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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 06.02.2020

Judgment Delivered on : 24.02.2020

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 4440 of 2019

- Maa Tarini Traders, a Proprietorship Concern, through its Proprietor Prabhat Patnaik, S/o Mukund Murari Patnaik, aged about 27 years, having its office at post Tamnar, Janpad Panchayat Tamnar, District Raigarh (C.G.)

--- Petitioner

Versus

1. State of Chhattisgarh through Secretary, Mineral Resources Department, Mantralaya, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, District Raipur (Chhattisgarh)
2. Collector (Mining Branch), Raigarh, District Raigarh, Chhattisgarh
3. Deputy Director (Mining Administration), Raigarh, District Raigarh, Chhattisgarh
4. Murli Dhar Jaiswal, post Tamnar, Janpad Panchayat Tamnar, Raigarh, District Raigarh, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Anand Dadariya, Advocate
For Respondents No.1 to 3/State	:	Mr. Vikram Sharma, Dy. GA
For Respondent No.4	:	Mr. Shivang Dubey, Advocate

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

Per P. R. Ramachandra Menon, Chief Justice

1. The alleged arbitrary course of action pursued by the Respondent authorities in connection with the tender floated for granting quarrying lease in a **'reverse auction process'**, eliminating the qualified bidder / Petitioner, by considering the fresh quote of the already rejected bidder along with bids quoted by four other persons within the extended time and allotting the same to the 4th Respondent (father of the rejected bidder) by drawing 'lots' (as all the quotes were of uniform rate), is the subject matter of challenge in this writ petition.

2. At the very outset it has to be mentioned that, scrutiny is being conducted by this Court only to the permissible extent in view of the settled position of law laid down by the Apex Court as per ever so many judgments including in ***Tata Cellular v. Union of India*[1]*, Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited and Another*[2]*, State of Jharkhand and Others v. CWE-Soma Consortium*[3]** and the recent one in ***The Silppi Constructions Contractors v. Union of India (UOI) and Ors.*[4]** and such other verdicts to the effect that the judicial scrutiny shall be with utmost restraint; that it is the prerogative of the Government / Awarder to accept or reject the tender; that the probe shall confine to the 'decision making process' and not the decision and further that no interference shall be made unless it is arbitrary, irrational, perverse or against public interest.

3. The 2nd Respondent floated Annexure-P/2 Notification Inviting Tender (NIT) on 09.10.2019 inviting bids for grant of quarry lease of ordinary sand at various sand mines located in the District Raigarh in the State, clearly giving the terms and conditions with reference to the relevant rules i.e. The Chhattisgarh Minor Mineral Ordinary Sand (Quarrying and Trade) Rules, 2019 (hereinafter referred to as 'Rules of 2019'). As per the said rules, the bids have to be submitted separately (Technical Bid and Price Bid respectively) and the bidding is by way of Reverse Auction process. According to the Petitioner, he satisfied all the requirements and submitted the bid accordingly in respect of the Tender for 'Raigarh-D'.

[1] (1994) 6 SCC 651
[2] (2016) 16 SCC 818
[3] (2016) 14 SCC 172
[4] 2019 (11) SCALE 592

Bid was submitted by another person as well, by name one Gopesh Jaisawal. After the last date for submitting the bid, the technical bids were opened on the next date i.e. 06.11.2019 and on evaluation, both the bidders were held as technically qualified. Thereafter, the price bids were opened; when it was found that both the bidders had quoted the rock bottom rate (Rs. 46 per cu.m.), below which nobody can quote as per the relevant Rules / NIT. But, in the case of the other bidder by name Gopesh Jaisawal, it was found that the requisite extent of 'bid security' was not deposited by him and hence his price bid was rejected. Instead of identifying the Petitioner as the 'preferred bidder' to be proceeded with further steps for declaring him as the successful bidder and awarding the quarrying lease in favour of the Petitioner, the 2nd Respondent, as per Annexure-P/1 dated 13.11.2019, invited fresh bids granting 'seven more days' and obtained four more bids. In the four additional bids so submitted, it included the bid of the person by name Gopesh Jaisawal (whose bid was already rejected) as well, who could not have been permitted to participate in the process; by virtue of the specific bar under Clause 6.8 of the NIT. The names of these bidders and the Petitioner (who were found as having quoted the rock bottom rate at Rs.46 per cu.m.) were subjected to 'lot', in which the 4th Respondent (father of the rejected bidder) turned to be the lucky man and hence he was declared as the 'preferred bidder' in respect of the group 'Raigarh-D'. This made the Petitioner to challenge the proceedings by filing writ petition, seeking to set aside Annexure-P/1 Notification dated 13.11.2019 and also to direct the 2nd Respondent to execute the quarrying lease in favour of the

