

(2014) 03 RAJ CK 0099

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 5787 and 5834/2013

Chaina Ram

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Partnership Act, 1932 — Section 12, 12(a), 19, 4

Citation : (2014) 4 RLW 3609 : (2014) 2 WLN 371

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : Dinesh Mehta for the M/s. Kuber Associates and Others, Mr. Manoj Bhandari and Mr. V.D. Dadhich for Chaina Ram, Advocate for the Appellant; P.S. Bhati, Additional Advocate General assisted by Mr. Mohnit Bhatnagar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sangeet Lodha, J.—These two writ petitions, which relate to grant of mining lease for excavation of river sand (bazari) from rivers, drains, nadi, nala, bhala etc. recorded as "Gair Mumkin" in the Revenue Record of various revenue Villages of Tehsil-Jaitaran, District-Pali, pursuant to the Notice Inviting Tender (NIT) dt. 20.11.2012, issued by the Superintending Mining Engineer, Department of Mines, Government of Rajasthan were heard together and are being disposed of by this common order. The petitioners-Kuber Associates & Others have filed the writ petition No. 5834/13 aggrieved by the order dt. 26.04.2013 issued by the Superintending Mining Engineer, in compliance of order dt. 17.04.2013 issued by the Directorate, Mines, Government of Rajasthan, directing to issue a fresh NIT for grant of mining lease in question, on account of rejection of petitioner's bid as invalid and non confirmation of the bid offered by the petitioner-Chaina Ram.

2. The petitioner-Chaina Ram has preferred the writ petition No. 5787/13

aggrieved by the action of the respondents in rejecting the bid offered by him and issuing a fresh NIT as aforesaid, for the award of the mining lease for the area in question.

3. The relevant facts in nutshell are that in exercise of the power conferred under Rule 21 & 35 of the Rajasthan Minor Minerals Concession Rules, 1986 (for short "the Rules"), the Superintending Mining Engineer, Jodhpur, issued a NIT dt. 21.11.2012 for grant of mining lease for excavation of bazari from rivers, drain, nadi, nala, bhala etc. which are recorded in the Revenue Record as Gair mumkin in the various areas specified falling within territorial limit of Jodhpur circle of Department of Mines, Government of Rajasthan. The present petitions relate to item No. 13 of the NIT i.e. the grant of mining lease for excavation of the bazari from the gair mumkin river, nala etc. falling within the area of various revenue Villages of Tehsil-Jaitaran.

4. The procedure for holding auction for mining leases under Rule 21 of the Rules is prescribed under Rule 34 of the Rules and the procedure for calling tenders is governed by Rule 35 of the Rules.

5. Rule 35(vi) of the Rules mandates that every tender shall be accompanied by the documents as specified. Since the controversy involved in the matter rolls around Rule 35(vi) of the Rules, the same is reproduced hereunder for ready reference:

(vi) Every tender shall be accompanied by:

(a) earnest money equal to 10% of yearly tender amount in the form of Demand Draft or Banker's Cheque drawn in favour of the Assistant Mining Engineer/ Mining Engineer concerned or in any other mode as notified by the Government from time to time.

Provided that no interest shall be paid by the Government on the earnest money deposited as above.

[(aa) a non refundable application fees as prescribed in Rule 5 in the form of Treasury Challan or Demand Draft/Banker's Cheque drawn in favour of Assistant Mining Engineer/Mining Engineer concerned in case of tender for grant of mining lease.]

(b) an attested copy of registration of contractor as provided in sub-Rule(4) of Rule 32 for royalty collection contract/excess royalty collection contract.

(c) an affidavit stating that no dues of the Department are outstanding against the tenderer/all partners of the firm/all members of association of persons/all directors of the company or family members of the tenderer/partners/members of association of persons/directors, as the case may be. Such affidavit should not be older than 15 days from the date of its submission.

(d) power of attorney in case the tenderer is a partnership firm/association of persons and resolution of board of Directors in case of company as the case may

be.

(e) in case tenderer fails to enclose all or any one of the documents as per sub Clause (a) to (d) above alongwith tender form, his tender shall be treated as invalid and shall not be considered by the Tender Opening Committee.

(f) tender document shall be signed by proprietor in case of individual tenderer, all the partners of the firm/all the members of association of persons or power of attorney holder of all the partners of the firm/all the members of association of persons in case of firm/association of persons and authorized person of the company by the resolution in case of company as the case may be. Tender document signed by a person other than mentioned above shall be treated as invalid and shall not be considered by Tender Opening Committee.

