

(2015) 01 OHC CK 0047

In the Orissa High Court

Case No : Writ Petition (C) Nos. 6748 and 9323 of 2014

Abhaya Samantaray

APPELLANT

Vs

The Collector and Others

RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Citation : (2015) 120 CLT 93 : (2015) 1 ILR Ori 723 : (2015) 1 OLR 1017

Hon'ble Judges : I. Mahanty, J; Biswanath Rath, J

Bench : Division Bench

Advocate : T.P. Tripathy, for the Appellant

Final Decision : Allowed

Judgement

Biswanath Rath, J.

1. Both the writ petitions arise out of a common cause of action and in view of common pleading involved in both the writ petitions having same cause of action in both the writ petitions can be decided together by a common judgment. Hence, we proceed to decide both the above writ petitions together. Pleadings as involved in W.P.(C) No. 6748 of 2014 is that petitioner was an applicant against the Tender Process in the matter of auction of a Sand Sairat at Talapada for a period of one year. Petitioner became the highest bidder to the aforesaid Sand Sairat for the year 2013-2014. As assessed, petitioner deposited a sum of Rs. 4,50,000/- on 15.03.2013, the full and final amount involved in the bid. It is alleged by the petitioner that even though the amount involved was deposited on 15.03.2013 yet the opposite party No. 3 could not obtain the Environmental Clearance till end of August, 2013 and ultimately the opposite party No. 3 could obtain the Environment Clearance on 04.09.2013. After the Environmental Clearance was obtained, petitioner approached the opposite parties for issuing the "R" Form for extraction of sand immediately. It is alleged by the petitioner that the matter was delayed at the hand of the opposite parties and ultimately after issuing the Form "R" on 28.12.2013, the Tahasildar directed the petitioner

to execute the agreement within 3 days but again due to paucity of time with the Competent Authority the agreement could not be finalized. But ultimately petitioner was allowed to operate the Sand Sairat from December, 2013 making period of lease valid up to 31.03.2014. Petitioner alleged that the authorities did not act in terms of Rule 36 and Rule 53 of the Orissa Minor Mineral Concession Rules, 2004 (for short "the OMMC Rules, 2004") and by not allowing the petitioner to operate for one year, the petitioner has been greatly prejudiced and suffer financially. Thus in filing the 1st writ petition [W.P.(C) No. 6748 of 2014] the petitioner sought for direction to the opposite parties to allow the petitioner to operate the particular Sand Sairat for a period of one year from the date of execution of the agreement. Petitioner alleged that during pendency of the above writ the opposite parties without considering the request of the petitioner to allow him to operate for one year from the date of actual commencement proceeded for bringing out a fresh auction notice dated 09.05.2014 as available at Annexure-7 in the W.P.(C) No. 9323 of 2014 was filed by the petitioner challenging the fresh auction notice in connection with the very same Sand Sairat. The petitioner by filing the above writ petition again sought for a direction from this Court for quashing the fresh auction notice dated 09.05.2014 and at the same time directing the opposite party No. 3 therein to extend the time of operation of Sairat for full term of one year following a decision of this Court in W.P.(C) No. 28583 of 2013.

2. Per contra pending consideration of the writ petitions opposite parties 1 to 3 filed a counter affidavit in W.P.(C) No. 6748 of 2014 inter alia contending therein that up set price for particular bid (Sand Sairat source at Talapada) for the year 2013-14 was fixed and approved by the Sub-collector, Puri @ Rs. 4,00,000/- (rupees four lakhs) vide order dated 04.02.2013. Petitioner being found as the highest bidder, the bid was knocked down in favour of the petitioner vide order dated 15.03.2013. Opposite parties 1 to 3 admitted that the petitioner had deposited the balance bid price on 15.03.2013 along with the security deposits. These opposite parties contended that even though form "R" permitting the petitioner to operate the source with effect from 01.04.2013 by issuing form "R" on 21.03.2013 but the same could not be made effective as the Environmental Clearance was granted by Environment Impact Assessment Authority vide letter dated 28.08.2013 and even though the petitioner was asked to execute the agreement vide letters dated 16.12.2013 and 28.12.2013 but petitioner proceed with operate the source without executing any agreement till 31.03.2014. Considering the bid period to be from 01.04.2013 till 31.03.2014, the opposite parties submitted that the petitioner cannot be allowed to continue after 31.03.2014 and after expiring of bid period the opposite parties have already gone for another advertisement for auctioning the very Sand Sairat for 2014-2015 by giving of for a fresh advertisement. It is in these premises, the opposite parties claimed for dismissal of the 1st writ petition for there being no illegality committed by the opposite parties and in view of fresh advertisement, there is scope for interfering in the 1st writ as well as in the 2nd writ petition.

3. There is no denial to the fact that the period of bid involved was 2013-2014. There is no denial to the fact that the petitioner was found to be the highest bidder in the alleged auction process and bid was also knocked down in his favour by issuing a letter dated 15.03.2013. There is also no denial to the fact that the petitioner has deposited the balance bid amount on 15.03.2013 along with security deposits. Rule 36 of the OMMC Rules, 2004 speaks of validity of auction and Rule 53 of the above Rule speaks for an agreement in the matter between the parties, Rules 36 and Rule 53 of the OMMC Rule, 2004 reads as follows:-

"Rule 36 - Validity of action - The auction shall be valid for a maximum period of one year from the date of execution of auction agreement."

