

**(2015) 05 PAT CK 0043**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 2750 of 2015, I.A. No. 1590 of 2015 and Civil Writ Jurisdiction Case No. 3774 of 2015, I.A. No. 2375 of 2015

Westlink Trading Private Limited and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 19-05-2015

**Acts Referred:**

**Citation :** (2015) 05 PAT CK 0043

**Hon'ble Judges :** Jyoti Saran, J

**Bench :** Single Bench

**Advocate :** Y.V. Giri, Senior Advocate, Amit Srivastava and Girish Pandey, for the Appellant; D.K. Sinha, AAG and Alok Kumar Rahi, Advocates for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Jyoti Saran, J.

1. Since the petitioner in the two writ petitions while espousing their own causes have also questioned the eligibility of the other petitioner for settlement of the Sand Ghats in question and the facts of the matter in issue are the same in the two writ petitions hence they have been heard analogous and are being finally disposed of at the stage of admission itself with the consent of the parties.

2. The writ petitioner in CWJC No. 2750 of 2015 has prayed for the following reliefs:

(i) for issuance of a writ in the nature of certiorari or such other writ/order/direction as is deem fit and proper for quashing the letter No. 2/MM(Ba)-06/14 (Khand) 176/M, Patna dated 19.1.2015 issued by the Respondent No. 3 whereby the approval has been granted to settle the Balughat, Jehanabad for 2015-19 in view of a public auction held on 21.10.2014 in favour of the highest bidder.

(ii) For issuance of writ in the nature of mandamus or such other writ/order/

direction as is deemed fit and proper for commanding and directing the Respondent Nos. 2 to 4 to settle Balughat, Jehanabad, for the period 01.01.2015 to 31.12.2019 on the offered settlement amount of Rs. 6.80 crores being the highest offer made in the auction held on 13.11.2014 and reiterated in the third auction held on 02.12.2014 which has been held pursuant to letter dated 23.9.2014 issued by the Respondent No. 3.

(iii) For issuance of a writ in the nature of certiorari or such other writ/order/direction for quashing the settlement on daily basis of the Balughat, Jehanabd in favour of the private respondent No. 5 (A copy of the said settlement is not available with the writ petitioner, however his representative has filed a R.T.I. application on 31.01.2015 before the Public Information Officer, District Mines Office, Jehanabad and Arwal for supplying a certified copy of the said settlement, and as such the writ petitioner is unable to bring the said settlement on record).

3. The petitioner in CWJC No. 3774 of 2015 has prayed for the following reliefs:

(i) For a direction on the respondent particularly respondent No. 3, District Magistrate, Jehanabad to issue work order in favour of the petitioner under clause 9(i) of letter No. 3671/M dated 30.9.2014, on deposit of 1st instalment of settlement of Sand Ghat in the district of Jehanabad, in the light of legal opinion and also in the light of the fact that the petitioner has been declared highest bidder in public auction held on 21.10.2014 for the period 01.01.2015 to 31.12.2019 in terms of letter No. 176 dated 19.01.2015 and letter No. 225 dated 21.01.2015 of the Mines Department;

(ii) For a direction on the respondent No. 3, District Magistrate, Jehanabad, to recall its recommendation, seeking approval from the Mines and Geology Department, Government of Bihar, for settlement of Sand Ghats in the district of Jehanabad in favour of respondent No. 4 vide letter No. 659 dated 08.12.2014, letter No. 26, dated 23.01.2015 and letter No. 29 dated 29.01.2015, since respondent No. 4 do not fulfill the terms and condition of tender documents contained in letter No. 3588/M dated 23.9.2014 and his technical and financial bid is fit to be declared invalid.

(iii) For any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of the case.

4. For the sake of convenience I shall be referring to the two writ petitioners as writ petitioner No. 1 and writ petitioner No. 2 respectively and would be referring to the pleadings made in CWJC No. 2750 of 2015 unless clarified with specific reference to the other writ petition as writ petition No. 2.

5. Mr. Y.V. Giri, learned Senior Advocate has appeared for the writ petitioner No. 1 while writ petitioner No. 2 is represented by Mr. Shashi Anugrah Narain, Senior Advocate and Mr. Devendra Kumar Sinha, learned Additional Advocate General No. 2 represents the State as well as its Department of Mines and Geology.