Petitioner. The prayers have been opposed by the Respondents pointing out that the course and proceedings pursued by the 2nd respondent are valid in all respects. Separate returns have been filed on behalf of the Respondents No.1 to 3 - State of Chhattisgarh and the 4th Respondent.

4. Heard Mr. Anand Dadariya, the learned counsel for the Petitioner, Mr. Vikram Sharma, the learned counsel representing the State - Respondents No.1 to 3 as well as Mr. Shivang Dubey, the learned counsel for the 4th Respondent at length.

5. The learned counsel for the Petitioner submits that the quarrying lease of Ordinary Sand is governed by Annexure-P/3 Rules of 2019 and the tender floated has been finalized by the 2nd Respondent, ignoring the Rules and the specific stipulations in the NIT. As per the relevant Rules and terms of the NIT, the maximum / ceiling price was fixed as Rs.92 per cu.m. and the bidders had to quote below the maximum / ceiling price, which however shall never go below fifty percent of the maximum / ceiling i.e. Rs.46 per cu.m. 'Performance security' was stipulated as Rs.14 lacs in respect of the bid for 'Raigarh-D' and 'twenty percent' had to be deposited as 'bid security'. If the price bid contained in the separate cover was less than sixty percent of the maximum / ceiling price (i.e. Rs. 92/cu.m.), the bid security was to be submitted at 'forty percent' of the performance security. In the instant case, since the performance security was Rs.14 lacs and since the price quoted by the Petitioner and the bidder by name Gopesh Jaisawal was the same, i.e. Rs.46 per cu.m. (the

lowest quote, being fifty percent of the maximum / ceiling of Rs.92 per cu.m., below which, no bid could be made), the bid security to be submitted was forty percent of the performance security of 14 lacs i.e. 5.6 lacs. Security to the said extent was satisfied by the Petitioner as prescribed, whereas in the case of the other bidder Gopesh Jaisawal, he furnished the bid security only to an extent of twenty percent i.e., Rs.2.8 lacs. It was in the said context that, the bid of Gopesh Jaisawal came to be rejected as clearly provided under Rule 5(1) of Annexure-P/3 Rules and Clause 2.6 of the NIT.

6. Instead of declaring the Petitioner as the 'preferred bidder' as defined under Rule 2(c) of the Annexure-P/3 Rules and as per Rule 7 of the very same Rules, read with the relevant Clause of the NIT, the 2nd Respondent, wrongly interpreting Rules 6(v) of Annexure-P/3 Rules and Clause 6.6 of Annexure-P/2 NIT, issued a fresh NIT on 13.11.2019 as borne by Annexure-P/1, granting 'seven more days' from 13.11.2019 to 19.11.2019 inviting more bids. Making use of the said undue favour, the person by name Gopesh Jaisawal, whose bid was already rejected, submitted a fresh bid again, quoting the rock bottom rate of Rs.46 per cu.m. and also depositing the bid security of Rs.5.6 lacs (forty percent of the performance security of Rs.14 lacs) along with similar tenders submitted by the others including his father - the 4th Respondent herein. After opening the bids, observing that the price bids submitted by all the tenderers including the Petitioner were of the rock bottom rate i.e., Rs.46 per cu.m., all their names were put to lot and the 4th Respondent - father of Gopesh Jaisawal was found as lucky to have won the lot and declared

as the 'preferred bidder'. This is stated as totally illegal in all respects, displaying patent arbitrariness and favouritism, paying scant regards to the specific provisions in Annexure-P/3 Rules and the relevant Clauses in the NIT and hence the challenge.