"Rule 53 - Agreement - An agreement containing the terms and conditions of auction sale, quarrying operation etc.. shall be executed by the successful bidders and the competent authority as per provisions of the Registration Act, 1908 and the Stamp Act, 1899 within seven days from the date of payment of bid amount in full."

4. Reading of both the above provisions make it clear that the period of auction under the OMMC Rule, 2004 is for a maximum period of one year from the date of execution of the auction agreement. Similarly, it is mandatory to have an agreement containing the terms and conditions of the auction sale between successful bidders and the competent authority shall have to execute the agreement within seven days from the date of payment of bid amount in full. The facts as borne from the writ petition as well as the counter affidavit makes it clear that even though the petitioner deposited the entire balance bid amount on 15.3.2013 along with other security deposits but the Tahasildar, Pipili-opposite party No. 3 could be able to get a Clearance Certificate, as granted by State Environment Impact Assessment Authority only in the month of August, 2013. Further, from the pleading of the opposite parties in their counter affidavit, this Court is unable to find a reason as to if the Environmental Clearance Certificate was issued on 28.8.2013 then why the opposite parties took time till middle of the December to ask the petitioner to execute the agreement on 16.12.2013 as well as 28.12.2013 respectively. All these seems make it clear that even though the petitioner made the full deposit on the bid amount along with security deposit on 15.3.2013 but he had no scope to get into the execution of the agreement prior to 16.12.2013 at the minimum. Again all these facts make it clear that even though bid was knocked for one year but the petitioner has been allowed to operate the sand sairat at the maximum from 16.12.2013 till 31.3.2014. Further, in view of the provisions, as contained in Rule 53 of the OMMC Rule, 2004, under no circumstances the petitioner can be permitted to operate the sand sairat in absence of an agreement. Such matters has drawn the attention of this High Court again and again. In considering similar request involved in W.P.(C) Nos. 889, 890, 891 and 892 of 2012 decided by another Division Bench of this Court and as reported in 2012 (I) OLR-813, after taking

into consideration the provisions contained under Rule 36, Rule 48 and Rule 53 of the of OMMC Rules, 2004, this Court has come to the following finding:-

"For the reasons stated supra, the period of delay in executing the lease documents shall be excluded from the period of lease. As per Rule 36 of the Rules, 2004, the lease period of one year from the date of agreement shall be given effect to. Hence, that period shall be added to the agreement and the petitioners shall be permitted to extract minor minerals from the sairats in question for a period of one year from the date of agreements. Therefore, it is open for the competent authority either to allow the petitioners to extract the minor minerals for a period of one year from the date of agreements or to refund the bid amount to the petitioner on pro rate basis."

Similar matter was also considered by another Division Bench of this Court in W.P. (C) No. 28583 of 2013 and taking into consideration of a decision dated 12.3.2014 taken by the State Government in such matters taking into consideration the submission of the Government Advocate that the date when all the statutory clearance are obtained by the successful bidder will be the date of agreement and it is under the circumstance, the Division Bench in the said case disposed the matter involved in W.P.(C) No. 28583 of 2013 in approval of the judgment of this Court passed on 28.3.2012 in W.P.(C) No. 5754 of 2011 came to hold that the prescribed one year validity of auction under the existing rule shall be reckoned from the date when all statutory clearance are obtained by the successful bidder.

5. During course of argument of both the above cases, parties have brought to the notice of the Court the proceeding of the State Government dated 12.3.2014. Perusal of the decision of the Government also makes it clear that Government in consideration of the fact that since the source is allotted through open public auction and substantial period is already lost for obtaining clearance, shorter tenure would encourage the miner to concentrate more on over exploitation/un-scientific mining without any measures being taken for protection of environment and/or safety of the workers and therefore decided to have longer period of validity for auction under the existing Rules. It is in this view, the State also decided to suitably extend the period of auction in terms of the observations made by this Court in the judgment dated 28.3.2012 passed in W.P.(C) No. 5754 of 2011.

6. In view of the above and particularly, in view of the direction contained in W.P. (C) No. 5754 of 2011 there remains no doubt in considering the validity of auction in the matter of sand quarry auction. Law is fairly well settled holding that the validity of the auction is to be at the minimum from the date of obtaining of statutory permissions. But keeping in view the fact involved in the case at hand, there is no denial that the statutory clearance for working out the quarry operation was obtained vide letter dated 28.08.2013. Further taking into consideration the submission of the opposite parties 1 to 3 in paragraph-9 of their counter that even though the petitioner was asked to execute the

agreement vide letters dated 16.12.2013, 28.12.2013 and also taking into consideration the submission of the petitioner as made in paragraph-4 of the writ petition that he could be able to start operation of sand sairat on 12.12.2013 in view of issuance of valid transit transportation pass under form "R" by the competent authority, the petitioner should be allowed to operate the quarry for one year from the date of asking to come forward for agreement on 16.12.2013 excluding the period he has already operated. Since we have directed the petitioner to operate the sairat for the balance period, the fresh auction process initiated vide Annexure-7 in W.P.(C) No. 9323 of 2014 cannot be maintained and the same is hereby set aside. Under the circumstances, both the writ petitions succeed to the extent direction given hereinabove. In view of our direction allowing the petitioner to operate the quarry for balance period, we direct the opposite parties to issue necessary order in favour of the petitioner indicating therein the period of operation for the sand sairat which order to be issued to the petitioner within a period of two weeks from the date of communication of this judgment. However, there shall be no order as to cost.