

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 4480 of 2019**

- Ankit Gupta, S/o Shri Sanjay Gupta, aged about 24 years, R/o Tikrapara, Kanker, District North Bastar Kanker (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Department of Mining, Mahanadi Bhawan, Mantralaya Atal Nagar, District Raipur (C.G.)
2. Director, Department of Mining, D-Block, Second Floor Indirawati Bhawan Atal Nagar New Raipur, District Raipur (C.G.)
3. Collector, District Kondagaon (C.G.)
4. Mining Officer, District Kondagaon (C.G.)
5. Bhangilal Patel (Compainant) S/o Late Kusumram Patel R/o Village Massora P.O. Massora District Kondagaon (C.G.)
6. Peelaram Markam (Complainant) S/o Panchiya Ram Markam R/o Village Massora P.O. Massora District Kondagaon (C.G.)

---- Respondents

For Petitioner	:	Shri Satish Gupta, Advocate.
For Respondent/State	:	Shri Vikram Sharma, Deputy Government Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Order on Board**Per Parth Prateem Sahu, Judge****24.02.2020**

1. Sustainability of the action of Respondent No. 3/Collector of issuing order dated 08.11.2019 (Annexure P/1), whereby the bid auction proceedings under reverse

auction for Minor Mineral Sand Quarry Lease for Kondagaon-B, Code B-1, Gram Panchayat Massora was cancelled and further passing of the consequential order dated 08.11.2019 vide Annexure P/2 was put to challenge in this writ petition.

2. On earlier date of hearing *i.e.* on 06.12.2019 notices have been issued to Respondents No. 5 and 6 by speed post. In pursuance to the order for issuance of notices passed by this Court, notices have been issued to Respondents No. 5 and 6 on 12.12.2019. The acknowledgment sent alongwith the notice was not received back and therefore, in view of the Rule 167 (ii) of the Chhattisgarh High Court Rules, 2007 it is deemed that the Respondents No. 5 and 6 have been served and accordingly the Registry has mentioned the noting to this effect. In view of the above, we proceeded to decide the case finally in their absence.
3. The Respondent No. 3 issued notice inviting tender on 10.10.2019 under Rule 6 of the Chhattisgarh Minor Mineral Ordinary Sand (Quarrying and Trade) Rules, 2019 (for short, 'Rules of 2019') for auction of the sand mines for Kondagaon-A at village Sambalpur and Kondagaon-B at village Massora.
4. The bids were called for under the Rules of 2019 by way of reverse auction. The submission of the bid under the reverse auction started from 01.11.2019 till 07.11.2019. Total 10 bidders participated in the tender proceedings out of which 8 of them have quoted equal rates *i.e.* Rs. 49.50/- per cu.mt. The above bid submitted by 8 tenderer was more than 60% below the maximum ceiling price fixed in the tender notification dated 10.10.2019.
5. The Respondents looking to the fact that above 8 tenderer/persons have submitted bid of Rs. 49.50/- per cu.mt. and have proceeded for selecting the successful bidder by way of lot.

6. The Petitioner became successful in the procedure adopted by the Respondent by way of 'drawing lot' and he has been treated as preferred bidder. The Respondents No. 5 and 6 have raised objection in the aforementioned tender proceedings before the Respondent No. 3/Collector. The Respondent No. 3/Collector after considering the complaints and also the records of the tender proceedings have cancelled the bid proceedings by mentioning Rules 6 (4) (vi) and 6 (5) for the sand mines of Kondagaon-B, Code B-1, Gram Panchayat Massora.

7. The another order was passed on the same date *i.e.* 08.11.2019 by the Incharge Mining Officer mentioning therein that due to unavoidable reasons the tender proceedings of mines groups of Kondagaon-B, Code B-1, Gram Panchayat Massora is set aside. This setting aside of the tender proceedings made the Petitioner to approach this Court by way of filing this writ petition with the following prayers:

“10.1 It is prayed that Hon'ble the Court be pleased to call for the entire records of the case.

