ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 13628 OF 2022,
W.P.(C) NO. 11018 OF 2022
AND
W.P.(C) NO. 17464 OF 2022

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

AFR

In W.P.(C) No. 13628 of 2022

Sukanta Muduli ..... Petitioner

-Versus-

State of Odisha and others ..... Opp. Parties

For Petitioner : Mr. Goutam Mukherji, Sr. Advocate along with M/s. Ankita Mukherji, A. Panda, S.D. Ray, S. Acharya & A. Mishra. Advocates.

For Opp. Parties : Mr. P.P. Mohanty, Add. Government Advocate [O.Ps.No.1 to 4]

M/s. S.K. Dash, A.K. Otta, S. Das, N.K. Das, A. Sahoo, E.Das, P. Das & C.K. Mohapatra, Advocates. [O.P. No.5]

In W.P.(C) No. 11018 of 2022

Sukanta Muduli ..... Petitioner

-Versus-

State of Odisha and others ..... Opp. Parties

For Petitioner : M/s. Bibhu Prasad Das, A. Mohanty,G. Mohanty, S. Samal, P.A. Dash, A. Mohanty and S.R. Tripathy, Advocates.

For Opp. Parties : Mr. P.P. Mohanty, Add. Government Advocate [O.Ps.No.1 to 4 & 6 to 10]

M/s. S.K. Dash, A.K. Otta, S. Das, N.K. Das, A. Sahoo, E.Das, P. Das & C.K. Mohapatra, Advocates. [O.P. No.5]

In W.P.(C) No. 17464 of 2022

Tapan Kumar Nanda ..... Petitioner

-Versus-

State of Odisha and others ..... Opp. Parties

For Petitioner : M/s. S.K. Dash, A.K. Otta, S. Das, N.K. Das, A. Sahoo, E.Das, P. Das & C.K. Mohapatra, Advocates.

For Opp. Parties : Mr. P.P. Mohanty, Add. Government Advocate [O.Ps.No.1 to 5]

P R E S E N T:

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

Date of hearing : 27.10.2022: Date of judgment : 01.11.2022

DR. B.R. SARANGI, J. W.P.(C) No. 13628 of 2022 has been filed by one Sukanta Muduli with the following prayer:-

> *"It is therefore prayed that this Hon'ble Court may graciously be pleased to issue notice calling upon the Opp. Parties to show cause as to why the lease in favour of Opp. Party no.5 shall not be cancelled and the bid shall not be awarded in favour of this petitioner;*
>
> *And if the Opp. Parties fail to show cause and/or show insufficient cause appropriate Writ/Writs in the nature of Mandamus may be issued directing the Opp. Party authorities to cancel the lease of the Opp. Party No.5 and award the bid in favour of this petitioner forthwith.*
>
> *And such other relief/s to which the petitioner is found entitled to or as this Hon'ble Court will deem just and proper in the facts and circumstances of the case may be granted in favour of the petitioner."*

The very same petitioner-Sukanta Muduli, prior to filing of W.P.(C) No. 13628 of 2022, had also filed W.P.(C) No. 11018 of 2022 with the following prayer:-

> *"Under the aforesaid facts and circumstances, it is therefore humbly prayed that this Hon'ble Court may graciously be pleased to issue RULE NISI calling upon the Opposite Parties to show cause as to why a Writ in the nature of Mandamus or any other appropriate writ(s) order(s) be not issued to the Opposite Party No. 2 for quashing the impugned letter No. 1474 dated 21.04.2022 and the lease deed agreement in respect of the Baitarani River Sand Bed, Girigaon sand quarry dated 22.04.2022 at Page No. 16 of Annexure-3 Series above, in respect of Girigaon Sand Quarry, and upon insufficient cause being shown, be pleased to make the said Rule absolute;*

And may further be pleased to issue a Writ in the nature of Mandamus or any other appropriate writ/writ(s) directing the Opposite Party No. 6, 7 & 8 to submit the records called for by the Opposite Party No. 3 enabling him to complete the enquiry with regards to the genuineness of the Solvency Certificate issued in favour of the Opposite Party No. 5 from the office of the Opposite Party No. 6 in respect to the properties situated at Jajpur;

And pass any other order/orders, direction/directions, writ/writs as this Hon'ble Court deem tit and proper in the interest of justices equity and good conscience;

And for which act of kindness, the Petitioner shall as in duty bound ever pray."

