

*Before Ranjit Singh, J.*

**M/S FARIDABAD GURGAON MINERALS,—Petitioner**

*versus*

**STATE OF HARYANA AND OTHERS,—Respondents**

**C.W.P. No. 1300 of 2009**

21st January, 2010

*Constitution of India, 1950—Art. 226—Punjab Minor Mineral Concessions Rules, 1964—Rls. 10A & 18—Supreme Court directing to stop all mining operations in entire Aravalli Hills and allowing resumption of mining operations in non-forest areas—Lease for minor minerals in favour of petitioner coming to an end, therefore, question of granting them mining lease for major minerals on principle of “one area one lessee” not available—Petitioner filing representations for extension of their mining lease on ground that area taken by them in auction had been reduced for operation—Petitioner earlier giving representation for renewal of their mining lease in terms of Rule 18 of 1964 Rules fully knowing that said rule had been omitted by State—Prayers made by petitioner can be described quite misleading and not maintainable—Petition dismissed with costs.*

*Held,* that the petitioner was given mining lease of sand, road metal and masonry stone mines through auction for Sirohi and Khori Jamalpur stone quarries on 30th October, 2001. This lease was for a period of seven years from 6th February, 2002 to 5th February, 2009. Fully aware that their exploits would come to an end on 5th February, 2009, the present petition was filed on 24th January, 2009, when the lease for mining minerals in favour of the petitioner was about to end. Once the lease for minor minerals in favour of the petitioner was coming to an end, the question of granting them mining lease for major minerals like silica sand, china clay and quartzite on the principle of “one area one lessee” was certainly not available. Cleverly the petitioner-company filed representations on 14th December, 2008 and 26th December, 2008 for extension of their mining lease on the ground that the area taken by them in auction had been reduced for operation.

The petitioner had earlier given a representation on 29th August, 2008 for renewal of their mining lease in terms of Rule 18 of the Rules fully knowing that the said rule had been omitted by the State through an amendment introduced on 9th October, 2001. In the said representation, prayer in the alternative was made for extension of mining lease in terms of Rule 28. The petitioner very well knew that this rule was not applicable as it governs mining contracts and not those mining lease which were granted through auction. The prayers made by the petitioner, thus, can be described quite misleading and not maintainable.

(Para 4)

*Further held*, that even if one was to view that power of renewal is available, it cannot be sought as a matter of right. The prayer once made was rejected, but still this approach has been made which appears to be with some purpose and motive. None of the prayers, thus, made by the petitioner through the present writ petition is justified and maintainable. The present petition has been a waste of time of the court. The petitioner kept on seeking adjournments on one ground or the other by saying that the matter is pending before the Hon'ble Supreme Court. During one of the hearings, the counsel conceded that because of the order passed by the Hon'ble Supreme Court part of the prayer made in the writ petition may have become infructuous, but still he wanted to make submissions in regard to the vires of deleting Rule 18 of the Rules.

(Paras 12 &13)

Akshay Bhan, Advocate, *for the petitioner.*

Sunil Nehra, Sr. D.A.G., Haryana, *for the State.*

**RANJIT SINGH, J.**

(1) Unconcerned about the degradation of environment due to mining activities, the petitioner-company has approached this court with a strange prayer. Despite having made a kill by extracting minerals for nearly seven years, the greed and profit making concern of the petitioner has remained unsatisfied. The intervention by the Hon'ble Supreme Court to stop mining activity in the Aravlli Hills Area close to the borders of Delhi has not in any manner deterred the petitioner-company to continue with their exploits. Profit is the only motive with the petitioner with no other concern. Their action is having an adverse irreversible effect on the ecology of the area as has been observed by the Hon'ble Supreme Court. As noted, the

mines in the Aravalli Hills Area are usually located in the clusters in remote mineral rich districts of the area where living standards are low and understanding of people towards environmental poor. The attitude of the mining community has been completely to ignore the environmental concerns, the aim being to make quick bucks. No wonder, the Hon'ble Supreme Court had to put a complete ban on the entire mining activities in the Aravalli Hills Area. Still, the persons like the petitioner were able to breathe through this ban order by seeking modification of the same as Annexure P-12, dated 13th April, 2006 would show.

(2) The perusal of Annexure P-12 would reveal that photograph showing plying of large number of trucks per day was advanced as ground to seek ban on mining activities even in this area being mined by the petitioner. Though the Hon'ble Supreme Court declined to put ban in this area under the control of the petitioner-company for mining, yet the court asked for a report to determine the impact of mining activity and its effect on environment in this area and then to consider whether it would be possible to permit mining in this area by strictly complying with the requisite safeguards to save the environment from degradation or alternatively to prohibit mining activity. This opening is enough encouragement for the petitioner to approach this court with the relief in the present case, which is rather unfair, unreasonable, and to an extent, absurd.

