

(A.F.R.)

Neutral Citation No. - 2024:AHC:98024-DB

Reserved on 19.03.2024

Delivered on 29.05.2024

**Court No. - 3**

**Case :-** WRIT - C No. - 21022 of 2021

**Petitioner :-** M/S Pragyason Constructions Private Limited

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Sr. Advocate, Udayan Nandan

**Counsel for Respondent :-** C.S.C.

**Hon'ble Anjani Kumar Mishra, J.**

**Hon'ble Jayant Banerji, J.**

1. Heard Shri Udayan Nandan, for the petitioner and learned Standing Counsel for the state respondents.
2. The petitioner by means of this writ petition seeks a writ of certiorari for quashing the order dated 16.07.2020 passed by the District Magistrate, respondent no. 2 (annexure 9 to the writ petition) and the order dated 20.11.2020 (annexure 11 to the writ petition) passed by the Secretary, Mines and Minerals, U.P.
3. By the order dated 16.07.2020, the District Magistrate has rejected petitioner's application for refund of earnest money deposited by him for participating in an e-auction for grant of a lease in District Hamirpur for which an advertisement had been issued on 03.01.2020.
4. The order of the District Magistrate has been affirmed in revision by the first respondent, hence, this petition.
5. The facts of the case briefly stated are that an advertisement was issued on 03.01.2020 inviting bids for grant of mining leases in District Hamirpur. The petitioner submitted its bid along with earnest money of Rs. 90 lakhs on 24.04.2020. The bid of the petitioner, being the highest, was accepted. On 05.03.2020, a letter was issued calling upon the petitioner to furnish relevant documents so that a letter of intent could be issued in his favour.
6. In the meantime, the petitioner on 07.03.2020 participated in the bidding for grant of leases in District-Fatehpur which was, however, cancelled.
7. Since, the letter dated 05.03.2020 could not be complied with, allegedly on account of the prevailing pandemic, yet another reminder was issued to the petitioner on 16.05.2020 requiring submission of the relevant documents within three days.

8. It appears that in the meantime, on 14.05.2020, yet another advertisement was published, inviting tenders for grant of mining leases in District Fatehpur. The petitioner participated in the bidding and was issued a letter of intent on 18.06.2020.

9. After this letter of intent was issued, the petitioner on 19.06.2020 represented to the District Magistrate, Hamirpur for refund of the earnest money of 90 lakhs deposited by him for participation in the bidding held consequent to the advertisement dated 3.01.2020. It is this application which has been rejected holding that the petitioner deliberately failed to furnish the required documents within three days after acceptance of his bid as was provided in the tender. This has caused huge loss of revenue to the State. Therefore, petitioner is not entitled to a refund. Accordingly, the earnest money of 90 lakhs deposited by the petitioner was forfeited in favour of the State. Thus order has been affirmed by the revisional authority.

10. The submission of learned counsel for the the petitioner is that the application dated 19.06.2020 seeking refund of earnest money was in accordance with Rule 10(3) of the U.P. Minor Minerals (Concessions) Rules, 1963, as amended by the 47<sup>th</sup> Amendment Rules, 19.10.2019, which provided that no person in the State of U.P. can be granted leases in excess of an area of 50 hectares. The Government Order dated 19.10.2019 provides the modalities for refund of earnest money in cases where more than two mining leases have been granted in favour of one entity or the aggregate of leases granted is in excess of 50 hectares.

11. It is additionally reiterated that Rule 10(3) of 47<sup>th</sup> Amendment Rules limits the maximum number of leases that can be granted in favour of one entity to two and the other condition is that the aggregate area of these two leases cannot exceed 50 hectares.

12. Since, the petitioner had been granted two leases in District-Fatehpur consequent to the advertisement issued on 14.05.2020, the petitioner informed the authorities opting to operate two leases granted in Fatehpur which option was with the petitioner.

13. This amended provision has not been taken into consideration by the respondent while passing the impugned orders. The earnest money would be forfeited, if at all, if the information of grant of more than two leases having an aggregate area in excess of 50 hectares had not been communicated by the petitioner and was discovered by the authorities on their own. Such is not the position in the case at hand. The petitioner intimated the respondent no.1 immediately on obtaining two leases in District-Fatehpur and therefore, exercised his option of not going ahead with his bid offered for the mining lease in District-Hamirpur.

14. Learned Standing Counsel has opposed the writ petition and has reiterated what has been stated in the impugned order especially that the petitioner was required to submit documents prior to grant of letter of intent in his favour within three days of the acceptance of his bid. This specific condition mentioned in the tender was not complied with by the petitioner despite issuance of the reminders on 05.03.2020 and 16.05.2020. This inaction of the petitioner resulted in huge loss to the exchequer and therefore, the earnest money deposited by the petitioner has been rightly forfeited as lease could not be operated by any other person also.

