

(2004) 10 OHC CK 0020

In the Orissa High Court

Case No : Writ Petition (C) No. 6992 of 2004

Aditya Narayan Mahasupakar

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-10-2004

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 4
Orissa Minor Minerals Concession Rules, 1990 — Rule 28

Citation : AIR 2005 Ori 10 : (2005) 99 CLT 106 : (2005) 99 CTLJ 106 : (2004) 2 OLR 574

Hon'ble Judges : Sujit Barman Roy, C.J;L. Mohapatra, J

Bench : Division Bench

Advocate : R.K. Mohanty, D.K. Mohanty, A.P. Bose, S.N. Biswal and P.K. Samantray, for the Appellant; Additional Government Advocate and Samir Kumar Mohanty, for the Respondent

Judgement

L. Mohapatra, J.—The petitioner in this writ application assails Annexure-1, a notice issued by the Tahasildar, Bhubaneswar calling for applications for settlement of a sand quarry as well as the decision of the opposite parties in settling the sand quarry in favour of the opposite party No. 5.

2. The case of the petitioner is that an advertisement was published in daily "The Samaj" and "The Dhariti" on 1-2-2004 for auction of certain sand sources including the present quarry. Pursuant to such advertisement, three applications were filed including that of the petitioner, but opposite party No. 5 never participated in the said auction. The price offered by the petitioner was the highest, but the upset price fixed by the Tahasildar being much more than the highest price offered by the petitioner, the said auction notice was cancelled. Similarly, at subsequent stages two more auctions were held but no one could match the upset price fixed by the Tahasildar. After three attempts the authorities having failed to get an offer matching the upset price all the bidders who participated in three auctions were called for negotiation. However, while giving such notice for negotiation in Annexure-2, persons who never participated

in the earlier auctions were also given opportunity to attend the negotiation. The further case of the petitioner is that in the negotiation held the petitioner again offered the highest price i.e. Rs. 3,40,000/-. However, it did not match the upset price fixed by the Tahasildar and the sand source was not settled with any one. Subsequently, the petitioner came to know that the said source has been settled with opposite party No. 5 by private negotiation and challenging the same, he has filed this writ application.

3. A counter-affidavit has been filed by the opposite party No. 4, Tahasildar, Bhubaneswar. It is stated in the counter-affidavit that the upset price was fixed by the Tahasildar at Rs. 13,65,000/-, but in all the three auctions held the participants could not match the upset price as a result of which the auctions had to be cancelled. It is also stated in paragraph 4 of the counter-affidavit that pursuant to auction notice, an auction was held on 11-2-2004 and the petitioner offered Rs. 6,68,000/- whereas the other two participants offered Rs. 4,51,000/- and Rs. 4,11,000/- respectively. When the auction was held for the second time, the petitioner offered Rs. 3,30,000/- whereas two other participants offered Rs. 2,57,000/- and Rs. 1,90,000/- respectively. Since the second offer submitted by the petitioner did not match the upset price and was also lower than the first offer, it was decided to cancel the auction. The third auction was held on 25-3-2004 and in the said auction the petitioner offered Rs. 3,30,000/- whereas two other participants offered Rs. 2,50,000/- and Rs. 1,90,000/-. In view of such offer, again the auction was cancelled. In order to fetch maximum amount, though three auctions were held, nobody matched the upset price fixed by the Tahasildar and a decision was taken to settle the source on negotiation. Pursuant to such decision, the three bidders including the petitioner were noticed and the petitioner offered highest price of Rs. 3,40,000/-. One of the bidders namely, Dasarathi Garabadu did not turn up for negotiation and another bidder namely, Bishnu Pr. Panda offered Rs. 3,10,000/-. The opposite party No. 5 who had never participated in the earlier auctions offered price of Rs. 3,51,250/-. It is further case of the opposite parties that had the source not been settled in favour of opposite party No. 5, who offered the highest price, operation of the sand source for the current year would have been stopped and there would have been loss to the revenue of the State Government.

4. From the averments made in the writ application as well as in the counter-affidavit and on consideration of the submissions made by the learned counsel appearing for the parties, the following facts appear to be undisputed.

5. The upset price for the sand source had been fixed by the Tahasildar at Rs. 13,65,000/-. Three auctions were held and in none of the auctions the participants could match the upset price fixed by the Tahasildar. In view of such reasons, all the auctions were cancelled and a decision was taken to settle the source by way of negotiation. In the negotiation, opposite party No. 5 offered the highest price and the same was accepted. The question that comes for consideration is, having accepted an offer which is lower than the upset price,

was there any reason for the Tahasildar to cancel the previous auctions in which also the offers made by the participants were lower than the up set price?. It appears that in all the three auctions three participants namely, the petitioner, Bishnu Pr. Panda and Dasarathi Garabadu have participated. Even if a general notice was given for such auction, except the three no other participant participated in the auction. It appears from the counter-affidavit that the Tahasildar entertained a doubt and in view of the above, decided to go in for a negotiation. In the negotiation, undisputedly opposite party No. 5 offered the highest price Rs. 3,51,250/-and the same was accepted. True it is, from the counter-affidavit as it appears pursuant to the first auction notice the petitioner had offered Rs. 6,68,000/- and the same should have been accepted even though it was less than the upset price. The Tahasildar probably was of the view that the bid price might go up in second and third auctions, but unfortunately it was found that the second and third auctions did not result in better offers. However, it appears from the counter-affidavit that on negotiation the opposite party No. 5 having been found to be the highest bidder, the same has been settled in his favour with effect from 1-7-2004. It will not be appropriate on the part of this Court to unsettle the position as opposite party No. 5 has already operated the source" for more than three months; We are therefore, not inclined to interfere with the impugned notice in Annexure-1 in settling the sand source in favour of the opposite party No. 5. However we observe that in future the sand source should be put to public auction and wide publicity of such auction must be given so that best price will be. available to the State Government for putting the said source either at lease or license.

6. The writ application is accordingly disposed of

Sujit Barman Roy, C.J.

7. I agree.