(1998) 09 P&H CK 0159

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1032 of 1997, Civil Miscellaneous No''s. 26457 and 26458 of 1997, 269 and 3139 of 1998

Yogesh Anand and Co. — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 18-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Haryana Minor Mineral Concessions Rules, 1964 — Rule 33

Citation : (1999) 121 PLR 761

Hon'ble Judges : Iqbal Singh, J

Bench : Single Bench

Advocate : J.V. Yadav, for the Appellant; H.S. Hooda, A.G. and U.K. Agnihotri, for the Respondent

Final Decision : Dismissed

Judgement

Iqbal Singh, J.—The following two questions arise in this petition :

(i) Whether the action of the State, who auctions the mines, in adding additional causes 3-A and 18-A apart from the conditions statutorily provided for by the executive instructions, is contrary to the rules, arbitrary and illegal?"

(ii) Whether the respondent-State is entitled to charge contractual money even from the villages where sand is not available ?

2. The facts of the case are given as under:

The Department of Mines & Geology, Haryana issued a public auction notice for the sand zone, namely, Ugrakheri-Sanoli Zone comprising of 43 villages in District Panipat. The auction was held on 4.11.1996. The contractual period was for three years. M/s Yogesh Anand & Company (hereinafter referred to as the petitioner-company) participated in this auction and was the highest bidder and its bid was accepted. The respondent No. 2 desired that ''agreement'' as per the provision of Rule 33 of Haryana Minor Mineral Concession Rules, 1964 (hereinafter referred to as ''the Rules''). The petitioner-company accordingly deposited the necessary and advance contract money and also submitted non-judicial stamp papers for executing the agreement. The petitioner-company received form "L" i.e. statutory proforma of the agreement provided in Rule 33 for signing but the petitioner-company noted that after Clause 3, Clause 3-A was newly added and similarly Clause 18-A after Clause 18 was inserted on typed papers whereas the rest of the agreement was on the printed proforma. The petitioner-company averred that the insertion of these two clauses is in contravention of the provisions of the Rules specifically Rule 61. Petitioner-company signed this agreement under protest with regard to these two clauses. The petitioner-company made a survey of the other villages in Ugnakheri-Sanoli Zone for which bid was given by it and found that many villages have no sand mineral although the said villages have been included in the auction and that a dispute has arisen between the previous contractor/lessee and the respondent in regard to the contract granted in the year 1993. According to the petitioner-company, there were 48 villages in the present zone in the earlier lease period referred to above and out of 48 villages, as per the letter of the Mining Officer, Panipat dated 13.8.1993, 5 villages comprising the Zone had undergone urbanisation and extraction of the sand was not at all possible and in many villages sand is available in different depth. In spite of knowing all these facts, the respondents have put to auction all those villages excluding the 5 villages which had sand mineral where the mining operation extraction of sand is not at all feasible. Thus, the petitioner-company has been kept in dark and the respondents are guilty of concealing the facts which were in their knowledge. Therefore, the petitioner-company is in a disadvantageous position. After depositing a huge amount, the respondents are not finalising the execution of the agreement and in an unreasonable manner are insisting upon the insertion of clauses 3-A and 18-A in the agreement whereas as per statutory form "L" provided in Rule 33, there are only 28 clauses. This act of the respondents is highly unfair, unjust and without jurisdiction. Therefore, the petitioner-company has filed this petition under Article 226 of the Constitution of India for issuance of writ of certiorari quashing clauses 3-A and 18-A being illegal and without jurisdiction.

3. The respondents in their written statement took preliminary objection that Ugrakheri-Sanoli sand zone of District Panipat was put to auction on 4.11.1996. Before auction was held, notice was issued and terms and conditions thereof were read over before start of auction, it was also made clear to the bidders that additional clauses 3-A and 18-A after clauses 3 and 18 respectively shall form part of the contract agreement to be executed in the form "L" of the State Rules. The petitioner-company was fully aware of the conditions of the auction notice which were conveyed to it while accepting the highest bid offered by it but it did not raise any objection on the said conditions. It has been further stated that the petitioner-company was permitted to start mining operation on 13.11.1996 and it has already settled compensation with the landowners of two villages as per its

