

(2019) 03 J&K CK 0036

In the Jammu And Kashmir High Court

Case No : Other Writ Petition (OWP) No. 325 Of 2019, IA No. 01 Of 2019

Rakesh Kumar Choudhary

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 13-03-2019

Acts Referred:

Constitution Of Jammu And Kashmir, 1956 — Section 103
Jammu And Kashmir Minor Mineral Concession, Storage, Transportation Of Minerals
And Prevention Of Illegal Mining Rules, 2016 — Rule 2 (xLviii), 26, 27, 52(2), 55(9)
Constitution Of India, 1950 — Article 199(1)(g), 226

Citation : (2019) 03 J&K CK 0036

Hon'ble Judges : Rashid Ali Dar, J

Bench : Single Bench

Advocate : Vikram Sharma, FA Natnoo

Judgement

1. Relief has been sought in the main petition for quashment of communication No. IND/Legal-239/2018 dated 26.02.2019 whereby the ?open auction? of mining blocks has been conveyed to be scrapped by the respondents along with writ of prohibition for conducting fresh auction of the mining blocks already allotted to the petitioner in the District of Rajouri and Samba; with a further writ of Mandamus commanding the respondents to allow the petitioner to continue as an allottee of the mining blocks in District of Rajouri and Samba and to allow the petitioner to continue its operation as a successful bidder allottee allowed by repeat SROs to extract the minor minerals on payment of the prescribed royalty.

2. Notice has been accepted by Mr. FA Natnoo, on behalf of the respondents.

3. While the learned counsel for the petitioner has prayed for grant of interim assistance in the IA. He has brought on record communication dated 14.02.2019 under the signature of Director, Geology and Mining, J&K Government, Jammu addressed to the Principal Secretary to Government, Industries and Commerce department, Civil Sectt., Jammu and order dated 11.03.2019 passed by the Srinagar Wing of this Court in OWP No. 243/2019. The order according to him

has been passed in similar matter. Interim direction has been passed in this case which reads as under :-

"Notice. Notice in MP as well.

In the meantime, subject to objections and till next date of hearing before the Bench, respondents shall not act upon Condition No.i of impugned communication dated 26th February, 2019. List on 19th April, 2019.

4. It has already been noted in the order dated 06.03.2019 passed in the instant petition that the petitioner herein has also moved a petition before this Court being OWP No.50/2019. In the said petition interim assistance has been granted on 15.01.2019 as:-

" In the meantime, respondent Nos. 3 and 4 shall finalize the case of the environmental clearance of the petitioner by the next date."

5. Thereafter vide order dated 01.02.2019 further directions were issued to the respondent No.2 to not act upon the impugned notice dated 04.01.2019, while listing the matter along with OWP No.2648/2018.

6. Copy of the petition wherein the relief has been granted is not available, however, so that circumstances in which relief has been granted could be noted along with the prayer made in the main case.

7. Mr. Natnoo, learned AAG had made a submission that all the writ petitions are inter related to each other and as various various interim orders even run contrary to each other, the respondents herein are experiencing difficulty in proceeding ahead with the obligation cast upon them in pursuance of the statute governing minor mineral. Accordingly, connected writ petitions, at request, were also called for from Registry for perusal.

8. The perusal of the writ petitions called for from the Registry would suggest that in Radha Krishan and others (OWP No. 1176/2018), the petitioners have prayed for the following reliefs:-

i) Certiorari, to quash and set aside Standard Auction Document titled Auction Document for grant of mineral lease/ Quarry Lease issued by the respondent state for being illegal, arbitrary and violative of Article 199(1) (g) of the Constitution of India.

ii) Writ of mandamus for declaring Rule 52, sub rule (2) of Rule 27 of the J&K Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016 vide SRO 105 of 2016 dated 31.03.2016 as ultra vires the constitution of India, Notification issued by central Government, being contrary to the judgment of the Apex court in Deepak Kumar's case within a further writ of mandamus for declaring all the actions taken in pursuance of Auction document for grant of Minor Mineral Concession and directing the respondents to frame rules while strictly complying with the EIA notification dated 14.09.2006 issued by the Ministry of Environment and Forest, Government

of India and the directions issued by the Hon^{ble} Supreme Court vide judgment dated 27.02.2011 in Deepak Kumar etc and others v. State of Harayana and others.

iii) Certiorari to quash and set aside SRO 164 of 2018 dated 11.04.2018 with respect to J&K Minor Mineral Concession, Storage, transportation of Minerals and Prevention of Illegal Mining Rules, by the issuance of writ, order or direction in the nature of Certiorari.

