IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
****

CWP No. 12629 of 2019
Date of Decision: May 05, 2022
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Kanwaljeet Singh Gill ...Petitioner

Versus

State of Punjab and others ...Respondents

Coram: Hon'ble Mr. Justice M.S. Ramachandra Rao
Hon'ble Mr. Justice H.S. Madaan
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Present:- Mr. Mansur Ali, Advocate
for Mr. Tushar Madaan, Advocate for the petitioner.

Mr. P.S. Bajwa, Addl.A.G., Punjab.
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M.S. Ramachandra Rao, J. (Oral)

In this Writ Petition, petitioner is seeking refund of amount of security and earnest money of Rs.6,07,82,390/- along with compound interest at the rate of 24% per annum from the date of deposit till the date of realization.

The State of Punjab has issued an auction notice with regard to certain sites of mining on 13.6.2017 vide Annexure P1.

Petitioner was successful for the mining area of Ailgran.

Provisional approval was issued to the petitioner vide Annexure P2 on 7.7.2017 for Rs.6,07,82,390/- paying the yearly contract money.

Thereafter, the General Manager-Cum-Mining Officer wrote to the Director, Ministry of Environment and Forest, New Delhi vide Annexure P3 dt. 28.8.2017 for transfer of environmental clearance certificate in favour of the petitioner. The same was however effected only on 27.12.2017 vide Annenxure P4.

According to the petitioner, the Government of India had granted the environmental clearance to the Government of Punjab for a period of five years vide letter dt.28.6.2013. The clearance, therefore, lapsed on 28.6.2018, and so the petitioner could not do mining.

The petitioner completed all the formalities as required as per guidelines of the Mines and Minerals Regulation and Development Act, 1957, and the Punjab Minor Mineral Rules, 2013.

The petitioner contends that he discovered that material to be mined in the area allotted to the petitioner was much less than what was projected in the auction notice, and he made a representation Annexure P7 dt.16.2.2018 to respondent No. 1 for reassessment from the concerned department regarding the material available at the site.

The State of Punjab then wrote to the Deputy Commissioner vide Annexure P8 dt.4.5.2018 directing the Site Appraisal Committee to visit, and report within ten days, by taking along the petitioner.

Thereafter, the Site Appraisal Committee visited the spot, and inspection was carried out, and the report was prepared, and sent to the Deputy Commissioner.

The petitioner contends that the said report indicates that the total mineable material available was only 7861.8081 tons while in the auction notice the respondent had indicated that the available mineral was 23,000 tons per annum, which could be mined. He also contends that the said report indicated that most of the area mentioned in the auction notice was not even mineable.

The petitioner therefore made representation (Annexure P-10) on 21.9.2018 to respondent No. 1 to take action in accordance with the latest site appraisal report. In the meantime, the environmental clearance, which was granted by the Government of India itself expired in June, 2018, and fresh clearance was not obtained.

The petitioner, therefore, seeks refund of the amount of Rs.6,07,82,390/- from the respondents since petitioner's representation Annexure P-12 dt. 8.4.2019 seeking the said refund was not disposed of.

Reply was filed by the Executive Engineer-Cum-District Mining Officer, Rupnagar (respondent No. 5) opposing grant of relief to the petitioner.

There is no denial in the reply about the findings recorded in Annexure P-9 by the mining Site Appraisal Committee as to the quantum of mineral available in the site which was allotted to the petitioner in the auction.

It is contended by the respondents that the petitioner had raised the issue after lapse of more than seven months from the date of grant of provisional acceptance of his bid through a letter dt. 16.2.2018, and so the petitioner was at fault in making request for reassessment belatedly. It is contended that petitioner should have made such request for reassessment immediately after provisional acceptance. It is stated that the petitioner's contract needs to be cancelled as he is late in applying for final acceptance. It is also contended that a Site Appraisal Committee calculated total available material as 1.2 lakh tons as extractable quantity of 23,000 tons, and that the site was reclamationable. Learned counsel for the State also contended that there was an arbitration clause in the contract between the parties, and so this Court ought not to exercise its extra ordinary jurisdiction in the matter. It is further contended that as per condition No. 22 of the E-auction notification, if the period of environmental clearance of any mine ends before the period of contract, it is open to the contractor to obtain the environmental clearance, and complete the contract, and so the petitioner cannot contend that the environmental clearance had expired in June, 2018.

Along with the reply Annexure R-2 statement has been filed indicating Khasra number wise calculation of material prepared by the mining department based on report by the Site Appraisal Committee of Sub Division, Nangal in Ailgran Village. This report indicates that the annual production target in tons for the mining blocks in Ailgran is 2620.60272 metric tons.