Whereas W.P.(C) No. 17464 of 2022 has been filed by Tapan Kumar Nanda with the following prayer:-

"It is therefore prayed that the Hon'ble Court may be pleased to admit the writ application, issue notice to the opposite parties, calling upon them to show cause as to why the impugned Orders under ANNEXURE:6 i.e. the Order dated 05.05.2022 passed in Tauzi Misc. Case (Enquiry Purpose) No. 01 of 2022, by the opposite party No. 4 and under ANNEXURE:7 i.e. the further Order dated 24.06.2022 passed therein by the opposite party No.4, will not be quashed arid upon their failure to show cause or showing insufficient cause and after hearing the parties, may graciously be pleased to quash those Orders under ANNEXURE:6 and ANNEXURE:7 to the writ application and/or may be pleased to pass such other or further order as it may deem fit and proper in the facts and circumstances of the case."

2. All the above noted three writ petitions having arisen out of the selfsame tender notice issued by the Tahasildar, Hatadihi in the district of Keonjhar inviting bids for grant of Girigaon Sand Quarry on long term lease of 5

years, they have been heard together and are disposed of by this common judgment.

3. The factual matrix leading to filing of these cases, in a nutshell, is that the Tahasildar Hatadihi issued an advertisement bearing no. 342 dated 29.01.2021 inviting bids from the intending bidders for grant of Girigaon Sand Quarry on long term lease for 5 years, i.e. 2020-21 to 2024-25 as per the provisions of Orissa Minor Mineral Concession Rules, 2016. According to the advertisement, the intending bidders were to apply in the prescribed Form 'M' along with the documents in a sealed cover to the Tahasildar, Hatadihi and submit the same in the drop box available in his office from the date of publication of the advertisement till 25.02.2021 at 5.30 P.M. except holidays. In the advertisement, the place, time and date of auction were indicated and it was stipulated therein that after expiry of the period, no application would be entertained. As such, the authority had got the right to amend or cancel the tender. The details of the rules and the lease conditions were made available in the website, i.e. *www.keonjhar.nic.in*

and also different notice boards of the various authorities of the district. The intending bidders were to apply under the prescribed Form 'M' in triplicate along with the detailed description of the source with boundary map prepared by the office of the Tahasil. Along with the application, the bidders were also required to furnish a non-refundable treasury challan of Rs.1000/-, an affidavit with regard to no outstanding dues in respect of the quarry, a demand draft equivalent to 5% of the estimated value of royalty and additional charges per year and a solvency certificate or bank guarantee having validity of 18 months whose value would be not less than the MGQ x Offered Addl. Charges and Royalty.

3.1 Pursuant to the above advertisement, all total 15 applicants submitted their bids well within the time specified and participated in the bid process. After scrutiny, it was found that Dr. Kaushik Saha was the highest bidder, Tapan Kumar Nanda was the 2nd higher bidder and Sukanta Muduli was the 3rd highest bidder. Tapan Kumar Nanda approached this Court by filing W.P.(C) No. 12114 of

2021 challenging the selection of Dr. Kaushik Saha as the highest bidder. The said writ petition as disposed of vide order dated 13.04.2021 with the following order.

> *"This matter is taken up by video conferencing mode.*
> *2. Against the order dated 17th February, 2021 of the Tahasildar, it will be open to the Petitioner to file an appeal before the Sub Collector in accordance with Rule 46 of the OMMC Rules. It will also open to the Petitioner to seek appropriate interim relief in such appeal in accordance with law. All points urged in the present petition are permitted to be raised before the appellate authority.*
> *3. Any delay in filing the appeal on account of pendency of the present writ petition will be taken into account by the appellate authority.*
> *4. It will be open to the Petitioner to seek request to the appellate authority for expeditious disposal of the appeal.*
> *5. As the restrictions due to the COVID-19 situation are continuing, learned counsel for the parties may utilize a soft copy of this order available in the High Court's website or print out thereof at par with certified copy in the manner prescribed, vide Court's Notice No.4587, dated 25th March, 2020."*

3.2. In terms of the aforesaid order dated 13.04.2021, Tapan Kumar Nanda filed an appeal before the Sub-Collector, Anandapur being Touzi Misc Case No. 3 of 2021. After thorough verification, it was found that the Bank Guarantee submitted by the 1st highest bidder Dr. Kaushik Saha was not genuine, as confirmed by the issuing bank. Thereby, vide order dated 24.08.2021, the Sub-Collector cancelled the bid of the 1st highest bidder and advised the Tahasildar, Hatadihi to carefully examine the bid before passing final order. After cancellation of the bid of the 1st highest bidder, the 2nd highest bidder, viz., Tapan Kumar Nanda was intimated with the issuance of Form 'F' for acceptance of the terms and conditions. In consideration of the acceptance, Tapan Kumar Nanda was called upon to make security deposit of 1/4th of the total royalty amounting to Rs.3,78,700/-, additional charges @ Rs.4,121/- in respect of MGQ of 10820 Cum. and a further sum of Rs.44,96,792/- i.e. 10% of the total Royalty and additional charges, which was determined at Rs.1,57,38,772/-, reduced by the earnest money. Shri Nanda, deposited the amount on 18.09.2021 and obtained receipt thereof from the Nazir of Hatadihi Tahasil. Before execution of lease agreement in Form 'N' as per Rule 27 (13) of the Odisha Minor Minerals Concession Rules, 2016 (for short "OMMC Rules, 2016"), Shri Nanda was called upon, by letter No. 655/Touzi dated 03.02.2022 of the Tahasildar, Hatadihi, to deposit quarry dues as provided under Rule 32 (5) of the OMMC Rules, 2016 and the Government

