
(2012) 06 MP CK 0012
In the Madhya Pradesh High Court
Case No : Writ Petition No. 11954 of 2011

Rajesh Pathak

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 21-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2013 MP 80

Hon'ble Judges : Sanjay Yadav, J;Ajit Singh, J

Bench : Division Bench

Advocate : V.K. Shukla and Rahul Diwakar, for the Appellant; Vivek Agrawal, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ajit Singh, J.—This petition, under Article 226 of the Constitution, is directed against the order dated 30.6.2011, Annexure P12, passed by respondent No. 3 Mining Officer, Balaghat, on behalf of respondent No. 2 Collector, Balaghat, whereby petitioner's auction bid has been cancelled with a direction of forfeiture of the security amount deposited by him. The petitioner is a mining contractor. Respondent No. 2 issued a notice for auction of quarry of sand, which is a minor mineral. The area mentioned in the auction notice was 3.037 hectares bearing Khasra No. 232 situated at village Khairi Tahsil Khairlanji, District Balaghat. The allotment of quarry of sand by auction is made as per the procedure prescribed in Chapter VI of the Madhya Pradesh Minor Mineral Rules, 1996 (in short, "the Rules").

2. Under Rule 36(2) of the Rules notice of auction is required to be published at the notice board or in conspicuous place by way of fixing a copy of such notice thereon in the office of concerned Gram Panchayat, Janpad Panchayat, Zila Panchayat, Development Block, Tahsil and Collectorate and the village where the quarry is situated. This is mainly for giving an opportunity to the concerned villagers for making objections or suggestions, if any, with regard to grant of

trade quarry because they are directly affected by the mining. Since the petitioner was interested in the auction, he executed an agreement to bid in the prescribed form XVI as provided under Rule 36(3). After the auction, respondent No. 3 declared the petitioner as successful bidder vide memo dated 11.11.2010, Annexure P1. The petitioner was therefore required, as per Rule 37 and Cause 6 of the agreement to bid, to execute a contract-agreement within a period of 30 days from the date of receipt of approval of the contract failing which the earnest money and the security deposited by him were liable to be forfeited.

3. But the Sarpanch of Gram Panchayat Khairi made a written objection dated 15.12.2010, Annexure P3, to respondent No. 2 to the effect that as the land in question is being used for the purposes of cremation and burial by the members of scheduled tribes residing in villages Khairi, Khairlanji and Navegaon, its auction be cancelled. Gram Sabha of village Khairi also in its meeting held on 29.10.2010 passed a resolution, Annexure P4, for the cancellation of auction of quarry which too was made available to respondent No. 2. Having regard to the objection and resolution, respondent No. 2 by his letter dated 19.1.2011, Annexure P5, directed the Sub-Divisional Officer, Waraseoni, to submit his report whether grant of trade quarry be made. The Sub-Divisional Officer held a spot inspection through the Tahsildar and submitted a report dated 27.1.2011, Annexure P6, stating therein that since the area auctioned is being used for funeral and burial purposes, the auction for trade quarry be cancelled. Member of Legislative Assembly, Waraseoni, also made a representation dated 3.1.2011, Annexure P8, to respondent Nos. 2 and 3 for the cancellation of auction in the interest of villages because they have been using the land for cremation and burial purposes. Respondent No. 2, in turn, sent a memo dated 7.2.2011, Annexure P9, to the State Government narrating the details of auction, objections received and the report of revenue officers and sought instructions in the matter. The petitioner, who had earlier sought extension of time on medical grounds for the execution of contract-agreement, also made a representation dated 17.2.2011, Annexure P10, to respondent No. 2 for guidance in view of the objections raised by the villagers against the auction. Since the State Government did not respond to the aforesaid memo dated 7.2.2011, respondent No. 2 sent a reminder dated 6.6.2011, Annexure P11, for instructions. The State Government, in reply vide letter dated 23.6.2011 Annexure R4 without addressing the issue regarding the status of land auctioned, instructed respondent No. 2 that the auction can be cancelled on the ground of petitioner's failure to execute the contract-agreement within a period of 30 days. It is to be noted that the State Government did not instruct respondent No. 2 to forfeit the security amount deposited by the petitioner while cancelling the auction. Respondent No. 2 also unfortunately did not decide the issue whether trade quarry of the land, if being used for cremation and burial purposes by the villagers, can be granted to the petitioner. But he, by the impugned order dated 30.6.2011, not only cancelled the petitioner's auction bid but also directed for forfeiture of the security amount deposited by him simply on the ground that he

failed to execute a contract-agreement within a period of 30 days. It is in this background the petitioner has filed the present petition.

4. This Court by an interim order dated 27.7.2011 directed the respondents not to take coercive action against the petitioner.

5. On the facts narrated above, it is clear that there is a serious dispute regarding the nature of use of land which was auctioned for quarry lease to the petitioner. In the fact situation of the case, it can also safely be inferred that respondent No. 2 would not have executed the contract-agreement within 30 days even if the petitioner was willing for the same because respondent No. 2 had himself ordered for an enquiry regarding the status of land auctioned and then referred the matter to the State Government for instructions where it remained pending for more than four months. Also respondent No. 2 should have, in all fairness, first decided the dispute regarding the nature of use of land and whether having regard to the material available on record particularly the report of Sub-Divisional Officer to the effect that the land was being used for cremation and burial purposes by the villagers, it can be granted for trade quarry. We therefore find that respondent No. 2, by insisting the petitioner to execute the contract-agreement without first deciding the dispute and passing the order dated 30.6.2011, acted arbitrarily and unreasonably.

6. We accordingly quash the order dated 30.6.2011 and direct respondent No. 2 to immediately refund the security amount and earnest money deposited by the petitioner along with the prevailing rate of interest. The petition is allowed but without any order as to costs.