Sr.No.209
IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CWP-12680-2018(O&M)
Date of Decision: 31.05.2018

M/s Sunder Marketing Associates and others ....Petitioners

versus

State of Haryana and others ....Respondents

CORAM HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present Mr.Puneet Bali, Sr. Advocate
with Mr. Vaibhav Jain, Advocate for the petitioners.
Mr. Lokesh Sinhal, Addl. AG, Haryana.
***

MAHESH GROVER, J(ORAL)

This is a petition filed by M/s Sunder Marketing Associates and others impugning the orders dated 11.09.2017 Annexure P27, 01.12.2017 Annexure P34 and 03/05.04.2018 Annexure P36.

Pursuant to an e-auction order dated 03/05.04.2018 intending to auction a site for mines, a firm by the name of M/s KJSL-Sunder (JV) was successful (hereinafter called as successful bidder). In this venture, the petitioner M/s Sunder Marketing Associates was a partner. On 03.01.2014, notice / acceptance letter was issued by respondent no.3 in favour of M/s KJSL-Sunder (JV). A writ petition No.2599 of 2014 came to be filed challenging the grant of mining lease in favour of HSIIDC in area of *khanak* . Another writ petition No. 26454 of 2014 was filed by Shiva Minerals on the same grounds.

This Court on 04.03.2015, dismissed the writ petitions and while doing so recorded the statement of the counsel for the State of Haryana to the effect that the State Government would refund the amount paid by M/s KJSL-Sunder (JV) and no penalty would be imposed if it wanted to get the contract rescinded. Time was granted upto 30.04.2015 for the venture to seek an exit. The matter was then taken to the Hon'ble Supreme Court by way of SLP Nos. 12623 and 12624 of 2015 which were disposed of but the time for exiting extended upto 10.05.2015. M/s Karamjit Singh and another, one of the component of M/s KJSL-Sunder (JV) made an application on 07.05.2015 seeking rescission of contract and refund of amount. On 14.05.2015, the petitioner being a 49% stake holder in M/s KJSL-Sunder (JV) wrote to the State that he did not want to rescind the contract but wanted to persist with it. It was also said in the letter that M/s Karamjit Singh, one of the component of M/s KJSL-Sunder (JV) would have to support the offer of the petitioner to run the mining operations exclusively. This was accepted by the State Government and an approval granted on 16/17.06.2015 after furnishing of indemnity bond and no objection from M/s Karamjit Singh (the partner who opted out), the lease deed was executed in favour of the petitioner on 05.08.2015. Environment Clearance in terms of the requirement was granted on 03.07.2015 in favour of the original applicant M/s KJSL-Sunder (JV). On 28.10.2015, this Environment Clearance was shifted to the name of the petitioner.

At this stage, in April 2016, writ petition no.9419 of 2016 came to be filed challenging the memorandum of 17.06.2015 in favour of the petitioner permitting him to continue with the mining lease. In the meantime, the State issued notice to the petitioner on 09.08.2016 as to why the letter dated 17.06.2015 be not withdrawn.

Construing to be virtual order of withdrawal, the petitioner filed CWP No. 16735 of 2016. This Court disposed of the petition with a direction that final decision in this regard be taken by the respondents after considering the claim of the petitioner. CWP No. 9491 of 2016 filed as a Public Interest Litigation was then disposed of in view of the notice issued to the petitioner. On 29.09.2016, the letter (Annexure P20) dated 17.06.2015, was finally withdrawn. While doing so, it was stated that this letter dated 17.06.2015 is void being not maintainable. For the purposes of reference, the relevant portion of the letter dated 17.06.2015 negating the lease deed as also the earlier proceedings, is extracted here below:-

> *" Accordingly, the permission granted to transfer mining lease/share of 51% of M/s Karamjeet Singh & Co. Ltd. in favour of 49% partner namely M/s Sunder Marketing Associates and as communicated vide this office memo No. DMG/HY/ML/Dadam/2013/3164 dated 17.06.2015 is ordered to be withdrawn with immediate effect. Consequently, the lease deed executed on 05.08.2015 with M/s Sunder Marketing Associates on the basis of letter dated 17.06.2015 also cannot sustain, hence the sane is also declared as void being not maintainable. However, any action taken by the M/s Sunder Marketing Associates and State Government as per letter dated 17.06.2015 and as per the lease executed in pursuance to the same shall remain valid and not have any adverse implication for any of the parties."*

This order was challenged in CWP No. 20986 of 2016 which was disposed of on 01.06.2017 dismissing the writ petition and upholding the order dated 29.09.2016. The matter was then taken to the Hon'ble Supreme Court by way of SLP No. 19166 of 2017 and it would be relevant to extract the relevant portions of the order of the Hon'ble Supreme Court.

