

CWP no.1683 of 2017 (O&M) 1

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP no.1683 of 2017 (O&M)
Date of Decision : 14.02.2018**

Eco Tech Coal Industries Pvt. Ltd.

....Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

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

Present : Mr.Devashish Bharuka, Advocate for the petitioner(s)

Mr.Amar Vivek, Addl. AG, Haryana

MAHESH GROVER, J.(ORAL)

This writ petition is preferred by the petitioner questioning the order dated 14.1.2016 (Annexure P-22) cancelling the bid of the petitioner. A further prayer has been made that the entire auction process qua the quarries consisting of Sonapat unit-2 to be declared illegal and void ab initio.

The petitioner claims itself to be a registered company engaged in the business of mining and minerals amongst others activities.

The State of Haryana exercising its powers under Sections 15 (1) and 23 (C) of the Mines and Minerals(Development and Regulation) Act, 1957 (hereinafter referred to as the 'Act') and the Rules notified thereunder issued auction notice dated 30.11.2013 calling for bids with

respect to mining of minor minerals in three districts of Haryana namely, Karnal, Sonapat and Panipat. The quarries were identified in blocks with the auction notice providing the details of the quarries duly identified by khasra numbers. On 26.12.2013 the petitioner was declared the highest bidder for Sonapat unit-2 having offered a bid of Rs.120.13 crores against the reserved price of Rs.15.12 crores. It has been asserted that this Sonapat Unit-2 comprised of two blocks and included 16 quarries measuring 565.10 hectares. The very next date i.e on 27.12.2013 the petitioner intimated his reluctance to go ahead with the bid and prayed for revocation. On a subsequent reconsideration vide letter dated 31.12.2013 it prayed that the earlier letter be considered as withdrawn and expressed its readiness to go ahead and abide by the auction process. Pursuant to letter dated 31.12.2013, the respondents issued a letter of intent dated 3.1.2014 in favour of the petitioner. On 6.1.2014 the petitioner wrote to the respondents to seek revocation of its bid in terms of Section 5 of the Indian Contract Act and seeking refund of the deposited amount. On 8.1.2014 the petitioner was informed about the acceptance of the highest bid of the petitioner and on 13.1.2014 the petitioner was threatened with coercive action since the bid had already been accepted and conveyed to the petitioner. He was called upon to confirm its stand within 7 days failing which an action under Rule 55(3)(v) read with clause 19 of the auction notice would be taken against him. The petitioner responded vide his letter dated 22.1.2014 and sought certain information under the Right to Information Act so as to enable it to submit its final reply to the notice dated 13.1.2014.

Anticipating a go ahead to the mining activity the petitioner

took environment clearances and incurred expenditure for field survey and

mining plan. The respondents then issued a letter dated 14.3.2014 intending to withdraw the letter of intent unless some earlier letters issued by the petitioner on 6.1.2014 and 22.1.2014 were withdrawn.

Eventually an order came to be passed on 12.9.2014 the relevant of which we may extract herebelow, which was assailed by the petitioner by way of a writ petition bearing CWP no. 20392 of 2014 decided on 29.5.2015:-

“24. Accordingly, it as regards to bid of the Sonipat Unit-2 it is ordered that:

(i) The Lol dated 3.1.2014 issued in favour of M/s Eco Tech Coal Industries Private Limited, vide this office Memo No. DMG/Hy /SNP/Unit-2/ 2013/131, in respect of Mining contract of Minor mineral Sand mines namely SNP Unit-2 is declared as deemed to have been revoked;

(ii) The amount of Rs.12,01,30,000/- (Rs. Twelve crores and one lac and thirty thousand) deposited at the time of auction by M/s Eco Tech Coal Industries Private Limited, towards the initially bid security is forfeited;

(iii) The un-paid 15% of security amount of Rs.18,01,95,000/- (Rs. Eighteen crore one lac and ninety five thousand only) shall be recovered from by M/s Eco Tech Coal Industries Private Limited as arrears of Land revenue;

