(2020) 10 OHC CK 0012

In the Orissa High Court

Case No : Writ Petition (Civil) No. 12641 Of 2020

Bharat Chandra Bhuyan APPELLANT

Vs

State Of Odisha & Others RESPONDENT

Date of Decision : 13-10-2020

Acts Referred:

Odisha Minor Minerals Concession Rules, 2016 — Rule 10(10), 27, 27(4)(ii), 27(4)(iv), 27(5)

Citation : (2020) 10 OHC CK 0012

Hon'ble Judges : Mohammad Rafiq, CJ;B.R. Sarangi, J

Bench : Division Bench

Advocate : G. Padhi, P.K. Muduli

Final Decision : Dismissed

Judgement

Mohammad Rafiq, CJ

1. This writ petition has been filed by the petitioner-Bharat Chandra Bhuyan, challenging the order dated 09.02.2018 (Annexure-6), passed by the

Tahasildar, Sadar, Cuttack-opposite party no.4 and the order dated 03.03.2020 (Annexure-9), passed in Misc. Appeal No.08/2020 (Sairat) by the Sub-

Collector, Cuttack Sadar, Cuttack-opposite party no.3.

2. The facts of the case in nutshell are that the Tahasildar, Sadar, Cuttack-opposite party no.4 issued a long term lease auction notice dated

08.01.2018 for five years for Sand Sairat Lease auction in different sand sairat quarries. He later issued a corrigendum to that notice dated 12.01.2018

notifying that the additional charge would not be less than Rs.20/-. The petitioner submitted his bid for Sidua River Sand in Mouza-Kadampada Sairat

case No.37/18-19 under Khata No.610 at Plot No.2638, area of 12 acres 500 dec. on the prescribed application in Form-M for grant of such quarry lease. He also submitted the solvency Certificate amounting to Rs.20.00 lakhs before the Tahasildar along with an affidavit declaring that no due

towards Government is pending against him. According to the petitioner, he was the second highest bidder.

3. Mr. G. Padhi, learned counsel for the petitioner submitted that according to sub-Rule (10) of Rules 10 of the Odisha Minor Minerals Concession

Rules, 2016 (for short, â??the 2016 Rulesâ?), the prospecting license-cum-mining lease shall be granted in favour of the applicant, who has quoted the

highest rate of additional charge. The petitioner-assessee is the second highest bidder but the Tahasildar confirmed the bid of opposite party no.5-

Bidyadhar Patra, who is the third highest bidder. The petitioner has quoted additional charge of Rs.119/-, which is much higher than Rs.75/- quoted as

additional charge by opposite party no.5. Reference has been made to Bid Sheet under Annexure-7. It is contended that according to Rule 27 (4)(iv)

of the 2016 Rules, the bidder is required to furnish â??a solvency Certificate valid for a period of eighteen months for an amount not less than the

amount of additional charge offered and the royalty payable for the minimum guaranteed quantity for one whole year and a list of immovable

properties from the Revenue Authority.â? The calculation made by the Tahasildar that the petitioner would be required to furnish the solvency

Certificate of Rs.39,70,890/- is wholly incorrect. Since the additional charge offered by the Tahasildar in the advertisement is Rs.20/- and Royalty is

Rs.35/-, the amount, of which the solvency Certificate would be required to be submitted, would be calculated by adding those two figures i.e. Rs.35/-

+ Rs.20/- = Rs.55/- and then multiplying the same with the minimum guaranteed quantity of sand to be lifted in one whole year, which is 25,785 Cum,

the total of which would come to Rs.14,18,175/-. Since the petitioner already furnished the solvency Certificate of Rs.20.00 lakhs, the requirement of

furnishing solvency Certificate of Rs.14,18,175/- was fully satisfied. The Tahasildar wrongly calculated the earnest money of opposite party no.5, who

was the third highest bidder. He has taken solvency Certificate of opposite party no.5 of Rs.28,36,350/-and therefore, the earnest money @ 5%

required to be deposited by opposite party no.5 was Rs.1,41,818/- but he has deposited only Rs.70,909/-. It was contended that the bidder had to be

selected based upon highest additional charge made and not on the basis of solvency Certificate and therefore acceptance of offer of additional charge of Rs.75/- made by the third highest bidder was wholly illegal and arbitrary for which the State Government would lose revenue of about

Rs.80.00 lakhs. It was submitted that the Tahasildar has thus illegally rejected the bid of the petitioner on the ground that the petitioner had failed to

furnish the solvency Certificate of required sum. In support of his case, learned counsel for the petitioner relied upon a judgment of this Court in the

case of Suryakanta Haboda v. State of Odisha and others, reported in 2016 (Supp.-I) OLRâ?"1113.

