
(2019) 04 RAJ CK 0007

In the Rajasthan High Court

Case No : Special Appeal Writ No. 841 Of 2017

Ambuja Cements Limited

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

Mines And Mineral (Development And Regulation Act), 1957 — Section 30
High Court Of Judicature for Rajasthan Rules, 1952 — Rule 134
Constitution Of India, 1950 — Article 14, 19(1)(g), 226

Citation : (2019) 04 RAJ CK 0007

Hon'ble Judges : Sangeet Lodha, J;Dinesh Mehta, J

Bench : Division Bench

Advocate : R. Venkatramani, Surendra Kumar Gupta, Arvind Shrimali, Sandeep Shah

Final Decision : Allowed

Judgement

The present intra-court appeal under Rule 134 of the Rajasthan High Court Rules has been preferred against the order dated 18.9.2017, passed by learned Single Judge of this Court, vide which the appellant's writ petition (SBCWP No.11377/2017) questioning the order-cum-demand notice dated 13.7.2017 has been dismissed, in view of alternative remedy of revision provided under Section 30 of the Mines and Mineral (Development and Regulation Act), 1957 (hereinafter referred to as the MMDR Act).

The contextual facts which are relevant for the present purposes are that the appellant-company incorporated under the provisions of Companies Act, 1956 has its cement manufacturing unit at village Rabariyawas, District Pali. The appellant is holding mining lease for cement grade limestone bearing Mining Lease No.2/94, covering an area of 803 hectare. The appellant's royalty assessment for the contentious period, i.e., 1999, 2000 and 2001 (upto November) had been finalized by the Mining Engineer - respondent No.3, vide separate orders dated 1.5.2003.

The appellant-company on 13.12.2012 came to receive a notice issued by the respondent no.3, whereby a sum of Rs.20.57 crores was demanded on the basis of the audit report of Accountant General/recommendation of Public Account Committee, Rajasthan. The said demand notice simply contained a reference of the communication dated 4.2.2012 sent by the Directorate and recommendation of the Public Accounts Committee. By way of the said demand notice, the respondent no.3 required the appellant to pay the amount mentioned in the demand notice within a period of 60 days, failing which, he would take coercive recovery proceedings under Mineral Concession Rules, 1960.

On receipt of the notice aforesaid, the appellant-company vide its letter dated 26.12.2012, requested the respondent no.3 to provide details and copy of the letter dated 4.6.2012 mentioned in the demand notice. Pursuant to the request made by the appellant-company, the respondent no.3 supplied abstract of minutes of the Public Accounts Committee. Even on receipt of the abstract of the minutes of Public Accounts Committee, the appellant could not comprehend as to why and on what count the amount aforesaid was sought to be recovered from it.

Apprehending recovery of the amount by coercive measures, the appellant-company preferred a writ petition in this court which was registered as SBCWP No.1093/2013. A learned Single Judge of this Court allowed the said writ petition after noticing that the demand was being sought to be recovered without recording any findings and also without providing any opportunity of hearing to the petitioner. The learned Single Judge not only quashed and set aside the demand notice dated 13.12.2012, but also directed the respondents to initiate fresh proceedings in accordance with law after granting reasonable opportunity and following principles of natural justice. It will not out of place to reproduce the above referred finding recorded by the learned Single Judge, we hereby do:

"Annexure-4 is dated 13.12.2012 and Annexure-10 is dated 15.1.2013 which shows that the documents if at all, were given after the demand notice Annexure-4. Further, a perusal of both Annexure-4 and Annexure-10 show that the petitioner was required to deposit Rs.20.57 Crores on account of the finding recorded by the CAG. The report of CAG is on record. The report of the CAG also does not show that the said finding was recorded after granting opportunity to the petitioner. Moreover, neither is there anything on record to show as to which defect, the petitioner was required to remove and whether the petitioner was ever granted any opportunity to remove the defects as stated by the learned counsel for the respondent-State. It is obvious that Annexure-4 dated 13.12.2012 has been passed without getting any explanation of the petitioner and without granting him any reasonable opportunity. The language of Annexure-4 shows that same is by way of demand and not notice.