6. In the nature of the dispute raised in these writ petitions, it would be

necessary to briefly enumerate the sequence of events.

7. The two writ petitioners are private limited companies incorporated under the Companies Act, 1956 having their registered office in Mumbai and Dhanbad respectively.

8. A public advertisement was published in the daily newspaper inviting offers from willing tenderers for settlement of Balughat situated within Patna, Gaya and Munger Commissionaires for a period of five years i.e. 1.1.2015 to 31.12.2019. The eligibility conditions are mentioned in the advertisement and the public auctions were notified in three phases with the first one to take place between 13.10.2014 to 21.10.2014, the second phase between 22.10.2014 to 5.11.2014 and the third phase from 6.11.2014 to 13.11.2014. A copy of one of such advertisement published in daily Hindi newspaper "Prabhat Khabar" on 26.9.2014 finds place at Annexure-2 to the writ petition.

9. The dispute in hand relates to the Sandghats at Jehanabad falling under the Gaya Commissionary where the Reserve Jama was fixed at Rs. 6,62,40,000/- and the earnest deposit amount was 15% thereof at Rs. 99,50,000/-.

10. The writ petitioner No. 1 did not participate while four tenderers including the writ petitioner No. 2 participated in the first phase of auction held on 21.10.2014 and when the writ petitioner No. 2 made an offer of Rs. 6,67,01,000/-. The District Magistrate, Jehanabad was of the opinion that the offers made by the four tenderers was collusive and thus he did not approve of the settlement in favour of the writ petitioner No. 2. Surprisingly such decision of the District Magistrate, Jehanabad not to approve the settlement in favour of the writ petitioner No. 2 was not questioned by him before any forum.

11. The Joint Secretary, Department of Mines and Geology vide letter dated 22.10.2014 requested the Collectors of the districts to conduct the auction as per the second phase programme. However, the second phase could not be conducted and the matter went into the third phase which was duly notified vide publication in different newspapers in which the writ petitioner No. 1 was the sole applicant and the information whereof was also given to the four applicants of the first phase including the writ petitioner No. 2 by registered post. On the date fixed for auction on 13.11.2014 although the four applicants in the first phase did participate but raised objections as to the eligibility of the writ petitioner No. 1 to contest the settlement, inter alia, on grounds of invalidity of his character certificate. The objection raised by the four applicants of the first phase including the writ petitioner No. 2 was rejected by the District Magistrate, Jehanabad and following which these four applicants boycotted the auction bid by refusing to participate therein. Since by the non-participation of these 4 tenderers, the writ petitioner No. 1 was left as the sole tenderer at a financial bid of Rs. 6,65,40,000/- which was enhanced to Rs. 6,80,00,000/- hence the District Magistrate, Jehanabad took a decision to hold a fourth phase auction and tender papers were invited in between 24.11.2014 to 27.11.2014 vide advertisement

published in "Dainik Jagran" on 22.11.2014. The date of opening of technical bid was fixed on 1.12.2014 and the date for examining the financial bid and holding auction was fixed on 2.12.2014. In the fourth phase public auction, none except the writ petitioner No. 1 participated. A Committee consisting of the Mines Inspector, Jehanabad, The District Accounts Officer, Jehanabad, the Assistant Commissioner, Commercial Taxes, Jehanabad, the Additional Collector, Jehanabad and the District Magistrate, Jehanabad held their proceedings on 2.12.2014 for examining the financial bid and holding the auction and when the single tender of the writ petitioner No. 1 was opened with an offer of Rs. 6,65,40,000/- which was higher than the reserve jama fixed at Rs. 6,62,40,000/-. In view of the earlier offer made by the writ petitioner of taking settlement at Rs. 6,80,00,000/-, the higher of the two amount was treated to be his offer amount and the Committee presided by the District Magistrate, Jehanabad recommended for settlement of the Balughat at Jehanabad in favour of the writ petitioner No. 1 under clause 7(v) of the tender conditions which required an approval of the department in case of a single tenderer. A copy of the tender paper is placed at Annexure-A to the supplementary counter affidavit filed on behalf of the writ petitioner No. 2 i.e. the respondent No. 5, in the present case. The minutes of the proceedings of the Committee at Jehanabad dated 2.12.2014 placed at Annexure-8 to the writ petition is self explanatory of the circumstances which has resulted in the four phase auction of the Sand Ghats in question.