9. Somewhat similar reliefs have been prayed for in Subash Chander (OWP No. 1249/2018) and Sarveshwar Sharma and another (OWP No.2648/2018).

10. This Court vide order dated 19.06.2018 passed in Radha Krishan and others (OWP No. 1176/2018) has directed that no license for mining leases and quarries shall be granted by the competent authority, otherwise than by the mode of 'e-auction'. Similar in Subash Chander and others (OWP No. 1249/2018), this Court vide order dated 02.07.2018 has passed the following orders:-

"Meanwhile, as ad interim, subject to objections and till next date before the Bench, impugned public notice dated 27.06.2018 (supra) and all proceedings pursuant thereto shall stay and no auction shall be held/or acted upon."

11. In Sarveshwar Sharma and others (OWP No. 2648/2018), this Court while asking the State to explain its position vis-a-vis transitory provision and also mandate of judgment in Deepak Kumar etc. v. State of Haryana and others etc, 2102(4) SCC 629 passed by the Hon^{ble} Supreme Court not being implemented in its true letter and spirit, has passed the following order:-

"Considering the importance of the matter, I request the learned Advocate General of the State to assist this Court on the next date of hearing. It is, however, made clear that although I am of the prima facie view that the Transitory Provision does not in any manner absolve the successful bidders to obtain environmental clearance based upon the Transitory Provision, yet the issue will be considered after an appropriate response is filed through the office of learned Advocate General. In case, the response is not satisfactory, on the next date of hearing, it may become necessary to permit the successful bidders to conduct their minor mineral operations only if they have in their possession an appropriate environmental clearance report. The pendency of the present petition, therefore, would not prevent the successful bidders, in the meantime, to get the clearance, as required."

12. The contention of Mr. Sharma learned counsel appearing for the petitioner, is that the Auction Notice for mining blocks for different districts including district Rajouri and Samba had been issued and the petitioner has been found eligible for the allocation of identified mining blocks for the purposes of extraction of minor minerals being highest bidder in the competitive bidding process. The Letter of Intent (LoI) has been issued by the respondents Geology and Mining Department which on perusal was found has been issued on 21.12.2017 in respect of District

