

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

CWP-22873-2021

Date of decision:-19.4.2022

Confitech Barter (P) Ltd.

..... Petitioner

VERSUS

State of Punjab and others.

..... Respondents

CORAM: **HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO**
 HON'BLE MR. JUSTICE H.S.MADAAN

Present: Mr.Atul Lakhanpal, Senior Advocate with
 Mr.Ankur Gupta, Advocate
 for the petitioner.

Mr.Gaurav Garg Dhuriwala, Sr.DAG, Punjab.

M.S. RAMACHANDRA RAO, J.(ORAL)

Heard Sh.Atul Lakhanpal, Senior Advocate with Mr.Ankur Gupta, Advocate for the petitioner, and Sh.Gaurav Garg Dhuriwala, Sr.DAG, Punjab.

The respondents No.1 & 2 had issued E-auction notice on 3.5.2017 inviting bids for sand mining in 14 districts in the State of Punjab.

The petitioner became the highest bidder in respect of one site of Lubangarh located in Tehsil Machhiwara, District Ludhiana.

A provisional approval was issued by respondents No.1 and 2 in favour of the petitioner on 21.5.2017 requiring the petitioner to deposit Rs.3,70,37,460/- plus Rs.3,25,957/- within two days.

On 22.5.2017, the petitioner deposited Rs.2,85,48,687/- with respondents No.1 and 2, and on 23.5.2017, he also deposited Rs.3,25,957/-.

On 17.1.2018, the respondents issued a confirmed approval of environmental clearance in favour of the petitioner.

Thereafter, on 18.1.2018, the petitioner sought to take up the work of execution of sand mining in hand at site but discovered that there was no approach road except one, which according to the petitioner was owned by a private person, who was having a stay order from a Civil Court against the previous allottee of the site, and was not permitting the petitioner to ply its trucks.

Therefore the petitioner complained to respondents No.1 and 2 on 27.1.2018 pointing out the above fact. The petitioner also approached Senior Superintendent of Police, Khanna for assistance and according to the petitioner, such assistance was refused.

Ultimately, the petitioner filed CWP-11241 of 2018, when the respondents failed to respond to petitioner's request for surrender of the mine on 16.4.2018 assigning the reason of its inability to run the site on account of lack of access to it.

During the course of hearing of the said writ petition, there was a representation made by the State counsel that petitioner needs to have access to the mine through revenue rasta, but use of the same was objected to by residents of the area.

In view of the said submission, the writ petition was disposed of by holding that for a period of three weeks, the Mining Officer, either himself or through some officer deputed by him in that regard, would be present on the site and ensure the transportation of the minerals after excavation by the petitioner through the revenue rasta.

Thereafter, for a period of three weeks, apparently there was usage of the said revenue rasta by the petitioner for transportation of minerals, but after the expiry of the said period, again according to the petitioner, there was a hindrance by the local residents, who had threatened the petitioner's employees and the petitioner again gave a representation on 21.5.2019 to the respondents regarding the problems created by the local people.

The petitioner thereafter made a representation on 8.8.2019 to adjust its previously deposited unutilized installment and waive off the installments for the intervening period and followed it up by reminders dt. 23.9.2019 and dt. 9.10.2019.

When this was not replied to, the petitioner wrote a letter on 15.10.2019 offering to surrender the mining site and sought return of its deposited amount.

When there was no reply to this, the petitioner had filed CWP-35670 of 2019 before this Court, which was however withdrawn on 4.3.2020 with liberty to pursue the said representation.

Subsequently, the petitioner made representations again on dt.17.3.2020 and dt.30.6.2020.

On 26.8.2020, the petitioner received a communication that its representation was forwarded for appropriate action from the office of the CMO, but ultimately no action was communicated to the petitioner.

The petitioner then filed CWP-20648 of 2020 in this Court, which was disposed of on dt. 11.2.2021 after recording a statement by the counsel for the State that the representation of the petitioner would be decided by the Director Mining, Department of Mines and Geology within four weeks after giving liberty of hearing to the petitioner.

Subsequently, an order dated 7.4.2021 was passed by Director Mining, Water Resources Department of the State of Punjab stating that the petitioner himself gave a consent letter on 10.6.2019 that he would continue the mining work, subject to the condition that local people does not create hindrance; therefore, it was evident that there was no problem in carrying out mining operations at mining site Lubangarh and the transportation of the mineral through the revenue rasta. Reference has also been made to Condition 10 of the auction notice, which stated that the prospective bidder, at his own level and expense, can visit the mines included in the notification for his satisfaction whether he can operate the mine or not. It was held that it was the responsibility of the Contractor to take care of such issues. The

Director of Mining then further held that since the petitioner had not mined as per the approved mining plan, his contract to do mining is cancelled under Rule 66 & 67 of Punjab Minor Mineral Rules, 2013 and the amount deposited by the petitioner is forfeited to the Government. It is also held that the contractor has extracted the miner mineral without execution of agreement under Rule 40 of the said rule and the amount of stamp duty for the agreement is also to be deposited by the contractor in addition to the amount of forfeiture. A direction was given to the Executive Engineer-cum-District Mining Officer, Ludhiana to recover outstanding amount, if any, along with interest from the concessionaire after issuing notice as per the said rule.

