(2012) 12 OHC CK 0024

In the Orissa High Court

Case No : Writ Petition (C) No. 6868 of 2012

Hemanta Ku. Mishra APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 48A, 51A(g)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 15(1A)(i)

Citation : (2013) 115 CLT 704

Hon'ble Judges : V. Gopala Gowda, C.J;B.N. Mahapatra, J

Bench : Division Bench

Advocate : Trilochan Nanda and S.N. Mishra, for the Appellant; B.K. Nayak, Addl. Government Advocate and Mr. P.K. Muduli, A.S.C., for the Respondent

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—This Writ Petition has been filed with a prayer to quash auction notice/advertisement No. 752 dated 22.03.2012 published by the Tahasildar, Bolangir under Annexure- 7 in respect of Plot No. 79/B-1, Holding No. 14 of Mouza: Basupali. Further prayer is made to grant the lease of the stone quarry in question to the Petitioner on long term basis by relaxing Rule 35 of the Orissa Minor Minerals Concession Rules, 2004 (for short ''OMMC Rules''). Petitioner''s case in a nutshell is that as per provision of Rule 35 of OMMC Rules the sairat source, i.e., the stone quarry pertaining to Plot No. 79/B-1, Holding No. 14 of Mouza: Basupali, measuring Ac. 5.00 decimals was put to public auction for the year 2010-11 by fixing upset price as per Rule 37. The auction was conducted thrice, i.e., on 24.04.2010, 27.04.2010 & 30.04.2010 but no bidder participated in the auction. While the matter stood thus, the Petitioner came forward for negotiation & filed an application in the requisite format along with necessary documents before the Tahasildar, Bolangir praying for grant of the lease in favour of the Petitioner on long term basis in respect of the said sairat. The said application of the Petitioner was registered as Sairat Misc. Case No. 96/2010 by the Tahasildar, Bolangir. Tahasildar, Bolangir sent the necessary case record to Collector, Bolangir for obtaining necessary permission I approval from Government by relaxing Rule 35 of Rules 2004. Tahasildar, Bolangir vide letter No. 2943 dated 14.09.2010 requested the Collector, Bolangir to take necessary action to lease out the aforesaid stone quarry to the Petitioner. Collector, Bolangir vide letter dated 19.01.2011 requested Opp. Party No. 1 -Commissioner-cum-Secretary, Revenue & Disaster Management Department, Odisha, to consider the case of the Petitioner in view of letter No. 29304/RDM dated 26.07.2010 requiring relaxation of Rule 35 of OMMC Rules in order to lease out the Stone quarry for a long term to the Petitioner as no bidder took part in public auction. In the said letter, the Collector has also mentioned that in such action Government will fetch revenue. Opp. Party No. 1 vide letter dated 26.07.2010 communicated to all Collectors of the State about relaxation of Rule 35 of OMMC Rules by the Government in cases quarry has been granted by way of lease. While the decision to lease out the stone quarry in question by relaxing Rule 35 is pending before Opp. Party No. 1, Tahasildar, Bolangir has again come up with auction Notice/Advertisement No. 752 dated 22.03.2012 to auction the quarry in question on 25.04.2012 & in case of failure the same shall be conducted 28.04.2012 & 30.04.2012. Hence, the present Writ Petition.

2. Mr. Trilochan Nanda, Learned Counsel appearing for the Petitioner submitted that action of the Tahasildar, Bolangir in floating the advertisement while Petitioner''s case for long term lease is pending before the Government is bad in law. Petitioner is an unemployed youth & wanted to take the stone quarry in question on long term basis for stone crushing for which the Petitioner has filed an application along with necessary documents. When the Tahasildar, Bolangir himself recommended the Petitioner''s case for long term lease to the Collector & Collector in turn, has been pleased to seek the permission of Opp. Party No. 1 & a decision in this regard is pending before the Government publication of the advertisement for auction of the stone quarry in question is improper & not sustainable in law. The Tahasildar, Bolangir should have waited till the decision is taken by the Government & Opp. Party No. 1 is also expected to take a decision promptly. Concluding his argument, Mr. Nanda. Learned Counsel for the Petitioner requests to allow the Writ Petition.

