IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 11054 of 2020
Date of Decision: 6th August, 2020

Manpreet Singh

....Petitioner

VERSUS

State of Punjab and others

....Respondents

CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN

Present: Mr. Gurminder Singh, Senior Advocate with
Mr. R.P.S. Bara, Advocate for the Petitioner.
Mr. Sahil Sharma, Deputy Advocate General, Punjab.

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Dr. S. Muralidhar, J.

1. The challenge in the present petition is *inter alia* to an order dated 11th December, 2018 issued by the Secretary, Department of Mines and Geology, Punjab, determining that the amount receivable from the Petitioner/Contractor pursuant to the allotment of the *Swara* Mine in his favour on 10th October, 2016, as Rs.183,67,87,710/-. Also challenged is the impugned demand notice dated 15th March, 2019 issued in Form 'S' for recovery of a sum of Rs.182,80,02,380/- and a further notice dated 17th January, 2020 in Form 'M' for recovery of Rs.95,07,644/-. The writ petition further prays for quashing of the order dated 3rd July, 2020 passed by the Director, Department of Mines and Geology, Punjab, rejecting the 'appeal' of the Petitioner against the demand notice issued in Form 'S'.

2. The case of the Petitioner is that during certain proceedings in CWP-12664-2017 initiated in this Court by certain contractors, including the Petitioner, to challenge the changed policy of the Respondents of awarding contracts by the progressive bidding process, the

Respondent/Department made an offer that it was ready and willing to pay the advance profit for the remaining period of the original contracts surrendered by the contractors. With the said challenge failing, the Petitioner and other contractors filed Special Leave Petitions ('SLPs') in the Supreme Court. An interim order was passed by the Supreme Court in those SLPs, directing the Department not to cancel the contracts of the Petitioner and other contractors.

3. The said SLPs were disposed of by the Supreme Court by a final order dated 10th May, 2018, recording the statement on behalf of Respondent/State that on or before 18th May, 2018 "the necessary calculations and assessment will be made with regard to each Petitioner and the quantum that is required to be paid". The Supreme Court directed that "within a week thereafter i.e. on or before 25th May 2018, necessary cheques for the payment will be made by the State of Punjab." It was directed that "if any amount is required to be refunded to the Petitioners, by the State of Punjab that would be looked into". It was, however, clarified that any delay in calculating the refundable amount would not come in the way of the implementation of the aforesaid order.

4. According to the Petitioner, when the Department failed to comply with the above directions, he filed a Contempt Petition (C) No. 1911 of 2018, in the Supreme Court, in which by order dated 13th November, 2018 notice was issued to the Respondents herein. In response to the said notice, the State of Punjab filed a reply to which it enclosed a copy of the order passed on 11th December, 2018, determining the amount payable by the Petitioner as Rs.183,67,87,710/-. Also enclosed with the reply, was a copy of the notice in Form 'R' dated 6th December, 2018 issued to the Petitioner under Rule 85 (5) of the Punjab Minor Mineral Rules, 2013

(hereinafter 'Rules'), requiring the Petitioner to appear before the Executive Engineer-cum-District Mining Officer on 3rd January, 2019 at 11.00 am. The notice further stated that if the Petitioner failed to so appear, the said officer would proceed to assess the royalty to the best of his judgment under Rule 85 (5) of the Rules and that the Petitioner would be liable to prosecution under Rule 76.

5. It appears that pursuant to the said notice in Form 'R', on 15th March, 2019, a demand notice in Form 'S' in terms of Rule 85 (6) of the Rules was issued, setting out the assessed amount of royalty as Rs.54,84,00,714/- and price of material as Rs.127,96,01,666/-. Thereafter, another notice dated 17th January, 2020 in Form 'M' was issued to the Petitioner for recovering a sum of Rs.95,07,644/- as arrears of land revenue.

6. Meanwhile, in the contempt proceedings, on 15th October, 2019, a statement was made on behalf of State of Punjab in the Supreme Court that certain demands have been raised against the contractors, including the present Petitioner. The Supreme Court observed that "without going into the question whether the demands are valid or not, we must ensure compliance of the order which required payment to be made within two weeks."

7. Further orders were passed by the Supreme Court in the aforementioned contempt petition on 10th December, 2019 and 20th February, 2020 reiterating its earlier directions.