Challenging the said order, this writ petition is filed.

Learned counsel for the petitioner placed reliance upon a decision dt.18.1.2019 of this Court passed in CWP-27711 of 2018 in case titled '*Pritpal Singh Versus State of Punjab & others*', where under similar circumstances this Court had taken a view that the State cannot abdicate its responsibility in identifying proper area to offer it to the prospective bidders for mining purposes; there would be no moral authority with the State to retain the amount deposited by a person in the hope of successfully executing the contract, which continues to be hindered on account of default of the State agencies, who had failed to identify the area and its availability to the bidder. It was noticed in the said case that the respondents themselves had expressed their inability to demarcate the area intended for mining, which prevented the petitioner from carrying out any activity despite the

fact that he has made a successful bid in open auction. The Court held that there would be no justification with the respondents to offer a mine, which is incapable of being operational, and disposed of the writ petition with a direction to the respondents to refund the amount of the petitioner therein within a period of three months.

Learned counsel for the petitioner has contended that the impugned order dt. 7.4.2021 passed by respondent No.2 refusing to refund to the petitioner the amount deposited by the petitioner is arbitrary, illegal and violative of Article 14 and 300-A of the Constitution of India. He contended that it was the duty of the respondents to provide an approach road free from any hindrances providing access to the auctioned mine site, and when such hindrance cannot be prevented by the State, it cannot refuse to refund the amount paid by the petitioner for getting the mining contract for the said mine.

The State has filed status report by way of affidavit of Engineer-cum-District Mining Officer, Ludhiana on behalf of the respondents stating that there is a revenue passage and there was absolutely no objection by the residents of the area for the petitioner to use it for transporting of minerals. The State counsel has contended that there is no encumbrance from the local residents for use of the said revenue passage. It is stated that pursuant to the order dated 9.4.2019 passed by this Court, the petitioner did run mining operation on trial for three weeks starting from 20.5.2019 to 9.6.2019 and the respondents ensured the compliance of the said order dt. 9.4.2019 by writing to the Deputy Superintendent of Police,

Samrala for providing the police force to the petitioner. Reliance is also placed on the letter dt. 10.6.2019 of the petitioner, wherein the petitioner stated that he wanted to continue the mining work, subject to the condition that local people does not create hindrance and it is contended that this indicates that there was no problem in carrying mining operations at mining site. It is contended that it is the responsibility of the petitioner to carry out the mining operations and he cannot demand the refund of the amount by violating the contractual obligations. It is, however, admitted that the mining activities were not done from 24.3.2020 to 14.5.2020.

We have noted the contentions of both sides.

It is no doubt true that the petitioner was the successful bidder in the open auction for the mine in question. There was undoubtedly a revenue rasta to the said mining site at Lubangarh, but the petitioner's contention is that there was hindrance from the local people for the use of the said revenue rasta, which makes it difficult for the petitioner to operate vehicles on the said rasta. It is, however, admitted that for the period from 18.1.2018 to 10.3.2019, the petitioner did operate the mine and that he also operated the mine for three weeks from 19.5.2019 to 9.6.2019 pursuant to the order dt. 9.4.2019 granted by this Court.

Though learned counsel for the State sought to contend that subsequent thereto also, the petitioner operated the mine, there is no pleading to that effect. He has admitted that when CWP-11241 of 2018 was decided on 9.4.2019, the State agreed to provide security for a period of

three weeks to enable the petitioner to use the revenue rasta. Even in para No.14 of the status report, this fact is not disputed.

The plea of the respondents that it is the petitioner's look out as to how he would operate the mine and access it because of Clause 10 cannot be countenanced because having put to open auction the said mine, it cannot abdicate its responsibility in providing safe passage to the petitioner to use the said revenue rasta. They have no moral authority to retain the amount deposited by the petitioner in the hope of successfully executing the mining contract, which continues to be hindered on account of the default of the State agencies in failing to give a free passage through the revenue rasta to the mining site. The duty to maintain law and order is cast on the State and it is its responsibility to ensure that no member of the local population obstruct the passage through admittedly a revenue rasta and cause hindrance to the petitioner from using it.

No reliance can be placed on State as letter dt.10.6.2019 of petitioner because he only give consent to carry on mining subject to condition that there is no hindrance to use the revenue rasta. So if the hindrance continued, the petitioner cannot be blamed for not working the mine.

Therefore, the impugned order dt.7.4.2021 passed by the Director/Mining, Water Resources Department, Punjab is set aside; and the respondents are directed to refund the amount deposited by the petitioner after deducting the installments payable by the petitioner for the period from 18.1.2018 to 10.3.2019 and from 19.5.2018 to 9.6.2019, if not paid by the

petitioner. The said amount shall be refunded with interest @ 6% per annum from the date of such deposit till the date of payment, and the said payment shall be made to the petitioner within two months from the date of receipt of copy of this order.

The civil writ petition stands allowed accordingly.

(M.S. RAMACHANDRA RAO)
JUDGE

19.4.2022
Brij

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No