(2021) 06 OHC CK 0047

In the Orissa High Court

Case No : Writ Petition (Civil) Nos.17278, 17281, 17282 Of 2021

Rangadhar Pradhan APPELLANT

Vs

State Of Odisha And Others RESPONDENT

Date of Decision : 09-06-2021

Acts Referred:

Mines and Minerals (Development and Regulation Amendment) Act, 2015 — Section 15
Odisha Minor Mineral Concession Rules, 2016 — Rule 27, 27(4)(iv), 27(5), 27(7), 27(9), 27(10), 27(16), 46

Citation : (2021) 06 OHC CK 0047

Hon'ble Judges : Dr. S. Muralidhar, CJ;K. R. Mohapatra, J

Bench : Division Bench

Advocate : Subir Palit, Abhijit Pal, Anindya Mishra, Aditya Kumar Mohapatra, Debakanta Mohanty

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, CJ

1. The challenge in all these petitions is to the cancellation of the auction held in respect of Black Stone Quarries located in the Dharmasala Tahsil in

Jajpur district. The cancellation was intimated to each of the Petitioners by separate letters dated 17th May, 2021 by the Tahsildar, Dharmasala

(Opposite Party No.3). In each of the petitions a direction has been sought to the Opposite Parties to declare the Petitioner as the highest successful

bidde in respect of the concerned stone quarry, accept the rate quoted by the Petitioner and execute the lease agreement in the Petitionerâ??s

favour.

2. It is noted at the outset that, although a prayer has been made in some of the writ petitions to declare Rule 46 of the Orissa Minor Minerals

Concession Rules, 2016 (â??OMMC Rules, 2016â??) as ultra vires Section 15 of the Mines and Minerals (Development and Regulation

Amendment) Act, 2015 (â??MMDR Actâ??), during the course of argument, the counsels for the Petitioners stated that they were not pressing that

prayer.

3. Since the facts in all the cases are almost similar, illustratively the facts in W.P. (C) No.17285 of 2021 are discussed first. Here, an advertisement

was issued on 22nd February, 2021 for a long-term 5 year lease of several Sairat Sources in Dharmasala Tahsil. As far as the Petitioner in W.P. (C)

No.17285 of 2021 is concerned, he had submitted an application for allotment of the mining lease in respect of Rahadpur Black Stone Quarry No.1

pertaining to Sairat Case No.23 of 2021 at Serial No.14 of the Advertisement.

4. According to the Petitioner, subsequent to the opening of the bids on 23rd March, 2021, it was found that the Petitioner was the only successful

bidder. Although other bidders had quoted a higher price, they had failed to submit the relevant property list which was a mandatory requirement for

consideration of the Bid.

5. While the letter dated 29th April, 2021 of Opposite Party No.3 informed the Petitioner that he was the highest bidder, and that he should come to

the office of Opposite Party No.3 for negotiation of the bid amount, since, according to the Petitioner, this was contrary to the applicable OMMC

Rules, he did not proceed for negotiation. It is stated that the Petitioner was issued intimation in Form-F vide letter dated 10th May, 2021 by Opposite

Party No.1 declaring him to be the successful bidder. However, the additional charge was unilaterally and arbitrarily enhanced from Rs.65/-quoted by

the Petitioner to Rs.275/- + 1. The Petitioner was asked to deposit 1/4th of the amount so calculated within 15 days, failing which the Earnest Money

Deposit (EMD) would be forfeited.

6. While the matter stood thus, the auction was totally cancelled by the Opposite Parties by the impugned letter dated 17th May, 2021. The said letter

reads as under:

â??Sir/Madam,

This is to inform you that the Collector-cum-Controlling Authority under OMMC Rules 2016 and vide decision taken on Dt-13.05.2021, in the District Level Committee for Settlement of Sairat Sources Through Tender Process, it has been decided to cancel the minor mineral long term lease proceeding due to insufficient participation

of qualified bidders, i.e. participation of only one or no valid bidder. The bid knocked in your favour stands cancelled vide District Office (Res) memo no.109

Dt.15.05.2021.

Hence, you are hereby informed to receive the EMD and security deposit from this office within seven days from the date of issue of this letter.

