

**SUPREME COURT OF INDIA**

Sunder Marketing Associates

Vs.

State of Haryana

SLP(Civil)No.19166 of 2017

(Madan B.Lokur and Deepak Gupta,JJ.,)

11.08.2017

**JUDGMENT**

**Madan B. Lokur,J.,**

1. This is a classic case of someone (the petitioner in this case) apparently having influence in high places, using that influence to violate the law and get a benefit that would ordinarily not be granted to anybody else. We cannot say with any degree of certainty how high is the reach of the petitioner but it is quite apparent from the facts of the case, that the reach is pretty high.

2. The only real issue before us arising out of the judgment and order dated 1st June, 2017 passed by the High Court of Punjab and Haryana in a writ petition filed by the petitioner is whether the petitioner should be allowed to surrender the mining lease granted to it and if so, under what conditions, if any.

3. The facts of the case reveal that a joint venture (for short JV) was formed between the petitioner and Karamjeet Singh and Co. Ltd. (for short KJSL). The JV was formed on or about 18th September, 2012 but the terms of the arrangement or partnership are not available on the record of the case.

4. Be that as it may, it transpires that on 30th November, 2013 the Mines and Geology Department of the Government of Haryana issued an auction notice for the grant of several mining leases. One of the quarries sought to be auctioned for mining purposes was the Dadam quarry in District Bhiwani from which stone could be extracted. The reserve price (or dead rent or royalty) mentioned for this quarry in the auction notice was Rs. 6.25 crores per annum and the lease period was for 10 years. The JV of the petitioner and KJSL gave the highest bid for this quarry in the auction conducted on 30th December, 2013. Some of the terms and conditions of the auction need mention.

5. Condition No. 4 provided that the period of the lease shall commence with effect from the date of environmental clearance by the competent authority as required under the EIA

notification dated 14th September, 2006 issued by the Ministry of Environment and Forests of the Government of India as amended from time to time or on expiry of a period of 12 months from the date of acceptance of the highest bid or the issuance of a letter of intent, whichever is earlier.

6. Condition No. 7 provided that all prospective bidders were expected and presumed to have surveyed the areas to make their own assessment for the potential of the areas for which bids are to be offered.

7. Condition No. 19 provided that after acceptance of the highest bid by the State Government and on the issuance of a letter of intent, its holder shall execute an agreement in form ML-1 appended to the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 (for short the Rules) within a period of 90 days of the grant of a letter of intent.

8. Condition No. 36 provided that no transfer of the lease shall be permissible for the first 5 years of the grant. However, on submission of an application, in accordance with the provisions of the Rules and after satisfying itself, the State Government may allow inducting other partners or shareholders to the extent of 49% of the total shareholding of the original lease holder. It may be mentioned that the petitioner had a 49% share while KJSL had a 51% share in the JV.

9. As mentioned above, the auction was held on 30th December, 2013 and the JV was the highest bidder for the Dadam quarry in District Bhiwani with a bid of Rs. 115 crores per annum towards dead rent or royalty whichever is higher. At this stage, it may also be mentioned that the admitted position is that the JV was qualified to participate in the auction, but the petitioner by itself was not qualified to participate in the auction. The relevance of this will become apparent at a later stage.

10. As required by Rule 55(3)(iii) of the Rules, the JV deposited Rs. 28.75 crores with the State Government towards 25% of the annual bid amount as security deposit.

11. On 3rd January, 2014 the JV received a letter of intent from the Director, Department of Mines and Geology of the Government of Haryana to the effect that its bid was the highest for the Dadam quarry and had been accepted by the State Government. The letter of intent laid down certain terms and conditions which were not at variance with the terms mentioned in the auction notice. In any event, there is no dispute in this regard.

12. Surprisingly, a short while after having received the letter of intent, the JV filed a writ petition in the High Court of Punjab and Haryana seeking an order quashing the grant of a mining lease in favour of the Haryana State Industrial and Infrastructure Development Corporation (a public sector undertaking under the control and management of the State of Haryana - forshort HSIIDC). The grievance of the JV was that while it had given a bid of Rs. 115 crores per annum as the dead rent, the HSIIDC had been granted a mining lease in a different area at a negligible amount. According to the JV this was not disclosed to it and the

grant of the lease in favour of HSIIDC and the failure of the State Government to disclose this to the JV had seriously prejudiced their commercial interests since it would give HSIIDC an unfair advantage because of the low dead rent payable by it. The writ petition came to be dismissed by the High Court on 4th March, 2015.

