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(2016) 11 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 22575 of 2016

M/s Jai Yamuna Ji Developers — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 03-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 LawHerald 3549 : (2017) 2 PLR 271

Hon'ble Judges : Mr. S.J. Vazifdar, CJ. and Mr. Deepak Sibal, J.

Bench : Division Bench

Advocate : Mr. Karanvir Singh Khehar and Ms. Shalini Atri, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

S.J. Vazifdar, C.J.(Oral) - The petitioner had challenged Rules 76 to 80 of the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 (hereinafter referred to as the Rules).

2. The petitioner had earlier filed CWP-12334-2016 challenging an undated communication (Annexure P-6) from the Director General, Mines and Geology, Haryana rejecting their request for waiving the payment of ten percent of the amount of the monthly instalments for the Mines and Mineral Development, Restoration and Rehabilitation Fund (hereinafter referred to as the Fund) and for refunding the instalments already paid for the earlier months. The petitioner was advised to deposit the balance amounts as required.

That writ petition was dismissed as withdrawn on 24.08.2016. The order and judgment dated 24.08.2016 reads as under:-

"After arguing for some time, a prayer was made to withdraw the writ petition with liberty to file a fresh one only to challenge Rules 76 to 80 of the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012. On the basis of the said Rules, as they stand the terms and conditions of the auction, LoI and the contract entered into between the parties, the petitioner is bound to pay the amounts to the Fund. Thus, that aspect cannot be reagitated in the fresh petition.

2. The liberty is granted to challenge the Rules. It is further clarified that even in the event of the Rules being challenged successfully, the matter may not end there. It would have to be considered whether in that event the respondents would be bound to have the entire auction process annulled and call for fresh bids in order to give all prospective bidders an opportunity of bidding under the fresh terms of auction.

3. Dismissed as withdrawn with liberty as aforesaid."

3. We, therefore, did not permit the petitioner to challenge the communication on merits. The petitioner was confined to a challenge to the said Rules. The validity of the communication would depend upon the outcome of the challenge to the said Rules.

4. The Rules, which have been challenged, read as under:-

"Chapter - 12 Mines and Mineral Development, Restoration and Rehabilitation Fund

76. Establishment of the Mines and Mineral Development, Restoration and Rehabilitation Fund - A fund known as the ''Mines & Mineral Development, Restoration & Rehabilitation Fund'' shall be established under Public Account in the State of Haryana under the administrative control of the Department to which rehabilitation charges payable under clause (i) of sub rule (1A) of section 15 of the Act shall be credited in order to meet the following objectives:-

(i) funding of the restoration or reclamation or rehabilitation works in the sites affected by mining operations;

(ii) provision of common facilities for the benefit of community in and around areas where mining activities are undertaken;

(iii) development of infrastructure facilities for orderly growth of the mining operations and allied activities e.g. roads, stone crusher estates, water supply etc.;

(iv) funding of the studies commissioned or activities related to the mining sector e.g. survey, exploration and prospecting of minerals, procurement of equipment and machinery required to support such activities;

(v) education, awareness and training of the mineral concession holders and the staff of the Department through field visits and exposure to the best mining practices;

(vi) funding of expenditure incurred on implementation of any scheme of incentives that the state Government may frame for recognition and awards for scientific mining undertaken with highest regard to mineral conservation,

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rehabilitation measures along with environmental safeguards and other measures;

(vii) Any other objects which the Government may consider expedient to support in the overall interest of the mining sector.

77. Contributions to the Fund - (1) An amount equal to ten percent of the dead rent or royalty or contract money paid to the state shall be charged from the mineral concession holder in the nature of other charges for restoration and rehabilitation works and credited to the Fund in addition to the amount payable to the Government on account of such dead rent or royalty or contract money.

(2) The said contribution shall be remitted by the mineral concession holder in instalments along with the instalments of dead rent or royalty or contract money, as the case may be. Such amount shall be reconciled at the close of the financial year and any differential of the amount due shall be adjusted or paid on reconciliation;

(3) The Government shall also set apart and contribute five percent of the amount received by it on account of the dead rent or royalty or contract money in a financial year to the Fund in the manner decided in consultation with the Finance Department of the State;

(4) The Department shall maintain complete account of receipts to the Fund and the expenditure there from and shall invest the progressive accumulated corpus in a manner so as to earn secure returns therefrom.

