IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP no. 10255 of 2018 (O&M)
Date of Decision : 30.11.2018

Ranbir Singh

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE MAHABIR SINGH SINDHU

Present : Mr.Girish Agnihotri, Sr. Advocate with
Mr. Bhuvan Vats, Advocate for the petitioner(s)

Mr. Anil Mehta, DAG, Haryana

MAHESH GROVER, J.

The petitioner prays for issuance of a writ in the nature of Certiorari quashing the order dated 8.3.2018 terminating the mining contract and ordering forfeiture of security, even though the petitioner had submitted his request for surrender of the mining w.e.f 1.6.2017.

We may briefly notice the facts, that the petitioner pursuant to an E-auction notice responded for obtaining a mining contract and made a bid of Rs.5,37, 50,000/- which was accepted and a letter of intent issued to him on 9.6.2015 pursuant to which he sought the regulatory compliances such a environmental clearance etc. The mining operation commenced on 19.9.2016 but was obstructed by the land owners forcing him to stop mining operations on 1.4.2017 whereafter he could not commence the mining operations again despite best efforts.

Confronted with this situation, petitioner gave a representation dated 27.5.2017 invoking Rule 25 of the Haryana Minor Mineral Concession, Stocking and Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 (hereinafter referred to as the 'State Rules 2012') which went unheeded. The petitioner submitted another representation on 4.9.2017 which also met with no response and finally on 8.3.2018 the impugned order has been passed.

The petitioner asserts in his petition that he has been compliant in all respects but was prevented from mining due to the activities of the mining mafia in the area. Besides, the auction notice and the contract permitted him an area of 25 hectares but the actual area was far less as some of the area was under the control of the Administrator who had taken over the properties of a concern- Golden Forests Private Limited whose assets are being liquidated by the said Administrator under the orders of the Hon'ble Supreme Court.

On 26.4.2018 when this petition was preferred before us, we noticed the contention of the learned counsel for the petitioner who had stated that in terms of the State Rules 2012, he can surrender his mining contract subject to satisfying the outstanding amount, if any. He further stated that he would submit an undertaking and satisfy all outstanding liabilities in the event of acceptance of his plea of surrender.

The State has filed its response and has justified the impugned order.

A perusal of the order dated 8.3.2018 would indicate that the prayer of the petitioner for surrender on the grounds that he had stated in his representation have not even been remotely addressed. For the purposes of ready reference, reasoning preceding the order of terminating the contract is extracted herebelow:-

> "8. Whereas, the Mining Officer, Panchkula vide letter dated 5.12.2017 has informed that contract money for the period from 9.6.2016 was not being paid. As the contractor on one hand was not making the payments for the due period and on the other hand was seeking surrender of the contract w.e.f 1.6.2017, therefore, the contractor had violated the terms and conditions of the agreements. The department is left with no other alternative but to terminate the mining contract as per provision of the rule 56(7)(vi) of the State Rule, 2012.
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> 9. Accordingly in exercise of the powers conferred under Rule 56(7)(vi) of the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rule, 2012 the contract granted in favour of Shri Ranbir Singh s/o Sh. Mohinder Singh for extraction of minor mineral from "Mandlai-1 Block/PKL B-21" of District Panchkula is hereby terminated with forfeiture of full amount of security Rs.01,34,37,500/-. It is directed that outstanding amount of contract money, R&R Fund and TCS till date of possession alongwith interest shall be recovered arrears of land revenue."

The representation of the petitioner is on record as Annexure P-5 wherein he has expressed all the difficulties that he faced which prevented his mining operations. He has also emphatically stated in his representation that he undertakes to make payment of all the outstanding dues on the date of surrender after adjustment of security amount in terms of Clause (iii) of Rule 25 of the State Rules, 2012. For the purposes of reference, his offer as contained in his representation is extracted herebelow:-

> "**10.** That in order to surrender the mining contract of Mandial-1 Block applicant has already made following compliance of Rule 25 of State Rule read with Clause 7 Part V of the Contract Agreement.
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> > (i) That applicant has already made payment of advance monthly instalments at the time of execution of contract agreement and have also paid further monthly instalments. The applicant undertakes to make payment of all the outstanding dues upto the date of surrender of the contract after the adjustment of the security amount in terms of clause (iii) of rule 25 of the State Rules, 2012. The department may intimate the outstanding amount after adjustment of security which shall be promptly paid by the applicant to settle the accounts with the Department.
> >
> > (ii) The applicant has already submitted the production returns in the prescribed Form MMP-1 for the short period he operated the

contracted area.

(iii) The applicant has done reclamation and restoration of the land where he undertook mining operation for a short period with a minimal production to the satisfaction of the land owners.

8. That please take notice that the applicant shall surrender and relinquish the mining contract w.e.f 31.5.2017 and shall have nothing to do with the mining contract from 1.6.2017 onwards. The possession of the mineral rights of the contracted area shall stand relinquished by the applicant from 31.5.2017 onwards and he shall have no liability what so ever relating to the mining contract."

Rule 25 which was invoked by the petitioner is also extracted herebelow:-

"25. Surrender of a mining contract.