10.2 It is prayed that this Hon'ble Court, in the facts and circumstances of the case, may kindly be pleased to set aside the backdated impugned order dated 08.11.2019 Annexure P/1 and Annexure P/2 and all subsequent actions thereto which are prejudicial as far as the Petitioner herein is concerned, by issuing suitable writ, orders, directions etc. In the interests of justice.

10.3 Any other relief(s) which this Hon'ble Court deems fit and proper in facts and circumstances of the instant case, in the interests of justice, including the costs of the petition in favour of the Petitioner.”

8. The learned counsel for the Petitioner submitted that the tender proceedings have been initiated by the Respondent authorities in accordance with the Rules of 2019, 10 tenderer participated in the tender proceedings and out of which 8 persons/tenderer have quoted equal rates. On account of more than 1 tenderer submitting equal rates *i.e.* Rs. 49.50/- per cu.mt., the Respondent authorities have proceeded to identify the preferred bidder through 'draw of lots' as

provided under Clause 6.5 of the tender notification. It is also pointed out that the Respondent authorities have proceeded in accordance with law, within the Rules of 2019 in a very transparent manner, but the Respondent No. 3/Collector fled away with the allegation made in the complaint and erroneously set aside the entire tender proceedings ignoring the fact that the Petitioner has been selected as preferred bidder during the proceedings conducted by the Respondent authorities by way of 'drawing lots'. It is further pointed out that Rule 6(4)(vi) and Rule 6(5) is not applicable to the facts of the case and there was no occasion for the Respondent No. 3/Collector to set aside the whole tender proceedings under the aforesaid Rules.

9. It is also contended by the learned counsel for the Petitioner that there was no provision/clause specifying that more than one family member cannot participate in the same tender proceedings and submits that the order issued by the Respondent No. 3/Collector as well as consequential order dated 08.11.2019 is liable to be set aside.
10. Per contra, the learned counsel appearing for the Respondent/State submits that Petitioner has participated in the tender proceedings alongwith the other family members. It is also submitted that the Petitioner have submitted the tender application on behalf of the other family members by using unauthorized signatures, the address and mobile numbers of the Petitioner and his other family members namely Kuldeep Gupta, Sanjay Gupta, Ramji Prasad Gupta and Rupesh Gupta are one and the same.
11. Referring to the pleadings made in the reply to the writ petition, the learned counsel for the Respondent/State further submitted that in pursuance to Clause 2.6 of the tender document more than one person is not permitted for the same group of sand mines as the said procedure and action taken by the Respondent to disgrace the cartelization in the bidding process. It was also argued that after

receiving the complaint they have enquired into and found that the Petitioner and other bidders of his family members have participated in the tender proceedings which is against Clause 2.6 of the NIT and prays that the writ petition is not having any merit and is liable to be dismissed.

12. We have heard the learned counsel for the respective parties.
13. For the purpose of auctioning the sand mines the State Government has formulated rules under the Mines and Minerals (Development and Regulation) Act, 1957 which is known as Chhattisgarh Minor Minerals Ordinary Sand (Quarrying and Trade) Rules, 2019. To have a better understanding of the Rules which are applicable to the fact of the case are reproduced herein below for ready reference:

“2. Definitions.-(1) In these rules, unless the context otherwise requires,-

(a) “Ceiling Price” means the highest price fixed for auction (reverse auction), below which the bidders will bid;

(b) “District-level Committee” means the committed of officials constituted at the district level by the Collector, which shall function according to the provisions laid down;

(c) “Preferred bidder” means the bidder specified in clause (c) of sub-rule (4) or rule 6;

(d) “Auction (Reverse Auction)” means the bid submitted descending order below the ceiling price in a phase of bidding for grant of lease to quarry ordinary sand as described in rule 6.”