Guidelines amounting to Rs.2,33,92,832/- within 3 days. Notwithstanding the clear provision for deposit of royalty by the end of the first fortnight of each half yearly period during the subsistence of the lease and further deposit of surface rent not later than 15th January and 15th July of each year, Shri Nanda having been called upon to deposit the entire annual dues to the tune of Rs.2,33,92,832/- within a space of 3 days only, he approached the authority, who is the Chief Officer-in-Charge of the revenue administration of the district as well as the Controlling authority as specified in Column 1 (ii) (a) of Schedule-III as per Section 2(g) of the OMMC Rules, 2016, seeking his intervention in the matter with an undertaking to pay Rs.1,00,00,000/- immediately and deposit the balance within next four months due to his own suffering in the pandemic.

3.3. At this point of time, Sukanta Muduli, who was the 3rd highest bidder, collected the valuation in respect of one, out of the three solvency certificates submitted by Shri Nanda, and contended that the solvency certificate of Jajpur

Town is forged and manipulated one as the valuation certificate submitted by Shri Nanda for the same plot number, khata number, mouza and area do not match with each other and differential amount in respect of the solvency certificate of the properties in Jajpur Town is Rs.1,28,33,135/- and if the differential amount is deducted from the total amount of the solvency certificate submitted by Shri Nanda, i.e. Rs. 4,49,67,920/-, it will come down to Rs.3,21,34,785/- making the bid technically inadequate for qualification, as the minimum royalty required for the particular bid is of Rs.4,49,67,920/-. Therefore, Shri Muduli filed a representation to the State Government as well as Tahasildar, Hatadihi and Sub-Collector, Anandapur on 03.01.2022. But neither any action was taken nor any enquiry whatsoever was conducted against Shri Nanda for alleged forging of solvency certificate. Rather, the Tahasildar took steps for awarding the tender in respect of Shri Nanda vide order dated 31.08.2021 in Sairat Case No. 06/2020-21. Therefore, Shri Muduli approached this Court by filing W.P.(C) No. 4081 of 2022, seeking to quash the award of tender in favour of Shri Nanda vide order dated 31.08.2021 passed in Sairat Case No. 06/2020-21 in respect of Girigaon Sand Quarry and further sought direction to the Tahasildar, Jajpur Town, Sub-Registrar, Jajpur and Collector-cum-District Magistrate, Jajpur to verify the genuineness of the solvency certificate issued in favour of Shri Nanda from the office of the Tahasildar, Jajpur Town and award the tender work pursuant to the advertisement no. 342 dated 29.01.2021, in favour of Shri Muduli.

3.4. At the outset, this Court vide order dated 10.02.2022 disposed of the W.P.(C) no. 4081 of 2022 by passing following order:-

> *"This matter is taken up through hybrid mode.*
>
> *2. Heard Mr. B.P. Das, learned counsel for the petitioner and Mr. P.K. Muduli, learned Additional Government Advocate for the State.*
>
> *3. The petitioner files this writ petition seeking to quash the order dated 31.08.2021 passed in Sairat Case No. 06 of 2020-21 in respect of Girigaon Sand Quarry and to direct opposite party nos. 6, 7 and 8 to verify the genuineness of the Solvency Certificate issued in favour of opposite party no.5 from the office of opposite party no.6 in respect of the properties situated at Jajpur. The petitioner further seeks to direct the opposite parties to award the tender work pursuant to notice Inviting Tender bearing Advertisement No. 342 dated 29.01.2021, in favour of the petitioner.*
>
> *4. Mr. B.P. Das, learned counsel for the petitioner contended that opposite party no.5 being the 2nd highest bidder has been allotted with the tender work, though he has got the Solvency Certificate from the office of opposite party no.6 in respect of the properties situated at Jajpur. To that extent the*

petitioner has already moved the authority by filing an objection under Annexure-11, which is required to be verified by the authority, so that the authority can pass appropriate order in accordance with law.

5. Mr. P.K. Muduli, learned Additional Government Advocate contended that since the property put to auction is situated in the district of Keonjhar, the Sub Collector, Anandapur is the competent authority, who can cause an inquiry and pass appropriate order on the basis of the grievance of the petitioner vide Annexure-11.

