(1988) 07 OHC CK 0039

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1704 of 1988

Sk. Lokman Alli — APPELLANT

Vs

Collector, Balasore and Others — RESPONDENT

Date of Decision : 13-07-1988

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15(1)
Orissa Minor Minerals Concession Rules, 1983 — Rule 28(1), 3

Citation : (1988) 66 CLT 524

Hon'ble Judges : G.B. Patnaik, J;A.K. Padhi, J

Bench : Division Bench

Advocate : M.R. Panda, for the Appellant; Additional Government Advocate and S. Misra-2, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—Both these writ applications involve a common question of law and are, therefore, heard together and are being disposed of by this common judgment.

2. The Petitioner in O.J.C. No. 1704 of 1988 was the highest bidder in respect of Lot No. 1 and Petitioner in O.J.C. No. 1705 of 1988 was the highest bidder in respect of Lot No. 2. The Tahasildar, Balasore, issued a notification on 22-4-1988 stating therein that the two sairat sources of Balanga river would be put to auction on 30-4-1988. The said notification has been annexed as Annexure-1 to both the writ petitions. It has been asserted in the writ applications that though the Petitioners in both the writ applications were the highest bidders in respect of Lots 1 and 2 respectively, instead of settling the sairat with the Petitioners, the Tahasildar settled the same with opposite party No. 4 on the grounds stated in the order dated 30th of April, 1988. The said order has been quoted in extenso in the writ application and has also been filed as Annexure-A to the counter affidavit filed on behalf of opposite parties 1 to 3. The Petitioner in each of the writ applications being aggrieved by the said order carried an appeal to the Sub-

Divisional Officer who is the appellate authority under the rules. The said appeals having been dismissed, the Petitioners have approached this Court.

3. Mr. Panda, the learned Counsel for the Petitioners, contends that the sairat in question, namely, the sand is undisputedly a minor mineral. Such minor mineral can be disposed of by public auction by the competent authority on such terms and conditions as may be specified in the auction sale notice, as contained in Rule 28 (1) of the Orissa Minor Minerals Concession Rules,]983 (hereinafter referred to as the ?Rules?) framed by the State Government in exercise of powers conferred under Sub-section (1) of Section 15 of the Mines and Minerals Regulation & Development) Act, 1957 (hereinafter referred to as the ?Act?). According to the learned Counsel for the Petitioners, Rule 28 (1) of the Rules read with Rule 3 (b) which defines the words ?auction? makes it obligatory on the part of the competent authority to dispose of the sairat in favour of the highest bidder and that not having been done, the competent authority has committed infraction of the statutory rules and, therefore, the same must be struck down. The learned Counsel further contends that the grounds on which the competent authority did not accept the highest bid and then settled the sairat in favor of opposite party No. 4 and the affirmation of the same by the appellate authority are not at all germane to the points in issue and must be taken to be extraneous consideration and therefore, this Court should strike down the said orders.

4. The learned Additional Government Advocate, on the other hand contends that in view of the specific clause contained in the auction sale notice (Annexure-1) to the effect that the authority is not bound to accept the highest bid the Petitioner in each of the writ applications does not acquire any right merely by virtue of being the highest bidder and, therefore, there is no legally enforceable right to be enforced in an application under Article 226 of the Constitution. It is further contended that there is no error of law apparent on the face of the orders which can be interfered with by a writ of certiorari.

5. Mr. S. Misra-2, the learned Counsel appearing for the grantee, opposite party No. 4. in addition to the aforesaid submissions of the learned Additional Government Advocate contends that the grant in question having been made and opposite party No. 4 having executed an agreement and to operate the grant having spent a huge sum, discretionary jurisdiction of this Court should not be invoked and the Petitioners? applications must be rejected.

6. It would be appropriate to note that while the writ application was pending, pursuant to an interim order of the Court dated 10-6-1988, a fresh auction had been held and in the said auction the Petitioners in both the writ applications being the highest bidders are operating the sairat as receivers under the Court. In order to examine the correctness of the rival submissions, it would be profitable to extract the relevant provisions of the Rules. Rule 3 (b) defines ? auction? to mean ?......auction sale of minor minerals in any area in favour of the highest bidder under the terms and conditions fixed by the competent authority.?

Rule - 28 contained in Chapter-IV of the Rules which deals with . Auction? is quoted hereinbelow in extenso:

28 (1) Subject to the conditions mentioned in these Rules, minor minerals can be sold or disposed of by public auction by the Competent Authority on such terms and conditions as may be specified in the auction sale notice.

(2) Auction shall be valid for a maximum period of one year from the date of auction.

(3) The off set price to be fixed may be based on the average price obtained during the last three years. In case of the bid amount falling short of the off set price so fixed, the competent Authority may dispose the material by auction at the maximum bid amount obtained, after recording the reasons in writing. In all cases, the off set price fixed by with Competent Authority shall be subject to confirmation by the next higher officer.

(4) The Competent Authority shall make reasonable publicity for the auction sale so as to obtain the best possible price.

(5) The successful bidder shall deposit the bid amount in full before removal of any minor mineral is permitted, from the area auctioned. In the event of the bid amount being considered high, the Competent Authority shall have the discretion to collect fifty per cent of the total bid amount in cash in advance from the auction purchaser and for the balance, bank guarantee shall be furnished by the auction purchaser to the satisfaction of the Competent Authority.