14. The procedure of auction (reverse auction) for grant of quo release has been envisaged under the Rule 6 of the Rules of 2019. Sub Rule 4 of Rule 6 mentions the process of bidding some of the important clauses of sub rule 4 of Rule 6 relevant to the fact of the case which mentioned are as under:

“6. The Process of Auction (Revenue Auction) for Grant of Quarry Lease.- (1) Eligibility for grant of quarry lease:-

(4) The process of bidding:-

xxx xxx xxx

(ii) Prospective bidders shall be allowed to study the bid documents after release of the notice inviting tenders by providing period of 21 days. After which auction process shall commence. The bids in the manner prescribed in the clause (b) of sub-rule (2) shall be accepted till the time as may be described in the NIT.

(iii) The bidder who submits the lowest bid shall be declared as the preferred bidder.

(iv) If two or more bidder submitted the same bid quote, then the preferred bidder shall be selected through lottery process amongst them.

(vi) The competent authority shall have the power to annul the bid at any stage for reasons to be recorded in writing.

(ix) No bid below fifty percent of the ceiling price shall be acceptable.

(x) Bid submitted below fifty percent of the ceiling price shall be deemed to be rejected automatically."

15. Perusal of clauses mentioned in sub-rule 4 of Rule 6 would show that the lowest bidder shall be declared as preferred bidder, if more than two bidders quoted same bid than preferred shall be selected through lottery process amongst them. No bid below 50% of the ceiling price be acceptable and the bid submitted below 50% of the ceiling price shall be deemed to be rejected automatically.
16. In the case at hand, perusal of Annexure P/3 would show that in notice inviting tender the maximum price had been fixed as Rs. 99/- per cu.mt. 50% of the maximum ceiling price comes to Rs. 49.50/- which was quoted by the 8 tenderer out of total 10 tenderer who participated in the subject tender proceedings.
17. In view of the above, minimum possible rate quoted by more than 1 person the Respondent have proceeded to select the preferred bidder by way of lottery process that is by 'drawing lots' amongst them. After the proceedings by

'drawing lots' amongst 8 bidders who quoted minimum possible rate Petitioner has been selected as the preferred bidder. Till this stage there is no dispute in the proceedings drawn by the Respondent authorities or no objection whatsoever was made by any of the bidders before the authority. After selection of the Petitioner as preferred bidder the Respondents No. 5 and 6 have made complaint to the Respondent No. 3/Collector and the Respondent No. 3/Collector by mentioning Rules 6(4) (vi) and 6(5) quash the entire tender proceedings vide impugned order Annexure P/1.

18. The question arises for consideration before this Court, in view of the submission made by the learned counsel for the parties as well as under the provisions of Rules of 2019 is whether the Respondent No. 3/Collector acted in accordance with law or the action of passing an order Annexure P/1 and P/2 is arbitrary. Rule 6(4)(vi) mention that the competent authority shall have power to annul the same at any stage for reasons to be recorded in writing. Respondent No. 3/Collector while passing the impugned order dated 08.11.2019 (Annexure P/1) have mention that Kuldeep Gupta, Ramji Prasad Gupta and Rupesh Gupta gave authorization to one person/bidder. The name, address and mobile numbers is of only 1 family member, only 1 person participated in the tender proceedings and the 4 persons have given authorization letter to only 1 person which shows that only 1 person had submitted the tender application/tender document for bidding in the tender proceedings in the name of other family members.
19. For this part of the order, the learned counsel for the Petitioner has submitted that there is no specific provision as mentioned in Rules of 2019 nor any clause of tender notification barring participation of more than 1 family members in the tender notification for the same sand mines. To appreciate the submissions made by the learned counsel for the Petitioner as above, we have further gone

through Rule 9 of Rules of 2019 which is in the heading of general terms and condition for quarrying of Minor Mineral Ordinary Sand and also Rule 6 which is the process of auction (reverse auction) for grant of quo release. But, there is no provision restricting participation of more than 1 member of a family in the tender proceedings.