4. Mr. P. K. Muduli, learned Additional Government Advocate for the State submitted that bid of the petitioner has been rejected on two grounds

namely (1) due to non-submission of affidavit stating that no mining due is outstanding against the petitioner-applicant and (2) insufficient solvency

Certificate in terms of Rule-27(4)(ii) and 27(4)(iv) of the 2016 Rules respectively, which are both mandatory conditions.

Mr. P.K.Muduli, learned Additional Government Advocate submitted that Sl. No.2 of the Bid Sheet (Annexure-7) in 9th column thereof would clearly

show that the petitioner has not submitted the affidavit required under Rule 27(4)(ii) of the 2016 Rules. In the said Bid Sheet, Sl. No.2 in the 9th

column provided to attach documents and on the side of affidavit, there is a cross mark (X) which clearly implies that affidavit had not been submitted

by the petitioner along with the application. This is also evident from the order sheet dated 09.02.2018 i.e. the date of opening of the sealed tender

paper. It was contended that the petitioner has wrongly calculated the amount of solvency Certificate. Reference is made to the corrigendum dated

12.01.2018, which required that a solvency Certificate valid for a period of eighteen months for an amount not less than the amount of additional

charge offered and the royalty payable for the minimum guaranteed quantity of mineral for one whole year and a list of immovable property from the

Revenue authority to be enclosed in the application. It was contended that the aforesaid corrigendum was in consonance with Rule â?"27(4)(iv) of the

2016 Rules. As per the auction notice dated 08.01.2018, the minimum additional charge has been fixed at Rs.20/-, royalty at Rs.35/- and the minimum

guaranteed quantity of sand to be lifted in one whole year is 25,785 Cum. But the petitioner has quoted Rs119/- as the additional charge, therefore, the

amount of solvency certificate shall be calculated on that basis. It was contended that as per Ruleâ?"27(5) of the 2016 Rules, the quarry lease shall be granted in favour of the applicant, who has quoted/offered the highest rate of additional charge.

5. We have given our consideration to rival submissions and perused the material on record.

6. For ready reference, the Rule 27 is reproduced hereunder:-

â??27. Grant of quarry lease:â?

4) xxxÂ Â

xxxÂ xxx

(ii) An Affidavit stating that no mining due payable under the Act and the rules made thereunder, is outstanding against the applicant:

xxxÂ Â

xxxÂ xxx

(iv) a solvency Certificate or Bank Guarantee valid for a period of eighteen months for an amount not less than the amount of additional

charge offered and the royalty payable for the minimum guaranteed quantity for one whole year and a list of immovable properties from the

Revenue authority.â??

7. The additional charge as referred to in Ruleâ?"27(4)(iv) of the 2016 Rules is a variable figure whereas the royalty as mentioned in Ruleâ?"27(4)(iv)

is a fixed figure. Variable factor of additional charge offered plus the fixed rate of royalty multiplied by the minimum guaranteed quantity for one

whole year has to be treated as the basis for arriving at the value of the solvency Certificate, to be submitted by the intending bidders. Rate of royalty

in respect of different minor minerals have been mentioned in Scheduleâ?"II of the 2016 Rules. Sl. No.32 of Scheduleâ?"II relates to â??Ordinary

Sandâ?? and the rate of royalty has been fixed at Rs.35/- per cum. In order to be the successful bidder, the petitioner quoted the additional charge of

Rs.119/- and when this amount is added to the fixed amount of royalty of Rs.35/-, the total amount comes to Rs.154/-, which is required to be

multiplied by the minimum guaranteed quantity of sand to be lifted in one whole year i.e. 25785 cum. Thus caclulated, the total amount would come to

Rs.39,70,890/-. While the amount of royalty may be fixed but what is to be added to the amount of royalty is the â??additional charge offeredâ? by

the bidder and not the minimum additional charge indicated in the tender call notice. The petitioner having submitted the bid with solvency Certificate

of only Rs.20.00 lakhs, his bid in our view, was rightly rejected by the opposite party no.4. It is trite that when a statute provides a particular thing to

be done in a particular manner, the same should be done in that way and other modes of performance are forbidden. Reference in this regard may be

made to judgment of the Supreme Court in Prabha Shankar Dubey v. State of M.P., reported in (2004) 2 SCC 56.

8. In view of the above discussion, we do not find any merit in the writ petition so as to warrant any interference, which is accordingly dismissed.

As Lock-down period is continuing for COVID-19, learned counsel may utilize the soft copy of this order available in the High Courtâ??s website or

print out thereof at par with certified copies in the manner prescribed, vide Courtâ??s Notice No.4587, dated 25.03.2020.