

(2015) 04 MP CK 0090

Madhya Pradesh High Court (Indore Bench)

Case No: Writ Petition No. 2620 of 2014

Hemant Singh

APPELLANT

Vs

The State of Madhya Pradesh
and Others

RESPONDENT

Date of Decision: April 24, 2015

Acts Referred:

- Constitution of India, 1950 - Article 21, 226, 48A, 51A(g)
- Mines and Minerals (Development and Regulation) Act, 1957 - Section 15

Citation: AIR 2015 MP 95

Hon'ble Judges: P.K. Jaiswal, J; Alok Verma, J

Bench: Division Bench

Advocate: Amit Singh Sisodia, for the Appellant; Mini Ravindran, Deputy Government Advocate, Advocates for the Respondent

Final Decision: Partly Allowed

Judgement

@JUDGMENTTAG-ORDER

P.K. Jaiswal, J.

1. By this writ petition under Article 226 of the Constitution of India, the petitioner is challenging the orders/notices dated 13.01.2014 and 17.09.2013 passed by the Collector (Mining), District Ujjain (respondent No. 2), thereby intimating about the information of the lease-deed to be cancelled along with the confiscation of the deposited amount, in failure of submitting the environmental approval from State Environment impact Assessment Authority (SEIAA).

2. Brief facts of the case are that a "trade quarry" means a quarry for which the right to work is auctioned by the Collector was granted to the petitioner for a period of two years with effect from 01.04.2012 to 31.03.2014 over an area of 4.00 hectare of village Hapakheda of District Ujjain for lifting of sand, because his highest bid of Rs.

11,25,000/- per annum was accepted by the Granting Authority.

3. The power to control the trade quarries mentioned in Rule 7(1) of MP Minor Mineral Rules, 1996 shall vest with the Collector. Chapter VI deals with grant of trade quarries.

4. It is submitted that on 17.09.2013 notice (Annexure P/1) was issued by the respondent thereby intimating about the information of trade quarry to be cancelled along with confiscation of the deposited amount, in failure of granting the environmental approval from State Environment Impact Assessment Authority (SEIAA).

5. The stand of the respondents that after allotment of the trade quarry to the petitioner, Hon"ble Supreme Court was pleased to issue directives in the matter of Deepak Kumar v. State of Haryana and others in SLP (Civil) No. 19628-19629 of 2009 dated 27.02.2012 and as per the directives of the Hon"ble Supreme Court, the leases of the minor mineral, including the renewal for an area of less than 5 hectares, be granted by the State/Union Territories only after getting environmental clearance from the Ministry of Environmental and Forest, Government of India, New Delhi. In due compliance of the directives issued by the Hon"ble Supreme Court, instructions are issued by the Government of Madhya Pradesh, Mineral Resources Department vide communication dated 24.04.2012 (Annexure R/2). Paragraphs No. 16 to 19 of the order dated 27.02.2012 of the Hon"ble Supreme Court are relevant, which reads, as under:-

"16. We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational and sustainable use of natural resource base and also the bio-assessment protocol. Sand mining, it may be noted, may have an adverse effect on biodiversity as loss of habitat caused by sand mining will effect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued 26 various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Article 48A, Article 51A(g) read with Article 21 of the Constitution.

17. The State of Haryana and various other States have not so far implemented the above recommendations of the MoEF or the guidelines issued by the Ministry of Mines before issuing auction notices granting short term permits by way of auction of minor mineral boulders, gravel, sand etc., in the river beds and elsewhere of less than 5 hectares. We, therefore, direct to all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March 2010 and the model guidelines framed by the Ministry of Mines, within a period of six months from today and submit their compliance reports.

18. Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules 2010 at the earliest. State Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its Report of March 2010 and model guidelines framed by the Ministry of Mines, Govt. of India. Communicate the copy of this order to the MoEF, Secretary, Ministry of Mines, New Delhi, Ministry of Water Resources, Central Government Water Authority, the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the concerned Departments.

19. We, in the meanwhile, order that leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from the MoEF."

6. Learned counsel for the petitioner submits that he, in pursuance to the statutory notice of auction issued by the Collector, in statutory Form XV under Rule 36(2) of the Madhya Pradesh Minor Mineral Rules, 1996, participated in the auction and he being the highest bidder, his bid was accepted on 07.04.2012 and in the auction notice, at the relevant point of time, no such provision was there, and therefore, his security deposit amount be refunded. Clause 16 of the auction notice (Annexure P/3) is relevant, which reads, as under:-

7. Chapter VI of Madhya Pradesh Minor Mineral Rules, 1996 deals with grant of trade quarries. As per Sub-Rule (2) of Rule 36 of the Rules of 1996, notice of auction shall be published in Form XV at least 15 days before the auction at the notice board or any conspicuous place by way of fixing the copy of such notice thereon in the office of the concerned Gram Panchayat, Collectorate and the village where the quarries are situated. As per Sub-Rule (3) of Rule 36 of the Rules of 1996, every bidder shall execute an agreement in Form XVI before he participate in the auction.

