

WP(C) 4383/2016
BEFORE
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI
JUDGMENT & ORDER

Heard Mr. S. Borthakur, learned counsel for the petitioners. Also heard Mr. T.C. Chutia, learned State counsel, appearing for the respondent Nos.1 to 5. This case was heard-in-part on 24.1.2017 and, on that day, Ms. P. Bhattacharyya, learned counsel appearing for the respondent Nos. 6 to 8, had appeared. Today, Mr. D. Das, learned counsel appears for respondent Nos. 6 to 8.

[2] Sale notice in respect of NKD-B-6 Bandarkhowa Mining Contract Area was issued on 21.8.2013, for a period of 7 years, for the Years 2014-2021 and award of settlement was also made in favour of one Madhusudan Sutradhar and he had surrendered the mining contract area on 25.11.2014. In respect of NKD-B-5 Shahpur Mining Contract Area, sale notice was issued on 21.8.2013 for a period of 7 years, for the Years 2014-2021 and award of settlement was also made in favour of one Khandaker Jiyaur Rahman. He also surrendered the mining contract area by submitting application on 25.11.2014. In view of aforesaid developments, a resale notice dated 23.12.2014 was issued by the Divisional Forest Officer, North Kamrup Division, Rangia under the provisions of Rule 32(1) and 33(1) of the Assam Minor Mineral Concessions Rule, 2013 (for short, 2013 Rules).

[3] The petitioner No.1 had submitted tender for NKD-B-5 Shahpur Mining Contract Area and the petitioner No.2 for NKD-B-6 Bandarkhowa Mining Contract Area. The tenders were to be received up to 16.01.2015 and the notice for resale was pasted in the Office Notice Board on 23.12.2014. Notices were published on 13.01.2015 in 'The Sentinel', an English daily and in 'Janasadharan', an Assamese daily. By filing an additional affidavit, the petitioner has also brought on record the fact that the resale notice was published on 10.01.2015 in 'Eastern Chronicle', an English Daily and also in the Assamese Daily 'Gana Sangbad'. It is averred that the petitioners were the highest successful bidders in respect of the particular Mining Contract Areas for which they had respectively submitted their tenders. However, as settlement was not offered, the petitioners approached this Court by filing a writ application under Article 226 of the Constitution of India, which has registered as WP(C) No.3847/2016 and the said writ petition was disposed of by an order dated 22.07.2016. During the pendency of the writ petition, the respondent authorities initiated the process for resale of the aforesaid 2 (two) Mining Contract Areas and accordingly, letter dated 15.07.2016 was issued by the Additional Principal Chief Conservator of Forests (P) to the Principal Chief Conservator of Forests (T), Lower Assam Zone to put the Mining Contract Area as for resale.

[4] This Court, while issuing notice on 02.08.2016, had passed an interim order directing the respondents not to issue resale notice in respect of NKD-B-5 Shahpur Mining Contract Area and NKD-B-6 Bandarkhowa Mining Contract Area. In the order dated 02.08.2016, passed by this Court, it is reflected that the learned counsel appearing for the parties submitted that the aforesaid Mining Contract Areas had not been settled for more than two years. Accordingly, taking note of the aforesaid submission, the case was directed to be listed for Admission hearing on 23.8.2016. It was also observed that the parties may exchange their affidavits in the meantime. Though the case could not be heard earlier, it needs to be put on record that the State respondents have not filed any affidavit till date. Mr. T.C. Chutia, learned State counsel, however, has produced the relevant records.

[5] Mr. Borthakur has submitted that the impugned order dated 15.07.2016 directing resale of NKD-B-5 Shahpur Mining Contract Area and NKD-B-6 Bandarkhowa Mining Contract Area under North Kamrup Division, Rangia, on the ground that time gap between the newspaper publication date and tender submitting date is not as per Rule 34 of the 2013 Rules is wholly not sustainable in law, as notice was duly published in the Notice Board in terms of Rule 34(1) and in addition to that, as required under Rule 34(2), paper publications were also effected. Requirement of 21(twenty-one) days notice is relatable to notice to be published in the No

tice Board and not for paper publication and, therefore, there is compliance of the provisions of Rule 34(1) and Rule 34(2) of the 2013 Rules, he submits. Mr. Borthakur has also sought to emphasise that the essence of Rule 34 of the 2013 Rules is to give wide publicity of the resale notice in the area where the Contract Area is located. It is contended by him that the impugned order, in the facts and circumstances of the case, is wholly not tenable in law and requires to be interfered with.

[6] Per contra, Mr. T.C. Chutia, learned State counsel has submitted that only three tenderers had responded to the resale notice in question and admittedly, as paper publication did not provide the period of 21 days' notice, there is infraction of Rule 34 of the 2013 Rules. He also contends that schedule was not mentioned in the newspaper publications and therefore, on that count also, the paper publication was not in accordance with law. Accordingly, he submits that the writ petition deserves to be dismissed. Learned counsel appearing for respondent Nos. 6 to 9 has endorsed the submission of Mr. Chutia.

[7] I have considered the submissions made by the learned counsel for the parties and have perused the materials on record.

[8] It will be appropriate, having regard to the controversy, to extract Rule 34 of the 2013 Rules for better appreciation:

34. Public notice for inviting expressions of Interest/bids/open auctions;

(1) A public notice of 21 days shall be published for inviting bids or conduct of open auctions for the grant of mineral leases/contracts/permits, as the case may be.

(2) In addition to the publication of notice in writing, competitive bids/open auction under sub-rule (1) above, the gist of such notice, along with the schedule for inviting bids/holding open auctions, shall also be published in one daily newspaper having good circulation in the area.