(3) Petitioner-company has prayed for directions to the State of Haryana to decide its application submitted on 21st February, 2006 for grant of mining lease for silica sand, china clay and quartzite in the villages Khori Jamalpur and Sirohi of District Faridabad and to grant the same alongwith the mining lease for road metal and masonry stone minor minerals available in the same area. Rule 10A of the Punjab Minor Mineral Concessions Rules, 1964 (for short "the Rules") is invoked to say that this area should be given to the petitioner for mining in terms of principle of "one area one lessee". This prayer, when viewed in the factual background could easily be termed as unreasonable.

(4) The petitioner was given mining lease of sand, road metal and masonry stone mines through auction for Sirohi and Khori Jamalpur stone quarries on 30th October, 2001. This lease was for a period of seven years from 6th February, 2002 to 5th February, 2009. Fully aware that their exploits would come to an end on 5th February, 2009, the present petition

was filed on 24th January, 2009, when the lease for mining minerals in favour of the petitioner was about to end. Once the lease for minor minerals was coming to an end, the question of granting them mining lease for major minerals like silica sand, china clay and quartzite on the principle of "one area one lessee" was certainly not available. Cleverly the petitioner-company filed representations on 14th December, 2008 and 26th December, 2008 for extension of their mining lease on the ground that the area taken by them in auction had been reduced for operation. The petitioner had earlier given a representation on 29th August, 2008 for renewal of their mining lease in terms of Rule 18 of the Rules fully knowing that the said rule had been omitted by the State through an amendment introduced on 9th October, 2001. In the said representation, prayer in the alternative was made for extension of mining lease in terms of Rule 28. The petitioner very well knew that this rule was not applicable as it governs mining contracts and not those mining lease which were granted through auction. The prayers made by the petitioner in the present writ petition, thus, can be described quite misleading and not maintainable.

(5) The representation dated 29th August, 2008 by the petitioner was rejected on 19th November, 2008 on the ground that there was no provision for renewal or extension of mining lease granted under Rule 10 of the State Rules through public auction. It would stand to logic and reasons. Once the auction was for a particular period, it would be absurd to think that the same can be extended. See this in the background of the ban on the mining activity. Thus, the audacity of the petitioner is seen to be believed. It has gone to the extent of suggesting the Government to amend the rules to renew the mining lease of the petitioner. The State is fully justified in describing this prayer to be preposterous and even not worth consideration.

(6) Having entered and after exploiting the areas to the hilt, the petitioner-company apparently is wanting to perpetuate their hold. They are adopting one mode or the other to somehow remain in this area and to continue with the mining activities. To achieve this aim, petitioner has adopted another route. It is stated that during the course of mining in the area, the petitioner discovered the occurrence of silica sand, china clay and quartzite all major minerals. To investigate the extent of the availability of the major minerals, the petitioner-company applied for and were granted prospecting licence in the area of their operation in terms of Rule 9 of the

Mineral Concession Rules, 1960. The petitioner would refer to the report annexed with the petition (Annexure P-6) to show the reserves of these major minerals found during this Geological exploration. The petitioner accordingly applied for grant of mining lease for these major minerals. It is this lucrative availability which seems to be tempting the petitioner to somehow remain in the area. This application given by the petitioner is statedly pending and so a prayer that direction be issued to the State to decide the same.

(7) Most unreasonably, the petitioner-company would press their claim for extension on the ground that some area was reduced in breach of the terms of the auction notice which resulted in a loss of Rs. 33,57,69,270 and, thus, they pray for extension to compensate them for this loss.

(8) The facts that would emerge from the reply filed in this case would reveal the true picture and the exploits and profits that have been made by the petitioner. Pointing that the Hon'ble Supreme Court had directed to stop all mining operations within 5 Kms. of Delhi-Haryana boundary in the Aravalli Hills, it is stated that the activities were so closed on 7th May, 2002. Subsequently, on directions by the Hon'ble Supreme Court mining activities in the entire Aravalli Hills from Haryana to Rajasthan were stopped. This happened on 9th December, 2002. On 16th December, 2002, however, the Hon'ble Supreme Court modified its order and allowed resumption of mining operations in non-forest areas. It is, thus, pointed out that the mining operations of the petitioner had been stopped only from 9th December, 2002 to 16th December, 2002 and thereafter they were allowed to operate. The effect of this was that the mining activities could be carried out by the petitioner in the area excepting such which formed part of the deemed forest area. It is pointed out that mines in Sirohi and Khori Jamalpur were only two operating in entire area of Faridabad and Gurgaon Districts. Thus, the entire demand for construction material in the region, including Delhi market was met from these mines. It created a near monopoly situation for the petitioner. The petitioner must have made up kill. Indeed they earned huge profit. To urge that they suffered a loss on account of any reduction in the area of their operation, would be something which is unpalatable and, thus, unacceptable.