Yours faithfully,

Tahasildar, Dharmasala.â??

7. It is in these circumstances that the present writ petition has been filed. The facts of the other connected writ petitions are more or less similar.

Although in some cases there may have been more than one bidder, it stood confirmed during hearing of all the writ petitions that, with reference to

each of the respective Stone Sairats for which the Petitioners had bid, there was only one valid bid.

8. This Court heard the submissions of Mr. Subir Palit, learned counsel for the Petitioners in W.P. (C) Nos. 17278, 17281, 17282, 17283 & 17285 of

2021, Mr. Abhijit Pal, learned counsel for the Petitioner in W.P.(C) No.17288 of 2021, Mr. Anindya Mishra, learned counsel for the Petitioner in W.P.

(C) No.17289 of 2021, Mr. Aditya Kumar Mohapatra, learned counsel for the Petitioner in W.P.(C) Nos.17280 and 17284 of 2021, Mr. Aditya

Narayan Das, learned counsel for the Petitioner in W.P. (C) No.17291 of 2021, and Mr. Debakant Mohanty, learned Addl. Govt. Advocate who

appeared on behalf of the Opposite Parties in all the writ petitions.

9. On behalf of the Petitioners, it is submitted that, once Form-F is issued by the Opposite Party No.3 announcing the respective Petitioners to be the

successful bidder and calling upon the Petitioners to come forward to complete the necessary formalities, then the Opposite Parties were estopped

from cancelling the auction at that stage. It is submitted that, the power of the competent authority under Section 27 (16) of the OMMC Rules to

cancel an auction cannot be permitted to be exercised after all the requirements have been fulfilled by the successful bidder and the only step

remaining was the execution of the agreement.

10. A reference is made to Rule 27(4)(iv) of the OMMC Rules to point out that

each of the successful bidders had complied with all the mandatory

requirements spelt out therein, including production of the solvency certificate/ Bank Guarantee and royalty for the minimum guarantee quantity once a

year along with additional immovable property obtained from the revenue authority. It is submitted that, under Rules 27 (5) and (7) of the OMMC

Rules, the procedure for declaring each of the Petitioners as the successful bidder was duly complied with. It is submitted under Rule 27(9) that it is

only in the event of default by the selected bidder that the competent authority may issue intimation to the next highest bidder to be required to convey

its acceptance and make security deposit in the manner mentioned in Rule 27(7) of the OMMC Rules.

11. It is pointed out that, in the letter dated 17th May, 2021 by Opposite Party No.3 to each of the petitioners informing that the auction has been

cancelled, a reference was made to Rule 27 (10) of the OMMC Rules, which, in fact, talks of a contingency where the second highest bidder quotes

â??an unusually low price in comparison to the highest bidder of the same source or other sourcesâ?, which alone could then justify the cancellation

of the bid and inviting tenders afresh. It is pointed out that, on the admitted facts of the present cases, since the ostensible reason was that there was

only one valid bid, Rule 27 (10) of the OMMC Rules has no application. This is put forth as an additional ground to challenge the impugned decision to

cancel the auction on account of non-application of mind.

12. All of the learned counsel for the Petitioners submit that the power under Rules 27 (16) of the OMMC Rules, whereby the Collector could cancel

a bid by recording the reasons thereof â??if he is not satisfied on the publicity, participation of the bidders and amount of additional chargeâ? cannot

be exercised arbitrarily. Importantly, it is submitted that such a power can be exercised only after due notice to the Petitioners and after providing

them an opportunity of being heard.

13. Further it is submitted that, once the Form-F is issued to the successful bidder, the price quoted by him stands disclosed to all his competitors and

thereafter to cancel the bid would cause him serious prejudice. It is submitted that there could be no deviation from the procedure mentioned in the

OMMC Rules. A thing has to be done in the manner prescribed or not at all.

