

**IN THE COURT OF REVENUE DIVISIONAL COMMISSIONER,
SOUTHERN DIVISION, ODISHA, BERHAMPUR**

OMMC Appeal Case No. 3/21

(Order by Sri T. Ao, I.A.S.,)

(Revenue Divisional Commissioner, (SD), Berhampur)

Decided on 18-08-2021

Sumeet Panigrahy,
S/o- Santosh Panigrahy
Vill-Ankorada, P.S-Hinjili
Dist- Ganjam

.....Petitioner

Versus

1. The District Magistrate & Collector, Ganjam, Chatrapur
Dist-Ganjam
2. The Addl. District Magistrate, Ganjam, Chatrapur
Dist: Ganjam
3. The Sub-Collector, Ganjam, Chatrapur
Dist-Ganjam
4. The Tahasildar, Hinjilicut
Dist- Ganjam
5. Kiran Kumar Panda
Gopinath Panda

.....Opposite party

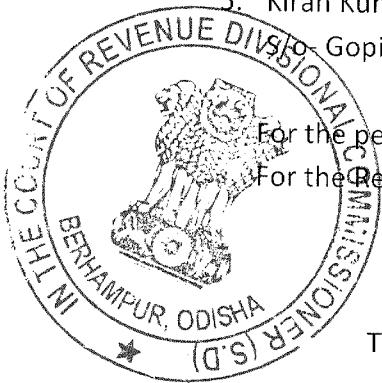
For the petitioner
For the Respondent

..... Sri. P.K.Nanda, Advocate

..... Sri. N.P. Mishra, Advocate

PRAYER

This appeal petition is filed U/r-46 (1) of Odisha Minor Minerals Concession Rules, 2016 with prayer to set aside order Dtd.25.03.2021 of Sub Collector, Chatrapur passed in Case No. Misc. Appeal (Sairat)-01/2021, the letter Dtd.01.02.2021 issued by ADM, Ganjam and final process of the fresh auction notice dated 09/02/2021 in respect of sand bed sairat namely Kharida sand Sairat under Hinjicut Tahasil and to settle the sand Sairat in favour of the applicant.



In this Case, the petitioner prays "to admit the appeal, call for the records and issue notice to the respondents, upon hearing the respondents set aside the order Dtd.25.03.2021 passed by the Opposite Party No.3 in Misc. Appeal (Sairat) No.01 of 2021 in confirming the order passed by the Tahasildar, Hinjilicut in LTL No.01 of 2020-21 vide Notice Dtd.28.11.2020 invited applications from intending person to lease out one minor mineral Sand Bed Sairat namely "Kharida" sand Sairat under Hinjilicut Tahasil in the District of Ganjam, deleting the clause 6 of the tender condition of annexure -1 and to set aside the letter Dtd.01.02.2021 issued by ADM, Ganjam and further be pleased to set aside consequential the final process of the fresh auction notice dated 09/02/2021 in respect of sand bed Sairat namely Kharida sand sairat under Hinjicut Tahasil in the district of Ganjam and further be pleased to settle the sand sairat in favour of the appellatant within stipulated time and may pass such order/orders, direction/directions as deemed appropriate."

Contention

The Tahasildar, Hinjilicut made advertisement vide office order No.5478 Dtd.28.11.2020 inviting tender applications for long term lease of sand bed, Kharida. In the said advertisement annual MGQ was fixed at 15,500 per Cubic meter, Additional charges and Royalty were fixed @ Rs.135 per Cubic meter and Rs.35 per Cubic meter respectively. The interested bidders were requested to file their tender applications with required documents in Tahasil office on any working day between 11.02.2021 to 25.02.2021 by 5.30 PM. Within the prescribed time limit apart from the petitioner (Sumeet Panigrahy, S/o- Santosh Panigrahy), Smt. Kalpana Nayak, W/o- Narasingha Nayak, Kalasandhapur, Aska, Krupasindhu Muduli S/o- Jhuria Muduli, Ramakrushna Nagar, 2nd Lane, Lochhapada, Sunil Kumar Senapati, S/o- Dandapani Senapati, Gobindapur, Sheragada, Dharendra Kumar Sahu, S/o-Bhiga Sahu, Dhanatara, Seragada, Smt. Kishori Mohanty, W/o- Himanshu Sekhar Mohanty, Jagamohan Nagar, Jagamara, Bhubaneswar, Smt. Geetanjali Sahu, W/o- Bapuni Kumar Sahu, Singipur, Mirza Abrarul Haque Baig, S/o- Mirza Fazlul Haque Baig, Plot No.74, Satya Nagar, Bhubaneswar submitted applications to participate in the bidding process.



Out of the above applications, only the application of the Petitioner was complete in all respects and all other applications were incomplete and hence were rejected. Petitioner Sumeet Panigrahy submitted proper application fulfilling all the criteria as per advertisement with quotation of Addl. Charge as Rs.177/m3. Thus the petitioner was the only successful bidder in this case and was eligible in all respects to get the tender in this case. But the Tahasildar, Hinjilicut recommended to cancel the tender treating this auction as of "Single tender" which was approved by Collector, Ganjam and the same was communicated by ADM, Ganjam vide L.No.287 dtd.02.02.2021 with instruction for fresh auction of Sand Bed, Kharida following due procedure as per law.

Accordingly, a fresh advertisement was issued vide order No.945 dtd.09.02.2021 wherein the OP No.5 was declared as the successful bidder. Thus, the petitioner has prayed to set aside order Dtd.25.03.2021 of Sub-Collector, Chatrapur passed in Misc. Appeal (sairat) No.01/2021, Order Dtd. 01.02.2021 of ADM, Ganjam, final process of auction notice dtd.09.02.2021 and to settle the sand sairat in favour of the applicant.

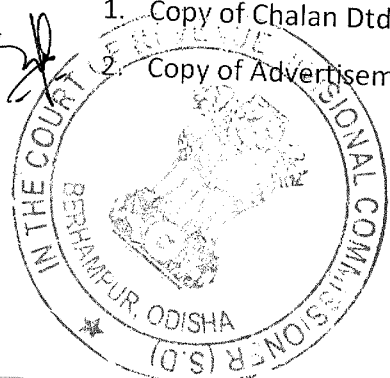
Sairat Sources Details

| Sl. No | Name of Sairat Sources | Mouza | Khata No | Plot No. | Area in Acre | Kissam | Fixed Royalty in rupees per cubic meter |
|--------|------------------------|---------|----------|------------------|--------------|--------|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 1 | Kharida Sand Bed | Kharida | 554 | 4553/1 4552/1 | 13 Acre | Nadi | Rs35 |

| Addl. Charges in Rupees per cubic meter | Total Charges per Cubic meter | MGQ per Cubic meter | Solvency/ Bank Guarantee | EMD in Rs. |
|---|-------------------------------|---------------------|--------------------------|------------|
| 135 | 170 | 15500 | 2635000 | 131750 |

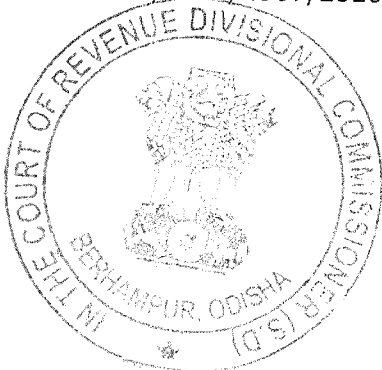
Documents Enclosed

1. Copy of Chalan Dtd.13.04.21 for Rs.1600.
2. Copy of Advertisement No.5478 Dtd.28.11.2020 for long time lease of minor mineral sources.



