
(2016) 03 P&H CK 0098
In the Punjab And Haryana At Chandigarh
Case No : CWP-22107-2014 (O&M)

Eco Tech Coal Industries Pvt. Ltd.

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Citation : (2016) 03 P&H CK 0098

Hon'ble Judges : Rajive Bhalla and Amol Rattan Singh, JJ.

Bench : Division Bench

Advocate : Alok Mittal, Advocate, for the Appellant; Tanisha Peshawaria, DAG, for the Respondent

Final Decision : Disposed Off

Judgement

Rajive Bhalla, J.—1. The petitioner prays for issuance of a writ of certiorari for quashing order dated 12.09.2014, passed by the Director, Mines and Geology Department, Haryana, Chandigarh. The petitioner has also filed an application, seeking permission to withdraw the present writ petition having accepted to receive Rs. 4,00,50,000/- in terms of order 12.09.2014, impugned in the present writ petition (Annexure P-13), vide which the second respondent had cancelled the letter of intent dated 03.01.2014 issued to the petitioner in respect of a mining contract for Panipat Unit-1 and had further directed that the amount of Rs. 4,00,50,000/- deposited as initial bid security, be refunded. The cancellation and the refund were ordered in view of the fact that the petitioner vide its letter dated 22.01.2014 (Annexure P-11) had revoked its bid for another separate mining contract for Sonipat Unit- II, which was subject matter of CWP-20392-2014, wherein the prayer of the petitioner was that bid of the petitioner for the Sonipat Unit-II be cancelled and the entire auction process qua the mining contract for Sonipat Unit-II be declared illegal and void.

2. Both these petitions were being heard together after hearing counsel for the parties on 28.05.2015 and judgment was reserved.

3. Counsel for both parties i.e. for the petitioner and also for the State of Haryana had appeared before the Court on 29.05.2015 and learned Additional Advocate General, Haryana, had made a request in CWP No. 20392 of 2014 that the matter be taken up for rehearing and order dated 12.09.2014 be treated to have been withdrawn with liberty to the State to decide the matter afresh.

4. Counsel for the petitioner, on the other hand, had submitted that if the matter was to be decided afresh by the State, it should be so decided in the light of judgment of a Division Bench of this Court in CWP-15431-2014, decided on 15.01.2015.

5. Consequently, an order was passed by us in CWP-20392- 2014, wherein also the order impugned is the same dated 12.09.2014 but wherein the prayer, as already discussed, is that the auction proceedings in Sonipat be declared as void ab initio. Thus, CWP- 20392-2014, was allowed, impugned order dated 12.09.2014 was quashed but with liberty to the State to pass a fresh order in accordance with law and in terms of the judgment of a Division Bench of this Court in CWP-15431-2014, decided on 15.01.2015.

6. Simultaneously, the present petition was adjourned to 02.07.2015 for arguments.

7. Thus, obviously, whereas this Court had quashed the order dated 12.09.2014 as regards the mining process for Sonipat Unit-II, with liberty to the State to pass a fresh order in accordance with law and in terms of the judgment of a Division Bench of this Court in CWP-15431-2014, decided on 15.01.2015, the issue with regard to cancellation of the mining contract for Panipat Unit-I, was kept alive with the matter to be taken up for rehearing and for further arguments on the issue on 02.07.2015.

8. The controversy boils down to the petitioner stating that the issue with regard to the contracts in Panipat and Sonipat having been separated vide order dated 29.05.2015, obviously, the two cannot be linked together as the State is now not allowing refund to the petitioner after cancellation of the contract in Panipat. In other words, the contention of the petitioner is that order dated 29.05.2015, directing the respondents to consider the matter afresh, after quashing of the impugned order dated 12.09.2014, was only with regard to the contract in Sonipat with the petitioner having accepted the cancellation of the contract in Panipat and refund of the security deposit made by him to the tune of Rs. 4,00,50,000/-.

9. The State, on the other hand, claims that even though CWP-22104-2014 (present writ petition) was ordered to be put up for further arguments on 02.07.2015, factually the entire order dated 12.09.2014 had been quashed by this Court, therefore, leaving the entire controversy with regard to both units i.e. Sonipat and Panipat to be considered afresh by the State in terms of the judgment of a Division Bench of this Court in CWP-15431-2014, decided on 15.01.2015.

10. We have heard counsel for the parties, perused the application as well as pleadings in the petition and order dated 29.05.2015, passed in the present writ petition as well as in CWP- 20392-2014.