15. Learned Standing Counsel has also referred to GO No. 1875/86-2017-57 (सामान्य)/2017 which is dated 14.08.2017. This very same GO also find mention in the order passed by the revisional authority. He has specifically referred the Clause 17 of this Notification which reads as follows:-

“17- ई- निलामी समाप्त होने के पश्चात 03 कार्य दिवस के अन्दर सफल बोलीदाता को अपने मूल अभिलेख का सत्यापन उस जनपद के जिलाधिकारी जहाँ क्षेत्र स्थित है, के द्वारा अथवा निदेशक, भूतत्व एवं खनिकर्म, निदेशालय के द्वारा कराना होगा। निदेशक द्वारा मूल अभिलेख की सत्यापन की स्थिति में अभिलेख सत्यापन की आख्या ई-मेल के माध्यम से संबंधित जिलाधिकारी को प्रेषित की जायेगी। अभिलेख सत्यापन के पश्चात ही जिलाधिकारी द्वारा लेटर आफ इन्टेंट जारी किया जायेगा। सत्यापन में यदि कोई अभिलेख अथवा प्रमाण पत्र कूटरचित, असत्य अथवा गलत पाया जाता है तो लेटर आफ इन्टेंट जारी नहीं किया जायेगा तथा बयाने की धनराशि (अर्नेस्ट मनी) जब्त कर ली जायेगी।”

16. He has also referred to Clause 19 of the tender notice dated 03.01.2020 which reads as follows:-

"विज्ञप्ति की शर्त संख्या-19 में उल्लेख किया गया है कि- ई- नीलामी समाप्त होने के पश्चात 03 कार्य दिवस के अन्दर सफल बोलीदाता को अपने मूल अभिलेख का सत्यापन उस जनपद के जिलाधिकारी, जहाँ क्षेत्र स्थित है, के द्वारा अथवा निदेशक, भूतत्व एवं खनिकर्म निदेशालय के द्वारा कराना होगा। निदेशक, द्वारा मूल अभिलेख के सत्यापन की स्थिति में अभिलेख-सत्यापन की आख्या ई-मेल के माध्यम से सम्बन्धित जिलाधिकारी को प्रेषित की जायेगी। अभिलेख-सत्यापन के पश्चात ही जिलाधिकारी द्वारा आशय पत्र (लेटर आफ इन्टेंट) जारी किया जायेगा। सत्यापन में यदि कोई अभिलेख अथवा प्रमाण पत्र कूटरचित, असत्य अथवा गलत पाया जाता है तो लेटर आफ इन्टेंट जारी नहीं किया जायेगा तथा बयाने की धनराशि (अर्नेस्ट मनी) जब्त कर ली जायेगी।

आप द्वारा शासनादेश दिनांक- 09.10.2019 में दिये गये निर्देशों एवं विज्ञप्ति दिनांक - 03.01.2020 में दी गयी शर्तों के अनुसार अभिलेख प्रस्तुत नहीं किया गया है, जिस कारण आपके प्रकरण में अग्रेतर कार्यवाही किया जाना सम्भव नहीं है।”

17. In rejoinder, the submission of learned counsel for the petitioner is that Clause 17 of the GO dated 14.08.2017, relied upon by learned Standing Counsel, does not empower the respondents to forfeit the earnest money deposited by the petitioner. Forfeiture of earnest money under the this provision is provided only in case the documents or certificates submitted by a person are found forged, fabricated or false. Additionally, no letter of intent would be issued in favour of such person. This condition does not apply because it is the admitted case of the respondents that no documents or certificates were ever furnished by the petitioner.

18. It is next submitted that in any case, the condition that relevant documents are to be submitted by the person whose bid is found highest within three days after such acceptance does not provide any penal clause for its non-compliance. The provision is, therefore, merely directory and not mandatory. In support of this contention, learned counsel for the petitioner has placed reliance upon the decision of the Apex Court in State of *Bihar and others v. Bihar Rajya Bhumi Vikas Bank Samiti*, (2018) 9 SCC 472 wherein it has been held that any requirement under a statute in the absence of a penal clause or provision for its non-compliance, the provision is deemed to be directory and not mandatory. Therefore, also the earnest money deposited by the petitioner could not be forfeited especially in the absence of any quantification of loss suffered by the State on account of petitioner not having furnished relevant documents within three days from acceptance of this bid.

19. We have considered the submissions made by learned counsel for the parties. From the narration of the facts above and submission made by learned counsel for the parties, the point which arises for consideration in the writ petition is whether the respondents were empowered to order forfeiture of the earnest money deposited by the petitioner in favour of the State.