(emphasis added)

6. The petitioners-M/s. Kuber Associates and Chaina Ram being aspirant for the mining lease in question submitted their tenders in prescribed form i.e. in form 1-I. M/s. Kuber Associates offered a close bid of Rs. 8,65,00,000/-, whereas, Chaina Ram offered the bid of Rs. 5,21,00,000/-. Thus, the bid offered by M/s. Kuber Associates was higher than the bid offered by Chaina Ram by a sum of Rs. 3,44,00,000/-. However, tender submitted by M/s. Kuber Associates was not found in conformity with the provisions of Rule 35(vi) of the Rules inasmuch as, the same was not accompanied by the power of attorney executed in favour of Shri Giriraj Sharma, the person signing the document, by the remaining members of association of persons (AOP). Since the tender submitted by the M/s. Kuber Associates was liable to be rejected for non compliance of the mandatory condition in terms of Rule 35(vi)(d) of the Rules and the bid offered by the Chaina Ram was much lower than the bid offered by M/s. Kuber Associates, the Tender Opening Committee instead of selecting any of the bidders provisionally, referred the matter to the Director, Mines and the Secretary, Department of Mines, Government of Rajasthan, for appropriate decision, keeping in view the interest of Revenue. The Directorate, Mines, Government of Rajasthan vide communication dt. 17.04.2013 directed the Superintending Mining Engineer, to issue fresh NIT for the grant of mining lease for the area in question. Accordingly, the Superintending Mining Engineer, Jodhpur issued fresh NIT dt. 06.05.2013, as aforesaid. Hence, these petitions.

7. A reply to the writ petition has been filed on behalf of the respondents taking the stand that the tender furnished by M/s. Kuber Associates was not fulfilling the mandatory requirement as provided by sub-Clause (d) of Clause (vi) of Rule 35 of the Rules and therefore, its tender was liable to be rejected as invalid. It is stated that bid of Chaina Ram was not accepted inasmuch as, it was much lower than the bid offered by M/s. Kuber Associates. It is submitted that taking into consideration the difference in the bid offered by two tenderers and loss bound to be caused to the Revenue on the bid offered by valid tenderer being accepted, the decision of the State Government in issuing fresh NIT was justified. It is

submitted that pursuant to the fresh NIT, the highest bid received is of Rs. 13,78,00,000/-.

8. Mr. Dinesh Mehta, learned counsel appearing for the petitioner-M/s. Kuber Associates & Ors. submitted that the condition prescribed by Rule 35(vi)(d) of the Rules, requiring that in case tenderer is a partnership firm/AOP, the tender should be accompanied by power of attorney runs contrary to the provisions of Section 12(a) & 19 of Indian Partnership Act, 1932 (for short "the Act of 1932"), which mandates that every partner has right to take part in the conduct of business and every act done by such partner binds other partners and firm as if the same has been done by the firm itself. Learned counsel submitted that Rule 35(vi)(d) of the Rules, which mandates that the tender shall be accompanied by power of attorney in case the tenderer is partnership firm/AOP, cannot operate against the mandates of Section 12 & 19 of the Act of 1932 and will have to concede to the said provisions. Learned counsel urged that the provisions of Rule 35(vi)(d) of the Rules deserve to be read down in the manner that in case the tender is signed and submitted by a person other than the partner of the firm or Director of the company, it should be accompanied by a power of attorney in favour of the person signing the document. Learned counsel submitted that a conjoint reading of Clause 7 of the NIT and Column 9(ii) of the application form, makes it abundantly clear that there is no requirement of furnishing power of attorney in cases where the partner of the firm signs the tender documents. Drawing the attention of this Court to the point No. 9 of the form prescribed i.e. Form No. 1-I, learned counsel submitted that even the respondents are interpreting the Rule 35(vi)(d) in the manner that where the tender is submitted by a partnership firm, it need not be accompanied by power of attorney. Learned counsel submitted that the contemporaneous construction placed upon an ambiguous provision by the respondents entrusted with the task of executing the statute is extremely significant and therefore, how the provision is applied by the respondents in actual practice over the years shall govern the field. In this regard, learned counsel has relied upon the decisions of the Hon'ble Supreme Court in the matter of Ajay Gandhi and Another Vs. B. Singh and Others, and Raymond Synthetics Ltd. and others Vs. Union of India and others, . Learned counsel submitted that Clause 7 of deed of partnership/AOP submitted by the petitioner alongwith the tender, specifically provides that any person party to the reconstituted firm/AOP is authorised to sign all the documents like tender document, any deeds, agreement, representation, forwarding letter etc. on behalf of the firm/AOP and therefore, even otherwise, the tender document was not required to be accompanied by any power of attorney executed by the partners of the firm/members of AOP in favour of one of the partners/members, who has signed the tender document on behalf of the firm/AOP. Learned counsel submitted that yet another tender document submitted on behalf of the petitioner firm/AOP for a different location was accompanied by the power of attorney executed in favour of member of AOP, Mr. Giriraj Sharma and therefore, the authority concerned was well aware about the existence of the power of

