

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

CWP No.2 of 2022 (O&M)
Date of Decision: 11.02.2022

AJITPAL SINGH GILL

.....Petitioner

V/s.

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: **HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO**
 HON'BLE MR. JUSTICE SANDEEP MOUDGIL

(Through Video Conferencing)

Present: Mr. Nitin Kaushal, Advocate,
 for the petitioner.

Mr. Pankaj Gupta, Additional Advocate General, Punjab.

M.S. RAMACHANDRA RAO, J.

This petition is filed by the petitioner for issuance of a writ in the nature of *Certiorari* for quashing of the order dt. 30.09.2021 (*Annexure P-15*) passed by the Principal Secretary, Department of Water Resources, Punjab-respondent No.1 and order dt. 07.06.2021 (*Annexure P-13*) received vide letter dt. 30.06.2021 passed by the Director Mining, Water Resources Department, Punjab-respondent No.2.

The Government of Punjab had issued e-auction notice dt. 03.05.2017 to auction 'Behloor Khurd Mine' in the District S.B.S. Nagar, Punjab.

On 11.05.2017, the petitioner deposited a sum of ₹7,61,616/- as Earnest Money Deposit (EMD) with the Mining Department of the State of Punjab.

On 18.05.2017, a meeting of the Committee appointed by the respondents for e-auction of Sand Mines was held which took cognizance

of cases of four persons/bidders wherein Challan Nos. and UTR Nos. through which these four persons/bidders had deposited their respective EMDs were not matching. Two persons/bidders out of these four persons had deposited their respective EMDs from the bank account which allegedly did not belong to them, but the Committee recommended that all these four persons/bidders be allowed in participating in the e-auction of mines scheduled on 19th and 20th May, 2017.

This final decision is alleged to have been approved by the Additional Chief Secretary (Industry and Commerce), Government of Punjab on 18.05.2017 itself, and all these persons/bidders were allegedly allowed to participate in the said e-auction.

The e-auction of the mines including Behloor Khurd Mine, SBS Nagar, Punjab took place on 20.05.2017.

As regards the petitioner, no irregularity regarding his EMD was flagged by any of the respondents in the said meeting, and the same was duly accepted by the respondents.

On 22.05.2017, a provisional allotment letter was issued to the petitioner by the respondents conveying the provisional acceptance of the H1 bid of the petitioner with regard to Behloor Khurd Mine in District SBS Nagar.

Acting upon the said provisional allotment letter issued by the Department of Mining and Geology on 22.05.2017, on 23.05.2017 petitioner made payment of ₹11,70,92,424/- as H1 bid amount and security amount.

On 30.05.2017, the Government of Punjab constituted the Commission headed by a retired Judge of the Punjab and Haryana High Court, Justice (Retd.) J.S. Narang, under Section 11 of the Commissions of Inquiry Act, 1952 for two other mines namely Saidpur Khurd and Mehadipur Mines in District SBS Nagar, Punjab to inquire into e-auction and allotment process of those two mines and not with regard to the Behloor Khurd Mine.

On 11.10.2017, the District Mining Officer sent a letter to the General Manager-cum-Mining Officer, S.B.S. Nagar, Punjab (respondent No.3) that all required clearances have been taken by the petitioner *qua* Behloor Khurd mine, and he should be given the final approval to operate the mine.

There was no response to this letter and so the petitioner was not allowed to operate the mine.

On 09.01.2019 i.e. more than one and half years after the e-auction of the mines took place on 20.05.2017, a show cause notice was issued to the petitioner by the Secretary-cum-Director, Department of Mining & Geology, Government of Punjab (respondent No.2) stating as under:-

With regards to the controversy over H-1 bid of Saidpur Khurd and Mehdipur in SBS Nagar the above noted mine, the matter was referred to one man Commission of Enquiry headed by Hon'ble Justice J.S. Narang (retd.). The Commission pointed out irregularities regarding violation of condition number 5, 22 and 25 of auction notice on account of deposit of requisite amount of EMD, first installment and

security from the bank account other than that of bidder himself. Since in your case also the amount towards security and first installment was deposited from bank account other than yours, you are hereby given an opportunity to appear in person before the Director/Mining on 18th January at 3.00 PM at Room No. 20-B, 7th floor, Civil Secretariat 1, Chandigarh and explain:-

- 1. Why Provisional acceptance for the above said mine issued in your name shall not be cancelled and earnest money deposited by you be forfeited.*
- 2. Why You should not be prohibited to participate in the auction for five years.”*

The petitioner was, thus, asked to show cause why provisional acceptance for the said mine should not be cancelled and earnest money deposited by the petitioner should not be forfeited, and also why the petitioner should not be prohibited to participate in the auction for five years.