3. Copy of Advertisement No.945/sairat Dtd.09.02.2021 for long term lease of minor minerals sources by Tahasildar, Hinjilicut.
4. Copy of order sheet of case No.LTL 01/20-21 for long term lease of sand bed, Kharida of Tahasildar, Hinjilicut.
5. Copy of L.No.287 Dtd.02.02.2021 of A.D.M, Ganjam.
6. Copy of L.No.1206 Dtd.17.02.2021 of Tahasildar, Hinjilicut addressed to Sumeet Panigrahy regarding cancellation of tender of sand bed, Kharida.
7. Copy of order sheet Dt.25.3.21 of Misc. Appeal (sairat) case No.1/2021 of Sub Collector, Chatrapur.
8. Copy of order sheet Dtd.1.1.2020 of Tahasildar, Sheragada in OMMC case No.02/2019-20.
9. Copy of case record of case No.TMC-21/2019-20 of Chandiposh sand bed of Bonai Tahasil of Sundargarh District.
10. Copy of order sheet Dtd.7.12.2020 of Sub Collector, Bonai in Misc. Appeal (Touzi) case No.02/2020 relating to Auction of Chandiposh sand bed.
11. Copy of order Dtd.12.04.21 of Hon'ble Odisha High court in WP(C) No.13175/2021.
12. Written statement submitted by respondent Kiran Kumar Panda.
13. PWC filed by Tahasildar, Hinjilicut in OMMC Appeal No.03/2021.
14. Copy of judgement Dtd.9.5.2017 in WP(C) No.22315/2016 by Odisha High court.
15. Copy of L.No.893 Dtd.502021 addressed to Sumeet Panigrahy.
16. Copy of L.No.1206 Dtd.17.2.21 of Tahasildar, Hinjilicut addressed to Sumeet Panigrahy.
17. Copy of order Dtd.10.11.2020 of Hon'ble Odisha High court in WP(C) No.25359/2020.
18. Copy of order dt.09.06.2021 of Hon'ble Odisha High Court passed in WP(C) No.17278, 17281, 17282/2021 of Rangadhar Pradhan-Vrs- State, WP (C), 17283/2021 & 17285/2021 of Sribash Jena-Vrs-State, WP(C) No.17288/2021 Niranjan Rout-Vrs- State, WP(C) No.17289/2021 of Gangadhar Ojha-Vrs- State, WP(C) No.17280, 17284/2021 of Narayan Rout-Vrs-State & WP(C) No.17291/2021 of Deepak Pradhan-Vrs-State.
19. Copy of order Dtd.10.11.2020 in WP(C) No.16375/2020 of Hon'ble Odisha High Court.
20. Copy of order dtd.21.07.2021 of Hon'ble Patna High Court in Civil Unit Jurisdiction Case No.8869/2016, 4907/2016, 11747/2015.

[Handwritten signature]



Date wise Briefing

1. On 19.04.2021, this case was taken for hearing on point of admission. The Advocate for the petitioner was present in the court and intimated that the petitioner participated in the tender process for long term lease of sand bed of Kharida of Hinjili Tahasil pursuant to advertisement No.5478 dt.28.11.2020. The Advocate for the petitioner further submitted that being the highest bidder amongst the bidders in the tender process, petitioner deposited Bank guarantee of Rs.33,00,000 and Rs.1,65,000 whereas the application of other bidders were rejected on technical ground. Basing on recommendation of Tahasildar, Hinjili, the Collector, Ganjam ordered for cancellation of the tender process treating the bid of the petitioner as single tender and asked Tahasiildar, Hinjili for fresh auction. Without giving opportunity to the petitioner, a new tender process has been completed and new bidder was selected in the process.

Further the Advocate for the petitioner prayed the court to hold up the ongoing tender process for long term lease of sand bed, Kharida till disposal of this appeal petition. Prayer was allowed. As an interim order, issued direction to OP No.1 to 5 not to give effect to the process or, order of the new tender till disposal of the case. Asked the respondent to file PWC in this regard forthwith.

Order

This case was taken up for hearing on 22.06.2021. Advocate for petitioner as well as Advocate for OP were present in the Court. Petitioner as well as respondent were also present in the court. During hearing the Advocate for the petitioner stood on the contention of the appeal petition and submitted that there is no provision under OMMC Rules, 2016 to cancel the tender process where a single bidder had fulfilled required norms for the tender process and the Tahasildar, Hinjilicut has wrongly cited the provisions of OPWD code to cancel his bid. The petitioner also said that he has sent a registered letter wherein he had applied for participation in fresh tender process which was negated by the Tahasildar, Hinjilicut who was present in the Court.

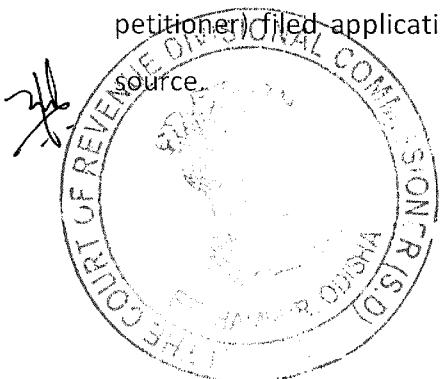


The Advocate for OP present in the Court submitted that the petitioner has concern regarding the auction process in the 1st tender, but he has no reason to raise objection over the procedure in the subsequent tender process.

The Advertisement No.5478 dt.28.11.2020 floated by Tahasildar, Hinjilicut for long term lease of Kharida Sand bed reveals that:

1. The Advertisement was made for Kharida sand bed of Kharida Mouza situated over area of Ac.13.000 of Plot No.4553/1 & 4532/1 of Khata No.554 for MGQ of 15, 500 cubic meters with minimum royalty of Rs.35/m³ and Addl. Charge of Rs.135/m³.
2. The applicants were required to furnish the following documents.
 - (a) To file application Form-M in three copies prescribed under OMMC Rules, 2016.
 - (b) To submit chalan of Rs.1000/- as application fee (Head of Account-0853-Non-Ferrous Mining and Metallurgical Industries-102-Mineral concession Fees, Rents and Royalties).
3. Name of source, land details and name of Tahasil to be enclosed.
4. An affidavit showing no pendency of dues towards Mining and Revenue as per OMMC Rules, 2016.
5. A Solvency Certificate/ Bank Guarantee showing the minimum amount of Royalty/ Addl. Charge for the minimum guaranteed quantity.
6. A pledged bank draft of an amount equivalent to 5% of Addl. Charge and royalty on MGQ as Earnest Money Deposit.
7. To submit list of immovable property and its valuation.
8. Copy of PAN Card/ Income Tax Return receipt/ GST Clearance Certificate.
9. A self-declaration stating his visit of the location of Sairat source.
10. An affidavit showing payment of cost for mining plan preparation, EC preparation and sairat advertising cost.
11. To mention the name of Sairat source along with address and phone number of the applicant on the cover envelops.

Copy of order sheet of lease case No.LTL-01/20-21 shows that 8 applicants (including the petitioner) filed application to participate in the bidding process for auction of this Sairat source.

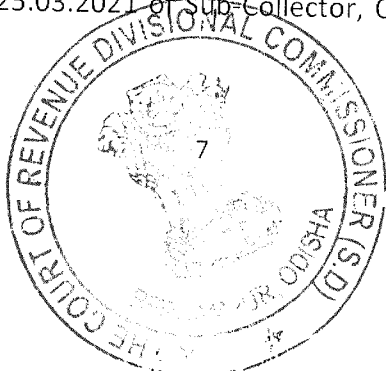


- (a) Smt. Kalpana Nayak, W/o- Narasingha Nayak of Kalasandhapur, Aska.
- (b) Sri Krupasindhu Muduli, S/o- Jhuria Muduli, Ramakrushna Nagar, 2nd lane, Lochhapada.
- (c) Sri Sunil Kumar Senapati, S/o- Dandapani Senapati, Gobindapur, PS- Sheragada.
- (d) Sri Dharendra Kumar Sahu, S/o- Bhiga Sahu, Dhanatara, PS- Sheragada.
- (e) Smt. Kishore Mohanty, W/o-Himanshu Sekhar Mohanty, Jagamohan Nagar, Jagamara, Bhubaneswar.
- (f) Smt. Geetanjali Sahu, W/o- Bapuni Kumar Sahu, Singipur.
- (g) Sri Mirza Abrarul Haque Baig, S/o- Mirza Fazlul Haque Baig, Plot No.74, Satya Nagar, Bhubaneswar.
- (h) Sri Sumeet Panigrahy, S/o- Santosh Panigrahy.

