

A.F.R.

Neutral Citation No. - 2024:AHC:97545-DB

Reserved on 06.05.2024

Delivered on 29.05.2024

Court No. - 3

Case :- WRIT - C No. - 33710 of 2021

Petitioner :- M/S Deep Builders And Another

Respondent :- State Of Uttar Pradesh And 2 Others

Counsel for Petitioner :- Ashish Malhotra, Syed Mohd. Fazal

Counsel for Respondent :- C.S.C.

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Jayant Banerji, J.

1. Heard Shri Syed Mohd. Fazal, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

This writ petition seeks a writ of certiorari for quashing the order dated 28.08.2021 passed by the third respondent, the District Magistrate/District Officer, Ghaziabad.

2. By this order and in purported exercise of powers conferred by Rule 34 (4) of the U.P. Minor Minerals (Concession) (Forty Seventh Amendment) Rules, 2019 and for their non compliance, the security deposited by the petitioner as also the first instalment consequent to the issuance of Letter of Intent with regard to Plot Nos. 290M, 301M, 303M, 304M, 310M, 311M, 314M area 12.512 hectares has been forfeited in favour of the State.

3. The facts of the case briefly stated are that the petitioner participated in the bidding for grant of mining lease of ordinary sand for a period of five years over plots situated in Village Pachayra, Tehsil Loni, District Ghaziabad having a total area of 12.512 hectares. The auction was for a mining of annual quantity of 2,50,240 cubic meters of sand.

4. Since the bid of the petitioner was the highest, a Letter of Intent was issued in its favour on 31.10.2017. The petitioner thereafter deposited 25% of the bid amount as security and an equal amount as the first instalment of royalty in accordance with Rule 28(2)(i) of the U.P. Minor Minerals (Concession) Rules, 1963.

5. The Letter of Intent was cancelled on 28.01.2019. However, no order was passed for refund of the security amount or the first instalment forcing the petitioner to approach this Court by means of Writ – C No.19354 of 2021.

6. During the pendency of the said writ petition, the order dated 28.08.2021 was passed. The petitioner thereafter withdrew his earlier Writ – C No.19354 of 2021 and the instant writ petition is being filed challenging the order of the District Magistrate dated 28.08.2021, whereby the security and first instalment towards royalty has been forfeited in favour of the State.

7. The contention of learned counsel for the petitioner primarily is that there exists no power with the respondents to forfeit the security deposit or the first instalment deposited by him, once the Letter of Intent has been cancelled. The impugned order therefore, is without any sanction of law and is liable to be quashed. The amount deposited by the petitioner is liable to be refunded along with interest, thereon.

8. Elaborating further, it has been submitted that at the time, the Letter of Intent was issued in favour of the petitioner, the U.P. Minor Minerals (Concession) Rules, 2017 as amended by the 43rd Amendment, therein, were in force.

9. On the date, the Letter of Intent was cancelled namely 28.01.2019, it is the 44th Amendment Rules, which were operational. Neither the 43rd nor the 44th Amendment Rules contain any provision for forfeiture of the security deposit and/or the royalty paid by the petitioner on cancellation of the Letter of Intent. He has reiterated that after issuance of the Letter of Intent, a mining plan was submitted by the petitioner within the time prescribed for the same. This mining plan was also granted approval by the respondents. Thereafter, the petitioner applied for environmental clearance and before the same could be granted, the Letter of Intent has been cancelled. No order for forfeiture was passed at the time of cancellation of the Letter of Intent and this order has been passed after the petitioner had preferred a revision to the State Government, wherein the matter was remitted back to the third respondent to pass appropriate orders on the prayer

of the petitioner for refund for security deposit and also the royalty deposited by him. However, no order was passed and, therefore, the petitioner approach this Court by means of Writ – C No.19354 of 2021 and during the pendency of this writ petition, the impugned order has been passed.

10. He has also submitted that the order of forfeiture if at all can only be passed at the time of the order passed for cancelling the Letter of Intent. This cannot be done subsequently.