20. The learned counsel for the State also failed to point out any such restriction imposed under the Rules of 2019 or any clause of the tender notification. In fact, the learned counsel for the Respondent/State have based his submission on the pleadings made in reply to the writ petition that Clause 2.6 of the tender notification mandates that 1 person can be allowed only to bid for one group of mines and in view of that clause of the tender notification inference can be drawn that the person cannot take part for same group in the name of different family members.
21. To substantiate the aforementioned submission of the learned counsel for the State has not placed any material before this Court to prove that 1 person had submitted the tender applications in the name of other family members, but for the fact recorded by the Respondent No. 3/Collector based on the one address and one mobile number and issuing authorization letter to 1 person to appear in person in the auction proceedings.
22. It is not a case that the bidders have to make an oral bids, but the bids are required to be submitted in a closed envelope at the time of submission of the tender forms. The authorization letter given to 1 person that is Ravindra Gupta is with respect to representing the person who executed the authorization letter in favour of the Ravindra Gupta in his absence at office of Mines Department, Kondagaon and to participate in the departmental meeting to sign other document and take the demand draft attached alongwith the documents. The Respondents have submitted two such type of authorization letter/Power of

Attorney which only shows that the person in whose favour authorization letter executed has only to participate in the tender proceeding and meeting etc. in their absence. From this document it cannot be inferred that it is only 1 person who submitted tender documents/bids in the name of family members by only 1 person.

23. The learned counsel for the State also argued that pleadings made in paragraphs 8, 9 and 10 is also to be taken as his submissions. The pleadings of paragraphs 8, 9 and 10 are reproduced herein below for ready reference:

“8. It is further respectfully submitted that if clause 2.6 will be read thoroughly, the inference which can be drawn is that (i) only one person/firm/company can bid for one group of mines (ii) another positive inference which can be drawn is that the person, in the name of different family members, cannot take part for the same group of sand mines. It is so because the rules are made to discourage the cartelization in the bidding.

9. That, the answering respondents after receiving the complaint, have inquired into the matter and have found that since the names, address as well as the mobile numbers of all the other bidders i.e. Kuldeep Gupta, Sanjay Gupta, Ramji Prasad Gupta and Rupesh Gupta are the same and therefore, it reached to the conclusion that the present petitioner on the pretext of other bidders, has taken participation in the NIT which is against clause 2.6 of the NIT which clearly mandates that one person can be allowed only to bid for one group and by virtue of clause 6.7 of the NIT, the answering respondent no. 4 has rejected the tender and has directed to issue a fresh tender. It is further respectfully submitted that this action of the answering respondent no. 3 is very well within the limits of the NIT and therefore, cannot be said to be as arbitrary and illegal.

10. That, in view of the submissions made hereinabove, it is submitted that the impugned order (Annexure P/1) has been issued strictly in accordance with law and does not suffer from any illegality or infirmity. Hence, the present petition, being sans merit, deserves to be dismissed at the threshold.”

24. Looking to the pleadings and submissions made by the Petitioner as well as the arguments raised by the learned counsel for the State on 06.12.2019 while issuing notices, we have passed the following orders:

“The learned counsel for the petitioner submits that pursuant to Annexure P-3 tender by way of reverse auction of the quarries for sand mining, the petitioner participated in the bid. Since all the eight qualified bidders had submitted the same rate, as per the relevant provisions, the person to whom the tender was to be awarded had to be identified by drawing lots. It was accordingly that the petitioner came to be successful, as evident from Annexure P-9 dated 08.11.2019, based on which, the petitioner effected the performance guarantee/deposit of Rs.5 Lacs, as evident from Annexure P-10 dated 15.11.2019, which is well within time as the last date for submitting the security deposit of the bid was on 18.11.2019, as disclosed from Annexure P-3, giving the time schedule. The learned counsel submits that, all of a sudden, everything turned upside down, when Annexures P-1 and P-2 were issued (allegedly with a back date of 08.11.2019) that the tender was cancelled based on the complaint preferred by the private respondents, who also had participated in the tender, but lost the game. This is nothing but arbitrary and to extend unlawful gains to the private respondents and hence, the challenge.

Mr. Vikram Sharma, the learned counsel representing State/respondents No. 1 to 4 submits that, after the selection of the petitioner, complaint was preferred by the private respondents before the District Collector, who considered the same in the light of 'Clause 2.6' of the tender conditions and found that, the petitioner had participated in tender under different names, which is not possible and hence, the proceedings had to be conducted afresh.