11. The petitioner bid for mining contracts and was successful in Sonipat Unit-II and Panipat Unit-I. The petitioner revoked its bid with respect to Sonipat Unit-II but accepted the allotment with respect to Panipat Unit-I. The respondents, while considering the withdrawal of the bid with respect to Sonipat Unit-II, passed an order dated 12.09.2014, revoking the letter of intent, forfeited Rs. 12,01,30,000/- deposited as security, ordered recovery of 15% of the security amount of Rs. 18,01,95,000/- and debarred the petitioner from pursuing any subsequent bid. Though the petitioner had only withdrawn bid with respect to Sonipat Unit-II, the respondents cancelled the bid regarding Panipat Unit-I, which is subject matter of the present petition, on the ground that the petitioner has not changed its stand with respect to Sonipat Unit-II and ordered refund of Rs. 4,00,50,000/- deposited by the petitioner. A relevant extract from order dated 12.09.2014, reads as follows:-

"25. It is further observed that the state government with regards to Lol issued qua the Panipat Unit-I vides this officer Memo No.DMG/Hy/PNP/Unit-1/2013/123 dated 30.01.2014 ordered to keep the same in abeyance so long as they maintain the position communicated vide their letter dated 22.01.2014. The same was communicated to them vide memo No.DMG/Hy/SNP-Unit-2/2013/1958 dated 14.03.2014. However, M/s. Eco Tech Coal Industries Private Limited has not changed their stand in this behalf, therefore, the state government has also ordered to cancel the Lol dated 03.01.2014 in respect of Panipat Unit-I issued in favour of M/s. Eco Tech Coal Industries Private Limited. In this behalf the amount of Rs. 4,00,50,000/- deposited on account of initial bid security i.e. 10% of the bid amount is ordered to be refunded."

12. The petitioner filed CWP-20392-2014 with respect to Sonipat Unit-II, challenging the forfeiture and recovery etc. and CWP-22107-2014 (the present writ petition) with respect to Panipat Unit-I, challenging the cancellation of the bid.

13. Both writ petitions were ordered to be heard together and came up for consideration on 28.05.2015. As already noticed in the narrative of facts, arguments were heard and judgment in both petitions was reserved but as counsel for the parties made a request that the matter be taken up for rehearing, the matter was reheard on 29.05.2015. As counsel for the State of Haryana made a statement in CWP-20392-2014 that order dated 12.09.2014 be treated as withdrawn, the writ petition was allowed and the following order was passed in CWP-20392-2014: -

"The judgment was reserved on 28.05.2015. Mr. Amar Vivek, Addl. A.G., Haryana has made a request in Court that the matter be taken up for re-hearing.

Mr. Amar Vivek, Addl. A.G., Haryana states on instructions, from Mr. Parvesh

Sharma, the State Mining Engineer, that order dated 12.09.2014 may be treated as withdrawn but with liberty to the State to decide the matter afresh.

Counsel for the petitioner submits that as the controversy in the present petition is squarely covered in favour of the petitioner by a judgment of a Division Bench of this Court in CWP No. 15431 of 2014(M/s. Haryana Royalty Company Vs. State of Haryana & anr.), decided on 15.01.2015, he has no objection if the order dated 12.09.2014 is withdrawn but with a direction to the State to decide the controversy afresh in accordance with order dated 15.01.2015 passed in CWP No. 15431 of 2014. We have heard counsel for the parties and after taking into consideration the respective submissions, the writ petition is allowed and order dated 12.09.2014 is set aside, but with liberty to the State of Haryana to pass a fresh order in accordance with law and in terms of judgment dated 15.01.2015 passed in CWP No. 15431 of 2014.

The parties are directed to appear before the Director, Mines and Geology Department, Haryana-respondent No. 2, on 15.06.2015. We hope and expect that the matter is concluded expeditiously, preferably within four weeks from the date of appearance before respondent No. 2."

14. The present writ petition, however, was not disposed of as counsel for the parties agreed that the writ petition may be put up for re-hearing. The following order was passed on 29.05.2015: -

"Counsel for the parties agree that as order dated 12.09.2014 has been withdrawn by the State of Haryana in CWP No. 20392 of 2014, the present writ petition may be put up for re-hearing. Accordingly, the present writ petition is adjourned to 02.07.2015, for arguments."

15. It is in the context of these two orders dated 29.05.2015 that this writ petition and the application for withdrawal have been taken up for hearing.

16. Counsel for the State of Haryana urges that with withdrawal of order dated 29.05.2015 and passing of a fresh order that the highest bid in Panipat Unit-I be adjusted from the amount due to the State from Sonipat Unit-II, the present petition has been rendered infructuous. Counsel for the petitioner, on the other hand, submits that before the order in CWP-20392-2014 was passed, the petitioner had already filed an application for withdrawal of the writ petition and as after order dated 12.09.2014 was withdrawn, this writ petition was admittedly adjourned for arguments. The State, therefore, cannot presume that part of order dated 12.09.2014 which pertains to the present writ petition i.e. Panipat Unit-I also stood withdrawn.

17. A due consideration of the facts reveals that both writ petitions were taken up together for rehearing, CWP No. 20392 of 2014 was allowed on a statement made by counsel for the State of Haryana, that impugned order dated 12.09.2014 be treated as withdrawn. The present petition was pursuant to an agreed order directed to be taken up for arguments. The reasons for separation

of the writ petitions are not far to seek.