attorney executed in favour of member of AOP and thus, there was no reason not to treat the requirement of furnishing power of attorney in terms of the Rule 35(vi)(d) of the Rules, if any, as satisfied. Learned counsel submitted that the condition incorporated in Rule 35(vi)(d) has to be construed as directory and not mandatory. Learned counsel would submit that power of attorney by its very nature is required to be executed in favour of a person, who has no authority to act and therefore, execution of the power of attorney by the partners of the firm in favour of one partner who is even otherwise authorised to act on behalf of the firm, is absolutely meaningless. Lastly, learned counsel submitted that the provisions as contained in Clause (e) of Clause (vi) of Rule 35 stands amended by the State Government vide Notification dt. 31.12.2012 and thereafter, the provision as contained in Clause 35(vi)(d) is no more a mandatory provision and therefore, failure to enclose power of attorney alongwith the tender will not render it invalid. Learned counsel submitted that admittedly, the final decision rejecting the tender is taken by the State Government/Director, Mines, after the amendment being introduced by the State Government as aforesaid and therefore, ignoring the amended provision, the impugned decision taken is not sustainable in the eyes of law.

9. Mr. Manoj Bhandari, learned counsel appearing for the petitioner-Chaina Ram drawing the attention of this Court to Rule 35(ix), submitted that the Tender Opening Committee is under an obligation to select the highest valid tenderer as provisionally selected tenderer and the Presiding Officer of the Committee is required to make declaration in this regard. Learned counsel submitted that there being only two tenderers for the grant of mining lease for the area in question and the tender of the highest bidder M/s. Kuber Associates having been declared invalid, the Tender Opening Committee was under an obligation to declare the petitioner as provisionally selected tenderer and was required to refer the bid to the competent authority to take decision for sanction or rejection thereof. Learned counsel submitted that the Tender Opening Committee could not have referred the matter to the State Government for decision without rejecting the invalid tender of M/s. Kuber Associates and thereafter, selecting the petitioner, the highest valid tenderer as provisionally selected tenderer and therefore, the procedure adopted by the Tender Opening Committee, is ex facie contrary to the Rules and cannot be sustained. Learned counsel submitted that a bare perusal of tender submitted by M/s. Kuber Associates makes it clear that in the column of power of attorney, the name of one Giriraj Sharma is mentioned, however, on the tender documents, he has put his signature as member of AOP and not as power of attorney holder. Learned counsel submitted that a conjoint reading of Rule 35(vi)(d), (e) & (f) makes it abundantly clear that the requirement of power of attorney in case the tender is submitted by a partnership firm/AOP, is mandatory. Accordingly, learned counsel submitted that the bid of M/s. Kuber Associates was liable to be rejected as invalid and therefore, the Tender Opening Committee could not have referred the matter with regard to the bid of M/s. Kuber Associates to the competent authority for

consideration. Learned counsel submitted that the petitioner-M/s. Kuber Associates cannot be permitted to plead that it had no knowledge about the requirement of the power of attorney inasmuch as, yet another tender submitted by the said firm in relation to the area Marwar Junction, was accompanied by power of attorney executed by the members of the AOP in favour of Shri Giriraj Sharma. Learned counsel submitted that it is settled law that once NIT is issued providing for the terms and conditions which are governed by the statutory rules, the procedure provided has to be strictly adhered to and no secret or other procedure, which is not provided in the Rules, can be adopted. Learned counsel submitted that while issuing NIT the reserved price was fixed by the respondents a sum of Rs. 1,65,00,000/- on the basis of the highest bid received for the area in question, during the year 2012-13 and since the petitioner's bid was much higher than the reserved price, the same could not have been rejected. Learned counsel submitted that the rejection of the petitioner's bid by the respondents and decision taken to issue fresh NIT without giving an opportunity of hearing to the petitioner and even without assigning any reason, is *ex facie* illegal and arbitrary.

