IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) **CWP No.1772 of 2018**

M/s Sangam Infra Estate Pvt.Ltd.

....Petitioner

Versus

State of Haryana and others

....Respondents

2) **CWP No.13511 of 2018**

M/s Sangam Infra Estate Pvt.Ltd.

....Petitioner

Versus

State of Haryana and others

....Respondents

3) **CWP No.1877 of 2018 (O&M)**

M/s Techno Exports

....Petitioner

Versus

State of Haryana and others

....Respondents

4) **CWP No.9828 of 2018**

M/s Techno Exports

....Petitioner

Versus

State of Haryana and others

....Respondents

Date of Decision : 30.11.2018

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

Present: Mr.Girish Agnihotri, Sr. Advocate with
Mr.Arvind Seth, Advocate,
Mr.R.Kartikeya, Advocate, and
Mr.Vikram Singh, Advocate
for the petitioner(s).

Mr. Lokesh Sinhal, Addl.AG, Haryana.

MAHESH GROVER, J. (Oral)

By this order we shall dispose of CWP Nos.1772, 13511, 1877 and 9828 of 2018 as common question of law and facts is involved in all these cases.

The petitioners are primarily aggrieved of the order dated 16.08.2017 as also subsequent orders passed in April 2018 on the representations submitted by them against the demand raised upon them by the State.

The facts are being extracted from CWP No.1772 of 2018.

In response to a notice for a contract of mining minerals spread over an area of 62.25 hectares the petitioner being eligible participated in the auction proceedings successfully. On 02.01.2015 he was given letter of intent. As per the procedure, on the environmental impact assessment the petitioner was granted environmental clearance on 30.06.2016, which included the permission for mechanized mining. However, he was restrained from carrying on mechanized mining vide order dated 21.12.2016 on account of the directions passed by the National Green Tribunal. This order dated 21.12.2016 as also the order passed by the National Green Tribunal was impugned by filing CWP No.1255 of 2017. It was specifically brought out in this petition that the order passed by the Tribunal on OA No.184 of 2013 pertained to illegal mining on the banks of river Yamuna in Saharanpur and that had no concern with the mining activity undertaken by the petitioner after compliance with law. In addition to the challenge to the order afore-stated the petitioner also impugned the letter of demand dated 11.11.2016 whereby respondent no.3 demanded amounts in terms of the LOI and the lease agreement despite the fact that the petitioner was restrained from carrying out mechanized mining. The impugned order was set aside with liberty to the State to pass a fresh order within a period of four months after hearing the petitioner. The petitioner in terms of the directions submitted a detailed representation and even while the representation was pending an order dated 16.08.2017 was passed suspending production and despatch of minerals due to non-payment of monthly contract money. More representations were submitted which remained unheeded leading to the filing of present writ petition where it has been contended before us that once the mining activity was not permitted on account of the order passed by the National Green Tribunal, the petitioner could not be saddled with the liability. It has further been contended that the order of the National Green Tribunal was subsequently clarified by the orders passed by the writ court in CWP No.20206 of 2016 that the restraint was confined only to illegal mining and not to the legal mining and on the strength of these orders the order impugned in the writ petition preferred by the petitioner was set aside with liberty to the respondents to pass a fresh order after hearing the parties within a period of four months.

The respondents, on the other hand, justified their action on the ground that only mechanized mining was not permitted whereas the petitioner has continued to operate the mines manually thereby suffering no loss, which is countered by the petitioner to contend that manual mining would certainly not be as effective as mechanized mining and huge loss was suffered during this period when mining was not permitted and the entire operation has now been suspended on account of the demands which are legally unsustainable.

We have heard the learned counsel for the parties.

There is no dispute on facts. The mechanized mining as also manual was permitted and environmental clearance granted in this regard. What prevented the petitioner from mining was something beyond his control i.e. an order passed by the National Green Tribunal and despite the fact that this Court clarified in ample and unambiguous language of the operative arena of the orders, yet the State has prohibited mechanical mining, though on the strength of orders from a court. For the purpose of reference the relevant portion of the order dated 29.11.2016 passed in CWP No.20206 of 2016 is extracted herebelow :-

> "12. It is apparent that the above order dated 01.06.2016 was on account of the application filed by M/s Ganga Yamuna Mining Company (respondent No.6 herein). Clause (ii) of the recommendations of the High Powered Committee, in fact, states that two valid lessees with all clearances may be permitted to continue their operations. The petitioners' leases are not one of the two leases referred to therein. However, this at least indicates that even the High Powered Committee did not appear to have any objection regarding legal mining. In any

event, there is no recommendation by the High Powered Committee to ban even illegal mining. The Tribunal permitted the applicant-M/s Ganga Yamuna Mining Company, which was one of the lessees referred to in paragraph No.(ii) of the recommendations of the High Powered Committee, to commence the mining operation, crushing and screening for a period of three months from the date of the order. This also indicates that there was no total ban imposed by the Tribunal. This order does not ban all legal mining operations. We do not find anything in this order that compels the respondents to prevent the petitioners from carrying on mining operations pursuant to the said permissions which, at the cost of repetition, even the respondents' admit are in place and valid.

13. The impugned order dated 20.09.2016 has been passed on a misconstruction of the order of the Tribunal dated 01.06.2016. We must in fairness to the official respondents, however, observe that it appears that they have passed the impugned order out of abundant caution and not out of mala fide motive.

14. Had there been a doubt regarding the order of the Tribunal, we would have directed the parties to seek a clarification in respect thereof from the Tribunal. However, learned counsel appearing on behalf of respondent No.5 i.e. the petitioner before the Tribunal did not contend that the orders of the Tribunal prohibited mining operations being carried on by the petitioners so long as the same was done in accordance with law.