Samba and on 05.10.2017 in respect of District Rajouri by the Director, Geology and Mining J&K Government, Jammu. The direction has been given to submit the approved mining plan and environmental clearance besides deposition of remaining of 50% of the bid amount within a period of six months enabling the said office to grant minor lease for extraction of mining minerals from the said blocks. The compliance according to the petitioner was made of the terms of the LoI by making payment of the required sum and also submission of the plan. Copy of the acknowledgement slip issued by the competent authority while entertaining request for assessing environmental aspects and issuance of clearance certificate is annexed with the petition. The case is pending for the last so many months before the authority concerned but no action has been taken as is required in terms of the statute is being canvassed. Further argument of Mr. Sharma, learned counsel appearing for the petitioner is that the Director-respondent No.2 had submitted for consideration of the respondent No.1-Commissioner Secretary certain proposal as to how the matter is required to be examined in the light of the contractual obligation coupled with the obligation cast on the Department in terms of the statute and the directions of the Hon'ble Apex Court but the respondent No.1 has instead examining the said proposal observed that the 'open auction' has been scrapped and fresh auction be carried out only through 'e-auction' mode and till the fresh allotments are made, existing mechanism would continue. There is lapse according to him on the part of the respondents and the authority which has statutory duty to consider the application submitted for clearance of the environmental issue and this in no case should be permitted to come in the way of the petitioner to derive the benefits to which he is entitled to. Earlier interim direction passed in OWP No.50/2019 cannot be observed in breach by the respondents and issuance of the communication from the respondent No. dated 26.02.2019 (Annexure-I) is not only unjust but nonest in the eyes of law. Mr. Sharma, learned counsel for the petitioner has also referred to the definition of 'open auction' as contained in Rule 2 (xLviii) which includes not only the 'e-auction' but also the auction made through physical presence before the auction committee for grant of mineral concessions. The mining blocks identified for the petitioner were not part of left over blocks to which the scheme, if any, had to be framed and carried into effect is also his plea. The mala fides of the respondents according to Mr. Sharma can be inferred from the inconsistent stand taken in different petitions and so interim assistance is required to be granted in the backdrop of fresh cause of action available to the petitioner, in terms of the communication dated 26.02.2019. Further argument of Mr. Sharma is that in terms of the communication dated 14.02.2019 issued by the Director, Geology and Mining Department, J&K Government, Jammu, a request has been made to the Principal Secretary to Government, Industries and Commerce Department, Civil Sectt, Jammu that the Transitory Provision valid upto 28th February, 2019 be extended upto ending September, 2019 in favour of the successful bidders having approved mining plans, ancestrally occupied quarry belts/clusters having approved mining plan and for emergent nature works/projects of Central and State Government to lift

and transport mineral on royalty basis in order to ensure uninterrupted supply of minor minerals to the consumers.

13. On the other hand, learned counsel for the respondents submitted that petitioner herein who was successful bidder for various Mining Blocks of District Samba and District Rajouri admittedly could not produce the Environmental Clearance Certificate from the concerned authorities within the requisite period of six months, as was required in terms of Rule 26 read with Rule 55(9) of SRO 105 of 2016 and also as per the terms of Letter of Intent (LoI) issued in his favour. He further submitted that not only the petitioner, but even most of other successful bidders could not produce the Environmental Clearance Certificate and as such, the matter in light of all the aforesaid facts, figures and change scenario was considered by the competent authorities and accordingly the process was apparently found to have continued contrary to the judgment of the Hon'ble Apex Court in Deepak Kumar's case (supra), as such, was scrapped by virtue of impugned order with a further direction that the whole process shall be through e-mode auctioning only. He further submitted that the intervention of the Courts sought in terms of Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir, would not be warranted as there is not infraction of any statutory or contractual right of the petitioner from the respondents. In terms of the judgment of Hon'ble Apex Court and the Rule as amended and notified under SRO 105 of 2016 dated 31.03.2016. It is the duty of the petitioner herein to produce the certificate falling within the arena of environmental concerns and blame cannot be attributed on the respondents. The Government has come up with its clear stand and there is no question of inconsistency in the stand of the Government functionaries as is being submitted by other side. Accordingly, his argument is also that no direction can be sought from this Court contrary to the directions given by the Hon'ble Apex Court in Deepak Kumar's case (supra).

14. Considered the rival submissions and perused the records.

15. Let the objections be filed within four weeks. List on 22.04.2019.

16. Having regard to the questions projected before this Court in terms of various writ petitions for adjudication either about the manner in which the extraction of the minor minerals is to be made or about environmental concerns or lapses attributed to the concerned Authority regarding statutory duties cast on it, it would be proper to direct the Registrar Judicial to solicit orders of Lord Chief Justice for listing of the cases (both at Srinagar and Jammu Wing) before the same Bench. It would also ward of possibility of passing the directions not contrary to each other. The contention of some petitioners has been 'e-auction' be only resorted to while others have canvassed, this cannot be the only mode for making allocation of mining blocks. Whatever may be the justification as is being put forth in this regard by the parties, minerals are being allowed to be extracted without there being any formal contract between the parties for the same.

17. Meanwhile, subject to objections from the other side and till next date before the Bench, status of the petitioner shall not be disturbed in terms of the Communication dated 26.02.2019 (Annexure-I).