The applications of applicants at Sl.No.(a) to (f) were rejected due to non- submission of Solvency Certificate/ Bank Guarantee whereas application of the applicant at Sl.No.(g) was rejected due to submission of incomplete application form and non-submission of affidavit for payment of cost for Mining Plan preparation, EC preparation and Sairat advertising cost for the Sairat Source.

The petitioner Sumeet Panigrahy, S/o- Santosh Panigrahy submitted proper application as per the advertisement with quotation of Additional charge of Rs.177/m³ which was very low in comparison to the additional charge quoted by first four applicants. Citing judgement passed by Hon'ble Odisha High Court in WP(C) No.22315/2016 in M/s- Debabrata Samal-Vrs- State of Odisha and Others. Tahasildar, Hinjilicut recommended to cancel the tender of the lease of sand bed, Kharida treating the bid of the Petitioner as "Single tender". The Sub-Collector, Chatrapur forwarded the proposal to Collector, Ganjam endorsing the recommendation of Tahasildar, Hinjilicut for cancellation of the tender. The proposal was finally approved by the Collector, Ganjam and same was communicated by ADM, Ganjam vide his L.No.287 dt.02.02.2021 wherein there was instruction for cancellation of above tender and for fresh auction of the sand bed, Kharida.

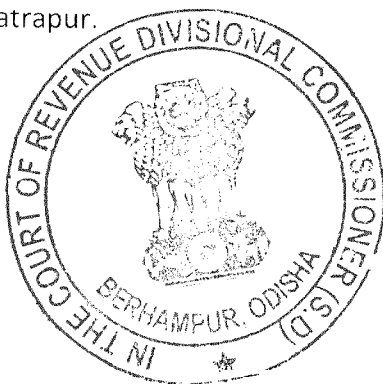
Copy of order sheet dt.25.03.2021 of Sub-Collector, Chatrapur in Misc. Appeal (Sairat) Case No.01/2021 shows that:



1. Appeal Case No.01/2021 was filed by Sumeet Panigrahy in the Court of Sub-Collector, Chatrapur against order of Tahasildar, Hinjilicut passed in Case No. LTL 01/2020-21.
2. In this appeal, the petitioner stated that in the tender process initiated vide advertisement No.5478 dt.28.11.2020, he participated and ^{was} selected as the highest bidder and deposited Bank guarantee of Rs.33,00,000/- and Rs.1,65,000/-. But without giving him any opportunity, the Tahasildar, Hinjilicut cancelled the tender. Further, without giving any opportunity to the applicant a new tender process was completed and another person has been selected as the highest bidder.
3. Simultaneously, the petitioner filed WP(C) No.10060/2021 before the Hon'ble High Court which was disposed of by order dtd.17.03.2021 of Hon'ble High Court with direction to Sub-Collector, Chatrapur "to hear and decide the aforementioned application for stay filed by the petitioner and pass a reasoned order in accordance with law not later than 30th March, 2021.
4. The Sub-Collector, Chatrapur disposed of the case on 25.03.2021 with observation that as Collector, Ganjam has approved the proposal of cancellation of tender process floated vide advertisement No.5478 dt.28.11.2020, he is not entitled to entertain this case as per OMMC Rules, 2016.

In this case the petitioner has submitted the following documents claiming to support his case.

- Tender process conducted by Tahasildar, Sheragada for Pakidi sand Bed over area of Ac.28.720 of Plot No.01 of khata No.507 of Pakidi Mouza.
- Case record of case No.TMC-21/2019-20 of the Court of Tahasildar, Bonai for long term lease of Chandiposh sand Bed.
- Extract of order passed by Pradeep Dang, Sub collector, Bonai Dtd.7.10.2020 in Misc Appeal (Touzi) case No.02/2020.
- Order Dt.12.04.2021 of WP(C) No.03175/2021 against the order of Sub collector, Chatrapur.

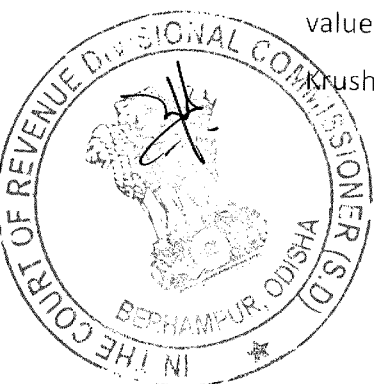


- Copy of Judgement Dt.10.11.2020 of WP(C) No.25359/2020 Sidheswar Panigrahy- vrs- State of Odisha & others.
- Copy of Judgement Dt.21.7.2016 of Patna High Court in Civil writ Jurisdiction Case No.8869/2016 M/S R.R. Company, Jit Jhingoi, Dist-Jamui, Bihar-vrs-State of Bihar & others. Case No.4907/2016, M/S Sona Engicon pvt. Ltd, Sona Commercial complex, Thana Road, Gopalganj, Bihar-Vrs-state of Bihar, Case No.11747/2015. Subash Kumar Sahi, S/o- Shardanand Sahi, At/Po-Deopura, Dist. Saran of Bihar-vrs-state of Bihar.
- Copy of Judgement dtd.25.11.2014 of Hon'ble Supreme Court of india in Civil Appeal No.3148/2012, 3147/2012, 3149/2012, 1390/2013, SLP(C) No.19895/2008, 20282/2008, 21896/2010, 18614/2012.

Case record of OMMC No.02/2019-20 of Tahasil office, Sheragada for Pakidi Sand Bed (I) reveals that:

1. This tender process was conducted for Pakidi Sand bed for five year lease from 2020-21 to 2024-25 for area of Ac.12.500 of Plot No.01 of khata No. 507(AAA) of Pakidi Mouza.
2. In the said tender process, 8 applicants submitted application to participate in the auction, the name of bidders are as under:
 - a) Krupasindhu Muduli, S/o- Juna Muduli, Lochapada, Berhampur.
 - b) Sushanta Kumar Sahu, S/o- Late Sudarshan Sahu.
 - c) Nishikanta Nayak, S/o- Giridhari Nayak, Khodasingi, Berhampur.
 - d) Brundaban Swain, S/o- Ulla Swain, gambhariguda, Po- Konkarada.
 - e) Mihir Prasad choudhury, S/o- Pramod Kumar choudhury, Dharaghara, PO- Chikiti.
 - f) Sudhanidhi Choudhury, S/o-Krushna, Gudisara, P.O-Haridapadar.
 - g) M/S premix, Nayapalli, Bhubaneswar.
 - h) Sudhanidhi Choudhury, Gudisara.

In all tender applications except in the case of Sudhanidhi Choudhury, S/o- Krushna, Gudisara, the solvency certificate filed were of lesser amount than the required value. As such 7 tender applications were cancelled and Sudhanidhi Choudhury, S/o- Krushna, Gudisara, P.O-Haridapadar was selected as successful bidder.



In this case, it is seen that Sudhanidhi Choudhury had filed two bids in this case through he was the lone bidder who had submitted solvency certificate of required value in the successful bid.

Thus, in this case the matter is different from the auction process of Sand Bed, Kharida initiated as per advertisement No.5478 dt.28.11.2020 and is not a proper citation to nullify the orders of respondents in cancellation of tender in this case.