15. We record Mr. Bhan’s statement on behalf of the petitioners

that the petitioners would, in any event, carry out their mining operations under the said permission strictly in compliance with the recommendations of the High Powered Committee. The statement is accepted and it is so ordered. Mr. Amar Vivek, learned counsel appearing on behalf of respondents No.1 to 4 i.e. official respondents, states that in any event it is the stand of the official respondents that the mining operations under the said permissions would have to be carried out as per the recommendations of the High Powered Committee.

16. The impugned orders are accordingly quashed and set aside. It is clarified, however, that we have only construed the aforesaid orders of the Tribunal. We were not invited to construe any other orders of the Tribunal. In the event of there being any restrictions placed by any other order of the Tribunal or any other authority, the same would be a different matter and not covered by this judgment.

The petitioners shall be at liberty to apply to the official respondents for any benefits on account of the delay caused by the impugned orders."

Despite the above the impugned orders have been passed. It is not the case of the respondents that the consent to mechanized mining has been withdrawn altogether. Rather, the permission stands but the consequences of the restraint order passed by the Tribunal and its impact on the mining activity of the petitioner has not been taken into account in any manner. Rather there is a plain insistence on the terms and conditions of the lease and the letter of intent.

The question is that if a person has not been able to operate in terms of the agreed contract for reasons beyond his control, then would the State be justified in demanding an amount for the period when they themselves restricted the lawful operations of the mining and at the cost of repetition if we may say so despite the orders passed by this Court in CWP No.20206 of 2016. The petitioner's plea in this regard to permit the mining operations subject to their deposit does not seem to be unfounded.

On 29.01.2018, we had passed the following order in CWP-11772-2018 :-

> "Contends that the petitioner was granted LOI for mechanised mining but the contract was frustrated on account of the order of the National Green Tribunal prohibiting mechanised mining. These orders were set aside by this Court. During this period the petitioner could only resort to partial mining through manual means. The respondents have now suspended the license in totality on the ground that an amount of Rs.12 crores is due as per the LOI. It is the specific contention of the petitioner that since the mining contract was frustrated on account of the order of the Tribunal, they were not permitted mechanised mining at all thereby creating the situation where they could not comply with their own obligation to the State. However, it is fairly conceded before us that mining to the extent of Rs.6 crores roughly, out of which Rs.4 crores have already been paid, was carried out through manual means and, therefore, insistence of the State on the entire amount of Rs.12 crores is totally unjust in the given set

of circumstances, particularly when the State was aware of the inhibition in executing the contract.

Notice of motion for 15.03.2018.

In the meantime, if the petitioner deposits a sum of Rs.1 crore within a period of two weeks from today, the operation of the impugned order shall remain stayed."

It is thus a clear case where the petitioner could not possibly undertake the mining activity on account of the reasons which were totally beyond his control. The respondents, therefore, cannot treat it to be a willful breach of the conditions of the contract. It was thus imperative for them to take into account these factors while determining the liability by taking into account the petitioner's plea of a proportionate reduction in the liability. Even if the plea of the respondents is accepted and the petitioner's carrying on with their mining activity, they would still have to address the issue considering that if the petitioner had been permitted mechanized mining as per the contract and prevented from carrying it out by orders of a Court, then the reduced mining activity which is clearly manifest should have been taken into account while assessing the liability. One need not be a mining expert to understand that mechanized mining would offer a far effective and beneficial extraction of minerals than a manual one.

The petitioner M/s Sangam Infra Estate Private Limited has also been representing the respondents regarding the area that was set out in the invitation for contract i.e. 62.25 hectares whereas the environmental clearance was not granted for the entire land and what was available to the petitioner for mining was 10 hectares less from the total of 62.25 hectares. Even this aspect had to be addressed by the respondents while ascertaining the liability. Clearly when a person opts to assess the worth of a contract which he intends to execute, he goes by the proclamation of offer and if for reasons beyond his control the said offer is varied to his disadvantage, it becomes necessary to revisit the terms of the contract. Evidently, if the environmental clearance had not been granted to the petitioner for 10 hectares, such an area would not be available to him for mining and in this regard also the respondents ought to take into consideration the changed circumstance to reduce the liability proportionately.

The respondents cannot justify their action in foisting undiluted liability upon the petitioner in the given circumstances by asserting that the petitioner had accepted the terms of the contract. Evidently, he has, but the requisites of mining contract such as the reduced area and a restraint on the mechanised mining would certainly be the factors resulting in a restrictive mining activity visited upon the petitioner for no fault of his. The contract in its original form, if accepted and available for execution to the petitioner, would certainly not have given any cause to him to agitate. For example we do not agree with the contention that intervention of monsoon should be a factor to be accounted by the State while ascertaining the liability to claim a proportionate reduction. The petitioner who made the offer of acceptance is expected to understand the intervention of natural factors which now should have been taken into account by him while formulating his offer. Such a plea for reduction in the liability is unsustainable but if there were factors beyond his control such as ones which have been discussed in the foregoing paragraphs, then we are of the opinion that the respondents ought to have taken such factors into account to dilute the liability in a proportion and manner that addresses the concern of the petitioner.

Consequently, we accept these petitions by holding that the petitioners would be entitled to a proportionate reduction on account of the reduced area available as also on account of the period when they were restrained from mechanized mining.

The impugned orders are, therefore, set aside and the matters are remanded back to the respondents for decision afresh in the light of what has been stated above.

Since we have held that factors that were beyond the control of the petitioners intervened in the complete execution of the mining contracts, the respondents while determining the liability in each of the cases take into consideration the above factors to reduce the liability proportionately.

(MAHESH GROVER)
JUDGE

30.11.2018
dss

(RAJBIR SEHRAWAT)
JUDGE

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