ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 7051 OF 2022

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

Dillip Kumar Sahoo	.....	Petitioner
	-Versus-	
State of Odisha and others	.....	Opp. Parties

For Petitioner	:	M/s. S.S. Rao, L. Raj K and B.K. Mohanty, Advocates.
For Opp. Parties	:	Mr. P.P. Mohanty, Addl. Government Advocate. (O.P. Nos. 1 to 3)
		Mr. Sankar Prasad Pani, Advocate (O.P. No.4)

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HON'BLE MISS JUSTICE SAVITRI RATHO

Date of hearing & judgment: 09.05.2022

DR. B.R. SARANGI, J. The petitioner, being the 2nd highest bidder, by means of this writ petition, seeks direction to opposite party no.3 to issue "Intimation to Successful Bidder" in his favour in terms of Rule 27(9) of the Odisha

Minor Mineral Concession Rules, 2016, in respect of Pankapal-II Sand Quarry, as the highest bidder could not be able to deposit the security amount in due time.

2. The factual matrix of the case, in brief, is that a notice bearing no. 4029 was issued on 31.12.2021 by opposite party no.3 inviting applications from the intending bidders to participate in the auction of different Sand Quarries, including Pankapal-II Sand Quarry (Bramani River Sand Belt) of Mouza-Pankapal, Khata No.224, Plot No. 1089, Area Ac. 12.30 for a period of five years under the provisions of Odisha Minor Mineral Concession Rules, 2016 (for short "OMMC Rules, 2016") and Odisha Minor Mineral Concession (Amendment) Rules, 2017. The details of the Sairat Sources, which were notified to put to auction are given hereunder:-

SL. No	Sairat Case/Year	Sairat Source Name	Mouza	Khata No.	Plot No.
1.	01/2021	Digambarpur Balighat	Digambarpur	68	407
2.	02/2021	Pankapal-I Balighat	Pankapal	224	1089
3.	03/2021	Pankapal-II Balighat	Pankapal	224	1075

2.1 Pursuant to the said notice, the petitioner made his application in Form-M, as prescribed under Rule 27 (4) of the OMMC Rules, 2016, for grant of quarry lease by submitting all the necessary supporting documents, besides depositing the requisite fees, and participated in the auction process.

2.2 There were all total eight applicants for Pankapal-II Sand Quarry. The details of the applicants, the rate quoted by them towards additional charges and their position in the tender are as follows:-

Sl. No	Name	Amount	Position
1.	Jayanta Ku. Jena	612	7th
2.	Satya Sundar Pal	Cancelled due to deficiency in documents	
3.	Dillip Kumar Sahoo	1855 (H2)	2nd
4.	Gyana Ranjan Mohapatra	729	5th
5.	Sribacha Mohapatra	638	6th
6.	Laxmidhar Jena	1215	3rd
7.	Daitari Dhal	2401 (H1)	1st
8.	Hemanda Sahoo	1009	4th

2.3 The tender was opened on 18.01.2022 for all the sand quarries. Opposite party no.4 was declared as the successful bidder considering his highest bidding amount of Rs.2401/- (H1) for Pankapal-II sand quarry

(Bramani River Sand Belt) of Mouza-Pankapal, Khata No.224, Plot No. 1089, Area Ac. 12.30. As a consequence thereof, opposite party no.3 issued Intimation to Successful Bidder under Form-F bearing No. 255 dated 19.01.2022. The petitioner was found to be the 2nd highest bidder (H2) for Pankapal-II sand quarry with a bidding amount of Rs.1855/-, which is close to the successful bidder.