own admission and has also started mining operation in village Nagla. Therefore, the petitioner-company is now estopped by its own act and conduct from raising any objection in regard to the terms and conditions. It shows that the petitioner-company with malafide intention of not paying contract money to the State Government is trying to avoid execution of the contract/agreement while continuing with mining operation. It is admitted that the contract of this Zone was granted in favour of M/s Vinod Kumar and Company for the period from 1993 to 1996. Earlier the contract of sand quarries was given on village basis and in order to solve the problem of clashes/disputes between different contractors in regard to extraction of sand, encroachment of areas or usage of passages, a sand zone was created in these districts consisting of many villages in order to give monopoly and free access to contractors. As per the previous experience the contractor, at a time, extracts sand from 2-3 villages keeping in view the demand and requirement. It hardly matters whether sand is available in all villages or in a few villages, and at what level. It has been further stated that after participating in the open auction and having offered the highest bid, the petitioner-company cannot question the viability and availability of the mineral and plead that it was deceived or not apprised of the correct position. The public notice was published well in advance and it was open for the petitioner-company to satisfy itself about the availability of the sand in the villages and now it cannot be allowed to raise the objection regarding non-availability of sand in some of the villages. It has been further stated that the State Government can add or delete any condition of contract which is not contrary to the provisions of the law and rules keeping in view the circumstances. Accordingly, conditions 3-A and 18-A were incorporated. Further, it has been mentioned that this Court in Civil Writ Petition No. 2716 of 1995 (Bhim Sain Sharma v. State of Haryana,) has held that the additional conditions are not contrary to the rules.

4. We have heard learned counsel for the petitioner and learned Advocate General for the State of Haryana.

5. It is relevant to reproduce the following additional conditions :-

"3-A : That the contractor(s) shall restrict the quarrying operations to maximum in 4 villages of the Zone at a time during the subsistence of the contract. The contractor shall have a right to change the site any time during the subsistence of the contract on settlement of compensation with the landowners of the new sites of the zone from where they intend to extract sand but ceiling of maximum 4 sites shall be adhered to.

18-A : The contractor shall have no right to seek any relief in payment of contract money on the plea that he was not able to extract sand from any village failing in the Zone."

Therefore, the question now is whether these conditions can be inserted by the respondents in the contract/agreement. The counsel for the petitioner submits that it is contrary to the scheme of the Act and has relied upon the decision of the Supreme Court in Jogendra Lal Saha Vs. The State of Bihar and others, . The facts of Joginder Lal Saha''s case (supra) are not applicable to the facts of the present case. In that case the appellant had entered into a contract with the State of Bihar in the year 1968 for a period of three years in the matter of appropriating Tendu Leaves from certain forests of the State of Bihar in the Dumka division stipulating to pay the price in three instalments spread over the three years for which the contract was valid. First instalment had been paid and the other two had not been paid. At a point of time, when the third one had not become due and in regard to the second there had been default, proceedings under the Bihar Public Demand Recovery Act, 1914, were initiated for recovery of the two instalments on the requisition of the Forest Officer after adjustment of the security deposit and the price obtained at a re-auction. The appellant challenged the action in a proceeding under Article 226 of the Constitution before the Patna High Court. The High Court dismissed the same and upheld the action and the matter came up before the Hon''ble Supreme Court. In that case, two sections (Sections 82 and 83) of the Forest Act, 1927 were interpreted. It was held that the instalment relating to third year was not due when the requisition was sent or the certificate was signed and therefore, the demand for that amount could not be included in the certificate. It was also held that the liability of the appellant shall be confined to two instalments which were due for the second and third year in terms of the contract after setting off the security deposit and the amounts that have been recovered being Rs. 2,200/- and Rs. 28,000/- respectively.

6. In this case the contract has not yet come into being as the contract papers have not been signed by the respondent-department. Therefore, there is no such contract which exists in the eyes of law. It is necessary to observe here that the petitioner-company has appended its signatures to the terms and conditions of the contract and accepted the same which were publically notified before the auction took place and before the petitioner''s bid was accepted. Therefore, it cannot be allowed to challenge the same. In fact, the petitioner- company started working before the contract could be signed by the State of Haryana and started extracting sand. Therefore, it cannot be allowed to take volte face stand and say that the additional terms and conditions as detailed above are not authorised by the rules. There is nothing in the rules to show that the State Government cannot add or delete the condition of contract in form "L". Petitioner-company accepted the terms and conditions with open eyes and once it appended its signatures on the terms and conditions, it cannot say that these are unfair, unjust and against the rules. Perusal of additional clauses 3-A and 18- A does not show that there is any illegality in the same or they are contrary to the rules or illegal. In fact, in my opinion, these clauses have been inserted with a view to facilitate the smooth working of the mine by the contractors. Similar question arose in C.W.P. No. 2716 of 1995 (Bhim Sain Sharma v. State of Haryana), wherein the following order was passed on 21.2.1995:-

"Notice for auction was issued on 14.1.1995. The State who auctions the mines can impose additional conditions, apart from the conditions statutorily provided for by executive instructions provided the additional conditions are not contrary to the rules. We find no contravention in the conditions added to the proviso under the rules for auction.

No ground to interfere is made out. The writ petition is, accordingly, dismissed. However, the petitioner will be at liberty to make any representation, if so advised."

In view of the above discussion, I find that there is no merit in the writ petition and the same is hereby dismissed.