

(2016) 04 OHC CK 0030

In the Orissa High Court

Case No : Writ Petition (Civil) No. 8911 of 2015

Seikh Mohammed Wazid

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 19-04-2016

Acts Referred:

Orissa Minor Minerals Concession (Amendment) Rules, 2014 — Rule 27 A

Citation : (2016) 1 ILRCuttack 1080

Hon'ble Judges : Vineet Saran, CJ. and Dr. B.R. Sarangi, J.

Bench : Division Bench

Advocate : M/s. Sidhartha Das, P.R. Singh, Y.S.P. Babu, A.M. Mohanty, Advocates, for the Petitioner; Mr. Bijaya Ku. Mohanty, R. Mohanty, S.S. Chhualsing, B. Muduli, P. Sahu, G.N. Sahu, Advocates, for the Opp. Parties

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J.—The highest bidder, Seikh Mohammed Wazid of Padampur filed this application challenging the order dated 24.04.2015 passed by the Sub-Collector, Padampur in Revenue Misc (Sairat Source) Appeal Case No. 3/2015 & 4/2015 by which the lease application recommended by the competent authority for approval has been rejected under Rule 26(10) of Orissa Minor Minerals Concession (Amendment) Rules, 2014 (hereinafter referred to as "Rules, 2014") and the second highest bidder, Markardhwaj Patel has been called upon to deposit the earnest money with the Tahasildar, Padampur under Section 26(7) of the said Rules.

2. Mr. S. Das, learned counsel for the petitioner urged that without considering the objection filed in Revenue Misc (Sairat Source) Appeal Case No. 3/2015 & 4/2015 by the petitioner the authority rejected the petitioner's application for lease bid as per Rule 26(10) of Rules, 2014 vide order dated 24.04.2015 allowing the second highest bidder to deposit the earnest money for both the Kumunibahali sand bed A and B. It is further urged that the Sub-Collector could not have admitted the appeal of opposite party no.5 as the same was defective

due to non-deposit of statutory deposits pursuant to Rule 64 (2) of the Rules, 2014 and more so, the appeal was barred by limitation and no application for condonation of delay was filed. Non-filing of solvency certificate cannot be construed to be a defect as per the Rules, 2014, thereby the authority has not applied his mind in proper perspective and therefore, he seeks for quashing of the order dated 24.4.2015.

3. Mr. P.K. Muduli, learned Addl. Standing Counsel for the State supported the order passed by the appellate authority and stated that there is no illegality or irregularity committed by the appellate authority in cancelling the recommendation of lease in favour of the highest bidder, the petitioner herein, as there is non-compliance of the statutory provisions contained in the Rules, 2014.

4. Mr. B.K. Mohanty, learned counsel appearing for opposite party no.5 urged that since the highest bidder has not satisfied the requirement of law as prescribed in the Rules, 2014, the authority has called upon the second highest bidder, the opposite party no.5 herein, who has satisfied the requirements, thereby the impugned order dated 24.4.2015 does not suffer from any illegality or irregularity warranting interference of this Court in exercise of its extraordinary jurisdiction.

5. Having heard learned counsel for the parties and after going through the records, it appears that the Tahasildar, Padampur in the district of Bargarh invited applications by issuing a public notice No.349 dated 5.02.2015 to lease out the quarries as per Rules, 2014 for a period of five years. The petitioner along with others applied for grant of lease in respect of Kumunibahali sand bed A under Khata No. 99, Plot No. 64(P), area Ac.24.00 dec. and Kumunibahali sand bed B under Khata No. 99, Plot No. 64(P) area Ac.20.00 dec. The royalty was also determined in respect of the said sairat sources at the rate of Rs. 28/- per cubic meter by the Tahasildar, Padampur. Five bidders participated in the bids. Accordingly, the bid was opened on 27.2.2015. It appears that the petitioner being the highest bidder in respect of the sairat source, the Tahasildar, Padampur passed the order as per the provisions contained in Rules, 2014 and recommended the case of the petitioner for approval of the competent authority vide order dated 10.3.2015. At this juncture, opposite party no.5, who is the second highest bidder, approached this Court by filing W.P.(C) No. 5352 of 2015 challenging the recommendation of the sand sairat for approval in favour of the petitioner, which has been withdrawn on 25.3.2015 with a liberty to approach the appellate authority. Consequentially, opposite party no.5 filed Revenue Misc (Sairat Source) Appeal Case No. 3/2015 & 4/2015 before the Sub-Collector, Padampur challenging the recommendation of the sairat sources for approval in favour of the petitioner, stating, inter alia, that the solvency certificate submitted by the petitioner is defective for non-production of mining plan and environmental clearance from the competent authority, which is the requirement of law as per Rules, 2014. The petitioner filed his objection before the appellate authority stating that in absence of any provision for determination of the

solvency certificate, the appeal so preferred by the opposite party no.5 cannot sustain.

6. The appellate authority has taken into consideration the provisions contained in Rule 27 (A) Rules, 2014 which is quoted below:

"27-A. Mining Plan as a pre-requisite to the grant of quarry lease:-

(1) No quarry lease shall be granted by the Competent Authority unless there is a mining plan prepared by the recognised persons and duly approved by the Authorised Officer for the development of the mineral deposits in the area concerned.