8. Against the demand notice issued in Form 'S', the Petitioner filed a statutory appeal, which came to be rejected by the impugned order dated 3rd July, 2020 by the Director, Department of Mines and Geology, Punjab.

9. Thereafter, the present petition was filed. When it was first listed for hearing on 31st July 2020, the following order was passed by this Court:-

> "Case has been heard through Video Conferencing in view of COVID-19 Pandemic.
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> Advance copy of the petition is available with Mr. Sahil Sharma, DAG Punjab.
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> Two main contentions have been raised by Mr. Gurminder Singh, learned senior counsel for the petitioner. Firstly that no opportunity of hearing was afforded to him before passing order dated 11.12.2018, Annexure P-9 passed by Secretary, Department of Mines and Geology and secondly order dated 03.07.2020 passed by Director, Department of Mines and Geology, Punjab which is authority lower than the Secretary. According to him, this is unsustainable. Learned State counsel seeks three days' time to file a short affidavit.
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> To come up on 05.08.2020."

10. Pursuant to the above order, the Respondent has filed an affidavit dated 4th August, 2020, in para 10 of which, it is stated as under:-

> "10. That for recovering the money due from the Petitioner, a Notice under Form-R was issued on dated 06.12.2018 by Executive Engineer-cum-District Mining Officer, SAS Nagar wherein the contractor was given opportunity to make submission in his defence. The justification submitted by contractor was not found to be satisfactory and the Executive Engineer-cum-District Mining Officer, Roopnagar vide order dated 15.03.2019 issued Demand Notice in Form-S for an amount of Rs.182,80,02,380/- (One Hundred Eighty Two Crores Eighty Lac Two Thousand Three Hundred and Eighty only)."

11. It is not in dispute that the Petitioner had indeed appealed under Rule 87 of the Rules against the demand notice in Form 'S' on 16th April, 2019 and that the said appeal was rejected by the impugned order dated 3rd July, 2020 passed by the Director, Department of Mines and Geology.

12. This Court has heard the submissions of Mr. Gurminder Singh, learned Senior Counsel appearing for the Petitioner and Mr. Sahil Sharma, Deputy Advocate General, State of Punjab.

13. Rule 85 of the Rules reads as under:-

> **"85. Assessment of Royalty:**

(1) If the assessing authority is satisfied without requiring the presence of the assessee or the production by him of any evidence that the returns furnished in Form 'N' in respect of any period are correct and complete, he shall assess the amount of royalty due from the assessee on the basis of such returns and record assessment order in Form 'O'.

(2) If the assessing authority is not satisfied without requiring the presence of the assessee who furnished the returns in Form 'N' or production of evidence that the returns furnished in Form 'N' in respect of any period are correct and complete, he shall serve on such assessee a notice in Form 'P', requiring him on a date and at a place specified therein, to attend in person or to cause to be produced any evidence (on which such assessee may rely) in support of such returns.

(3) In case the assessee having furnished the returns in respect of a period in Form 'N' fails to comply with the terms of the notice in Form 'N' fails to comply with the terms of the notice in Form 'P' issued under sub-rule (2), the assessing authority shall within three years after the expiry of such period proceed to assess to the best of his judgment, the amount of the royalty due from the assessee and record the assessment order in Form 'O'.

(4) If an assessee does not furnish the returns in respect of any period by the due date, the assessing authority shall serve a notice upon the assessee Form 'Q' and after giving the assessee a reasonable opportunity of being heard shall, within a period of three years after the expiry of the said period, proceed to assess to the best of his judgment the amount of royalty if any due from the assessee and record the assessment order in Form 'O'.

(5) If upon information, which has come into his possession the assessing authority is satisfied that any person has raised, without any lawful authority, minor mineral from any land and has not paid the royalty due therein to the Government, the assessing authority shall within three years after the expiry of the period during which the land was occupied by such person serve on such person a notice in Form 'R' and after giving such person a reasonable opportunity of being heard, proceed to assess to the best of his judgment the amount of royalty due from him. The assessing authority may also pass an order for recovery from such person of the minor minerals so raised or where such minor mineral has already been disposed of, the price thereof.