12. The recommendation was reiterated by the District Magistrate, Jehanabad before the Principal Secretary, Mines and Geology department vide letter dated 8.12.2014 placed at Annexure-9. While the recommendation made by the Committee was pending consideration before the department that a complaint was lodged by the writ petitioner No. 2 before the Principal Secretary against the settlement recommended in favour of the writ petitioner No. 1. Few correspondences have taken place in between the department and the District Magistrate, Jehanabad and finally the Joint Secretary-cum-Director, Mines and Geology department vide letter bearing No. 176 dated 19.1.2015 (Annexure-1), in the light of the legal opinion received, has directed for settlement in favour of the highest bidder of the auction held on 21.10.2014. Meaning thereby after a four phase exercise and while responding to the recommendation made by the Committee through the District Magistrate, Jehanabad in favour of writ petitioner No. 1 as reflected from his letter dated 8.12.2014, the Joint Secretary communicated the decision of the department in favour of the writ petitioner No. 2 as he was the highest bidder in the auction held on 21.10.2014. It is following such decision that a work order was issued in favour of the writ petitioner No. 2 vide letter No. 30 dated 30.1.2015 of the appropriate authority-cum-the District Mining Officer, Jehanabad impugned at Annexure-14, on daily rate basis.

13. It is being aggrieved by the directives issued by the Joint Secretary, Mines and Geology department as contained in his letter No. 176 dated 19.1.2015 impugned at Annexure-1 followed by the allotment made in favour of the writ petitioner No. 2 vide letter No. 30 dated 30.1.2015 that the writ petitioner No. 1

questioned the orders through the writ petition and by filing an interlocutory application bearing I.A. No. 1950 of 2015.

14. On the other hand the writ petitioner No. 2 encouraged by the decision of the department as contained in the letter of the Joint Secretary present at Annexure-1 has prayed for issuance of direction to the District Magistrate, Jehanabad to issue a work order in his favour but while making such prayer, he has perhaps under some confusion and without appreciating the implications, has also relied upon the letter No. 225 dated 21.1.2015 of the Joint Secretary whereby Annexure-1 stands recalled.

15. Even before the matter could be taken up for consideration, counter affidavit(s) are already on record, filed by the contesting parties including the writ petitioner No. 2 as well as the State. Although the grievance raised by the writ petitioner No. 2 in the 2nd writ petition praying for issuance of a work order stood somewhat satisfied upon issuance of a work order vide letter No. 30 dated 30.1.2015 (Annexure-14) but the matter did not rest at this stage rather not only the District Magistrate again sought guidelines on his recommendation from the department vide his letter dated 29.1.2015, but the District Magistrate, Jehanabad vide letter bearing Memo No. 249 dated 20.3.2015, has also cancelled the work order dated 30.1.2015 (Annexure-14) on grounds of being in the teeth of the New Sand Policy framed in the light of the Supreme Court decision which does not permit any allotment on daily basis. A copy of the letter dated 29.1.2015 and the order of the District Magistrate bearing Memo No. 249 dated 20.3.2015 has been brought on record vide Annexures-A and B to the counter affidavit filed on behalf of the District Magistrate. The most peculiar aspect of the matter is that even when a decision has been taken to recall the settlement made in favour of the writ petitioner No. 2 on daily rate basis, the department is absolutely silent on the recommendation made by the Committee headed by the District Magistrate, Jehanabad for settlement in favour of the writ petitioner No. 1.

16. I have rightly observed above that the matter did not rest, for the Joint Secretary-cum-Director, Department of Mines and Geology has also gone ahead and recalled the order bearing memo No. 176 dated 19.1.2015 which is impugned at Annexure-1 to the writ petition and which order of recall has been communicated to the District Magistrate, Jehanabad by the Joint Secretary vide letter No. 225 dated 21.1.2015, a copy of which has been produced by Mr. Rajendra Prasad, learned Special Public Prosecutor during the course of hearing of the present matter.