11. Learned counsel for the petitioner has placed reliance upon various provisions of law during arguments.

12. The first provision placed by learned counsel for the petitioner is Rule 29 of the U.P. Minor Minerals (Concession) (Forty Third Amendment) Rules, 2017 to submit that forfeiture of security deposit is provided where lease deed is not executed within three months due to a fault on the part of the Lease holder. In the case at hand no lease deed was ever executed. Hence this provision is not at all attracted. Rule 29(1) thereof reads as follows:-

“29. Execution of lease deed (1) The successful bidder/tenderer after receiving letter of intent of concerned e-tender/e-auction/e-tender cum c-auction shall produce, approved Mining Plan and Clean. Environment Certificate prescribed as per rule, and a lease deed concerning the same will be executed in form MM-6 or in similar format. The registration of the said executed lease deed will be registered within three months period. The period of lease will be counted from the date of execution of the concerned lease deed. If due to fault on the part of lease holder, registration of the said executed lease deed is not registered within three months, then the said lease deed will be treated as null and void and the amount of security will be seized by the District Magistrate.”

13. Rule 34(4), non compliance whereof is the basis of the impugned order reads as follows:-

“(4) Mining operations shall in respect of all minor mineral be undertaken in accordance with the mining plan, detailing, yearly development schemes, aspect of reclamation and rehabilitation of mined out areas including progressive mine closure scheme duly approved by the Director:

Provided that the lessee shall start the mining operation after obtaining environmental clearance if required under the provisions of Environment Impact Assessment Notification, dated September 14, 2006 issued by the Ministry of Environment, Forest and Calamite change Government of India as amended from time to time:

Provided further that an application seeking prior environmental clearance in all cases shall be made by the project proponent or end user agency as the case may be, in as provided in paragraph-6 of the Environment Impact Assessment Notification, dated September 14, 2006 as amended from time to time.”

14. Relying upon the provisions quoted above, he has submitted that the proviso to Rule 34(4) requires a lessee to start mining operations only after obtaining environmental clearance and that the proviso casts a duty upon the lessee or the proponent to apply for environmental clearance.

15. Rule 34(5) provides that a mining lease shall be executed only after environmental clearance has been obtained.

16. Rule 34 of the Uttar Pradesh Minor Minerals (Concession) (Forty Fourth Amendment) Rules, 2017 reads as follows:-

“34. (1) The 'Selected Applicant' before the execution of mining lease deed under the provisions of Chapters II, IV and IX or issuing a mining permit under Chapter VI of these rules, shall get prepared a mining plan by the person, recognized and registered by the Director, having the qualification and experience namely:-

(i) a degree in Mining Engineering or post-graduate degree in Geology granted by university established or incorporated by or under Central Act or a Provincial Act or a State Act, including any institution recognized by the University Grants Commission established under section 4 of the University Grants Commission Act, 1956; and

(ii) professional experience of 05 years of working in a supervisory capacity in the field of mining after obtaining the degree.

(2) The selected applicant of e-tender/ bidder of e-auction shall submit the mining plan for approval to the Director, who may within thirty days from the date of receipt of mining plan approve, modify or reject it positively.

(3) The mining plan once approved shall be valid for entire duration of the mining lease/license or for five years whichever is earlier. If the lease period is more than five years then in that case the lease holder will resubmit mining plan before the Director, Geology and Mining, Uttar Pradesh.

(4) Mining operations shall in respect of all minor mineral be undertaken in accordance with the mining plan, detailing, yearly development schemes, aspect of reclamation and rehabilitation of mined out areas including progressive mine closure scheme duly approved by the Director: Provided that the lessee shall start the mining operation after obtaining environmental clearance if required under the provisions of Environment Impact Assessment Notification, dated September 14, 2006 issued by the Ministry of Environment, Forest and Calamite change Government of India as amended from time to time : Provided further that an application seeking prior environmental clearance in all cases shall be made by the project proponent or end-user agency as the case may be, in as provided in Paragraph 06 of the Environment Impact Assessment Notification, dated September 14, 2006 as amended from time to time.”

17. He has therefore, submitted that the relevant Rule 34 was identical in both the 43rd and 44th Amendment, Rules.

18. The U.P. Minor Minerals (Concession) (Forty Seven Amendment) Rules 2019 came into force from 13.08.2019. Rule 34, therein reads as follows:-

“34 Mining operations to commence within six months -

(1) The 'Selected Applicant' before the execution of mining lease deed under the provision of chapter II, IV and IX or issuing a mining permit under chapter VI of these rules, shall get prepared a mining plan by the person, recognized and registered by the Director, having the qualification and experience namely:-

(i) a degree in Mining Engineering or post-graduate degree in Geology granted by university established or incorporated by or under Central Act or a Provincial Act or a State Act, including any institution recognized by the University Grants Commission established under section 4 of the University Grants Commission Act, 1956; and

(ii) Professional Experience of 05 years of working in a Supervisory Capacity in the field of mining after obtaining the degree.

