
(2008) 07 OHC CK 0100
In the Orissa High Court
Case No : Writ Petition (C) No. 9373 of 2008

Paumamasi Lenka

APPELLANT

Vs

Tahasildar and Another

RESPONDENT

Date of Decision : 23-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Orissa Minor Minerals Concession Rules, 2004 — Rule 44, 47, 48, 49

Citation : (2008) CLT 657 Supp

Hon'ble Judges : B.S. Chauhan, C.J.; B.N. Mahapatra, J

Bench : Division Bench

Advocate : G.K. Mishra, G.N. Mishra and S.C. Sahoo, for the Appellant; A.G.A., for the Respondent

Judgement

B.S. Chauhan, C.J.—This writ petition been filed seeking a direction to the opposite parties to accept the balance bid amount from the Petitioner and permit him to operate the sairat.

2. The facts of the case as revealed from the writ petition are that pursuant an advertisement made by the opposite parties the Petitioner also applied to participate in the bid under the provisions of the Orissa Minor Mineral Concession Rules, 2004. (hereinafter called the "Rules 2004")

3. In the bid held on 10.3.2008 Petitioner participated and was the highest bidder. The bid was confirmed and then, he deposited 50% of the bid amount to the tune of Rs. 1,05,000/- on 10.3.2008 itself. As he failed to deposit the balance amount within a period of 30 days thereafter, the opposite parties - authorities cancelled the bid and issued afresh advertisement. Hence this petition has been filed seeking the aforesaid reliefs.

4. Learned Counsel for the Petitioner has submitted that the Petitioner was the highest bidder and in terms of the aforesaid Rules 2004 he was supposed to deposit only 25% of the bid amount though he deposited 50% voluntarily on

persuasion of the opposite parties-authorities. Merely on the ground that he failed to deposit the balance 50% amount within 30 days, there was no occasion for the opposite parties-authorities to invite fresh applications. Further no opportunity of hearing had ever been given to the Petitioner before canceling his bid and issuing the fresh advertisement. Therefore, the writ petition deserves to be allowed.

5. On the other hand learned Standing Counsel has vehemently opposed the petition contending that the Petitioner has not filed the order of rejection of his bid and even if half of the amount has been deposited by the Petitioner, fresh advertisement, inviting applications is an act consequential to the order cancelling his bid and the Petitioner has not challenged the said order of cancellation thus the consequential action cannot be complained of by the Petitioner. More so, copy of the said order of cancellation is not a part of the record. Therefore, under no circumstances, this Court can interfere with the same as the writ petition itself is not maintainable. The petition is liable to be dismissed,

6. We have considered the rival submissions made by the learned Counsel for the parties and perused the records. Undoubtedly the auction was held on 10.3.2008. The Petitioner had been the highest bidder for sum of Rs. 2,10,000/-. Petitioner had deposited a sum of Rs. 1,05,000/- on 10.3.2008 itself. He was to deposit the balance amount by 9.4.2008 which he did not deposit. Therefore, the opposite parties - authorities cancelled the bid in his favour and issued fresh advertisement.

7. The provisions of Rules 44, 47, 48 and 49, of the Rules 2004, are relevant for the purpose of reference in this case, are quoted below:

44. Bid : The competent authority shall announce at the commencement of bidding the name of person or persons who are participating the auction and shall record the bid offered by participants from time to time. He shall ordinarily knock down the highest bid provided he is satisfied with the same. The competent authority concerned shall have the power to reject the highest bid on substantial ground to be recorded in writing at the time of auction and accept the next highest bid. He has to confirm the bid accepted by him. The auction proceeding shall be signed by all the participants as token of acceptance of the proceedings.

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47. Successful bidder : The successful bidder shall deposit twenty five percent of the bid amount immediately after the bid is knocked down by the competent authority. If the successful bidder fails to deposit the amount, the earnest money deposited shall be forfeited to Government and the bid offered by him shall be treated as null and void.

48. Payment of bid amount : The successful bidder on receipt of the confirmation

shall deposit the balance seventy five percent of the bid amount within thirty days from the date of confirmation of the bid.

49. Failure to deposit bid amount : If the successful bidder fails to deposit the remaining seventy five percent of the bid amount within the specified time as mentioned in the confirmation order, the competent authority shall cancel the confirmation order and forfeit the amount so far deposited including the earnest money deposited by the successful bidder to the Government.

8. The aforesaid Rules make it clear that the highest bidder shall deposit 25% of the bid amount on confirmation of his bid. The balance amount has to be deposited within 30 days thereafter. In case of failure to deposit the balance amount the amount of deposit shall be forfeited.

If those provisions are made applicable in the instant case, the Petitioner was supposed to deposit a sum of Rs. 50,00,250/- and not Rs. 1,05,000/- and the balance amount was supposed to be deposited by him within thirty days thereafter. In view of the above, as the Petitioner failed to ensure compliance of the statutory requirements he cannot have any grievance for cancelling the bid and initiating fresh proceeding. The question of giving show cause notice before cancelling the bid could not arise in this case for the reason that where the facts are so glaring that there can be only one answer that if the show cause notice is issued or opportunity of hearing is given that would not serve any purpose whatsoever as compliance of the principles of natural justice would be a futile exercise.