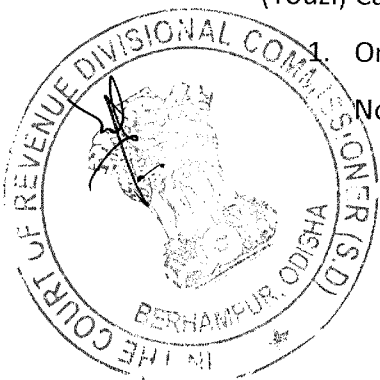
Case record of TMC-21/2019-2020 of Tahasildar, Bonai for long term lease of Chandiposh sand Bed reveals that:

1. This tender process was initiated for auction of Chandiposh sand Bed for which advertisement was made through local newspapers "Samaja" and "Prameya" Dtd.01.07.2020 over area of Hc.5.00 of plot No.98/P, 101/P, 102/P of Khata No.01 of Chandiposh Mouza.
2. MGQ per annum was fixed as 20,000 cubic metres with minimum Royalty & Additional charge as Rs.35/- and Rs.30/- respectively for the said sairat source.
3. 5 (five) bidders filed application for the above tender whose names are as under:
 - a) Arjun Naik with Addl.charge of Rs.180 & without submission of application fee, EMD & BG.
 - b) Nabin Kumar Mishra submitted Bank Guarantee (BG) for Rs.30,00,000/- instead of Rs.34,40,000/- and Earnest Money Deposit (EMD) of Rs.65,000/- instead of Rs.1,72,000 at the time of submission of bid with Addl. charge as Rs.137.
 - c) Prakash Kumar Tripathy fulfilled requisite criteria with Addl.charge of Rs.70.
 - d) Jogendra Nath Lohar fulfilled all criteria with quotation of Addl. charge of Rs.53.
 - e) Sudhir Kumar Harichandan fulfilled criteria with quotation of Addl. charge of Rs.45.

Out of the above, Tahasildar, Bonai concluded that 4 bidders fulfilled requisite criteria for the tender. Out of them Nabin Kumar Mishra being the highest bidder was selected as the successful bidder.

The order Dt.7.10.2020 of Sub- Collector, Bonai passed in Misc. Appeal (Touzi) Case No.02/2020 reveals that:

1. One of the unsuccessful bidders namely Prakash Kumar Tripathy filed WP(C) No.23955/2020 against orders of Tahasildar, Bonai TMC-21/2019-2020.



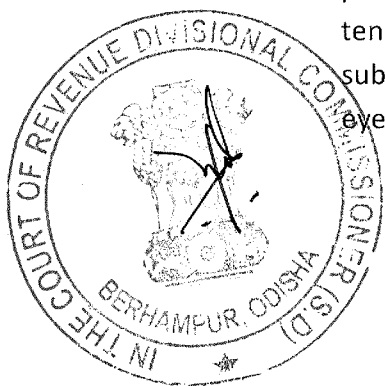
In the said order, Hon'ble High Court of Odisha disposed of the case vide order Dtd.24.9.2020 with observation that instead of considering the matter on limitation ground, Sub Collector, Bonai shall decide the same on question of merit & pass appropriate order within 2 months.

2. During course of hearing Sub-Collector, Bonai observed that the bidder Nabin Kumar Mishra who was declared successful bidder by the Tahasildar, Bonai for the Chandiposh sand Bed deposited Bank Guarantee (BG) for Rs.30,00,000/- instead of Rs.34,40,000/- and Earnest Money Deposit (EMD) of Rs.65,000/- instead of Rs.1,72,000 at the time of submission of bid. As per Rule 27(4)(iii)(iv) of OMMC Rules, 2016, the applicant is required to submit requisite Bank Guarantee & EMD at the time of submission of bid.
3. Sub-Collector, Bonai further observed that whereas the application of Prakash Kumar Tripathy was complete in all respect & he had deposited Bank Guarantee (BG) and Earnest Money Deposit (EMD) of requisite amount at the time of submission of bid.
4. As such order Dtd.23.7.2020 passed by Tahasildar, Bonai in TMC No.21/2019-20 was set aside & order was passed by the Sub-Collector, Bonai to settle the above sairat source in favour of Sri Prakash Kumar Tripathy as the highest qualified bidder.

The above facts indicate that in this case more than one bidder had submitted applications complete in all respects, but a non-qualified bidder was selected as the successful bidder which was later rectified by the orders of Sub-Collector, Bonai. Thus, this case is in no way similar to the present claim of the Petitioner in this case.

Copy of Judgement Dtd. 10.11.2020 of Hon'ble High Court of Orissa in WP(C) No.25359/2020 of Sidheswar Panigrahi-Vrs-State of Odisha & others shows that:

- a) This case was filed by one Sidheswar Panigrahy against Tahasildar, Nandahandi of Nabarangpur District for rejecting his bid in tender for lease of Paikaminigudi Sand quarry No.2 though he was the highest bidder due to non-submission of original solvency certificate/Bank Guarantee.
- b) The Hon'ble High Court of Orissa observed that nothing was placed on record that petitioner has to submit original solvency certificate/Bank Guarantee along with tender for which rejection of bid submitted by the petitioner on ground of non-submission of original solvency certificate/Bank Guarantee cannot sustain in the eyes of law.



The Order of Tahasildar, Nandahandi declaring bid of Sidheswar Panigrahy as incomplete relating to Paikaminigudi sand quarry was quashed & the matter was remitted back to Tahasildar, Nandahandi to consider claim of Sri Panigrahy. Copy of L. No.1159 dtd.25.06.2021 of Tahasildar, Nandahandi shows that pursuant to order of Hon'ble High court passed in WP(C) No.25359/2020, the Tahasildar, Nandahandi declared Sri Panigrahy as the Successful bidder. As such this is a case raising question over admissibility of photocopy of Solvency Certificate/Bank Guarantee as valid document, but is not a case of single qualified bidder.

This case on which the Petitioner relied upon to cite as evidence in support of his claim is not similar to the claim of the Petitioner in the instant case.

Copy of Judgement Dtd.21.07.2016 of Patna High Court in civil writ Jurisdiction case No.8869/2016 M/S R.R. Company, Jit Jhingri, Bihar-Vrs-State of Bihar & others & case No.11747/2015 Subash Kumar Sahi, S/o- Shardanand Sahi-Vrs-state of Bihar shows that:

- Common order has been passed in civil writ Jurisdiction Case No.8869/2016, 4907/2016 & 11747/2015 as the cases are similar in nature.
- In CWJC No.8869/2016, tender was advertised in daily newspaper on 6.8.2015 for construction of Amin Khaira Road to Dumarkala under Khaira Block. Three bidders filed bid in this case, but all were rejected due to defect in bid documents. Thereafter order was passed for re-tender for which advertisement was made on 1.1.2016 in the newspaper. Technical bid Evaluation committee on 26.2.2016 rejected bid documents of all other bidders except M/S R.R Company finding him eligible. However, in letter Dt.5.5.2016, the Rural works Deptt. Bihar cancelled the tender and directed for re-tender of the work basing on Finance Deptt. Notification Dtd.1.03.2016 regarding amendment of Rule 131(J) of Bihar Financial Rules.
- In CWJC No.4907/2016, advertisement was made on 16.7.2015 for construction-cum-maintenance work of Mishrauli Bhengari Road in KM 9 to 29 (length 20km) issued by the road construction Department with estimated cost of Rs.35.50 lakhs. Last date for submission of bid was 6.8.15 & date of opening of financial bid was 10.8.15.