7. The learned counsel representing the State submits that Clause 6.6 of Annexure-P/2 NIT clearly stipulates that the bid should be a 'valid bid'. On 06.11.2019, though both the Petitioner and the other tenderer by name Gopesh Jaisawal were found as technically qualified. On opening their price bids, it was noted that in respect of the price quoted at Rs.46 per cu.m., the bid security submitted by the Petitioner was Rs.5.6 lacs; which was valid, whereas the bid security submitted by the other bidder was only Rs.2.8 lacs; which hence was defective / invalid and rejected. Hence, it remained only as a 'single tender' submitted by the Petitioner, which made the 2nd Respondent to invoke the power under Clause 6.6 of the NIT and Rule 6(4)(v) of Annexure-P/3 Rules to issue a fresh Notification by way of Annexure-P/1 giving seven more days, inviting further bids, which was only to provide 'more competition'. It is pointed out that the version of the Petitioner that it was not a case of 'single tender', as two tenders were already there is not correct, as what is contemplated is two or more 'valid tenders', lest it should be a case of single tender. It is stated that the proceedings pursued by the 2nd Respondent are transparent in all respects and hence no interference is warranted, in view of limited scope of judicial scrutiny and the rights / prerogative to the Government in either accepting or rejecting the tender and to go for fresh tender. Reliance is sought to be placed on the

verdicts passed by the Apex Court in ***Central Coalfileds Limited and Another v. SLL-SML (Joint Venture Consortium) and Others***[5] (paragraphs 27,32, 47, 48 & 52), ***Afcons Infrastructure Limited*** (supra) (paragraphs 13,14 & 15) and ***CWE-Soma Consortium*** (supra) (paragraphs 6, 13, 15 & 23). The learned Government counsel submits that the Petitioner's name was also put in the lot and since the 4th Respondent turned to be lucky, he has been declared as the 'preferred bidder', simultaneously adding that, Annexure-P/2 tender has not been cancelled and that Annexure-P/1 is only in continuation of the same, granting seven more days' time and inviting more bids to 'promote competition' and hence no prejudice has been caused to him.

8. The stand taken by the Respondents No.1 to 3 is sought to be supported by the 4th Respondent / beneficiary. The learned counsel for the 4th Respondent also highlights the limited powers of this Court to interfere in the contract matters with reference to the various decisions rendered by the Apex Court on the point. It is stated that power is vested with the 2nd Respondent, either to accept or cancel the tender at any stage under Clause 6.7 of the NIT and that there is no vested right for the Petitioner to claim the tender to be awarded in his favour and further that it was a case of 'single tender' when the earlier price bid submitted by Gopesh Jaisawal came to be rejected for want of satisfaction of requisite extent of bid security; in turn leading to Annexure-P/1 Notification inviting more bids to promote competition. It is pointed out that interpretation of the terms of tender by the author must be given preference and that Court cannot

[5] (2016) 8 SCC 622

substitute its view; more so since it is the prerogative of the Awarder / State to decide whether to accept or reject any tender. Reliance is sought to be placed on the very same judgments cited from the part of the State {***Tata Cellular*** (supra), ***Afcons Infrastructure Limited*** (supra) and ***CWE-Soma Consortium*** (supra)} besides citing a judgment rendered by a Co-ordinate Bench of this Court in WPC No. 1263 of 2016 {***M/s. Acer India Private Limited v. State of Chhattisgarh & Others***) and also judgment dated 21.06.2019 of the Apex Court in ***SLP No.13802-13805 of 2019 (The Silppi Constructions Contractors v. Union of India and Another)***. The learned counsel submits that, if two interpretations are possible, the interpretation given by the author of the terms of the tender shall prevail and hence that the State action is correct and sustainable, warranting no interference by the Court.

9. After hearing both the sides, as observed in the opening paragraphs as to the declaration of law by the Apex Court in the judgments cited, there cannot be any dispute for anybody as to the limited scope for judicial scrutiny in matters of contract, this Court will be justified to have a probe only to see whether the 'decision making process' is correct or not and whether it is arbitrary, irrational, perverse or against the public interest. In the instant case, since it is a 'statutory auction', being governed by Annexure-P/3 Rules, it has also to be considered whether the proceedings are in conformity with the Rules or whether the terms of the NIT are deviating from the Annexure-P/3 Rules. It is also to be noted whether Annexure-P/1 tender notification issued can be said as to 'promote competition', when there is already a qualified bidder who has

quoted the rock bottom rate, below which nobody else can quote, even if the bids are repeated time and again. So also, it has to be ascertained whether the Respondent/State has permitted the rejected bidder - Gopesh Jaisawal also to participate in the extended period of time; virtually rectifying the defects and contrary to the mandate of Clause 6.8 of the NIT. To answer these questions, it is necessary to have a clear understanding as to particular process of auction (**Reverse Auction**) governed by Annexure-P/3 set of Rules.

