

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 8589 of 2022

Abhinandan Mohanty

.....

Petitioner

*Mr. M. Kanungo, Sr. Advocate along
with Mr. S.R. Mohanty, Advocate*

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. T. Patnaik, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

07.04.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. M. Kanungo, learned Senior Advocate along with Mr. S.R. Mohanty, learned counsel for the petitioner and Mr. T. Patnaik, learned Additional Standing Counsel for the State.

3. The petitioner has challenged the order dated 24.01.2022 passed by the appellate authority in the appeal filed under Rule 46 of the Orissa Minor Mineral Concession Rules, 2016, wherein the petitioner's claim to declare as the successful bidder was rejected.

4. Mr. M. Kanungo, learned Senior Advocate contended that pursuant to the auction notice under Annexure-1, the petitioner made his application under Annexure-2. At Clause-5 of the application form as against the Rate of additional charge (per cubic meter) quoted the petitioner entered "35+140+527=702 (Seven hundred two rupees only)". According to him since he has submitted 702 towards additional charge, the sairat source should have been settled in his favour. But the authorities have acted arbitrarily in rejected the application of the petitioner. Against such rejection he filed the appeal. But the appellate

authority without considering the contentions raised by the petitioner rejected the appeal.

5. As it appears the appellate authority while passing the order in the appeal preferred by the petitioner under Rule 46 of the OMCC Rules, 2016 have observed as follows:-

“Tahasildar, Kasinagar present during trial of the case submits that the appellant has mentioned more than one figure in the column meant for additional charge i.e. $35+140+527=702$. His authorized representative who was present during scrutiny and signed in the bidder's attendance during opening of lease papers on 05.1.2021 also clarified that the quoted amount by the appellant for additional charge submitted in FORM 'M' is Rs.527/- Since the respondent No. 2 offered additional charge for Rs.701/- which is the highest among all the participants he was considered to be successful bidder for Budura Sand Quarry. As regards fixation of royalty and minimum additional charge for the said quarry, it is submitted by him that as per Schedule II of OMCC Rules, 2016 the royalty of Rs.35/- per cubic meter has been fixed and the same is payable as per Rule 32 of OMCC Rules. Further Collector, Gajapati-cum-Controlling Authority under OMCC Rules, 2016 has been pleased to approve the minimum additional charge of Rs. 140/- per cum of sand vide district office letter no. 7319 dated 04.9.2021.

Gone through the documents filed by both the parties as well as Tahasildar, Kasinagar and heard them. As per Rule 32(2) of OMCC Rules, the lessee shall pay to the State Government every year royalty at the rates specified Schedule II and at Sl. 32 of Schedule II, the royalty amount fixed for ordinary sand is Rs.35/- per cubic meter. The plea taken by advocate for appellant that he has quoted Rs. 702/- as additional charge in FORM 'M' could not be justified since the appellant has quoted Rs. 702/- which includes royalty amount @ Rs. 35/- minimum additional charge @ Rs.140/- as approved by Collector and Rs.527/- towards additional charges per cum which was also confirmed by the authorized representative present during opening of the bid. Further Rule 27(5) under Chapter IV of OMCC Rules, stipulates that “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. Since the additional charge quoted by Respondent No.2 in FORM 'M' is Rs. 701/- per cum and the appellant is Rs.527/- per cum, Tahasildar Kasinagar has rightly declared respondent No.2 to be the successful bidder for Budura Sand bad.

Since the claim of the appellant finds no merit, the appeal is rejected. Inform the parties accordingly.”

6. Since the petitioner has quoted Rs.35/- per cubic meter towards royalty, minimum additional charge of Rs.140/- per cum of sand as approved by the Collector vide district office letter No. 7319 dated 04.09.2021, and additional charges of Rs.527, it cannot be construed that he has quoted Rs. 702/- towards additional charges as mentioned in Clause-5 of the application under Annexure-2. The justification giving fraction of the amount in Clause-5 itself indicates the demand which has been raised by the petitioner as per law and the petitioner clarifies the same.

7. In view of the above, no error is apparent on the face of the order of the appellate authority warranting any interference by this Court. Thereby, the writ petition merits no consideration and the same stands dismissed accordingly.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Arun/ Bichi