17. This would not only complete the sequence of events that has taken place in the present writ petition but would also reflect that the grievance of the writ petitioner No. 1 in so far as the steps taken by the department in favour of the writ petitioner No. 2 is concerned stands redressed by the recall of those orders. The developments which have taken place in the present matter despite the recommendation made by the Committee in favour of the writ petitioner No. 1, is

stated to be in the light of a legal opinion obtained by the department. Although a legal opinion is a privileged document between the counsel and the client but since the decisions taken by the department to go in favour of the writ petitioner No. 2 rested on the legal opinion, Mr. Sinha, learned Additional Advocate General appearing for the department and who is the author of the legal opinion chose to place the same before the Court while submitting that there was nothing in the legal opinion which reflected anything in favour or against any of the contestants. This Court is also in agreement with the submission of Mr. Sinha for the opinion gives no such indication.

18. Mr. Y.V. Giri, learned senior counsel has appeared for the writ petitioner No. 1 and with reference to the order of the department present at Annexure-1 requiring the District Magistrate, Jehanabad to take appropriate steps in the light of the legal opinion and on the basis of the auction held on 21.10.2014 submits that in view of the developments that have followed, it is the writ petitioner No. 1 alone who is eligible for the settlement. It is contended that the writ petitioner No. 2 was disqualified to participate in the auction on grounds of being a defaulter and to support his argument Mr. Giri has referred to Annexure-17 to the writ petition. It is further argued that the District Magistrate, Jehanabad being fully aware of the situation, discovered the collusiveness in the participants of the first auction held on 21.10.2014 and thus did not act thereupon rather decided to go for the second phase auction. It was submitted that the recommendation of the Tender Committee present at Annexure-8 to the writ petition recommending a settlement in favour of the writ petitioner No. 1 discusses the matter in detail and also assigns the reasons for the recommendation.

19. With reference to the counter affidavit filed on behalf of the department in CWJC No. 2750 of 2015 and with a particular reference to paragraphs 5 to 12 thereof he submits that the reasons for recommendation in favour of the petitioner No. 1 are discussed and which requires no interference. It was contended that the writ petitioner No. 2 after having participated in the first phase auction had chosen to boycott the other phases and while the first phase auction held on 21.10.2014 was doubted with suspicion of collusiveness, in the other phases though due intimation was given to the writ petitioner No. 2 who also responded but on a pretext of objection to the candidature of the writ petitioner No. 1, chose to boycott the bid and thus has waived his right for consideration. It is submitted that since it was ultimately the offer of the writ petitioner No. 1 which was found to be the highest that the tender committee chose to recommend his candidature. On the issue of character certificate it was submitted that the certificate was deposited as per the procedure prevalent in the State of Uttar Pradesh and which suffers from no infirmity. It was further contended that the accounts submitted by the petitioner No. 1 were also in tune with the requirement.

20. Mr. Shashi Anugrah Narain, learned senior counsel has appeared for the writ

petitioner No. 2 and has argued with reference to the Annexures as occurring in writ petition No. 2. With reference to the notice of the Joint Secretary, Department of Mines and Geology dated 23.9.2014 present at Annexure-3 which is a direction to the Director, Information and Public Relation Department requiring him to publish the advertisement relating to settlement of Balughats for the period 1.1.2015 to 31.12.2019 and with a particular reference to clause-7 of the tender which is enclosed along with same, he submits that the stipulations for declaration of successful tenderer is mentioned therein and there is no empowerment to a District Magistrate to keep the result of any auction in abeyance. He submits that the writ petitioner No. 2 filed a detailed representation complaining of the action of the District Magistrate on 15.11.2014, a copy of which is placed at Annexure-10 and for an appropriate direction, in view of the fact that he was the highest tenderer held on 21.10.2014.