13. An alternative submission was made by the JV in the writ petition to the effect that the JV desired the cancellation of its contract in view of the grant of a mining lease to HSIIDC. In this regard, it was stated by learned counsel appearing on behalf of the Government of Haryana that it would refund the amount paid by the JV and that no penalty would be imposed if it wanted the contract to be cancelled and if the proposal was accepted by the State Government. The High Court granted time to the JV to exercise the option to either continue with the contract or rescind it by 30 th April, 2015. It was made clear that if the JV chooses to rescind the contract, the State Government shall refund all the amounts paid within 8 weeks of the demand. The JV was entitled to take appropriate proceedings for recovery of compensation or damages on its own merits.

14. Feeling aggrieved, the JV preferred a petition for special leave to appeal in this Court and on 1st May, 2015 the following order was passed:

“Dr. A.M.Singhvi, learned senior counsel, on instructions, would submit that the petitioner(s) is/are not carrying on with the mining activities. We take on record the statement so made by learned senior counsel. The Division Bench of the High Court of Punjab & Haryana while dismissing the writ petition filed by the petitioners had granted time to the petitioners till 30.04.2015 to exercise their option either to continue with the contract or to rescind the same. The time has expired and therefore, the learned senior counsel requests us to grant ten days more to exercise the aforesaid option. In our opinion, if such permission is granted, it may not cause any prejudice to either of the parties. Therefore, we extend the time that was granted to the petitioners for exercising its option till 10.05.2015.

Accordingly, the special leave petitions are disposed of.”

15. On 7th May, 2015 the State Government was informed of its decision by KJSL to rescind the contract and it also sought a refund of the deposit of Rs. 28.75 crores with interest thereon. On the other hand on 14th May, 2015 the petitioner wrote to the Chief Minister of the State of Haryana to the effect that it would have no objection if the other partner in the JV that is KJSL surrenders its share. In such an eventuality, the State Government may consider the transfer of 51% share of KJSL in favour of the petitioner or permit any other mining agency to replace KJSL. It is not clear why the petitioner chose to write to the Chief Minister of the State but the fact is that it did.

16. Acting on the communication sent by the petitioner as well as the decision of KJSL to rescind the contract, a detailed note was prepared by the concerned Mining Engineer on 25th May, 2015. The note drew attention to the anomalous situation where one partner in the JV was desirous of rescinding the contract while the other partner was desirous of continuing

with the contract. The note also drew attention to Condition No. 36 of the auction notice and recorded that the request of one partner in the JV to rescind the contract does not qualify to be accepted as such but at the same time it might be better to allow KJSL to withdraw its share. Accordingly, it was proposed that the State Government may consider allowing the petitioner to continue with the lease and allowing KJSL to surrender its share. It was also proposed that the surrendered 51% share of KJSL could either be allowed retention by the petitioner or the petitioner may induct a new partner. It was suggested that before a final decision is taken, it would be appropriate to take the opinion of the Advocate General of the State of Haryana. This proposal was accepted by the next superior authority and eventually the opinion of the Advocate General of the State of Haryana was obtained.

17. On the basis of the opinion given as well as on the basis of official notings, it was proposed by the concerned Mining Engineer on 10th June, 2015 to allow the transfer of the entire share of KJSL in favour of the petitioner subject to certain conditions. This was approved by the superior authorities including the Chief Minister of the State of Haryana.

18. At this stage, it is useful to recall that the petitioner by itself was not qualified to participate in the auction and this is the admitted position. Only the JV was qualified to bid in the auction. Therefore, it is not clear how and why the petitioner alone was allowed to take over the share of KJSL and be the sole beneficiary of the dissolution of the JV and to acquire the mining rights when it was originally not even qualified to participate in the auction.