6. Having heard learned counsel for the parties and after going through the record, this Court without expressing any opinion on the merits of the case, disposes of the writ petition, directing opposite party no.3-Sub Collector, Anandapur, to cause an inquiry and pass appropriate order considering the grievance made by the petitioner dated 03.01.2022 vide Annexure-11 to the writ petition within a period of six weeks from the date of communication of the certified copy of the order. Any further action to be taken pursuant to the order under Annexure-5 series shall be subject to the outcome of the order to be passed by the Sub Collector.

7. It is needless to mention here that, opposite party no.3 while conducting inquiry shall give opportunity of hearing to all the parties, who have participated in the auction and pass necessary order in accordance with law.

8. With the aforesaid observation/direction, the writ petition stands disposed of.

9. Issue urgent certified copy as per rules."

3.5. Due to non-consideration of the application/ representation and the failure of the Collector & District Magistrate, Keonjahar to allow Shri Nanda to deposit the amount in two half yearly installments or a direction to the Tahasildar, Hatadihi, to make computation of the dues, strictly by taking into account the provision under Part - VI of Form 'N' as per Rule 27 (13) of the OMMC Rules, 2016, Shri Nanda approached this Court by filing W.P.(C) No. 5371 of 2022, seeking direction to the authorities not to take any coercive measure at least till consideration of his representation and, thereby, allowing him to deposit the amount in installments or in modified schedule. This Court, vide order dated 24.02.2022, disposed of the writ petition by passing the following order.

> *"This matter is taken up through hybrid mode.*
>
> *2. Heard Mr. S.K. Dash, learned counsel for the petitioner and Mr. P.P. Mohanty, learned Additional Government Advocate.*
>
> *3. The petitioner files this writ petition seeking direction to opposite parties to accept the amount demanded under Annexure-4 by two half yearly installments.*
>
> *4. Mr. S.K. Dash, learned counsel for the petitioner contended that the petitioner being the highest bidder, has deposited Rs.1,57,38,772/- as security pursuant to the letter dated 01.09.2021 issued by the Tahasildar, Hatadihi, which has been acknowledged by the authority concerned on 18.09.2021 vide receipt No. 0144174. On 03.02.2022 under Annexure-4, the petitioner has been called upon to deposit the sairat dues as provided under Rule 32 (5) of the Odisha Minior Mineral Rules, 2016 for an amount of Rs.2,33,92,832/- within three days. According to learned counsel for the petitioner, the Tahasildar, Hatadihi could not have passed such an order directing the petitioner to pay such amount within a period of three days, in view of Rule 27 (13) of the Odisha Minior Minerals Rules, 2016.*
>
> *5. Mr. P.P. Mohanty, learned Additional Government Advocate contended that in view of Rule 32 (5) of the OMMS Rules 2016, the petitioner is liable to pay royalty, dead rent, surface rent,*

additional charge, amount of contribution payable to the District Mineral Foundation and amount of contribution payable to the Environment Management Fund. Since these are the statutory dues, the petitioner is liable to pay, which has been calculated and communicated by the Tahasildar on 03.02.2022 vide Annexure-4 and the petitioner has been called upon to deposit the same within three days.

6. Having heard learned counsel for the parties and after going through the record, it appears that the petitioner has never disputed with regard to quantum of such statutory deposit as has been assessed and communicated by the Tahasildar on 03.02.2022, i.e. an amount of Rs.2,33,92,832.00. However, the petitioner is aggrieved by the direction to deposit the same within a period of three days, which is in gross violation of Rule-27 (13) of the OMMR Rules, 2016. Form-N as mentioned in Rule 27 (13), more particularly part-VI thereof provides as follows:-

1. *The lessee shall, during the subsistence of this lease pay to Government royalty in respect of the minor mineral removed by him from the leased area at the rates prescribed in Schedule II and surface rent at the rate prescribed in Schedule I.*
2. *All payments relating to rents, royalties, fees, etc., as provided under these rules shall be paid to the State Government free from all deductions, at the District Treasury/Sub Treasury and in such manner as the Competent Authority may prescribe.*
3. *For the purpose of computing the royalty, the lessee shall keep correct account of the mineral produced, stacked and removed from the lease area and submit a return to the Competent Authority and Director in Form K & Form P.*
4. *The lessee shall pay royalty in advance and the differential amount, if any, on computation shall be paid by the end of the first fortnight of each half yearly period during the subsistence of the lease.*
5. *The lessee shall pay surface rent in advance and not later than 15th January and 15th July of each year.*

7. On perusal of Clause-4 and 5 of the above quoted provision, clearly indicates that the petitioner is liable to pay royalty in advance and the differential amount, if any, on computation shall be paid by the end of the first fortnight of each half yearly period during the subsistence of the lease and the lessee shall pay surface rent in advance and not later than 15th January and 15th July of each year. In view of such position, since the petitioner has admitted that he is liable to pay the demand raised in Annexure-4, the only question is to be considered, whether the Tahasiladar has taken into consideration the provisions as quoted above, while directing the petitioner to deposit the same within a period of three days.