10. Under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957, the State Government is conferred with Rule Making Power, in exercise of which the Chhattisgarh Minor Mineral Rules, 2015 have already been framed by the State. So far as the Quarrying and Trade of Ordinary Sand (which is also a minor mineral), the State found it appropriate to frame separate set of Rules named as the Chhattisgarh Minor Mineral Ordinary Sand (Quarrying and Trade) Rules, 2019, notified in the Gazette dated 16.08.2019; as borne by Annexure-P.3. The said Rules stipulate that the Quarrying Lease in respect of Ordinary Sand shall be effected only by way of "**Auction (Reverse Auction) process"** defined under Section 2(d) of the Annexure-P/3 Rules, which provides for a '**Maximum / Ceiling Price**', below which alone will the bidders bid {as defined under Section 2(a)} and also the 'rock bottom price' (50% of the Maximum / Ceiling Price) below which nobody can quote {(Rule 6(4)(ix)}.

11. Under Rule 3, it is for the District Collector to identify 'Ordinary Sand Quarries' and to fix the 'Ceiling Price' and sub-Rule (4) of Rule 3

stipulates that the 'Ceiling Price' shall not include the amount of royalty, contribution to the District Mineral Foundation Trust, Environmental Cess, Infrastructure Development Cess, Tax Deduction at Source, and other taxes as applicable.

12. As mentioned already, Rule 5 (1) of Annexure-P/3 Rules stipulates that every bidder shall be required to provide 'twenty percent' amount of the Performance Security as Bid Security in the Reverse Auction and if the quote is less than sixty percent of the Ceiling Price fixed, the Bid Security amount shall be doubled i.e. 'forty percent' of the Performance Security, as mentioned under the proviso to sub-Rule (1).

13. Rule 6(1)(b) stipulates that, to participate in the auction (Reverse Auction) for ordinary sand, the bidder must satisfy the terms and conditions prescribed for bidding and such bidders shall be called technically eligible bidders; whereas Rule 6(1)(c) says that the 'preferred bidder' {as defined under Rule 2(c)} shall be determined on the basis of the financial bids of only the technically eligible bidders. Rule 6(2)(b) provides that the documents relating to eligibility for bidding and submission of bid shall be submitted separately in two sealed envelopes. The first envelope shall contain documents suitable in accordance with the requirements specified in the NIT; whereas the second envelope shall contain the financial bid, which shall be kept within the first envelope only. Rule 6(3)(b) says that for the purpose of the payment of 'auction amount' to the State Government, the bidder shall quote the amount lower than the standard ceiling price as per rupees per cubic meter specified for auction

(Reverse Auction) of the minerals to be extracted from the lease area and as per Rule 9(1)(d) (General Terms and Conditions for quarry and trade of minor mineral ordinary sand), the difference between the Ceiling Price and the lowest bid received, or a percentage as may be fixed by the Government, shall be paid by the lease holder to the Government as 'auction amount'.

14. The process of bidding is specified under Rule 6(4), which is extracted below for easy reference :

"(4) The process of bidding :-

(i) The Collector shall publish the notice in departmental website and regional newspaper and display on notice board office of the Collector / Gram Panchayat / Janpad Panchayat / Zila Panchayat and Local Urban Bodies concerned for inviting the auction (reverse auction) to initiate procedure of auction (reverse auction). Auction (reverse auction) documents issued by the collector shall contained as follows :

(a) The particulars of the areas (including the geographical coordinates i.e. latitude and longitude) emphasized and demarcated as per report of delimitation received from the respective Revenue Officer;

(b) Information regarding the mineral availability in the area.

(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 bidders submit the same bid quote, then the preferred bidder shall be selected through lottery process amongst them.

(v) If a single bid is received in auction (reverse auction) process, the competent authority shall have the power to extend more seven days <u>at the date appointed for submission of bids</u>. If a single bid remains even thereafter, the competent authority shall have the power to accept or reject it.