(2) On receipt of the intimation from the Competent Authority for the precise area to be granted, the applicant shall submit application before the recognised person selected by the Authorised Officer for preparation of mining plan.

(3) The recognised person shall prepare the mining plan in FORMZB within thirty days from the date of receipt of the application and submit the same to the Authorised Officer for approval.

(4) The Authorised officer, after receipt of the mining plan from the recognised person, shall approve the same within thirty days from the date of receipt with modifications, if any, and submit the same to the competent Authority.

(5) The mining plan for quarry lease shall contain, _

(i) the plan of the quarry lease hold area showing the nature and extent of the mineral body, spot or spots where the mining operations are proposed to be carried out by the applicant;

(ii) details of mineral reserve of the area;

(iii) the extent of manual mining or mining by the use of machinery and mechanical devices on the precise area;

(iv) the plan of the precise area showing natural water courses, limits of reserves and other forest areas and density of trees, if any, assessment of impact of mining activities on forest, land surface, structures in the vicinity of the spot of mining, details of scheme of restoration of area by afforestation, if required, land reclamation and use of pollution control devices;

(v) annual programme and plan for excavation on the precise area from year to year for five years; and

(vi) a progressive mine closure plan.

(6) The selected lessee shall bear the cost for preparation of the mining plan.

(7) A holder of a quarry lease desirous of seeking modification in the approved mining plan for quarry lease as considered expedient in the interest of safe and scientific mining, conservation of minerals, or for the protection of the

environment, shall apply to the Authorised Officer, setting forth the intended modifications and explaining the reasons for such modifications.

(8) The Authorised Officer may approve the modifications under sub-rule (7) within a period of thirty days from the date of receipt of the application.

(9) The modification of the mining plan for quarry lease shall remain valid for the remaining period of the quarry lease."

7. The aforementioned provisions mandate that no quarry lease shall be granted by the competent authority unless there is mining plan prepared by the recognised persons or duly approved by the authorised persons for the development of the mineral deposits in the area concerned and for the said purpose on receipt of the intimation from the competent authority for the precise area to be granted, the applicant shall submit before the recognised persons selected by the authorised persons for preparation of the mining plan. The recognised person shall prepare the mining plan in Form ZB within thirty days from the date of receipt of the application and submit the same to the Authorised Officer for approval. The petitioner having not complied with the provisions under Rule 27(A) by submitting the mining plan and also the environmental clearance from the Ministry of Forest and Environment, Government of India within the statutory period of thirty days, he has defaulted in compliance of the said requirement.

8. For grant of quarry lease, the intending applicant has to file application in prescribed Form-J along with documents mentioned in clauses (i) and (vi) as per sub-rule (2) of Rule 26. Sub-rule 2 (v) of Rule 26 of the Rules, 2014 requires that a solvency certificate and a list of immovable properties from the Revenue Authority have to be accompanied with the application submitted by the applicant. As per sub-rule (10) of Rule 26 the application submitted in Form-J shall be summarily rejected if the rate of royalty quoted is less than the rate of royalty specified in Schedule-II and if the application is not accompanied with documents and particulars as specified in sub-rule (2) of Rule 26 of the Rules, 2014. As it appears, the requirement of clause (v) of sub-rule (2) of Rule 26 so far as furnishing of solvency certificate having not been complied by the petitioner, the same should have been rejected summarily. Therefore, when the second highest bidder preferred appeal before the appellate authority, the records of the Tahasildar were produced before him and on perusal of the same, it appears that there is non-compliance of the provisions contained in Rule 26(2) (v) read with Rule 27(A) of Rules, 2014. Consequently by assigning reasons, the lease-bid application submitted by the petitioner in respect of Kumunibahali sand bed A and Kumunibahali sand bed B has been rejected and direction has been given for calling upon the second highest bidder, namely, opposite party no.5 to deposit the earnest money with the Tahasildar in respect of the very same quarries under Rule 27(C) of the Rules, 2014 and to take action as per the said Rules in favour of the second highest bidder.

9. In *State of West Bengal v. Atul Krishna Shaw*, AIR 1990 SC 2205, the Apex Court observed that giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review.

10. In *Krishna Swami v. Union of India*, (1992) 4 SCC 605 : AIR 1993 SC 1407, the Apex Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne-out from the record. The Court further observed that,

"reasons are the links between the material, the foundation for these erection and the actual conclusions. They would also administer how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusion reached. Least it may not be arbitrary, unfair and unjust, violate Article 14 or unfair procedure offending Article 21".

11. In *Vasant D. Bhavsar v. Bar Council of India*, (1999) 1 SCC 45, the Apex Court held that an authority must pass a speaking and reasoned order indicating the materials on which its conclusions are based. Similar view has also been reiterated in *Indian Charge Chrome Ltd. v. Union of India*, AIR 2003 SC 953 and *Secretary, Ministry of Chemicals & Fertilizers, Govt. of India, v. CIPLA Ltd.*, AIR 2003 SC 3078.

12. Applying the principles laid down by the Apex Court in the aforementioned judgments to the present context, it appears that the authorities having applied their mind have passed a speaking and reasoned order in consonance with the provisions of law. This Court is of the considered view that the impugned order dated 24.04.2015 does not warrant any interference by this Court. Accordingly, the writ petition is dismissed. No order as to costs.