3. Mr. B.K. Nayak, Learned Additional Government Advocate submits that lease in respect of sairat in question is to be held on public auction as per Rule 35. It is further submitted that auction is the proper method to fetch best price, which is necessary in the public interest. Therefore, the Tahasildar, Bolangir is fully justified in issuing the advertisement to put the sairat in question to public auction. The action of the Tahasildar, Balangir being in conformity with Rule 35, the Writ Petition filed by the Petitioner should be dismissed.

4. On the rival contentions, the question falls for consideration by this Court is whether the Tahasildar, Bolangir is justified in floating the advertisement No. 752 dated 22.03.2012 for putting the stone quarry pertaining to Plot No. 79 / B-1, Holding No. 14 of Mouza: Basupali in the district of Bolangir to public auction.

5. To deal with the above question, it is necessary to extract Rule 35 of OMMC Rules, 2004 which reads thus:-

35. Auction of minor minerals: Notwithstanding anything mentioned in the rules, sources of minor minerals specified in Item 1(i) of Schedule III shall be sold or disposed of by public auction on such terms & conditions as may be specified in the auction sale notice by the competent authority.

6. It is not in dispute that the sairat, stone quarry is in item No. (i) of Schedule III; therefore, such sairat can only be disposed of by public auction. Apart from the above, Rule 35 of OMMC Rules starts with a non-obstante clause mentioned in Rule 35. Hence, provision of Rule 35 overrides other provisions of OMMC Rules.

7. Chapter-VI of the OMMC Rules contains the detailed procedure with regard to auction of Sairats. Moreover, considering the nature of the Sairat, Rule 35 provides that minerals specified in Item 1(i) of Schedule-III are to be disposed of by public auction. The minor minerals specified in item 1(i) of Schedule-III are:- Ordinary clay, silt, rehmatti, ordinary sand other than used for industrial & prescribed purposes, brick-earth, ordinary earth, moorum, laterite slabs, ordinary boulders, road metals including ballasts, chips, bajri & rock lines generated from stone crushers, gravels of ordinary stones & river shingles & pebbles.

8. Chapter-VI of the OMMC Rules is framed to get the best price from leasing out different sairats which are owned by the Government. Generation of maximum revenue with a view to secure maximum benefit to the community is in the larger public interest.

9. Law is well settled that no person has any right to the grant of renewal of the Government property. The Hon''ble Supreme Court in the case of State of Tamil Nadu Vs. M/s. Hind Stone etc., (supra), held that no one has a vested right to the grant or renewal of a lease & none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested right in anyone, an application for lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application.

10. In Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, the Supreme Court held that while dealing with public property, the executive must make an endeavour to dispose it of by pubic auction or by inviting tenders, though that is the ordinary rule, may not be an invariable rule. Where there are compelling circumstances necessitating the departure therefrom then the reasons for the departure must be rational & should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Therefore, in case of dealing with public property, certain percepts & principles have to be observed & public interest is the paramount consideration & when a public property is disposed of, they should try to get the maximum price.

11. In Ram and Shyam Company Vs. State of Haryana and Others, the Hon''ble Supreme Court held as under:

A welfare State exists for largest good of the largest number, more so when it proclaims to be the socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater is the revenue, the welfare activities will get a fillip & shot in the arm''. Financial constrains may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activates primarily for which the Constitution envisages the setting-up of a Welfare State.

12. In Nagar Nigam, Meerut Vs. Al Faheem Meat Exports Pvt. Ltd and Others, , the Hon''ble Supreme Court held as under:

The law is, thus, clear that ordinarily all contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well known newspapers having wide circulation, so that all eligible persons will have an opportunity to bid in the bid, & there is total transparency. In our opinion, this is an essential requirement in a democracy, where the people are supreme, & all official acts must be actuated by the public interest, & should inspire public confidence.