8. Mr. S.K. Dash, learned counsel for the petitioner, at the outset contended that the petitioner is willing to deposit Rs.1.00 crore within a period of seven days.

9. In view of the above, the petitioner is directed to deposit Rs.1.00 crore, out of the demanded amount indicated in Annexure-4, within a period of seven days hence and the balance amount shall be deposited in terms of Clause- (4) and (5) of Part-VI of Form-N of Rule 27 (13) of OMMR Rules, 2016, on the date, as would be fixed by the Tahasildar. Needless to say that on deposit of part payment of Rs.1.00 crore by the petitioner, out of the amount demanded under Annexure-4 within a period of seven days hence, as undertaken by learned counsel for the petitioner, the Tahasildar, Hatadihi shall forthwith execute the lease deed in favour of the petitioner by way of agreement.

10. With the aforesaid observation and direction, the writ petition stands disposed of."

3.6. After the above mentioned order was passed, the State filed an Interlocutory Application bearing I.A. No. 3019 of 2022 seeking clarification/modification of the order dated 24.02.2022 passed in the above mentioned writ petition. This Court, vide order dated 13.04.2022, disposed of the said I.A. with the following order:-

> *"**I.A. No. 3019 of 2022***
>
> *This matter is taken up through hybrid mode.*
>
> *2. Heard Mr. A. Sahoo, learned counsel for the writ petitioner and Mr. P.P. Mohanty, learned Additional Government Advocate.*
>
> *3. The State-opposite parties have filed this interlocutory application seeking clarification/modification of the order dated 24.02.2022 passed in the writ petition.*
>
> *4. Mr. P.P. Mohanty, learned Additional Government Advocate for the State contended that pursuant to the direction of this Court dated 24.02.2022, the petitioner has already deposited Rs.1.00 crores, out of the amount demanded under Annexure-4 within the time stipulated by this Court and the same has been duly acknowledged by the Tahasildar Hatadihi. When the Tahasildar Hatadihi was going to execute the lease deed, at that point of time, he came to know that in another writ petition, i.e. W.P.(C) No. 4081 of 2022 filed by one Sukanta Muduli, this Court has passed an order directing the Sub-Collector, Anandapur to cause an inquiry and pass appropriate order by giving opportunity of hearing to all the parties. The grievance was made in the said writ petition that the present petitioner had not furnished the genuine Solvency Certificate, for which inquiry was directed to be conducted by the authority concerned.*
>
> *5. Mr. Sahoo, learned counsel appearing for the petitioner contended that the order dated 10.02.2022 passed in W.P.(C) No. 4081 of 2021 is very clear to the extent that this Court had directed the Sub-Collector to cause an inquiry and pass appropriate order considering the grievance made by the petitioner therein on 03.01.2022, vide Annexure-11 to the said writ petition within a period of six weeks from the date of communication of the order and any further action to be taken pursuant to the order under Annexure-5 series shall be subject to the outcome of the order to be passed by the Sub-Collector. Thereby, there is no ambiguity in the order itself so as to not to give effect to the order passed by this Court on 24.02.2022 in the present writ petition.*

> *6. Having heard learned counsel for the parties and after going through the record, it is found that admittedly the petitioner has deposited Rs.1.00 crore within the time specified, in compliance to the order dated 24.02.2022 passed in this writ petition. If any allegation has been made by the petitioner in W.P.(C) No. 4081 of 2022 with regard to the Solvency Certificate, pursuant to the order dated 10.02.2022 passed in the said writ petition, that will be subject to the outcome of the result of the inquiry by the Sub-Collector.*
> *7. In that view of the matter, at this stage, no clarification is required to the order dated 24.02.2022 passed in this writ petition.*
> *8. The I.A. stands disposed of accordingly."*

3.7. In pursuance of direction of this Court in its order dated 10.02.2022 passed in W.P.(C) No. 4081 of 2022, an enquiry was initiated, by registering the grievance petition as Tauzi Misc. Case (Enquiry Purpose) No. 01 of 2022. Revealing that the order was passed on 05.05.2022, the Sub-Collector, Anandapur, submitted the same before the Collector & District Magistrate, Keonjhar for perusal and necessary order at his end. Basing on such order dated 05.05.2022, passed in Tauzi Misc. Case (Enquiry Purpose) No. 01 of 2022, Sukanta Muduli, filed W.P.(C) No. 11018 of 2022, seeking to quash the letter dated 21.04.2022 issued by the Tahasildar, Hatadihi in connection with stamp duty and registration fee payable for the execution of the lease deed as well as the registered lease deed in favour of Shri Nanda and for issuance of direction to the Tahasildar, Jajpur Town, Sub-Registrar, Jajpur and Collector, Jajpur to submit the records called for by the Sub-Collector, Anandapur for enabling him to complete the enquiry with regard to the genuineness of the solvency certificate issued in favour of the petitioner, so far as the properties situated at Jajpur. Shri Muduli had also filed W.P.(C) No. 13628 of 2022, seeking direction to the opposite party-authorities to cancel the lease of Shri Nanda.