Since it was insinuated in the show cause notice that the petitioner also gave security and first installment from the Bank account of persons other than the petitioner (like the cases which were considered by the Justice J.S. Narang Commission), petitioner addressed (*Annexure P-8*) letters dt. 17.01.2019, 04.02.2019 and 21.02.2019 to the Director of Mining and letters dt. 15.06.2019 and 29.11.2019 to the Chief Secretary, State of Punjab, seeking information/documents on the basis of which show cause notice has been issued to him, and sought in particular the following:-

- (i) “Copy of Justice Narang Report, with all annexures and copies of all of statements of everybody recorded by him, and his noting and order sheets; Action Taken*

Report, thereof, under Committee headed by the Chief Secretary.

- (ii) Copies of complete statements given by Shri Amit Dhaka, former Director, Department of Mines, and Shri Jasbir Singh Superintendent, Office of Director of Mines, before Justice Narang Commission.*
- (iii) Record of proceedings/observations/minutes of meetings/ notings of meeting and discussions/ decision with representatives of AXIS Bank for finalising condition No 25 in the Terms & Conditions.*
- (iv) Copy of order regarding Composition, Constitution, powers and duties of tender scrutiny committee/coordination committee; and in addition the notings, minutes, record of proceedings, record of observations, record findings, record of objections, record of approvals by the Committee during and after the scrutiny of tender documents and reconciliation of earnest money deposits with regard to the bidding process in question.*
- (v) Copy of earlier E-Auction of mines notifications dt. 1.9.2016 and 30.11.2016.*
- (vi) Names and particulars of prospective bidders as per record who had not deposited their EMDs and Bid Money from the account of the prospective bidder himself in all the auctions.*
- (vii) Copy of notings/decision/minutes of discussions etc. constituting the basis of modification of Condition No. 25 in particular, and other conditions in general in the notification dt. 3.5.2017 in the subsequent notifications.”*

The petitioner contends that this material was never furnished to him.

The petitioner contends that he submitted a reply to respondent No.2 on 16.11.2020, *inter alia* contending that the Justice J.S. Narang Commission had nothing to do with the Behloor Khurd Mine, District SBS Nagar for which the petitioner has given his bid on 20.05.2017; that any findings of the said Commission which are not known to the petitioner and unrelated to the petitioner, cannot be applied to the petitioner. It was also contended that procedural hyper-technicalities with regard to the deposit of security and the first installment, which had been duly scrutinized by the Department, and even by the High Powered Committee appointed by the Department, cannot be now thrown out, one year seven months after the provisional allotment letter was issued on 22.05.2017.

It is contended that the request for information sought by the petitioner vide correspondence (*Annexure P-8*) has not been responded to by the respondents. Other contentions on merits were also raised.

The petitioner also contends that he applied to the respondents under the Right to Information Act, 2005 vide application dt. 16.04.2019 to furnish the material, information, record from them, but the same was denied and complaint No. CC-283 of 2020 was lodged before the Punjab State Information Commission (PSIC) on 15.05.2020, and the penalty order was passed by the PSIC on 06.08.2021 against the respondents and others.

It is the contention of the petitioner that notice dt. 01.04.2021 was issued by the respondent No.2 to the petitioner fixing the date of

hearing for 07.04.2021 at 11.00 A.M., but in the said notice details and documents of a totally different mine i.e. Bairsal Mine were attached.

The petitioner gave a reply on 05.04.2021 and sought clarification from the respondents and requested to provide documents relating to his mine along with request for adjournment for three weeks as his representative had tested positive for COVID-19.

On 19.04.2021, another notice was issued to the petitioner by respondent No.2 without supplying documents sought by the petitioner and the petitioner gave a reply on 27.04.2021, stating his representative was still suffering from COVID-19 and was advised complete bed rest, and some other date may be fixed for hearing via Video Conference.

Lastly, notice dt. 03.05.2021 was issued by respondent No.2 to the petitioner fixing the date of physical hearing on 11.05.2021 at 11.00 A.M.

According to the petitioner, the said notice was dispatched by the office of respondent No.2 only on 13.05.2021 i.e two days after the date of hearing of 11.05.2021.

The petitioner contends that he did file a reply to the said notice on 03.06.2021, mentioning that the notice was received after the scheduled hearing, but respondent No.2 did not give any response and pass the impugned order dt. 07.06.2021 (*Annexure P-13*) received by the petitioner on 30.06.2021, behind the back of the petitioner, in violation of principles of natural justice. In the said order not only the EMD deposited by the petitioner but even the bid amount and security, which was not

proposed to be forfeited even in the show cause notice, were forfeited. The petitioner was advised to file an appeal before respondent No.1.

Aggrieved against the order dt. 07.06.2021 passed by respondent No.2, the petitioner filed an appeal before the State Government (respondent No.1) under Rule 44 of the Punjab Minor Minerals Rules, 2013.

