

**In the High Court of Punjab and Haryana at Chandigarh**

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**CWP No.20303 of 2021**

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**Date of Decision:09.11.2021****M/s Pioneer Partners****....Petitioner****Vs.****State of Haryana and others****.....Respondents**

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**Coram: Hon'ble Mr. Justice M.S. Ramachandra Rao  
Hon'ble Mr. Justice Karamjit Singh**

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**(Heard through Video-Conferencing)**

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**Present:** Mr. Puneet Bali, Senior Advocate with Mr. Vibhav Jain and Mr. Vikram Singh Brar, Advocates for the petitioner.Mr. Lokesh Sinhal, Senior Additional Advocate General,  
Haryana for respondents No.1 to 4.Mr. Sanjay Kaushal, Senior Advocate with Mr. Ishaan  
Bhardwaj, Advocate for the Caveator/respondent-The Warriar  
Mining Minerals and Infra Pvt. Ltd.

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**M.S. Ramachandra Rao, J.****The background facts:**

The Department of Mines and Geology, State of Haryana issued an E-auction Notice dt. 22.01.2016 inviting bids for mining leases for extraction of minor minerals “Stone along with Associated minor minerals” from the mines of the Districts of Mahendergarh and Bhiwani and “Slate Stone mine” of District Rewari.

The petitioner, which is a partnership firm constituted under the Partnership Deed dt. 12.02.2016 having four partners submitted its bid for

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obtaining mining lease of Minor Mineral Mine, namely, “Pichopa Kalan Plot No.2” for extraction of “Stone along with Associated minor minerals” having tentative area of 22.40 hectares by quoting a bid amount of ₹16,46,50,000/- per annum against the reserve price of ₹14,75,00,000/- per annum. E-auction was held on 16/17.03.2016.

The Director General of Mines and Geology Department, State of Haryana (3<sup>rd</sup> respondent) informed the petitioner that its bid was the highest bid in respect of the said mine vide Letter of Intent dt. 11.04.2016.

Thereafter, there was a change in the constitution of petitioner-firm and two partners were inducted into it under Partnership Deed dt. 16.05.2016.

The petitioner then submitted the draft ML-1 Form along with all relevant documents for the perusal of the Mining Officer, Bhiwani, Haryana (4<sup>th</sup> respondent) and also submitted the new Partnership Deed dt. 16.05.2016 containing the names of the six partners along with a letter of authority in favour of Mr. Deepak Agarwal, one of the partners, for execution of the lease deed on behalf of the petitioner-firm.

The 3<sup>rd</sup> respondent then informed the petitioner on 02.09.2016 that 4<sup>th</sup> respondent vide memo dt. 22.07.2016 had sent the draft lease deed agreement papers (draft ML-1 Form) submitted by the petitioner to a Chartered Accountant for scrutiny/examination, and upon scrutiny, certain discrepancies were noticed. The petitioner was further asked to complete the short-comings/submit the additional documents/clarification/amended affidavits etc. as per the observations of the Chartered Accountant within a

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week so that further action could be taken. The petitioner was also to submit the copy of the old Partnership-Deed.

The petitioner then submitted all the documents sought through a letter on 15.09.2016 annexing both the Partnership-Deeds i.e. earlier Partnership Deed dt. 04.03.2015 and the Partnership Deed dt. 12.02.2016 (old Partnership-Deed).

After considering this material, the 3<sup>rd</sup> respondent executed Lease Agreement on 09.11.2016 with the petitioner for a period of ten years in respect of the said mine.

On 23.05.2017, the petitioner applied for and was granted requisite environment clearance for the said mining project by the State Environment Impact Assessment Authority, Haryana.

The petitioner also applied for and was granted Consent to Establish as well as Consent to Operate the said mining project by the Haryana State Pollution Control Board on 02.06.2017 and 20.06.2017.

4 years after execution of the lease agreement, on 11.11.2020, the Caveator Company, namely, “The Warriar Mining Minerals and Infra Private Limited”, which was the second highest bidder in the e-auction held on 16/17.03.2016, approached this Court by filing CWP No.18861 of 2020 for quashing Letter of Intent dt. 11.04.2016 as well as the Mining Lease dt. 09.11.2016 granted to the petitioner on the ground that the petitioner had allegedly violated the terms and conditions of E-auction Notice dt. 22.01.2016 relating to the change of the partners before the execution of the deed (i.e., Instruction C (ii) which mentioned that there shall be no transfer, additions or

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deletion of partner-Director before the execution of the agreement.)

On the same day, vide order dt. 11.11.2020, the said Writ Petition was disposed of on the statement made by the counsel for the State of Haryana that if the said party filed a fresh representation within ten days from the date of the said order, the same would be decided within a week thereafter.

**The complaint of Caveator to 3<sup>rd</sup> respondent:**

On 18.11.2020, the said Caveator filed a representation before the 3<sup>rd</sup> respondent claiming that the Letter of Intent dt. 11.04.2016 as well as Mining Lease dt. 09.11.2016 granted in favour of the petitioner be terminated and the same be allotted to it since it was the second highest bidder in the e-auction held on 16/17.03.2016.