3.8. At this point of time, the Tahasildar, Jajpur, vide letter no. 1458, dated 16.03.2022, intimated the Sub-Collector, Anandapur, that the Solvency Certificate is correct and genuine. Such certificate was granted on an enquiry and report submitted by the concerned Revenue Inspector. But, the discrepancy in the valuation could be noted merely on the basis of benchmark valuation of 2007, as would be evident from letter No.516/Regn. dated 27.04.2012 of the District Sub-Registrar, Jajpur, addressed to the Sub-Collector, Anandapur. The said valuation could not have been regarded as the basis to say that there is a virtual difference in the valuation of the land inasmuch as the value of the land has definitely increased during the passage of time and the sharp rise in potentiality on account of the proposed Medical College and Hospital, nearby. The grievance of Sukanta Muduli, being that the solvency certificate is fake/false and fabricated, the Sub-Collector, Anandapur should have rejected the representation once it is found that the said certificate is not genuine. More so, if Sukanta Muduli is aggrieved by the issuance of such certificate under Rule 6 of the Odisha Miscellaneous Certificate Rules, 2019, the remedy is available in terms of Rule 10 thereof. Having not availed the remedy, the contention raised, that solvency certificate is not genuine, cannot be sustained. Therefore, Shri Nanda filed the writ petition bearing W.P.(C) No. 17464 of 2022 seeking the aforementioned relief.

4. Mr. Goutam Mukherji, learned Senior Counsel appearing along with Ms. Ankita Mukherji, learned counsel appearing for Sukanta Muduli, the petitioner in W.P.(C) No.

13628 of 2022 contended that Shri Tapan Kumar Nanda, the petitioner in W.P.(C) No. 17464 of 2022 had submitted three solvency certificates to meet the solvency requirement of Rs.4,55,53,670/-. The solvency certificates were relating to one property in Jajpur town and two of Vyasanagar. So far as the solvency certificate issued for the property at Jajpur Town is concerned, the value was shown as Rs.2,69,47,059. It is contended that said solvency certificate furnished by Shri Nanda was found to be false and, therefore, Shri Muduli, being the next highest bidder, is entitled to be considered for settlement of the source in his favour. On the basis of the direction given by this Court in W.P.(C) No. 4081 of 2022, vide order dated 10.12.2022, the Sub-Collector, Anandapur was to cause an enquiry and pass appropriate order on the grievance made by Shri Muduli. In the conclusion, in the order dated 05.05.2022, the Sub-Collector, Anandapur stated that solvency report submitted by the Tahasildar Jajpur upon the valuation and enquiry report of the RI concerned the amount given in the certificate is in the higher rate. Though the solvency certificate is genuine one, but the valuation which has been mentioned in the solvency certificate is inadequate, and therefore, his bid is liable to be rejected. He further contended that Shri Nanda had played fraud on the authorities by producing a manipulated and false certificate. Fraud vitiates all acts and it was open for the authorities to re-examine the document by which they were mislead. More so, this Court in W.P.(C) No 4081 of 2022 has given a mandate to the Sub-Collector to cause the enquiry. Therefore, Shri Nanda cannot question the maintainability of the proceedings initiated against him with regard to the genuineness of the solvency certificate produced by him. He also contended that even though the benchmark value is low but in fact the valuation has been done in terms of market value which is higher. The submission is thoroughly misconceived in as much as the benchmark value is nothing but the market value. There cannot be two values to a same property as per the mandate of the statute. It is further contended that premium weights can never be the market value of the property. As what is market value is provided for under the Odisha Stamp Rules and is the same as benchmark value.

His further ground is that the tender was for 10820 Cum, but the agreement has been executed for 4800 Cum. If the solvency requirement for the reduced quantity is taken, then Shri Nanda fulfills the solvency guidelines. Thereby, there is deviation of the tender condition, which is not permissible.

To substantiate his contention, Mr. Mukherji, learned Senior Counsel, has relied upon the judgments of the apex Court in the cases of ***Vidharbha Irrigation Development Corporation v. Anoj Kumar Agarwala, (2020) 17 SCC 577*** and the decision of this Court in the case of ***Debendranath Mahanta v. State of Odisha and others*** (W.P.(C) no. 4926 of 2014 decided on 21.01.2020).

5. Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State contended that Shri Sukanta Muduli has no *locus standi* to approach this Court by filing writ petitions because he is the 3rd highest bidder. Admittedly, the 1st highest bidder, Dr. Kousik Saha having not satisfied the requirement of the tender, as per the provisions contained in Rule-27, the 2nd highest bidder,

Shri Tapan Kumar Nanda was called upon. The allegation made, that the solvency certificate furnished by Shri Nanda is not genuine, is not correct. On the report furnished by Tahasildar, the solvency certificate was found to be genuine, taking into consideration the report of the RI and the present valuation. Shri Nanda has been called upon to execute the agreement and pursuant to the execution of agreement he is operating the quarry.

6. Mr. S.K. Dash, learned counsel appearing for Shri Tapan Kumar Nanda, vehemently contended that Shri Muduli has no locus to challenge the award of lease in favour of Shri Nanda, as he is the 2nd highest bidder admittedly and the 1st highest bidder having incurred disqualification his bid was rejected. The allegation of playing fraud on the authority by producing forged solvency certificate is not genuine. Rather, on the basis of the report, vide letter no.1458 dated 16.03.2022, furnished by the Tahasildar, it is found that the solvency certificate produced by Shri Nanda is genuine one. But there was some discrepancy with regard to valuation of the property, as

pointed out by the District Registrar vis-à-vis the Tahasildar, for which the matter was referred to the Collector. But that by itself does not disentitle Shri Nanda to execute the agreement, because the valuation of the property has gone up in the meantime and the valuation, which had been made by the District Registrar, was on the basis of the benchmark valuation fixed in the year 2007. Thereby, there is no element of fraud. In response to the argument advanced by Mr. Mukherji, learned Senior Counsel with regard to the market value and benchmark valuation, he contended that nothing has been prescribed in the Odisha Stamp Act as market value or the benchmark valuation. Any guidelines the State Government or the Board of Revenue or associated department of the Government gives to the registering authority regarding the valuation of the land in a particular area is not the last word in the assessment of market value. Therefore, the solvency certificate having been held to be genuine, taking into consideration the market value of the land and the present scenario the objection so raised by Shri Muduli cannot sustain and accordingly, the writ petition filed by him is liable to be quashed.

To substantiate his contention, Mr. S.K. Dash, learned counsel, has relied upon the judgment of this Court in ***Gourang Naik v. State of Orissa and others***, AIR 1992 Orissa 232

7. This Court heard Mr. Goutam Mukherji, learned Senior Counsel appearing along with Ms. Ankita Mukherji, learned counsel for Sukanta Muduli, the petitioner in W.P.(C) No.13628 of 2022. Though W.P.(C) No. 11018 of 2022 was filed by Sukanta Muduli, through learned counsel Mr. B.P. Das and associates, but they were not present and address was made by Mr. Goutam Mukharji, learned Senior Counsel. This Court also heard Mr. S.K. Dash, learned counsel appearing for the petitioner-Tapan Kumar Nanda, in W.P.(C) No. 17464 of 2022 and Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties in all the three writ petitions. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties all these writ

petitions are being disposed of finally at the stage of admission.

8. On the basis of the factual matrix, as delineated above, the sole question arises for consideration by this Court is, whether the lease agreement executed with Tapan Kumar Nanda in respect of Girigaon Sand Quarry, pursuant to advertisement no. 342 dated 29.01.2021, is legally tenable or not.

9. The main ground of challenge to the lease agreement executed with Tapan Kumar Nanda is that one of the three solvency certificates furnished by him was not genuine, as alleged by Shri Muduli. But fact remains, pursuant to the direction given by this Court, an inquiry was conducted and the Tahasildar, Jajpur in an unequivocal term explained, vide letter no.1458 dated 16.03.2022, that the solvency certificate in question was genuine, but the valuation has been mentioned at a higher side because of commencement of a hospital in the nearby locality. Even though the District Registrar had quoted a lesser price on inquiry, but that was done on the basis of

the benchmark value of the year 2007. Therefore, the market value was taken into consideration and solvency certificate was issued. As a consequence thereof, the allegation of playing fraud on the authority by producing a fake solvency certificate and deriving benefit out of that by Shri Nanda, cannot have any justification.

10. In ***Gourang Naik*** (supra), this Court has already has held that where the State Government has already issued executive instructions fixing the market value of the land in the area in question, requiring the registering officers to stick on to that valuation while considering the valuation of the property under the document and to impound the document and refer the document to the Collector for determination of the market value when the valuation shown in the document appeared to be low compared with the valuation chart shown by the Government, those executive instructions are liable to be quashed. The issuance of such instructions has the tendency of arbitrarily affecting the opinion of the registering authority and thereby interferes with the

jurisdiction given to the registering authority under Section 47-A of the Stamp Act to reach the satisfaction of the property and will guide him to mechanically refer all the documents to the Collector on being impounded, harassing the general public on the basis of this statement regarding market value of land, when there is no authenticity in its correctness.

