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In the High Court of Punjab and Haryana at Chandigarh

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CWP No.21368 of 2021

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Date of Decision:09.11.2021

M/s Ultimate Group ....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. Sandeep Goyal, Advocate for the petitioner.

Mr. Lokesh Sinhal, Senior Additional Advocate General, Haryana for respondents.

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M.S. Ramachandra Rao, J.

The background facts:

The petitioner is a partnership firm registered under the Partnership Act, 1932.

The 1st respondent in the Writ petition is the State of Haryana rep. by it's Additional Chief Secretary, Mines and Geology Department, the 2nd respondent is the Director General, Mines and Geology Department and the 3rd respondent is the District Mining Officer, Mines and Geology Department.

A sand mining unit "Gyaspur/Rasulpur Sand Unit" of District Sonipat, Haryana was notified for grant of mining contract for extraction of sand through Auction Notice dt. 19.03.2015.

The petitioner offered a bid of Rs.6,13,25,000/- against the reserve price of Rs.6,08,00,000/- and since it was the highest bid, its bid was accepted and Letter of Intent was issued in its favour on 21.04.2015 in respect of 35 hectares of land. Thereafter, a contract was entered into in Form MC-1 by the petitioner with the respondent on 04.08.2015.

The petitioner then obtained Environmental Clearance on 27.06.2016 and all the necessary approvals/permissions and commenced mining operation from 07.07.2016. At the time of entering into the said mining contract agreement there were nine partners in the petitioner firm.

According to the petitioner, it was restrained from realizing the full potential from the mining concession on account of certain factors including the prohibition by the National Green Tribunal on riverbed mining, restraint on use of mechanized mining, the obstruction caused by the issue of access road, departmental bottlenecks etc.

Since this affected the viability of its business operations, it had sought financial help from Shri Ishwar Sharma and Rajesh Kumar, who readily helped the petitioner financially subject to they being made partners in the petitioner firm. In November 2017, the petitioner claims that Rs.2 crores were paid to the petitioner by the above two persons and they also paid a sum of Rs.1.80 crores in December 2017 to the 3rd respondent through their Business Venture "M/s Elite Mining Corporation".

The petitioner claims that it then made an application to the respondent Department to permit induction of the above two persons in the petitioner firm, but no action was taken. According to the petitioner, there was no response from the Department on this application and having waited for two months, the petitioner inducted the above two persons as partners of the petitioner firm under a Partnership Deed dt. 21.05.2018 r/w Retirement Deed and affidavits dt. 28.07.2018, 07.08.2018, 25.07.2018, 09.10.2018, 07.08.2018 and 17.11.2018 etc. Thus, the petitioner firm was reconstituted. Even after the new partners were inducted into the petitioner firm, it is alleged that it paid more than Rs.2 crores to the respondent-Department.

The petitioner contend that it once again filed an application on 04.06.2018 with the respondent Department through Shri Ishwar Sharma to allow addition of the two persons in its firm. According to the petitioner, by the end of 2018, the firm had only Shri Ishwar Sharma and Shri Rajesh Kumar as partners.

Show cause notice dt.27.07.2018 issued to petitioner:

On 27.07.2018, a Show cause Notice was issued to the petitioner firm by the 2nd respondent to show cause as to why its mining contract be not terminated prematurely for transfer of 75% share in favour of Shri Ishwar Sharma without permission from the State Government. In the Show Cause Notice it was stated that in February 2018 two of its partners, namely, Shri Amandeep Singh and Amrit Pal Singh informed that some anti-social elements have taken over the mine and are operating it illegally. Shri Ishwar Sharma filed a civil suit before the ACJ (Senior Division), Ganaur, Sonipat claiming that he bought 75% share in petitioner firm from Amrinder Singh, authorized person of contractor firm for a consideration of Rs.3.00 crores, and he claimed that he deposited Rs.1.80 crores with the Department and also paid Rs.2.00 crores to him through RTGS. In the civil suit he has also claimed ownership of the said share and also obtained stay order dt. 26.03.2018 from the said Court. It is contended in the Show Cause Notice that as per clause 27 Part-III of the Contract Agreement read with Rule 16 of the Haryana Minor Mineral Concession, Stocking and Transportation of Mineral and Prevention of Illegal Mining Rules, 2012 (for short - 'State Rules 2012'), a contractor shall not assign, sublet or transfer the contract to any other person without obtaining prior permission in writing from the Government, and since no permission of the State Government was sought before selling the share to Shri Ishwar Sharma, there has been a violation of the said clause in the contract agreement.