In these circumstances, it would be appropriate not to go into the merits at this stage lest it effects the case of either of the two parties but deems it appropriate to set aside the demand notice dated 13.12.2012 (Annex.4) having been passed without following the principles of natural justice.

Accordingly, the notice/order dated 13.12.2012 is set aside and the present writ petition is disposed of with liberty to the respondents to initiate fresh proceedings in accordance with law after granting reasonable opportunity and after following the principles of natural justice."

In furtherance of the above referred order dated 17.11.2016, the respondent no.3 initiated the proceedings afresh and sent a notice dated 17.2.2017, calling upon the appellant to show cause why the amount recommended by the Public Accounts Committee be not recovered from it. On receipt of the notice aforesaid, the appellant filed a detailed reply and pointed out that with respect to the recommendation of the Public Account Committee under Para 195 requiring the respondent to recover a sum of Rs.20.57 crores, the Director, Mines himself had sent a compliance report on 24.8.2014 to the Accountant General, Rajasthan and pointed out that there was a discrepancy in the calculation made by the Public Accounts Committee and that, there was no unauthorized excavation by the appellant-company. The appellant tried to clarify that the audit team of Accountant General has mistakenly considered the figures of mining plan to be from 1.1.1999 to Nov., 2001; whereas these figures relate to the period between 1.4.1999 and Nov. 2001 and the difference of alleged extra excavation to the tune of Rs.5.14 lac metric tonne was a result of such error/misunderstanding. It was also asserted that the Royalty-Assessment of the appellant-company had been made after examining the record of mining excavation and production of each year and no unauthorized excavation or mining by the appellant-company was found.

Notwithstanding the aforesaid reply, the respondent no.3 passed yet another order on 13.7.2017 and reiterated the demand of Rs.20.57 crores, simply replying upon the recommendation given by the Public Accounts Committee vide its letter dated 4.6.2012. While issuing the demand notice/order dated 13.7.2017, the respondent no.3 instead of considering the reply of the appellant-company, has simply recorded that the Directorate had vide its letter No.304 dated 3.7.2017 asked him to recover the amount of Rs.20.57 crores, as determined vide audit para of the Accountant General. The respondent no.3 in turn asked the appellant to pay the amount mentioned in the notice, failing which its mining lease would be cancelled.

Faced with such a demand notice, the appellant yet again invoked extra ordinary writ jurisdiction by filing another writ petition (CWP No.11377/2017). The learned Single Judge while noticing the relevant facts, including the order dated 17.11.2016 passed in appellant's earlier writ petition, chose to relegate the appellant to avail statutory remedy under Section 30 of the MMDR Act.

While dismissing the second writ petition filed by the appellant, the learned Single Judge in the order under consideration observed that the petitioner's earlier writ petition was entertained and allowed as the order impugned therein was passed without granting opportunity of hearing or following the principles of natural justice, but however, the order being subject matter of this writ petition

was passed after issuance of notice and granting opportunity of hearing to the appellant-company.

In a bid to appreciate the grievance of the appellant we deem it appropriate to reproduce the operative portion of the order passed by the learned Single Judge, which runs as under:

"In the present case, the earlier writ petition being SB Civil Writ Petition No.1093/2013 of the same party was entertained on the ground that the impugned order was passed without granting opportunity or following the principles of natural justice which was well within the principles applying for entertaining a petition under Article 226 of the Constitution of India in spite of the availability of the alternative remedy. Now the order has been passed after issuing notice and after granting the opportunity to file their objections. Moreover, taking into account the controversy involved, this Court is not persuaded to exercise its jurisdiction under Article 226 of the Constitution of India.

In view of the above, the present writ petition is dismissed. However, the petitioner is at liberty to avail the alternative remedy as available in law."

Feeling aggrieved of the order dated 18.9.2017, passed by the learned Single Judge, the appellant has preferred the present intra-court appeal. A coordinate Bench of this Court while issuing notices to the respondents, granted an interim order on 20.9.2017 and restrained the respondents from taking coercive measures against the appellant, pursuant to the demand notice dated 13.7.2017.

