**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P (C) No. 5021 of 2022**

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| ***Prasant Kumar Patra*** | ….. | ***Petitioner*** |
| | | *Mr. G. Mishra, Adv.* |
| | Vs. | |
| ***Tahasildar, K. Nuagaon and others*** | ….. | ***Opposite parties*** |
| | | *Mr. T.K. Pattnaik, ASC* |

**CORAM:**
**DR. JUSTICE B.R. SARANGI**
**MISS JUSTICE SAVITRI RATHO**

**ORDER**
**05.04.2022**

**Order No.** 02.

This matter is taken up through hybrid mode.

2. Heard Mr. Gopinath Mishra, learned counsel for the petitioner and Mr. T.K. Pattnaik, learned Addl. Standing Counsel.

3. The petitioner, who claims to be the holder of the auction conducted on 11.04.2018 by opposite party no.1-Tahasildar, K. Nuagaon, Kandhamal, having not been allowed to operate the sand quarry, has filed this writ petition seeking to quash the order dated 18.12.2019 passed by the Collector, Kandhamal, Phulbani under Annexure-5 under Rule 27 (16) of OMMC Rules, 2016, as well as the order dated 30.11.2021 passed by the Revenue Divisional Commissioner, Berhampur vide Annexure-6 confirming the order passed by the Collector, and to issue direction to opposite party no.3 to permit him to operate the quarry lease for five years from the date of actual operation.

4. Mr. Gopinath Mishra, learned counsel for the petitioner contended that the petitioner was granted with the sand quarry lease, namely, Kudutali sand quarry of Nuagaon Tahasil for the

year 2018-19 to 2022-23 for an area of 5 Hec. Accordingly, on being called upon, he executed the lease agreement vide Annexure-3 dated 30.04.2018 for a period of five years. But in spite of the agreement executed by the petitioner, he was not allowed to operate the quarry. Therefore, the petitioner approached the Tahasildar seeking permission to operate the quarry. As a consequence thereof, clarification was sought by the Tahasildar, vide letter dated 24.08.2018 addressed to Addl. Magistrate, Kandhamal. But the Collector, vide order dated 18.12.2019, cancelled the quarry leased granted in favour of the petitioner, by contending that the entire bid process of finalization of Bagada sand bed and Kudutuli sand bed, which was settled in favour of the petitioner, was null and void and it was done violating OMMC Rules, 2016, and further instructed the Tahasildar to go for a fresh advertisement for lease of the above sources. Against the said order, though the petitioner preferred appeal bearing OMMC Appeal No.02 of 2021 before the R.D.C., Berhampur, but the appellate authority confirmed the order passed by the Collector, vide order dated 30.11.2021 under Annexure-6. Hence this writ petition.

5. Mr. T.K. Pattnaik, learned Addl. Standing Counsel contended that the lease having been executed without following the procedure as envisaged under Rule-27 of Odisha Minor Minerals Concession Rules, 2016, when clarification was sought by the petitioner, the Collector, after applying its mind held that the entire bid process of finalization of Bagada sand bed and Kudutuli sand bed was null and void, as it was done violating the OMMC Rules, 2016, and accordingly directed the Tahasildar to

go for a fresh advertisement for lease of the sources. Against the order passed by the Collector, the petitioner preferred appeal before the R.D.C., Berhampur, who confirmed the order passed by the Collector. Thereby, no illegality or irregularity has been committed by the authorities in passing such orders, so as to warrant interference of this Court.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that, so far as Bagada and Kudutuli sand beds are concerned, no advertisement was issued by the authority inviting bids from the intending bidders. As such, without doing so, the Tahasildar, K. Nuagaon had issued Form-F under Annexure-1 dated 11.04.2018 in favour of the petitioner to execute the lease deed. Pursuant thereto, Annexure-3 was executed in favour of the petitioner which itself is contrary to the OMMC Rules, 2016. The Tahasildar, who is a Class-I responsible Revenue Officer, should not have acted de hors the OMMC Rules, 2016.

