(2002) 03 OHC CK 0004

In the Orissa High Court

Case No : O.J.C. No. 13 of 2002

Jagannath Pradhan APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 04-03-2002

Acts Referred:

Orissa Minor Minerals Concession Rules, 1990 — Rule 18(3), 22

Citation : (2002) 93 CLT 369 : (2002) OLR 800 Supp

Hon'ble Judges : P.K. Balasubramanyan, C.J;A.S. Naidu, J

Bench : Division Bench

Advocate : A.K. Parija, for the Appellant; S.P. Mishra, S.B. Panda, R.K. Mohanty, D.K. Mohanty and P.K. Rath, for the Respondent

Judgement

A.S. Naidu, J.—The petitioner, in this writ application, seeks t''o assail the propriety or otherwise of the temporary permits issued by the Tahasildar, Bhubaneswar (Opp. Party No. 4), in favour of Opp. parties 5 to 8 for extracting and/or removing "Sand" from the river bed of ''Kuakhai'' near village Pandara and Bhubanpur situated under Bhubaneswar Tahasil. The petitioner also seeks issue of a writ of mandamus directing Opp. parties 2 and 3 to conduct auction as required under Rule 22(1) of the Orissa Minor Mineral Concession Rules, 1990 (hereinafter referred to as "the Rules") for extracting and/or removing sand from the said river.

2. Before entering into the arena of the controversy, some of the admitted facts and provisions of law are stated herein below :

The petitioner, being the highest bidder in public auction, was allowed to extract sand from ''Kuakhai river bed'' at village Pandara over Plot No. 2414 having an area of Ac. 20.40 decimals out of Ac. 102.25 decimals for a period of one year. The said privilege was granted under Rule 22 of the Rules.

3. "Sand" as defined in the Mines and Minerals (Regulation and Development) Act, 1957, is a ''Minor Mineral''. Rule 3 of the Rules stipulates that, no person

shall undertake any quarry operations for the purpose of extraction, collection and/or removal , of any minor minerals, except under and in accordance with the terms and conditions of quarry lease, permit and/or auction sale provided under these Rules. Chapter-Il of the Rules imposes restrictions on grant of quarry leases and stipulates modalities for filing application for quarry lease and disposal of the same. Rule 18 which is under Chapter-Ill of the Rules, deals with granting quarry permits by the competent authority for a period not exceeding one year on the conditions stipulated under Rule 20, whereas Rule 22(1) which is under Chapter-IV of the Rules specifically stipulates that Minerals can be sold or disposed of by public auction on such terms and conditions as may be specified in the auction sale notice. For the sake of better understanding, Rule 22(1) is quoted herein below :

"22(1). Notwithstanding anything mentioned in these rules, minerals can be sold or disposed of by public auction as may be prescribed by the concerned controlling authority on such terms and conditions as may be specified in the auction sale notice."

4. The simple grievance of the petitioner in the present case is during subsistence of the term of his lease, the authorities have granted quarry permit in consonance with Rule 18(3) in favour of Opp. parties 5 to 7 for extraction and removal of quantum of sand specified in each of the permits from the river Kuakhai situated at village ''Pandara'' and ''Bhubanpur'' which are adjoining his lease hold, on payment of advance royalty in lump sum. Out of the three permits annexed to the writ application, Annexure-1, granted in favour of Opp. party No. 5 remains valid upto 31.3.2002, whereas such permits granted in support of Opp. party No. 7 and another, have expired since 30.11.2001.

The only contention raised by the learned counsel for the petitioner is that in view of the specific embargo created under Rule 22 of the Rules, granting of permit, without holding auction, is illegal, unjust and contrary to the provisions as well as intentment of the Rules. It is further contended that minor minerals being the largesse of the State, the same should be leased out at the maximum price and only by holding auction and any settlement otherwise made, is repugnant to the provisions of the Rules and shall not be in the best interest of the State.

5. After receiving the Rule, the Opp. parties have filed their counter affidavits. The Opp. party No. 5 in the counter affidavit has taken a stand that for the self-same relief, Title Suit No. 964 of 2001 has been filed by the petitioner in the Court of the Civil Judge (Jr. Division), Bhubaneswar alongwith a petition for prohibiting Opp. party No. 5 from operating the quarry and as such, the present writ application is not maintainable.

6. The petitioner has filed a rejoinder contending that the question of law as to whether a permit, for extraction and removal of minor mineral like ''sand'' can be granted without holding a public auction in consonance with Rule 22, is a point

which needs determination in the present case and as such, the writ application is maintainable.