(iv) M/s Eco Tech Coal Industries Private

Limited, Opposite Goel Ice Factories, Diamond Cinema Road, District Rampur, Uttar Pradesh (U.P) the highest bidder/Lol holder is debarred from participation in any subsequent bidding process to be held in the State under the provisions of Haryana Minor Mineral Concession, Stocking Transportation of Mineral and Prevention of Illegal Mining Rules-2012 for a period of 5 years and

25. It is further observed that the state government with regards to Lol issued qua the Panipat Unit-1 vide this office Memo no. DMG/Hy/PNP/Unit-1/2013/123 dated 3.1.2014 ordered to keep the same in abeyance so long as they maintain the position communicated vide their letter dated 22.1.2014. The same was communicated to them vide memo No. DMG/Hy/SNP-Unit-2/ 2013/1958 dated 14.3.2014. However, M/s Eco Tech Coal Industries Privates Limited has not changed their stand in this behalf, therefore, the state government has also ordered to cancel the Lol dated 3.1.2014 in respect of Panipat Unit-1 issued in favour of M/s Eco Tech Coal Industries Private Limited. In this behalf the amount of Rs.4,00,50,000 deposited on account initial bid security i.e 10% of the bid amount is ordered to be refunded.”

A perusal of this order indicates virtually a concession by the State to withdraw the impugned order, the relevant content of which has

the writ petition bearing CWP no. 20392 of 2014 in the following terms:-

“We have heard counsel for the parties and after taking into consideration the respective submissions, the writ petition is allowed and order dated 12.9.2014 is set aside, but with liberty to the State of Haryana to pass a fresh order in accordance with law and in terms of judgment dated 15.1.2015 passed in CWP no. 15431 of 2014.”

Evidently the State bound itself to a mandate of the writ Court to pass fresh orders in accordance with law and in terms of the judgment rendered in CWP no. 15431 of 2014(**M/s Haryana Royalty Company vs. State of Haryana and another**). It would thus be relevant to briefly advert to the conclusion in M/sHaryana Royalty's case (supra):-

“32. In view of our findings recorded and law elucidated above, we quash the impugned order dated 10.7.2014 (Annexure P-10) passed by respondent no.2 and as a consequence direct the respondents to conduct fresh auction of the quarries situated in different district/villages across the State of Haryana only after conducting fresh and proper survey and demarcation of the area to be auctioned. The amount charged from the petitioner in pursuance to the auction in the present case, be refunded back to him without any forfeiture, recovery and penalty and if the petitioner so desire, shall be free to sit in the auction as and when

conducted by the respondents afresh in accordance with law. It is made clear that since the impugned order 10.7.2014 (Annexure P-10) has been set aside by us vide this judgment, all proceedings undertaken pursuant to the said impugned order dated 10.7.2014 (Annexure P-10) are also set aside. With these observations, the writ petitions are allowed.”

For the sake of clarity we may even refer to certain facts of the said case wherein a dispute had erupted between the successful bidder and the State as the area offered for mining in the auction notice was deviant from the one actually available. It is in this backdrop that this Court had directed the State to conduct fresh auction of the quarries situated in Districts/ villages across the State of Haryana only after conducting fresh survey and demarcation of the area to be auctioned. The directions given to the State of Haryana in M/s Haryana Royalty case (supra) were not restricted to the case in hand and rather dealt with a larger issue of the entire State of Haryana areas being identified before being offered for auction.

In terms of the consent given by the State of Haryana in earlier writ petition preferred by the petitioner in CWP no. 20392 of 2014 the respondents passed a fresh order and in conclusion the following observations were made

“34. In the light of above, it is clear that M/s Eco Tech Coal Industries Pvt. Ltd, By refusing to execute the contract in respect of their bid of Rs.120.13 crore per annum in respect of

Sonipat Unit-2, offered in the auction held on 26.12.2013 to obtain the mining contract for extraction of sand, had defaulted the terms and condition of auction notice, State Rules as well as Lol dated 3.1.2014 issued in their favour. Accordingly, the amount of Rs.12,01,30,000/- (Rs. Twelve core and one lac and thirty thousand) deposited at the time of auction by them towards the initial bid security stands forfeited.”

