

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

WP(C) No. 915/2020 (O&M)
(Through Video Conferencing)

Reserved on : 30.09.2020

Pronounced on : 05.10.2020

Mohammad Sadiq Wani ...Petitioner(s)

Through:- Mr. Shabir Ahmad Naik, Advocate

v/s

Union Territory of J&K and othersRespondent(s)

Through:- Mr. Ayjaz Lone, Dy. AG

Coram: HON'BLE MR. JUSTICE RAJESH BINDAL, JUDGE

ORDER

1. The petitioner has filed the present writ petition seeking direction to the respondents to grant extension of time for extraction/collection and removal of the remaining quantity of NTFP from Marwah Forest Division and further allow him to deposit the balance amount in terms of the agreement signed between the parties.

2. Learned counsel for the petitioner submitted that auction notice dated 26.07.2017, was issued for conferring rights to collect/extract Dhoop (*Jurinea dolomiae*) from Marwah Forest Division. The aforesaid contract was awarded to the petitioner. Agreement to that effect was signed on 09.09.2017. The total consideration for 850 quintals of Dhoop, was Rs. 54,40,000/-. The

petitioner was issued permit for transportation of 342 quintals of Dhoop on 16.11.2017, however, he could not collect and transport the entire material. Though, as per the agreement, the amount was to be paid in installments, however, still the petitioner had deposited more than Rs. 45,36,000/- in advance with the respondents. Out of 342 quintals, for which the petitioner was granted permit, he could transport only 187.05 quintals. It was because of the rough weather. The petitioner made a representation to the authorities, which was received by them on 31.03.2018, for extension of time for extraction and removal of the NTFP (Dhoop). The same was forwarded by the Divisional Forest Officer, to the Conservator of Forest vide letter dated 28.07.2018. A communication was also sent by the Conservator of Forests to the Divisional Forest on 01.09.2018, that in the communication sent by him on 28.07.2018, neither any recommendation has been made nor any comments have been offered. No action was taken thereon.

3. The petitioner referring to case of one Vikrant Kapoor contractor, submitted that he should be treated at par with him as Vikrant Kapoor was also granted extension for extraction of the NTFP after expiry of period of his contract.

4. He further referred to order passed by this Court on 24.07.2020, whereby direction was issued to the respondents to apprise the Court about the distinction between the case of the petitioner and Vikrant Kapoor. As there was no distinction as such, the petitioner deserves to be granted extension as otherwise he will suffer immense loss. He could remove only very small quantity of Dhoop, though the payment deposited is much more.

5. On the other hand learned counsel for the respondents submitted that the petitioner has filed the present petition seeking to enforce an agreement, which already stood expired. The agreement does not envisages extension of time. There is no parity in the case of the petitioner with that of Vikrant Kapoor. In his case, entire agreed amount had been deposited and only the balance quantity of NTFP, lying in the Forest was to be removed. For that, extension was granted. The contract for removal of NTFP, is awarded by the competent authority on year to year basis. All the contractors know the period for which the same is awarded and the terrain from where the same is to be collected and removed. The weather conditions are also well known to them. It was for the petitioner to have taken care of all these conditions and remove the agreed quantity of Dhoop well within time allotted to him.

6. A perusal of the contract signed between the parties shows that it provides for details regarding schedule of deposit of the amount. The last date of extraction/collection was 31.12.2017 and the collected material could be transported/removed up to 31.03.2018.

7. As the petitioner has failed to deposit the amount as per schedule and also lift the material, notices were issued to him on 03.01.2018 and 06.03.2018. Despite receipt of the aforesaid notices, the petitioner did not take any steps to deposit the balance amount or lift the balance material.

8. Referring to clause 12 of the agreement, the learned counsel for the respondents submitted that it contains a provision for arbitration, in case there is any dispute arising out of the agreement. The petitioner should have invoked the same instead of rushing to this Court.

9. In response, learned counsel for the petitioner submitted that the petitioner has approached this Court as he is being discriminated. The extension in time was granted to one of the contractor, whereas the petitioner though similarly placed, has been denied the same. He further submitted in the arbitration process, the matter will be delayed unnecessarily and the petitioner will suffer more loss. Hence, interference in present writ petition is called for.

10. Heard learned counsel for the parties and perused the relevant referred record.

11. As is evident from the agreement dated 09.09.2017, signed between the parties for collection of NTFP-Dhoop (*Jurinea dolomiae*), the petitioner was allowed to collect and transport 850 quintals of NTFP-Dhoop (*Jurinea dolomiae*), from Marwah Forest Division, other than wildlife and protected areas. Total contract value was Rs. 54,40,000/-. Out of the total amount, Rs. 13,60,000/-, were to be deposited at the time of signing the agreement, Rs. 21,76,000/-, on or before 30th September, 2017 or issuance of 1st Form-25, whichever is earlier. The balance of Rs. 19,04,000/- were to be deposited on or before 31st December, 2017 or issuance of 2nd Form-25, whichever is earlier. It is specifically provided in the agreement that no relaxation in the dates of payment of installments shall be allowed. The last date for extraction/collection of the (Dhoop) was 31.12.2017. The last date for transportation/removal of produce from Transit Depot/Godown was fixed as 31.03.2018.

