certificate has been acted upon.

31. From the aforesaid fact, it is clear that the veracity or legality of the environmental clearance certificate was under a cloud as it was challenged before the National Green Tribunal.

32. It is also established on record that an environmental clearance certificate was not issued in accordance with the procedure provided, and there were several defects in the environmental clearance certificate, which led the competent authority to recall the environmental clearance certificate granted to the petitioner, which is evident from paragraph 6 of the reply filed by the competent authority in Execution Application No.19 of 2020.

33. The lease deed could not be executed for the defect in the environmental clearance certificate, which was assailed before the

National Green Tribunal. So the aforesaid fact clearly discloses that the petitioner was not at fault in not getting the lease deed executed.

34. No man of prudence would make a huge amount in any venture from which he is not going to reap any benefit, and it is certain that the investment will doom.

35. In the instant case, even Rule 29 of amended Rules of 1963 says that the successful bidder after obtaining letter of intent of concerned tender has to produce clean environmental certificate which means environmental clearance certificate has been issued by the competent authority after following due procedure and is not under scrutiny before any Court of law on the ground that it has not issued as per the procedure prescribed for issuing the said certificate.

36. In view of Rule 29 of the amended Rules of 1963, no lease deed could be executed in the absence of a valid environmental clearance certificate. As has been held above, the clean environmental certificate is to be issued by the competent authority, and in the issuance of which, the petitioner has no role, and if there was any defect in the environmental clearance certificate, the fault is of the concerned department authorised to issue the clean environmental certificate, for which the petitioner cannot be penalised.

37. In view of the aforesaid fact, we are of the view that the petitioner was not at fault in not getting the lease deed executed in compliance with the directions issued by the respondent no.3, as he was prohibited under Rule 29 of the amended Rules of 1963 to execute any lease deed till he possesses a valid, clean environmental certificate.

38. The respondent no.3 while passing the impugned order has failed to consider the aforesaid aspect of the matter and also failed to consider Rule 29 of amended Rules of 1963 in correct perspective that the 25% security amount and 25% of first installment can be forfeited if there is fault of the successful bidder in not executing the lease deed and getting it registered within three months.

39. In view of the discussions made above, we conclude that the forfeiture of 25% of the security as well as 25% of the first installment of the petitioner by the respondent no.3 is illegal and arbitrary and cannot be sustained in law. Accordingly, we set aside the impugned order dated 08.02.2019 to the extent it forfeits 25% of the security and 25% of the first installment of the petitioner. We further direct the respondent no.3 to refund the amount of Rs . 10,38,46,500/- deposited by the petitioner towards security and the first installment.

40. We further find that 25% of the security and 25% of the first installment have been illegally forfeited by the respondent no.3, due to which the petitioner has suffered financial loss. Thus, in view of the aforesaid fact, we compensate him by awarding 6% simple interest on the aforesaid amount from the date it was forfeited till the date of its payment.

41. Thus, for the reasons given above, the writ petition is *allowed* with no order as to costs.

Order Date :- 20.8.2025

Sattiyarth/Vandana

(Arun Kumar Singh Deshwal,J) (Saral Srivastava,J)