The reasoning preceding this conclusion is virtually the same which was reflected in the earlier order impugned by the petitioner in CWP no. 20392 of 2014 i.e inter se communication between the petitioner and State immediately succeeding the auction process which according to us would have no significance today for the simple reason of the State binding itself to the directions given in M/s Haryana Royalty case(supra) which assume great significance in view of the limited dispute between the petitioner and the State qua identification of the land offered for mining and the discrepancy in the auction notice regarding the same.

It is not in dispute that the demarcation has not been carried out as it finds an admission in the counter affidavit filed by the State which we may extract herebelow:-

“(XVII) That in reply to sub para (XVII)

it is submitted that the area transferred to U.P under the Dixit Award could not be excluded mistakenly from the area to be auctioned because of non-updation of revenue records by the revenue authorities of the State. It is

reiterated that equivalent area in village Mirakpur/adjoining villages to the contract area of the petitioner firm was offered to him from the area transferred from U.P to Haryana to supplement his contract area.”

It is the specific case of the petitioner that out of these 16 quarries, 3 fall in the State of Uttar Pradesh thereby reducing the mining area substantially.

Learned counsel for the State has conceded before us that no demarcation process was carried out even after they bound themselves to do so in the earlier writ proceedings. In any eventuality in the matter of M/s Haryana Royalty demarcation had indeed been carried out but after the auction process. The subsequent Division Bench in case bearing CWP no. 19549 of 2015 titled as '**M/s Planet Steels Private Limited vs. State of Haryana and others**' opined that the direction issued by the Court in Haryana Royalty to conduct a fresh auction of the quarries situated in different District/villages across the State of Haryana does not refer to the quarries which are not subject matter of the writ petition. It was held that the word 'situated in districts/villages across State of Haryana' only refer to the quarries that are subject matter of the writ petition. The necessary portion of the observations of the Division Bench in the subsequent case are extracted:-

“The direction issued by the Division Bench to conduct a fresh auction of the quarries 'situated in different districts/villages across the State of Haryana' does not refer to the quarries which were not the subject

matter of the petitions. The words “situated in different district/villages across the State of Haryana' only refer to the quarries that were the subject matter of the writ petitions before the Division Bench which were in different parts of the State of Haryana. The Division Bench did not deal with just one quarry or one lease. It dealt with several of them. It was a common order and judgment in 11 petitions. The quarries which were the subject matter of those petitions were across the State of Haryana. It is for this reason that the Division Bench held that fresh auction ought to be held in respect of the quarries situated in different district/villages “across the State of Haryana”.”

We are of the opinion that this would not substantially alter the controversy or even dilute the underlying principles of law. It is imperative for the contracting parties that their free consent be based on proper understanding of the offer made at the time of contract. The respondents have not disputed that there is a deviation/discrepancy in the area offered for mining in the auction notice and the one which is substantially available. It is in this backdrop that a proper demarcation and re-evaluation of the terms of the contract was imperative and the State ought to have carried out the demarcation and permitted a fresh auction by adopting essentially a correctional approach. Concededly the needful has not been done therefore, petitioner cannot be bound to the terms of the auction in view of the above. Consequently, we accept the writ petition and set aside the impugned order and direct the refund of the amount to the petitioner which has been unfairly

forfeited. Needless to say that the respondents would be at liberty to auction the mines again and the petitioner in which eventuality would also be at liberty to participate.

At this stage, it has been brought to our notice that subsequent to the cancellation of auction in favour of the petitioner, the State did indeed demarcate and carry out a fresh auction. Learned State counsel on instructions contends that under a policy they had divided the area into small blocks to enable the auction bidders to verify the area. This in itself would be inconsequential to the case of the petitioner.

Writ allowed.

(Mahesh Grover)
Judge

14.02.2018

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No

(Rajbir Sehrawat)
Judge