(3) A copy each of the said public notice shall also be sent to the Deputy Commissioner and others as decided by the competent authority for giving wide publicity in the area.

[9] A perusal of the records produced by the State goes to show that the Principal Chief Conservator of Forest and Head of Forest Force had separately noted in respect of both the Contract Mining Areas as follows:

(1) Date of publication in newspapers : 13.1.2015 and

(2) Date of receipt of tender : 16.1.2015.

It is clear that provisions of Rule 34 of the AMMC Rules have not been met. To be put to re-sale.

This was in reference to page-173 of the record and, alongside the note, 173C is reflected. Page-173 is a letter of the Principal Chief Conservator of Forest (T), Lower Assam Zone, addressed to the Principal Chief Conservator of Forest and Head of Forest Force, wherein recommendation was made for settlement in favour of the highest bidder to avoid loss of Government revenue.

[10] It will be appropriate to extract the letter dated 15.07.2016 in respect of NKD-B-5 Shahpur Mining Contract Area (Annexure-5 of the writ petition) herein below for better appreciation:

Sub:- Submission of comparative statement in respect of NKD-B-5 Shahpur Mining contract area and working period of 7 (seven) years.

Ref:- Your letter No.FGT.24/NKD-B-5/Shahpur/2013 dated 08.07.2016.

Sir,

With reference to the above, as time gap between news paper publish date & tender receiving date is not as per provisions of Rule 34 of AMMC Rule, 2013, so, I am directed to request you to put the Mining contract area in to resale as per rule notified by the Govt. for better revenue and sale notice should be widely circulated giving adequate time to attract more and genuine bidders.

Identical letter dated 15.07.2016 (Annexure: 5A of the writ petition) is

issued in respect of NKD-B-6 Bandarkhowa Mining Contract Area.

[11] It is noticed that in the letter dated 15.7.2016, issued by the Additional Principal Chief Conservator of Forest (P), addressed to the Principal Chief Conservator of Forest (T), Lower Assam Zone, mention is also made that resale is ordered for better revenue. The better revenue part did not figure in the letter of the Principal Chief Conservator of Forest and Head of Forest Force, based on which resale notice was directed to be issued.

[12] A perusal of Rule 34(1) goes to show that a public notice of 21 days is required to be published inviting bids or for conducting open auctions for the grant of mineral leases/contracts/permits, as the case may be. The note of the Principal Chief Conservator of Forest and Head of Forest Force, as quoted herein above, goes to show that he did not dwell upon the public notice and, therefore, it has to be understood that he did not find any discrepancy with regard to the requirement of public notice of 21 days. The said note deals with only with regard to the publication in newspapers. In that context also, the paper publications dated 10.01.2015 are not taken note of and reference is made only to publication in newspapers on 13.01.2015. Why the paper publication was not in conformity with Rule 34 has not been spelt out except stating that it was clear that provisions of Rule 34 of the 2013 Rules have not been followed. However, Mr. Chutia had argued vehemently that the paper publication was not issued prior to 21 days of the receipt of tenders and thus, it appears to the Court that the Principal Chief Conservator of Forest and Head of Forest Force had also proceeded to consider the issue in that perspective.

[13] Rule 34(2) requires that in addition to publication of notice, which is evidently the notice as required to be published in terms of Rule 34(1), a gist of notice along with the schedule for inviting bids/holding open auction shall also be published in one daily newspaper having good circulation in the area. In Rule 34(2), there is no stipulation with regard to any notice period in respect of such paper publication and, therefore, requirement of 21 days' notice cannot be read into in Rule 34(2). In that view of the matter, I am unable to accept the submission of Mr. Chutia that paper publication shall also have to be issued or published 21 days before the date fixed for submission of tenders. However, the court has to understand that the paper advertisement has to be published before a reasonable period of time prior to the date fixed for receipt of tenders as, otherwise, the entire provision may be made redundant. In the context of the instant case, I am of the opinion that Rule 34(2) of the 2013 Rules has been substantially complied with so far as date of publication is concerned.

[14] What should be the contents of the paper publication is another question that the Court has to deal with in view of the submission of Mr. Chutia that the paper publication did not contain the schedule for inviting bids as indicated in Rule 34(2). In the paper publications, amongst others, Mining Contract Area, date and time of submission of tender are indicated. Wherefrom the details are to be obtained, is also specifically mentioned in the paper publication. Rule 34(2) requires publication in newspaper having good circulation in the area where the Mining Area is located. In terms of Rule 34(3), public notice, as required to be published under Rule 34(1), is required to be sent to Deputy Commissioner for giving wide publicity in the area where the mining area is located. The emphasis appears to be that there has to be due and wide publicity in the area where the Mining Area is located. The schedule to be indicated, according to the perception of the Court, need not indicate the entire details of the public notice and it should disclose information as would enable an intending tenderer to be aware that a specific Mining Contract Area is put on sale inviting tenderers to submit tenders on or before a particular date. Wherefrom further details are to be obtained, should also be indicated. Viewed in that perspective, the paper publications satisfy the aforesaid requirement of Rule 34(2).

[15] The Court cannot be oblivious of the fact that the Mining Contract Areas had not been operated for the last three years. Keeping a Mining Contract Area idle does not, in any way, inure to the benefit of the State and, therefore, when there is sufficient compliance of the provision of Rule 34(2) of the 2013 Rule

s, I see no justification for issuing a fresh resale notice for the Contract Are as in question. Taking that view, the decision to go for resale notice is interfered with and the letter dated 15.07.2016 is set aside and quashed. The authorities will finalise the tenders received in response to the resale notice dated 23.12.2014 in accordance with law.

[16] Writ petition stands allowed and disposed of in terms of the above directions and observations.