19. Be that as it may, on 17th June, 2015 the Director General of the Mines and Geology Department of the Government of Haryana wrote to both the partners in the JV that the mining lease would continue with the petitioner and that KJSL could walk out of the contract. It was also stated that to avoid any complication it had been decided that the contract may be transferred or changed in the name of the petitioner subject to certain conditions. The decision to transfer the contract in favour of the petitioner was challenged by some persons by filing Writ Petition No. 9419 of 2016 in the High Court the writ petition having been filed on 22nd April, 2016. We shall refer to this a little later.

20. Subsequent to the above decision taken and communicated on 17<sup>th</sup> June, 2015 the Ministry of Environment, Forests and Climate Change in the Government of India issued an Environment Clearance to the JV on 3<sup>rd</sup> July, 2015 with a proposed production capacity of 15.0 million tonnes per annum (RoM) of stone. It is quite clear that the Government of India was not kept informed of the developments that had taken place including the decision of the State Government to hand over the quarry to the petitioner alone.

21. On the basis of the decisions taken as well as the Environment Clearance, the State of Haryana granted a mining lease to the petitioner on 5th August, 2015 (actually signed on 19th August, 2015). The dead rent was fixed at Rs. 115 crores per annum or royalty whichever is higher. There were certain other terms and conditions of the mining lease but we are not presently concerned with them.

22. Thereafter on the application of the petitioner, the Ministry of Environment, Forests and Climate Change of the Government of India transferred the Environment Clearance granted to the JV in favour of the petitioner on 28th October, 2015. On the basis of the mining lease granted to the petitioner as well as the Environment Clearance, the petitioner started mining operations on 1st November, 2015 and began paying the dead rent or royalty from that date onwards.

23. As mentioned above, the permission granted to the petitioner on 17<sup>th</sup> June, 2015 by the Director General of the Mines and Geology Department of the Government of Haryana was challenged by some persons by filing Writ Petition No. 9419 of 2016. These persons had, prior to filing the writ petition, made a query under the Right to Information Act on 12<sup>th</sup> of January, 2016 with regard to the transfer of the contract in favour of the petitioner. A response was received by these persons on 10th March, 2016 from the Government of Haryana to the effect that the file dealing with the subject was not available! The High Court has mentioned in its judgment and order that till the date of delivery of the judgment and order, the file was not made available even to the High Court. This is surprising indeed.

24. Be that as it may, perhaps as a result of all these developments, a notice was issued to the petitioner on 9<sup>th</sup> August, 2016 by the Director General of the Mines and Geology Department of the Government of Haryana to show cause why the permission granted to transfer the mining lease or the share of 51% of KJSL in favour of the petitioner as communicated on 17th June, 2015 should not be withdrawn with immediate effect.

25. The show cause notice was challenged by the petitioner by filing Writ Petition No. 16735 of 2016 in the High Court and that was disposed of on 27th August, 2016. It was directed by the High Court that the petitioner may file a supplementary response to the show cause notice (it had already filed a response on 23rd August, 2016). The persons who had filed Writ Petition No. 9419 of 2016 were also given an option to be heard by the Director General of the Mines and Geology Department before a final decision is taken on the show cause notice.

26. The petitioner then filed a supplementary response to the show cause notice on 2nd September, 2016 and since the Writ Petition No. 9419 of 2016 had become more or less infructuous, it was disposed of on 14th September, 2016.

27. On 29th September, 2016 a detailed order was passed by the Director General of the Mines and Geology Department of the Government of Haryana withdrawing the permission granted to transfer the mining lease or the share of 51% of KJSL in favour of the petitioner as communicated on 17th June, 2015. Consequently, the lease deed executed on 5th August, 2015 with the petitioner on the basis of the letter dated 17<sup>th</sup> June, 2015 was declared void being not maintainable. However, it was made clear that any action taken by the petitioner and the State Government in terms of the letter dated 17th June, 2015 and in terms of the lease deed shall remain valid and shall not have any adverse implication for any of the parties. It was also directed that the order dated 29th September, 2016 will not be given

effect to for a period of two weeks after which the petitioner will immediately stop its mining operations.

28. Feeling aggrieved by the order of 29th September, 2016 the petitioner filed Writ Petition No. 20986 of 2016 in the High Court which came to be dismissed by the impugned judgment and order dated 1st June, 2017.

