

(2020) 06 J&K CK 0080

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1046 Of 2020, Civil Miscellaneous No. 2797,
2798 Of 2020

Amit Gupta

APPELLANT

Vs

Union Territory Of Jammu And Kashmir And Others

RESPONDENT

Date of Decision : 24-06-2020

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 3(e), 15, 20(A)
Constitution Of India, 1950 — Article 226

Citation : (2020) 06 J&K CK 0080

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Abhinav Sharma, F.A.Natnoo, Vishal Sharma

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. The petitioner is aggrieved and has challenged the e-auction notices issued by the District Mineral Officers of different Districts on 27.05.2020, 28.05.2020, 29.05.2020, 30.05.2020 and 01.06.2020 etc. The petitioner claims that he had earlier responded to the e-auction notice issued by the District Mineral Officer, Bandipora vide his No. DGM/DMO/BPR/828-832 dated 30.01.2020. The petitioner was found to be the highest bidder in the aforesaid auctioning process and was intimated to deposit 50% of the total bid amount in terms of e-mail dated 15.02.2020 sent by the District Mineral Officer concerned.

2. The petitioner submits that despite the fact that he was entitled to allotment of blocks e-auctioned by the District Mineral Officer, Bandipora, the process was not taken to its logical end on the ground that the Ministry of Environment, Forest and Climate Change, Government of India vide its communication dated 29.04.2020 had written to the Ministry of Mines, Government of India to have pre-embedded prior environment/forest clearance before putting the mineral blocks to e-auction. The petitioner states that he did not agitate the matter as he

was convinced that the instructions of the Ministry of Environment, Forest and Climate Change were required to be carried out by all the States and Union Territories including the Union Territory of Jammu and Kashmir.

3. The grievance of the petitioner is that while he was denied the allotment of lease relying upon the aforesaid instructions of the Ministry of Environment and Forest, yet the respondents issued the e-auction notices without complying with the communication of Ministry of Environment, Forest and Climate Change dated 29.04.2020. His further grievance is that the Ministry of Mines, Government of India has now come up with detailed guidelines issued purportedly under Section 20A of Mines and Mineral (Development & Regulation) Act, 1957 (‘the Act’ for short) which clearly provide pre-embedded clearances before putting the mineral blocks to e-auction process.

4. Learned counsel appearing for the petitioner, therefore, contends that all e-auction notices issued by the respondents are bad in the eyes of law as the pre-embedded clearances as mandated by the Government of India had not been obtained before initiating e-auction process.

5. Having heard learned counsel for the petitioner and perused the record, I am of the view that the petitioner has no cause to maintain this petition.

6. Admittedly, the petitioner has not responded to any of the e-auction notices impugned in this petition. He claims to have participated in the e-auction which was conducted by the District Mineral Officer, Bandipora pursuant to its notification dated 30.01.2020. He was declared successful in the e-auction and was directed to deposit 50% of the bid amount.

7. Why the aforesaid e-auction process was not taken to its logical end is not forthcoming from the record of the writ petition. Learned counsel for the petitioner, however contends that the petitioner was given to understand that in view of the new guidelines issued by the Ministry of Environment, Forest and Claimant Change and communicated to the Secretary of Mines, Government of India on 29.04.2020, the process has been abandoned.

8 Interestingly, the petitioner has raised no grievance with regard to the aforesaid e-auction process. He, however, has strongly relied upon the abandonment of the aforesaid process to justify the sustainability of his grievance against the impugned e-auction notices.

9 As noted above, most of the e-auction notices were issued on 27.05.2020, 28.05.2020 and 30.05.2020 and one or two e-auction notices have also been issued on 01.06.2020. The petitioner has neither participated in those e-auction, nor has he raised any grievance as is projected in the writ petition before any authority.

10. Confronted with the aforesaid position, learned counsel for the petitioner placed reliance on the communication of the J&K Pollution Control Board (for short ‘the Board’) issued vide its No. PCB/LSJ/PS/20/738 dated 05.06.2020 to

contend that the matter had been taken at the relevant point of time with the Board.

11. A perusal of the communication of the Board dated 05.06.2020 makes it abundantly clear that the grievance which the petitioner has now projected in this writ petition was never agitated before any authority including the Board. The Board vide its communication dated 05.06.2020 appears to have responded to the representation of the petitioner dated 03.06.2020 regarding the role of the Board in the matter of mining operations. The Board clarifies that for any type of mining activity, not only the environmental clearance from the competent authority is required, but consent to establish and consent to operate from the Board under Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act, 1981 is sine quo non. No other document, letter or communication has been brought to the notice of this Court by the learned counsel for the petitioner which could demonstrate the bona fide of the petitioner with regard to raising of the grievance on the first available opportunity. No explanation has been tendered to justify the wait of about twenty one days for challenging the e-auction notices. The process of e-auction appears to have proceeded further and is stated to be at the stage of finalization.

12. It is at this point of time the petitioner, for reasons not forthcoming from the petition has approached this Court to somehow stop the e-auction of minor minerals undertaken by the Union Territory of J&K. Even a look at the order of Ministry of Mines, Government of India dated 03.06.2020 laying down the guidelines for e-auction of mineral blocks with pre-embedded clearances for mining projects makes it clear that the States and the Union Territories have been enjoined to identify at least five mineral blocks for e-auction with pre-embedded clearances which would be e-auctioned along with other mineral blocks. It further provides that based on the experience from e-auction of the identified mineral blocks on pilot basis, further steps will be taken towards mainstreaming the concept of auction with pre-embedded clearances as per National Mineral Policy, 2019 approved by the Cabinet.

13. Suffice it to notice that these guidelines were issued by the Ministry of Mines in terms of Section 20A of the Act only on 03.06.2020, while as the impugned e-auction notices had already been floated. The identification of five mineral blocks for e-auction with pre-embedded clearances may have to be resorted to by the respondents in the next auctions in terms of the communication of the Ministry of Mines dated 30.06.2020, and would not apply to the process which was already set in motion by issuing the impugned e-auction notices prior to coming into operation of the guidelines aforesaid. Otherwise also, the petition filed by the petitioner lacks bona fide and, therefore, this Court is not inclined to exercise its discretionary power vested under Article 226 of the Constitution.

14. That apart, the communication dated 3.06.2020 (*supra*) *ex-facie* applies to the minerals only and may not comprehend within its ambit the 'minor minerals' which expression is separately defined under Section 3 (e) of the Act. It is also

pertinent to note that in terms of Section 15 of the Act, the power to frame statutory rules in respect of minor minerals is exclusively reserved to the State Government and the State Government, in the exercise of aforesaid power, has already promulgated the statutory rules in terms of SRO 105 of 2016 which is being followed by the respondents in the matter of allotment of leases and licences of minor minerals in the Union Territory of Jammu and Kashmir. Ministry's guidelines issued in terms of Section 20A of the Act can, at the most, be treated to be instructions to remodel their Rules on the lines suggested in the guidelines.

15. For the foregoing reasons, I find no merit in this writ petition. The same is, accordingly, dismissed.