10. On the other hand, Dr. P.S. Bhati, learned Additional Advocate General submitted that since the tender submitted by M/s. Kuber Associates was not fulfilling the mandatory requirement as provided in sub-Clause (d) of Clause (vi) of Rule 35 of the Rules, the same was rightly rejected as invalid tender. Learned AAG submitted that sub-Clause (f) of Clause (vi) of Rule 35, mandates that the tender document submitted on behalf of the firm/AOP, is required to be signed by all the partners of the firm or power of attorney holder of all partners of the firm/ all members of AOP and therefore, it is provided for under sub-Clause (d) of Clause (vi) of Rule 35 of the Rules that the tender document shall be accompanied by power of attorney in case the tenderer is a partnership firm/ AOP. Learned AAG submitted that in terms of Clause (e) in case tenderer fails to enclose all or any one of the documents as mentioned in Clause (a) to (d), his tender shall be treated as invalid and shall not be considered by the Tender Opening Committee and therefore, the condition with regard to requirement of the power of attorney in case the tenderer is partnership firm/AOP, cannot be relaxed.

11. Learned AAG submitted that the bid submitted by Chaina Ram was lower than M/s. Kuber Associates by Rs. 3.44 crores and therefore, keeping in view the interest of the Revenue, the matter was rightly forwarded by the Tender Opening Committee to the State Government for consideration. Learned AAG submitted that as per Clause 35(ix) even the bid of the provisionally selected tenderer was subject to decision for sanction or rejection by the competent authority and no tender is regarded as accepted unless competent authority issues the sanction for the same. Learned AAG submitted that even otherwise, it is well settled that no contract comes into existence merely by submission of the highest bid, unless it is accepted by the competent authority. Learned AAG submitted that the highest bidder who has participated in the tender process has no other right

except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to the NIT. Learned AAG submitted that the Government is not bound to accept the highest bid and it can always be rejected in the interest of public revenue. In this regard, learned AAG has relied upon the decisions of the Hon'ble Supreme Court in the matter of U.P. Avas Evam Vikas Parishad and Others Vs. Om Prakash Sharma, and West Bengal State Electricity Board Vs. Patel Engineering Co. Ltd. and Others, . Learned AAG submitted that pursuant to the fresh NIT issued, the highest bid received is of Rs. 13.78 crores i.e. about two and half times of the bid offered by the valid tenderer Chaina Ram, this fortifies the fact that had the bid offered by him was accepted, the public revenue would have suffered a huge loss and therefore, the decision of the State Government in issuing fresh NIT for the grant of mining lease in question, cannot be faulted with. Learned AAG submitted that the amendment introduced by the State Government vide Notification dt. 31.12.2012 is prospective and it cannot govern the award of the contract under the NIT already issued in conformity with the Rules in force at the relevant time.

12. I have considered the rival submissions and perused the material on record.

13. Indisputably, the procedure for inviting the tenders for grant of mining lease for excavation of minor minerals in the State of Rajasthan is Governed by Rule 35 of the Rules. As per sub-Clause (f) of Clause (vi) of Rule 35, the tender document is required to be signed by proprietor in case of individual tenderer, all the partners of the firm/all the members of AOP or power of attorney holder of all the partners of the firm/all the members of AOP in case of firm/AOP and authorised persons of the company by resolution in case of company, as the case may be. It is not in dispute that the tender submitted by M/s. Kuber Associates was a tender on behalf of a firm/AOP, however, the tender document was neither signed by all the partners of the firm/members of AOP nor it was accompanied by a power of attorney executed by all the members in favour of Shri Giriraj Sharma, the member of AOP, who had signed the tender document on behalf of the AOP. Thus, apparently, the tender document submitted on behalf of M/s. Kuber Associates does not satisfy the requirements of sub-Clause (d) & (f) of Clause (vi) of Rule 35 of the Rules.

14. A fortiori, sub-Clause (e) of Clause (vi) of Rule 35 provides in unequivocal terms that in case tenderer fails to enclose all or any one of the documents as per Clause (a) to (d) alongwith tender form, his tender shall be treated as invalid and shall not be considered by the Tender Opening Committee. Thus, strictly going by Rule 35 of the Rules, the tender document submitted by M/s. Kuber Associates not fulfilling the mandatory requirement of sub-Clause (d) & (f) has to be treated as invalid.