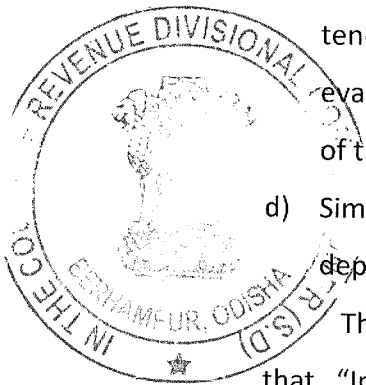
In this case, except the bid of petitioner, all other bids were cancelled on technical grounds. But in the departmental tender committee meeting held on 4.3.2016, tender was cancelled citing reason of single financial bid. In CWJC No.11747/2015, 25.3.2015 was fixed as last date for submission of tender for repairing work of Ekma Mashrah Road & 27.3.2015 was date of opening of technical bid. On 22.7.15, Engineer-in-chief- cum-Additional Secretary-cum-Special Secretary, Rural works Deptt. Govt. of Bihar directed for re-tender as there was single qualifying tenderer who qualified in technical bid.

Rule131 (J) of Bihar Financial Rules, 1950 with sub rules(c) and (d) added therein by notification Dtd.1.3.2016 says that:

"131J. Two bid system: For purchasing high value plant, machinery etc of a Complex and technical nature, bids may be obtained in two parts as under:

- a) Technical bid consisting of all technical details along with commercial terms and conditions;
- b) Financial bid indicating item-wise price for the items mentioned in the technical bid.
- c) After evaluating the technical bids received by the purchaser department by the competent Committee or authority, if only one tender remains for evaluation of financial bid, then re-tender shall be invited for it immediately. If after inviting re-tender also, only one tender remains for evaluation of financial bid after technical evaluation, then the matter will be disposed of by the authority of one level above of the competent authority.
- d) Similar amendment shall be required to be made by concerned administrative department in the Bihar public work code.

Thus, Hon'ble Patna High Court of Bihar disposed of the matter with observation that "In all the three matters, the respondents have acted in arbitrary and discriminatory manner by not opening the financial bids of the petitioners on the sole ground that they remained single bidders after the tender, when no circular has been brought to the notice of this court that such was the practice of the Department and half a dozen cases have been cited by the Petitioners, in which single tenders have been awarded contracts, apart from other reasons stated above. The writ applications are, accordingly, allowed and the respondents are directed to open the financial bids

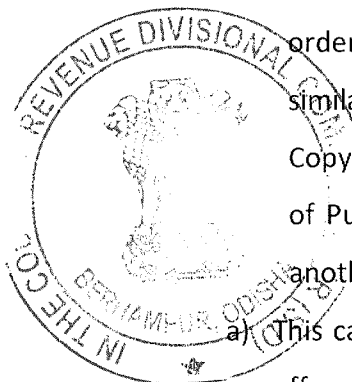


of the Petitioners within a period of two weeks from the date of receipt/production of a copy of this order and thereafter proceed to award the contract subject to the statements made by the petitioners through their counsels with regard TO THEIR FINANCIAL BIDS. "The Technical bid and the financial bid should be sealed by the bidder in separate covers duly superscribed and both these sealed covers are to be put in a bigger cover which should also be sealed and duly superscribed. The Technical bids are to be opened by the purchasing Department at the first instance and evaluated by a competent Committee or, authority. At the second stage, financial bids of only the technically acceptable offers should be opened for further evaluation and ranking before awarding the contract".

As no such rule was in force to order for re-tender before 1.3.2016 (at the time of advertisement for the above works) the Hon'ble Bihar High Court allowed the petitions and directed to open the financial bids of petitioners within two weeks. Thus, the court order which has been cited as reference by the Petitioner in support of his claim is not similar to the claim of the Petitioner in the instant case.

Copy of judgement dtd.21.08.2008 in civil writ petition No.19440/2007 of High Court of Punjab and Haryana of Bharat Hotels Limited, New Delhi-Vrs- State of Haryana & another shows that:

- a) This case was filed by Bharat Hotels Limited, New Delhi against invitation of additional offers in respect of opening of "the State-of-the-Art Hotel/ Hospitality Management Institute" at Tilyar (Rohtak) and Badhkal (Faridabad).
- b) In this case the respondents invited Expression of Interest (EOI) from interested institutions/ hotel chains/ societies/ bodies possessing experience and expertise in hotel, hospitality, travel and tourism management for setting of "The State-of-the-Art Hotel/ Hospitality Management Institutes" at Tilyar (Rohtak) and Badhkal (Faridabad) vide advertisement dated 13.02.2006 published in the Economic Times and last date for receipt of EOI was 31.03.2006.
- c) Petitioner submitted its EOI in the project vide letter dtd.18.02.2006. Petitioner was called to appear before a committee under the Chairmanship of Minister of State of Tourism, Haryana on 12.06.2006 for making a presentation on its EOI for explaining the profile of its organisation and also for giving the details of the proposed offer for setting

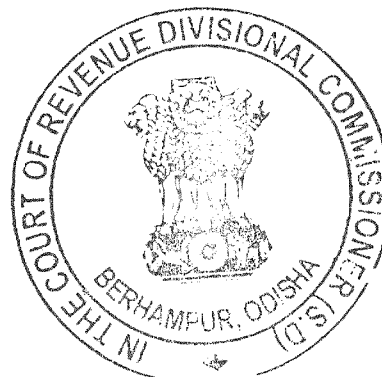


up the proposed institute. reserve price for land at Tilyar Lake Tourist Complex, Rohtak was fixed at Rs.4,40,22,000/- and for land at Food Craft Institute, Faridabad reserve price was fixed at Rs.6,29,97,000/-.

Apart from petitioner, 67 other interested parties also made their representations on 12.06.2008. On 05.06.2007, Petitioner was informed that his name has been shortlisted for obtaining financial bid for the project. Prebid conference was organised for 27.06.2007 which was attended by the petitioner. Petitioner was asked to submit financial bid being the successful bidder. In the Prebid Conference only Petitioner submitted financial bid which was opened and found that the Petitioner has quoted more price than the minimum price fixed for the auction. But instead of granting bid in favour of petitioner, the respondents floated another advertisement on 15.12.2007 inviting EOI for the same project.

During hearing, learned counsel for the respondent (Govt. of Haryana) could not point out any judgement, Rule, Instruction to the effect that in case of sole offer received in pursuance of tender, same cannot be considered. Learned Counsel for respondent argued that respondent have absolute right to annul the tender process at any point of time. The tender process was annulled on account of lack of competition. Therefore, the action of the respondents having been taken in the interest of the State does not warrant interference by this court.

Hon'ble High Court of Punjab and Haryana observed that "it was not open to the respondents to open the financial bid of the Petitioner as M/s Banarsi Chandiwala has not submitted even the earnest money. In the absence of proof of payment of the earnest money, Part-II of the financial bid of the Petitioner could not have been opened. Such opening of the financial bid has affected the rights of the Petitioner. Such decision suffers from arbitrariness and lacks bonafide. Therefore, we are of the opinion that once the financial bid of the Petitioner is opened, the same could not have been rejected on account of the fact that there is no competition. In view of the above, we are of the opinion that the decision to invite fresh tenders as decided in the minutes dated 9.10.2007(Annexure R.3) and consequent advertisement inviting fresh applications is arbitrary, unjust and not sustainable."



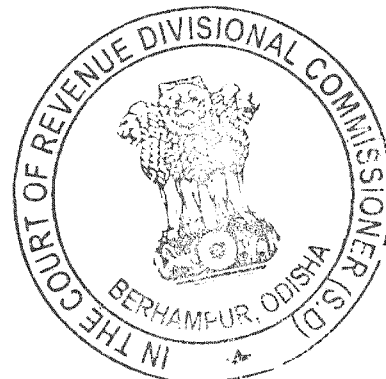
[Handwritten signature]

In the instant case tender was issued in respect of "the State-of-the-Art Hotel/ Hospitality Management Institute" at Tilyar (Rohtak) and Badhkal (Faridabad) which is different from Mining tender process and separate procedure has been laid down in the respective rules and regulations prescribed for the purpose. Thus, the judgement relied upon by the Petitioner is not relevant in this case.