7. Chapter-IV of Odisha Minor Minerals Concession Rules, 2016 prescribes the procedure for grant of quarry lease. Rule-27 thereof, being relevant for the purpose of this case, is extracted hereunder:-

> *"27. **Grant of quarry lease**:— (1) The area of the quarry lease shall be delineated and notification inviting application(s)for grant of quarry lease(s) through auction shall be published in two daily newspapers, at least one of which shall be a State level and other having wide publicity in the area, where the lease is located and such notification shall be published at least fifteen days before the intended date of inviting applications and shall contain the date and*

*time within which applications shall be received.*

*(2) The notice inviting applications for grant of quarry lease shall be issued by the Competent Authority and shall specify the minimum guaranteed quantity of the minor mineral to be extracted in a year by the applicant and the minimum amount of additional charge payable for the same as determined under sub-rule (14).*

*(3) In case the mining plan or Environment Clearance for the proposed lease has been obtained by the Competent Authority, this fact, along with the cost of obtaining thereof shall be recoverable from the selected bidder which shall also be mentioned in the notice.*

*(4) Subject to other provisions of these rules for settlement of quarry lease, the intending applicant may apply to the Competent Authority in a sealed cover for grant of quarry lease for such area or areas in Form-M in triplicate accompanied by the following documents and particulars, namely:—*

*(i) Treasury challan showing deposit of one thousand rupees (non-refundable) towards the application fee;*

*(ii) An affidavit stating that no mining due payable under the Act and the rules made thereunder, is outstanding against the applicant;*

*(iii) Proof of payment of earnest money equivalent to five percentum of the minimum amount of additional charges specified in the notice and the amount of royalty, both calculated on the basis of minimum guaranteed quantity for one whole year for the minimum guaranteed quantity of minor mineral to be extracted in one full year; and*

*(iv) a solvency Certificate or Bank guarantee valid for a period of eighteen months for an amount not less than the amount of additional charge offered and the royalty payable for the minimum guaranteed quantity for one whole year and a list of immovable properties from the Revenue Authority.*

*(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.*

*(8) The selected bidder shall also deposit the costs of obtaining the mining plan and environmental clearance approvals, in case those have been obtained by the Competent Authority (non-refundable) before executing the lease deed.*

*(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.*

*(11) If the second highest bidder does not convey the acceptance within the time stipulated for such*

*acceptance, or if the Controlling Authority has cancelled the bid under sub-rule (10), fresh notice inviting application for grant of quarry lease shall be issued with the approval of the next higher authority.*

*(12) Immediately after compliance of the foregoing provisions by the selected bidder, the earnest money of the unsuccessful bidders shall be refunded and the bank guarantees, if any, furnished by them, shall stand discharged.*

*(13) The selected bidder shall be required to execute quarry lease in Form-N within three weeks from the date of intimation of his selection, if the approval of the mining plan and environment clearance has been obtained before auction, and in other cases, three months from the date of intimation, failing which, the intimation shall stand cancelled and the security deposit shall stand forfeited:*

*Provided that the Controlling Authority may, for genuine and sufficient reasons, extend the said period, if it is satisfied that the delay in execution of lease deed is not due to reasons attributable to the selected bidder.*

*(14) Security deposit shall be refunded after expiry of the lease period if the lessee has fulfilled all conditions of lease and in case of violation of any of the conditions of lease, the security deposit shall be forfeited in whole or in part by the Competent Authority.*

*(15) The minimum amount of additional charge to be quoted shall be such as the Competent Authority, in consultation with the Controlling Authority, decide and specify in the notice inviting applications for grant of quarry lease:*

*Provided that the minimum amount of additional charge so fixed should not be less than 5% of the rate of royalty.*

*(16) The Collector or 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.*

*(17) Where the lessee, who has quoted the highest*

> *rate of additional charge, dies after deposit of the amount specified under rule 42 or after execution of lease deed by him, such deposit or deed shall be deemed to have been made or executed by the legal heir or legal representative, if they so like."*

