

JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

W. P. No. 81499 / 2022

Muhammad Tariq Sahi

Versus

Government of Punjab, etc

JUDGMENT

Date of Hearing:	12.10.2023
Petitioner By:	Ch. Imran Raza Chadhar, Advocate Hafiz Muhammad Zaheer Nasir, Advocate
Respondents By:	Mr. Sikandar Nisar Saroya, A.A.G. alongwith Mr. Farooq Sultan, DD, Mines & Minerals Department, Lahore.

ABID HUSSAIN CHATTHA, J: This constitutional Petition is directed against the impugned Order dated 01.12.2022 passed by Respondent No. 1 / Secretary, Mines & Minerals, Government of Punjab, Lahore.

2. Briefly, the Petitioner is a mining contractor who obtained lease for the extraction of sand stone through work Order dated 21.12.2019 for a period of three years starting from 21.12.2019 to 20.12.2022 in consideration of Rs. 70,270,000/- payable in six installments. The explosive license required to execute the contract was granted on 09.09.2020. It is the case of the Petitioner that due to non-issuance of explosive license on time, some of the lease period was wasted in which the Petitioner could not obtain lawful benefits. Accordingly, the Petitioner was constrained to file an application on 21.11.2022 under Rule 185-A(2) of the Punjab Mining Concession Rules, 2002 (the “Rules”) seeking extension in the lease period. The said application was entertained by Respondent No. 1 in terms of his revisional powers under the aforesaid Rule. The request of the Petitioner was conditionally allowed through the impugned Order, the operating part of which contained in paragraph Nos. 5 to 7 is reproduced as under:-

"5. I have heard the argument and perused the record. It is observed that a mining lease for Sandstone over an area of 226.03 acres near Chak No. 116 Janobi District Sargodha stands granted to the petitioner against a bid of Rs. 7,02,70,000/- for a period of three years w.e.f. 21.12.2019 to 20.12.2022. The counsel for the petitioner has claimed that the petitioner was not able to get explosive license from the District Administration till 09.09.2020, hence he was unable to work in the leased area for a period of nine months, resulting in irreparable financial loss to the petitioner. The counsel, therefore, has requested for extension in the lease period by revalidating the initial date of grant from 10.09.2020 to 09.09.2023 i.e. date of issuance of explosive license. Whereas, on the other hand, the representative from DG(M&M) have strongly opposed the stance of the petitioner by stating that work of the lessee was never stopped in the leased area since date of initial grant. He also produced number of inspections, showing that the work of the petitioner was continuously in progress. However, in the presence of record produced by the Inspector of Mines Sargodha, there remains a question mark on the inspections produced by the representative of DG(M&M).

6. On the other side, it is important to mention here that even if the petitioner was unable to work in the leased area owing to the reasons that he was not granted explosive license by the District Administration, it was the responsibility of the petitioner to obtain explosive license from the concerned quarter in a timely manner to operate the mining lease. This state of affairs shows that the petitioner was also not efficiently dealing with the matters of the mining lease and the public exchequer shall not suffer due to default & sluggishness on part of the petitioner. During the course of arguments, the departmental representative apprised the court, that the block under discussion is included in the current auction schedule. It has also came in the notice of this court that a status quo has been passed by the Hon'ble Lahore High Court Lahore against the auction of Sandstone blocks in District Sargodha owing to an exercise being carried out by the department regarding rationalization and resizing of sandstone block of District Sargodha to ensure safe and scientific mining. I am therefore of the considered opinion that instead of revalidation, extension in the lease period at the rate of newly fixed reserve price can be granted to the petitioner under rule 228 of ibid rules and on administrative grounds to safeguard the public exchequer.

7. In view of what has been discussed above, I am therefore inclined to extend the lease period of mining lease held by the petitioner till 09.09.2023, subject to payment of advance proportionate bid money on monthly

basis at the rate of newly fixed reserve price of the block in the public interest. The Director Licensing Minor Minerals Punjab is advised to proceed in light of above directions. Disposed of accordingly.”

3. Learned counsel for the Petitioner submitted that the Petitioner is aggrieved to the extent of payment of advance proportionate bid money on monthly basis at the rate of newly fixed reserve price of the block which is patently unlawful. The Petitioner was only liable to pay advance proportionate lease money at the rate at which the Petitioner had obtained the lease. In this context, it is argued that the impugned Order is against Rule 228 of the Rules. Further, in another identical case, Respondent No. 1 allowed extension of lease against proportionate lease amount vide Order dated 13.11.2019. Finally, it was stated that the impugned Order is against the Orders dated 12.03.2019 and 02.04.2019 passed by this Court in W. P. No. 9428 / 2019.

4. Learned Law Officer, while relying upon the report and parawise comments filed on behalf of the Respondents, stated that as per Rule 228 of the Rules, a leased area is required to be auctioned within three months before its expiry but prior to auction, a Special Experts Committee notified by the Government vide notification dated 27.01.2016 is required to determine the reserve price of mining leases of minor minerals under Rule 197-A of the Rules based on different technical parameters. The said Committee has lately determined the reserve price as Rs. 400,000,000/-, whereafter, leases of minor minerals were advertised for open auction against the reserve price determined by the Special Experts Committee on 15.11.2022 under Rule 198 of the Rules. As per the said proclamation, leases of minor minerals including the sandstone block under discussion in District, Sargodha were scheduled to be auctioned on 30.11.2022, 26.12.2022 and 23.01.2023. In this context, Respondent No. 1 had lawfully passed the impugned Order in line with the law laid down by the Supreme Court of Pakistan in C. P. No. 590 of 2014 decided on 29.05.2014. The Petitioner after having availed the relief provided by Respondent No. 1 in the form of nine months extended lease period, now wants to avail further relief from this

Court which if granted would cause irreparable loss of Rs. 82,432,503/- to the public exchequer. Therefore, this Petition is liable to be dismissed.