29. At the outset, we must mention that the High Court dealt with every submission raised by learned counsel for the petitioner in a lucid and well reasoned judgment. We really have nothing to add to the decision rendered by the High Court. Perhaps that is the reason why detailed submissions on the merits of the case were not made before us and the only issue agitated was the desire of the petitioner to walk out of the contract without having to pay any penalty or suffer any other adverse consequence. It was generally submitted by learned counsel for the petitioner that the cancellation of the mining lease granted to the petitioner was illegal but that contention was not pressed beyond a point particularly because it was very clear that the petitioner alone or by itself was not a qualified bidder and that it was the JV between the petitioner and KJSL that was qualified to bid at the auction. That being the position, it was appreciated that under no circumstance could the letter of intent or the mining lease have been transferred from the JV in favour of the petitioner. It is this totally illegal transfer carried out within 5 years of the execution of the mining lease that has prompted us to believe that the petitioner could exercise influence in high places.

30. The surrender of a mining contract is dealt with in Rule 25 and Rule 41(v) of the Rules. These rules read as follows:-

“25. The Government may accept the contractor’s request for surrender of a contract or part thereof in cases where it is established that it has not been found feasible to operate the contract grant for whatsoever reasons subject to the condition that the contractor:-

(i) has been regular in furnishing the production returns as required in terms of the contract agreement;

(ii) has been taking the requisite steps for the progressive mine closure plan as per the conditions of the contract grant;

(iii) is not in default of payment of any dues of the Government as on the date of making such application and undertakes to pay all such dues till the date of expiry of the notice period either in cash in advance or by way of adjustment of the security or both; Provided that in case the contractor makes an application for surrender of part of the contract area, it shall not result in any prorated reduction of the contract money and the rate of contract amount payable and applicable for the entire area at the time of making such application shall remain intact.”

“41 (v) The lessee may surrender the lease at any time by giving not less than three calendar months notice in writing to the lessor after paying all outstanding dues to the lessor.”

31. In view of the peculiar facts of the case and the offer of surrender or rescission of the contract having been accepted by the State Government, we would not like to place any hurdle in the ‘agreement’ but the provisions of Rule 25 and Rule 41(v) of the Rules must be complied with by the petitioner and the State Government.

32. Learned counsel for the petitioner had made a prayer to the effect that the petitioner may be permitted to continue its mining operations till 30th November, 2017 so that it could wind up its activities and put its mine closure plan into operation. We had passed orders on 31st July, 2017 and 3rd August, 2017 permitting the petitioner to continue its mining activities till judgment is delivered.

33. Keeping in view the prayer made:

“(i) We permit the petitioner to continue its mining operations till 30<sup>th</sup> November, 2017 in accordance with the Mining Plan. On or before that date, it shall ensure implementation of the mine closure plan to the satisfaction of the concerned authorities in the State of Haryana.

(ii) The petitioner will be under an obligation to continue paying the dead rent or royalty whichever is higher till 30th November, 2017 regardless of whether it ceases its mining operations before that date or not.

(iii) The petitioner shall ensure that all the dues (including wages etc.) of all the persons (including labour) employed in the mining operations in terms of Rule 56(10) of the Rules are paid to the satisfaction of the concerned authorities in the State of Haryana. To ensure that the employees and labour (casual or otherwise) are not left in the lurch, the petitioner is restrained from alienating or transferring or otherwise creating any charge or encumbrance on the equipment and machinery and all other moveable property in the lease area and connected with the mining operations (such as trucks, excavators etc.) so that there is no difficulty in recovery of dues.

(iv) All the laws applicable to the petitioner shall be strictly enforced by the State Government regardless of its apparent influence in high places. We make it clear that we will hold the Chief Secretary of the State of Haryana responsible for any lapse in this regard.

(v) It is not clear whether or not the security deposit of Rs. 28.75 crores has been refunded to KJSL or the petitioner. If the refund has not been made, it is deemed to have been forfeited to the State and is not adjustable against any dues of the petitioner.

34. The petition for special leave filed by the petitioner is disposed of on the above terms and the judgment and order of the High Court is modified to the above extent. No costs.