

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.16326 of 2021

Narottam Mohanty

....

Petitioner

Mr. Sukanta Kumar Dalei, Advocate
-versus-

State of Odisha and Others

....

Opposite Parties

Mr. Debakanta Mohanty
Addl. Government Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE A.K. MOHAPATRA

Order No.

ORDER
30.11.2021

Dr. S. Muralidhar, CJ

03. 1. The challenge in the present petition is to the proceedings dated 18th February, 2021 issued by the Secretary, Revenue and Disaster Management Department (RDMD) and an order dated 19th April, 2021 passed by the Sub-Collector-cum-Revenue Officer, Sonapur (Opposite Party No.3) in Sairat Appeal No.6 of 2021 as being contrary to the conditions of the advertisement and the provisions of the Orissa Minor Mineral Concessions Rules, 2016 ('OMMC Rules'). The second prayer is for a direction to the Collector, Subarnapur (Opposite Party No.2) to issue a work order declaring the Petitioner as the highest bidder for the quarry lease of Ghatkaintara Sand Quarry.

2. Pursuant to an auction notice dated 1st February, 2021 inviting applications from the eligible bidders, the Petitioner submitted his bid quoting additional charge at Rs.696/- per cubic meter (cum). As far as the quotation of additional charges is concerned, from the comparative statement prepared on 18th February, 2021 during the scrutiny of the bids, the Petitioner's financial bid was the highest. Compared to this the rate quoted by Opposite Party Nos.5 to 8 was Rs.529/-, Rs.282/-, Rs.321/- and Rs.503/- respectively.

3. Nevertheless, the Petitioner's bid was rejected on the ground "less value of solvency submitted".

4. The Petitioner states that he had furnished a solvency certificate of Rs.40 lakh which according to him, was strictly in terms of the formula given in the advertisement namely MGQ X (Royalty + Additional Charges).

5. Aggrieved by the rejection of his bid, the Petitioner filed an appeal before the Sub-Collector being Sairat Appeal Case No.6 of 2021. This was rejected by an order dated 9th April, 2021 thereby upholding the order of the Tahasildar, Tarabha. In the impugned order, the reasoning of the Sub-Collector was essentially based on Rule 27(4)(iv) of the OMMC Rules which *inter alia* requires furnishing a solvency certificate, valid for a period of 18 months, "for an amount not less than the amount of additional charges offered and the royalty payable for the Minimum Guarantee Quantity (MGQ) for one whole year" and a list of immovable properties from the Revenue authority.

6. In the counter affidavit filed in response to the present petition, it is sought to be explained that in terms of the advertisement the bidder has to deposit an earnest money deposit (EMD) amount just 5% of the MGQ X (Royalty + Additional Charges). The solvency certificate should be higher in the annual value of the Sand Sairat namely MGQ X (Royalty + Additional Charges). It is explained that the Petitioner has calculated the amount as Rs.3,70,000/- by taking the additional charges as Rs.2. In other words, the amounts calculated was Rs.10,000/- X (35 +2). Instead, he ought to have produced a solvency certificate in the sum of Rs.10000 X (35 + 696).

7. Mr. S.K. Dalai, learned counsel appearing for the Petitioner, submitted that the conditions of the advertisement where the additional charge for the sand sairat in question was indicated as Rs. 2.00. The Petitioner strictly went by the advertisement. Mr. Dalai submitted that the Petitioner was, in the circumstances, not obliged to go by the conditions of the advertisement and not the OMMC Rules.

8. Secondly, Mr. Dalai submitted that the Petitioner having furnished the highest financial bid compared to the other four participants, his bid could not have been rejected without giving him a notice indicating that the solvency certificate was not for the appropriate amount; he ought to have been given an opportunity to rectify it. He referred to another communication sent by the same Tahasildar, Tarabha in respect of the Petitioner's bid for the Dubula Stone Quarry where he had been given such an

opportunity. Thirdly, it was submitted that the authority should have either accepted the bid of the Petitioner or cancelled the entire auction and floated a fresh advertisement.

9. Mr. Debakanta Mohanty, learned Additional Government Advocate for the State, on the other hand, defended the decision of the Tahasildar as well as the Sub-Collector and pointed out that there was a fundamental error in the calculation of the amount for which the solvency certificate was furnished. Once it was found that the bid was non-responsive for the reason indicated, the Petitioner could not insist that either his bid should be accepted or the entire auction should be cancelled.

10. The above submissions have been considered. At the outset, it requires to be noticed that the advertisement dated 1st February, 2021 states that interested persons may apply “in Form-M duly filled as prescribed under Orissa Miner Mineral Concession (Amendment) Rule, 2016 along with following required documents in sealed cover and to drop in the drop box at Tahasil office Tarabha from 03.01.2021 to 17.02.2021 (Except holidays) before 5.00 P.M.”. Therefore, the advertisement made it clear that the auction process was being held under the OMMC Rules. Further, in Clause 6 it was indicated that the value for which the solvency certificate had to be furnished should be more than the royalty and additional charges of the MGQ to be excavated. The formula for calculation of the solvency certificate amount was was MGQ (Royalty + additional charges). Therefore, obviously the additional charges would change, from bidder to bidder, depending

on what the amount quoted by that bidder was. The Petitioner could have been under no misconception that it was not the additional charge indicated in the advertisement that was relevant for calculating the amount for which solvency certificate had to be furnished but for the very amount which was quoted by the bidder as additional charges. There was no scope for any misunderstanding on this score since every bidder was fully aware that the conditions stipulated in the OMMC Rules had to be complied with, particularly Rule 27 (4)(iv).

11. The Petitioner's quote for the additional charges Rs.696/- per cum which is by the amount for which the solvency certificate be furnished was Rs.73.10 lakhs arrived at by applying the formula $\text{Rs.10000} \times (35 + 696)$. In a competitive bidding process for a sand sairat, if the bid is found to be non-responsive for any reason, the tender inviting authority would well be within its rights to pick up the next highest bidder who satisfied all the requirements. It was not obligatory that the tender inviting authority should give one more chance to the unsuccessful bidder to rectify the defect. In the present case, the Petitioner could not have demanded such an opportunity as a matter of right. Likewise, in a competitive bidding process, which involves elimination of unresponsive bidders, one of them cannot insist that his bid should be selected merely because he happened to quote the highest in terms of the financial bid, and insist that if his bid is not accepted, the entire auction process should be cancelled. That is a decision entirely within the discretion of the tender inviting authority after ascertaining that all the tender conditions have been met.

12. In the present case, the Court is not satisfied that the Petitioner has made out any ground for interference with the concurrent views of the Tahasildar and the Sub-Collector. There is no merit in the writ petition. It is accordingly dismissed.

(S. Muralidhar)
Chief Justice

(A.K. Mohapatra)
Judge

S.K. Jena/P.A.