9. In State of Uttar Pradesh Vs. Om Prakash Gupta, the Hon"ble Apex Court had observed that Courts have to examine whether the non-observance of any statutory provision or principle of natural justice have resulted in deflecting the course of justice. In S.L. Kapoor Vs. Jagmohan and Others, , the Hon"ble Supreme Court has held that where from admitted or undisputed fact, only one conclusion is possible and under the law only one course is permissible to be adopted, the Court should not enforce the observance of principles of natural justice for the reason that it would amount to issuing a futile writ.

10. In A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , the Hon"ble Supreme Court observed as under:

The aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in the areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it...Whenever a complaint is made before the Court that some principles of natural justice had been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

11. Therefore, whether the principles of natural justice should be applied in a given case, depends upon the facts and circumstances of that case. In case the

principles have not been applied but if even after their observation result could have been the same, enforcing the observance of such principles would be a futile exercise. (Vide Khem Chand Vs. The Union of India (UOI)and Others, ; and Laxmi Shankar Pandey Vs. Union of India and others, .

12. In The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, the Court has observed that natural justice is not an unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference of the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as a mere artefact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

13. In Union of India and Another Vs. Tulsiram Patel and Others, the Hon''ble Supreme Court held:

Though the two rules of natural justice, namely, *nemo iudex in causa sua* and *audi alteram partem*, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal straitjacket. They are not immutable but flexible.

14. It is equally well settled that the principles of natural justice must not be stretched too far and in this connection reference may be made to the decisions of the Supreme Court in Sohan Lal Gupta (Dead) thr. L.Rs. and Others Vs. Smt. Asha Devi Gupta and Others, ; Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., and Canara Bank and Others Vs. Shri Debasis Das and Others, .

15. In Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, , the Hon''ble Supreme Court held that principles of natural justice are not inflexible and may differ in different circumstances. Rules of natural justice cannot remain the same applying to all conditions.

16. The Constitution Bench of the Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., made reference to its earlier decisions and observed:

In A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , it was held

that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why, they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame work of the law under which the inquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

(Emphasis added)

17. In view of the above, as in the instant case the Petitioner has admittedly not complied with the statutory requirements, he could not be in a position to answer the show cause even if issued to him. Thus, in such a fact situation no purpose could have been served by giving opportunity of hearing to the Petitioner.

18. So far as the issue of maintainability of the writ petition is concerned, we find some force in the contentions raised by the learned Standing Counsel. The Petitioner has challenged merely the fresh advertisement without challenging the order of canceling of the acceptance of bid in his favour. Challenging the consequential order without challenging the basic order is also not permissible.

19. In *P. Chitharanja Menon and Others Vs. A. Balakrishnan and Others*, , the Hon"ble Supreme Court held that in absence of challenge to the basis order, subsequent consequential order cannot be challenged. Similar view has been reiterated in *Roshan Lal and Others Vs. International Airport Authority of India and Others*, , wherein the Petitions were primary confined to the seniority list and the Apex Court held that challenge to appointment orders could not be entertained because of inordinate delay and in absence of the same, validity of consequential seniority cannot be examined. In such a case, a party is under a legal obligation to challenge the basic order and if and only if the same is found to be wrong, consequential orders may be examined.

20. In *H.V. Pardasani and Others Vs. Union of India (UOI) and Others*, , the Apex Court observed that if "Petitioners are not able to establish that the determination of their seniority is wrong and they have been prejudiced by such adverse determination, their ultimate claim to promotion would, in deed, not

succeed."

21. Similar view has been reiterated in Government of Maharashtra and Others Vs. Deokar's Distillery, .

In view of the above, the petition is also not maintainable. At this juncture learned Counsel for the Petitioner orally prays that the order cancelling his bid may be quashed in the interest of justice by this Court. Such a plea cannot be accepted. In Surinder Singh Vs. Central Government and Others, , the Hon''ble Supreme Court has held that the High Court cannot pass an order in such a case in absence of the impugned order being on record. The Apex Court observed as under:

In absence of order under challenge, the High Court could not quash the same. Normally whenever an order of the Government or some authority is impugned-before the High Court under Article 226 of the Constitution, copy of the order must be produced before it. In absence of impugned order it would not be possible to assign the reason which have impelled the authority to pass the order. It is therefore, improper to quash an order which is not produced before the High Court in a proceeding under Article 226 of the Constitution.

(Emphasis added)

22. In view of the above, as the order cancelling the bid of the Petitioner is not on record, we are afraid, such a relief cannot be granted on mere asking orally.

The writ petition is, therefore, liable to be dismissed.

23. Be that as it may, it is evident from the aforesaid Rules 2004 that Petitioner was supposed to deposit 25% of the bid amount just after confirmation of the bid. Either voluntarily or on persuasion of the opposite parties he deposited 50% of the said amount and he failed to deposit the balance amount as per the terms of the statutory provisions. Therefore, forfeiture of the entire amount deposited by him cannot be held to be justified. Thus, the Petitioner is entitled to get refund over and above 25% of the bid amount deposited by him.

24. With the aforesaid observations, the writ petition stands disposed of No costs.

B.N. Mahapatra, J.

25. I agree.