18. A perusal of order dated 12.09.2014 reveals that it primarily related to withdrawal of the bid regarding Sonipat Unit-II but as the petitioner did not change its stand with respect to Sonipat Unit-II, the respondent cancelled the letter of intent issued for Panipat Unit-I and directed refund. The statement withdrawing order dated 12.09.2014 was made with respect to challenge to this order in CWP-20392-2014 and, therefore, the present writ petition (Panipat Unit-I) was to be decided separately though after obviously considering the affect of withdrawal of the order. The stand by the State of Haryana to say the least, is unfair and contrary to the statement made by their counsel as it was clearly understood that the withdrawal pertains to order passed regarding Sonipat Unit-II. We, however, do not deny the right of the State of Haryana to recover any amount due from Sonipat Unit-II, but in the absence of any rule, regulation or statutory provision that empowers the State to link this recovery to the amount deposited by the petitioner regarding Panipat Unit-I, particularly when no default is alleged or pointed out by the respondents regarding Panipat Unit-I, have no option but to hold that order dated 12.09.2014 stood withdrawn with respect to the lis pending in CWP-20392-2014 and not with respect to the lis pending in CWP-22107-2014.

19. At this stage, it would be appropriate to emphasise that at no stage did the petitioner withdraw its bid for Panipat Unit-I but it was the respondents who for the reason that the petitioner has not changed its stand with respect to Sonipat Unit-II, cancelled this bid and ordered refund. The respondents, even otherwise, had no right to pass any fresh order particularly when the lis was pending in CWP-22107-2014 and the Bench was seized of the matter and arguments were being addressed.

20. We, however, desist from expressing any further opinion as to the rights of the parties except to the extent of accepting the prayer made by counsel for the petitioner and dismiss the writ petition as withdrawn. We also desist from recording any opinion as to the consequence of the withdrawal but direct the respondents to pass a fresh order with respect to Panipat Unit-I.

21. I have gone through the judgment/order passed by my learned brother, Rajive Bhalla, J. However, I am not in agreement with it to the extent that the order dated 12.09.2014 passed by the Director, Mines and Geology Department, Haryana, would be treated to have been withdrawn/set aside, only qua the quarry that was bid for by the petitioner in Sonipat (Unit-II).

22. As recorded by my brother, learned Additional Advocate General, Haryana, had made a statement on 29.05.2015 that the said order (impugned in both CWP No. 20392 of 2014 as also the present writ petition), be treated to be withdrawn with liberty to the State to decide the matter afresh.

23. Learned counsel for the petitioner had submitted, upon that statement of the learned State counsel, that the petitioner also had no objection to the order

being withdrawn, as long liberty availed of by the State to pass a fresh order, was in terms of the order passed in CWP No. 15431 of 2014, on 15.01.2015.

24. Thus, while setting aside the order dated 12.09.2014, on the above statement of the Additional Advocate General, we had granted liberty to the State of Haryana to pass a fresh order in accordance with law and in terms of the judgment dated 15.01.2015, passed in CWP No. 15431 of 2014.

25. The order dated 12.09.2014 passed by the Director dealt with both, the quarry in Sonipat as also the quarry bid for by the petitioner in Panipat. Eventually, the impugned order held that since the petitioner had not changed its stand of not operating the quarry in Sonipat due to the difference in the area shown in the document inviting bids and in the actual area available on the ground, the allotment made to the petitioner in Panipat also stood cancelled. Consequently, the amount deposited by the petitioner pursuant to his bid was ordered to be refunded.

26. Hence, once the order dated 12.09.2014 was dealing with both the Panipat and Sonipat Units, and that order was set aside by us (actually treating it to be withdrawn on the statement of the learned State counsel), in my opinion, the entire order would stand set aside/withdrawn and not qua only the Sonipat quarry, even though the order passed by us on 29.05.2015 was recorded only as having been passed in CWP No. 20392 of 2014, in which the subject matter was that quarry. With the same order having been impugned in both the writ petitions, even though two separate writ petitions were filed by the petitioner, it cannot be held that just because this writ petition was put up for rehearing after judgment had been reserved in both the cases, after hearing them together on 28.05.2015, the order could be treated to have been set aside/withdrawn only qua one writ petition and one Unit.

27. Thus, even though this writ petition continued to come up for rehearing for various dates on this very issue, i.e. as to whether the order would be treated to have been withdrawn only qua the Sonipat Unit or qua both Units, I hold that the impugned order, being a composite order, ordered to be set aside by us on 20.09.2015 in CWP No. 20392 of 2014, in terms of the statement of the State counsel, would be deemed to have been set aside in both writ petitions.

28. Consequently, in terms of the order passed by us on 29.09.2015 in CWP No. 20392 of 2014, I hold that the impugned order passed by the Director, Mines and Geology Department, Haryana, on 12.09.2014 was set aside by us qua both the Sonipat and the Panipat quarries, on 29.09.2015, with liberty to the State of Haryana to pass a fresh order in accordance with the law.

29. I have perused the order appended by Amol Rattan Singh J. The matter be placed before a third Hon'ble Bench. The difference of opinion is whether statement made by counsel for the State of Haryana withdrawing order dated 12.09.2014 applies to the lis pending in CWP-20392-2014 or to the lis pending in both the writ petitions.