

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 16445 of 2022

Jayanta Kumar Jena

.....

Petitioner

Mr. S.K. Dalai, Adv.

Vs.

*The Collector and District
Magistrate, Jajpur and another*

.....

Opposite parties

Mr. P.P. Mohanty, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR JUSTICE S.K. MISHRA

ORDER

05.07.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. S.K. Dalai, learned Counsel appearing for the Petitioner and Mr. P.P. Mohanty, learned Addl. Government Advocate appearing for the State-Opposite Parties.

3. The Petitioner has filed this Writ Petition seeking to quash the letter dated 08.06.2022 under Annexure-8, by which he has been called upon to deposit a sum of Rs.7,00,000/- without following due procedure of law, and to issue direction to the Opposite Parties to allow the Petitioner to carry out the lease operation by executing the Deed as per the prescribed procedure of OMMC Rules, 2016.

4. Mr. S.K. Dalai, learned Counsel appearing for the Petitioner contended that on perusal of letter dated 08.06.2022, it would be well evident that on the one hand the Authority issued notice of show cause, and on the other hand directed the Petitioner to immediately deposit the aforesaid amount, failing which necessary action would be taken against the Petitioner as per law, which itself is arbitrary, unreasonable and contrary to the provisions of law. More so, without determining the liability, the Authority has directed the Petitioner to pay the amount in the Notice of Show Cause, which cannot sustain in the eye of law, as the same is an

empty formality. To substantiate his contention, he has relied upon the judgment of this Court in the case of ***Rawani Construction Private Limited v. State of Odisha*** (W.P.(C) No. 21508 of 2017 disposed of on 05.04.2022).

5. Mr. P.P. Mohanty, learned Addl. Government Advocate appearing for the State-Opposite Parties, fairly admitted that once notice of show cause has been issued, opportunity of hearing should have been given to the Petitioner and thereafter, after determining the liability, direction should have been given to the Petitioner to deposit the amount.

6. Having heard learned Counsel for the parties and after going through the records, this Court finds that auction notice was issued by Opposite Party No.3 in respect of the Sand Sairat in question under Dharmasala Tahasil for the Financial Year 2022 to 2024-26, i.e., for a period of five years, as per the Odisha Minor Mineral Concession Rules, 2016. Pursuant to such auction notice, the Petitioner applied for Brahamani River Sand Sairat, Jenapur under Khata No.864, Plot No.2(p) comprising of an area of 12.50 acres. The MGQ on annual basis was fixed at 44230, Royalty was @ Rs.35/- and Additional Charge on the basis of which the bidders are selected was Rs.45/-. On 13.02.2022, the Tahasildar issued Form-F in favour of the Petitioner. Form-F issued under Rule-27(6) of the OMMC Rules, 2016, clearly indicates that the Petitioner was selected accepting additional charge bid of Rs.85/- per cubic meter. Further, it is categorically mentioned therein that the Mining Plan was approved and the Environmental Clearance for the lease was not obtained by the Petitioner, who was selected as a successful bidder. Subsequently, the Petitioner was asked to convey his acceptance to the terms and conditions by depositing a sum of Rs.3,57,645/- as 1/4th of bid amount of the year prescribed

under Rule-27(7) and Rule-(9) within a period of 15 days of the date of issue of the said letter. The Petitioner deposited the said amount before the Authority, which was duly acknowledged and accordingly on 09.03.2022, the Petitioner was issued with Individual Approved Mining Plan and Environmental Clearance Certificate for the auctioned Sand Sairat. Thereafter, on 29.03.2022, the Revenue Inspector, Balarampur-I Circle of Dharماسala Tahasil, carried out an inspection over the area granted for mining lease to the Petitioner and demarcation was carried out by making field inspection. But in the meantime, a demand of Rs.7,00,000/- has been made by the Authority against the Petitioner vide Annexure-8. On perusal of Annexure-8 dated 08.06.2022, it is well evident that simultaneously the Petitioner has been issued with Notice of Show Cause and demand of Rs.7,00,000/- has been raised with a direction to deposit the same immediately, failing which necessary action will be taken against the Petitioner as per law. As has been contended, such demand has been raised without following due procedure and mere issuance of notice of show cause cannot suffice the purpose and, as such, it is an empty formality, as the Opposite Parties have already determined the amount and called upon the Petitioner to deposit the same.

7. In ***Rawani Construction Private Limited*** (supra), this Court, relying upon the judgment of the apex Court in the case of ***Kumaon Mandal Vikash Nigam Ltd. v. Girija Shankar Pant***, (2001) 1 SCC 182, while answering the word ‘bias’, held that the alleged guilt of the Petitioner-Company has been pre-judged at the stage of Show Cause Notice itself.

8. In the above view of the matter, this Court is of the considered view that the demand so raised by the Authority vide

Annexure-8, dated 08.06.2022, directing the Petitioner to deposit a sum of Rs.7,00,000/- cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. Accordingly, the matter is remitted back to the Tahasildar, Dharmasala, to take necessary steps in accordance with law by affording opportunity of hearing to the Petitioner.

9. The Writ Petition is accordingly disposed of.

Issue urgent certified copy as per Rules.

(DR. B.R. SARANGI)
JUDGE

Ashok/PCD

(S.K. MISHRA)
JUDGE