8. In compliance to the order passed by the Apex Court in the case of Deepak Kumar v. State of Haryana and others (supra), instructions are issued by the respondent No. 1, Mineral Resources Department vide communication dated 24.04.2012 (Annexure R/2), directing the petitioner to submit sanction from SEIAA. The petitioner vide letter dated 08.01.2013 (Annexure R/3) very categorically admitted that he had information since 03.05.2012 about the seeking permission from SEIAA and had sought time for obtaining the requisition sanction from the SEIAA. In respect of payment of installments, he requested for deferment of payment of installments till February, 2013. Paragraphs of the letter dated 08.01.2013 (Annexure R/3) are relevant which reads, as under:-

9. As the petitioner did not fulfill the requisite permission from the SEIAA, as directed by the Hon"ble Supreme Court, nor in spite of number of assurances given by the petitioner, he deposited the installments, as is evident from letter dated

08.01.2013.

10. Learned counsel for the petitioner submits that at the time of auction, no sanction/permission from SEIAA was required, otherwise, he could not have participated in the auction. His next submission is that for the year 2013-14, the Ministry of Mineral Resources Department, Government of Madhya Pradesh issued directions and directed all the Collectors of the State of Madhya Pradesh, that in those auction where possession of the quarry has not been delivered for want of necessary sanction/permission from SEIAA, their earnest money/security deposit/installments be refunded to them. He submitted that similar facility has to be provided to the petitioner and thus, the action of forfeiture of security deposit is illegal and prays for quashment of the same.

11. Per contra, learned Deputy Government Advocate submits that circular dated 09.02.2015 issued by respondent No. 1 will not be applicable in the present facts and circumstances of the case, because in the case in hand, an agreement was executed on 11.04.2012 and thereafter, possession of the quarry was handed over the petitioner, and thus, he will not get any benefit from the aforesaid circular. On merits, she submits that the petitioner for the first time on 03.05.2012 came to know that permission/sanction from SEIAA is a must, but in spite of number of opportunities granted to the petitioner, he failed to obtain environmental approval from SEIAA nor deposited the installments, and thus, the action of the respondents is just and proper and prays for dismissal of the writ petition.

12. It is not in dispute that at the time of auction, no such condition was there. After execution of the agreement of trade quarry, for the first time, instructions were issued to get environmental permission/sanction from the SEIAA on 24.04.2012. As per Mines and Mineral (Development and Regulation) Act, 1957 and M.P. Minor Mineral Rules, 1996, there is no provision to obtain environmental permission/sanction from the SEIAA. The petitioner, as per the terms and conditions of the auction, participated in the auction and submitted his bid, and thus, he cannot be forced to obtain environmental permission from SEIAA nor for want of environmental permission, his security deposit can be forfeited. It is the duty of the State Government also to provide all assistance to the petitioner in obtaining necessary environmental permission/approval from the SEIAA. No document or any material has been filed to prove that the State Government, immediately after coming to know of the directives of the Supreme Court, co-operated the petitioner in obtaining environmental sanction/approval from SEIAA.

13. We do not find any provision in the Madhya Pradesh Minor Mineral Rules, 1996, directing the trade quarry holder to obtain environmental approval/sanction from SEIAA and in absence of approval, his security deposit shall be forfeited. When in this case, grant of trade quarry was envisaged under definite statutory rules made in exercise of powers conferred under Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, the State Government was under legal

obligation to act, in accordance with these Rules. It could not exercise a power in the matter of grant of trade quarry unknown to these Rules. The State Government could not impose terms and conditions, according to its own whims, ignoring or disregarding the statutory rules, which are binding on it. There is no provision under the Act and Rules that if the petitioner fails to submit environmental approval/sanction from SEIAA, his security deposit or earnest money will be forfeited. It is not unknown to the respondents that they have granted trade quarry in favour of the petitioner. It is the duty of the State Government to obtain all the environmental clearance from the SEIAA in favour of the petitioner, in terms of the order passed by the Hon"ble Supreme Court, which they have failed to do so and blaming the whole responsibility to the petitioner. Even otherwise, for the year 2013-14, a circular was issued on 09.02.2015, directing all the Collectors of the State of Madhya Pradesh to refund the amount of earnest money/security deposit/installments for want of environmental clearance from SEIAA.

14. Considering the aforesaid, we are of the view that the impugned action of the Collector (Mining), Ujjain (respondent No. 2) is illegal. Accordingly, orders dated 17.09.2013 (Annexure P/1) and 13.01.2014 (Annexure P/2) are quashed. If it is found that for want of environmental approval/sanction from SEIAA, he has not carried out any mining operation over the trade quarry in question; and if it is found that during the trade quarry period, he had carried out mining operation and lifted sand, then he is not entitled for relief in respect of payment of installments, as per terms and conditions of the trade quarry agreement.

15. With the aforesaid, the writ petition is allowed in part, as indicated herein above, but without any order as to costs.