(2020) 08 OHC CK 0009

In the Orissa High Court

Case No : D.B. Writ Petition (Civil) No. 12879, 17640, 17766 Of 2020

Dusmant Mallick — APPELLANT

Vs

State Of Odisha And Others — RESPONDENT

Date of Decision : 26-08-2020

Acts Referred:

Mines And Minerals (Development And Regulation) Act, 1957 — Section 15(1)
Orissa Minor Minerals Concession Rules, 2016 — Rule 27, 27(4)(iv), 27(5), 27(16), 42
Constitution Of India, 1950 — Article 12, 14, 32, 226, 298

Citation : (2020) 08 OHC CK 0009

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

Bench : Division Bench

Advocate : Asok Mohanty, T.K. Mishra, S.C. Panda, P. Bastia, B. Sahoo, D.K. Mohanty, Manoj Kumar Mishra, D. Mishra, S.K. Satpathy, Sanatan Das, M.K. Sahu

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J

Dusmant Mallick, the petitioner in W.P.(C) No.12879 of 2018 has approached this Court seeking following reliefs:-

"It is therefore most respectfully prayed that Your Lordships would be graciously pleased to issue a Rule Nisi calling upon the Opp. Parties to show cause as to:-

A) why the action of the opposite party no.4 in not settling the tender in favour of the petitioner shall not be declared as illegal and arbitrary in the eye of law.

B) why the opp.party no.4 shall not be directed to settle the source in favour of the petitioner as per Annexure-2, he being the highest bidder.

C) why the petitioner shall not be issued with the work order to operate the source.

D) Why the order no.1104/dated 20.03.2020, Annexure-3(Annexure-A/4 to the counter affidavit) shall not be quashed being illegal and arbitrary.

E) Why the issuance of Form-F in favour of the opp. Party no.5 on 26.05.2020 shall not be treated as illegal and void and contrary to the provisions contained in the OMMC Rules, 2016."

F) why such other order/orders, direction/directions shall not be passed to secure the ends of justice, equity and fair play;

If the opposite parties fail to show cause or show insufficient cause the Hon'ble Court may be pleased to make the rule absolute and issue writ in the nature of writ of mandamus by declaring the action of the opp.party no.4 as illegal and arbitrary with further prayer to direct the opp.party no.4 to settle the tender in favour of the petitioner with further prayer to direct for issuance of the work order in favour of the petitioner to operate the source as per Annexure- 2 in the facts and circumstances of the case;

And/or pass any other order/orders as this Hon'ble Court may deem fit and proper to secure the ends of justice and equity.

And for this act of kindness, the petitioner shall as in duty bound ever pray."

Janardan Nath filed I.A. No.7316 of 2020 in W.P.(C) No.12879 of 2020 for impleadment of party and the said I.A. was disposed of vide order dated 13.07.2020 granting him liberty to file separate writ petition, which would be considered on its own merit. Accordingly, W.P.(C) No.17640 of 2020 has been filed by Janardan Nath seeking following reliefs:-

"It is therefore prayed that, this Hon'ble Court may graciously be pleased to issue RULE NISI directing the Opp. Parties to show cause as to why the auction sale notice No.815 dt.29.02.2020 (annexure-1) and all subsequent decisions/ actions taken thereto or any act furtherance thereto shall not be quashed;

If the opposite parties fail to show cause or show insufficient cause the Rule NISI may be made absolute and the auction sale notice No.815 dt.29.2.2020 (annexure-1) & the entire auction process may be quashed;

AND

Further prays to pass any other order/orders as deemed fit and proper;

And for this act of kindness the petitioner as in duty bound shall ever pray;"

Similarly, one Sanjay Mishra filed I.A. No. 7429 of 2020 in W.P.(C) No.12879 of 2020 for impleadment of party in the writ petition and vide order dated 13.07.2020, the said I.A. was disposed of granting him liberty to file separate writ petition which would be considered and decided on its own merit in accordance with law. Accordingly, W.P.(C) No.17766 of 2020 has been filed by Sanjay Mishra seeking following reliefs:-

"The petitioner therefore most humbly prays that this Hon'ble Court be graciously pleased to admit the writ application, issue rule Nisi calling upon the Opposite parties to show cause as to why the tender process vide Annexure-1 conducted by Tahasildar, Opp. Party No.3 and the consequential settlement if any, in favour of the private Opp. Party and others if any shall not be quashed and as to why there shall not be a direction to initiate fresh tender process so as to enable the petitioner & others to participate in a fair tender process.

And if the opposite parities fail to show cause or show insufficient cause to make the rule absolute by issuance of an appropriate writ(s), order(s), direction(s) as this Hon'ble Court deems fit and proper.

And for this act of kindness the petitioner shall as in duty bound ever pray".

All the above three writ petitions, having similar cause of action and arisen out of one tender call notice with regard to selfsame sairat source, were heard together and are disposed of by this common judgment.

