
(2016) 05 OHC CK 0037
In the Orissa High Court
Case No : W.P.(C) No. 8130 of 2015

Bimala Prasad Sethy

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 13-05-2016

Acts Referred:

Orissa Minor Minerals Concession Rules, 2004 — Rule 26(5)

Citation : (2016) AIR(Orissa) 147 : (2016) 2 ILRCuttack 35

Hon'ble Judges : Vineet Saran, CJ. and Dr. B.R. Sarangi, J.

Bench : Division Bench

Advocate : M/s. S.K. Bhanjadeo, S. Balabantaray and B.K. Behera, Advocates, for the Petitioner; Mr. B.P. Pradhan, Addl. Govt. Advocate, Mr. S.K. Dalai, P.N. Swain and S. Mohapatra, Advocates, for the Opposite Parties

Final Decision : Dismissed

Judgement

Vineet Saran, C.J.—Heard Mr. S.K. Bhanjadeo, learned counsel for the petitioner as well as learned Additional Government Advocate for

State-opposite party nos. 1 to 3 and Mr. S.K. Dalai, learned counsel for opposite party no.4. Counter and rejoinder affidavits between the

contesting parties have been exchanged, and with consent of learned counsel for the parties, this writ petition is being disposed of finally at this stage.

2. The facts of the present case are that for the years 2015-16 to 2019-20, the lease for sand quarry of Mundilo Patenigaon was to be granted by

auction, for which an advertisement was issued on 11.03.2015. Opposite party no. 5 was the highest bidder, whereas opposite party no. 4 was

the second highest bidder and the petitioner was the third highest bidder. Initially, the bid of opposite party no. 5 was accepted on the condition

that opposite party no. 5 shall deposit the requisite amount, for which as per Rule 26(5) of the OMMC Rules, seven days notice was given on

06.04.2015. When the requisite amount was not deposited by opposite party no.5 within seven days, as per the relevant Rules, opposite party no.

4 was issued notice on 15.04.2015 to deposit the requisite amount as he was the second highest bidder. The period of seven days from the notice

dated 15.04.2015 was to expire on 22.04.2015. The petitioner, who was the third highest bidder, approached this Court on 24.04.2015 by filing

this writ petition, with the prayer for a direction to opposite parties no. 2 and 3 to issue notice to him for depositing the money, to enable him to get

lease executed in his favour. An interim order of status quo was passed by this Court on 04.05.2015.

3. The facts stated as above are not disputed by the parties.

4. In the counter affidavits filed by the State opposite parties, as well as opposite party no. 4, it has been categorically stated that in response to the

notice dated 15.04.2015, opposite party no. 4, who was the second highest bidder, deposited an amount of Rs. 5,44,597/- on 20.04.2015, which

was within five days of the notice dated 15.04.2015. Copy of the receipt issued by the Nazir, Jagatsinghpur Tahasil has been filed by the State in

Annexure-A/3 to its counter affidavit, as well as Annexure-A/4 to the misc. case No. 4584/2016 filed by opposite no.4. In the rejoinder affidavit,

learned counsel for the petitioner has stated that the amount was deposited in the Treasury on 18.05.2015, which was not within the period of

seven days from the notice dated 15.04.2015.

5. The deposit receipt of the Nazir, which is dated 20.04.2015, is what is relevant. Opposite party no. 4 was required to deposit the money with

the Nazir and it was, in turn, for the Nazir to deposit the said amount in the Treasury. This procedure is not disputed. According to the petitioner,

the Nazir ought to have deposited the entire amount with the Treasury on the very next day, as is provided in the relevant Rules.

6. The Nazir, by not having done so, the deposit made by opposite party no. 4 on 20.04.2015, in our opinion, would not become time barred.

The liability of opposite party no. 4 was to deposit the amount in question within the stipulated time, which opposite party no. 4 has deposited. If

the authorities failed to deposit the said amount in the Treasury on the very next

day or actually deposited the same after four weeks, it is not the concern of opposite party no. 4, as he had discharged his liability under the notice dated 15.04.2015 within the stipulated time. As such, the contention of the petitioner that the notice for grant of lease be issued to him, being the 3rd highest bidder, in terms of the Rule-26(5) of the OMMC Rules, would not be justified in the facts of the present case.

7. Accordingly, for the reasons given above, the prayer made in the writ petition does not deserve to be granted. The petition is thus dismissed. No order to cost.