Copy of judgement dt.25.11.2014 of Supreme Court of India in Civil Appeal No.3148/2012 shows that:

1. This case was filed by M/S Hyder Consulting (UK) Ltd. Challenging order dtd.28.07.2010 of Hon'ble Orissa High Court in WP(C) No.5302/2009 wherein a Principal amount of Rs.2,30,59,802/- was accorded in favour of applicant wherein interest has been added in principal on the date of award.
2. In final verdict, Hon'ble Court has expressed that "In my view, the expression 'grant of interest on interest' while exercising the power under Section 31(7) of the Act does not arise and, therefore, the Arbitral Tribunal is well empowered to grant interest even in the absence of clause in the contract for grant of interest. My aforesaid interpretation of Section 31 (7) of the Act is based on three golden rules of interpretation as explained by justice G.P. Singh- Interpretation of statute (13th Edition-2012) there the learned author has said that while interpreting any statute, language of the provision should be read as it is and the intention of the legislature should be gathered primarily from the language used in the provision meaning thereby that attention should be paid to what has been said as also to what has not been said; Second, in selecting out of different interpretations " the Court will adopt that which is just, reasonable, and sensible rather than that which is none of those things"; and third when the words of the statute are clear, Plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of the consequence (see pages 50, 64, and 132). I have kept these principles in mind while interpreting section 31(7) of the Act".

[Handwritten signature]

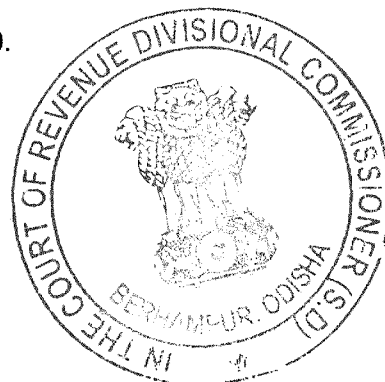


This is a case where the matter is with regard to legality of addition of interest with principal amount on the date of award which is in no way similar to the instant case filed by the petitioner.

The para wise comment has been submitted by Tahasildar, Hinjilicut vide L.No.3093 dt.21.05.2021 which reveals that:

1. As per rule 28 (2) of OMMC Rules, 2016 competent authority (Tahasildar, Hinjilicut) has requested to RQP Sri Amaresh Rath to prepare mining plan in respect of sand bed, Kharida and get approval of authorised officer vide his Letter No. 3810 dtd. 16.09.2020. Mining Plan has been approved by the Deputy Director of Geology (Authorised Officer), Office of Joint Director of Geology, South Zone, Berhampur and was communicated by him vide letter No. 1273 dtd. 06.10.2020.
2. Divisional forest Officer, Berhampur Division has been requested to submit status (Forest/ Non-Forest) of the above quarry vide Letter No. 4176 dtd. 01.10.2020 of Tahasildar, Hinjilicut. In response to the above letter, DFO has furnished the DLC status of the plots of Sand bed, Kharida and found that the plots of Sand Bed, Kharida are non-forest lands.
3. As per rule 2 (P) of OMMC rules, 2016 the MGQ assessed by the competent Authority requires approval of controlling Authority to fix the reasonable quantity that may be extracted from the source considering its potential.
4. As per approved mining Plan, the mineable reserve of sand was 41779 cum/ Annum. The minimum Guaranteed Quantity (MGQ) was determined as 15,500 cum and was submitted for approval of controlling authority, i.e., Collector, Ganjam through Sub-Collector, Chatrapur.
5. Additional charge per cubic metre of sand of the proposed source is to be fixed taking into account the market value and demands of sand in the locality. As per Rule 27 (15) of OMMC rules, 2016 additional charge should not be less than 5% of the Royalty. Royalty for 1 cubic meter of sand was Rs.35/-. In view of market value and demand of sand in the locality, additional charge was proposed to be fixed at Rs. 135/- per Cubic metre of sand. The proposal for fixation of MGQ as 15,500 cum and Addl. Charge of Rs. 135 was approved by Collector, Ganjam on 04.12.2020.

[Handwritten signature]



6. The advertisement for auction of the Sairat source was published on 28.11.2020. DIO, NIC, Ganjam was requested to publish it on the dist. Web site and the same was also published in two Odia Dailies "The Sambad" and "The Prameya" on 30.11.2020 fixing date of opening of tender box on 16.12.2020.

- Advertisement for long term lease of sand bed, Kharida for inviting tender applications was made vide advertisement No.5478 dtd.28.11.2020. In response to the said advertisement, 8 (Eight) applications were received. After scrutiny of the applications, it was found that applications of seven bidders out of eight applicants could not comply the conditions of the advertisement regarding lease of sand bed, Kharida. Application of appellant Sumeet Panigrahy was found valid as per conditions of advertisement.
- a) As per order of Hon'ble High Court of Orissa in WP© No.22315/2016 in M/S- Debabrata Samal-Vrs- state of Odisha & Others, even when several tenders have been filed, but only a single tender is found to be qualified, the same should be treated as single tender, as there would be no competitive price bidding. Therefore, the lease of sand bed, Kharida was treated as single tender in connection with office advertisement No.5478 dt.28.11.220.
- b) As per Rule 27(16) of OMMC Rules, 2016, the Collector, the Conservator of Forest, as the case may be, shall have power to cancel the bid duly recording the reasons, thereof if he is not satisfied with the publicity, participation of bidders and amount of additional charge quoted. The amount of additional charges quoted by the appellant was unusually low in comparison to the other bidders.
- c) As per condition 16 of the office advertisement No.5478 dtd.28.11.2020, the authority has the power to cancel the tender without intimating the reason to the participants of tender relating to the sand bed, Kharida.
- d) As per the above order of Hon'ble High Court and rule-27(16) of OMMC Rules, 2016 the Tahasildar, Hinjilicut recommended to the Controlling Authority to cancel the tender relating to advertisement No.5478 dt.28.11.2020 regarding lease of sand bed, Kharida as only one Tenderer was left after scrutinization of applications. The Controlling Authority passed order to cancel the tender which was communicated vide L.No.287 dt.02.02.2021 of ADM, Ganjam.

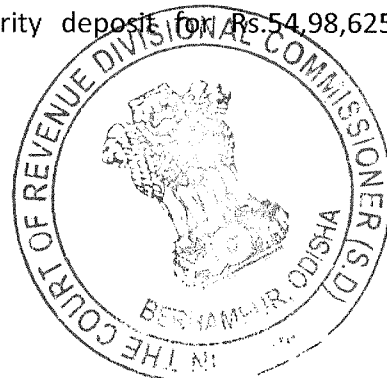


e) The fact about cancellation of advertisement No.5478 dt.28.11.2020 regarding lease of sand bed, Kharida was intimated to the appellant vide office L.No.893 dtd.05.02.2021 which was received by him on 10.02.2021. the Tahasildar, Hinjilicut also issued instruction to the appellant to receive the original demand draft bearing No.000528 dtd.14.12.2020 and original bank guarantee bearing No.1314WDDG00073621 submitted with the application for lease of sand bed, Kharida vide L.No.893 dtd.05.02.2021. But the appellant refused to receive the original bank draft and Bank guarantee. Reminder was also issued to the appellant to collect the above original documents vide L.No.1206 dtd.17.02.2021 and same was received by the appellant on 18.02.2021. But the appellant never approached Tahasil Office, Hinjilicut to receive the original demand draft and bank guarantee.

The OP No.5 submitted counter reply alongwith copy of judgement dtd.09.06.2021 in WP© No.17278, 17281,17282 of Rangadhar Pradhan-Vrs- State of Odisha, WP© No.17283 & 17285 of 2021 of Sribash Jena-Vrs- State of Odisha, WP© No.17288/2021 of Niranjjan Rout-Vrs- State of Odisha and Other, WP© No.17289/2021 of Gangadhar Ojha-Vrs- State of Odisha & Others, WP© No.17280,17284/2021 of Narayan Rout-Vrs- State of Odisha, WP© No.17291/2021 of Deepak Pradhan-Vrs- State of Odisha & others in his defence.