Mr. R. Venkatramani, learned Senior Counsel appearing for the appellant-company submitted that there was practically no difference in the facts and circumstances available before the learned Single Judge, at the time of deciding the first writ petition (SBCWP No.1093/2013) and the present writ petition (SBCWP No.11377/2017). He pointed out that the order impugned in the earlier writ petition being demand notice dated 13.12.2012 and the demand notice dated 13.7.2017, impugned in the subsequent writ petition are almost identical. Neither any adjudication or basis was given in the earlier demand notice nor was the same given in the present impugned demand notice issued on 13.7.2017. Comparing both the orders, he pointed out that except for observing the formality of issuing a notice and calling a written response from the appellant, there is practically no change in both the demand notices.

Having narrated the above facts, he argued that learned Single Judge has erred in non-suiting the appellant on the ground of availability of statutory remedy under Section 30 of the MMDR Act and passing two different orders, practically in identical facts and circumstances. Learned Senior Counsel contended that the respondent no.3 was under an obligation to provide proper opportunity of hearing and pass a speaking order, while raising a demand on the allegation of unauthorized excavation for the period 1999 to 2001. He submitted that

recording of finding was all the more necessary because the respondent no.3 had made assessment of the royalty for the contentious period after due examination of the record.

While reading the impugned order dated 13.7.2017, the learned Senior Counsel brought to fore the relevant portion which showed that the respondent no.3 has simply followed the diktats of the Directorate, purportedly given vide letter dated 3.7.2017, vide which he was directed to recover the amount as per the audit objection of the Accountant General. He argued that there is neither any adjudication nor a finding worth the name, for which, the impugned demand can be sustained.

Mr. Venkatramani contended that in the present set of facts, it was required of the respondent no.3 to pass a considered and reasoned order, if he really thought it fit to reiterate the demand, particularly in the face of the earlier order dated 17.11.2016, passed by this Court in appellant's earlier writ petition. He pointed out that the learned Single Judge had already observed that "moreover, neither is there anything on record to show as to which defect, the petitioner was required to remove nor whether the petitioner was ever granted any opportunity to remove the defects as stated by the learned counsel for the respondent-State....".

Inviting attention of this Court towards the reply dated 9.3.2017, filed by the appellant-company learned Senior Counsel contended that the audit para itself was misconceived, inasmuch as the audit party had reckoned the figures of mining plan to be from 1.1.1999 to Nov. 2001, whereas the period covered by the mining plan was from 1.4.1999 to Nov. 2001. While giving calculation and details he tried to explain that if the figures of excavation of January, February and March, 1999 are excluded, the actual excavation as per Rawanas record is exactly the same as shown in the mining plan. He submitted that notwithstanding the aforesaid clarification, the figures were easily reconcilable from the comparative chart supplied to the respondent no.3. He added that the Director, Mines himself in his compliance report had clarified the same to the audit team of the Accountant General, yet the respondent no.3 has resurrected the demand, simply finding himself to be bound by the audit report.

In the aforesaid factual backdrop the learned Senior Counsel contended that the impugned order is a glaring example of violations of the principles of natural justice. He further urged that since the impugned order has been passed simply under the intervention of the Accountant General, without there being independent adjudication; the appellant-company having saddled with the huge liability of Rs.20.57 crores, cannot be relegated to avail statutory remedy.

Mr. Sandeep Shah, learned Addl. Advocate General appearing for the respondents, per contra submitted that in the facts of the instant case, learned Single Judge was justified in refusing to exercise extra ordinary jurisdiction vested in her. He submitted that the impugned order dated 13.7.2017, has been

passed after issuing a notice and providing a proper opportunity of hearing to the appellant-company, hence, the impugned order, cannot be assailed on the ground of breach of principles of natural justice.

Learned Addl. Advocate General submitted that the appellant is not entitled for any indulgence in intra-court appeal jurisdiction, particularly when the learned Single Judge has refused to exercise its discretionary jurisdiction under Article 226 of the Constitution of India.

We have heard rival counsels and perused the material available on record.

Learned Addl. Advocate General was called upon to satisfy as to how the demand in question had been raised and the amount calculated. To our surprise, the respondents have failed to place on record any calculation or other material which could prima facie satisfy the Court about the substance of the demand in question. The respondents have not even cared to place any satisfactory reply or other material to support the impugned demand of Rs.20.57 crores. The reply to the writ petition filed by the respondents is simply evasive and all what has been stated is, that there is variation of 5.14 lac metric tonne as calculated by the Public Accounts Committee.