2.4 On receipt of "Intimation to Successful Bidder" opposite party no.4 was to deposit a sum of Rs.42,51,872/- towards security deposit as prescribed under Rule 27 (7) of the OMMC Rules, 2016 within a period of 15 days, i.e. before 03.02.2022. In the Intimation to Successful Bidder (ISB), it was specifically required that "*proof of deposit of the aforesaid amount along with acceptance should reach the undersigned within fifteen days of the date of issuance of this letter failing which this intimation shall stand automatically revoked without any further notice and the earnest money shall stand forfeited*". Instead of depositing such amount within the time specified, opposite party no.4 sought extension of time. Accordingly, opposite party no.3 granted 10 days time to opposite party no.4, to comply with the terms and conditions of deposit. At this point of time, the present petitioner, being the 2nd highest bidder, approached this Court claiming that since the highest bidder, i.e. opposite party no.4 could not deposit the amount within 15 days, his bid ought to have been cancelled and the petitioner should have been allowed to operate the quarry as per the bid submitted by him.

2.5. While entertaining this writ petition, this Court passed an interim order on 21.03.2022 in I.A. No. 3550 of 2022 to the effect that no 3rd party interest would be created in respect of source in question till 30.03.2022. The said interim order was subsequently extended vide orders dated 31.03.2022, 08.04.2022, 18.04.2022 and 27.04.2022. In the meantime, the opposite parties no.2 and 4 have filed their counter affidavits.

2.6 Opposite party no.2 in the counter affidavit has specifically stated that opposite party no.4 had deposited the amount in question within the extended period of 10 days, which was duly acknowledged by the authority. It is also stated that the petitioner had quoted a sum of Rs.1855/- as additional charges per cubic meter of sand, whereas opposite party no.4 had quoted a sum of Rs.2401/-. Thereby, there was a difference of Rs.546/- between the additional charges quoted by opposite party No.4 and the petitioner. In the event the quarry is allotted in favour of the petitioner, then the government will lose revenue of Rs.44,38,920/- in one year, totaling to Rs.2,21,94,600/- in five years. In such circumstance, since opposite party no.4 had deposited the amount within the extended period, no right can be accrued in favour of petitioner to allot the sand quarry in question in his favour and, as such, the claim of the petitioner cannot sustain.

3. Mr. S.S. Rao, learned counsel appearing for the petitioner vehemently contended that if opposite party no.4 could not deposit the security amount within the time specified, then right accrued in favour of the

petitioner, pursuant to Rule 27 (9) of the OMMC Rules, 2016 and, as such, the sand quarry should have been settled in his favour. Instead of doing so, the Tahasildar, Danagadi extended the time to deposit the security amount, which is not within his jurisdiction, thereby, the acceptance of security amount within the extended period cannot also sustain. Therefore, the petitioner seeks for direction to opposite party no.3 for allotment of the sand quarry in question in favour of the petitioner.

4. Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State opposite parties vehemently contended that no right can be accrued in favour of the petitioner, unless the provisions contained in Rule-27(7) are fully complied. If from the date of intimation, opposite party no.4 was not able to deposit the security amount within the time stipulated and sought for extension of time and within the extended period he deposited the security amount of Rs.42,51,872/-, in that case he has complied the statutory provision and cannot be considered as a

defaulter. In the event of default by the selected bidder, the competent authority may issue intimation, as specified in sub-rule (6), to the next highest bidder, who shall then be required to convey his acceptance and to make the security deposit calculated in the manner mentioned in sub-rule (7). As such, no such intimation has also been issued to the petitioner. In view of the above, no right can be accrued in favour of the petitioner to claim such benefit. As a consequence thereof, the writ petition merits no consideration and the same is liable to be dismissed.

5. Mr. Sankar Prasad Pani, learned counsel appearing for opposite party no.4 contended that after the intimation was issued under Rule 27(7) of the OMMC Rules, 2016, opposite no.4 sought extension of time to deposit the security amount. As a consequence thereof, on consideration of the same, competent authority extended 10 days time, by which time opposite party no.4 deposited the amount. Thereby, no right can be accrued in favour of the petitioner to claim that he being the 2nd

highest bidder, the sand quarry in question should be settled in his favour and, as such, Rule 27(9) of the OMMC Rules 2016 has not yet come into play so as to extend the benefit in favour of the petitioner. Thereby, the claim of the petitioner cannot sustain in the eye of law and, accordingly, the writ petition, at the instance of the petitioner, should be dismissed.