Prima facie, we are not impressed with the said explanation, as Clause 2.6 deals with something else. That apart, the learned counsel for the Petitioner submits that the parties may be the relatives of the petitioner, but they participated in the bid separate identity, separate Aadhar Card and PAN Card and they have every right to participate in the bid. It is also stated that there is no clause or law which prohibits the members of the same family from participating in the bid and the restriction is only that a person can participate in the bid, in respect of only one quarry and that alone.

The learned counsel for the State seeks for time to get instruction and to file a proper statement.

The writ petition stand admitted.

Issue urgent notice to the respondents No. 5 and 6 by speed post, returnable within one week.

There will be an interim stay with regard to further proceedings in respect of Annexure P-3 tender, for a period of one month.

List the matter for further consideration on 19.02.2020."

25. The learned counsel for the Respondent/State stressed on Clause 2.6 of the tender document to justify the action of cancellation of tender proceedings.

Clause 2.6 of tender document is reproduced below:

"राज्य शासन द्वारा छत्तीसगढ़ गौण खनिज रेत (उत्खनन एवं व्यवसाय) नियम, 2019 के नियम 9 (र) के अंतर्गत जारी निर्देश के अनुसार "जिले में, एक व्यक्ति/फर्म/कंपनी द्वारा अधिकतम किसी एक रेत खदान समूह हेतु ही बोली स्वीकार्य की जाएगी। प्रदेश में एक व्यक्ति/फर्म/कंपनी द्वारा प्रस्तुत बोलियों में से अधिकतम 05 खदान समूहों के लिए ही बोली स्वीकार की जाएगी इस हेतु उक्त व्यक्ति/फर्म/कंपनी द्वारा शपथपत्र प्रस्तुत किया जाना होगा किसी व्यक्ति/फर्म/कंपनी को जिला स्तर में एक समूह से अधिक एवं प्रदेश स्तर पर 05 से अधिक समूहों में अधिमानी बोलीदार घोषित होने की स्थिति में प्रस्तुत अन्य बोली, स्वमेव निरस्त मानी जायेगी।"

From bare reading of the aforementioned clause it is apparent that bar is for a person/firm/company to bid for one sand mine group in a District and for 5 sand mine group in a State. There is no mention of other restriction.

26. The other aspect of the case arises for consideration of this Court is whether in the present tender proceedings, wherein the Petitioner has been selected as preferred bidder caused any loss to public exchequer and causing loss to the revenue of the Respondent/State.
27. As per the Rules of 2019 and clause mentioned in the tender notification the auction proceedings is on reverse auction basis, maximum price bid has been fixed by the Respondent authorities as Rs. 99/- per cu. mt. Further Rules of 2019 and the Clause 2.4 of tender condition mentioned in the tender notification (Annexure P/3) specifically mention that there cannot be a bid less than 50% of

the highest prescribed rate/ceiling price and Rule 6(4)(x) and clause 2.5 of tender notification mentions at the bid submitted less than 50% of the maximum ceiling price shall be deemed to be automatically rejected.

28. In view of the above, in no case there will be less than the price quoted by the Petitioner or other tenderers amongst whom the lots have been drawn. Even if, the complaints made by the Respondents No. 5 and 6 is taken, it is not a case where only the Petitioner and his family members have participated in the tender proceedings, but apart from them other tenderers who participated also quoted the minimum price of Rs. 49.50/- per cu. mt. There cannot be less than the price of Rs. 49.50/- per cu.mt. as quoted by Petitioner and the Respondents No. 5 and 6.
29. In view of the above, in our considered opinion there is no loss to the revenue of the Respondent or the public exchequer there is more than 1 valid tender *i.e.* 10 tenderer submitted their bid within the time prescribed out of which 8 tenderer have been found to be quoted same minimum rate and in a draw of lot the Petitioner has been selected as the preferred bidder.
30. The Petitioner have also deposited the performance guarantee as required that is of Rs. 5 lakhs which is evident from Annexure P/10, which is not disputed by the learned counsel for the State.
31. Hon'ble Supreme Court in 'N' number of judgments has held that the scope of Judicial Review in Tender matters is very limited. For exercising judicial review one of the ground is that the action of the employer is so arbitrary or irrational that no responsible authority acting reasonably and in accordance with law could have reached.
32. In the case at hand, after the Petitioner becoming successful by lottery system as per Rule 6(4)(iv) in which Respondents No. 5 and 6 were also participant,

