

B.P.DAS, J & S.PANDA, J.

W.P.(C) NO.13135 OF 2010 (Decided on 22.9.2010)

BIRANCHI PRADHAN

.....Petitioner

.Vrs.

E.O. DEBOTTAR & ORS

.....Respondent

CONSTITUTION OF INDIA, 1950 – ART.226.

For Petitioner -Sourjya S. Das

For Opp. Party -Mr.Satyabrata Mohanty

Heard Mr.S.S.Das, learned counsel for the petitioners, Mr.S.Mohanty, learned counsel for O.P.3 and Mr. J.P.Pattnaik, learned Additional Government for the State.

The petitioners representing the villagers of Paikrapur under Gurudijhatia P.S. of Cuttack District have filed this writ petition challenging the decision of the Administrative Authorities of Athagarh Endowment, O.P.1, in rejecting their offer made in respect of the sairat-source of cycle stand of Sri Sri Dhabaleswar Deva for the financial year 2010-11 pursuant to the notification dated 18.3.2010 made in Annexure-1 and settling the said sairat in favour of O.P.3 by accepting his offer and executing the agreement with him on the basis of a private negotiation in course of public auction.

Mr. Das, learned counsel for the petitioners, draws our attention to the notification dated 18.3.2010 issued by the Sub-Collector-cum-Executive Officer, Athagarh Endowment under Annexure-1.

As it appears, the price offered by O.P.3 for the sairat in question, i.e., Rs.9,50,000/- is lesser than the offset price fixed by the Authority in Annexure-1, which is Rs.10,36,200/-. In the notification, it was indicated that the sairat in question would be put to public auction for the financial year 2010-11 on 25.3.2010 at 11 a.m. in the Office of Sub-Collector-cum-Executive Officer, Athagarh Endowment and the intending bidders were required to deposit their Earnest Money to enable them to participate in the bid. If for any reason, the sairat could not be settled on that date, it would be put to auction on the next date, i.e., 26.3.2010 and in case, it fails on that date, again for the third time, it would be done on 27.3.2010.

It is an admitted fact that on those three occasions, nobody participated in the bid and ultimately, O.P.3 approached the authority and the sairat was settled in his favour at Rs.9,50,000/- and he deposited Rs.5,00,000/- with the Sub-Collector, Athagarh and agreement was entered into on 3.4.2010. The balance amount was

directed to be deposited in various instalments. But it is stated by the petitioners that the balance amount has not been deposited till date.

Challenging the aforesaid action, the petitioners filed this writ petition on 30.7.2010. This Court by order dated 17.8.2010 while adjourning the matter to 23.8.2010 directed the petitioners to come with bank draft of Rs.10.00 lakhs drawn in favour of the Registrar (JdL.) of this Court to show their bona fide that they were interested to take the sairat in question and as an interim measure also directed that status quo as on that date in respect of the sairat in question would be maintained till next date. On 23.8.2010 when this matter came up before us, learned counsel for the petitioners produced 21 nos. of bank drafts amounting to Rs.10.00 lakhs, which were directed to be kept in a sealed cover with the Registry. Ultimately when the matter was taken up on 20.9.2010, this Court directed the Sub-Collector, Athagarh, to appear before this Court today (22.9.2010) at 10.30 a.m. so also the respective parties, since the petitioners had already offered Rs.10.00 lakhs and that too, for operation of the sairat for the balance period of the financial year 2010-11.

Pursuant to the aforesaid order dated 20.9.2010, the Sub-Collector, Athagarh, the petitioner and O.P.3 are present. It is stated by Mr. Das for the petitioners that after the auction failed, a person namely, Jaga Rout along with O.P.3 approached the Executive Officer and O.P.3 offered the highest amount, i.e. Rs.9,50,000/- as against the offer of Jaga Rout, i.e., Rs.7,50,000/-.

Looking at the facts and circumstances of the case, we are of the opinion that the prime interest of the Administrator is to ensure that maximum revenue is collected out of the sairat in question and in this case, before negotiating with O.P.3 and Jaga Rout, the Executive Officer should have published the decision to settle the sairat in negotiation so that the sairat would have fetched more money and the benefit would have gone to the Deity. The order of the Executive Officer, Athagarh Endowment, is extracted hereunder.