2. The factual matrix of the case, in hand, is that Tahasildar, Gondia-opposite party no.4 published a tender notice on 29.02.2020 vide Annexure-1 inviting bids for auction sale of Gopalpur sand quarry, Kasipur sand quarry, Ambapada-I sand quarry, Ambapada-II sand quarry, Dallar sand quarry and Chhatia quarry on a long term lease basis for a period of five years from the year 2020-21 to 2024-25. The present writ petitions relate to 'Dallar sand quarry', which was published according to the provisions of Orissa Minor Minerals Concession Rules, 2016, fixing minimum charge of Rs.35/- per cm., additional charge of Rs.55/- per cm, total fixed price per cm. as Rs.90/-, minimum guaranteed quantity as 24,000 cum. per year, EMD as Rs.1,08,000/- and bank guarantee/IT return as Rs.21,60,000/-. The last date of submission of bid was 19.03.2020 and date of opening of bid was 20.03.2020. The date of publication of result of bid was 21.03.2020. In response to such notice, the petitioners along with three others, namely, Dusmant Mallick, Janardan Nath, H.K. Sahoo, N. Dhir, Jena Minerals and Tripurai Sahoo submitted their bids within the time specified. The bids were opened on 20.03.2020 by the Tahasildar, Gondia and a comparative chart was published vide Annexure-2 wherein Dusmant Mallick, the petitioner in W.P.(C) No.12879 of 2020 though shown as H-3, but his tender was allowed as highest bidder. So far as Jena Minerals is concerned, though shown as H-5, its tender was allowed as second highest bidder. Tripurari Sahoo-Opposite party no.5 in WP(C) Nos. 12879 and 17640 of 2020, though shown as H-1, his tender was rejected due to non-furnishing of required bank guarantee. Similarly, the tenders submitted by Janardan Nath and H.K. Sahoo were rejected on the ground of non-submission of required bank guarantee, though they had been shown as H-2 and H-6 respectively. So far as N. Dhir is concerned, his tender was rejected on the ground of non-submission of relevant documents, though he was shown as H-4.

Dusmant Mallick, the petitioner in W.P.(C) No.12879 of 2020 asserts that by following due process his tender having been considered highest, necessary follow up action should have been taken by awarding the work order in his favour by executing the agreement for operation of the sand quarry, but the same having not been done, he has approached this court by filing the aforesaid writ petition.

Janardan Nath filed W.P.(C) No.17640 of 2020 against rejection of his H-2 bid due to non-submission of required bank guarantee and consideration of bid of opposite party no.5-Tripurari Sahoo, whose bid though was shown as H-1 but was rejected due to similar ground of non-furnishing of required bank guarantee.

So far as W.P.(C) No.17766 of 2020 is concerned, the same has been filed by Sanjay Mishra, whose bid was not taken into consideration and thereby his name was not found placed in the list of applicants published under Annexure-2. His case is that though he submitted documents by e-mail, but the same were not taken into consideration due to COVID-19 pandemic, as result of which he was not able to participate in the process of tender. Therefore, he seeks for quashing of the tender process initiated pursuant to Annexure-1 with further direction to the opposite parties to conduct fresh tender so as to enable him to participate in the tender process.

3. Mr. Asok Mohanty, learned Senior Counsel appearing along with Mr. T.K. Mishra, learned counsel for the petitioner in W.P.(C) No.12879 of 2020 strenuously urged that petitioner-Dusmant Mallick, who was shown as H-3 and whose tender was allowed treating to be highest bidder, as he had complied the requirements in Annexure-1, he should have been issued with work order in accordance with Odisha Minor Mineral Concessions Rules, 2016 to operate the sand quarry. But instead of issuing any work order in favour of the petitioner-Dusmant Mallick, opposite party no.4-Tahasildar, Gondia cancelled the tender vide notice no.1104 dated 20.03.2020 by affixing the same in the notice board of the Tahasil Office, Gondia which has been annexed as Annexure-4 to the writ petition and Annexure A/4 to the counter affidavit filed by opposite party no.4. It is contended that after cancelling the tender on 20.03.2020, opposite party no.4 wrote letter dated 21.03.2020 to the Collector-cum- Controlling Authority, Dhenkanal for cancellation of the tender, as it was not done in order and therefore, sought permission for fresh auction as per law to avoid further litigation and legal complicacies in future. In response to same, the Collector, Dhenkanal vide letter dated 19.05.2020 called for an explanation as to why suitable action would not be taken against opposite party no.4 in accordance with law in the matter of negligence in duty, lack of revenue rules and regulations, carelessness in tender process for which there was controversial situation which resulted in loss of revenue. Thereafter, opposite party no.4 immediately accepted the deposit of bank guarantee filed by opposite party no.5- Tripurari Sahoo and selected him for awarding tender in his favour. Such action of opposite party no.4 to settle the auction in favour of opposite party no.5 is arbitrary, unreasonable and contrary to the provisions of law, therefore, the petitioner seeks interference of this Court. To substantiate his contentions, learned Senior Counsel appearing for the petitioner has relied upon Monarch Infrastructure (P) Limited v. Commissioner, Ulhasnagar Municipal corporation, (2000) 5 SCC 287; West Bengal State Electricity Board v. Patel Engg. Co. Ltd, (2001) 2 SCC 451; Sorath

Builders v. Shrejikrupa Buildcon Limited, (2009) 11 SCC 9; and Vidarbha Irrigation Development Corporation v. Anoj Kumar Garwala, (2019) SCC Online SC 89.

4. Mr. Sanatan Das, learned counsel appearing for petitioner-Janardan Nath in W.P.(C) No.17640 of 2020 contended that when the bid of the petitioner was rejected on 20.03.2020, he raised objection on 21.03.2020 with regard to rejection of his bid and contended that due to some defects in the auction sale notice the Tahasildar, Gondia sought permission from the Collector-cum-Controlling Authority, Dhenkanal to go for fresh auction. When the petitioner was awaiting for fresh auction sale notice in respect of 'Dallar sand quarry', he came to know that auction had been finalized in favour of opposite party no.5-Tripurari Sahoo by issuing Form-F on 26.05.2020, though his tender was rejected on the ground of non-submission of bank guarantee. Therefore, the action of opposite party no.4 in finalizing the tender in favour of opposite party no.5 shows his mala fide intention. It is also contended that once the tender submitted by opposite party no.5 was rejected on the ground of non-submission of bank guarantee, subsequent acceptance of such tender cannot sustain in the eye of law, as it is contrary to the rules governing the field. It is contended that Clause-6 of the auction sale notice is not in consonance with the provisions of Rule 27(4)(iv) of OMMC Rules, 2016 and without adhering to the same, the auction so finalized cannot sustain in the eye of law. It is further contended that no transparency has been adopted by opposite party no.4, while finalizing the auction in favour of opposite party no.5, as the same smacks mala fide.