The Government may accept the contractor's request for surrender of a contract or part thereof in cases where it is established that it has not been found feasible to operate the contract grant for whatsoever reasons subject to the condition that the contractor:

(i) has been regular in furnishing the production returns as required in terms of the contract agreement.

(ii) has been taking the requisite steps for the progressive mine closure plan as per the conditions of the contract grant.

(iii) is not in default of payment of any dues of the Government as on the date of making such application and undertakes to pay all such dues till the date of expiry of the notice period either in cash in advance or by way of adjustment of the security or both.

Provided that in case the contractor makes an application for surrender of part of the contract area, it shall not result in any prorated reduction of the contract money and the rate of contract amount payable and applicable for the entire area at the time of making such application shall remain intact."

Rule 19-A is also set down below:-

"**19-A Right to determine contract** – The contractor may determine the contract at any time by giving not less than three calendar months notice in writing to the Government after paying all outstanding dues of the Government.

Provided that the security deposited at the time of auction shall be forfeited."

Even a cursory look at Rule 25 makes it clear that the Govt. may accept the contractor's request for surrender of a contract or a part thereof in cases where it is established that it has not been found feasible to operate the contract granted for whatever reasons, subject to the conditions that the contractor has been regular in furnishing the production reports as required; has been taking requisite steps for progressive mine closure plan; is not in default of payment of any dues to the Government as on the date of making such an application and undertakes to pay all such dues till expiry of the notice period.

If we see the impugned order it does not address the core issue of the impracticability of the mining area as pleaded by the petitioner. Rather impugned order merely refers to a default and goes on to terminate the contract with no application of mind to the fact that it is a case of surrender in terms of Rule 25 which indeed is permissible if the mining contract is incapable of being executed either in totality or in part.

To our minds once such an application is made where a contractor pleads inability to operate the mine , for the reasons he may specify, it becomes incumbent upon the competent authority to look into the cause pleaded by the contractor and give independent reasons that would either justify the plea of surrender or its negation. In the event of latter, the State would have to offer a greater justification to surmount the reasons pleaded by the contractor in support of his surrender.

Before us it was vehemently argued by the learned counsel representing the State that all such matters were indeed considered and form a part of the decision making.

We then summoned the records and found that nowhere has this aspect been dealt with in any of the notings, although it has repeatedly been observed on the file, of a default in deposits by the petitioner. In the note dated 10.7.2017 put up before the competent authority there is a hint that surrender can be accepted but from the date when the State Government accords an approval and not from 31.5.2017 as pleaded by the contractor.

For the purposes of reference, the relevant portion of the note is extracted herebelow:-

> "14. Further the contract shall be treated to be surrendered w.e.f the date of its approval by the State Government and not from 31.5.2017 as dictated by the contractor. The contractor has undertook that he will deposit all the outstanding dues upto to the date of surrender of the contract after the adjustment of the security amount in terms of clause (iii) of rule 25 of the State Rules, 2012. The department may intimate the outstanding amount after adjustment of security."

In para 15 of the note by the Mining Officer, it goes on to state "*in view of the facts as stated above, it does not seem that the contract is not feasible.*"

A perusal of the entire note shows that initially the grievance of the petitioner as contained in the representation was reproduced in verbatim and then a paragraph was devoted to the outstanding liability which the petitioner does not deny. Rather he has submitted his willingness to deposit all the outstanding arrears but despite the above neither the Mining Officer nor the approving authority considered any of the grounds set out by the contractor. The request for surrender was declined by one line order as being devoid of merit and rejected. To be true to the records, the order dated 10.7.2017 is set down herebelow:-

> "*The request for surrender being devoid of merit may be rejected.*"

As observed by us in the forgoing paragraphs it is imperative for the competent authority while applying Rule 25 to ensure that reasons set out by the contractor to establish the un-feasibility of mining operation has to be dealt with and sound reasoning afforded to decline the prayer for surrender as the plain reading of Rule 25 would suggest. Finding that there has been no application of mind, we are of the opinion that impugned order deserves to be set aside. Ordered accordingly.

The respondents have already determined the amount due against the petitioner which is reflected in the note upon which decision has been taken and the same is reproduced herebelow:-

> "13. The contractor has submitted production returns for the month of September, 2016 to March, 2017 only 02 production returns are lacking. He has operated area only for few months, therefore, the mining has not reached to progressive mine closure stage. With regard to condition No.(iii), it is submitted that w.e.f 9.6.2016 (on expiry of 12 months from issuance of LoI) to 30.6.2017 an amount of Rs. 05,70,34,722/- as contract money, 37,62,00,500/- as R&R Fund and Rs.11,40,694/- as TCS total aggregating to 06,19,37,916/- alongwith interest was due to the contractor out of which he has deposited an amount of 02,45,45,835/- towards contractor money. Hence, a total amount of Rs.3,73,92,081/- is still outstanding towards the contractor. An amount of Rs.03,71,00,000/- as 25% security is lying with the department. The submission that they have deposited upto date contract money is wrong."

The petitioner shall satisfy the aforesaid outstanding liability to enable him to surrender the mining contract but if he has reasons to dispute the amount, he may do so, within two weeks of this order, whereafter the respondents shall consider the same.

Petition stands disposed of.

(Mahesh Grover)
Judge

30.11.2018 **(Mahabir Singh Sindhu)**
rekha **Judge**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No