21. Reverting to the second supplementary counter affidavit filed as a respondent in CWJC No. 2750 of 2015 he submits that appropriate directions have been issued by the department to the Collector-cum-District Magistrate, Jehanabad whereunder the department while disapproving the settlement on daily basis in favour of the writ petitioner No. 2 had issued directions to the District Magistrate, Jehanabad to complete the settlement of the Balughats as per the legal opinion received. Again turning to the tender conditions, a copy of which is enclosed as Annexure-3 to the writ petition No. 2 and with reference to clause-9 thereof he submits that the formalities are to be completed by a successful tenderer has been stipulated and whereunder if the successful tenderer fails to complete the formalities then he has been made liable for forfeiture of his earnest deposit amount. It further stipulates that even if the second tenderer does not take the settlement then he is also liable for similar treatment and in such circumstances a fresh auction has to be undertaken. It is submitted that in the circumstances where the financial bid of the writ petitioner No. 2 at Rs. 6.67 crores was the highest bid and even after completion of the three phases yet he remained as such, there was no occasion for any confusion and the action of the District Magistrate, Jehanabad to deny the rightful claim of the writ petitioner No. 2 by virtue of being the highest tenderer in all the three phases is an arbitrary exercise of statutory function and an afterthought by the writ petitioner No. 1 to enhance the financial bid amount to Rs. 6.80 crores cannot be a ground for negating his claim. Referring to Annexure-5 to writ petition No. 2 he submits that there is no material present in the bid-sheet to reflect collusiveness and the decision of the District Magistrate, Jehanabad to ignore the result of the first auction held on 21.10.2014 is founded on conjectures. Concluding his arguments it was argued by Mr. Narain that since admittedly the writ petitioner No. 1 did not fulfill the eligibility conditions regarding furnishing of character certificate for the last six months, his candidature itself was not fit to be entertained and the District Magistrate, Jehanabad had no jurisdiction to relax this condition. It was lastly contended that

since in the three phases of auctions it is the writ petitioner No. 2 alone who fulfilled all the requirements, he is entitled for the settlement.

22. Mr. D.K. Sinha, learned Additional Advocate General appearing for the Government as well as for the department has submitted that there was no occasion for the District Magistrate, Jehanabad to keep the result of the first auction held on 21.10.2014 in abeyance. He further submits that the character certificate furnished by the writ petitioner No. 1 was not in tune with the tender requirements and that clause 5(v) of the tender conditions present at Annexure-3 to the writ petition No. 2 required a tenderer to furnish the character certificate from the District Magistrate/Superintendent of Police/Sub-Divisional Officer supporting his permanent as well as temporary address and which certificate should also certify whether he has been involved in any cognizable offence. The condition also requires that such certificate should have been issued within six months of the issuance of the advertisement. It was contended that this condition has admittedly not been fulfilled by the writ petitioner No. 1. It was also submitted that clause 5(vi) requires the tenderer to furnish the annual accounts (along with profit and loss account) duly certified by a Chartered Accountant for the last three years and which condition has also not been satisfied by the writ petitioner No. 1.

23. Responding to the arguments of Mr. Narain it was argued by Mr. Amit Srivastava that in so far as the issue of character certificate is concerned since in the State of Uttar Pradesh a character certificate issued has the validity of two years and which fact was duly verified by the District Magistrate, Jehanabad hence no objection could be taken by the writ petitioner No. 2 on this issue since the certificate produced by the writ petitioner No. 2 is in tune with the procedure in force in the State of Uttar Pradesh. In so far as the furnishing of accounts for the last three years is concerned, it is stated that the writ petitioner No. 1 has deposited the accounts for the financial years 2010-11, 2011-12 and 2012-13 and thus had fulfilled the conditions. Reiterating the argument of Mr. Giri he submits that the writ petitioner No. 2 is a defaulter and thus was not eligible to contest the tender auction itself. To support his argument Mr. Shrivastava referred to Annexure-17 of CWJC No. 2750 of 2015 which is a letter of the Competent Authority-cum-Mining Inspector, Jehanabad bearing Memo No. 237 dated 14.3.2015 addressed to the writ petitioner No. 2 charging him of with default in clearance of the dues for the period 2011-12.

24. While responding to the charge of Mr. Srivastava that the petitioner No. 2 being a defaulter Mr. Shivendra Kishore, learned Senior Counsel submits that the tender condition does not disqualify any willing tenderer simply on grounds of being a defaulter. To support his contention learned counsel has relied upon clause 5 and 6 of the tender conditions present at Annexure-3.

25. I have heard learned counsel appearing on behalf of the respective parties and I have perused the materials on record. Whereas the argument of Mr. Giri, learned senior counsel appearing for writ petitioner No. 1 rests on the foundation

that the recommendation made by the Committee headed by the District Magistrate, Jehanabad has to be taken to its logical conclusion by the department and cannot be kept hanging, the argument of Mr. Narain appearing for the writ petitioner No. 2 rests on the 1st auction held on 21.10.2014 and the letter of the department dated 19.1.2015 impugned at Annexure-1.

