

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 626/2023

Balbir Sandhu

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 12.10.2023

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Gaurav Kumar Bansal & Ms. Nandita Bansal, Advs.

Respondent: Mr. Rahul Khurana, Adv. for R – 5

ORDER

1. The applicant is aggrieved with impugned communication concerning extraction of minorable mineral in District Yamuna Nagar, Haryana.

2. In this original application, following prayers have been made:

- “a) *To quash the impugned letter dated 06/10/2022 issued by Respondent No. 05 whereby Letter of Intent was issued in favour of Respondent No. 08.*
- b) *To quash the impugned letter dated 26/06/2023 whereby the Director, Mines and Geology, Haryana has approved the Mining Plan of Respondent No. 08 as the same is in violation of provisions of Environment Protection Rules, 1986 and the notifications issued by the Ministry of Environment, Forests, and Climate Change, Government of INDIA.*
- c) *To quash the impugned E Auction Notice dated 30/05/2023 issued by the office of Department of Mines and Geology, Government of Haryana.*
- d) *Direct Chief Secretary, Haryana to appoint NODAL OFFICER (Joint Secretary Rank) for the purpose securing riverine ecology of the Rivers of District Yamuna Nagar, Haryana.*
- e) *Direct Respondents and in particular Chief Secretary, Haryana to create effective mechanism that extraction of Mineable Minerals shall be done in accordance with valid District Survey Report and Replenishment Study for District Yamuna Nagar.*

f) *Pass any other or further orders, as this Hon'ble Court may deem fit and proper in the circumstances of the present case."*

3. The first prayer of Applicant is in respect of quash-ment of the letter dated 06.10.2022 which is in the nature of Letter of Intent (LOI). The further prayer clause 'b' is as against the letter dated 26.06.2023 which is stated to be the sanction of mining plan of Respondent No. 8 and the prayer 'c' is for quashing the e-auction notice dated 30.05.2023 for grant of mining contract/mineral rights, for extraction of minor mineral namely Boulder, Gravel, Sand ('BGS') from the minor mineral mines of the District Yamuna Nagar.

4. The main thrust of argument of Counsel for the applicant is that the impugned letters/notices have been issued without their being any District Survey Report (DSR) and Replenishment Study for the area concerned.

5. Before the Tribunal, the substantial issue relating to environment can be entertained.

6. A perusal of the LOI dated 06.10.2022 reveals that adequate conditions have been incorporated therein providing that further action in pursuance to the said LOI will be taken only after the requisite Environmental Clearance (EC). The relevant conditions in LOI in this regard are as under:

"4.1 The period of the contract shall be 07 years and the same shall commence w.e.f. the date of grant of Environmental Clearance by the competent authority and the Consent to Operate (CTO) by the State Pollution Control Board, whichever is later, or on expiry of the period of 12 months from the date of issuance of LoI, whichever is earlier;

4.2 xxx.....xxx.....xxx

Provided that in case having taken all steps on your part, if you fails to obtain required environmental clearance and consent to operate(CTO) for undertaking mining operations within the said period of 12 months from the date of issuance of LoI, such letter of intent holder/contractor on a specific application submitted to

the Director, at least thirty days prior to the end of the period mentioned above, giving details of the action already taken may seek additional time up to another twelve months, over and above the time of 12 months already allowed for commencement of the period of contract, on payment of a non-refundable fee as per the following:-