In the Grounds of Appeal, it was specifically contended by the petitioner in ground No.5 that the documents, on the basis of which the show cause notice was issued to the petitioner, were not supplied to the petitioner, and in ground No.6, it was specifically contended that notice dt.03.05.2021 fixing the physical date of hearing of the appeal to 11.05.2021 was dispatched only on 13.05.2021 after the schedule date of hearing, and there was violation of principles of natural justice. It was also contended that the order passed by respondent No.2 cannot be sustained because he had exceeded the reach of the show cause notice which had proposed only for forfeiture of the earnest money, but in the impugned order dt. 07.06.2021, respondent No.2 had even forfeited the bid money and the security deposit.

A personal hearing to the petitioner was provided by respondent No.1 on 24.09.2021 and the appeal filed by the petitioner was dismissed without adverting to any of the contentions raised by the petitioner referred to above. The Appellate Authority merely stated that no new documents were submitted to him and there was no new substantial fact to reconsider the speaking order passed by respondent No.2.

Challenging these two orders i.e. order dt.07.06.2021 (*Annexure P-13*) received vide letter dt. 30.06.2021 passed by the Director Mining, Water Resources Department, Punjab-respondent No.2 and order dt. 30.09.2021 (*Annexure P-15*) passed by the Principal Secretary, Department of Water Resources, Punjab-respondent No.1, this Writ Petition has been filed by the petitioner.

Learned counsel for the petitioner contended that non-supply of the material on the basis of which the show cause notice was issued to the petitioner by the respondents has caused a great prejudice to the petitioner in replying to the contents of the show cause notice; and the primary authority i.e. respondent No.2 ought to have supplied the material sought by the petitioner on the basis of which the show cause notice was issued to the petitioner, and which had been specifically sought by the petitioner vide *Annexure P-8* correspondence, before deciding against the petitioner. He further contended that respondent No.2 could not have passed order dt. 07.06.2021 when the physical hearing was fixed for 11.05.2021 vide notice dt. 03.05.2021 by respondent No.2, but the notice of such hearing was dispatched to the petitioner only on 13.05.2021 i.e. two days after the scheduled date of hearing. He contended that this resulted in respondent No.2 passing an order in violation of the principles of natural justice behind the back of the petitioner. He also contended that respondent No.1 did not advert to the specific contentions raised in grounds No.5 and 6 by the petitioner while dismissing the petitioner's appeal vide order dt. 30.09.2021.

Learned counsel for the petitioner, therefore, requested that the order dt. 07.06.2021 passed by respondent No.2 and order dt. 30.09.2021 passed by respondent No.1 be both set aside, and that the matter be remanded back to respondent No.2 for fresh disposal, after supplying to the petitioner copies of the documents sought by the petitioner vide letters *Annexure P-8*, and also by giving a personal hearing to the petitioner, after service of notice of such hearing sufficiently in advance to the date fixed for such personal hearing.

Learned State counsel, on instructions, has stated that there appears to be non-service of notice of hearing by respondent No.2 on the petitioner, and the order of respondent No.2 was passed without the petitioner being heard. He stated that respondent No.2 will submit the documents sought by the petitioner if he makes a fresh request to respondent No.2.

Having regard to the aforesaid facts and circumstances, since the material on the basis of which the show cause notice was issued to the petitioner, appears to have been not supplied to him by the respondents in spite of several requests made by the petitioner vide letters *Annexure P-8*, and since the petitioner's attempts to secure the document under the RTI Act, 2005 also did not fructify, and since notice dt. 03.05.2021 fixing the physical hearing of the matter by respondent No.2 on 11.05.2021 was dispatched to the petitioner only on 13.05.2021 i.e. two days after the date of such hearing, we hold that there has been violation of principles of natural justice.

Accordingly, the orders dt. 07.06.2021 passed by respondent No.2 and order dt. 30.09.2021 passed by respondent No.1 are both set aside. The matter is remitted back to respondent No.2 for fresh consideration.

The petitioner is directed to give a fresh representation to respondent No.2, giving list of documents which he seeks within one week from today. Within two weeks of submission of said representation by the petitioner, respondent No.2 shall furnish him the material sought. The petitioner shall then file a detailed reply to the show cause notice within four weeks thereafter; respondent No.2 shall provide a personal hearing to the petitioner; and then pass the reasoned order in accordance with law within three months from the date of receipt of certified copy of this order.

It is made clear that we have not expressed any opinion on the merits of the contentions of either parties.

Writ Petition disposed off accordingly.

No costs.

February 11, 2022

Ess Kay

**[M.S. RAMACHANDRA RAO]
JUDGE**

**[SANDEEP MOUDGIL]
JUDGE**

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>
<i>Whether Reportable</i>	:	<i>No</i>