6. This Court heard Mr. S.S. Rao, learned counsel appearing for the petitioner; Mr. P.P. Mohanty, learned Additional Government Advocate appearing for State-opposite parties no.1 to 3; and Mr. S.P. Pani, learned counsel appearing for opposite party no.4 by hybrid mode, and perused the records. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

7. Before delving into the merits of the case, let us examine the rudiment of law governing the field:-

In ***Cresswell on Building Contractors***, 1954 Ed., p.27, it is enlightened that tender is an offer. It is something which invites, and is intended to invite acceptance. Sometimes, in the case of large contracts a list is prepared, tabulated, and shows the name of all contractors who have tendered; and opposite each name, the total price tendered and also any observations made by the contractor or any peculiar conditions which the contractor wishes to govern his execution of the work, are stated.

In ***Meerut Development Authority v. Assn. of Management Studies***, (2006) SCC 171, the apex Court held as follows:-

> *"A 'tender' is an offer. It is something which invites and communicates to notify acceptance. Broadly stated it must be unconditional; must be in proper form, the person by whom tender is made must be able to and willing to perform his obligations. The invitation of tender is in the realm of contract."*

The terms of a contract should be interpreted and their legal effect determined as a whole. A word, phrase, sentence or a whole clause must be considered along with all the other words by which it is surrounded; and also along with-

(1) The history and education of the user,
(2) The nature of the business in hand,
(3) The purpose of the parties to the transaction, and
(4) The other relevant circumstances.

The intention of the parties should be collected from the instruments as an entirety. Disproportionate emphasis must not be laid upon a single provision. Word, phrase and clauses should not be isolated, but related to the context and the contractual scheme, as a whole, and given the meaning which accords with the probable intention.

Therefore, under the law of contract the term tender means a tender of performance or offer of performance of contract. It is also used to mean a quotation or an offer, just like an auction bid. The contract becomes complete when a tender is accepted by the party who had invited the tender.

8. On the basis of the facts, as narrated above, there is no dispute that a notice was issued by opposite party no.3 on 31.12.2021 inviting interested bidders to

participate in the auction of Pankapal-II sand quarry (Bramani River Sand Belt) of Mouza-Pankapal, Khata No. 224, Plot No. 1075 for an area of Ac.12.30 dec, for a period of five years. In response to the same, 8 (eight) bidders participated and of them opposite party no.4, having quoted Rs.2401/- as the additional charges per cubic meter of sand, became the highest bidder, whereas the petitioner, having quoted Rs. 1855/- as the additional charges per cubic meter of sand, became the 2nd highest bidder. Thus, there was difference of Rs.546/- between the additional charges quoted by opposite party no.4-highest bidder and the petitioner-2nd highest bidder. It is also not in dispute that from the date of intimation, opposite party no.4 was not able to deposit the security amount within the time stipulated and sought for extension of time and within the extended period he deposited the security amount of Rs.42,51,872/-. In such eventuality, whether the selected bidder-opposite party no.4 can be treated as a defaulter and intimation can be issued to the 2nd highest bidder, i.e., the petitioner herein.

This is the short question which is required to be decided in this writ petition.

9. For a just and proper adjudication of the case, the relevant rules of OMMC Rules, 2016, are quoted hereunder:-

"Rule 27. Grant of Lease:-

xxx xxx xxx

(5) Subject to the provisions of these rules, the quarry 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.

(6) The selected bidder shall be intimated by the Competent Authority within seven days in Form-F about the selection and terms and conditions of the lease.

(7) Within fifteen days of such intimation, the selected bidder shall be required to convey his acceptance of the terms and conditions and to deposit an amount which shall be calculated in such a way that it shall be equivalent to one-fourth of the total amount of royalty and additional charge and the amount of contribution payable to the District Mineral Foundation on the annual minimum guaranteed quantity, taken together, reduced by the amount of earnest money, which, along with the earnest money, shall be held as interest-free security deposit.

xxx xxx xxx

(9) In the event of default by the selected bidder, the Competent Authority may issue intimation as specified in sub-rule (6) to the next highest bidder who shall then be required to convey his acceptance and to make the security deposit calculated in the manner mentioned in sub-rule (7).