15. Coming to the contention of learned counsel for the petitioner that the provision requiring power of attorney in case the tenderer is a partnership firm/AOP runs contrary to the provisions of Section 12 & 19 of the Act of 1932, it is to be noticed that as per Section 4 of the Act of 1932, "partnership" is a relation

between persons who have agreed to share the profit of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one and another are called individually "partners" and collectively a "firm" and the name under which their business is carried on is called the "firm name". It is well settled law that firm has no legal entity nor it is a person rather, it is a collective term for partners who have entered into partnership with one another. It is also well settled that the rights and obligations of the firm are the rights and obligations of the individuals composing the firm. Therefore, nothing turns on the question that in terms of provisions of Section 12(a) of the Act of 1932, every partner has right to take part in the conduct of the business. It is true that by virtue of provisions of Section 19 of the Act of 1932, the act of a partner which is done to carry on, in the usual way, business of kind carried on by the firm, binds the firm but then, the question whether a given act can or cannot be said to be done in carrying on a business in a way in which it is usually carried on shall be determined by the nature of business and by the practice of the persons engaged in it. In this view of the matter, the provision incorporated by the legislature providing for signing of the tender documents so as to bind the individual partners of the firm, cannot be construed to be a provision in conflict with the provisions of Section 12(a) & 19 of the Act of 1932 so as to make it inoperative.

16. The contention of learned counsel regarding the necessity for reading down of the provision of sub-Clause (d) of Clause (vi) of Rule 35 of the Rules, is absolutely devoid of any merit. It is well settled that the principle of reading down cannot be invoked or applied in opposition to the clear intention of the legislature. As noticed above, a bare perusal of sub-Clause (d) of Clause (vi) of Rule 35 of the Rules, makes it abundantly clear that the requirement of power of attorney executed in favour of the partner of the firm/member of AOP signing the tender document, on behalf of all the partners of the firm/members of AOP is a mandatory requirement. Suffice it to say that the provision incorporated as aforesaid has no ambiguity and is not capable of two meanings, requiring the device of reading down being resorted to so as to make it effective, operative and workable.

17. The contention raised by the counsel appearing for M/s. Kuber Associates with reference to column No. 9 of the prescribed form in terms that even the respondents have interpreted the provision of the sub-Clause (d) in terms that the power of attorney as mentioned relates to individual tenderer and in case of partnership firm, if the tender is accompanied by partnership deed, it will satisfy the condition incorporated, appears to be attractive but on close scrutiny, the same is found to be baseless. In the considered opinion of this Court, the column No. 9 of the prescribed form refers to various documents required to be enclosed with the tender, whichever applicable and the tenderer is required to mark either "yes" or "no" in the said column and thus, from the contents of column No. 9 of the form, in no manner, it can be inferred that in case of partnership firm, the tender form is not required to be accompanied by power of attorney. It is pertinent to note that even in the NIT issued there is a specific condition

incorporated that the tender document if signed by the power of attorney holder it should be accompanied by the power of attorney. Thus, on the basis of the column No. 9 of the prescribed form, the contention raised by the learned counsel for the petitioner that the provision of Rule 35(vi)(d) is being interpreted by the respondents in the manner suggested by him does not appear to be well founded. Thus, on the facts and in the circumstances of the case, the doctrine of *contemporanea expositio* which is confined to the construction of ambiguous language used in a statute is not attracted in the matter for interpretation of Rule 35(vi)(d) of the Rules, language whereof, is not found to be ambiguous in any manner whatsoever.

18. The stand taken on behalf of the petitioner that as a common man relying upon the column No. 9 of the tender form, the petitioner concluded that the tender document is not required to be accompanied by a power of attorney executed by all the members of AOP in favour of member of AOP signing the tender document appears to be false to its own knowledge. Apart from the unequivocal provisions incorporated in Rule 35(vi)(d) of the Rules, it was specifically mentioned in the NIT that where the document is signed by a power of attorney holder, the tender document must be accompanied by power of attorney. That apart, even according to the saying of the petitioner while submitting the tender for grant of mining lease for yet another location, the tender form submitted by him was accompanied by the power of attorney and therefore, the petitioner cannot be permitted to plead lack of knowledge about the requirement of power of attorney.

19. The next contention raised by the counsel for M/s. Kuber Associates that the partnership deed produced on record satisfy the conditions of authorisation inasmuch as per Clause 7 of the partnership deed, every individual partner is authorised to perform any act on behalf of the firm, is also not tenable. In the considered opinion of this Court, so as to maintain the transparency in the process of awarding contract, the mandatory requirements specified for a valid tender must be adhered to strictly and the petitioner cannot claim exemption from the requirement of power of attorney on the basis of alleged clause in the partnership deed or on the basis of the power of attorney accompanying yet another tender submitted on behalf of the firm/AOP.