12. Besides the aforesaid schedule provided for deposit of the amount and removal of Dhoop, other relevant conditions in the agreement are extracted below:

No. 10 Penalties :-

In the event of partial or complete failure to carry out/abide by the terms and conditions of this contract either in a manner satisfactory to the lessor or within the prescribed period the purchaser will be liable to be penalized as decided by the Divisional Forest Officer concerned. The penalty may include all or any of the following:-

- i) The cancelling of this contract.
- ii) The forfeitures of the security money and all other moneys paid by him.
- iii) The stopping of his work and confiscation of his produce.
- iv) A fine not less than the contract value.

No. 12

The Conservator of Forests, Chenab Circle, Doda will act as Arbitrator whose decision shall be final in case any dispute that may arise concerning the terms and working of this contract.”

13. A perusal of clause 10 in the agreement shows that, in the event of partial or complete failure of the petitioner to abide by the terms and conditions of the contract within the prescribed period, the contractor may be penalized by cancelling the contract, or forfeiture of the security and other moneys paid by him; stoppage of work and confiscation of his produce or imposition of fine not less than the contract value. Clause 12 provides that in case of any dispute arising out of the working of the contract, the decision of Conservator of Forests, Chenab Circle, Doda, who shall act as an arbitrator, shall be final.

14. Though, the petitioner has claimed that he had deposited a sum of Rs. 45,36,000/-, however, the fact remains that the amount was not deposited as

per the schedule provided in the agreement. Admittedly, first permission was granted to the petitioner for extraction and transportation of 342 quintals of Dhoop vide letter dated 16.11.2017 (page 14). A perusal of the aforesaid letter shows that the permission was valid for a period of 18 days from the date of issue. The extraction was allowed with reference to the agreement signed between the parties for the year 2017-18. It is pleaded by the petitioner that he could not lift the quantity permitted on account of extreme weather conditions. But the weather conditions in the area are something new, as these are all known to the persons there. Two communications have been placed on record by the respondents with the objections filed (Annexure R-2). These are dated 03.01.2018 and 06.03.2018. It is clearly mentioned in the aforesaid notices issued to the petitioner that he had failed to deposit the balance amount of royalty and also lift the entire quantity. It is specifically mentioned in the notice dated 06.03.2018, that action in terms of the clause 10 of the agreement can be taken.

15. There is no response as such available on record to the aforesaid two communications except that the petitioner has referred to a letter submitted by him in the office of the then Conservator of Forest, Jammu, on 31.03.2018, (Annexure-II) seeking extension of time for deposit of money and extraction of NTFP up to August 2018.

16. Learned counsel for the petitioner has also referred to certain subsequent intra-departmental communications dealing with his case. However, no extension as such, was granted. The ground on which the petitioner was seeking extension was that one Vikrant Kapoor had been granted

extension for collecting the remaining quantity of NTFP upto August 2018. In fact, the petitioner was also seeking parity with his case.

17. As far as the case in hand is concerned, this Court does not find any reason to interfere in the present petition for the reason that clause 12 of the agreement clearly provides for arbitration of any dispute arising out of the agreement. Once there is effective alternate remedy already provided in the agreement itself, the writ petition filed for resolution of a dispute arising out of that contract, is not maintainable. It cannot simplicitor be termed as a petition filed for extension of time for collection/lifting of balance Dhoop.

18. The same is accordingly, dismissed, however, with liberty to the petitioner to avail of his alternate remedy as provided for in the agreement.

19. Before parting with the order, this Court is constrained to observe that the way the forest department is working cannot be appreciated. It has large area under its control in the Union Territory of Jammu & Kashmir but unfortunately, not being monitored properly through there are ways and means to do the same. Forest cover is decreasing as encroachments are increasing day by day. Illegal forest cutting is also rampant. Some urgent steps are required to be taken to take care of our green cover.

20. On year to year basis, the contracts are awarded for extraction/collection and removal of NTFP (Non Timber Forest Produce), which is of natural growth, as has been submitted by learned counsel for the respondents. In such a situation, how extension for extraction/removal of NTFP can envisaged is a misty. It cannot be comprehended as to how at the same time two persons can be allowed to extract and remove NTFP, from the same

area. This may create dispute amongst the contractors. The agreement signed between the parties is also not happily worded. Legal mind has to be applied when these kind of agreements are to be drafted and got signed. These aspect of the matter are required to be examined at the highest level as to find out whether there has been annual award of contracts for extraction and removal of NTFP from different forest areas, if not whether there were good reasons for the same or who was responsible for causing loss to the public exchequer. Fool proof method or removal are also required to be put in place. Under what circumstances, the contractor, who had been awarded contract for extraction of NTFP for a particular period can be granted extension when the period of extension may overlap with the period for which next year's contract may be awarded.

21. A copy of the order be sent to the Secretary to Government, Forest, Ecology and Environment Department, Union Territory of J&K, Chief Conservator of Forests, Jammu, and Kashmir, for appropriate action.

(RAJESH BINDAL)
JUDGE

CHANDIGARH

05.10.2020

SUNIL-I

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes/No