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

(vii) In case the bid is less than sixty percent of the ceiling price fixed, the Bid Security amount to be deposited shall be twice the amount of Bid Security.

(viii) If twice the amount of Bid Security is not deposited according to clause (vii), the submitted bid will be deemed to be defective and rejected.

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

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

15. On completion of the process of auction (Reverse Auction), the 'preferred bidder' shall deposit the Performance Security according to Rule 5 and on receipt of the same, the Sanctioning Authority shall issue a 'Letter Of Intent' to the preferred bidder as mentioned under Rule 7 of the Annexure-P/3 Rules, who is to be considered as successful bidder, subject to satisfaction of the conditions under sub-Rule (2) as given below :

> **"7. Order regarding grant of Quarry Lease.**
>
> (1) xxx xxx xxx
>
> (2) The preferred bidder shall be considered as successful bidder on fulfilment of the following conditions :-
>
> > (a) Compliance of the conditions relating to eligibility;
> >
> > (b) Submissions of all consents, approvals, no-objection and such documents as may be required under relevant laws relating to commencement of quarrying operations;
> >
> > (c) Submission of approved mining plan;"

On compliance of the above conditions under sub-Rule (2) of Rule 7, the Sanctioning Authority shall grant Quarry Lease to the successful bidder, as provided under sub-Rule (3) of Rule 7.

16. Unlike other / conventional tenders, in the case of tender by **Reverse Auction**, particularly, govered by Annexure-P/3 Rules framed and notified by the Government, it has to be strictly <u>in conformity with the said Rules</u>; which clearly state :-

- that it shall be subject to fixation of a ceiling price (here shown as Rs.92 per cu.m.), below which alone can a bidder submit his quote;
- that, no bidder shall be permitted to quote below fifty percent of the maximum ceiling (Rs.46 per cu.m., the maximum /ceiling stipulated being Rs.92 per cu.m.) as per Rule 6(4)(ix);
- that, if anybody quotes below fifty percent of the maximum / ceiling price, it will stand automatically rejected as per Rule 6(4)(x); and

- if a single bid is received in auction (Reverse Auction) process, the competent authority shall have the power to extend seven more days **'at the date'** appointed for submission of bids and if a single tender remains even thereafter, the competent authority shall have the power to accept or reject it.

17. The Respondents No.1 to 3 concede that both the Petitioner and the person by name Gopesh Jaisawal, who submitted the bids pursuant to Annexure-P/2 NIT, were technically qualified in all respects, on opening the technical bid. Only on opening the financial bid of the parties on 06.11.2019, it was noted that the Bid Security furnished by Gopesh Jaisawal (which was contained in the first cover) was only Rs.2.8 lacs and not adequate enough in tune with Rule 6(4)(vii) and hence his bid was rejected in terms of Rule 6(4)(viii). It is hence contended that only the tender of the Petitioner remained as a 'valid tender' and therefore, it was a case of 'single tender' attracting Rule 6(4)(v). Reference is also made to Clause 6.6 of the Annexure-P/2 NIT, which reads as follows :

> ''6.6 यदि नीलामी रिवर्स ऑक्शन में एक ही वैध बोली प्राप्त होती है तो बोली के लिए नियत तिथि में अतिरिक्त सात दिवस की वृद्धि का अधिकारी सक्षम प्राधिकारी को होगा और यदि पुनः एक ही बोली प्राप्त होती है, तो उसे स्वीकार करने का अधिकार सक्षम प्राधिकारी को होगा ।''

In the above context, the learned counsel submits that the tender means a 'valid tender' and since there was only one valid tender i.e. of the Petitioner, the Respondents No. 1 to 3 were justified in calling for more tenders, granting seven more days' time leading to Annexure-P/1 for promoting 'better competition' and to have it finalized accordingly. Since, the subsequent tenders received pursuant to Annexure-P/1 were all valid tenders, quoting the rock bottom rates by all, the names of all such tenderers including the Petitioner were put to lot, which course is specifically provided under Rule 6(4)(iv) of the Annexure-P/3 Rules {Clause 6.5 of Annexure-P/2 NIT} and hence there is nothing wrong.