14. In support of the above submission reliance is paced on the decision in State

of U. P. v. Singhara Singh AIR 1964 SC 358. Reliance is placed on

the decisions in Nagendra Rai v. Om Prakash Singh (2014) 15 SCC 463, to urge that, once the offer is accepted, such acceptance would bind the

authority inviting the tender and the tender cannot be cancelled at that stage. The decision in Union of India v. International Trading Co. (2003) 5 SCC

437, is referred in support of the submission that all the statutory powers are to be exercised in the public interest and in good faith. In support of the

plea that the impugned decision is violative of the principle of natural justice, reliance is placed on the decision in M/s. Sahara India (Firm), Lucknow

v. Commissioner of Income Tax, Central [decision dated 11th April, 2008 of the Supreme Court in Civil Appeal No.2783 of 2008]. Lastly, reference

is made to the decision of this Court in M/s. Sical Logistics Ltd. v. Mahanadi Coalfields Limited [decision dated 23rd August, 2017 in W.P. (C)

No.5272 of 2017].

15. Appearing on behalf of the Opposite Parties, Mr. D.K. Mohanty, learned A.G.A. placed before this Court a copy of the Proceeding of the District

Level Committee Meeting dated 13th May, 2021 in respect of the settlement of Sairat Sources through Tender Process under Dharmasala Tahasil.

This explains the reasons for the decision to cancel the auction in respect of the Sairat sources for which the Petitioners had applied. Mr. Mohanty

assures the Court that within two daysâ?? time the money which was collected from each of the Petitioners would be returned to them and within a

week from today the notice for a fresh auction would be issued so that no prejudice is caused to anyone.

16. The above submissions have been considered. In the present case, the source of power of the Collector to cancel the auction can be traced in

Rule 27(16) of the OMMC Rules. The Court notes that there has been no challenge by any of the Petitioners to the validity of the said Rule 27(16) of

the OMMC Rules, which expressly confers on the Collector the power to cancel any bid by recording the reasons therefor â??if he is not satisfied

with the publicity, participation of bidders, and amount of additional charges quotedâ?. It is obvious that such power is to be exercised in a just fair and

reasonable manner. That in fact is the scope of judicial review of the impugned letter dated 17th May 2021.

17. In the present case, from the proceedings of the District Level Committee

Meeting, it is apparent that the reason for cancellation of the auction is

traceable to the factor of â??participation of biddersâ?. The proceeding reveals that there were 27 Sairat Sources that had been offered for auction in

Dharmasala Tahsil. This was for settlement on long-term lease for a period of five years under the OMMC Rules. The bids received in respect of 9

of the Sairat Sources in Bichhakhandi Hillock area were not opened in view of the interim order passed by this Court in W.P.(C) No.8378 of 2021.

Further, no bidder participated in respect of 3 of the Sairat Sources of Aruha Hillock area.

18. This left 15 Sairat Sources, in which the bids received were opened. Only in case of 2 out of these 15 sources, viz., the Anjira Black Stone Quarry

No.10 and the Baraman Black Stone Quarry No.02, there was more than one valid bid. In these two cases, therefore, the Committee decided to grant

the bid in favour of the highest bidder.

19. As regards the balance 13 Sairat Sources, it was found that there was either only one valid bid or no valid bid at all. The cases where the

petitioners had participated and were successful were admittedly cases of a valid single bid. It was unanimously decided by the Committee, which

comprised of the Collector & District Magistrate, Jajpur, A.D.M., Revenue, Jajpur, Sub-Collector & S.D.M., Jajpur and the Deputy Collector,

Revenue Collectorate, Jajpur, to go into a fresh Tender. It was further decided that the intimation in Form-F sent to the successful bidders should be

cancelled forthwith and the amount deposited should be refunded.

20. The Court is unable to accept the plea of the Petitioners that in the present case there has been any violation of the principle of natural justice in

cancelling the auction. No doubt, the decision would result in the Petitioners having to once again participate in the fresh auction. But, apart from this,

it cannot be said that there is any serious prejudice caused to any of them on that score. The fact remains that, in as many as 13 Sairat Sources, out of

a total of 27, there was either only one valid bid or no valid bid at all. In the circumstances, it cannot be said that the decision of the opposite parties to

cancel the auction in respect of these sairat sources and go in for a fresh Tender notice was arbitrary or unreasonable. Any Tender inviting authority

would be justified, in expecting that the price quoted is the most competitive one in the circumstances.