78. Expenditure out of the Fund - The amount available in the Fund shall be utilised strictly for fulfilment of the objectives for which the Fund is being set up and on the terms and conditions as may be stipulated by the Committee constituted under rule 80.

79. Restoration and Rehabilitation works to remain the first charge on the Fund -

(1) The expenditure on restoration and rehabilitation of the mining sites shall remain the first charge on the fund Every mineral concession holder, before undertaking the restoration and rehabilitation works as part of his progressive mine closure plan, shall get his estimates of expenditure on such works duly approved from the Director or an officer authorised by him and submit the utilisation certificate duly certified by a registered Chartered Accountant. The mineral concession holder shall be entitled to get the expended amount reimbursed out of the Fund to the extent of actual expenditure subject to such re-imbursement being limited to the amount contributed by him. Any expenditure incurred over and above this limit shall have to be borne by the mineral concession holder from his own account.

Explanatory Note:

Notwithstanding the expenditure incurred by a mineral concession holder on the measures taken for the progressive mine closure plan, the occasion for

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undertaking the complete restoration and rehabilitation works in respect of any mining area arises only when a mine reaches the closure stage or so declared by the department.

It is likely that the mining operations would have been undertaken by multiple concession holders before reaching the stage of closure of a mine. As such, it becomes imperative that the comprehensive measures for restoration and rehabilitation of a mining site are taken up only upon closure of such mine. The responsibility for execution of such plan shall rest with the mineral concession holder operating such area at the time of its closure. Since the contribution to the fund is also made by each of the lessees/ contractors who have operated the area during the intervening period, the financial burden of restoration and rehabilitation measures shall not be borne by the last contractor/ lessee alone.

(3) A mineral concession holder operating the mine at the time of its final closure shall be responsible for execution of the restoration and rehabilitation works as per the final mine closure plan. He shall prepare and submit the estimates for implementation of the final restoration and rehabilitation plan to the Director, for approval of the estimates;

(4) The Director, shall approve such estimates, with or without any modifications, and re-imburse the expenditure actually incurred on the site by the implementation agency in a phased manner out of the Fund. The amount so re-imbursed shall not exceed the total amount received from the mineral concession holders in respect of that site less the expenditure already incurred earlier.

(5) The Director may require the mineral concession holder to engage an independent agency for implementation of the restoration and rehabilitation works and evolve a system of monitoring the deliverables through an independent agency.

80. Sanction of expenditure from the Fund -

(1) Any or all proposals for expenditure from out of the Fund shall be approved by a committee of officers headed by the Principal Secretary of the department and consisting of representatives from the departments of mines and geology, finance, environment, forests, health, education, Panchayat & Development.

(2) The mode and method of collection, remittance, and utilisation of these other charges shall be notified separately by the department."

(emphasis supplied)

5. Firstly, we are reluctant to exercise our extraordinary jurisdiction under Article 226 of the Constitution of India in favour of the petitioner. The petitioner submitted its bid. The bid was accepted. A Letter of Intent was issued by the respondents on 03.01.2014. The parties thereafter entered into a mining contract on 17.11.2014 without demur or protest as to any of the terms thereof. The petitioner had thereafter availed the benefit under the contract. The

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petitioner now seeks to challenge some of the terms of the contract only under the garb of a challenge to the Rules.

6. That the petitioner today may be willing to have the contract annulled altogether is irrelevant. The official respondents have altered their position to their detriment. To grant the prayers now would in effect result in altering the terms and conditions of the contract itself. It would be unfair not only to the respondents, but also to the other bidders. These bidders may well have bid a higher amount had the terms and conditions been diluted as is now sought to be done, albeit on the basis of a challenge to the Rules. This would be unfair even to prospective bidders who may have considered submitting bids if the terms and conditions of the contract were as may be relaxed especially in financial terms.

7. Even otherwise, there is no merit in the petition.

8. The challenge to these Rules was firstly on the basis that compensation for damage or injury caused to the land is a matter entirely between the land owner and the mineral concession holder who in this case is the petitioner and that the Government has nothing to do with it.