18. It is true that Clause 6.6 of Annexure-P/2 NIT speaks about ''वैध बोली'' i.e. "valid tender", but this is actually <u>as on the last date for submitting the tender</u>; which is clearly discernible from Rule 6(4)(v) (extracted already). Since it is a statutory tender, the terms of the NIT have necessarily to be in conformity with the relevant Rules i.e. Rule 6(4)(v). If there is any doubt regarding the interpretation, normally, the interpretation of the author has to be given preference, <u>but here, it is a statutory contract governed by Annexure-P/3 Rules and hence what is envisaged under Rule 6(4)(v) is that what matters</u> and not the understanding of the author with reference to the clause notified by them in the tender. If there is any inconsistency between the clause in the tender notification and the Rules framed by the Government, the clause in the tender notification has to yield to the specific provision in the Rules. Obviously Rule 6(4)(v) does not mention anything with regard to validity of the tender or otherwise. The power of the competent authority to extend seven more days is specifically mentioned as **<u>at the date appointed for submission of bids</u>**. This does not envisage opening of any tender to see whether it is valid or not, but for stating that, even on the last date of the tender, if only one tender has been obtained, the last date for submission of the tender

could be extended by seven more days and that's all. This is discernible from the <u>next sentence</u> of the Rule [Rule 6(4)(v)], that if a single bid remains even thereafter, the competent authority shall have the power to accept or reject it.

19. Annexure-P/2 NIT has been issued by the 2nd Respondent / District Collector incorporating / adding the word ''वैध बोली'' (valid) in Clause 6.6, which is not there in Rule 6(4)(v) framed by the Government. Similar wording may not be there in the tender notification to be issued by the District Collectors of other districts, which may be strictly in conformity with Rule 6(4)(v). The role of the 2nd Respondent / District Collector is only to follow what the Rule framed by the Government says and nothing else.

20. For the time being, let us consider the mandate of the Clause 6.6 of the Annexure-P/2 NIT, treating it as to be a 'valid tender'. Even then, going by the very same tender notification, read and understood in the light of Rule 6(4)(v) of the Annexure-P/3 Rules, <u>it can only mean a 'valid tender' in respect of the technical bid</u>, as there cannot be any qualification with regard to the 'price' to be quoted, which is to be contained in a separate sealed cover. If it is below fifty percent of the Performance Security, it stands automatically rejected by virtue of Rule 6(4)(x). As pointed out already, Rule 6(2) of Annexure-P/3 Rules clearly stipulates that the documents relating to (i) eligibility for bidding; and (ii) submission of bid shall be submitted separately in two sealed envelopes. The 'first' one containing the documents as per requirements specified in the NIT and

the 'second' one containing the financial bid, which shall be kept within the first envelope only. Proof of satisfaction of the Bid Security is to be contained in the 'first' envelop, which contains such other documents as well. The Respondents concede that, on opening the technical bid, both the Petitioner and the person by name Gopesh Jaisawal were found as technically qualified. This being the position, there were two valid bids (''वैध बोली'') on opening the technical bids on 06.11.2019 and hence it is not a case of single tender.

21. The price bid, which is only to contain the rate / quote; is to be in the following 'Form' as revealed from Clause 8.0. The 'Form' given thereunder (of Annexure-P/2 NIT) is reproduced below :

''8.0 नीलामी (रिवर्स ऑक्सन) में भाग लेने हेतु वित्तीय बोली का प्रारूप :–

प्ररूप – 2

(बोलीदार द्वारा बॉल पाइंट पेन से ही भरा जाना होगा)

नीलामी (रिवर्स ऑक्सन) का इवेंट क्रमांक एवं दिनांक	रेत खदान समूह का नाम	वित्तीय बोली (प्रति घर मीटर में)	
		रूपये अंकों में	रूपये शब्दों में
		—————— —————— ——————	

बोली दिनांक ....

बोलीदार के हस्ताक्षर
नाम ....
पता ....
फोन नं./मोबा ....
ई–मेल आई.डी. ....''

It is always within the knowledge of the party who submitted the bid as to the rate quoted by him in the 'second' envelope and hence as to (requisite extent) the adequacy of the Bid Security; proof of which was submitted in the 'first envelope'.