The order dt.25.01.2019 of the 2nd respondent suspending the mining contract:

A personal hearing was provided to the petitioner firm on 25.01.2019 and on that day, the 2nd respondent suspended the mining contract given to the petitioner for three months on the ground of selling of 75% of share in the firm to Shri Ishwar Sharma without prior approval of the State government or till rectification of the violation alongwith clearance of all pending dues accrued to the Government which was earlier.

The order dt.11.3.2019 in C.W.P.No.6040 of 2019:

This was challenged by the petitioner in CWP No.6040 of 2019 before this Court contending that the petitioner had made an application seeking permission to make the transfer, but it was denied by the respondents. This Court permitted the petitioner to file an application regarding its request for change in the composition of its partners within one week and directed the respondents to pass a final order within a week thereafter and disposed of the Writ Petition on 11.03.2019.

The application dt.19.03.2019 of petitioner to permit change of composition of the firm:

Having regard to the said order, an application dt. 19.03.2019 seeking change of composition of its partners was filed by the petitioner before the 2nd respondent, and on the same day the 2nd respondent withdrew suspension order 25.01.2019 till a final decision is taken on the said application of the petitioner.

The order dt.30.10.2019 of 2nd respondent rejecting the petitioner's request for transfer of mining contract to Sh. Ishwar Sharma

However, on 30.10.2019, the 2nd respondent rejected the transfer of the mining contract/lease as sought by the petitioner with regard to the 75% share in favour of Shri Ishwar Sharma on the ground that the petitioner firm was in default of Government dues, and that in response to letter dt. 12.09.2019 addressed to the petitioner asking it to clear the outstanding dues, the petitioner had not cleared the outstanding dues. It was stated that as per Rule 15(4) of State Rules, 2012, no consent for transfer of mining lease or contract shall be accorded unless the applicant has paid all the outstanding mining dues in respect of the lease or contract. It was also stated that two partners in petitioner firm had opposed the transfer of the contract in favour of Shri Ishwar Sharma and that substantial amount was owed to the Department by petitioner.

The show cause notice dt.7.11.2019 of 2nd respondent why the mining contract shall not be terminated

Thereafter, on 07.11.2019, a Show Cause Notice was issued by the 2nd respondent to the petitioner asking it to show cause as to why it had sold its share without prior approval of the Government and the petitioner was also directed to clear the outstanding dues to the Department and in default the termination of the contract was threatened.

Petitioner's reply dt.9.12.2019 to the show cause notice

The petitioner in its reply dt. 09.12.2019 to said show cause Notice disputed the contentions of the 2nd respondent and contended that in CWP No.28203 of 2018, on 01.11.2018, this Court had reduced the monthly instalment payable by petitioner to the Department from Rs.51,10,416/- to Rs.34,45,953/-; thereafter the petitioner had continued mining for about one month till 10.12.2018 when it was denied access to Yamuna Bundh (which was the only accessible route to access the petitioner's mine quarry); the Mining Department had then suspended its lease on 25.01.2019 and the same was withdrawn by the Department only 19.03.2019; and only thereafter the petitioner was undertaking mining activity for about 8 months. It is, therefore, contended that the amount payable by it was Rs.7,44,52,113/- only , that it had already paid Rs.6,41,25,500/-, and the only amount payable by it is Rs.1,03,26,613/-. It reminded the 2nd respondent that certain other contractors were not demanded any amount for the period during which the mining activities were suspended on account of ban on the use of 'Bundh' and it named four such contractors. Petitioner requested that the Demand Notice be withdrawn and no action such as suspension/termination/forfeiture be taken against it.