21. On a careful perusal of Rule 27 of the OMMC Rules, which lists in detail the steps to be taken for the grant of lease in favour of the successful

bidder in respect of the Sairat Sources, it is seen that the declaration of a bidder as a successful one and sending him an intimation in Form-F is but

one of the steps in the process. It is followed by the important stage of execution of the agreement. Till such time an agreement is executed, it cannot

be said that there is any vested right in the successful bidder to have the lease allotted in its favour. In other words, as long as the agreement is not

signed, it cannot be said that the Collector, in terms of Rule 27(16) of the OMMC Rules, is precluded from taking a decision, for valid reasons, to

cancel the auction.

22. In the present case, the sequence of events shows that the bids were received and were opened sometime in the third week of March, 2021. The

intimation to the successful bidder was sent some time in April, 2021 and the decision to cancel the auction was taken on 15th May, 2021. This

decision applied not just to one or two the sources but to all the 13 sources where only one valid bid or no valid bid at all was received. This, therefore,

cannot be termed to be either belated or barred by estoppel.

23. The Court finds that the decision in Nagendra Ray v. Om Prakash Singh (supra) is distinguishable on facts. In the present case the matters have

not reached the stage which could be said to attract the doctrine of legitimate expectation or promissory estoppel. Likewise, the decision in Union of

India v. International Trading Co. (supra) also is not helpful to the present Petitioner. In fact, in the said decision the Supreme Court explained in

para-20 as under:

â??20. As was observed in Punjab Communications Ltd. v. Union of India, the change in policy can defeat a substantive legitimate expectation if it can be justified on

â??Wednesbury reasonablenessâ?. The decision-maker has the choice in the balancing of the pros and cons relevant to the change in policy. It is, therefore, clear

that the choice of policy is for the decision-maker and not the court. The legitimate substantive expectation merely permits the court to find out if the change of policy

which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. A claim based on merely

legitimate expectation without anything more cannot ipso facto give a right. Its uniqueness lies in the fact that it covers the entire span of time: present, past and

future. How significant is the statement that today is tomorrowâ??s yesterday. The present is as we experience it, the past is a present memory and future is a

present expectation. For legal purposes, expectation is not same anticipation. Legitimacy of an expectation can be inferred only if it is founded on the sanction of

law.â??

24. Also, since the decision applied across the board, and the basic fact that there was either only one valid bid or no valid bid at all in respect of each

of the 13 sources is not even disputed by any of the Petitioners, the question of issuing notice to each of them prior to the cancellation of the auction

would have been an empty formality. It would have served no useful purpose other than further delaying the fresh auction process. Since the bidders

whose successful bids in the first round would in any event be able to participate in the second one as well, it cannot be said that any serious prejudice

is caused to any of them as a result of cancellation of the first auction. Also, the money deposited by each of them has been agreed to be refunded by

the Opposite Parties. The decisions in M/s. Sahara India (Firm), Lucknow v. Commissioner of Income Tax, Centra l(supra) and State of Uttar

Pradesh v. Singhara Singh (supra) also have no application to the facts of the present case.

25. The mere fact that the price quoted by the individual Petitioners would be known to their competitors cannot be said to prejudice them since they

have one more opportunity to participate in the fresh auction where they would still be able to anticipate the price now to be quoted by other bidders

and improve their own respective bid accordingly. That is how perhaps in a competitive bidding process, the best or rather the most competitive price

can possibly be obtained. This again cannot be said to be unfair, unreasonable or prejudicial to the Petitioners. Consequently, the decision in M/s. Sical

Logistics Ltd v. Mahanadi Coalfields Ltd. (supra) is also not helpful to the case of the Petitioners.

26. For all the aforementioned reasons, this Court finds no merit in any of the writ petitions and they are dismissed as such.Taking into consideration

the statement made by the learned A.G.A. on behalf of the Opposite Parties, it is directed that the money if any received from the Petitioners, will be

refunded to each of them by the Opposite Parties/State within two days from today. Further, the Opposite Parties/State shall issue notice for the fresh

auction of the aforesaid Sairat sources not later than seven days from today.

27. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order

available in the High Courtâ??s website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide

Courtâ??s Notice No.4587, dated 25th March, 2020 as modified by Courtâ??s Notice No.4798, dated 15th April, 2021.

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