The aforesaid Rules having been framed in exercise of powers conferred u/s 15 (1) of the Act are statutory in nature and, therefore, are of mandatory character. The minor mineral in question, therefore, has to be disposed of by a public auction by the competent authority on such terms and conditions as may be specified in the auction sale notice and in view of the definition of ?auction? in Rule 3 (b), it has to be ordinarily settled with the highest bidder under the terms and conditions fixed by the competent authority. The competent authority therefore, has no discretion to ignore the highest bidder unless for certain terms and conditions specified in the auction sale notice, the highest bidder becomes ineligible. The insertion of the term that the competent authority is not bound to accept the highest bid in the auction sale notice, does not confer an arbitrary discretion on the competent authority to ignore the highest bid either without assigning any reason or for reasons not germane to the issue. Such an interpretation would make the statutory rule nugatory and would enable the competent authority to act like a despot. One of the cardinal principles of rules of construction of any statute or statutory provision is that if a particular procedure is prescribed then the same must be strictly adhered to. We are not in a position to accept the submission of the learned Additional Government Advocate that the insertion of the term in the auction sale notice that the competent authority is not bound to accept the highest bid enables the competent authority in the present case to ignore the highest bid and to confer a right on the lowest bidder.

Then again, the reasons ascribed by the competent authority not to accept the highest bid in his order dated 30th. April, 1988; which has been annexed as Annexure-A are also imaginary ones and cannot be sustained in law. The sale reason appears to be the fact that the Education Foundation is an organisation for promoting higher education in the district and aims at establishing one University at Balasore and, therefore, needs some encouragement for raising funds to fulfil their sincere objects for common cause. Howsoever laudable the object of the said Education Foundation may be, in disposing of a minor mineral like sand, the competent authority is bound by the provisions of Rule 28 (1) of the Rules and the considerations which have weighed with the competent authority to settle the sairat in favour of opposite party No. 4 are extraneous to the provisions of the Rules. The manner in which the competent authority has ignored the highest bidder but has settled the grant with the lowest bidder dearly demonstrates that the said authority has gone beyond his powers conferred under Rule 28 (1) of the Rule?s read with Rule 3 (b) and, therefore, such conferment on opposite party No. 4 is without jurisdiction and cannot be sustained.

7. The appellate authority while disposing of the appeals filed at the instance of the Petitioners has come to the conclusion that when a public property is put to public action it should be settled with the highest bidder and once the auction sale is completed by fall of hammer or otherwise, no other should be entertained. He has also come to the conclusion that a departure has been made in the present case by the Tahasildar in settling the sairat in favour of a person who is not the highest bidder, but yet refused to interfere with the order of the Tahasildar and accepted the stand of the Tahasildar that the stipulation in the auction sale notice that he is not bound to accept the highest bid enables the competent authority to refuse the highest bid and to entertain the lowest bid and such a procedure is not violative of the provisions of the rules. In our opinion, the appellate authority has clearly erred in law in coming to the aforesaid conclusion. We have already held that the competent authority has no jurisdiction under the rules to ignore the highest bid of the Petitioner and to settle the sairat with the lower bidder namely, opposite party No. 4 on any extraneous consideration. The order of the Tahasildar dated 30th. April, 1988, as well as the order of the appellate authority dated 13th. of May, 1988, is patently erroneous and the same cannot be sustained by this Court.

8. Opposite party No. 4 in his counter affidavit, no doubt, has stated that it has already executed the agreement and has spent substantial amount in the construction of a bridge for convenient transportation of same by trucks and accordingly while exercising the jurisdiction under Article 226 of the Constitution, this Court should take into consideration that factor also. But having given our anxious consideration to the said assertion made by opposite party No. 4, even if that may be true, yet the action of the competent authority being without jurisdiction, we cannot but set aside the same. Once this Court is satisfied that there has been statutory infraction in settling a sairat source, this Court would be

failing in its duty by not quashing the same and by permitting the continuance of the order merely on some equitable consideration. In view of out conclusion made earlier, the submission of Mr. Misra, the learned Counsel for opposite party No. 4, cannot be sustained and is accordingly rejected.

9. We would, therefore, quash the order dated 30-4-1988 of the Tahasildar, who is the competent authority under the rules, conferring the grant on opposite party No. 4 as well as the appellate order of the S.D.O. dated 13th. May, 1988 which has been annexed as Annexure-2. Consequently, the agreement which has been executed between opposite party No. 4 and the competent authority will not be operative and the Petitioner in each of the cases would be entitled to operate the sairat source by observing all other formalities as required under the rules. It further appears that the Petitioners are in the meantime operating the sairat sources pursuant to a subsequent auction held in accordance with the interim order of this Court dated 10-6-1988, but the said working is as the receiver under the Court. In view of our conclusion that the Petitioners are entitled to the grant in question, we make it clear that their subsequent working of the sairat sources would be on the basis of their own right and the payments made shall be pursuant to the original auction that was held by the competent authority and the competent authority shall take into account all these factors while permitting the Petitioners to execute the agreement in question. If any amount has been paid by opposite party No. 4, the same may be refunded to him by the competent authority as expeditiously as possible.

The writ applications are accordingly allowed, but parties would bear their own costs.

A.K. Padhi, J.

10. I agree.