

A.F.R.

Court No. - 3

Case :- WRIT - C No. - 26588 of 2023

Petitioner :- M/S Manali Vintrade Private Limited

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Swati Singh, Birendra Singh

Counsel for Respondent :- C.S.C

Hon'ble Siddhartha Varma, J.

Hon'ble Manoj Bajaj, J.

(1) The petitioner had applied for a license/permit when an advertisement was issued inviting E- tenders under Rule 23(2)(a) of the Uttar Pradesh Minor Minerals (Concession) Rules, 1963. When the petitioner's tender was accepted a permit was granted to him for six months on payment of Rs.2,77,20,000/-. The mining was to commence on 09.05.2022 and end on 08.01.2023. The permit itself provided that during the monsoon season for the months of July, August and September no mining would be done.

(2) In the meantime, one Dileep Singh approached the National Green Tribunal and filed an Original Application being Original Application No.319 of 2022 (Dileep Singh Vs. State of U.P. and others) and alleged that the petitioner did not have a proper environmental clearance certificate. To begin with the Green Tribunal on 9th May, 2022 directed that no mining activities were to be done by the petitioner at the mining site. This order, however, merged in the final order of the Green Tribunal which on 1st July, 2022, while disposing of the original application provided that the State Environmental Impact Assessment Authority, Uttar Pradesh (S.E.I.A.A.) had to revisit the environmental clearance as was

issued to the petitioner within a period of two months. It had also observed that pending such consideration the interim order, which was earlier granted on 9th May, 2022 would continue. Ultimately, the environmental clearance was given to the petitioner on 14.05.2023. The District Magistrate thereafter concluded that since the petitioner had as per the permit dated 09.05.2022 worked for only nine days, he be permitted to work for the remaining five months and 21 days and therefore, granted him the permission from 16.05.2023 to 06.02.2024 to continue with the mining work. He, however, withdrew this order by a subsequent order dated 20th May, 2023 relying upon the order of the High Court passed in **Public Interest Litigation (PIL) No.28916 of 2016, Vijay Kumar Dwivedi vs. State of U.P. and 3 Ors.**

(3) Aggrieved thereof, the petitioner has approached this Court and has prayed for the quashing of the order dated 20.05.2013. Alternatively he had prayed that he be allowed to excavate for the period he had not worked i.e. for five months and 21 days. Still further he has prayed that if work for that period could not be given to him then the proportionate royalty be returned to him with interest.

(4) Contention of the learned counsel for the petitioner is that the ground as was taken by the District Magistrate in the order dated 20th May, 2023 had no legs to stand as subsequent to the passing of the interim orders in **Vijay Kumar Dwivedi's** case, the State Government itself had issued Government order dated 14th August, 2017, which was followed by another Government Order dated 23rd May, 2020, wherein the State Government had laid down the procedure for E-tendering and therefore, the embargo as was put by the orders in the PIL had no effect.

(5) Learned counsel for the petitioner, therefore, submitted that since now there was no hurdle in the way of the petitioner to mine he may be allowed to continue to work for the remaining five months and 21 days.

(6) Learned counsel for the petitioner relied upon the Judgement of **Beg Raj Singh v. State of U.P. & Ors. JT 2002 (10) SC 417**. He also relied upon the judgement of the Supreme Court reported in **AIR 2020 SC 4870, Chowgule and Company Private Limited Vs. Goa Foundation and others** and argued that if during the subsistence of the license period a litigation had intervened and the petitioner had not been able to mine from the mine for which he had a valid permit then the period of time of mining be extended.

(7) Per contra, Sri Sandeep Singh, learned Additional Chief Standing Counsel relying upon the judgement reported in **(2021) 1 Supreme Court Cases 93, Dharmendra Kumar Singh Vs. State of U.P. and others**, argued that if during the period of the subsistence of a license, if the the work of the petitioner was hindered because of an intervening litigation and the period expired, then the lease/license/permit could be extended only if there was a statutory provision for extension or if there was any condition in the lease deed to extend the period which had been wasted because of the intervening litigation. He relied upon paragraph 37 of the above judgement, which reads as under:

37. We do find ourselves in agreement with the submission of the learned counsel for the State that the right to extension of lease either flows from a statutory provision or from the terms of the lease between the parties concerned. If there has been an obstructed period of by reason of a judicial interdict, that itself will not give window to extend the lease by not following the

statutory provisions, especially when the terms of the lease do not provide for any consequences thereof.

(8) Having considered the rival submission of the parties, we are of the view that the petitioner's permit to mine for the reasons given in the judgement of **(2021) 1 Supreme Court Cases 93, Dharmendra Kumar Singh Vs. State of U.P. and others** cannot be extended. Even though, we find that the reason given by the District Magistrate that the interim order in the **Public Interest Litigation (PIL) No.28916 of 2016, Vijay Kumar Dwivedi vs. State of U.P. and 3 Ors.** prohibited the extension is an erroneous one, we decline to extend the period for the reasons mentioned herein above. Judgement reported in **(2021)1 SCC 93** is a judgment which came later in point of time. That is, it came after the judgment reported in **JT 2002 (1) SC 147** was delivered. The law as laid down in **2021(1) SCC 93** would thus be the good law for the courts to follow.

(9) We are definitely of the view that the petitioner could not work because of the intervening litigation which was initiated by Dileep Singh in the National Green Tribunal and because of which, the petitioner's mining work was hindered. He also suffered financially.

(10) Be it as it may, we are further of the view that the petitioner's case is squarely covered by the provision contained in Rule 41(h) of the Uttar Pradesh Minor Minerals (Concession) Rules, 2021 and he can always ask for a refund.

(11) We therefore, without interfering with the order of the District Magistrate dated 20.5.2023 which virtually prohibits the petitioner from further mining, provide that the petitioner be refunded his

money for the period he could not work.

(12) Accordingly, the petitioner be refunded the amount of royalty for the period he did not work within a period of one month. Since the petitioner did not mine for any fault of his, we also direct that interest at the rate of 6% *per annum* be given to the petitioner on the amount which shall be paid to him.

(13) With these observations, the writ petition stands **partly allowed**.

Order Date :- 10.10.2023

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