(6) The amount of royalty due and the price of minor mineral, if any shall be any paid by the assesse into the Government treasury by such date as may be notice in Form 'S' issued by the assessing authority for this purpose and the date so specified shall not be less than thirty days from the date of service of such notice:

Provided that the assessing authority may in respect of any particular assesses and for reasons to be recorded in writing extend the date of such payment or allow the payment of royalty and price, exceeding four, any, by installments not exceeding four.

(7) If in consequence of definite information which has come into his possession the assessing authority discovers that an assessee has been under assessed or escaped assessment of royalty in any year, the assessing authority, may, at any time within three years after the expiry of that year re-assess the royalty in Form 'O' after giving the assesse a reasonable opportunity being heard.

(8) The assessing authority may, at any time, within one year from the date any order passed by him of his own motion, rectify any clerical or arithmetical mistake apparent from the record and within a like time period rectify any such of mistake which has been brought to his notice by any person, affected by such order."

14. In the present case, it appears that although the Petitioner is a contractor, the procedure under Rule 85 (1) to (4), was not invoked and instead the procedure under Rule 85 (5) was resorted to by the Respondents. This is one of the issues raised by the Petitioner.

15. Be that as it may, even in terms of Rule 85 (5) of the Rules, the procedure envisaged is that after notice in Form 'R' is served, the noticee is required to be given "reasonable opportunity of being heard" before an order of assessment of best judgment of the amount of the royalty due can be passed by the assessing authority.

16. From para 10 of the reply filed by the Respondent, it is plain that this mandatory requirement under Rule 85 (5) of the Rules of passing an assessment order prior to issuing the demand notice in Form 'S', was not complied with.

17. At this stage, Mr. Sahil Sharma, learned Deputy Advocate General appearing for the Respondent/State tries to justify the action of the Respondent by contending that the demand notice dated 15th March, 2019 issued in Form 'S' was itself the assessment order.

18. The Court is unable to agree with this contention. Clearly, Form 'S', which is titled 'Demand Notice', does not even read like an assessment order. By no stretch of imagination, can this demand notice in Form 'S' be considered to be an assessment order. The contention is, therefore, rejected. The inevitable conclusion is that the mandatory requirement of passing an assessment order in terms of Rule 85 (5) of the Rules prior to raising a demand, has not been complied with by the Respondents.

19. A perusal of the order dated 3rd July, 2020 rejecting the Petitioner's appeal, reveals that this violation of Rule 85 (5) of the Rules has not been noticed by the Director who passed the order. As a matter of fact, the aforesaid order notices but does not decide many of the Petitioner's contentions raised in the said appeal.

20. It appears to the Court that with a view to purportedly complying with the orders passed by the Supreme Court in aforementioned contempt petition, the above actions were hurriedly taken by the Respondents overlooking the mandatory requirements of the Rules. As already noticed, the Supreme Court had made it clear to the Respondents that while it was not going into the question of the validity of the demand, it expected its orders to be complied with. This was reiterated time and again. This could not have been understood by the Respondents as their being allowed to dispense with the necessity of complying with the mandatory requirements of the law, inasmuch as they were required, in terms of Rule 85 (5) of the Rules, to pass an assessment order after giving the Petitioner noticee a reasonable opportunity of being heard, before raising a demand.

21. Insofar as the above mandatory procedure has not been complied with in the present case, the Court, hereby, quashes the order dated 11th

December, 2018 and the demand notice dated 15th March, 2019 in Form 'S'. Consequently, the order dated 3rd July, 2020, rejecting the Petitioner's appeal is also set aside. The matter is now restored to the stage at which it was when the notice in Form 'R' under Rule 85 (5) of the Rules was issued to the Petitioner.

22. It is made clear that the fresh proceedings of assessment, which are to take place pursuant to the notice in Form 'R', will be in strict compliance with the requirement of Rule 85 (5) of the Rules. It is also made clear that all the contentions of Petitioner *qua* the said notice in Form 'R', including that of its maintainability, are left open to be urged and it is for the Respondents to consider such submissions on their merits and in accordance with law, proceed to pass a fresh reasoned order under Rule 85 (5) of the Rules. The further remedies that may be available to the Petitioner against such order if it is adverse to him, are left open to be availed of by him.

23. It is made clear that the Court has not expressed any view on the orders passed by the National Green Tribunal, which have been adverted to in the affidavit filed by the Respondents. Those are the subject matter of independent proceedings.

24. The petition is disposed of in the above terms.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

6th August, 2020/
Sachin M.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No