Thereby, the entire process of auction has to be quashed and direction should be given for fresh auction.

5. Mr. Dayananda Mohapatra, learned counsel appearing for the petitioner-Sanjaya Mishra in W.P.(C) No.17766 of 2020 contended that para-1 of the auction notice in Annexure-1 stipulates the bids should be sent through registered post/speed post on or before 19.03.2020. The tender was floated on 29.02.2020 and the bids pursuant thereto were opened on 20.03.2020 during COVID-19 Pandemic, particularly when there was promulgation of order under 144 Cr.P.C. in the district of Dhenkanal, for which the petitioner could not be able to participate in the proceeding. Accordingly, he filed representation under Annexure-3 with a request to extend the period of submission of tender, but he did not receive any response thereto. Subsequently, when the petitioner came to know about the settlement of tender in favour of opposite party no.5, he filed the aforesaid writ petition. It is further contended that even though the tender, which was opened on 20.03.2020, was cancelled on the very same day and such fact of cancellation was communicated, vide letter dated 21.03.2020, to the Collector-cum-Controlling Authority, Dhenkanal, but when the Collector-cum-Controlling Authority, Dhenkanal called for an explanation, vide letter dated 19.05.2020, opposite party no.4 subsequently settled the tender in favour of Tripurai Sahoo whose tender was rejected on the ground of non-submission of required bank

guarantee. The tender process having stood cancelled, any settlement made subsequently in favour of a person whose tender was rejected cannot sustain in the eye of law. Thereby, in view of the arbitrary and unreasonable action taken by opposite party no.4, the settlement of tender so made has to be cancelled. It is further contended that according to the tender conditions stipulated in Annexure-1 tender should be filed through registered post/speed post, but in the counter affidavit filed by opposite party no.4 it has been categorically mentioned that tenders were received from the tender box, which is contrary to the specific conditions of tender. Thereby, there is gross violation of conditions of the tender notice, which touches the very root of the tender process, therefore seeks quashing of the same.

6. Mr. Debakant Mohanty, learned Additional Government Advocate appearing for the State opposite parties in all the three writ petitions relying upon the counter affidavit filed by opposite party no.4 dated 03.06.2020 and subsequent reply to the rejoinder affidavit of the petitioners filed by opposite party no.4 dated 03.07.2020 admitted the factum of issuance of notice of auction in Annexure-1 and contended that Annexure-2 dated 20.03.2020, the list of applicants applied for 'Dallar sand quarry' is not the final select list of the auction sale but is a data sheet of the auction sale held by opposite party no.4. However, on the same day, i.e. on 20.03.2020, opposite party no.4 cancelled the tender process which was published, vide office order no.1104 dated 20.03.2020. It is further contended that the petitioner in WP(C) No. 12879 of 2020 had quoted additional charge of Rs.116/- whereas opposite party no.5-Tripurari Sahoo had quoted additional charge of Rs.230/- i.e. Rs.114/- extra per cum which is in a very higher side. Therefore, opposite party no.5 was the highest bidder, he having quoted additional charge @ Rs.230/-. But, in Annexure-2 there is a remark that the bid submitted by opposite party no.5 was rejected because he did not submit the bank guarantee against the additional charges quoted by him although he had submitted the required bank guarantee as per the auction sale notice under Annexure-1 amounting to Rs.21,60,000/- only. Therefore, considering the bid of opposite party no.5 as highest, opposite party no.4 settled the auction in his favour so that the State would not lose any revenue. Accordingly, on 02.06.2020, opposite party no.5 submitted balance bank guarantee of Rs.42.00 lakhs, along with a forwarding letter to the Tahasildar, Gondia as per his undertaking. Consequentially, opposite party no.5 was issued Form-F as per OMMC Rules, 2016, as he had submitted balance bank guarantee as required. In view of such position, no illegality or irregularly has been committed by opposite party no.4 in settling the sources in favour of opposite party no.5, who is the actual highest bidder, though his bid was rejected due to non-furnishing of bank guarantee initially on 20.03.2020.

7. Mr. Manoj Kumar Mishra, learned Senior Counsel appearing along with Mr. D. Mishra, learned counsel for opposite party no.5 in W.P.(C) Nos.12879 & 17640 of 2020 and opposite party no.7 in W.P.(C) No.17766 of 2020 contended that as per tender notice, the bids were to be submitted in statutory format Form-M as per