(9) It may be significant to notice that initial representation by the petitioner was for removal of mining lease for minor minerals. Fully knowing that Rule 18 authorising the same had been withdrawn, alternative suggestion was for extension of two years contract under Rule 28 of the Rules. This rule, as already noted, was also not applicable. When these prayers were rejected, the petitioner pressed for compensation amounting to Rs. 33.57 crores. In alternative, it was prayed to extend the period for four years. The petitioner would also remain unmindful to the environment degradation. It would ignore the report which has been prepared by Central Empowered Committee under the directions of the Hon'ble Supreme Court to recommend that mining of major minerals in Aravalli Hills range of District Faridabad may be prohibited.

(10) Despite being aware of all what is noted above, the counsel for the petitioner hard pressed his plea and would challenge the vires of the action of the Government in omitting Rule 18 from the Rules which had earlier empowered the Government to renew the mining lease as was originally granted. This rule is omitted on 9th October, 2001 but is now challenged in the year 2009. The petitioner was well aware of the position when they successfully participated in the auction. The manner in which this prayer to challenge the omission of Rule 18 is seen to be believed. It was urged before me that Section 15 of the Central Act empowered the State Government to frame rules relating to minor minerals and, thus, rules could be framed for grant as well as for renewal. It is then pleaded that the State Government must make a provision for grant of lease as well as for its renewal. Submission is that if there is a provision relating to grant of mining lease, there has to be provision for its renewal.

(11) How a person with wise sense can canvass such a position is to be learnt from the line of submission pursued before me. Rather the counsel insists on for pressing prayer for making a provision for renewal on the ground that there is an enabling provision for making rules for grant and renewal? Section 15 of the Central Act is merely an enabling provision giving discretion to the State Government to make rules for grant or renewal but would not give any right to an individual to seek directions for the State Government to make rules. Even if the State Government was to make rules, it was for it to decide in what field it would wish to make rules, for grant or renewal or for none. Rather, State was rightly advised to delete Rule 18 which authorised to renew the period of lease in the case of an auction as that would in itself be unfair. To allow one to operate beyond

the period of auction for which he had given a bid initially would lead to denying others to complete and bid for the mining.

(12) Even if one was to view that power of renewal is available, it cannot be sought as matter of right. The prayer once made was rejected, but still this approach has been made which appears to be with some purpose and motive. None of the prayers, thus, made by the petitioner through the present writ petition is justified and maintainable.

(13) The present petition has been a waste of time of the court. The petitioner kept on seeking adjournments on one ground or the other by saying that the matter is pending before the Hon'ble Supreme Court. During one of the hearings, the counsel conceded that because of the order passed by the Hon'ble Supreme Court part of the prayer made in the writ petition may have become infructuous, but still he wanted to make submissions in regard to the vires of deleting Rule 18 of the Rules.

(14) It may need a notice that Hon'ble Supreme Court *vide* its order dated 8th October, 2009 had directed the State to revoke all licenses of major minerals in the districts of Faridabad and Gurgaon. Subsequently, a review application was filed on the ground that none of the persons, who had licence for major minerals in their favour, were party before the court when the order was passed. In order to afford them opportunity of hearing, notice has been issued by the Hon'ble Supreme Court. There is thus, no merit in any of the pleas made by the petitioner. This petition appears to have been filed with oblique motives to enable the petitioner for becoming a party before the Supreme Court in review petition, as otherwise the petitioner is not having lease of major minerals. The petitioner would make out a case for hearing before Supreme Court on the ground that its application for grant of major minerals was pending, whereas they did not have any lease in this regard. Thus, the petitioner even apparently has made an attempt to overreach the court by adopting such tactics. Inadvertently, the Court may have been made to pass any order not turly in line with the spirit and the approach adopted by the Hon'ble Supreme Court. Indeed, the complete approval and prayers are against the directions issued by the Hon'ble Supreme Court.

(15) The writ petition, therefore, deserves to be dismissed with exemplary cost assessed as Rs. 50,000 and it is so ordered. The cost be deposited by the petitioner in the accounts of the Legal Services Authority, Haryana within one month of the receipt of the copy of the order. Advocate General would ensure compliance of this part of the order.