20. The State has relied upon the GO No GO No. 1875/86-2017-57 (सामान्य)/2017 which is dated 14.08.2017, relevant part whereof has already been quoted hereinabove.

21. We are in agreement with the submission of learned counsel for the petitioner that forfeiture of earnest money could be ordered only when, upon the verification, any document or certificate filed by an individual was found false, fabricated or incorrect.

22. There does not appear to be any penal consequence provided for non-compliance of the earlier part of this provision which requires the highest bidder to submit relevant documents within a period of three days from acceptance of his bid. Therefore, in view of the judgment relied upon by the learned counsel for the petitioner, the provision has to be held to be directory and not mandatory. This view is further supported by the fact that in case this provision was mandatory, non-compliance would have resulted in adverse consequences having visited the petitioner on the 4<sup>th</sup> day itself. The authorities, on the contrary, have issued at least two reminders to the petitioner on 05.03.2020 and 16.05.2020.

23. Under the circumstances, reliance upon GO No. 1875/86-2017-57 (सामान्य)/2017 which is dated 14.08.2017 for forfeiture of his earnest money deposited by the petitioner is unsustainable.

24. In the context of the arguments, it is necessary to refer to GO No. 2168/86-2019-57(सामान्य)/2017, dated 09.10.2017, copy whereof has been filed as annexure 8 to this writ petition, which states that it has been issued to amend the notification dated 14.08.2017, No. 1875/86-2017-57(सामान्य)/2017TC1 on account of the amendments incorporated in the UP Minor Minerals (Concessions) (47<sup>th</sup> Amendment) Rules 2019. The relevant portion of this notification for the purposes of this writ petition whereby clause 13 of the Government Order dated 14.08.2017 was amended, is quoted below:-

“13(9)- अधिकतम दो खनन पट्टे या 50 हे० से अधिक के क्षेत्र को, उ० प्र० राज्य में किसी व्यक्ति/फर्म कम्पनी के पक्ष में स्वीकृत नहीं किया जायेगा। यदि किन्हीं परिस्थितियों में एक व्यक्ति/ फर्म/ कम्पनी द्वारा अपने पक्ष में दो खनन पट्टे या 50 हे० से अधिक के खनन पट्टे स्वीकृत करा लिया जाता है, तो अन्त में स्वीकृत खनन पट्टे निरस्त कर पट्टा अन्तर्गत जमा सम्पूर्ण धनराशि जब्त कर ली जायेगी तथा केवल प्रारम्भ के दो क्षेत्र अथवा 50 हे० के खनन पट्टे ही अनुमन्य होंगे। परन्तु यदि आवेदक स्वयं अपने पक्ष में दो खनन पट्टे या 50 हे० से अधिक के खनन पट्टे हेतु जारी लेटर ऑफ इटेंट की सूचना देता है, तो उक्त सीमा के अन्तर्गत कोई भी खनन पट्टा क्षेत्र के चयन का उसे अधिकार होगा तथा शेष क्षेत्रों की जमा धनराशि पुष्टि के उपरान्त यथावत वापस कर दी जायेगी।”

25. A bare perusal of the provision cited above reveals that it provides that a person in the State of U.P. cannot be granted more than two mining leases for an aggregate area in excess of 50 hectares. It further provides if in a case this condition stands violated, the last lease shall stand cancelled and the earnest money deposited for the same will also stand forfeited and only the first two leases which are not for more than 50 hectares shall remain approved. This provision is subject to proviso that if information is provided by the applicant that he has been issued two letters of intent for two or more mining leases or that their areas are in excess of 50 hectares, he will have right to choose any of the mining lease areas and the amount deposited for the remaining areas would be returned after verification.

26. The contention of learned counsel for the petitioner that the intimation of two choices of the petitioner getting more than two leases whose an area of aggregate was intimated to the authorities by the petitioner and therefore, he had, under the relevant provision, option to retain any of the two leased areas for which letter of intent had been issued in his favour. Under the circumstances, the respondents had no option but to refund the earnest money deposited by the petitioner, regarding the mining area in District-Hamirpur.

27. In view of the forgoing discussion, this Court is constrained to hold that the forfeiture of the petitioner's security deposit of Rs. 90 lakhs is without any authority of law. Accordingly, this petition is hereby allowed and the impugned orders 16.07.2020 and 20.11.2020 are hereby quashed.

28. The respondents are directed to refund the security deposit of Rs. 90 lakhs to the petitioner expeditiously, positively within a period of four weeks from the date a certified copy of this order is filed before them.

**Order Date :- 29.5.2024**

Aditya Tripathi