OMMC Rules, 2016. According to clause-6 of the tender notice, the bidders were to submit bank guarantee equivalent to the annual MGQ royalty. In respect of 'Dallar sand quarry', the required bank guarantee of Rs. 21.60 lakhs was to be submitted. Opposite party no.5 deposited EMD as well as bank guarantee as specified in the notice of auction. When the bid was opened on 20.03.2020 at 11 am, opposite party no.4 pasted the notice Annexure-2 indicating list of applicants applied for 'Dallar sand quarry'. In the remark column thereof, it was indicated that the bid of opposite party no.5 was rejected due to non- submission of required bank guarantee. On the very same day, i.e., 20.03.2020 vide Annexure-4 the selected list of bidders (not final) as affixed on the notice board stood cancelled. Subsequently on 21.03.2020, opposite party no.4 submitted the auction proceeding to the Collector-cum-Controlling Authority for cancellation, but the Collector-cum-Controlling Authority did not accept the said proposal of opposite party no.4 nor cancelled the auction held on 20.03.2020 and the notice of auction under Annexure-1 was confirmed as legal, valid and operative. It is further contended that as per Rule-27(16) the Collector or the Conservator of Forest, as the case may be, shall have power to cancel the bid duly recording the reasons thereof, if he is not satisfied with the publicity, participation of bidders and amount of additional charge quoted. Keeping in view the above provision, the Collector-cum-Controlling Authority did not pass any order of cancellation of auction and as such the order dated 19.05.2020 under Annexure-E/4 is not at all the order of cancellation of auction. As per the provisions contained in Rule-27 (5) of the OMMC Rules, 2016, the quarry lease shall be granted in favour of the applicant who has quoted the highest rate of additional charge. It is contended that opposite party no.5 in W.P.(C) Nos.12879 & 17640 of 2020 and opposite party no.7 in W.P.(C) No.17766 of 2020 even though had quoted highest charges and was mentioned as H-I bidder in the list prepared under Annexure- 2, but his bid was rejected on the ground of non-furnishing of required bank guarantee. It is further contended that the petitioner in WP(C) No. 12879 of 2020 has no locus standi to file the same, as he was H3 bidder and the bid of Tripurari Sahoo was accepted having complied all the provisions of bid documents. It is further contended that Annexure-2 on which reliance has been placed having been superseded, as revealed from Annexure-A/4 of the counter affidavit filed by opposite party no.4, the writ petition suffers from suppression of material fact and is thus liable to be quashed. To substantiate his contentions, he has relied upon the judgments in Prestige Lights Ltd v. State Bank of India, (2007) 8 SCC 449 and Bharat Coking Coal Ltd v. AMR Dev Prabha, 2020 SCC Online SC 335.

8. This Court heard in extenso on virtual mode Mr. Asok Mohanty, learned Senior Counsel appearing along with Mr. T.K. Mishra, learned counsel for the petitioner in W.P.(C) No.12879 of 2020, Mr. S. Das, learned counsel appearing for the petitioner in W.P.(C) No.17640 of 2020, Mr. D. Mohanty, learned counsel appearing for the petitioner in W.P.(C) No.17766 of 2020, Mr. D.K. Mohanty, learned Additional Government Advocate appearing for the State opposite parties in all the above three writ petitions and Mr. M. Mishra, learned Senior Counsel

appearing for Tripurari Sahoo-opposite party no.5 in W.P.(C) No.12879 & 17640 of 2020 and opposite party no.7 in W.P.(C) No.17766 of 2020. Pleadings having been exchanged between the parties, on the consent of learned counsel for the parties all the above three writ petitions are being disposed of at the stage of admission.

9. On the basis of undisputed facts mentioned above, it is to be considered whether opposite party no.4-Tahasildar is well justified in conducting the auction and settling 'Dallar sand quarry' in favour of Tripurari Sahoo-opposite party no.5 in W.P.(C) No.12879 & 17640 of 2020 and opposite party no.7 in W.P.(C) No.17766 of 2020 by issuing Form-F and accepting him as highest bidder, although his tender was initially rejected due to non- furnishing of required bank guarantee.

10. In exercise of powers conferred by sub-section (1) of Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 and in supersession of the provisions contained in the Odisha Minor Mineral Concession Rules, 2004, except as respects things done or omitted to be done before such supersession, the State Government made a rule, for regulating the grant of mineral concessions in respect of minor minerals and for the purposes connected therewith, called "Odisha Minor Mineral Concession Rules, 2016" (hereinafter referred to the "Rules, 2016"). Chapter-IV of the Rules, 2016 deals with grant of quarry leases. Rule-27 of the OMCC Rules, 2016 reads as under:-

"27. Grant of quarry lease:- (1) The area of the quarry lease shall be delineated and notification inviting application(s)for grant of quarry lease(s) through auction shall be published in two daily newspapers, at least one of which shall be a State level and other having wide publicity in the area, where the lease is located and such notification shall be published at least fifteen days before the intended date of inviting applications and shall contain the date and time within which applications shall be received.

(2) The notice inviting applications for grant of quarry lease shall be issued by the Competent Authority and shall specify the minimum guaranteed quantity of the minor mineral to be extracted in a year by the applicant and the minimum amount of additional charge payable for the same as determined under sub-rule (14).

(3) In case the mining plan or Environment Clearance for the proposed lease has been obtained by the Competent Authority, this fact, along with the cost of obtaining thereof shall be recoverable from the selected bidder which shall also be mentioned in the notice.

(4) Subject to other provisions of these rules for settlement of quarry lease, the intending applicant may apply to the Competent Authority in a sealed cover for grant of quarry lease for such area or areas in Form-M in triplicate accompanied by the following documents and particulars, namely:-

(i) Treasury challan showing deposit of one thousand rupees (non-refundable) towards the application fee;

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

(iii) Proof of payment of earnest money equivalent to five percentum of the minimum amount of additional charges specified in the notice and the amount of royalty, both calculated on the basis of minimum guaranteed quantity for one whole year for the minimum guaranteed quantity of minor mineral to be extracted in one full year; and

(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.

(5) Subject to the provisions of these rules, the quarry lease shall be granted in favour of the applicant who has quoted the highest rate of additional charge: 33 Provided that, if more than one applicant have quoted the highest rate of additional charge, then the applicant shall be selected by draw of lots.

(6) The selected bidder shall be intimated by the Competent Authority within seven days in Form-F about the selection and terms and conditions of the lease.

(7) Within fifteen days of such intimation, the selected bidder shall be required to convey his acceptance of the terms and conditions and to deposit an amount which shall be calculated in such a way that it shall be equivalent to one-fourth of the total amount of royalty and additional charge and the amount of contribution payable to the District Mineral Foundation on the annual minimum guaranteed quantity, taken together, reduced by the amount of earnest money, which, along with the earnest money, shall be held as interest-free security deposit.

(8) The selected bidder shall also deposit the costs of obtaining the mining plan and environmental clearance approvals, in case those have been obtained by the Competent Authority (non-refundable) before executing the lease deed.