26. The situation as it presently stands qua the reliefs claimed by the two writ petitioners, is that the decision of the department as contained in letter No. 176 dated 19.1.2015 of the Joint Secretary, Department of Mines and Geology stands recalled by a subsequent order bearing No. 225 dated 21.1.2015 and the work order issued in favour of the writ petitioner No. 2 vide order No. 30 dated 30.1.2015 (Annexure-14) stands recalled by a subsequent order of the District Magistrate bearing Memo No. 249 dated 20.3.2015 placed at Annexure-B to the counter affidavit of the District Magistrate. The only thing that remains pending is the recommendation of the Committee headed by the District Magistrate, Jehanabad dated 2.12.2014 placed at Annexure-8 to the writ petition despite its reiteration by the District Magistrate vide his letters dated 8.12.2014 (Annexure-9) and 29.1.2015 (Annexure-A to the counter affidavit of the District Magistrate).

27. In the circumstances existing, the relief prayed for by the writ petitioner No. 1 questioning the decision of the department made in favour of the writ petitioner No. 2 as well as the work order issued pursuant thereto has been rendered infructuous by the subsequent development and similarly the prayer made by the writ petitioner No. 2 seeking a direction to the District Magistrate for issuance of a work order in the light of the decision of the department as contained in the letter dated 19.1.2015 (Annexure-1) also has been rendered infructuous by the department.

28. The only issue which requires a decision at present is whether there can be any declaration in favour of either of the two writ petitioners in view of the circumstances existing. Whereas as per the financial bid papers, it is the writ petitioner No. 2 who is a higher bidder than the writ petitioner No. 1 at an offer of Rs. 6.67 crores as against Rs. 6.65 crores bid by the writ petitioner No. 1, the result of the first phase auction was ignored on grounds of collusiveness amongst the tenderers by the District Magistrate, Jehanabad.

29. The issue would be whether he had any such jurisdiction and whether there were materials to support this decision. The other issue which arises in these writ petitions is whether at all the two writ petitioners are eligible for the settlement in view of the circumstances noticed in the present proceedings. The third issue which arises is whether the department and the District Magistrate, Jehanabad has been shifting the burden of a final decision on the auction between themselves even at the cost of State exchequer.

30. The public notice for the settlement of the Sandghats enclosed with the letter dated 23.9.2014 of the Joint Secretary present at Annexure-3 to CWJC No. 3774

of 2015 manifests that the three phase auctions have been conceived to ensure the settlement of all the Sandghats. In fact it is only such of the Sandghats which are not settled in the first phase are left open for auction in the subsequent phases. This intent is manifest from Clause-2 of the auction programme enclosed with the letter. The situation in hand reflects that in the first phase auction held for settlement of Sandghats at Jehanabad on 21.10.2014, four tenderers participated whose names are reflected in the bid-sheet present at Annexure 5 to the writ petition No. 2. Whereas the first tenderer has his registered office at New Delhi, the tenderer Nos. 2 and 4 belong to Patna and the tenderer No. 3 is a dealer from Calcutta. The minimum reserve Jama was fixed at Rs. 6.62 crores and although all four of them have bid higher than the reserve Jama, it is the writ petitioner No. 2 who was the highest bidder at Rs. 6.67 crores. The remarks of the Tender Committee are present at the foot of the bid-sheet and a dissatisfaction has been recorded by the Committee on grounds of collusiveness. The foundation for such opinion is completely lacking. In absence of any definite reason on the part of the Tender Committee to reject the auction process, it was a whimsical action for even if any such impression were gathered by the Tender Committee they ought to have sought guidelines from the headquarter rather than rejecting it on collusiveness. In my opinion there is no material present to justify the decision of the Tender Committee to go ahead with the second phase auction of the Sandghats at Jehanabad. Even otherwise going by the procedure for three phase auction reflecting from the public notice present at Annexure 3 enabling the Tender Committee to proceed for next phase auction in cases where no settlement could take place, the rest of the phases also did not give any better result for the offer given by the writ petitioner No. 1 was only at Rs. 6,65,40,000/- which was below the offer of the writ petitioner No. 2, and although such offer had been enhanced at Rs. 6.80 crores by the writ petitioner No. 1 but the procedure was incorrect. Thus even if the writ petitioner No. 2 did not participate in the rest phases, his offer made in the first phase cannot be wiped out from the records especially where it is higher than the writ petitioner No. 1. Secondly the writ petitioner No. 1 also could not be permitted to enhance his offer without equal opportunity to others which is lacking in the present cases for the reasons whatsoever.