The order dt.8.12.2020 of the 2nd respondent suspending the petitioner's mining contract

But the 2nd respondent on 08.12.2020 rejected the petitioner's contention and suspended the petitioner's mining lease on the ground that the partnership had transferred or sold without prior permission of the Government in sheer violation of the contractual obligations, and that there were unpaid dues of over Rs.22 crores payable by the petitioner to the Department as on 31.08.2019, and the liability had also increased thereafter.

The appeals filed by petitioner to 1st respondent

The petitioner then preferred appeals before 1st respondent challenging the orders dt. 30.10.2019 and 08.01.2020.

The common order of the 1st respondent dt.4.1.2021 rejecting the appeals

These appeals were rejected by the 1st respondent on 04.01.2021 on the ground that they were not maintainable. In this order, the 1st respondent held that the matter relating to return of the contract money payable was pending in Special Leave Petition filed in the Supreme Court against similar orders which had been stayed by the said Court; while the petitioner had submitted its application dt. 19.03.2019 through Shri Amandeep Singh for transfer of 88% share of seven partners out of nine partners in favour of Shri Ishwar Sharma, the latter had filed another application on 02.04.2019 seeking transfer of the whole contract and not a mere transfer of share to his proprietary concern; and two of the partners filed another Writ Petition i.e. C.W.P. No.21663 of 2019 stating that they are rightful share holders to the extent of 6% each and they were not parties in CWP No.6040 of 2019; that CWP No.21663 of 2019 was disposed of on 02.09.2019 with a direction to the respondent-State to call both the parties and redress their grievance.

The 1st respondent held that the petitioner firm or its partners did not come forward with clarity on this issue and even they were in default of payment of Government dues.

He also held that the firm had sold its shares to different partners without prior permission of the State as required under Rule 16 of the State Rules, 2012 and the firm was asked to clear the huge Government dues which it had not cleared.

The consequential order dt.28.1.2021 of 2nd respondent

Pursuant to the order dt. 04.01.2021 of the 1st respondent, a consequential order was passed by the 2nd respondent on 28.01.2021 terminating the mining contract granted to the petitioner for extraction of mineral, and a sum of Rs.1,53,31,250/- available as security was adjusted against outstanding dues. The remaining outstanding amounts were also demanded and in default action for recovery of arrears of land revenue was threatened.

The present Writ Petition:

In this Writ Petition, (a) the petitioner challenges the termination order passed by the 2nd respondent on 28.01.2021; (b) the order dt. 04.01.2021 passed by the 1st respondent dismissing the petitioner's appeals against the order dt. 08.01.2020 issued by the 2nd respondent suspending the petitioner's mining lease and also the appeal against order dt.

30.10.2019 passed by the 2nd respondent rejecting petitioner's application dt. 19.032019 for transfer of the mining contract to Shri Ishwar Sharma; (c) the order dt. 08.01.2020 passed by 2nd respondent suspending the petitioner's mining contract and (d) the order dt. 30.10.2019 passed by the 2nd respondent rejecting the petitioner's application dt. 19.03.2019 for transfer of contract to Shri Ishwar Sharma.

Contentions of counsel for petitioner:

Counsel for the petitioner contended that there is a serious dispute about the amount payable by the petitioner to the respondents; that while respondents claim that a sum of Rs.22 crores is payable, petitioner alleges that only Rs.1,03,26,613/- is payable; the basis of this claim of petitioner is non-consideration of contentions as raised in the petitioner's reply dt. 19.12.2019 to the notice dt. 14.11.2019 issued by the second respondent; without adjudicating the said issue and determining the actual liability of the petitioner, the respondents had evaded to decide the said issue by blindly proceeding on the footing that the petitioner is due to pay Rs.22 crores and much more, and this has caused serious prejudice to the petitioner.