The counter reply dtd.04.05.2021 of OP No.5 is summed up below:

- I. The OP No-5 has stated that no deviation has been made in the procedure in the tender process carried out pursuant to advertisement made vide L.No.5478 dtd.28.11.2020.
- II. The OP No.5 has participated in the new tender floated vide letter No.945 dtd.09.02.2021 and came out successful quoting highest rate of Rs.1255/-cubic metre as addl. Charge. As a result of which intimation was issued to him in Form-F U/R-27(6) vide L.No.1587 dtd.02.03.2021.
- III. In compliance to the said letter, the OP No.5 communicated his interest in the bid under Rule-27(7) and deposited interest free security deposit for Rs.54,98,625/- as per direction of Respondent No.4.



IV. Chapter-II of OMMC Rules, 2016 is meant for generation of maximum revenue with a view to secure maximum benefit to the community in the larger public interest. Rule 10 prescribes procedure for auction of prospecting license-cum-mining lease as under:

1. The State Govt. may auction a prospecting license-cum-mining lease over an area where general exploration up to G4 level (as per UNFC guidelines) has been carried out.
 2. For the purpose of granting prospecting license-cum-mining lease, the State Govt. shall select, through auction by a method of competitive bidding including e-auction, an applicant who fulfils the conditions prescribed under this rule.
 3. The auction shall be conducted as per the terms and conditions as specified under Sub-rule(1) and (2).
10. Subject to provisions of these rules, the prospecting license-cum-mining lease shall be granted in favour of the applicant who has quoted the highest rate of additional charge.

Provided that if more than one applicant have quoted the highest rate of additional charge, then the applicant shall be selected by draw of lots.

17. The State Govt. shall have power to cancel the bid duly recording the reasons thereof, if it is considered expedient to do so.

V. "Law is well settled that, no person has any right to the grant or, renewal of the Govt. property" as held by the Hon'ble Supreme Court in the case of state of Tamil Nadu-Vrs-Hind Stone, 1981 AIR 711. No one has a vested right to the grant or, renewal of a lease and no one can claim a vested right to have an application for the grant or, renewal of a lease deals within a particular way, by applying particular provisions. In the absence of any vested right in any one an application for lease has necessarily be dealt according to the rules in force".

VI. In Sachidananda Pandey vs State of WB AIR 1987 SC 1109 the Apex Court held that;

"While dealing with public property, the executive must make an endeavour to dispose it off by public Auction or, by inviting tender, though that is the ordinary rule may not be an invariable rule where there are compelling circumstances necessitating the departure there



from than the reason for the departure must be rational and should not be suggestive and discrimination, Appearance of public justice is as important as doing justice. Therefore in case of dealing with public property certain percepts and principles have to be observed and public interest is the paramount consideration and when a public property is disposed of, they should try to get the maximum price”.

VII. In Ram and Shyam Co. Vs. State of Haryana AIR 1985 SC 1147 the Hon’ble Supreme Court held as under:

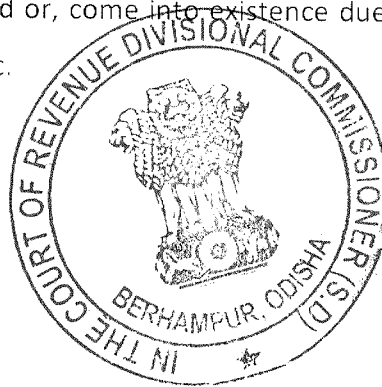
“All the attempts must be to obtain the best available price while disposing of its property because the greater is the revenue the welfare activities will get a fillip and shot in the arm, financial constraints may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which the constitution envisages the setting up of a welfare State”.

VIII. In Agarwal and Modi Enterprises (P) Limited vs New Delhi Municipal Council (2007) 8 SCC 75 the Supreme Court held as under:

“23- Disposal of public property partakes the characteristics of Trust and there is distinct demarcated approach for disposal of public property, in contradiction of disposal of public property, i.e. it should be for public purpose and public interest. Invitation for participation of Public Auction ensures transparency and it would be free from bias and discrimination and beyond reproach”.

IX. In Jagannath Pradhan- Vrs- State of Odisha 93 (2002) CLT 369, the Hon’ble Odisha High Court held as under:

“As and when the question of granting lease of a permanent source of Minor Mineral comes for consideration, the only way in which the said source can be settled, is by adopting the procedure laid down under Rule-22 of the Rule and by holding Public Auction, but then circumstance may occur, where exigencies may require removal of Minor Minerals from a temporary source created or, come into existence due to act of Nature, like heavy flood, cyclone, earth quake etc.

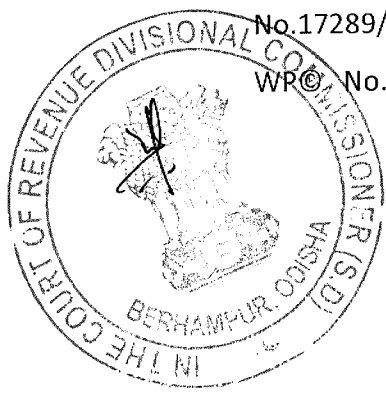


with rule- 10, sub rule- 2 of OMMC rules, 2016. Thus, being the case, the appellant's contention of highest bidder is not tenable & also as he has not participated in the fresh tender floated by the authority now at this juncture, he cannot challenge the decision of respondent No. 4 who has selected respondent No.5 in the fresh to order process in a rightful & lawful manner.

XV. With regard to submissions made in ground E about the decisions of the respondents as arbitrary, unreasonable, contrary to the provisions of MMC rules, 2016 & such action infringes the fundamental right under Act 14, 19 (1) (g) and 21 of the constitution, respondent No. 5 submitted that the Hon' ble court is not at all a constitutional court to decide the very constitutionality of the action taken by the authority which infringes the fundamental right of a person or, not. This Hon'ble court is only competent to entertain and decide an appeal under OMMC Rule if presented before it.

Judgment dtd. 09.05.2017 of Hon'ble High Court of Orissa passed in WP (C) No 22315/2016 shows that:

1. This case was filed by M/S Debabrata Samal challenging order dtd.25.11.2016 of Chief Engineer (DPI and Roads), Works Department, Odisha (Controlling Authority) for cancellation of tender for the work of 'Improvement of Badachana-Balichandrapur Road from 7/200KM to 11/980 KM under State Plan' where the Petitioner was the single qualified bidder as the bids of other four bidders were disqualified on technical ground during scrutiny.
2. Hon'ble High Court of Odisha finalised the case with observation that "Even when there may be several tenders filed, but only a single tender is found to be qualified, the same should be treated as 'single tender', as there would be no competitive price bidding". A The judgment Dt. 09.06.2021 in WP (C) No. 17278, 17581, 17282, 17283, 17285, 17288, 17289, 17280, 17284 and 17291/2021 of Hon'ble Odisha high Court shows that:
3. WP© No.17278/2021,17281/2021 and 17282/2021 were filed by Rangadhar Pradhan vs State of Odisha, WP© No.17283/2021 and 17285/2021 was filed by Sribash Jena-vs State of Odisha, WP© No.17288/2021 was filed by Niranjana Rout -vs-State of orissa, WP© No.17289/2021 was filed by Gangadhar Ojha-vs-State of Odisha, WP© No.17280/2021 and WP© No.17284/2021 were filed by Narayan Rout -vs-State of Odisha and WP©

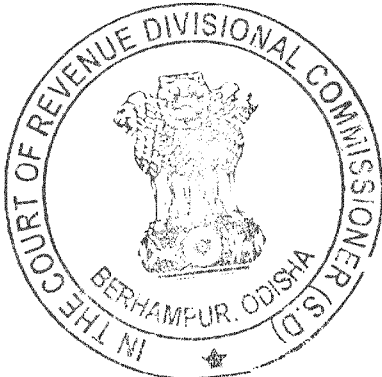


No.17291/2021 was filed by Deepak Pradhan -vs-State of Odisha for cancellation of tender process in respect of different Black Stone Quarries located in the Dharamsala Tahasil in Jajpur district. The Cancellation was intimated to each of the petitioners by separate letters Dtd. 17.05.2021 by Tahasildar, Dharmasala.