(9) In the event of default by the selected bidder, the Competent Authority may issue intimation as specified in sub-rule (6) to the next highest bidder who shall then be required to convey his acceptance and to make the security deposit calculated in the manner mentioned in subrule (7).

(10) If the second highest bidder has quoted unusually low price in comparison to the highest bidder of the same source or other sources in the vicinity, the competent authority may bring it to the notice of the Controlling Authority, who after proper verification and with due justification may cancel the bid and direct for fresh auction.

(11) If the second highest bidder does not convey the acceptance within the time

stipulated for such acceptance, or if the Controlling Authority has cancelled the bid under sub-rule (10), fresh notice inviting application for grant of quarry lease shall be issued with the approval of the next higher authority.

(12) Immediately after compliance of the foregoing provisions by the selected bidder, the earnest money of the unsuccessful bidders shall be refunded and the bank guarantees, if any, furnished by them, shall stand discharged.

(13) The selected bidder shall be required to execute quarry lease in Form-N within three weeks from the date of intimation of his selection, if the approval of the mining plan and environment clearance has been obtained before auction, and in other cases, three months from the date of intimation, failing which, the intimation shall stand cancelled and the security deposit shall stand forfeited: 34 Provided that the Controlling Authority may, for genuine and sufficient reasons, extend the said period, if it is satisfied that the delay in execution of lease deed is not due to reasons attributable to the selected bidder.

(14) Security deposit shall be refunded after expiry of the lease period if the lessee has fulfilled all conditions of lease and in case of violation of any of the conditions of lease, the security deposit shall be forfeited in whole or in part by the Competent Authority.

(15) The minimum amount of additional charge to be quoted shall be such as the Competent Authority, in consultation with the Controlling Authority, decide and specify in the notice inviting applications for grant of quarry lease: Provided that the minimum amount of additional charge so fixed should not be less than 5% of the rate of royalty.

(16) The Collector or the Conservator of Forest, as the case may be, shall have power to cancel the bid duly recording the reasons thereof, if he is not satisfied with the publicity, participation of bidders and amount of additional charge quoted.

(17) Where the lessee, who has quoted the highest rate of additional charge, dies after deposit of the amount specified under rule 42 or after execution of lease deed by him, such deposit or deed shall be deemed to have been made or executed by the legal heir or legal representative, if they so like."

Adhering to the above Rule-27, which envisaged the procedure for grant of lease in favour of a bidder, the competent authority, namely, Tahasildar, Gondia issued an advertisement published in daily newspaper inviting tenders for settlement of different sairat sources including 'Dallar sand quarry' on long term lease basis for a period of five years for the year from 2020-21 to 2024-25. In the said advertisement, it was specifically mentioned that intending bidders would fill up the form-M incorporating all the information as per Rules, 2016 in triplicate and the same should reach in the office of the Tahasildar, Gondia on 19.03.2020 before 5 pm by registered post or speed post. All the closed envelopes to be received would be opened on 20.03.2020 at 11 am in presence of the applicants or their authorized representatives for their verification and the tender would be granted in favour of the applicants who quoted the highest price. It was made clear that after expiry of the date and time, no application would be accepted and as such incomplete application would be rejected. The application fee amounting to Rs.1000/- should be deposited in shape of treasury challan. The applicants should deposit royalty, additional charge and 5% of MGQ of a year in shape of demand draft in favour of Tahasildar, Gondia along with the application form and description of lease property. The applicants were to deposit the MGQ royalty and also bank guarantee along with IT return of that year along with other conditions stipulated in the advertisement itself.

11. As has already been stated, the petitioners along with three others had applied for 'Dallar sand quarry' by submitting their applications, which were opened on 20.03.2020, except the bids of the petitioner in WP(C) No. 12879 of 2020 and Jena Minerals, other four applicants' tenders were rejected on the ground mentioned in Annexure-2 itself. More particularly, Tripurari Sahoo-opposite party no.5 in W.P.(C) No.12879 & 17640 of 2020 and opposite party no.7 in W.P.(C) No.17766 of 2020, who had quoted highest additional charge of Rs.210/- and shown as H-1 status, his bid was rejected due to non-furnishing of required bank guarantee. Therefore, even though the petitioner in W.P.(C) No.12879 of 2020 is shown as H-3 and his application was complete in all respect, the same was allowed and shown as highest bidder. So far as Jena Minerals is concerned, though its status was H-5 but its tender was allowed and taken as first highest bidder. However, on the very same day, i.e., 20.03.2020 vide Annexure-A/4, the tender process for 'Dallar sand quarry' which was opened at 11 am at Tahasil Office, was cancelled by the very same Tahasildar. But, however, reasons for such cancellation has not been indicated in Annexure-A/4 dated 20.03.2020. After cancelling such tender when opposite party no.4 communicated the same to the Collector-cum-Controlling Authority, vide letter no.1106 dated 21.03.2020 Annexure-D/4, indicating the cancellation of tender, as the same was not in order, and sought permission for fresh auction as per the law. In response thereto, the Collector, vide letter dated 19.05.2020 Annexure-E/4, communicated the Tahasildar as to why suitable action shall not be taken against him in accordance with law for negligence in duty, lack of revenue rules and regulations, carelessness in tender process for which there was controversial situation and sources remained unsettled which resulted in loss of revenue. Immediately thereafter, the Tahasildar, taking into consideration the highest additional charge quoted by Tripurari Sahoo-opposite party no.5 in W.P.(C) No.12879 & 17640 of 2020 and opposite party no.7 in W.P.(C) No.17766 of 20205, who was shown as H-1 in Annexure- 2 dated 20.03.2020 and whose tender was rejected due to non- furnishing of required bank guarantee, issued with Form-F in his favour accepting his tender, which is contrary to the Rule-27 of Rules, 2016.