It is further contended that according to the petitioner all the original partners had sold their shares to Shri Ishwar Sharma, but even if two of the partners having 6% share each have denied the same (as was stated by the 1st respondent), the Department should consider transfer of 88% of the share holding of the petitioner to Shri Ishwar Sharma on the basis of the order dt. 11.03.2019 passed in CWP No.6040 of 2019 by this Court on the basis of which the petitioner had given application dt.

19.3.2019 for transfer of the whole contract to Shri Ishwar Sharma.

The contentions of the State

Sri Lokesh Sinhal, Sr. Addl. Advocate General appearing for the State of Haryana refuted the above contentions and supported the orders passed by respondents 1 and 2.

The consideration by the Court

In the order dt. 08.01.2020 and Order dt.30.10.2019 passed by the 2nd respondent, and also in the order dt. 01.01.2021 passed by the 1st respondent, we noticed that there is no adjudication of the liability of the petitioner of the dues payable by it to the State by considering the contentions of the petitioner in the reply dt.19.12.2019 given by it to the show cause notice dt.14.11.2019 of the 2nd respondent.

Shri Lokesh Sinhal, Senior Additional Advocate General, for State of Haryana admitted that there was interim order passed on 01.11.2018 in CWP No.28203 of 2018 filed by the petitioner before this Court reducing the amount payable by the petitioner from Rs.51,10,416/- to Rs.34,45,953/- per month and that this order was not challenged in the Supreme Court though orders of similar nature passed in other Writ Petitions were challenged in the Supreme Court and stay was secured by the State in the said cases.

Since the said order dt. 01.11.2018 in CWP No.28203 of 2018 was passed in the presence of the respondents, and it was not challenged in the Supreme Court by them, the respondents cannot ignore the same and demand that for the period in question the higher amount is payable and not the reduced amount *prima facie*.

According to counsel for petitioner, the Environmental Clearance was granted by the competent authority was only for 52.25 hectares area out of 62.25 hectares under the contract, and for 11.40 hectares no environmental clearance was granted to the petitioner, and that is why the amount payable by petitioner to the Department was reduced by this Court.

Counsel for the petitioner also relied upon the order dt. 11.03.2019 passed in CWP No.6040 of 2019 wherein the State did not dispute that transfer of share of the partnership firm was permissible in law.

Having made such a concession before this Court *prima facie* it is not permissible for the respondents to contend that such a transfer is not permissible in law.

In this view of the matter, we are of the opinion that the impugned orders dt. 28.01.2021 passed by the 2nd respondent, order dt. 04.01.2021 of the 1st respondent, suspension order dt. 08.01.2020 and order dt. 30.10.2019 of 2nd respondent are not sustainable and deserve to be set aside and the matter, in our opinion, requires to be remitted to the 2nd respondent for fresh consideration in accordance with law, however, subject to the petitioner paying the admitted amount of Rs.1,03,26,613/- to the Department.

Accordingly, the Writ Petition is allowed and the impugned orders dt. 28.01.2021 passed by the 2nd respondent, order dt. 04.01.2021 of the 1st respondent, suspension order dt. 08.01.2020 and order dt. 30.10.2019 of 2nd respondent are set aside subject to the petitioner depositing Rs.1,03,26,613/- with the 2nd respondent within two weeks from today;

the matter is remitted back to the 2nd respondent to decide the quantum of liability of the petitioner with regard to the Government dues allegedly payable by it to the respondents and also to consider the issue of transfer of share in the petitioner firm to Shri Ishwar Sharma at least with regard to undisputed 88% of the share holding in the said firm in the light of admission made before this Court in the order dt. 11.03.2019 passed in CWP No.6040 of 2019.

This entire exercise shall be completed by the 2nd respondent after giving personal hearing to the petitioner within two months. We make it clear that this Court has not expressed any final conclusion on claims of the respective parties and whatever is said in this order is only for the purpose of deciding this case. The 2nd respondent shall consider the matter uninfluenced by the observations made in this order. No costs.

(M.S. Ramachandra Rao)
Judge

(Karamjit Singh)
Judge

November 09, 2021.

hsp

NOTE: Whether speaking/reasoned: Yes

Whether reportable: Yes