
(2006) 12 OHC CK 0037
In the Orissa High Court

Santosh Kumar Behera

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 18-12-2006

Acts Referred:

Citation : (2007) CLT 679 Supp : (2007) 1 OLR 166 : (2007) OLR 679 Supp

Hon'ble Judges : I. Mahanty, J;A.K. Ganguly, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Ganguly, J.—This writ petition has been filed challenging the process of auction of Sand Sairat Source namely, Chitrotpala River Sand, Shantpur, in favour of opposite party No. 5.

2. The allegation in the writ petition is that the process of auction of the said Sairat Source has been conducted without issuing public notice as required under Rule-38 of the Orissa Minor Minerals Concession Rules, 2004 and it was done in such a manner so as to favour the opposite party No. 5 by accepting his bid.

3. The main ground of challenge is that the date of holding of public auction was fixed to 25.2.2006. From the order sheet which has been disclosed in the writ petition it appears that on 17th February, 2006 the papers were put up before the opposite party No. 4, Tahasildar, Salipur, and on that date he directed issuance of notice for public auction on 25.2.2006. But it appears that the impugned notice was issued on 16.2.2006.

4. Learned Counsel for the petitioner submitted that the entire process was mere eye-wash. In other words, it is alleged that the order for issuing notice was passed by opposite party No. 4 on 17.2.2006 then how could the notice be issued on 16.2.2006. It was also stated that apart from opposite party No. 5, two other persons participated in the said auction process and those persons are the henchmen of opposite party No. 5. In other words, it was suggested that there was no public auction and the River Sand Sairat Source was settled at a very low

price i.e. at Rs. 5,500/- in favour of opposite party No. 5. Therefore, the public revenue has also suffered.

5. Counter Affidavits have been filed by opposite party No. 4 and by opposite party No. 5. In both the affidavits similar stand has been taken about the discrepancy of dates between 16.2.2006 and 17.2.2006. The explanation which has been offered by opposite party No. 4 is that "it was written by the bench clerk concerned putting the date as 17.2.2006 instead of 16.2.2006 and the opposite party No. 4 inadvertently signed the order sheet". In fact, opposite party No. 4 has filed the affidavit. This Court is not at all satisfied with the explanation offered by opposite party No. 4. Strangely enough, in the affidavit filed by opposite party No. 5, detailed explanation about the discrepancy of the date was sought to be put up whereas the author of the order sheet (opposite party No. 4) in his affidavit has not come forward with such detailed explanation. This Court is of the opinion that when vital discrepancy is noticed in the official record, it is for the official respondent to explain the same. Casual explanation offered by opposite party No. 4 is not acceptable by this Court.

6. From those materials on record, the Court finds it difficult to accept that the entire auction process was above board. In the counter affidavit filed by opposite party No. 5 some allegations have been made over the manner in which the writ petitioner has not succeeded in obtaining a different auction in his favour. It is not possible for this Court to go into those questions since grant of auction in favour of the petitioner has not been challenged before this Court. The opposite party No. 5 cannot collaterally challenge the auction settled in favour of the petitioner by filing an affidavit in the writ petition filed by the petitioner.

7. About non-issuance of notice in the Newspaper, the explanation given by both opposite parties 4 and 5 is that the reserve price of the said Sairat being low, the paper publication cost will be much more than the reserve price. As such, the same is not viable and in both the affidavits reference has been made to Rule 54 of the Manual of Tahasil Account which provides that unless the auction sale price exceeds Rs. 20,000/-, the auction notice need not be published in the Newspaper. It has been alleged by the learned Counsel for the petitioner that such administrative guideline violates Rule 38 of the Orissa Minor Minerals Concession Rules and it has been urged that an administrative circular cannot override the Rule.

8. This Court is of the opinion that without going into those questions, in the facts and circumstances of this case, this Court is not satisfied that the discrepancy in the official record about issuance of notice has been properly explained. Since that aspect has not been properly explained, it is difficult for this Court to uphold the entire process of auction. Apart from that, this Court finds that the Sairat has been settled at a very low price and a competitive price has not been given. When the auction process was challenged before a learned Vacation Judge on 7.6.2006, an interim order was granted and the said order is continuing till today and as a result of such interim order no agreement has been

entered between opposite party No. 5 and the Government. Therefore, the auction process has actually not been implemented.

9. For the reasons aforesaid this Court quashes the auction process in respect of Chitrotpola River Sand Sairat Source which was given to opposite party No. 5. This Court directs that the said Sairat be reauctioned so that competitive price is fetched and no loss is caused to the public revenue. Since the matter was pending in this Court for some time, this Court directs that such auction process should be completed within a period of three months from the date of service of a copy of this order upon the opposite party No. 2, Collector, Cuttack. The writ petition is allowed to the extent indicated above.

I. Mahanty, J.

10. I agree.