

**HIGH COURT OF JAMMU AND KASHMIR
ATJAMMU
(Through Virtual Mode)**

CM 2123/2020 in
WP(C) 950/2020
CM 2124/2020
Cav 581/2020

Suhail Ahmad Khan

.....Petitioner (s)

Through :- Mr. S.A.Naik Sr. Advocate with
Mr. Shabir Ahmed Advocate
(On video Conference/Voice Call
from residence(Srinagar))

V/s

Union Territory of J&K and others

.....Respondent(s)

Through :- Mr. F.A.Natnoo AAG
(On video Conference/Voice Call
from residence)

Coram:HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGEMENT(ORAL)

Cav 581/2020

Mr. F.A.Natnoo, learned AAG appears for the caveators. Caveat stands discharged.

CM 2124/2020

This is an application seeking extension of time for annexing the requisite Court fee along with attested affidavits.

For the reasons mentioned in the application, it is allowed.

WP(C) 950/2020

1 The petitioner is aggrieved and has challenged the e-auction notices issued by the District Mineral Officers of different Districts on 27.05.2020, 28.05.2020, 29.05.2020, 30.05.2020 and 01.06.2020 etc.

2 The grievance of the petitioner is that the Ministry of Mines, Government of India has come up with detailed guidelines issued purportedly under Section 20A of Mines and Mineral (Development & Regulation) Act, 1957 ('the Act' for short) which clearly provide pre-embedded clearances before putting the mineral blocks to e-auction process.

3 Learned counsel appearing for the petitioner, therefore, contends that all e-auction notices issued by the respondents are bad in the eyes of law as the pre-embedded clearances as mandated by the Government of India have not been obtained before initiating e-auction process.

4 Having heard learned counsel for the petitioner and perused the record, I am of the view that the petitioner has no cause to maintain this petition.

5 As noted above, most of the e-auction notices were issued on 27.05.2020, 28.05.2020 and 30.05.2020 and one or two e-auction notices have also been issued on 01.06.2020. The petitioner has neither participated in those e-auction, nor has he raised any grievance, as is projected in the writ petition before any authority.

6 Confronted with the aforesaid position, learned counsel for the petitioner placed reliance on the communication of the J&K Pollution Control Board (for short "the Board") issued vide its No. PCB/LSJ/PS/20/738 dated 05.06.2020 to

contend that the matter had been taken at the relevant point of time with the Board.

07 A perusal of the communication of the Board dated 05.06.2020 makes it abundantly clear that the grievance which the petitioner has now projected in this writ petition was never agitated before any authority including the Board. The Board vide its communication dated 05.06.2020 appears to have responded to the representation of the petitioner regarding the role of the Board in the matter of mining operations. The Board clarifies that for any type of mining activity, not only the environmental clearance from the competent authority is required, but **consent to establish** and **consent to operate** from the Board under Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act, 1981 is also a *sine quo non*. No other document, letter or communication has been brought to the notice of this Court by the learned counsel for the petitioner which could demonstrate the *bona fide* of the petitioner with regard to raising of the grievance on the first available opportunity. No explanation has been tendered to justify the wait of about three weeks for challenging the e-auction notices. The process of e-auction appears to have proceeded further and is stated to be at the stage of finalization.

08 It is at this point of time the petitioner, for reasons not forthcoming from the petition, has approached this Court to somehow stall the e-auction of minor minerals undertaken by the Union Territory of J&K. Even a look at the order of Ministry of Mines, Government of India dated 03.06.2020 laying down the guidelines for e-auction of mineral blocks with pre-embedded clearances for mining projects makes it clear that the States and the Union Territories have

been enjoined to identify at least five mineral blocks for e-auction with pre-embedded clearances which would be e-auctioned along with other mineral blocks. It further provides that based on the experience from e-auction of the identified mineral blocks on pilot basis, further steps will be taken towards mainstreaming the concept of auction with pre-embedded clearances as per National Mineral Policy, 2019 approved by the Cabinet.

09 Suffice it to notice that these guidelines were issued by the Ministry of Mines in terms of Section 20A of the Act only on 03.06.2020, while as the impugned e-auction notices had already been floated. The identification of five mineral blocks for e-auction with pre-embedded clearances may have to be resorted to by the respondents in the next auctions in terms of the communication of the Ministry of Mines dated 03.06.2020, and would not apply to the process which was already set in motion by issuing the impugned e-auction notices prior to coming into operation of the guidelines aforesaid. Otherwise also, the petition filed by the petitioner lacks *bona fide* and, therefore, this Court is not inclined to exercise its discretionary power vested under Article 226 of the Constitution.

10 That apart, the communication dated 3.06.2020 (*supra*) *ex-facie* applies to the minerals only and may not comprehend within its ambit the 'minor minerals' which expression is separately defined under Section 3 (e) of the Act. It is also pertinent to note that in terms of Section 15 of the Act, the power to frame statutory rules in respect of minor minerals is exclusively reserved to the State Government and the State Government, in the exercise of aforesaid power, has already promulgated the statutory rules in terms of SRO 105 of 2016 which is being followed by the respondents in the matter of allotment of

leases and licences of minor minerals in the Union Territory of Jammu and Kashmir. Ministry's guidelines issued in terms of Section 20A of the Act can, at the most, treated to be instructions to remodel their Rules on the lines suggested in the guidelines.

11 For the foregoing reasons, I find no merit in this writ petition. The same is, accordingly, dismissed.

(SANJEEV KUMAR)
JUDGE

Jammu
29.06.2020
Sanjeev

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