In the facts of the present case we deem it important to reproduce the whole short order, so as to highlight the manner in which, the respondent no.3 has hoisted a demand of Rs.20.57 crores against the appellant:

"????????? ?????

????????? ??? ??????? ??? ??? ?????????? ?????? ??? ???? ???? ?

????????? ??/????/??????/??./2/1994/17-18/317 ?????? 13.7.17 ?????????

?????? ???? ?????? ??????? ??

??? ?????? ???? ????????????,

?????? ??????? ???? ???? (???.)

????:- ??????? ??????? 2/1994 ?????? ???? ??????????(????????? ??????) ??????

????? ????????? ?????? ?????? ???? ???? ?? ????????? ???? ?

????????:- ???? ???? ??????? 09.03.2017 ?? ????????? ??

????????? ??????????????? ??? ?? ?? ???? ???? ???? ????????? ???? ???? ?? ?? 2/94 ???? ???
?? ???? ????????? ?????? ?????? ???? ???? ?? ????????? ???? ?????? ?????? ?? ????????? ????
? ?? 195 ???? ???? ???? ??????????????? ????????? ?????? ???? ????????? ???? ?? ????
20.57 ???? ? ?? ???? ???? ?? ????????? ?? ????????? 1644/13.12.12 ?? ?????? ??
?? ???? ???? ???? ?????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ????
??./?. ?????? ???? ?????? ?? 1093/2013 ???? ?? ?? ???? ???? ???? ???? ???? ???? ?
??? ?????????? ?????? ?????? ?????? 17.11.16 ?? ???? ???? ???? ?? ???? ???? ???? ?
???? ?? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?

258 ?????? 17.2.17 ?? ???? ??? ?? ???? ???? ???? ???? ???? ???? ???? ???? 09.0
3.2017 ?? ???? ?????????? ???? ???? ?? ???? ???? ???? ???? ???? ???? ???? ????
???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ????
? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ????
195 ??? ???? ???? ?????????????? ?????????? ??????? ???? ????????? ???? ????
20.57 ????? ??. ?? ?? ???? ?????? ???? ???? ?

????????? ?? ????????? 304 ?????? 3.7.2017 ?? ?????????????? ?? ?????????????????? ?????? ??
????????????? ???? ???? ???? ?????????????? ???? ???? ?? ??????? ???? ???? ???? ??????????????
????????????? ???? ???? ???? ?????????? ???? ??????? ???? ???? 9 ?????? 2 ???
3 ??? ??????? ???? ????????? ?????????? 1960 ??? ????????? ?????????? 1987 ?? ???? 27
(5) ?? ??????? ?????????????? ???? ???? ???? ??:-

1. ?????????? ?? ???? ?????????? ????/?.13/?????-3/????/154 ??? ???????????/11-12/369
????????? 4.6.12 ?? ??? ??????? ??????? ???? ???? ???? ???? ????
195 ??? ???? ???? ?????????????????? ?????????? ??????? ???? ?????????? ???? ???? 20.57 ?
??? ? ??. ??? ??????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ????
?????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ????
????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?

???????? ???? ?????????? 1960 ??? ?????????? ?????????? 1987 ?? ????
27(5) ??? ??????? ???? ???? 9 ?????? 2 ? 3 ??? ??????? ?????????????? ???? ???? ???? ???? ?
????????? ???? ???? ???? ???? ???? ???? ?

?????

?? ??????? ?? ?????? ?? ?????????? ???? ???? 75 ???? ???? ???? ???? ???? ???? ???? ????
????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ????
?? ??????????

???/-

??? ?????????

????? ?????

????????? ?? / ???????

????????????:- ?????? ?? ?????????? ???? ???? ???? ???? ???? ??:-

1. ?????????? ??????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ????
? ???? ???? ???? 193 ?????? 12.05.2017 ?? ? ???? ???? 29.6.17 ?? ??????? ???? ????
????? ?????????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? 304 ??????
03.07.2017 ?? ???? ???? ?

