IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 25702 of 2017
Date of Decision: November 10, 2017

Harvinder Singh

......Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE SUDHIR MITTAL.

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Present: Mr. Gurminder Singh, Sr. Advocate with
Mr. J.S. Gill, Advocate
for the petitioner

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Sudhir Mittal, J.

The petitioner is the successful bidder for Bhandala Mine in District Ferozepur having an area of 2.64 hectares. The said mine comprises Khasra Nos. 49//23, 24, 21, 22, 19, 20, 18. The mining rights in respect of this land have been obtained by the petitioner through e-auction held pursuant to the notice inviting tender dated 13.06.2017 issued by the State of Punjab. He was the highest bidder @ Rs. 108/- per metric ton. Thereafter, environmental clearance was transferred in the petitioner's name and consent to operate under the Air Act and Water Act was also granted. Final approval too was granted on 06.10.2017 and the petitioner thus has commenced the mining activities immediately thereafter.

2. The petitioner's grievance is that soon after he started mining activities, another Notification dated 30.10.2017 has been issued in which 'Bhandala mine' has been again included although the land comprises different

khasra numbers 53//2, 3, 8 and 9, measuring total 1.61 hectares. He submits that the mine which has now been put to auction is situated at a distance of 135 meters from the mine which is taken by the petitioner pursuant to the notification dated 13.06.2017. This information regarding availability of 2nd mine in the adjoining land was not made available when the notification inviting 1st bid was issued. Resultantly, it is claimed that the petitioner would suffer huge losses and the action of the State of Punjab in concealing this fact is per-se arbitrary and thus needs intervention of this Court in exercise of writ jurisdiction vested under Article 226 of the Constitution of India. Reliance has also been placed upon Rules 58 and 59 of the Punjab Minor Mineral Rules, 2013 as well as Notification dated 15.01.2016 issued by the Ministry of Environment, Forest and Climate Change.

3. The rules relied upon by the petitioner are reproduced below:-

> ***Rule 58 : Cluster of small quarries :***
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> *individual quarries having area of less than or equal to 5 hectares each and in total not more than 100 hectare in a development Block may be clubbed and declared as "cluster" by the Director.*
>
> ***Rule 59 : environmental management plan for a cluster of mineral concession :***
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> *for a cluster of mineral concessions, an Environmental Management Plan shall be prepared collectively by the Mineral Concession Holders of the cluster through a recognized person and submitted to the District Level Committee for approval.*

4. Relevant provisions of Appendix XI annexed with Notification dated 15.01.2016 of the Ministry of Environment, Forest and Climate Change are also being reproduced below :-

"*(1) The data provided by the State (Sustainable Sand Mining Guidelines) shows that most of the mining leases for minor minerals are of lease area less than 5 hectare. It is also reported that in hill States getting a stretch in river with area more than 5 hectare is very uncommon. So the size of lease for minor minerals including river sand mining will be determined by the States as per their circumstances.*

(2) The mining of minor minerals is mostly in clusters. The Environment Impact Assessment or Environment Management Plan are required to be prepared for the entire cluster in order to capture all the possible externalities. These reports shall capture carrying capacity of the cluster, transportation and related issues, replenishment and recharge issues, geo-hydrological study of the cluster area. The Environment Impact Assessment or Environment Management Plan shall be prepared by the State or State nominated Agency or group of projects proponents in the Cluster or the project proponent in the cluster.

(3) There shall be one public consultation for entire cluster after which the final Environment Impact Assessment or Environment Management Plan report for the cluster shall be prepared.

(4) Environmental clearance shall be applied for and issued to the individual project proponent. The individual lease holders in cluster can use the same Environment Impact Assessment or Environment Management Plan for application for environmental clearance. The cluster Environment Impact Assessment or Environment Management

Plan shall be updated as per need keeping in view any significant change.

(5) The details of cluster Environment Impact Assessment or Environment Management Plan shall be reflected in each environmental clearance in that cluster and DEAC, SEAC and EAC shall ensure that the mitigative measures emanating from the Environment Impact Assessment or Environment Management Plan study are fully reflected as environmental clearance conditions in the environmental clearance's of individual project proponents in that cluster.

(6) A cluster shall be formed when the distance between the peripheries of one lease is less than 500 meters from the periphery of other lease in a homogenous mineral area."

5. Reading the above provisions together, a "cluster" is created where, in a homogenous area not exceeding 100 hectares, there are individual mines of area not exceeding 5 hectares each and each mine within the cluster is less than 500 metres distant from the next mine. Further, in respect of such a "cluster", a common Environment Impact Assessment or Environment Management Plan shall be prepared. However, each individual project proponent shall apply for and be issued an individual environmental clearance. Thus, the said provisions provide that a common homogenous approach is to be adopted while assessing the Environment Impact in an area where a "cluster" of small quarries or mines exist. They do not bar leasing out of individual mines in a "cluster" as is sought to be projected by the petitioner. Thus, there is no violation of any statutory provision or a contractual liability. Nothing unreasonable has been pointed out in the impugned action so as to attract the charge of arbitrariness.

6. The argument that the business of the petitioner would be adversely affected on account of the impugned action, also can not be accepted. Assuming that such is the result of the action complained of, the petitioner has the remedy of claiming damages, if he is so entitled to. In exercise of jurisdiction under Article 226 of the Constitution of India, this Court would interfere only in case there is violation of a fundamental or legal right. Contractual rights and liabilities or the violation thereof can not form the subject matter of such a petition except where the action complained of is totally "unreasonable" and unconstitutional. In the present case there is no such "unreasonableness" involved. The writ petition is wholly misconceived and without merit. It is a gross misuse of the extraordinary remedy available under Article 226 of the Constitution of India and deserves to be dismissed with costs. Ordered accordingly. Costs are assessed at ₹ 25,000/-, to be deposited in the Registry of this Court within two weeks of receipt of a certified copy of this judgment.

[SUDHIR MITTAL]
JUDGE

[SURYA KANT]
JUDGE

November 10, 2017
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No