The 3<sup>rd</sup> respondent then issued notice to the petitioner to appear before him for personal hearing on 27.11.2020.

**The order dt. 08.01.2021 of 3<sup>rd</sup> respondent Re: claim of Caveator:**

On 08.01.2021, the 3<sup>rd</sup> respondent passed a detailed order rejecting the request of the Caveator on the ground that the issue relating to change of partners before the execution of the Lease Deed had been pointed out in the past and the matter was filed after a detailed consideration; that even if the said Lease Deed dt. 09.11.2016 with the petitioner was cancelled or terminated, it cannot be granted to the Caveator and the same would be auctioned afresh. The order dt. 08.01.2021 has not been impugned by the Caveator till date.

It is stated that the Caveator then filed a contempt case COCP No.423 of 2021 alleging that its grievance was not dealt with by 3<sup>rd</sup> respondent properly.

**The Show Cause Notice dt. 26.03.2021 to petitioner:**

After the said contempt case was filed, a notice was issued to the petitioner by the 3<sup>rd</sup> respondent on 26.03.2021 alleging that the Lease Deed had been executed as per Partnership Deed dt. 12.02.2016 which indicated only four partners instead of six partners; that it was amended and new partners had been inducted in the petitioner-firm on 16.05.2016; once the amendment of the Partnership Deed took place the earlier Partnership Deed would be valid; and petitioner did not take permission for the same and violated the terms of the grant and Rule 16 of the State Rules, 2012. The petitioner was asked to explain why its lease be not terminated or cancelled and 06.04.2021 was fixed as date of hearing before the 3<sup>rd</sup> respondent and the petitioner was asked to show cause in the said hearing why its lease shall not be terminated or cancelled.

**The explanation of petitioner dt. 28.04.2021:**

Detailed written submissions were filed by the petitioner on 28.04.2021 before the 3<sup>rd</sup> respondent pointing out that on 02.09.2016, the 3<sup>rd</sup> respondent had addressed a letter specifically referring to the re-constitution of the petitioner's Partnership Deed dt. 16.05.2016 and requesting a copy of the earlier Partnership Deed to be submitted; that even prior to that, the 3<sup>rd</sup> respondent was aware of the re-constitution of the petitioner's firm because on 08.07.2016, the petitioner had requested the 4<sup>th</sup> respondent to execute the Lease Deed by submitting the new Partnership Deed dt. 16.05.2016 along with letter of authority in favour of Mr. Deepak Agarwal to execute the Lease Deed on behalf of the petitioner firm; and without raising any objection, the Lease

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Deed came to be executed on 09.11.2016 with full knowledge about the re-constitution of the petitioner firm and without raising any objection about the re-constitution of the firm by simply asking the petitioner to submit a copy of the earlier Partnership Deed as well.

It was also pointed out that the Caveator had claimed to cancel the Letter of Intent dt. 11.04.2016 and Mining Lease dt. 19.11.2016 issued to the petitioner to be terminated and the Caveator be allotted the said Mining Lease, but such plea was rejected by the 3<sup>rd</sup> respondent on 08.01.2021; and there is no question of termination of the lease granted vide Lease Deed dt. 09.11.2016 since the factum of change of the constitution of the Partnership of the petitioner firm after the issuance of Letter of Intent was duly brought to the notice of the Mines and Geology Department, and after scrutiny by its Chartered Accountant of the earlier Partnership Deed as well as the new Partnership Deed, the said lease deed had been executed. It was contended that this objection about re-constitution of the petitioner firm was being raised at a belated stage almost four years after the grant of the lease, and it is hit by the Principles of Promissory Estoppel and Acquiescence. It was also pointed out that Rule 16 of the Haryana Minor Mineral Concession, Stocking and Transportation of Mineral and Prevention of Illegal Mining Rules, 2012 ('State Rules 2012' – for short) which prohibited transfer of lease to a 3<sup>rd</sup> party without prior approval of the Government would have no application, since there was no change in the Constitution of the petitioner firm after the grant of the lease.

**The order dt.23.06.2021 of 3<sup>rd</sup> respondent:**

Thereafter, the 3<sup>rd</sup> respondent passed the impugned order on 23.06.2021. In the said order, the 3<sup>rd</sup> respondent stated that the Lease Deed had been executed by the petitioner on the basis of the Partnership Deed executed on 16.05.2016 containing six partners including two new partners and the petitioner's contention that they were not aware of the fact that the constitution of the Partnership firm could not be changed was totally devoid of merit as it had been amply made clear in E-auction Notice as well as Letter of Intent; that as per terms and condition of E-auction Notice dt. 22.01.2016 the petitioner was not entitled to change the partners before execution of Lease Deed, but the petitioner had executed Lease Deed on 09.11.2016 with the Department after changing the constitution of the partnership firm. Reliance is placed on Clause C (ii) of the letter dt. 28.04.2021 which stated that “no transfer, addition or deletion of partner/Director will be permissible before execution of agreement”. It was observed that there was no consensus *ad idem*, i.e. - meeting of minds, and the act of the petitioner being in violation of the condition No. C (ii) of the Auction Notice and Clause 29 of Part-III of the Lease Deed, the lease of the petitioner stands nullified and is declared as terminated.