The question to be considered is whether the petitioner is entitled to refund of the security and earnest money of Rs.6,07,82,390/- with interest as is sought in the Writ Petition.

As regards the preliminary objection by the State regarding maintainability of the Writ Petition is concerned, it is now settled law that existence of an arbitration clause in a contract between the parties is no bar for entertaining of the Writ Petition.

In **Harbanslal Sahnia and another versus Indian Oil Corporation Ltd. and others** (2003) 2 SCC 107, a similar contention raised on behalf of the respondent before the Supreme Court was rejected. The Court held that the rule of exclusion of Writ Jurisdiction because of availability of an alternative remedy is a rule of discretion, and not one of compulsion; and in an appropriate case, in spite of availability of alternative remedy the High Court can still exercise its Writ Jurisdiction, i.e. where the Writ Petition seeks enforcement of fundamental rights or where there is a failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In that case, the petitioner's dealership was terminated by the respondent-Corporation for an irrelevant, and non-existent cause. The Supreme Court held that they should have been allowed relief by the High Court itself instead of being driven by the High Court to arbitration proceedings. This was reiterated in **Ram Barai Singh and Co. versus State of Bihar and others** (2015) 13 SCC 592 wherein the Supreme Court declared that a constitutional remedy by way of a Writ Petition is always available to an aggrieved party, and an arbitration clause in an agreement between the parties cannot *ipso fact* render a Writ Petition “not maintainable”. Therefore, this contention is also without any merit. Therefore, the said contention is rejected.

It is not in dispute that as per the auction notice (Annexure P-1) the maximum quantity of extractable minerals per year at Ailgran is 23,000 tons. Therefore, obviously the petitioner expected to extract that much quantity of the material when he participated in the auction, and became the successful bidder, but the evidence on record as per Annexure P-9, and the enclosed Site Assessment Report indicates that the mineral available in Ailgran is not 23,000 metric tons per year, but is a mere 2620.60272 tonnes per annum as indicated in Annexure R2**.**

Since Annexure R-2 is a report prepared by the State itself, and filed along with its reply, it is not open to the State to dispute its contents. The estimate of the mineral thus varies greatly between the auction notice and Site Assessment Report. So it is not tenable for the State to insist that the petitioner continue to extract the mineral which is available since the very presumption on the basis of which contract was entered into has been proved to be incorrect.

It is therefore unconscionable on the part of the State to refuse to refund the money deposited as security and earnest deposit by the petitioner, and compel the petitioner to perform the contract in these circumstances.

In M/s Planet Steel Private Limited versus The State of Haryana SLP 19619-19620 of 2017 on 10.4.2018, the Hon'ble Supreme Court considered a case where area auctioned for mining purpose was 558.53 hectares, but it turned out that the area available for mining was in fact only 141.76 hectares. The Court held that it was the duty and responsibility of the State to ensure that the area sought to be auctioned for mining purposes is as per the advertisement, and the State cannot contend that the sole responsibility for measuring the area sought to be auctioned for mining purpose, was on the Writ Petitioner. The Supreme Court also directed refund of the deposited amount by the petitioner in that Writ Petition.

Recently on 19.4.2022 in CWP No. 22873 of 2021, this Court had an occasion to consider the case where an E-auction notice was issued for sand mining, but the site allotted to the highest bidder had no uninterrupted access. There was hindrance from the local people for the use of revenue rasta which provided access to the mining site. This Court held that it was the duty of the State to provide safe passage to the petitioner to use the revenue rasta, and the State had no moral authority to retain the amount deposited by the petitioner in the hope of successfully executing the contract, which was hindered on account of default of the State Agencies in failing to give a hindrance free passage through the revenue rasta to the mining site. This Court held that it was the duty of the State to maintain the law and order, and it was its responsibility to ensure that no member of the local population obstructed the passage through the revenue rasta, and cause hindrance to the petitioner from using it. It directed refund of the amount deposited by the petitioner with interest at the rate of 6% per annum after deducting installments payable by the petitioner.

Having regard to the above precedents, and having regard to the facts and circumstances of the instant case, the Writ Petition is allowed, and the respondents are directed to refund the amount of security, and earnest money of Rs.6,07,82,390/- with 6% interest per annum from the date of deposit till the date of realization within two months from the date of receipt of copy of this order.

No costs.

(M.S. Ramachandra Rao)
Judge

(H.S. Madaan)
Judge

May 05, 2022
P.Singh

Whether speaking/reasoned? Yes/No

Whether Reportable? Yes/No