

CWP No.12926 of 2021 (O&M)

petitioner was got demarcated afresh. On 4th and 5th December, 2019 on reaching the site, it was found that no boundary pillars had been installed by the petitioner whereas as per law each of the boundary pillars had to be numbered and every pillar should have GPS reading. At that time the representative of the petitioner tried to claim that the pillars had got washed away during the rainy season but he failed to explain why there were no pillars on western side of the contract area, where no water stream was flowing and why the pillars after receding of water were not re-installed.

In the absence of pillars the team located the reference point (02 points) as per following :-

Point	Khasra Details	Co-ordinates
I	115//5 (NW Corner) and 115//4 (NE corner)	[GPS N 29°56'57.680” E77°12'32.665”]
II	123//7 (NW Corner) and 123//8 (NE corner)	[GPS N 29°56'45.656” E77°12'30.419”]

It was found that no mining operations were conducted in the contracted area but the petitioner was found to be actually working in the area outside the contracted area (using the GPS co-ordinates in the absence of pillars). It was worked out that the illegally mined area was 9.30 hectares (as mentioned above) and excavation was undertaken ranging between 1 meter to 1.5 meters. Ultimately, the following direction was given by the Director General, Mines and Geology, Haryana :-

“15. In the light of the fact that undertaking mining operations with non-erection and or maintenance of boundary

pillars as per provisions of Rule 7(91)[i] of the State Rules, 2012 is a breach of compliance of the conditions of the grant and undertaken mining beyond contracted area due said breach. Keeping in view that till such time all boundary pillars are put in place and duly verified, the possibility of illegal mining (irreversible breach) cannot be ruled out. Accordingly, in exercise of powers under Rule 74 (2)[i] of the State Rules, 2012, the mining operations and dispatch of mineral from the concession area are ordered to be suspended. It is also ordered that you shall be holding the inventory of stocks, if any, which shall be assessed by the Mining Officer, Yamunanagar, till such time the suspension order is revoked.

*16. Further, you are hereby served with Show Cause Notice to show cause as to why your mining contract in village **“Gumthala North Block/ YNR B-16”** of district Yamunanagar be not prematurely terminated with forfeiture of full amount of security on account of for undertaking mining operation beyond/outside your contract area to the extent of 9.30 hectares under the garb of mining contract granted in your favour. You are directed to submit reply to the Show Cause Notice within a period of 15 days positively failing which action for termination of mining contract with forfeiture of full amount of security on account will be initiated without giving further notice. “*

After getting the reply and hearing the parties the Director General, Mines and Geology Department, Haryana imposed the following penalty :-

“16. In the light of above it is admitted case that the Contractor had excavated and disposed of mineral from the

area which otherwise was/is not part of their contract and also the boundary pillars though now installed not meeting the requirement of rules. However keeping in view the overall record and considering undertaking made to comply with the terms of grants and approvals in later and spirit the liberal view was decided to be taken and not to terminate the contract, however, it was decided that :

[a] The contractor shall pay for the price of mineral illegally excavated – as reflected in the inspection report and show cause notice. The contractor shall be liable to pay the price of mineral taking the average sale price of last 15 days as per their own billing/sale price. Based on the average billing of the month of December, 2019 (from 1.12.2019 to 21.12.2019) as per e-Rawaana issued by the contractor as was also shown to the representative on the basis of details available on the e-Rawaana portal, the mineral was sold at the base price of Rs.150 Per MT, Rs.140 per MT and Rs.130 per MT during different dates in the month of December, 2019, before suspension of mining. Taking the average price of Rs.140 per MT the price of 2,32,500 MT of sand comes out to be Rs.3,25,50,000.

Considering the request of the representative of the Contractor made at the time of hearing, the amount of Rs.3,25,50,000 is directed to be paid in 2 installments. The first installment shall be paid within 15 days of the date of order and the second installment by 31.03.2020.

[b] In addition to above an amount of Rs.92,68,750 equal to 50% of the security deposit of Rs.1,85,37,500 is also ordered to be forfeited as penalty for the violation of the terms of grant. The contractor shall deposit the same immediately to replenish the security amount without any delay, the order of suspension

dated 19.12.2019 shall stand revoked on deposit of the amount of Rs.92,68,750 and on deposit of same MO Yamunanagar may allow them to resume mining accordingly.

[c] The above deposits shall be made/ensured in addition to the payment of contract money and other dues as are admissible under the contract. The failure to pay the aforesaid amount shall lead to termination of the contract without further notice and no further relaxation shall be allowed/considered.”

The petitioner filed appeal which was partly allowed and they were permitted to deposit the amount of Rs.3,25,50,000/- in 8 equal installments. Hence the present petition.

Learned senior counsel has primarily tried to argue that there was no illegal mining ever carried out by the petitioner. The Director General, Mines and Geology Department, Haryana held as follows:-

“16. Sh.Aman Pal had no reasonable answer to the same and he candidly stated that the area in the riverbed due to change in topography and river stream from location to other at times possibly of mistake remains and apparently the operators due to some confusion had been found to be at wrong site. He stated that the contractor has not excavated mineral more than approved capacity and the total area used for mining was much less than the area under contract. He stated that it is not the case that mining being was carrying out in the contracted area as well as outside contracted area to lift mineral much more then approved capacity. He stated that it is a case of inadvertent mistake and not intentional misdeed. He also stated that the Contractor had been paying government dues

regularly and had also will complying with all instructions and directions of the department including relating to e-Rawaana. He submitted that their one time mistake may be ignored taking liberal view. He further under took that no violation shall take place in future on any account.”

Likewise the appellate authority held as follows :-

“xxx In fact, the representative appeared before DGMS candidly conceded that in the riverbed due to change in topography and river stream from location to other at times possibly of mistake remains and apparently the operators due to some confusion had been found to be at wrong site.”

Further before the appellate authority the plea which was made on behalf of the petitioner was as follows :-

“10. He while concluding the submissions stated that though as per them they had not excavated mineral outside contracted area and had never even undertook mining in whole of their contracted area, so there was no logic for any such act. Even if their inadvertent mistake that was not found to be forgivable, the amount of penalty was too high. He stated that the appellant had been paying government dues regularly and had also complying with all instructions and directions and their one time mistake may be ignored taking moderate view. The submissions made were not found admissible.

11. The representative of the appellant stated that he may be given short time to deposit the amount of Rs.92,68,750/- without any delay and requested that the price of Rs.3,25,50,000/- may be allowed to be deposited in 12 equal installments instead of 02 installments as ordered by the DGMG. It was pointed out that he shall first deposit the amount of Rs.92,68,750/- towards penalty which DGMG

ordered to deposit immediately before allowing mining to be resumed. The hearing was adjourned for 01.09.2020, but was rescheduled for 02.09.2020.”

In view of the detailed finding in the survey report and of the officers below, we do not find ourselves in a position to go into this question of fact. In this view of the matter, we find no reason to entertain this writ petition and consequently, dismiss it *in limine*.

Since the main case has been decided, the pending miscellaneous application, if any, also stands disposed of.

**(AJAY TEWARI)
JUDGE**

**(VIKAS BAHL)
JUDGE**

26/7/2021
pooja sharma-I

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No