1	<i>Extension of further period up to six months</i>	<i>On payment of a non-refundable fee at the rate of one percent per month of the annual bid for each month of requested extension period</i>
2	<i>Extension for a second period up to six months</i>	<i>On payment of a non-refundable fee at the rate of two percent per month of the annual bid for each month of requested extension period</i>
Note: <i>Extension shall be allowed only in month (s) and any request for period less/part of the month shall be summarily rejected and shall apply along with advance amount of the fee for such requested period of extension.</i>		

xxx.....xxx.....xxx

- 4.20 *Further, the actual mining will be allowed to be commenced only after prior Environment Clearance is obtained by you as the LoI holder/ Mining contractor for the Mining from the Competent Authority as required under EIA notification dated 14/09/2006 issued by Ministry of Environment, Forests and Climate Change, Government of India or as amended from time to time and also other required approvals for mining including Consent to Establish and Consent to Operate from the Haryana State Pollution Control Board before commencement of actual mining operations.*

xxx.....xxx.....xxx

- 4.25 *The contractor shall not carry out any mining operations in any reserved/ protected forest or any area prohibited by any law in force in India, or prohibited by any authority without obtaining prior permission in writing from such authority or officer authorized in this behalf. In case of refusal of permission by such authority or officer authorised in this behalf, contractor(s) shall not be entitled to claim any relief in payment of contract money on this account;*

xxx.....xxx.....xxx

- 4.28 *The contractor shall not undertake any mining operation in the area granted on mining contract without obtaining requisite permission from the competent authority as are required for undertaking mining operations under relevant laws;*
- 4.29 *The contractor shall be under obligation to carry out mining in accordance with all other provisions as applicable under the Mines Act, 1952. Mines and Minerals (Development and Regulation) Act, 1957, Indian Explosive Act, 1884, Forest (Conservation) Act, 1980 and Environment (Protection) Act, 1986 and the rules made thereunder, Wild life (Protection) Act, 1972, Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981;”*

7. Similarly, in the communication dated 26.06.2023 stated to be the communication relating to sanction of mining plan, it has been clearly incorporated:

“4. Further, as per condition, the actual mining will be allowed to be commenced only after prior Environmental Clearance from the Competent Authority as required under EIA Notification dated 14.09.2006, as mended from time to time by the MoE&F, and guidelines/circulars issued in this behalf.”

8. A perusal of the e-auction notice dated 30.05.2023 also reveals incorporation of the similar conditions as in clause no. 21(i) which is as under:

“21. xxxxxx.....xxx

i). The period of contract shall commence w.e.f. the date of grant of environmental clearance by the Competent Authority and the Consent to Operate (CTO) by the State Pollution Control Board, whichever is later, or on expiry of the period of 12 months from the date of issuance of LoI, whichever is earlier.”

9. Hence, we find that so far as the challenge to the LOI dated 06.10.2022 and e-auction notices relating to prayer clause (a) to (e) are concerned, they are pre-mature. It is also worth noting that the limitation for challenging the LOI dated 06.10.2022 has also expired.

10. The limited issue which *prima-facie* appears available for examination at this stage is whether the mining plan by memo dated 26.06.2023 could be issued by the Director, Mines and Geology, Haryana in the absence of DSR and Replenishment Study.

11. In this regard, learned Counsel for the applicant has pointed out that the DSR for the area concerned was issued on 10.07.2017 which had the life of five years and in terms of the notification dated 25.07.2018, the plan had expired on completion of five years and, therefore, mining plan cannot be sanctioned because DSR forms basis of preparation of reports and

appraisal of projects. Following part of the notification dated 25.07.2018 has been relied upon by Counsel for the applicant:

“The District Environment Impact Assessment Authority (DEIAA) based on the nature and type of minor mineral in the District may include the additional parameters in the District Survey Report in consultation with the Department of Mines and Geology of the concerned State Government.

The District Survey Report shall form the basis for application for environmental clearance, preparation of reports and appraisal of projects. The Report shall be updated once every five years”

12. In view of the above, we deem it proper at this stage to issue notice to the Respondent Nos. 5 and 8 on the aforesaid limited issue. The applicant is directed to serve the Respondent Nos. 5 and 8 and file affidavit of service before the next date of hearing.

13. It will be open to the Respondent Nos. 5 and 8 to file their response before the next date of hearing.

14. List on 04.01.2024.

Prakash Shrivastava, CP

Dr. A. Senthil Vel, EM

October 12, 2023
Original Application No. 626/2023
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