12. In Morach Infrastructure (P) Ltd v. Commissioner, Ulhasnagar Municipal Corporation, (2000) 5 SCC 287, the apex Court in paragraph-12 held as under:-

"12. If we bear these principles in mind, the High Court is justified in setting aside the award of contract in favour of Monarch Infrastructure (P) Ltd. because it had not fulfilled the conditions relating to clause 6(a) of the Tender Notice but the same was deleted subsequent to the last date of acceptance of the tenders. If that is so, the arguments advanced on behalf of Konark Infrastructure (P) Ltd. in regard to the allegation of mala fides of the Commissioner of the Municipal Corporation in showing special favour to Monarch Infrastructure (P) Ltd. or the other contentions raised in the High Court and reiterated before us are insignificant because the High Court had set aside the award made in favour of Monarch Infrastructure (P) Ltd. The only question therefore remaining is whether any contract should have been awarded in favour of Konark Infrastructure (P) Ltd. The High Court had taken the view that if a term of the tender having been deleted after the players entered into the arena it is like changing the rules of the game after it had begun and, therefore, if the Government or the Municipal Corporation was free to alter the conditions fresh process of tender was the only alternative permissible. Therefore, we find that the course adopted by the High Court in the circumstances is justified because by reason of deletion of a particular condition a wider net will be permissible and a larger participation or more attractive bids could be offered."

13. In West Bengal State Electricity Board v. Patel Engineering Co. Ltd, (2001) 2 SCC 451, the apex Court in paragraphs-24 and 31 held as under:-

"24. The controversy in this case has arisen at the threshold. It cannot be disputed that this is an international competitive bidding which postulates keen competition and high efficiency. The bidders have or should have assistance of technical experts. The degree of care required in such a bidding is greater than in ordinary local bids for small works. It is essential to maintain the sanctity and integrity of process of tender/bid and also award of a contract. The appellant, Respondents 1 to 4 and Respondents 10 and 11 are all bound by the ITB which should be complied with scrupulously. In a work of this nature and magnitude where bidders who fulfil prequalification alone are invited to bid, adherence to the instructions cannot be given a go-by by branding it as a pedantic approach, otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the rule of law and our constitutional values. The very purpose of issuing rules/instructions is to ensure their enforcement lest the rule of law should be a casualty. Relaxation or waiver of a rule or condition, unless so provided under the ITB, by the State or its agencies (the appellant) in favour of one bidder would create justifiable doubts in the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. Where power to relax or waive a rule or a condition exists under the rules, it has to be done strictly in compliance with the rules. We have, therefore, no hesitation in concluding that adherence to the ITB or rules is the best principle to be followed, which is also in the best public interest."

xxx xxx xxx

"31. The submission that remains to be considered is that as the price bid of Respondents 1 to 4 is lesser by 40 crores and 80 crores than that of Respondents 11 and 10 respectively, public interest demands that the bid of Respondents 1 to 4 should be considered. The Project undertaken by the appellant is undoubtedly for the benefit of the public. The mode of execution of the work of the Project should also ensure that the public interest is best served. Tenders are invited on the basis of competitive bidding for execution of the work of the Project as it serves dual purposes. On the one hand it offers a fair opportunity to all those who are interested in competing for the contract relating to execution of the work and, on the other hand it affords the appellant a choice to select the best of the competitors on a competitive price without prejudice to the quality of the work. Above all, it eliminates favoritism and discrimination in awarding public works to contractors. The contract, is, therefore, awarded normally to the lowest tenderer which is in public interest. The principle of awarding contract to the lowest tenderer applies when all things are equal. It is equally in public interest to adhere to the rules and conditions subject to which bids are invited. Merely because a bid is the lowest the requirements of compliance with the rules and conditions cannot be ignored. It is obvious that the bid of respondents 1 to 4 is the lowest of bids offered. As the bid documents of respondents 1 to 4 stand without correction there will be inherent inconsistency between the particulars given in the annexure and the total bid amount, it (sic they) cannot be directed to be considered along with the other bids on the sole ground of being the lowest."

14. In Sorath Builders v. Shreejikrupa Buildcon Limited, (2009) 11 SCC 9, the apex Court in paragraphs-17, 26 and 27 held as under:-

"17. We also find on record that the tender submitted by the appellant was the lowest and the same was accepted as the same was found to be reasonable, tenable, plausible and valid. The High Court went beyond its jurisdiction in setting aside the decision of the University in accepting the bid of the appellant. We are of the opinion that there is no fault or arbitrariness in the decision-making process of the University. The said decision cannot be said to be in any manner arbitrary or unreasonable. Respondent 1 submitted his pre-qualification documents late for which only he is to be blamed.

"26. In W.B. SEB v. Patel Engg. Co. Ltd., this Court while considering the issue with regard to the process of tender held:

"24. .... where bidders who fulfil pre- qualification alone are invited to bid, adherence to the instructions cannot be given a go-by branding it as a pedantic approach, otherwise it will encourage and provide scope for discrimination, arbitrariness and favoritism which are totally opposed to the rule of law and our constitutional values."

It was also held :

"24. .... The very purpose of issuing rules/instructions is to ensure their enforcement lest the rule of law should be a casualty."

It was further held;

"31. .... The contract is ..... awarded normally to the lowest tenderer which is in public interest and that it is equally in public interest to adhere to the rules and conditions subject to which bids are invited."