13. The Hon''ble Supreme Court in Aggarwal and Modi Enterprises Pvt. Ltd. and Another Vs. New Delhi Municipal Council, held as under:-

22. The mandate of Section., 141(2) is that any immovable property belonging to NDMC is to be sold, leased, licensed or transferred on consideration which is not to be less than the value at which such immovable property could be sold, leased, or transferred in fair competition. The crucial expression is "normal & fair competition. In other words, NDMC is obligated to adopt the procedure by which it can get maximum possible return/ consideration for such immovable property. The methodology which can be adopted for receiving maximum consideration in a normal & fair competition would be the public auction which is expected to be fair & transparent. Public auction not only ensures fair price & maximum return it also militates against any allegation of favouritism on the part of the Government authorities while giving grant for disposing of public property. The Courts have accepted public auction as a transparent mean of disposal of public property. (See State of Uttar Pradesh Vs. Shiv Charan Sharma and Others, Sterling Computers Limited and Others Vs. M and N Publications Limited and Others, Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, , Committee of Management of Pachaiyappa''s Trust Vs. Official Trustee of Madras and Another, Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another, , New India Public School and other etc. Vs. HUDA and others etc., , State of Kerala and others Vs. M. Bhaskaran Pillai and another, & Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, .

23. Disposal of public property partakes the character of trust & there is distinct

demarcated approach for disposal of public property in contradiction to the disposal of private property i.e. it should be for public purpose & in public interest. Invitation for participation in public auction ensures transparency & it would be free from bias or discrimination & beyond reproach.

14. This Court in Jagannath Pradhan Vs. State of Orissa and Others, held as under:-

As & when the question of granting lease of a permanent source of minor mineral comes for consideration, the only way in which the said source can be settled, is by adopting the procedure laid down under Rule 22 of the Rule & by holding public auction, but then circumstance may occur, as has occurred in the present case, where exigencies may require removal of minor minerals from a temporary source created or come into existence due to act of Nature, like heavy flood, cyclone, earthquake etc. If such an eventuality occurs, the Government is free to invoke the authority conferred upon it under rule 18(3) to meet the emergent situation. However, such power should not be utilized or invoked in ordinary course & can only be exercised in exceptional cases & in situation over which the State has no control. All endeavour should be first made up dispose of minor minerals only by auction so that the State does not suffer & best advantage is gained.

15. In view of the above, Opp. Party No. 4-Tahasildar, Bolangir has rightly floated the Advertisement No. 752 dated 22.03.2012 under Annexure-7 to dispose of the Sairat in question by public auction.

16. At this juncture, it would be useful to refer to the Order Dated 27.2.2012 passed by the Hon''ble Supreme Court in the case of Deepak Kumar etc. V. State of Haryana & others etc. in I.A. Nos. 12-13 of 2011 arising out of SLP (C) No. 19628-19629 of 2009. In Deepak Kumar''s case referred to supra, the Hon''ble Supreme Court referred to the provisions the MMDR Act, 1957 & also referred to the Environmental Impact Assessment Notification of 2006 & several instances across the country drawn to the notice of MoEF regarding damage to lakes, riverbeds & groundwater leading to drying up of water beds & causing water scarcity on account of quarry I mining leases & mineral concessions granted under the Mineral Concession Rules framed by the State Governments u/s 15 of the MMDR Act, 1957. MoEF noticed that less attention was given to environmental aspects of mining of minor mineral since the area was small, but it was noticed that the collective impact in a particular area over a period of time might be significant & taking note of those aspects a Core Group was constituted under the Chairmanship of the Secretary (E&F) to look into the environmental aspects associated with mining of minor minerals, vide its Order Dated 24.03.2009. The terms of reference to the Group were as under:

(i) To consider the environmental aspects of mining of minor minerals (quarrying as well as river beds mining) for their integration into the mining process.

(ii) Specific-safeguard measures required to minimize the likely adverse impacts of mining on environment with specific reference to impact on water bodies as well as groundwater so as to ensure sustainable mining.

(iii) To evolve model guidelines so as to address mining as well as environmental concerns in a balanced manner for their adoption & implementation by all the mineral producing States.

Reference was also made to the meeting held on 07.07.2009 by the said Core Group which has discussed the impact that may be caused by quarrying/mining of minor minerals on riverbeds & ground waters. It was noticed that individual mines of minor minerals being small in size may have insignificant impact; however, their collective impacts taking into consideration various mines on a regional scale, is significantly adverse.