(2) The Selected applicant shall, within one month of issuance of letter of intent, submit the mining plan for approval to the Officer authorized by notification in this behalf by the State Government, who may within thirty days from the date of receipt of mining plan approve, modify or reject it positively. The project proponent shall, within one month of approval of mining plan, submit the application for grant of Environment Clearance to the competent authority.

(3) The mining plan once approved shall be valid for entire duration of the mining lease/permit or for five years whichever is earlier. If the lease period is more than five years, then in that case the lease holder will resubmit mining plan before the Officer authorized by notification in this behalf by the State Government.

(4) Mining operations shall in respect of all minor mineral be undertaken in accordance with the mining plan, detailing yearly development schemes, aspect of reclamation and rehabilitation of mined out areas including progressive mine closure scheme duly approved by the Officer authorized by notification in this behalf by the State Government.

Provided that the lessee shall start the mining operation after obtaining environmental clearance if required under the provisions of Environment Impact Assessment Notification, dated September 14, 2006 issued by the Ministry of Environment, Forest and climate change, Government of India as amended from time to time. During the process of grant of Environment clearance, the proponent shall be bound to complete all desired formalities to resolve the objections raised by the competent authority within the required time frame.

Provided further that an application seeking prior environmental clearance in all cases shall be made by the project proponent or end-user agency as the case may be, in as provided in Paragraph 06 of the Environment Impact Assessment Notification, dated September 14, 2006 as Amended from time to time.

(5) The mining lease deed will be executed only after approval of mining plan by the Officer authorized by notification in this behalf by the State Government and within one month from the date of issuance of environment clearance certificate in favour of the proponent. Mining operation shall commence, immediately for the lessee of river bed mineral within 03 (three) months from the date of the execution of the lease deed by the lessee of other minor minerals and the lessee shall thereafter conduct such operations without deliberate intermission in a proper, skillful in work-man like manner.

(6) Financial assurance has to be furnished by every lease holder. The amount of financial assurance shall be Rupees Twenty five thousand for insitu-rock deposit and Rupees Fifteen thousand for sand or morrum or bajari or boulder or any of these in mixed state exclusively found in the river bed mines per acres of the mining lease area put to use for mining and allied activities. However, the minimum amount of financial assurance to be furnished in any of the forms referred to in sub-rule (7) shall be Rupees Two Lacs. For each category of mines be respective of area.”

19. It is submitted that not only are the Rules of 2019 applicable because the Letter of Intent in favour of the petitioner stood cancelled on 28.01.2019, more than six months prior to the enforcement of the Forty Seven Amendment Rules.

20. Learned Standing Counsel has submitted that the impugned order has been passed for violation of Rule 34(5) of the U.P. Minor Minerals (Concession) (Forty Seven Amendment) Rule, 2019 but has not been able to point out from the said Rule, no power of the State Government to either forfeit the security deposit or the first instalment.

21. Upon a consideration of the submissions made and upon a careful scrutiny of the U.P. Minor Minerals (Concession) Rules, 2017 and 2019, we are unable to discern any power of forfeiture.

22. Under the circumstances therefore, the impugned order cannot be sustained and the petition deserves to be allowed.

23. The deposit made by the petitioner in the year 2017 as the Letter of Intent was cancelled on 28.01.2019, the security deposit as also the first instalment of royalty, which had been deposited by the petitioner upon cancellation of the Letter of Intent is liable to be refunded. The respondents instead of refunding this amount have forfeited the same, wrongly and illegally and in the absence of any power to do so.

24. Under the circumstances, the submission of learned counsel for the petitioner, he is entitled to interest on this delayed payment has substance.

Learned counsel for the petitioner has placed reliance upon a judgment of the Apex Court in *Dharmendra Kumar Singh vs. State of U.P.* AIR 2020 SC 5360, especially paragraph 43, therein, wherein in similar circumstances 9% interest is payable.

25. Accordingly, we allow the writ petition and quash the impugned order dated 28.08.2021 and direct the respondents to refund the security deposit and the first instalment of royalty deposited by the petitioner within a period of three weeks from today.

26. This refund shall be accompanied with simple interest at the rate of 9%, calculated from the date of cancellation of the Letter of Intent till actual payment is made.

Order Date :- 29.05.2024

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