5. The only point of determination before this Court is as to whether the Petitioner was entitled for extension in the lease period subject to payment of advance proportionate bid money at the time of grant of lease or at the rate of newly fixed reserve price in the light of the precise contention of the Petitioner that he could not enjoy the full lease period of three years due to non-issuance of explosive license on time. In this respect, Rule 222 of the Rules was fully attracted which is reproduced as under:-

“222. Refund of proportionate bid money.- In case a lessee fails to assume possession of the area or work therein due to circumstances beyond his control and informs within a period of fifteen days from the date he first faced the hindrance in this respect and proves it to the satisfaction of the Licensing Authority, it may refund the proportionate bid money to that extent:

Provided that no relief under this rule shall be admissible due to rains or floods in the rivers, streams or of dangerous quarry operations.”

However, admittedly, the Petitioner did not invoke the said Rule and did not raise any concern with respect to loss of lease period until he filed the application for extension in lease period under Rule 228 of the Rules before Respondent No. 1 immediately before the expiry of lease period which was conditionally allowed subject to payment of advance proportionate bid money on monthly basis at the rate of newly fixed reserve price of the block.

6. Rule 228 of the Rules being relevant is also reproduced as under:-

“228. Re-auction of leased area.- A leased area may be re-auctioned within three months before its expiry but if the auction or the grant of lease is delayed due to certain reasons, the Licensing Authority may extend the period of previous lease upto the date of next grant on payment of proportionate bid money in advance for the extended period:

Provided that any extension beyond a period of six months on this account shall be subject to the approval of Director General, Mines and Minerals, Punjab.

Provided further that extension beyond a total period of one year shall be subject to the approval of the Secretary.”

7. Rule 228 of the Rules was interpreted by the Supreme Court of Pakistan in C. P. No. 590 of 2014 decided on 29.04.2014 in the following terms:-

“We have gone through the letter dated 11.06.2011 issued by the Assistant Director Mines & Minerals, Attock, addressed to the respondent advising him to deposit Rs.570,834/- along with 05% income tax, the balance of Rs. 783,334/-, for the one month period from 03.06.2011 to 02.07.2011. It was clarified that the respondent could continue with the excavation work only if the above terms were accepted. The respondent duly accepted the terms of the offer as he continued with the excavation. As regards interpretation of Rule 228 of the Rules we agree with the learned Law Officer that the bid money mentioned in the said rule relates to the new bid for which the mine was being leased out to the highest bidder. Had the intention been to allow extension of lease to the old lessee on the basis of the rate on which he was already making payments Rule 228 would have referred to the lease amount and not the bid money. The High Court, with respect, had misinterpreted the rule and focused on the logic behind the Rule rather the wordings of the Rule Itself. Even otherwise the old lessee should make payment according to the new market rate for the extended period.”

8. It becomes evident from the above that the Petitioner in terms of his grievance for the lost period of lease did not seek refund of proportionate bid money in terms of Rule 222 of the Rules but requested the department for extension in the lease period under Rule 228 of the Rules just before expiry of the original lease period when the leasing area had been included in the schedule of auction and the fresh reserve price had been duly determined by the Special Experts Committee under Rule 197-A of the Rules. After obtaining relief from Respondent No. 1, the Petitioner had already consumed the extended lease period which demonstrates that in essence, he had accepted the terms of extension in the lease period.

9. When a contractor bids for a mining contract, he caters for all potential impediments in the execution of the contract if declared successful and submits his bid, accordingly. Notwithstanding the same,

Rule 222 of the Rules is available for certain unforeseen or extraordinary circumstances to cater for lost period of lease. The term ‘proportionate bid money’ employed in Rule 222 of the Rules relates to bid money at which the bidder was granted the mining lease. However, the term ‘proportionate bid money’ employed in Rule 228 of the Rules relates to prevalent reserve price of new bid for the reason that due to afflux of time, the prices have increased and cannot be deemed to remain static. Even otherwise, it is now well entrenched in our jurisprudence that public properties are required to be auctioned at the best possible price to avoid any financial loss to the exchequer. The finding of Respondent No. 1 was squarely in line with the reasoning of the Supreme Court of Pakistan and in accordance with the mandate of Rule 228 of the Rules. As such, the lease period was rightly extended subject to payment of advance proportionate bid money at the rate of newly fixed reserve price of the block.

10. It may also be noted that the Order dated 13.11.2019 passed by Respondent No. 1 is not identical to the case of the Petitioner as the Petitioner therein had remained in possession for 93 days beyond the valid lease period but the possession of the area was taken over before the date of new auction. Moreover, the Orders dated 12.03.2019 and 02.04.2019 passed in W. P. No. 9428 / 2019 do not relate to the facts and circumstances of the instant case. Even otherwise a wrong past practice, if any, is no ground for repeating the wrong and cannot be pressed for relief.

11. In view of the above, this constitutional Petition, being devoid of any merit, is dismissed, accordingly.

(Abid Hussain Chattha)
Judge

Approved for reporting.

Judge

**Ahsan*