“One Sri Jaga Rout, S/o.Gandharba Rout, At-Bidyadharpur, P.O.Mancheswar, P.S.-Choudwar Dist.-Cuttack placed an application on 27.3.2010 stating to take the said sairat with a sum of Rs.7,50,000/- (seven lakhs fifty thousand only). But the other one Sri Rusia Munduli, S/o.Hader Muduli of Bidyadharpur, P.O.-Mancheswar, P.S.-Choudwar, Dist.-Cuttack, placed an application on the same day stating to take the said sairat with a sum of Rs.9,00,000/- (rupees nine lakhs only).

Considering their two applications of two different applicants, the said sairat was allowed in favour of Rusia Muduli, S/o.Hadu Muduli of Bidyadharpur, P.O.-Mancheswar, P.S.-Choudwar, Dist.-Cuttack for the financial year 20.10.11 on negotiation basis. But enhancing Rs.50,000/- (fifty thousand) more according to his application i.e., Rs.9,50,000/- (nine lakhs fifty thousand only). The above said negotiation amount for the said sairat is to be deposited in the office of the Athagarh debottar.

Sd./-Illegible

29.3.10

E.O. Athagarh Debottar.

Later :-

The said sairat holder namely Rusis Muduli placed an application also at the last hour of the office stating that even though he accepted the above said negotiation amount of the E.O. Debottar Athagarh for the above said sairat but prayed to deposit Rs.4,00,000/- (rupees four lakhs only) out of the total amount and the rest amount is to be deposited within the month of 'Kartik' through instalments. The said application was allowed in part, i.e., to deposit Rs.4,00,000/- but as regards to Rs.5,50,000/- is to be deposited within a month of agreement. Accordingly, the sairat holder is to execute the agreement within seven days.

Sd./-Illegible

29.3.10

E.O. Athagarh Debottar"

When the petitioner has already deposited Rs.10,00,000/-, which is Rs.50,000/- more than the price offered by O.P.3, in the interest of the Revenue as well as Deity and as the Deity may get more revenue, applying the principles enunciated by the apex Court in the case of **“Ram and Shyam Company vrs. State of Haryana and others**, AIR 1985(SC) 1147, we allowed both the petitioners and O.P.3, who are present in Court, to bid in the open Court. Accordingly, the bid was conducted in the open Court, in which petitioners offer to pay Rs.12,00,000/- (rupees twelve lakhs) whereas O.P.3 offers to pay Rs.11,90,000/- (rupees eleven lakhs ninety thousand). Since the offer price of the petitioners is higher than that of O.P.3 and the Deity will get much more revenue in the auction in comparison to the amount received from O.P.3 in the negotiation, we accept the offer price of the petitioners at

Rs.12,00,000/- (rupees twelve lakhs).

In view of such, we direct the Registry of this Court to encash the demand drafts, which were kept in sealed cover, and issue a cheque for Rs.10,00,000/- (rupees ten lakhs) in favour of the Sub-Collector-cum-Executive Officer, Athagarh Endowment on a proper application filed by the learned Additional Government Advocate. Thereafter, on fulfilling all other conditions of the contract by the petitioners, the O.P.-authority shall pass necessary orders settling the sairat in question in their favour for the balance period of the financial year 2010-11 and the agreement shall be entered into between them within seven days and the petitioners shall be allowed to operate the sairat from 1st October, 2010. The petitioners are also directed to deposit the balance amount of Rs.2,00,000/- (rupees two lakhs) with the authority within a period of four weeks from today, failing which, it will be construed to be an act of contempt and entail cancellation of agreement and forfeiture of the amount deposited. After expiry of the agreement period, the petitioner shall give delivery possession of the sairat peacefully to the Sub-Collector, Athagarh.

The Sub-Collector-cum-Executive Officer, Athagarh Endowment, O.P.1 is directed to compute the amount for the period of operation of the sairat by O.P.3 and refund the amount after proportionately adjusting the same out of his deposited amount.

The Sub-Collector, Athagarh, submits that the amount shall be computed and refunded to O.P.3 within seven days from today.

Personal appearance of the Officers is dispensed with.

With the aforesaid direction, the writ petition as well as the misc. case is disposed of.

Writ petition disposed of.