> *"29 At the outset, we must mention that the High Court dealt*

with every submission raised by learned counsel for the petitioner in a lucid and well reasoned judgment. We really have nothing to add to the decision rendered by the High Court. xxxxxxxx

> *"30 xxxxxxxx*
>
> *31 In view of the peculiar facts of the case and the offer of surrender or rescission of the contract having been accepted by the State Government, we would not like to place any hurdle in the agreement but the provisions of Rule 25 and Rule 41(v) of the Rules must be complied with by the petitioner and the State Government.*
>
> *32. Learned counsel for the petitioner had made a prayer to the effect that the petitioner may be permitted to continue its mining operations till 30th November 2017 so that it could wind up its activities and put its mine closure plan into operation. We had passed orders on 31t July, 2017 and 3rd August, 2017 permitting the petitioner to continue its mining activities till judgment is delivered.*
>
> *33. Keeping in view the prayer made:*
>
> > *i We permit the petitioner to continue its mining operations till 30th November, 2017 in accordance with the Mining Plan. On or before that date, it shall ensure implementation of the mine closure plan to the satisfaction of the concerned authorities in the State of Haryana.*
> >
> > *ii The petitioner will be under an obligation to continue paying the dead rent or royalty whichever is higher till 30th November, 2017 regardless of whether it ceases its mining operations before that date or not.*
> >
> > *iii The petitioner shall ensure that all the dues (including wages etc.) of all the persons*

(including labour) employed in the mining operations in terms of Rule 56(10) of the Rules are paid to the satisfaction of the concerned authorities in the State of Haryana. To ensure that the employees and labour (casual or otherwise) are not left in the lurch, the petitioner is restrained from alienating or transferring or otherwise creating any charge or encumbrance on the equipment and machinery and all other moveable property in the lease area and connected with the mining operations (such as trucks,excavators etc.) so that there is no difficulty in recovery of dues.

iv All the laws applicable to the petitioner shall be strictly enforced by the State Government regardless of its apparent influence in high places. We make it clear that we will hold the Chief Secretary of the State of Haryana responsible for any lapse in this regard.

V It is not clear whether or not the security deposit of Rs.28,75 crores has been refunded to KJSL or the petitioner. If the refund has not been made, it is deemed to have been forfeited to the State and is not adjustable against any dues of the petitioner.

34. The petitioner for special leave filed by the petitioner is disposed of on the above terms and the judgment and order of the High Court is modified to the above extent. No costs."

On 11.09.2017, a demand was raised by the petitioner invoking Clause 3(i) and 3(x) of the Letter of Intent to raise a demand of Rs.140,26,04,822 which was to be paid upto 31.08.2017.

Writ petitioners contested this demand and eventually the process led to the passing of the impugned order which is now cause of grievance to the petitioner and it has been contended that prior to 17.06.2015 rather 05.08.2015, the petitioner could not be held liable for any amounts as there was neither any existing lease in his favour and by their own orders they had declared the order dt 17.06.2015 to be a nullity. It was also upheld by this Court as also by the Hon'ble Supreme Court.

On the other hand learned counsel for the respondents would contend that the petitioners would be liable to pay the amount demanded for the simple reason that he was also a component at the time when a bid was made and any alteration subsequently would be inconsequential considering that the petitioner has also furnished an indemnity bond to satisfy any demand or outstanding amounts against the mining area.

We have heard the learned counsel for the parties and are of the opinion that the issue whittles down to a limited aspect. Indeed, the petitioner was a component of M/s KJSL-Sunder (JV) at the time when bid was made in the year 2015 but because of various reasons which resonate from the facts noticed above, one of the components of the joint venture Karamjit Singh chose to opt out. The petitioner, in turn, was permitted to continue by the State itself and based on subsequent challenges made that they realized their error leading to withdrawal of the permission dated 17.06.2015 and the order dated 05.08.2015.

It is not in dispute before us that for whatever period the petitioner mined under the order of the Supreme Court each and every amount has been satisfied. It is, thus, evident that the petitioner cannot be held liable for an act that the State itself has declared a nullity. The rights of the petitioner commence from this letter which was eventually scuttled as the State realized its mistake and it is not in dispute that for whatever period petitioner mined, the amount has been satisfied. According to us, the petitioner cannot be held liable for the period when the joint venture made a bid but did not operate the mine till possession was granted by the State, only to declare it as a nullity subsequently.

The bid made by a joint venture though successful but remained inoperative because of the circumstances and it was for the first time the petitioner got the right to operate when the lease came into existence on 05.08.2015 and that too on the basis of letter dated 17.06.2015 which eventually was declared to be a nullity. The mining operation, according to the conceded stand of the parties, commenced on 31.10.2015 so looking at the facts in totality State has no right to a demand as the one in the impugned order.

Writ petition stands allowed in the above terms and the impugned orders are set aside and as a consequence, respondents would be required to release the sureties.

(MAHESH GROVER)
JUDGE

31.05.2018 **(RAJBIR SEHRAWAT)**
mamta **JUDGE**

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