31. In the circumstances discussed hereinabove, the action of the Tender Committee to ignore the first phase auction held on 21.10.2014 for settlement of the Sandghats at Jehanabad was a whimsical decision having no logistic support. Though it is oft repeated that the distribution of State largesse should be transparent and should reflect fair play but I would reserve my opinion in so far as the decision of the Tender Committee in relation to the first phase auction is concerned. Though the writ petitioner No. 2 filed his objection against the recommendation of the Tender Committee made in favour of the writ petitioner No. 1 on 15.11.2014 present at Annexure-10 to the writ petition No. 2 but the objection remains pending. In my considered opinion there was no occasion for the Tender Committee to proceed further in the matter of settlement of

Sandghats in the district of Jehanabad since there is nothing on record to reject the auction process held on 21.10.2014. Had the auction held in other phases given better results then the position would have been different but the writ petitioner No. 1 having given an offer below the offer of writ petitioner No. 2 he sought to enhance his offer through mutual consent and which may not be permissible.

32. Apart from the fact that the decision of the Tender Committee to go ahead with the other phases of auction failed to yield any better result even otherwise in my opinion the petitioner No. 1 did not satisfy the eligibility condition No. 5(v) and 5(vi) of the tender conditions which requires furnishing of a character certificate issued within six months of the tender notice and furnishing of accounts for the last three years respectively. The writ petitioner No. 1 has admitted that the character certificate furnished by him was issued on 16.7.2013, i.e. beyond the stipulated period of six months and that he furnished accounts for the financial years 2010-11, 2011-12 and 2012-13 even though according to the tender notice dated 23.9.2014, they had to submit accounts for the last three years, meaning thereby the financial year ending in 2013-14. The writ petitioner No. 1 clearly failed on these requirements and thus was not eligible for a settlement. The recommendation made by the Tender Committee which is the sheet anchor for the writ petitioner No. 1 to claim settlement, in my opinion is not a proper reflection of transparency and fairness in distribution of state largesse nor is a correct decision, in the attending circumstances.

33. The issue now would be whether the writ petitioner No. 2 is entitled for a favourable direction considering that this Court has not found any infirmity in the first phase auction held on 21.10.2014. This Court notices that beginning from auction held on 21.10.2014 everything lies in favour of the writ petitioner No. 2 but then he has no answers to the issue raised by the writ petitioner No. 1 vide Annexures-16 and 17 to CWJC No. 2750 of 2015 which are the documents reflecting the dues outstanding against the writ petitioner No. 2. Although the writ petitioner No. 2 has tried to meet the attack made by the writ petitioner No. 1 but in view of the undisputed circumstances reflecting from Annexures 16 and 17 respectively to CWJC No. 3774 of 2015, the answer of the writ petitioner No. 2 in his rejoinder filed on 13.4.2015 more particularly paragraph 21 is far from satisfactory. All that the writ petitioner No. 2 has done is that he has tried to attack the demand letter on grounds that the same is illegal, imaginary and invalid. The other ground raised by the writ petitioner No. 2 is that the same relates to the period 2011-12 and has been raised only on 14.3.2015 and thus the demand did not exist on the date of filing of the tender papers. The justification offered by the writ petitioner No. 2 is hardly any answer to the charge of default levelled by writ petition No. 1. The tender conditions present at Annexure-3 to CWJC No. 3774 of 2015 very specifically requires the willing tenderer to get a clearance certificate under clause 5(iii) of the tender conditions and in my opinion in view of the demand raised by the District Mining Officer, Jehanabad reflected from the letter dated 14.3.2015 present at Annexure-17

raising a demand of more than 2 crores, the writ petitioner No. 2 failed the eligibility condition No. 5(iii) regarding furnishing of clearance certificate from the concerned District.

34. For the reasons aforementioned I am not persuaded to grant relief to either of the two writ petitioners and in my opinion the entire auction process is infracted by irregularities, whimsical decisions apart from the fact that the two writ petitioners have also failed on the test of eligibility.

35. In result, the two writ petitions are dismissed. The Interlocutory application stands disposed of.

36. The State in its department of Mines and Geology are directed to hold fresh auction for the settlement of Sandghats in the district of Jehanabad and considering that the State has already lost almost five valuable months, it would be advisable to complete the process within the shortest possible time and preferably within four weeks from today.