Rule 63 relied upon by Mr. Khehar, the learned counsel appearing on behalf of the petitioner, reads as under:-

"63. Mutual settlement of rent and compensation for the land used for mining - The amount of annual rent and the compensation shall be settled mutually between the landowner and the mineral concession holder."

9. Firstly, Rule 63 deals only with the rent and compensation. It does not deal with compensation on account of damage or injury caused to the land on account of the mining activities. Further, the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the Act) deals with the rights and liabilities not merely of the mineral concession holder and the Government of Haryana, but also with the rights of the land owners. There is nothing in the Act or in the Rules that prevents the Government from securing the amounts that may be found payable to the land owners including the amounts by way of compensation for damage or injury caused to the land. It is in fact desirable that the Government secures the payment of compensation for damage or injury caused to the land. If indeed no damage or injury is caused to the land, the amount is to be returned. The Rules in so far as they provide for a payment by way of security by the mineral concession holder towards the said Fund are reasonable and in fact desirable.

10. It was then contended that in view of clause 31 of the agreement, the repayment of this amount is without interest. That is a matter of contract between the parties. The petitioner had agreed to the term. The petitioner did not raise any demur or protest in regard thereto when it entered into the agreement. It had availed the benefit of the contract. We are not inclined to permit the petitioner to challenge this term of the contract at this stage and

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especially in view of what we have already stated. Moreover, the liberty that was granted was only to challenge the Rules and not the terms and conditions of the contract.

11. It was further contended that the respondents have already secured themselves by virtue of clause 2 of Part-III of the contract which reads as under:-

"Part?III

Covenants of the contract

The contractor hereby covenant with the Government as follows:-

2. Security deposit:

(a) In case of mining contract granted through competitive bid/auction under rule 22:- 25% of the annual bid amount/rate of contract money. The security amount to be deposited as per following:-

(i) 10% as initial bid security at the time of auction; and

(ii) 15% of the annual bid amount before commencement of mining operations or before the expiry of period allowed, which shall not be more than 12 months, whichever is earlier:

Provided on enhancement of the contract money after expiry of every three year period of contract the contractor shall deposit the balance amount of security so as to up-scale the security amount equal to 25% of the revised annual contract money as applicable for one year with respect to next block of three years."

12. The amounts to be contributed towards the said Fund are not covered by the above clause. They are in addition to what is required to be deposited under the above clause. Clause 2(a) does not even refer to the said Fund. It is to secure the respondents in respect of other amounts payable under the contract.

13. This is clearer still from clause 4 of Part-III of the contract which reads as under:-

"4. Amount to be deposited on account of Fund

Where the contractor is operating the area, he shall also pay an additional amount, equal to 10% of the due contract money, whichever is more along with amount of instalments on account of dead rent or royalty, towards the Fund."

This is the clause that refers to the payment under the said Fund.

14. In support of this contention, Mr. Khehar also relied upon clause 5 of Part-IV of the contract which reads as under:-

"Part?IV

Rights of the State Government

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5. Compensation and acquisition of land of third parties thereof:

In case the occupier(s) or owner(s) of the said land refuses his/their consent to the exercise of the rights and powers reserved to the Government and demised to the contractor under these presents, the contractor shall report the matter to the Assistant Mining Engineer/Assistant Geologist/Mining Officer who shall request the Collector of the district concerned to direct the occupier(s) or owner(s) to allow the contractor to enter the said lands and to carry out such operations as may be necessary for working the mine on payment in advance of such compensation to the occupier or owner by the contractor, as may be fixed by the Collector under the Land Acquisition Act, 1894."

15. This clause is entirely different from the said Fund.

The amounts payable under this clause do not refer to compensation for damage or injury caused to the land.

16. It is necessary to also note that the liability to pay compensation for damage or injury caused to the land is specifically provided in Rules 63 and 65. In other words, merely because the respondents have under the contract a right to insist on security for ensuring due and proper performance of the contract, it does not follow that they are not entitled to security for another obligation on the part of the concession holder i.e. for the payment of compensation for damage or injury caused to the land. Further, although this amount may be payable to the land owners ultimately, it does not prevent the respondents from having the same secured for the benefit of the land owners.

17. In the circumstances, the writ petition is dismissed.

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