27. Following the aforesaid legal principles laid down by this Court, we are of the considered opinion that Respondent 1 was negligent and was not sincere in submitting his pre-qualification documents within the time schedule laid down despite the fact that he had information that there is a time schedule attached to the notice inviting tenders. Despite being aware of the said stipulation he did not submit the required documents within the stipulated date. Pre-qualification documents were received by Respondent 2 University only after the time schedule was over. The terms and conditions of the tender as held by the Supreme Court are required to be adhered to strictly, and therefore, Respondent 2 University was justified in not opening the tender submitted by Respondent 1 on 1-12- 2008, which was late by three days. According to us no grievance could also be made by Respondent 1 as lapse was due to his own fault."

15. In Vidarbha Irrigation Development Corporation v. Anoj Kumar Garwala, 2019 SCC OnLine Sc 89, the apex Court in paragraph-17 held as under:-

"17. It is clear even on a reading of this judgment that the words used in the tender document cannot be ignored or treated as redundant or superfluous - they must be given meaning and their necessary significance. Given the fact that in the present case, an essential tender condition which had to be strictly complied with was not so complied with, the appellant would have no power to condone lack of such strict compliance. Any such condonation, as has been done in the present case, would amount to perversity in the understanding or appreciation of the terms of the tender conditions, which must be interfered with by a constitutional court."

16. The sum total of the propositions of law laid down by the apex Court in the foregoing judgments clearly indicate that essential conditions required to be strictly complied with, if not complied with, the same cannot be condoned and, as such, the authority cannot act arbitrarily and unreasonably contrary to the conditions stipulated in the tender which is in gross violation of the provisions of law.

17. The scope and power of the Court to interfere with a contractual matter is well justified in various judgments of the apex Court, namely, Tata Cellular v. Union of India, AIR 1996 SC 11; Master Marine Service (P) Ltd. v. Metcafe & Hodgkinson (P) Ltd., (2005) 6 SCC 138; Sterling Computers Ltd. v. M & N Publications Ltd., (1993) 1 SCC 445; M/s. B. S. N. Joshi and Sons Ltd v. Nair Coal

Services Ltd., AIR 2007 SC 437; Reliance Airport Developers (P) Ltd. v. Airports Authority of India, (2006) 10 SCC 1; Siemens Public Communication Networks Private Limited.

18. In M/s Star Enterprises and others v. City and Industrial Development Corporation of Maharashtra Ltd. and others, (1990) 3 SCC 280, the apex Court in paragraph 10 of the judgment held as follows:-

"10. In recent times, judicial review of administrative action has become expansive and is becoming wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded. State activity too is becoming fast pervasive. As the State has descended into the commercial field and giant public sector undertakings have grown up, the stake of the public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze; these necessitate recording of reasons for executive actions including cases of rejection of highest offers. That very often involves large stakes and availability of reasons for actions on the record assures credibility to the action; disciplines public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity for an objective review in appropriate cases both by the administrative superior and by the judicial process. The submission of Mr Dwivedi, therefore, commends itself to our acceptance, namely, that when highest offers of the type in question are rejected reasons sufficient to indicate the stand of the appropriate authority should be made available and ordinarily the same should be communicated to the concerned parties unless there be any specific justification not to do so."

19. In Food Corporation of India v. M/s. Kamdhenu Cattle Feed Industries, AIR 1993 SC 1601, the apex Court in paragraph 7 of the judgment ruled as follows:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Art, 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review."

20. In Mahabir Auto Stores and others v. Indian Oil corporation and others, AIR 1990 SC 1031, the apex Court observed in paragraph 12 of the judgment as follows:

"12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in M/ s. Radha Krishna Agarwal v. State of Bihar, (1977) 3 S.C. 457: (AIR 1977 SC 1496). It appears to us, at the outset, that in the facts and circumstances of the case, the respondent-company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See M/s. Radha Krishna Agarwal v. State of Bihar at p. 462 (at SCC) : (at p. 1499-1500 of AIR) (supra), but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article

12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration, it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a Governmental action even ,in the matters of entering or not entering into contracts, fails to satisfy the test of reasoned ableness, the same would be unreasonable. In this connection reference may be made to E. P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3 : (AIR 1974 SC 555); Maneka Gandhi v. Union of India, (1978) 1 SCC 248: (AIR 1978 SC 597), Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722: (AIR 1981 SC 487); R. D. Shetty v. International Airport Authority of India, (1979) 3 SCC 489: (AIR 1979 SC 162) and also Dwarkadas Marfatia and Sons v. Board of Trustees .of the Port of Bombay, (1989) 3 SCC 293 : (AIR 1989 SC 1642). It appears to us that rule of reason and rule

against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into. a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non- discrimination in the type of the transactions and nature of the dealing as in the present case."

Similar view has also been taken in D.K. Engineering and Construction v. State of Odisha, 2016 (II) ILR CUT 515 and BMP and Sons Private Limited v. State of Odisha, 2016 (II) ILR CUT 272.

21. In view of the settled principles of law, as discussed above, this Court observed that the rights of citizens are in the nature of contractual rights. The manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non- discrimination in the type of the transactions and nature of the dealing, as in the present case. Therefore, this Court has every justified reason to exercise the power of judicial review in the present context.

22. In Raunaq International Ltd. v. I.V.R. Construction Ltd., (1999) 1 SCC 492, the apex Court had occasion to consider a case of paramount importance of government contract and in paragraphs-9, 10, 26 and 27 of the judgment held as under:-

"9. The award of a contract, whether it by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations, and the same would be:

(1) The price at which the other side is willing to do the work;

(2) Whether the goods or services offered are of the requisite specifications;

(3) Whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important;

(4) The ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality;

(5) Past experience of the tenderer and whether he has successfully completed similar work earlier;

(6) Time which will be taken to deliver the goods or services; and often

(7) The ability of the tenderer to take follow-up action, rectify defects or to give

post-contract services".

10. .... The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer for poor quality of goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in re-doing the entire work - thus involving larger outlays of public money and delaying the availability of services, facilities or goods......"

