

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 8531 of 2022

Fanindra Kumar Choudhury

.....

Petitioner

Mr. S. Mohanty, Advocate

Vs.

State of Odisha & Others

.....

Opposite parties

Mr. T.K. Pattnaik, A.S.C.

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

06.04.2022

Order No.

01

This matter is taken up through hybrid mode.

2. Heard Mr. S. Mohanty, learned counsel for the petitioner and Mr. T.K. Pattnaik, learned Additional Standing Counsel for the State.

3. The petitioner has filed this writ petition seeking to quash the order dated 03.02.2022 passed by the Collector, Sundargarh vide Annexure-6 rejecting his representation for granting extension of the lease period for a further period of 2 years and 8 months in favour of the petitioner, and to issue direction to opposite party no.3-Tahasildar, Tangarpali to execute fresh agreement for remaining period of 2 years & 8 months, out of 5 years, in order to compensate him and to protect his livelihood.

4. Mr. S. Mohanty, learned counsel for the petitioner contended that though the petitioner was a successful bidder and was allowed to operate the quarry for a period of five years, due to some unavoidable reasons, he could not operate the same for a period of two years and 8 months. Therefore, he had approached this Court by filing W.P.(C) No.27179 of 2021 and this Court vide order dated 12.11.2021, disposed of the said writ petition with the

direction that the petitioner shall file a representation before the Collector, Sundargarh, who shall consider and pass appropriate order after giving opportunity of hearing to the petitioner not later than 8th February 2022 and the said order to be made available to him not later than 15th February 2022. In compliance thereof, the petitioner filed a representation for extension of the lease period, but the Collector, Sundargarh, rejected the same vide order dated 03.02.2022 under Annexure-6. Therefore, the petitioner has approached this Court by filing this writ petition.

5. Mr. T.K. Pattnaik, learned Additional Standing Counsel for the State contended that the petitioner had not participated in the auction process as a bidder. In the event of any default by the successful bidder, the Tahasildar, Tangarpali ought to have intimated the second or subsequent higher bidders in descending order directing to deposit the earnest money. Therefore, the Collector, Sundargarh is well justified in passing the order impugned rejecting the representation of the petitioner for granting extension of the lease period for a further period of two years and 8 months.

6. Having heard learned counsel for the parties and after going through the records, it appears that admittedly the lease was granted for a period of five years in favour of the petitioner by the Tahasildar, Tangarpali, without following due procedure. More so, Rule-26(7) of OMMC Rule, 2014 prescribes that in the event of default by the highest successful bidder, the competent authority shall intimate the second or subsequent higher bidders in descending order directing him to deposit the earnest money and obtain mining plan and environmental clearance within the

prescribed time. The second highest bidder although deposited the earnest money, but, subsequently, he submitted a no objection petition stating that he had no objection if the said sand bed is settled in favour of the petitioner. Since the petitioner had not participated in the auction process as a bidder, the Tahasildar, Tangarpali should have intimated the third highest bidder to deposit the required earnest money or on failure by next higher bidder or should have obtained approval of controlling authority, i.e. Collector, Sundargarh for issuance of fresh notice inviting applications for grant of quarry lease. But, the Tahasildar, Tangarpali has exceeded his jurisdiction and settled the source for a period of five years in favour of the petitioner, who was not a participant in the bid, which is not permissible.

7. In that view of the matter, this Court does not find any error apparent on the face of the order dated 03.02.2022 passed by the Collector, Sundargarh, which is hereby upheld.

8. 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, Tangarpali, which was found by the Collector, Sundargarh, while considering the representation of the petitioner for extension of lease period. 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 duty 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 to enquire into the matter and pass appropriate, 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.

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

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

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Alok/Sukanta