The learned counsel for the State, with force, submitted that the Minor Minerals Concession Rules is a self-contained legislation and has made provisions for settlement of minerals either by way of inviting applications and granting temporary permits or by means of public auction. Thus, the contention that the permits granted to remove minor minerals in consonance with Rule 18(3), of the Rules is illegal holds no water. If such a contention is accepted, the provisions of Rufe 18(3) shall become redundant. The learned counsel for the State further submitted that in case of bare necessity, where due to certain peculiar circumstances, it becomes necessary to remove minor minerals within a specified time, the State can invoke the power under Rule 18(3) and grant permits for extraction/ removal of sand.

It is submitted that in the beginning of the Financial year, auction for removal of sand in consonance with Rule 22 in respect of permanent sources was duly conducted and the petitioner being the highest bidder, lease was granted in his favour for one year commencing from 1.4.2001 to 31.3.2002. Subsequently, in the month of July and August, due to unprecedented flood in river Kuakhai, huge sand-heaps were created on the river bed. Such sources are nomenclatured as Temporary sources''. Removal of sand from . the same before approach of the coming monsoon was felt very much necessary so as to keep the river-bed free from obstruction. Existence of such sand-heaps on the river-bed would obstruct free flow of water and cause further menace of flood. To meet such exigencies only, Rule 18(3) empowers the State to grant permits for removal of sand (minor mineral).

The local authorities called for applications for removal of sand-heaps accumulated during the last flood. After scrutinising the same, objections were invited from the villagers and local inhabitants. As no objections were received, permits, as stipulated under Rule 18(3) were issued in favour of Opp'' party No. 5 and others, fixing royalty at the price stipulated under the Rules.

As affidavit has been filed by the Tahasildar, Bhubaneswar, under whose jurisdiction villages Bhubanpur and Pandara are situated, stating therein that strict vigilance is maintained by the Revenue authorities to monitor removal of sand deposits by Opp. party No. 5 to 7 and there is absolutely no chance of any pilferage of Government money. The Tahasildar Opp. party No. 4 in his counter affidavit has also stated that the petitioner was aware of the process initiated for granting of permit for removal of sand, but he preferred neither to apply nor to file any objection. This belated writ application at the fag end of the period for which permit has been granted, is made with an avowed oblique motive to harass the Opp. parties and to prevent removal of sand from the land adjacent to his leasehold and for other ulterior reasons.

The learned counsel for the Opp. parties also vehemently submitted that all paraphernalia were scrupulously followed before issuance of permits in favour of Opp. parties 5 to 7 to remove the accumulated sands. The source being a temporary one, the authorities had the right under Rule 18 of the Rules to grant permit and no illegality whatsoever, has been committed.

The learned counsel for the petitioner vehemently contended that while granting tease or directing sale of any mineral which is the property of the State. The Government cannot act arbitrarily or at its sweet will like a private individual and deal with the matter as it pleases, but its action must be in conformity with the prescribed standard or norms. The action neither should be arbitrary not irrational or irregular, The Government, in view of the clear provisions enshrined under Rule 22 of the Rules, cannot grant permits by negotiation, to remove minerals which is the property of the State, that too for a consideration lesser than the highest that can be obtained if the same is put to an auction. In support of his contention, the learned counsel relied upon the oft-quoted decision in the case of Ram and Shyam Company Vs. State of Haryana and Others,

There is no controversy with regard to the settled position of law that minor minerals vest in the State where the land from which they are to be extracted is situated and minerals other than minor minerals vest in the Union. The transactions made by the Government in respect of such largesses should be transparent and with the aims and objectives of getting the best benefit/price out of it in a public auction. The Government is not free like any ordinary individual to choose a recipient for its largesse. As and when Government decides to lease or sell any minor minerals, it must do so fairly without discretion, without adopting to unfair procedure and try to obtain best price available.

7. Examining the present case jn the touch-stone of the ration of the decision in the case of Ram and Shyam (supra) as well as the other decisions of the Supreme Court, we have no hesitation to hold that as and 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 Rules and by holding public auction, but th.en 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 offered upon it under Rule 18(3} to meet the emergent situation. However, such power should not be utilised or invoked in ordinary course and can only be exercised in exceptional cases and in situation over which the State has no control, All endeavour should be first made to dispose of minor minerals only by auction so that the State does not suffer and best advantage is gained.

8. Taking into consideration the fact that the permit granted by the State is going to lapse by 31.3.2002, while not interfering with the Annexure-1 granted under Rule 18(3), we direct that if the source or any other source is available to be settled for the year 2002-03, the State Government should take steps to settle

the same only by public auction.

9. With the direction as aforesaid, the writ application is disposed of. No costs,