(10) If the second highest bidder has quoted unusually low price in comparison to the highest bidder of the same source or other sources in the vicinity, the competent authority may bring it to the notice of the Controlling Authority, who after proper verification and with due justification may cancel the bid and direct for fresh auction."

10. As per Rule 27(5), the quarry lease was to be granted in favour of the applicant quoting highest rate of additional charges. Admittedly, opposite party no.4 had quoted Rs. 2401/- as the additional charges and he, being the highest bidder, was selected and intimated by the competent authority within seven days in Form-F about his selection and the terms and conditions of the lease, which were to be complied with by opposite party no.4. As required under Rule 27(7) of the OMMC Rules, 2016, within a period of fifteen days of such intimation, the selected bidder was required to convey his acceptance of the terms and conditions and to deposit the amount to be calculated in such a way that it would be equivalent to one-fourth of the total amount of royalty and additional charge and the amount of contribution payable to the District Mineral Foundation on the annual minimum guaranteed quantity, taken together, reduced by the

amount of earnest money, which, along with the earnest money, would be held as interest-free security deposit.

11. On receipt of such intimation, opposite party no.4 sought extension of time to deposit the amount, which was considered and 10 days time was allowed to deposit such amount. As such, opposite party no.4 deposited the security amount within the extended time granted to him. As a consequence thereof, opposite party no.4, who was the selected bidder, having complied with the terms and conditions, the source was to be settled in his favour. But the petitioner contended that the highest bidder, i.e., opposite party no.4, having not complied with the statutory requirements by depositing the security amount within 15 days from the date of intimation, no right has been accrued in his favour to deposit the same within the extended time, as because the Tahasildar has no jurisdiction to grant such extension of time to opposite party no.4. Such a contention cannot sustain in the eye of law, the reason being, the competent authority, with whom the power has been vested, if realizes that due to

some difficulty the successful bidder could not deposit the money within the time specified and extension of time is sought by him, in that case, if extension of time is granted and within the extended period the successful bidder deposited the money, it cannot be said that the authority has no jurisdiction to pass an order to that extent. The extension of time was granted for the purpose of saving revenue loss to the government and, as such, if the time would not have been extended, then the government would have sustained heave loss. As such the letter dated 03.02.2022 clearly reveals that the Tahasildar, Danagadi had extended the period for 10 days, to save the revenue of the Government. It is also well settled principle of law laid down by the apex Court that the authority, which has got the power to pass final order, has got the power to pass an interim order also. Thereby, by extending 10 days time, as an interim measure, no illegally or irregularity has been committed by the authority concerned in granting extension of time to opposite party no.4.

12. It is of relevance to mention here, that no right is accrued in favour of the petitioner, as he has not been intimated by the Tahasildar with regard to default of the selected bidder in compliance of Rule 27 (9) of the OMMC Rules, 2016, which clearly mandates that in the event of default by the selected bidder, the competent authority may issue intimation, as specified in sub-rule (6), to the next highest bidder. Therefore, the claim of the petitioner cannot sustain, since no right is accrued in his favour, in accordance with Rule 27(9) of the OMMC Rules 2016. More so, he has quoted unusually low price in comparison to the highest bidder. That means, there is a difference of Rs.546/- between the rate of additional charges quoted by the petitioner and opposite party no.4.

13. In that view of the matter, this Court does not find any justification to grant the relief sought by the petitioner, who is admittedly the 2nd highest bidder, pursuant to the auction notice issued by opposite party no.3. As opposite party no.4 has already complied with

the terms and conditions specified in the intimation itself, the writ petition merits no consideration.

14. In the result, the writ petition stands dismissed. Consequentially, the interim order, which was granted on 21.03.2022 and extended from time to time, stands vacated. No order as to costs.

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DR. B.R. SARANGI,
JUDGE

SAVITRI RATHO, J. I agree.

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SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 9th May, 2022, Arun/GDS