4. Advertisement was issued on 22.02.2021 for long term lease of several sairat sources in Dharmasala Tahasil. Petitioner Subash Jena submitted application for allotment of mining lease in respect of Rahadpur Black Stone Quarry No.1 pertaining to Sairat Case No. 23 of 2021 at Sl. No. 14 of Advertisement. In this case on opening of bids on 23.03.2021, it was found that except the petitioner all other bidders were technically disqualified due to non-submission of relevant property list. Similarly in all other cases participation of only one or no valid bidders led to cancellation of the bid.
5. The Hon'ble High Court dismissed all the petitions and ordered that money if any received from the petitioners will be refunded to each of them by the opposite parties. State shall issue notice for fresh auction of the aforesaid sairat sources not later than seven days from the date of announcement of Judgement.

Finding

- As per rule 28 (2) of OMMC Rules, 2016 competent authority (Tahasildar, Hinjilicut) has requested to RQP Sri Amaresh Rath to prepare mining plan in respect of sand bed, Kharida and got approval of authorised officer vide his Letter No. 3810 dtd. 16.09.2020. Mining Plan has been approved by the Deputy Director of Geology (Authorised Officer), Office of Joint Director of Geology, South Zone, Berhampur and was communicated by his letter No. 1273 dtd. 06.10.2020.
- Divisional forest Officer, Berhampur Division has been requested to submit (Forest/ Non-Forest) of the above quarry vide Letter No. 4176 dtd. 01.10.2020 of Tahasildar, Hinjilicut. In response to the above letter, DFO has furnished the DLC status of the plots of Sand bad, Kharida and found that the plots of Sand Bed, Kharida are non-Forest lands.

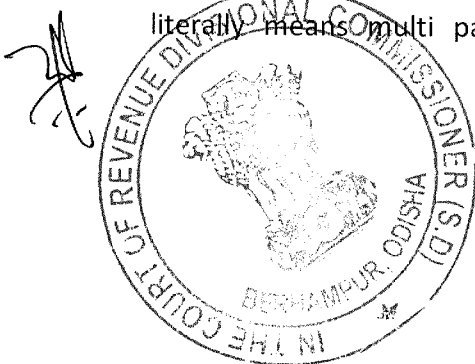


- As per rule 2 (P) of OMMC rules, 2016 the MGQ assessed by the competent Authority requires approval of controlling Authority to fix the reasonable quantity that may be extracted from the source considering its potential.
- As per approved mining Plan, the mineable reserve of sand was 41779 cum/ Annum. The minimum Guaranteed Quantity (MGQ) was determined as 15,500 cum and was submitted for approval of controlling authority, i.e., Collector, Ganjam through Sub-Collector, Chatrapur.
- Additional charge for cubic metre of sand of the proposed source is to be fixed taking into account the market value and demands of sand in the locality. As per Rule 27 (15) of OMMC rules, 2016 additional charge should not be less than 5% of the Royalty. Royalty for 1 cubic meter of sand is Rs.35/-. In view of market value and demand of sand in the locality, additional charge was proposed to be fixed at Rs. 135/- per Cubic metre of sand. The proposal for fixation of MGQ as 15,500 cum and Addl. Charge of Rs. 135 was approved by Collector, Ganjam on 04.12.2020.

The advertisement for auction of the Sairat source was published on 28.11.2020. DIO, NIC, Ganjam was requested to publish it on the dist. Web site and the same was also published in two Odia Dailies "The Sambad" and "The Prameya" on 30.11.2020 fixing date of opening of tender box on 16.12.2020.

The plaint of the instant case shows that the petitioner has no objection regarding procedure adopted in this case up to opening of tender paper. But the petitioner has raised objection over declaration of his bid as single tender and subsequent order passed by the Controlling Authority for cancellation of the tender process and for advertising for fresh tender and that no opportunity has been given to him before ordering for cancellation of tender process initiated pursuant to advertisement No. 5478 dtd. 28.11.2020.

Rule 10(2) of Odisha Minor Mineral Concession Rules,2016 says that "For the purpose of granting prospecting license-cum-mining lease, the state Government shall select, through auction by a method of competitive bidding, including e-auction, an applicant who fulfils the conditions prescribed under this rule." "Competitive Bidding" literally means multi party involvement in the process, wherein more than one



interested applicant legitimately partakes in the bidding, so as to afford the Competent Authority adequate scope for selecting the best offer from among many.

The para 6 of the conditions laid down in Advertisement No. 5478 dtd.28.11.2020 clearly says that no auction will take place in case of a single application for any source.

Judgment dtd. 09.05.2017 of Hon'ble High Court of Orissa passed in WP (C) No 22315/2016 and judgment dtd. 09.06.2021 of Hon'ble High Court of Orissa passed in WP (C) No. 17278, 17581, 17282, 17283, 17285, 17288, 17289, 17280, 17284 and 17291/2021 indicate that even when several tenders are filed, but only a single tender is found to be qualified the same should be treated as single tender as there would be no competitive price bidding otherwise and re-tender will be made in these cases.

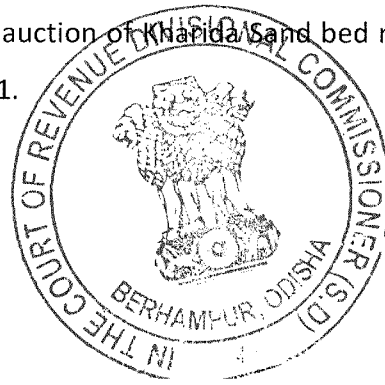
There being also no provision under Odisha Minor Mineral Concession Rules,2016 for hearing before cancellation of tender,and due process having been followed by the Tahasildar, Hinjilicut in cancellation of the Tendering Process, the allegation regarding "giving no scope of hearing" has no relevance in this context.

As all Sub-ordinate Revenue Courts (as also this court) are bound to abide by the judgment of Hon'ble High Court of Odisha, the Tahasildar, Hinjilicut has not done any irregularity in recommending for cancellation of tender process initiated as per advertisement No. 5478 dtd. 28.11.2020.

Further, though the petitioner intimated the court on 22.06.2021 that he had filed application for the fresh tender initiated vide advertisement No. 945/Sairat dtd. 09.02.2021 for the Kharida Sand Sairat source, but the report submitted by Tahasildar, Hinjilicut vide Letter no. 3648 dtd. 25.06.2021 shows that no application in prescribed form 'M' has been filed by Sumit Panigrahy to participate in the fresh tender published on 09.02.2021. Thus, the claim of the petitioner that he had participated in the fresh tender could not be proved on the face of record.

In view of the above facts this court arrives at the conclusion that, the decision taken by the Controlling Authority for cancelling the tender process is as per existing direction of Hon'ble High Court, Odisha and hence is correct in the eyes of law.

Further, the petitioner has not filed any evidence to prove that there was irregularity in the procedure adopted in the auction of Kharida Sand bed made as per advertisement No. 945/Sairat dtd. 09.02.2021.



[Handwritten signature]

As such this court is not inclined to interfere with the orders of Controlling Authority communicated vide letter 287 dtd. 02.02.2021 of ADM, Ganjam. The Interim Order issued by this court on 19.04.2021 will be treated as withdrawn from the date of issue of this order and stands superseded by this order.

This appeal case is disposed off accordingly.




Revenue Divisional Commissioner,
Southern Division, Berhampur