Challenging the same, the petitioner filed an appeal before the Additional Chief Secretary to the Government of Haryana, Mines and Geology Department (2<sup>nd</sup> respondent) under Sub-Rule (2) of Rule 109 of State Rules, 2012.

**The order dt. 20.08.2021 of 2<sup>nd</sup> respondent:**

The said appeal was also rejected on 20.08.2021 by the 2<sup>nd</sup>

respondent.

In the said order the appellate authority noted that claim of the petitioner that the Lease Deed was executed by it on the basis of the Partnership Deed executed on 16.05.2016 containing six partners including two new partners is not maintainable, that condition No.C(ii) of the E-auction Notice dt. 22.01.2016 has been violated, and so the appeal was devoid of merits.

**The present Writ Petition:**

Challenging the same, this Writ Petition is filed by the petitioner.

Heard Mr. Puneet Bali, Senior Advocate with Mr. Vibhav Jain and Mr. Vikram Singh Brar, Advocates for the petitioner, Mr. Lokesh Sinhal, Senior Additional Advocate General, Haryana for respondents No.1 to 4 and Shri Sanjay Kaushal, Senior advocate with Shri Ishaan Bhardwaj, Advocate for the Caveator-M/s The Warriar Mining Minerals and Infra Private Limited, (though the said party has not been impleaded by the petitioner in the Writ Petition).

**Contentions of counsel for petitioner:**

The Senior Counsel for the petitioner contended that the orders passed by the 3<sup>rd</sup> respondent on 23.06.2021 and by the 2<sup>nd</sup> respondent on 20.08.2021 are cryptic and have been passed without considering the contention of the petitioner that the Department was fully aware of the change of the partners in the petitioner firm on the date of execution of the Lease Deed on 09.11.2016; and the contention of the petitioner that the Principles of Promissory Estoppel and Acquiescence would be attracted since the petitioner

was allowed to work the mine for 4 years (i.e.) from 20.06.2017 when it secured the Consent to Operate the mine from the Haryana State Pollution Control Board till its cancellation on 23.06.2021 by the 3<sup>rd</sup> respondent has not been taken into account or dealt with by the 3<sup>rd</sup> respondent and 2<sup>nd</sup> respondent.

It is further contended that though the E-auction Notice dt. 22.01.2016 did contain a prohibition for induction of partners before the execution of the Lease Agreement, there was no such condition in the Letter of Intent issued to the petitioner on 11.04.2016; on 08.07.2016 Draft ML-1 Form (clearly mentioning about the petitioner firm having six partners as per the new Partnership Deed dt. 16.05.2016) and copy of the earlier Partnership Deeds dt. 04.03.2015 and dt. 12.02.2016 had also been submitted; and with full knowledge of the change in the constitution of the firm, the Lease Deed was entered into by the Department with the petitioner on 09.11.2016. It is also contended that Clause 29 of Part-3 of the Lease Deed would not be attracted because there was no assigning, sub-letting or transfer of the lease to any 3<sup>rd</sup> party after the lease deed was entered into with the petitioner.

**Consideration of petitioner's and respondent's contentions:**

A reading of the order passed by the 3<sup>rd</sup> respondent on 23.06.2021 and the order passed by the 2<sup>nd</sup> respondent on 20.08.2021 indicate that though they adverted to the above contentions of the petitioner, they had not dealt with the same.

Though, Mr. Lokesh Sinhal, Senior Additional Advocate General, Haryana appearing for respondents No.1 to 4 sought to sustain the orders passed by the respondents No.2 and 3 by reiterating the reasoning contained in

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the said orders, we are of the opinion that it was the duty of respondents No.2 and 3 to not only advert to the contentions of the petitioner, but also deal with the same by giving proper reasons. They cannot evade the issues and avoid dealing with them. Therefore, the impugned orders have to be set aside and the matter needs to be remitted back to 3<sup>rd</sup> respondent for further consideration.

Though, Mr. Sanjay Kaushal, learned Senior Counsel for the Caveator, (which was not impleaded in the Writ Petition) also sought to sustain the orders passed by the respondents No.2 and 3, keeping in mind the order which we propose to pass, we did not deem it proper to separately deal with his contentions.

Accordingly, the Writ Petition is allowed; the orders dt. 23.06.2021 passed by the 3<sup>rd</sup> respondent and also the order dt. 20.08.2021 passed by the 2<sup>nd</sup> respondent are set aside; and the matter is remitted back to the 3<sup>rd</sup> respondent for fresh consideration with a direction to 3<sup>rd</sup> respondent to provide a personal hearing to the petitioner, the Caveator as well as the 4<sup>th</sup> respondent and to pass a reasoned order in accordance with law within two months from date of receipt of a certified copy of this order. No costs.

**(M.S. Ramachandra Rao)**  
**Judge**

**(Karamjit Singh)**  
**Judge**

November 09, 2021.  
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| <b>NOTE:</b> | Whether speaking/reasoned: | Yes |
|              | Whether reportable:        | Yes |