20. Lastly, coming to the contention of the learned counsel that keeping in view subsequent amendment introduced by the State Government making the requirement of power of attorney directory, the decision on the matter referred by the Tender Opening Committee was required to be taken by the State Government as per the amended provisions, this Court is of the considered opinion the validity of the tenders submitted has to be examined as on the date, the decision was to be taken by the Tender Opening Committee in conformity with the provisions then existing. It is to be noticed that the Tender Opening Committee specifically opined that the tender submitted by the petitioner firm is found to be invalid. Thus, as a matter of fact, the decision regarding the

petitioner's tender being invalid had already been taken by the Tender Opening Committee, however, the matter was referred to the State Government keeping in view the huge difference in the bid amount offered by the petitioner and the yet another tenderer Chaina Ram, whose tender was found to be valid. Thus, the amendment introduced by the State Government subsequent to the tender process being initiated and opening of the tenders by the Tender Opening Committee, does not help the petitioner in any manner whatsoever.

21. In view of the discussion above, this Court is of firmly of the opinion that the decision of the respondents in rejecting the tender submitted by M/s. Kuber Associates pursuant to the NIT dt. 20.11.2012, does not suffer from any infirmity or illegality so as to warrant interference by this Court in exercise of its extraordinary jurisdiction under Art. 226 of the Constitution of India.

22. Coming to the rejection of the bid of the petitioner-Chaina Ram, it is true that in terms of Rule 35(ix) the Tender Opening Committee was required to select the highest valid tenderer as provisionally selected tenderer and after declaration thereof, was required to refer the same to the competent authority to take decision for sanction or rejection. In the instant case, though while referring the matter for appropriate decision to the competent authority, the Tender Opening Committee did not refer the petitioner-Chaina Ram as provisionally selected tenderer but then, it was clarified in unequivocal terms that the tender of M/s. Kuber Associates being found invalid, only the petitioner-Chaina Ram remains a valid tenderer. Indisputably, the ultimate decision for sanction or rejection of the bid was to be taken by the competent authority and therefore, no prejudice is caused to the petitioner on account of he being not formally declared and referred as provisionally selected tenderer by the Tender Opening Committee, while referring the matter for sanction or rejection of bid to the competent authority.

23. It is well settled that in the public contracts even in case where the contracts are awarded through tender or open bid, the highest bidder has no vested right to claim acceptance of his bid. The competent authority vested with the power to take decision for sanction or rejection of bid has discretion to reject even the highest bid for valid reasons. Needless to say that in the matters of award of the contract, the interest of the public revenue is of paramount consideration and therefore, if the highest bid received for the award of the contract is not found adequate, the State Government is not precluded from rejecting the same. Moreover, in the instant case, the award of the mining lease is governed by statutory rules and a specific provision has been incorporated under Clause (xii) of Rule 35 of the Rules in terms that the competent authority shall take decision for sanction or rejection, of the provisionally selected tenderer and no tender shall be regarded as accepted unless competent authority issues sanction for the same. Thus, merely because the petitioner-Chaina Ram was the only valid tenderer, there was no obligation casted upon the State Government to accept the bid offered by him. In the considered opinion of this Court, the huge

difference in two bids received, may be that one of the tender was treated as invalid, must be considered to be a valid reason for rejection of the bid, which is not found to be adequate comparatively. Moreover, it has come on record that on fresh NIT being issued for the grant of the mining lease for area in question, the highest bid received is of Rs. 13,78,00,0000/- as compared to the bid of Rs. 5,21,00,000/- offered by the valid tenderer, the petitioner-Chaina Ram and thus, the decision of the State Government in rejecting the tender on account of bid amount offered being found inadequate stands further fortified.

24. Thus, in the totality of the facts and circumstances of the case, the decision of the State Government in rejecting the bid offered by the petitioner-Chaina Ram, whose tender was found to be valid and in issuing fresh NIT for the grant of mining lease in question, cannot be said to be unfair and unreasonable or lacking in transparency and therefore, no case, for interference by this Court in exercise of its extraordinary jurisdiction under Art. 226 of the Constitution of India is made out. In the result, the writ petitions fail, the same are hereby dismissed. No order as to costs.