
(2017) 05 SHI CK 0148
In the High Court Of Himachal Pradesh
Case No : 1129 of 2016

Dinesh Kumar

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 29-05-2017

Acts Referred:

Citation : (2017) 05 SHI CK 0148

Hon'ble Judges : Sanjay Karol, Tarlok Singh Chauhan

Bench : Division Bench

Advocate : Deepak Kaushal, Desh Raj Thakur, Anup Rattan, Romesh Verma, Kish Sharma

Final Decision : Dismissed

Judgement

1. Mr. Anup Rattan, learned Additional Advocate General states that the only grievance of the petitioner is that the action of the officials of the State is in violation of Notification dated 15.1.2016.

2. Learned counsel for the parties are ad adiem that the petition can be disposed of by making interim directions dated 6.5.2016 absolute, which are reproduced as under:-

"CMP No. 3278 of 2016

By medium of this application, the applicant/petitioner has sought stay of the auction notice dated 4.4.2016 whereby as many as 28 river bed quarries are proposed to be put to auction on 6th and 7th May, 2016.

2. The grievance of the applicant/petitioner is that the respondent-State against the interest of the public at large and against the policy of development of the State has issued the aforesaid auction notice dated 4.4.2016. It is further alleged that auction is being conducted without any survey having been carried out by the District Level Environment Impact Assessment Authority (DEIAA) in the Districts, in violation to the provisions of the notification issued by respondent

No.1 on 15.1.2016.

3. The Union of India, is yet to file its reply, whereas, reply on behalf of the Secretary (Industries), Director of Industries and Mining Officer, Sirmaur, stands filed. It has been stated in the reply that as per the policy guidelines, a Joint Inspection Committee has already conducted the inspection under the Chairmanship of Sub Divisional Magistrate concerned alongwith other members/ representatives of the various departments i.e. Public Works, Irrigation & Public Health, Forest and Mining Officer, Sirmaur to identify and study the feasibility of the auction of river beds of District Sirmaur. The Committee after conducting spot inspection of different stretches of river beds recommended 28 numbers of sites for the grant of mineral concessions by way of auction as per the inspection report dated 16.10.2015. Subsequently, these areas have been proposed for the auction to be held on 6th & 7th May, 2016 well before 30 days prior to the date fixed for auction as per the requirement of law. Thus, according to these respondents, the auction of the stretches of river beds have been proposed as per the provisions contained in the Mining Act and River/Stream Bed Mining Policy Guidelines for the State of H.P. and, therefore, no exception to the auction can be taken by the applicant/petitioner.

We have heard learned counsel for the parties and have gone through the records of the case carefully.

4. Mr. Deepak Kaushal, learned counsel for the applicant/ petitioner has vehemently argued that the auction of mines can only be carried out after conformity and strict compliance of the notification issued by the Ministry of Environment, Forest and Climate Change on 15.1.2016, as the same was issued in compliance to the directions of the Hon"ble Supreme Court in SLP(C) No. 19628-19629 of 2009 in case titled Deepak Kumar etc. vs. State of Haryana and others, wherein it has been clearly envisaged that prior environmental clearance would now be mandatory for mining of minor minerals irrespective of the area of mining lease. He further argued that the respondents in terms of paragraph 3A are required to set up District Level Environment Impact Assessment Authority (DEIAA) with the members as mentioned in the notification. The respondents are further required to prepare a District Survey Report for sand mining or river bed mining and mining of other minor minerals as per the procedure prescribed in appendix "X" and this report is required to be prepared for each of the districts separately and thereafter placed in the public domain by keeping its copy in Collectorate and posting it on district's website for 21 days. The comments received are to be considered and if found fit, are required to be incorporated in the final report to be finalised within six months by the DEIAA.

5. In sum and substance the submission of learned counsel for the applicant/ petitioner is that the respondents were firstly required to comply with the terms and conditions of the amendments brought about by the notification dated 15.1.2016 and only thereafter could they be permitted to conduct the auction.

6. Notably, the contents of the notification dated 15.1.2016 and its mandatory compliance has not been disputed even by the respondents, as is evident from para- 3 of the preliminary submissions, which reads thus:

"3. That it is submitted that the successful bidder will be issued a Letter of Intent which is pre-requisite for obtaining Environment Clearance. The procedures laid down in the amended notification dated 15.01.2016 issued by the Ministry of Environment and Forest for grant of environment clearance shall be applicable at the time of grant of Environment Clearance and same shall be ensured by the Competent Authority constituted by the Ministry of Environment & Forests prior to commencement of mining activities by the successful bidder and accordingly, the mining activities in the auctioned area will be allowed by the respondent department. It is also pertinent to mention here that the criteria laid down in the notification dated 15.01.2016 for preparation of Survey Document for granting Environment Clearance has already been taken into account to a larger extent by the Department way back during the year, 2011 when the survey document was prepared."

These averments have again been reiterated in the reply on merits to the writ petition.

7. Once this is the admitted position, we see no reason why the applicant/petitioner should insist for staying of the auction scheduled to be held on 6th and 7th May, 2016 after all he is not a competitor, but claims to have filed the petition in public interest being a pro-bonopublico. Therefore, at this stage, the interest of the petitioner would only be to ensure that no mining is carried out by any person or authority contrary to the provisions contained in the amended notification dated 15.1.2016 and that is precisely what has been assured by the respondents in their reply, a portion whereof, has already been extracted hereinabove.

8. While we can very well understand the anxiety of the applicant/ petitioner, but we prima-facie find no reason(s) to stay the auction as the respondents have categorically stated and assured that the notification dated 15.1.2016 would have to be complied with by all the successful bidders before they are actually permitted to carry out any mining activities.

9. In view of the aforesaid discussion, no prima-facie case is made out for staying the auction scheduled to be held on 6th and 7th May, 2016 and accordingly, the present application is dismissed. However, the auction(s) shall be subject to the outcome of the writ petition."

Ordered accordingly.

As prayed for, the petition is disposed of in the aforesaid manner, so also the pending applications, if any.