22. Automatic rejection of the price bid (contained in the 'second' envelope) of the person by name Gopesh Jaisawal, without furnishing adequate Bid Security in terms of Rule 6(4)(vii), having quoted less than sixty percent of the maximum / ceiling of Rs.92 per cu.m., is a statutory consequence. The term "Bid" in Rule 6(4)(vii) and 6(4)(viii) is with specific reference to the 'price bid' and not w.r.t. the 'technical bid'. In other words, on the date of opening the price bids, there were two valid technical bids, but the price quoted by the other qualified bidder by name Gopesh Jaisawal was not liable to be accepted, because of Rule 6(4)(viii) and hence it was rightly rejected. Then, the only question is whether the Petitioner should have been declared as the 'preferred bidder' to proceed with further steps and to declare him as 'successful bidder' and award the contract (on meeting the requirements) or whether the Respondents are justified in invoking Rule 6(4)(v) extending the seven more days, inviting fresh bids and to have it considered for providing '**competition**' ?

23. By virtue of the powers conferred upon the Awarder / Government to annul the bid, as mentioned in Rule 6(4)(vi) of Annexure-P/3 Rules, at any stage, for reasons to be recorded in writing and as stipulated in Clause 6.7 of Annexure-P/2 NIT conferring power upon the 2nd Respondent to reject the tender and by virtue of the settled law, there is no vested right for anybody till the tender is accepted and awarded. It is always open for Awarder of the tender to go for fresh tender to promote 'competition'. The question is whether any such course is warranted in

the instant case or in other words, any better instance of competition / quote can be thought about by the Government in the given facts and circumstances, but for the tender quoted by the Petitioner ?

24. As revealed from the materials on record and as discussed already, Annexure-P/3 Rules dealing with the 'Reverse Auction' clearly stipulate that the maximum / ceiling amount shall be prescribed by the District Collector and it stands specified as Rs. 92 per cu.m. in Annexure-P/2 NIT, below which alone will a bidder be permitted to quote. Similarly, by virtue of Rule 6(4)(ix) of Annexure-P/3 Rules, nobody can quote below fifty percent of the maximum / ceiling price i.e. below Rs. 46 per cu.m., which is fifty percent of the maximum / ceiling price of Rs. 92 per cu.m. The price bid submitted by the Petitioner is admittedly Rs. 46 per cu.m. i.e. exactly fifty percent of the ceiling price, below which nobody can submit a quote. If anybody quotes below this amount, it will be automatically rejected, by virtue of the mandate under Rule 6(4)(x) of Annexure-P/3 Rules. This being the position, even though it is permissible for the Awarder of the contract to go for fresh tender to promote competition, the instant case, governed separately as per Annexure-P/3 statutory Rules stands on a different pedestal and no better quote than that of the Petitioner can ever be expected by the Respondents, at any time; it being the rock bottom rate, below which nobody can quote as per the Rules. In the said circumstance, it is not at all correct or proper for the 2nd Respondent to have ignored the valid and the most competitive quote given by the Petitioner at the rock bottom rate of fifty percent of the ceiling price and to go for fresh tender vide

Annexure-P/2 NIT. The entire difference between Rs. 92 and 46 = Rs.46 per cu.m. or such other amount as to be decided by the Government was to go to the State Exchequer as the 'auction amount' in terms of Rule 9(1)(d) of Annexure-P/3 Rules. This being the position, the course pursued by the 2nd Respondent in issuing Annexure-P/1 NIT dated 13.11.2019 is thoroughly wrong, arbitrary and without proper application of mind.

25. The Petitioner has got a specific case that, after rejecting the bid of the person by name Gopesh Jaisawal pursuant to Annexure-P/2 NIT {despite his submitting a 'valid technical bid', but for not depositing the Bid Security in terms of Rule 6(4)(viii)}, the 2nd Respondent issued Annexure-P/1 NIT dated 13.11.2019 and accepted a fresh bid from the said person as well and he was also permitted to participate in the tender, which was stated as continuation of Annexure-P/2. By virtue of said course, the rejected bidder was indirectly made eligible to participate in the very same tender proceeding, which is clearly contrary to Clause 6.8 of Annexure-P/2 tender, which is re-produced below :

> ''6.8 बोलीदार नीलामी हेतु अंतिम तिथि (बिड ड्यू डेट) तक अपनी पूर्व में प्रस्तुत की गई बोली में किसी प्रकार का संशोधन नहीं कर सकेगा ।''

This is not satisfactorily answered anywhere by the Respondents No.1 to 3 in their return and the factum of the rejected bidder's participation stands admitted.