& thereafter following issues were brought up for consideration:

(i) the need to re-look the definition of minor mineral,

(ii) minimum size of lease for adopting eco friendly scientific mining practices,

(iii) period of lease,

(iv) cluster of mine approach for, addressing & implementing EMP in case of small mines,

(v) depth of mining to minimize adverse impact on hydrological regime,

(vi) requirement of mine plan for minor minerals, similar to major minerals, &

(vii) reclamation of mined out area, post mine land use, progressive mine closure plan etc.

The report of Core Group, which is referred to in the order clearly indicates that portion of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals. It was also felt necessary to have a re-Look to the definition of "minor" minerals per se. The necessity of the preparation of "comprehensive mines plan" for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged & the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines.

17. Further, in the Core Committee report, it is recommended that States & Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime & carried out only under an approved framework of mining plan. It is further observed that a proper framework has also to be evolved on cluster of mining of minor mineral for which there must be a Regional Environmental Management Plan. There are eight recommendations made in the report of the Mineral Concession Rules for mining of minor minerals u/s 15 of MMDR Act, which reads thus:

(1) Minimum size of mine lease should be 5 ha.

(2) Minimum period of mine lease should be 5 years.

(3) A cluster approach to mines should be taken in case of smaller mines leases operating currently.

(4) Mine plans should be made mandatory for minor minerals as well.

(5) A separate corpus should be created for reclamation & rehabilitation of mined out areas.

(6) Hydro-geological reports should be prepared for mining proposed below groundwater table.

(7) For river bed mining, leases should be granted stretch wise, depth may be restricted to 3m/water level, whichever is less, & safety zones should be worked out.

(8) The present classification of minerals into major & minor categories should be reexamined by the Ministry of Mines in consultation with the States.

18. The draft rules called The Minor Minerals Conservation & Development Rules, 2010 were also put on the website. Section 15(1A)(i) of the MMDR Act specifies the manner in which rehabilitation of flora & other vegetation, such as trees, shrubs & the like destroyed by reasons of any quarrying or mining operations shall be made in the same area or in any other area once selected by the State Government, either by way of reimbursement of the cost of rehabilitation or otherwise by the persons holding the quarrying or mining lease. The State Government/Union Territories have to give due weightage to the above mentioned recommendations of the MoEF which are made in consultation with all the State Governments & Union Territories. The Model Rules of 2010 issued by the Ministry of Mines are very vital from the environmental, ecological & bio-diversity point of view.

19. After referring to the above said report & recommendations, the Hon''ble Supreme Court felt the necessity to have an effective framework of mining plan & further made observation after taking note of those technical, scientific & environmental matters, MoEF, Government of India, issued various recommendations in March, 2010 followed by the Model Rules, which is in the spirit of Article 48A, Article 51A(g) read with Article 21 of the Constitution. Having said so, the Hon''ble Supreme Court at paragraph 17 of the Judgment directed the States & Union Territories, MoEF & the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March, 2010 & the model guidelines framed by the Ministry of Mines, within a period of six months from the date of that Judgment & submit their compliance reports.

20. For the reasons stated above, the State Government is required to reframe the Minor Minerals Concession Rules in the light of the model guidelines framed by the Ministry of Mines, Government of India referred to supra keeping in view various aspects highlighted by the Core Committee & issues raised by it &

recommendations made by the Government of India. Further, keeping in view the size of the leased area, the definition of the minor mineral & environmental impact, the Hon''ble Supreme Court has held that lessee may be permitted to quarry the mineral from the sairat source at least for a period of five years.

21. In view of the above, it is open for the Petitioner to participate in the public auction & if the sairat is settled in favour of the Petitioner then the same may be renewed for a period of five years as per the observation made by the Hon''ble Supreme Court in its order in Deepak Kumar etc. (supra) subject to payment of consideration money in each succeeding year which shall be fixed by increasing 15% of the consideration money of the immediate preceding year. With the above observations & directions, the Writ Petition is allowed to the extent indicated above.

V. Gopala Gowda, C.J.

I agree.