8. The above being the procedure prescribed for grant of quarry lease, nothing has been placed on record to indicate that the Tahasildar has adhered to Rule-27 of Rules, 2016 by inviting applications for grant of quarry lease by publishing the same in two daily newspapers and other procedures as prescribed therein. If there was non-compliance of the provisions contained in the Rules itself, being a statutory authority, the Tahasildar could not have called upon the petitioner as per Rule-10(11), 16(9) and 27(6) of OMMC Rules, 2016 considering him as a successful bidder. More so, the Tahasildar - N. Naik, of K.Nuagaon Tahasil, who was holding the office at the relevant time, also executed the lease agreement, as per Rule-27(13) in the prescribed Form-N, with the petitioner. But nothing has been indicated that the petitioner, being a successful bidder, the Tahasildar has executed the lease with him as the representative of the Governor of Odisha. The said Tahasildar, namely, N. Naik, was transferred after executing the quarry lease on 30.04.2018. Thereafter, when the subsequent Tahasildar joined, the petitioner made request to permit him to operate the quarry lease, but he made a query about the issue and sought clarification, vide letter dated 24.08.2018, from the Addl. District Magistrate, Kandhamal. In response to the same, the Collector, Kandhamal on 18.12.2019 passed the following orders:-

> *"With reference to the subject cited above, I am to inform you that after careful Examination of the*

*records/documents submitted by you, the following discrepancy/defects are notices that-*

- *Advertisement regarding auction of sairat sources have not been done property as per OMMC Rule,2016.*
- *As per OMCC Rule, 2016, the intending applicant should apply to competent authority in a sealed cover for grant of quarry lease in from – M in triplicate. But, here open tender was done which is violating OMCC Rule.*
- *No separate application fee of Rs. 1000/- has been submitted by intending applicant for tow sources.*
- *No proof of payment of earnest money.*
- *No. solvency certificate submitted by applicant.*

*Therefore, in exercising the power conferred in Rule 27(16) of OMCC Rule,2016, I am to declare the entire bid process of finalization of Bagada sand bed and kudutuli sand bed as "NULL & VOID" as it has been done violating the guideline of OMCC Rule,2016. You are further instructed to go for a fresh advertisement for lease of the above sources."*

9. The reasons, which have been assigned in the order of the Collector, clearly indicate that no advertisement was issued with regard to auction of sand sairat in question, as per OMMC Rules, 2016. More so, as per OMMC Rules, 2016, the intending applicants were to make application to the competent authority in sealed cover for grant of quarry lease for a particular area or areas in Form-M in triplicate accompanied by the relevant documents. But here in this case no treasury challan was filed by the intending applicants and that too no proof of payment of earnest money and solvency certificate or bank guarantee were furnished. As a consequence thereof, the settlement of the sand sairat in question

was declared as null and void, being violative of the OMMC Rules, 2016, and direction was issued to the Tahasildar to go for fresh auction by making advertisement. Against the said order, the petitioner preferred appeal under Section 46 of OMMC Rules, 2016 before the appellate authority, who confirmed the order passed by the Collector and rejected the claim of the petitioner on the ground of limitation. Thereby, this Court does not find any justification to interfere with such orders passed under Annexures-5 and 6 by the Collector as well as the appellate authority respectively, which are hereby upheld.

10. While parting with the case, this Court thinks it apposite to mention that Tahasildars, who are authorities of the Revenue Department at the grassroots level are very often acting arbitrarily and unreasonably in settling the sources at their sweet will in favour of certain persons, who are even not eligible, as has been done in the present case. Here, the petitioner was not a participant to the auction, but the quarry was settled in favour of him by the Tahasildar-N. Naik of K.Nuagaon Tahasil, which was found by the Collector, Kandhamal, pursuant to a query made by the subsequent Tahasildar who succeeded Mr. N. Naik for grant quarry lease in question.

11. In view of such position, this Court is of the considered view that the erring officers should be dealt with in accordance with law for dereliction in duty, as they are not discharging their responsibility in accordance with rules applicable. Therefore, to avoid recurrence of such type of incident in future, this Court thinks it just and proper to request the Chief Secretary, Govt. of

Odisha or any other officer not below the rank of Additional Secretary to the Government authorized by him to enquire into the matter and pass appropriate order, by starting a proceeding against the erring officer, in accordance with law, within a period of six weeks from the date of receipt of this order. Needless to say, the action so taken against the erring officers must be communicated to this Court by the Chief Secretary, Govt. of Odisha.

12. With the above observation and direction, the writ petition stands disposed of.

13. A free copy of the order be handed over to learned Additional Standing Counsel for the State for its compliance.

**(DR. B.R. SARANGI)**
**JUDGE**

**(SAVITRI RATHO)**
**JUDGE**

*Ashok/Puspa*