"............ where rational non-discriminatory norms have been laid down for granting of tenders, a departure from such norms can only be made on valid principles. The award of contract cannot be by stopping the performance of the contract so awarded, there is a major detriment to the public because the construction of two thermal power units is held up on account of the dispute".

23. In view of the settled position of law, as discussed above, and applying the same to the present context, this Court is of the considered opinion that Tahasildar, Gondia, having cancelled the tender on 20.03.2020 and communicated the same to the Collector-cum-Controlling Officer, because of the communication made by the Collector vide Annexure-E/4 dated 19.05.2020, could not and should not have reviewed the same suo motu and allowed the lease in favour of Tripurari Sahoo-opposite party no.5 in W.P.(C) No.12879 & 17640 of 2020 and opposite party no.7 in W.P.(C) No.17766 of 20205, merely because he had quoted highest additional charge in his bid, though earlier his bid was rejected due to non-furnishing of bank guarantee. Thereby, the Tahasildar has acted in gross violation of conditions of tender, which is arbitrary and unreasonable exercise of power. While exercising power under judicial review, this Court is of the considered view that steps so taken by the Tahasildar in settling the sairat source in favour of Tripurari Sahoo-opposite party no.5 in W.P.(C) No.12879 & 17640 of 2020 and opposite party no.7 in W.P.(C) No.17766 of 2020 cannot sustain in the eye of law. Consequentially, issuance of Form-F in favour of Tripurari Sahoo on 26.05.2020, is also contrary to the provisions contained under the OMMC Rules, 2016. As per the law laid down by the apex Court, as discussed above, though highest price offered by the tenderer, which is paramount consideration of a tender, but in all cases the same cannot be adhered to, and, as such, in the present case, the same has been done in gross violation of provisions of law and contrary to the conditions stipulated in the tender documents. Therefore, even though Tripurari Sahoo has offered highest price, so far additional charge is concerned, that ipso facto cannot give rise to consider his tender which was already rejected due to non-furnishing of required bank guarantee.

24. Furthermore, the order of cancellation vide letter no.1104 dated 20.03.2020 in Annexure-A/4 so far as 'Dallar sand quarry' is concerned, no reason has been assigned in the letter itself nor any justification or cogent reason has been put forth before this Court.

25. In Maa Binda Express Carrier and another v. North-East Frontier Railway and others, (2014) 3 SCC 760, the apex Court held that submission of a bid/tender in response to a notice inviting tenders is only an offer which State or its agencies are under no obligation to accept. Bidders participating in the tender process cannot insist that their bids/tenders should be accepted simply because a bid is the highest or lowest. All that participating bidders are entitled to is a fair, equal and non- discriminatory treatment in evaluation of their bids/tenders. Therefore, the decision to cancel the tender process was in no way discriminatory or mala fide nor violated any fundamental right of appellants so as to warrant any interference by the Court.

26. In State of Assam and others v. Susrita Holdings Private Limited, (2014) 11 SCC 192, the apex Court held that the validity of tender process has to be considered in the light of fairness and reasonableness and of being in the public interest.

Similar view has also been taken in Rajasthan Housing Board and another v. G.S. Investments and another, (2007) 1 SCC 477.

27. Applying the above principles of law laid down by the apex Court, in the interest of justice the Tahasildar should have acted with all fairness and reasonableness in considering the tender submitted by the parties and, as such, when the tender was opened on 20.03.2020 the tenders which were rejected should not have been considered subsequently without any rhymes and reasons. More particularly, the tender of Tripurari Sahoo-opposite party no.5 which was initially rejected should not have been allowed subsequently and Form-F should not have been issued in his favour, which is de hors the OMMC Rules, 2016.

28. Mr. Manoj Kumar Mishra, learned Sr. Counsel appearing for Tripurari Sahoo-opposite party no.5 placed reliance on the judgment of the apex Court in Bharat Coking Coal Ltd. (supra), wherein maintainability of the writ petition has been dealt with. As such, the law discussed above clearly indicates that while dealing with the scope of judicial review, the constitutional courts are concerned only with lawfulness of a decision, and not its soundness. Phrased differently, courts ought not to sit in appeal over decisions of executive authorities or instrumentalities. Plausible decisions need not be overturned, and latitude ought to be granted to the State in exercise of executive power so that the constitutional separation of powers is not encroached upon. However, allegations of illegality, irrationality and procedural impropriety would be enough grounds for courts to assume jurisdiction and remedy such ills. Therefore, it would only be the decision making process which would be the subject of the judicial enquiry and not the end result. Thereby, the judgment which has been relied upon by learned Sr. Counsel appearing for opposite party no.5 may not be of any assistance to him, rather applying the same to the present context, because of the illegal and irrational procedure adopted by the Tahasildar, in exercise of powers of judicial review, this Court has jurisdiction to interfere with the same.

29. In view of the aforesaid facts and circumstances and considering the law discussed above, this Court is of the considered view that issuance of Form-F in favour of Tripurari Sahoo-opposite party no.5 on 26.05.2020, after cancellation of the tender vide letter no.4401 dated 20.03.2020, cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. Similarly, the entire tender process, so far as it relates to 'Dallar sand quarry', pursuant to notice under Annexure- 1 also cannot sustain in the eye of law and accordingly the same is hereby quashed. This Court directs opposite party no.2 go for a fresh auction in respect of 'Dallar sand quarry' in consonance with the provisions contained in OMMC Rules, 2016 as expeditiously as possible.

30. In the result therefore, the writ petitions are allowed. However, there shall be no order as to costs.

As Lock-down period is continuing for COVID-19, learned counsel for the parties may utilize the soft copy of this judgment available in the High Court's official website or print out thereof at par with certified copies in the manner prescribed, vide Court's Notice No.4587 dated 25.03.2020.