

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 41 of 2022

Banamali Mishra

.....

Petitioner

Mr. S.S. Rao, Adv.

Vs.

**Collector-cum-Chairman, Balangir
and others**

.....

Opposite parties

Mr. P.P. Mohanty, Adv.(O.P.Nos.1 and 3)

Mr. S.K. Mishra, Adv. (O.P. No.2)

Mr. D. Mohapatra, Adv. (Intervenor)

Mr. A.K. Biswal, Adv. (Intervenor)

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

21.04.2022

Order No.

07.

This matter is taken up through hybrid mode.

2. Heard Mr. S.S. Rao, learned counsel appearing on behalf of Mr. H.S. Mishra, learned counsel for the petitioner; Mr. P.P. Mohanty, learned Addl. Government Advocate for opposite parties nos.1 and 3; Mr. D. Mohapatra, learned counsel for the intervenor and Mr. A.K. Biswal, learned counsel for the intervenor.

3. In reply to the query made by this Court on 11.04.2022, Mr. S.K. Mishra, learned counsel for opposite party no.2 stated that as a matter of principle, whenever the Collector is not available, even though he is the Chairman, the Addl. District Magistrate, can hold the auction pursuant to the instructions issued by the Corporation.

4. But fact remains, if power has been delegated to the Collector, he cannot sub-delegate the same to the Addl. District Magistrate and, as such, the committee, which has been constituted headed by the Addl. District Magistrate for the process of selection, is absolutely without jurisdiction, in view of principles decided in **Taylor V. Taylor**, (1875) 1 Ch. D. 426 that “where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.” The

said principles have been followed subsequently in *Nazir Ahmed v. King Emperor*, AIR 1936 PC 253, *State of Uttar Pradesh v. Singhara Singh*, AIR 1964 SC 358, *Dhananjay Reddy v. State of Karnataka*, AIR 2001 SC 1512, *Chandra Kishore Jha v. Mahabir Prasad*, AIR 1999 SC 3558, *Gujrat Urja Vikas Nigam Ltd. v. Essar Power Ltd.*, AIR 2008 SC 1921, *Ram Deen Maurya v. State of U.P.*, (2009) 6 SCC 735.

5. In the above view of the matter, the selection process, having been done by an incompetent authority, is without jurisdiction. Accordingly, the same is hereby quashed and the matter is remitted back to the Collector, Bolangir-cum-Chairman District Tender Committee with a direction to conduct the tender process from the stage of opening of technical bid.

4. With the aforesaid observation and direction, the writ petition stands disposed of.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Ashok/Bichi