but became unsuccessful, submitted complaint before Respondent No. 3/Collector. While cancellation of the contract on complaint made by the unsuccessful bidder the Respondent No. 3/Collector by mentioning Rule 6(4) (vi) and 6(5) of the Rules of 2019 has cancelled the entire tender proceeding. Rule 6(4)(vi) of Rules 2019 talks about the power of competent authority to annul the bid at any stage for the reasons to be recorded in writing and the Rule 6(5) of Rules of 2019 talks about the decision of Collector to be final in case of any dispute.

33. The Collector only took note of the fact that Petitioner and other 4 tenderer belong to one family and in tender form mentioned on address and one mobile number and further authority letter executed in name of one person to participate in absence of the executant of that document. There is no clause in tender document or Rule in Rules of 2019 restricting of participating more than one family member. There is no loss to public exchequer.
34. It is also not the case of the Respondent/State that there is any irregularity committed by any of the officials in conducting the tender proceedings or at any point of time while drawing the lots for selecting the preferred bidders. The action of Respondent No. 3 is arbitrary, unreasonable and irrational in cancelling the entire tender proceeding without recording any violation of rules applicable or clause of tender or any financial loss to Government.
35. The Respondent No. 3/Collector under the Rule 6(4) (vi) of Rules of 2019 and the Clause 6.7 of tender document provides with discretionary power to the competent authority. Now it is to be seen that whether there was sufficient ground to pass Annexure P/1 order in exercise of power under Rule 6(4)(vi) of Rules of 2019. Hon'ble Supreme Court in the matter of ***Union of India & Others vs. Dinesh Engineering Corporation & Another*** reported in **(2001) 8 SCC 491** has considered this issue and held thus:

“15. Coming to the second question involved in these appeals, namely, the rejection of the tender of the writ petitioner, it was argued on behalf of the appellants that the Railways under clause 16 of the Guidelines was entitled to reject any tender offer without assigning any reasons and it also has the power to accept or not to accept the lowest offer. We do not dispute this power provided the same is exercised within the realm of the object for which this clause is incorporated. This does not give an arbitrary power to the Railways to reject the bid offered by a party merely because it has that power. This is a power which can be exercised on the existence of certain conditions which in the opinion of the Railways are not in the interest of the Railways to accept the offer. No such ground has been taken when the writ petitioner's tender was rejected. Therefore, we agree with the High Court that it is not open to the Railways to rely upon this clause in the Guidelines to reject any or every offer that may be made by the writ petitioner while responding to a tender that may be called for supply of spare parts by the Railways.

If the facts of the case is considered in the light of the law laid down by Hon'ble Supreme Court it is apparent that the Respondent No. 3/Collector has not recorded that the award of tender to successful bidder (Petitioner) will not be in the interest of Government.

36. For the forgoing reasons, we quash Annexure P/1 *i.e.* order dated 08.11.2019 passed by the Respondent No. 3/Collector and also the consequential order Annexure P/2 dated 08.11.2019 passed by the Incharge Mining Officer. It is further directed to Respondent No. 3/Collector to conclude the tender proceedings dated 10.10.2019 in favour of the successful bidder found in the proceedings by way of draw of lot by declaring the Petitioner as preferred bidder in terms of the Rules of 2019 and clauses mentioned in Annexure P/3 news inviting tender and taking the tender notification dated 10.10.2019 to its

logical conclusion. This exercise shall be done as expeditiously as possible at any rate within the period of 45 days from today.

37. The writ petition is allowed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge