

**ORISSA HIGH COURT: CUTTACK**

**W.P(C) NO. 7354 OF 2020**

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

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**AFR** Bhagirathi Mantri ..... Petitioner

-Versus-

State of Odisha & Ors. .... Opp. Parties

For Petitioner : M/s. H.N. Mohapatra and  
A. Samantaray, Advocates

For Opp. Parties : Mr. P.P. Mohanty,  
Addl. Govt. Advocate  
[O.Ps.No.1-4]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI  
AND  
THE HONOURABLE MR JUSTICE B.P. SATAPATHY**

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**DECIDED ON : 28.10.2022**

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**DR. B.R. SARANGI,J.** The petitioner, by means of this writ petition, seeks to quash the auction notice/tender notice dated 03.02.2020 under Annexure-10 issued by the Tahasildar, Banki in respect of Tentulia Sand Sairat and further to issue direction to the Tahasildar, Banki to

lease out the said Sairat in favour of the petitioner, after complying with all formalities as per law, within a stipulated period and allow him to operate the said Sairat for five years, pursuant notification made under Orissa Minor Mineral Concession Rules, 2016 (for short “OMMC Rules, 2016”).

2. The factual matrix of the case, in brief, is that the Tahasildar, Banki issued an advertisement bearing no.694 dated 23.02.2015 under Annexure-1 inviting bids from the intending bidders to lease out 4 Sand Sairats, including Tentulia Sand Sairat, lying under Mouza-Gadadharpur of Banki Tahasil. Pursuant to such advertisement, the petitioner and others submitted their bids in respect of Tentulia Sand Sairat. The petitioner was considered to be the highest bidder, as the highest bidder had no eligibility to apply for the said auction.

2.1 One Ganeswar Rout approached this Court by filing W.P.(C) No.3419 of 2015 challenging the action of the opposite parties directing to close the operation of Tentulia Sand Sairat and sought direction to allow him

to operate the said Sand Sairat for a period of one year from the date of obtaining the environmental clearance and settle the source for a period of five years as per conditions stipulated in OMMC Rules, 2016 and this Court passed an interim order, for which the grant of lease in favour of the petitioner was stalled and the process of getting environmental clearance and execution of agreement so also mining plan could not be made.

2.2. The petitioner filed W.P.(C) No.18373 of 2015 challenging the action of the opposite parties in not giving the lease of Tentulia Sand Sairat, even if he was the highest bidder of the same. Before disposal of W.P.(C) No.18373 of 2015, the interim order passed by this Court in W.P.(C) No.3419 of 2015 was vacated. Therefore, W.P.(C) No.18373 of 2015 filed by the petitioner was disposed of on 04.12.2017 with the following order:

*“Learned counsel for the petitioner has stated that the grant of lease in favour of the petitioner was stalled because of the interim order granted in W.P.(C) No.3419 of 2015. The said writ petition was disposed of by order passed today.*

*Learned counsel for the petitioner thus states that since the interim order in the aforesaid W.P.(C) NO.3491 of 2015 has been vacated in view of the disposal of the said writ petition, the case of the petitioner may be considered in accordance with law.*

*Prayer is granted.*

*Let the case of the petitioner be considered by the appropriate authority in accordance with law.*

*Writ petition is disposed of.”*

By this process, three years period was expired from the date of auction notice till the order is passed in W.P.(C) No.18373 of 2015. Pursuant to order of this Court, the Tahasildar, Banki, settled Tentulia Sand Sairat in favour of the petitioner for operating the remaining period of two financial years, i.e., from 01.04.2018 to 31.03.2020 subject to obtaining mining plan from the Director, Mines and Geology, Odisha, Bhubaneswar and environmental clearance from the State Environment Impact Assessment Authority, Odisha, Bhubaneswar at an early date and the Tahasildar, Banki also informed the petitioner, vide letter dated 26.03.2018, for execution of agreement after deposit of royalty and other Govt. dues as per OMMC Rules, 2016 for operating the source.

2.3 In compliance of the letter dated 26.03.2018 issued by the Tahasildar, Banki, the petitioner got

mining plan after getting it approved by the Deputy Director, Directorate of Geology, Bhubaneswar for Tentulia Sand Sairat as per Rule-28(4) of the OMMC Rules, 2016. The Deputy Director of Geology and Authorized Officer, Directorate of Geology wrote letter to the petitioner that the mining plan submitted on 04.05.2018 by P.K. Sahoo, RQP appointed by the petitioner is approved and the petitioner was required to apprise the local administration about the replenishment/erosion of sand resources during post-monsoon and pre-monsoon seasons in the area under consideration in the plan and in case of additional production than the commitment within the plan period, the mining plan may be modified and approved by the competent authority, which was sent to Tahasildar, Banki vide memo no.8166 dated 09.05.2018.

2.4 On receipt of the mining plan in respect of Tentulia Sand Sairat, the Tahasildar, Banki, wrote letter no.1809 dated 19.06.2018 to the Member Secretary, SEIAA, Odisha requesting him to issue environmental clearance in respect of Tentulia Sand Sairat of village

Tentulia under Banki Tahasil. Since the petitioner was allowed to operate the said Sand Quarry for remaining period of two years and required documents were submitted by him for consideration of grant of environment clearance, at this point of time, the Ministry of Environment, Forest and Climate Change issued the notification dated 14.08.2018 regarding procedure to be followed for giving environmental clearance by the appropriate authority according to the lease area of the Sand Sairat.

2.5. On receipt of the letter issued by the Tahasildar, Banki, the Environmental Engineer, State Environment Impact Assessment Authority, Odisha, wrote letter dated 10.10.2018 to the Tahasildar, Banki requesting him to submit the application along with the District Survey Report for sand mining or river bed mining, as mandated vide notification dated 14.08.2018. On the request made by the Environmental Engineer dated 10.10.2018, the Tahasildar, Banki did not resubmit the application for environment clearance through online for further consideration of

environmental clearance, but wrote a letter dated 25.10.2018 to the petitioner to submit environmental clearance and also to deposit the EMD. In spite of request made by the Environmental Engineer, the Tahasildar, Banki did not submit the District Survey Report along with the EC application, for which the Environmental Engineer further wrote a letter on 24.07.2019 requesting him to submit the District Survey Report, along with the proposal afresh, through online by 25.08.2019, and also stating therein that in the event of failure to submit District Survey Report, the proposal will be delisted in accordance with Office Memorandum File No.J-11013/5/2009-IA-II (Part) dated 30.10.2012 of MoFF, Govt. of India from the pending proposals with SEIAA, due to non-submission of the desired information even after lapse of six months period, without any further intimation. But the same was not complied with by the Tahasildar, Banki and, on the other hand, he published a fresh tender by issuing advertisement no.411 dated 03.02.2020 for auction of the aforesaid Sand Sairat. Hence, this writ petition.

3. Mr. H.N. Mohapatra, learned counsel appearing for the petitioner contended that the Tahasildar, Banki did not submit the District Survey Report, in spite of letters dated 10.10.2018 and 24.07.2019 being communicated by the Environmental Engineer, State Environment Impact Assessment Authority, Odisha. Thereby, the default/negligence is attributable to the Tahasildar, Banki and, as such, no fault is attributable to the petitioner for obtaining environment clearance certificate, as required to allot the Sand Sairat in favour of the petitioner. Therefore, the tender notice issued by the Tahasildar, Banki cannot sustain in the eye of law and the same is liable to be quashed and, as such, the petitioner should be allowed to continue with the Sand Quarry, as decided by the Tahasildar, after grant of no objection by the State Environment Impact Assessment Authority, Odisha. It is further contended that pursuant to advertisement No.694 issued under Annexure-1 dated 23.02.2015, the petitioner, being the second highest bidder, was awarded with Tentulia Sand Quarry, as the highest bidder, having

no solvency, was not eligible, and that since three years were passed from the date of auction notice, the Tahasildar, Banki settled the Sand Sairat in favour of the petitioner for operating the remaining period of two financial years, i.e., from 01.04.2018 to 31.03.2020, the said period should have been extended without going for fresh tender, pursuant to notification issued on 03.02.2020. As per requirement, pursuant to letter dated 26.03.2018, the petitioner had already submitted mining plan in due time and because of negligence on the part of the Tahasildar, Banki, who had to submit required papers before the State Environment Impact Assessment Authority, Odisha for environmental clearance, the period having been expired, pursuant to letter dated 30.10.2012, now the petitioner is deprived of getting the benefit of operating the Sand Quarry. Therefore, the fresh tender issued on 03.02.2020 should be quashed and the petitioner may be allowed to continue to operate the Sand Quarry for the period granted by the Tahasildar, Banki pursuant to letter dated 26.03.2018.

4. Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties, at the outset, contended that since the lease was granted to the petitioner for a period of five years, i.e., from 2015 to 2020, the writ petition has become infructuous. It is further contended that the petitioner has not approached this Court with clean hands and he has suppressed the true state of affairs, for which he is not entitled to get any relief. It is also contended that the petitioner has failed to comply with the mandatory requirements, as provided under OMMC Rules, 2016 and has not produced necessary clearance as well as not deposited statutory dues. Thereby, the Tahasildar, Banki has not committed any illegality or impropriety in issuing a fresh tender notice on 03.02.2020. It is further contended that pursuant to auction sale notice dated 23.02.2015 in respect of Tentulia Sand Sairat for a period of five years, i.e., from 2015-2020 with certain terms and conditions enumerated therein to be fulfilled by the participants, three bidders including the petitioner participated in the process of bid. In the said

auction, one Amarnedra Behera had quoted the highest rate of Rs.68/- per Cum as additional charge whereas the petitioner had quoted Rs.57/- per Cum as additional charge. Since the highest bidder had no solvency, as required in the tender documents, it was decided to settle the quarry in favour of the second highest bidder. One Ganeswar Rout, who was granted with the source and was operating the same, filed W.P.(C) No. 3419 of 2015 and this Court, vide order dated 25.03.2015, passed interim order directing that the auction in respect of Tentulia Sand Ghat under Banki Tahasil may take place, but no final decision shall be taken without leave of this Court. Because of the interim order, the auction sale notice dated 23.02.2015 could not be finalized till 2018. But the petitioner filed W.P.(C) No.18373 of 2015, which has been disposed of vide order dated 04.12.2017 with an observation that since the interim order passed by this Court in W.P.(C) No.3419 of 2015 has been vacated, in view of disposal of the said writ petition, the case of the petitioner may be considered by the appropriate authority in accordance with law. Therefore,

the case of the petitioner was considered by issuing notice to give his willingness by way of undertaking to operate the source for a period of two years only (2018-19 and 2019-20) till 23.03.2020 subject to fulfillment of conditions contained in the letter dated 26.03.2018 under Annexure-2. But the same having not been complied with, as the petitioner failed to obtain environment clearance certificate from the competent authority, after expiry of the period, the same was cancelled and fresh notice was issued on 03.02.2020. Thereby, no illegality or irregularity has been committed by the Tahasildar, Banki in issuing fresh auction notice and, therefore, seeks for dismissal of the writ petition.

5. This Court heard Mr. H.N. Mohapatra, learned counsel appearing for the petitioner and Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties in hybrid mode. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

6. On the face of the factual matrix, as discussed above, the admitted fact is that an advertisement was issued on 23.02.2015 under Annexure-1 by the Tahasildar, Banki for grant of long term lease for minor minerals for a period of five years from the year 2015-16 to 2019-20. As such, the period of lease, for which the notification had been issued, has already been over long since. Therefore, the writ petition no more survives for adjudication.

7. Be that as it may, even delving into the merits of the case this Court finds that Chapter-IV of the OMMC Rules, 2016 provides for grant of quarry lease and it enumerates the procedures to be followed. Rule-27(13) of the OMMC Rules, 2016 reads as follows:

*“that 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”.*

On perusal of the aforementioned provision, it is made clear that the selected bidder is required to execute the

quarry lease in Form-N within three weeks from the date of intimation of his selection, failing which, the intimation shall stand cancelled and the security deposit shall stand forfeited. Therefore, the petitioner was required to complete the entire process, i.e., by obtaining environment clearance from the competent authority within three months. Admittedly, the same has not been complied with. Furthermore, the Tahasildar, Banki, vide letter dated 26.03.2018, directed the petitioner to submit required documents within the period stipulated in the said letter. More so, the notification dated 14.08.2018 issued by the Ministry of Environment, Forest and Climate Change, provided the procedure to be followed for environment clearance by the appropriate authority according to the lease area. As such, there was no requirement of District Survey Report before the said notification and the fact remains that despite the issuance of the letter dated 26.03.2018, the sole responsibility of the petitioner was to obtain necessary environment clearance from the competent authority within three months, as per Rule-27(13) of the OMMC

Rules, 2016, but he failed to do so before issuance of the notification dated 14.08.2018. This material fact has been suppressed in the pleadings of the writ petition and the petitioner has tried to shift the responsibility on the Tahasildar, Banki. Thereby, the petitioner has not approached this Court with clean hands and, as such, he is not entitled to get any relief on that ground also.

8. As regards expressing distorted facts before the Court and not approaching with clean hands, in **R. v. Kensington, Income Tax Commissioner**, (1917) 1 KB 486 at page 506, it has been held as follows:

*“The prerogative writ is not a matter of course; the applicant must come in the manner prescribed and must be perfectly frank and open with the Court.”*

9. In **State of Haryana v. Karnal Distillery**, AIR 1977 SC 781, the apex Court refused to grant relief on the ground that the applicant has misled the Court.

10. In **Chancellor v. Bijayananda Kar**, AIR 1994 SC 579, the apex Court held that a writ petition is

liable to be dismissed on the ground that the petitioner did not approach the Court with clean hands.

11. Taking into consideration the above judgments, this Court, in **Netrananda Mishra v. State of Orissa**, 2018 (II) OLR 436, came to a conclusion in paragraph-26 of the said judgment and held as under:-

*“..... For suppression of facts and having not approached this Court with a clean hand, the encroacher is not entitled to get any relief, particularly when the valuable right accrued in favour of the petitioner is being jeopardized for last 43 years for no fault of him, on which this Court takes a serious view. ....”*

12. Undisputedly, the concept of District Survey Report came into existence after issuance of the notification dated 14.08.2018, which would take a long time to complete the process in the entire district. But fact remains, the petitioner was called upon vide letter dated 26.03.2018 to comply with the same and go for settlement and due to failure on his part to comply with the same within the statutory period of three months, as per Rule-27(13) of OMMC Rules, 2016, the Tahasildar, Banki has not committed any illegality or impropriety in

issuing fresh notice of auction, so as to cause interference of this Court.

13. It is of relevance to note that since under the OMMC Rules, 2016 specific procedures to be followed for operating the Sand Source have been provided, it was obligatory on the part of the petitioner to adhere to the same. Non-fulfillment of the criteria laid down in the statute would automatically disentitle a bidder to operate the source. As the petitioner failed to comply with the requirements contained in the letter dated 26.03.2018 issued by the Tahasildar, Banki, even after lapse of five months, when the notification dated 14.08.2018 of the Ministry of Environment, Forest and Climate Change, which introduced a new concept to be followed in respect of the source to be put to auction from that date, came into force, therefore, keeping in view the provisions contained in Sub-rule (13) of Rule-27 of the OMMC Rules, 2016, the Tahasildar, Banki, vide order dated 20.06.2019, cancelled the bid of the petitioner and proceeded for fresh auction in respect of Tentulia Sand Sairat for five years, vide notification

dated 03.02.2020. Consequentially, steps so taken by the Tahasildar, Banki cannot be said to be illegal, arbitrary and contrary to the provisions of law, so as to warrant interference of this Court.

14. The argument advanced by learned counsel appearing for the petitioner, that due to negligence on the part of the Tahasildar the petitioner cannot be disentitled to get the benefit to operate the quarry, cannot sustain in the eye of law.

15. In view of the facts and law, as discussed above, since five years period of lease, i.e., from 2015-2020 has been expired long since and the petitioner, having not complied with the requirements, pursuant to letter dated 26.03.2018 issued by the Tahasildar, Banki, by providing necessary documents, such as, environment clearance, etc. within the time stipulated, in view of Rule-27(13) of the OMMC Rules, 2016, after lapse of three months, the Sand Sairat settled in favour of the petitioner has to be cancelled and the security deposit has to be forfeited. Therefore, the steps taken by

the Tahasildar, Banki, vide notification dated 03.02.2020 under Annexure-10, are held to be legally justified.

16. There is thus no merit in this writ petition, which is accordingly dismissed. However, there shall be no order as to costs.

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

**B.P.SATAPATHY, J.** I agree.

**(B.P. SATAPATHY)**  
**JUDGE**

**Orissa High Court, Cuttack**  
**The 28<sup>th</sup> October, 2022, Alok**