26. It is submitted by the learned counsel representing the State and also the learned counsel representing the 4th Respondent that, though the person

by name Gopesh Jaisawal, whose bid was rejected earlier, was permitted to participate and his name was put in the lot, he could not succeed and the lot has been drawn in the favour of the 4th Respondent (father of Gopesh Jaisawal) and hence no prejudice has been caused to the Petitioner. This Court finds it difficult to accept the said proposition; firstly for the reason that the issuance of Annexure-P/1 NIT dated 13.11.2019 was bad as held already; secondly, by virtue of Clause 6.8 of Annexure-P/2 NIT, a bidder will not be permitted to vary the contents of the bid in any manner; which has been virtually re-written or watered down and the rejected bidder has been permitted to contest for the very same tender in an indirect manner and hence it is quite prejudicial to the interest of the Petitioner. That apart, when an ineligible person is also permitted to participate in a draw, the 'percentage of luck / success rate' is reduced and hence it is definitely prejudicial in all respects.

27. It may be possible for the Respondents / Government to contend that, on inviting more tenders, more competitive bids may be obtained, by virtue of which the revenue payable to the Government will get naturally augmented. This is because as per the Rule 9(d) of the Annexure-P/3 Rules, the difference between the Ceiling Price and the bid quoted by the preferred bidder, who subsequently becomes successful bidder in the 'Reverse Auction' would go through State exchequer. If a person quotes any amount below the maximum / ceiling price, but above fifty percent, it is possible to contend that there may be a chance to get a better quote. But in the given case, the Petitioner has quoted the rock bottom price at exactly fifty percent of the ceiling i.e. Rs.46 per cu.m.; below which

nobody can quote, by virtue of statutory bar under Rule 6(4)(ix) of Annexure-P/3 Rules. This being the position, under no circumstance, can there be a better bid, even on inviting more tenders and no prejudice is caused to the Revenue in any manner, as nothing more can be expected than the maximum extent / differential amount of Rs.46 per cu.m. to be the 'auction amount' payable to the Government. For this reason also, the course pursued by the Respondents/State is not liable to be sustained.

28. This is a case where the Petitioner has pleaded and demonstrated the arbitrariness, perversity and non-application of mind on part of the Respondent concerned in finalizing the tender in question. When the law says a matter is to be done in a particular manner, it shall be done only in that manner and not in any other manner. This is the dictum laid down by the Apex Court in ***Mohindra Singh Gill & Another vs The Chief Election Commissioner, New Delhi & Ors.***[6]**.** The Respondents have deviated from the field occupied by Annexure-P/3 Rules, with regard to the course of action to be pursued in respect of the tender by '**Reverse Auction**' as notified by Annexure-P/2 and has virtually permitted the forbidden entry to the lost participant by name Gopesh Jaisawal, even after rejection of his bid and ignoring the mandate of Clause 6.8 of Annexure-P/2 NIT. The decision making process is *per se* wrong, arbitrary and perverse, without proper application of mind and is liable to be interdicted.

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[6] AIR 1978 SC 851

29. In the above facts and circumstances, we hold that Annexure-P/1 Notification dated 13.11.2019 is not sustainable, either on facts or in law and it is set aside. As a natural consequence, the proceedings of the 2nd Respondent, declaring the 4th Respondent as the 'preferred bidder' pursuant to Annexure-P/1 Notification dated 13.11.2019 also stands set aside. In view of the declaration and finding that there cannot be any better competition than the quote offered by the Petitioner, giving the rock bottom price of Rs.46 per cu.m., which is exactly fifty percent of the maximum / ceiling in terms of Rule 6(4)(ix), below which nobody can quote (which otherwise will lead to automatic rejection of the price bid in terms of Rule 6(4)(x) of Annexure-P/3 Rules), the 2nd Respondent is directed to pass appropriate orders for declaration of the Petitioner as the 'preferred bidder' in terms of Annexure-P/3 Rules and the relevant Clauses in Annexure-P/2 NIT, taking the proceedings to a logical conclusion; which shall be done as expeditiously as possible, at any rate, within one month from today.

30. The writ petition stands allowed. No costs.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Chandra