2. ?????????? ?????????? ??????? (???) ???? ???? ???? ???? ???? ???? ?

3. ?????????? ?????????? ???? ???? ???? ???? ???? ???? ???? ?

???/-

??? ??????????"

A simple look at the above order passed by the respondent no.3, reveals that the respondent no.3 was overawed by the audit objection raised by the Accountant General of the State and felt bound by the directives issued by the Directorate, vide its letter No.304 dated 3.7.2017. Apart from mentioning of the factum of issuance of earlier notice; the decision in appellant's earlier writ petition No.1093/2013; and the recording of direction of the Directorate; it does not contain any reason whatsoever. The so called reasoning given in the order is also unsustainable, inasmuch as respondent no.3 has recorded that "after complete perusal of the reply, it is not clear that the amount of Rs.20.57 crores pointed out vide para no.195 by the Public Accounts Committee is not recoverable from the appellant-company."

We are rather surprised to see such a demand notice coming from respondent no.3, a quasi-judicial authority, who is supposed to pass an order after adjudication and due application of mind. The respondent no.3 cannot base his order, solely upon the audit objection or para made by the Public Accounts Committee. He is supposed to record his own finding of additional excavation, substantiated from reasoning or record.

If the order dated 13.7.2017, impugned in the writ petition is placed in juxtaposition with the earlier demand notice dated 13.12.2012, we find no difference, except for the cosmetic changes, rather improvement made in the order, such as recording of the facts of issuance of notice, receipt of reply etc. No adjudication has been made, though mandated by this Court, vide its order dated 17.11.2016, passed in appellant's earlier writ petition. As a matter of fact, the order dated 13.7.2017, impugned in the second writ petition is not only against the principles of natural justice, but also contrary to the very soul of earlier order dated 17.11.2016. According to us the order dated 13.7.2017, impugned in the writ petition filed by the appellant was per-se illegal, arbitrary and against the principles of natural justice, which are fundamental to the adjudicatory process.

It was the duty of the Mining Engineer to pass a reasoned order, bringing on record the relevant material and to prove or establish that the additional excavation or excavation out of the mining area took place before raising a demand within the bounds of law. A simple stereotype reproduction of the audit objection or direction in a demand notice is not sufficient to make it legally enforceable.

We feel that the learned Single Judge has erred in dismissing appellant's writ petition by observing that an opportunity of hearing was given this time. Providing of opportunity of hearing is not a ritual or an empty formality to be observed. The respondent no.3 or any other quasi-judicial authority for that matter, is required to deal with the contention/reply filed by the noticee in response to the notice and record his own finding based on plausible reasoning to support the demand. The impugned order suffers from the vice of dictatorship and the same therefore, deserve to be quashed.

We are of the considered view that the learned Single Judge has erred in non-suiting the appellant on the ground of availability of alternative remedy, while drawing a distinction that in the earlier writ petition no notice at all was issued, whereas before passing the impugned order dated 13.7.2017, the respondent no.3 has issued a notice. According to us, simply because the formality of issuance of notice has been observed, the impugned order cannot be affirmed. The manner in which the demand has been raised, cannot be treated to be adherence to the principle of 'audi alteram partem'.

As a consequence of the above discussion, the order under challenge passed by the learned Single Judge, dismissing the appellant's writ petition is quashed and set aside. The writ petition is allowed and the order impugned therein, being the demand notice dated 13.7.2017 (Annex.19) is quashed and set aside.

We however, keep it open for the respondent no.3 to issue a fresh notice alongwith material available with him in support of the allegation that the appellant has excavated excess mineral to the tune of 5.14 lac metric tonne from outside the mining plan.

As an abundant caution, we may clarify that we have quashed the impugned demand notice, finding it to be against the principles of natural justice and thus violative of Article 14 and 19(1)(g) of the Constitution. Any observations, made herein may not be construed to be a finding on merit of the demand. The appellant as well as the respondent no.3 shall be free to rely upon and put forth all the relevant material, upon which the respondent no.3 shall record his independent findings with respect to excess or extra excavation. Needless to say that the respondent no.3 shall pass a speaking order, if he chooses to raise a demand afresh.