11. Applying the above principle, when the market value did not match with the benchmark value, it required a revision and matter had to be referred to the district level valuation committee headed by the Collector-cum-Chairman. But that is not the question to be considered by this Court at this point of time. The sole question raised is that one of the solvency certificates produced by Shri Nanda was fraudulent and, as such, the same should not have been taken into consideration. Therefore, Shri Muduli had approached this Court seeking for direction to cause an inquiry to find out the genuineness of one of the three solvency certificates produced by Shri Nanda. But, on inquiry, the same was found to be genuine. In that view of

the matter, there is no iota of doubt that the Tahasildar having acted upon the genuineness of the solvency certificates produced by Shri Nanda, called upon him to execute the agreement and, as such, it cannot be said that any illegality or irregularity has been committed by him.

12. It is of relevance to mention that in the matter of issuance of solvency certificate, the Government of Odisha in Revenue and Disaster Management Department, on 15.10.2019, issued a Gazette Notification, Clause No.5(6) whereof reads thus:-

> *"While issuing solvency certificate, immovable properties situated within the State of Odisha only shall be taking into account. For this purpose, the Revenue Officer shall obtain the market value of the land from the Sub-Registrar and valuation of building from the Executive Engineer/Asst. Execution Engineer/Asst. Engineer and any department of Government."*

On the same date, i.e., 15.10.2019, the Government of Odisha in Revenue and Disaster Management Department also issued a resolution wherein, in supersession of the Odisha Miscellaneous Certificate Rules, 2017, Rule-5(6) was amended to the following effect:-

> *"While issuing solvency certificate, immovable properties situated within the State of Odisha only*

shall be taking into account. For this purpose, the Revenue Officer shall obtain the market value of the land from the Sub-Registrar and valuation of building from the Executive Engineer Asst. Execution Engineer/Asst. Engineer and any department of Government."

13. From the afore quoted provisions, it is revealed that while issuing solvency certificate, immoveable properties situated within the State of Odisha only shall be taken into account and for the said purpose, the Revenue Officer shall obtain the market value of the land from the Sub-Registrar. In the present case, it is the admitted fact that the Tahasildar, Jajpur, while issuing solvency certificate in favour of the petitioner, had not called for any valuation report from the District Registrar, Jajpur with regard to market value of the land and without considering the benchmark valuation of the District Registrar, Jajpur, on the market value of property the solvency certificate was issued in favour of the petitioner. It is also an admitted fact that as per the letter dated 16.03.2022 of the Tahasildar, Jajpur, the valuation of the property was assessed relying on the report of R.I. and solvency of certificate of the value of Rs.2,69,47,059.00 was issued, whereas the benchmark

valuation/market value, as furnished by the District Registrar, Jajpur, valuation of the said land comes to Rs.1,38,15,694.00. Merely because there was difference in the valuation of the land, as pointed out by the Tahasildar, Jajpur and District Registrar, Jajpur, which comes to Rs. 1,31,31,365.00, the solvency certificate issued by the Tahasildar, Jajpur cannot be said to be either false or forged. On the other hand, there was difference in the valuation of the property, as the Tahasildar, Jajpur issued the solvency certificate in favour of petitioner without taking into consideration the benchmark valuation/market value of the land, as per report of the District Registrar, Jajpur. Since the solvency certificate produced by Shri Tapan Kumar Nanda is genuine one and it is neither forged nor false, but there was only difference in valuation of the property, which has been stated by the Tahasildar, while taking into consideration the benchmark valuation/market value of the land as per District Registrar's report, but the District Registrar has referred to the benchmark valuation of 2007 and in the meantime the valuation has gone up because of establishment of district hospital at Jajpur, therefore, the valuation provided by the Tahasildar, while issuing genuine solvency certificate cannot be doubted, so as to defeat the purpose of providing contract in favour of Shri Tapan Kumar Nanda.

14. Coming to the question of *locus standi* of Shri Muduli, Rule 27 (9) of the OMMC Rules, 2016 reads as follows:-

> ***27. Grant of quarry lease:-***
>
> *xxx xxxx xxxx*
>
> *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)*

On perusal of the aforementioned provisions, it appears that 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). Meaning thereby, in the present case, Dr. Kaushik Saha, the selected bidder, having defaulted himself, was disqualified. Therefore, the competent authority intimated Shri Nanda, the 2nd highest bidder with the issuance of Form 'F'. Shri Nanda conveyed his acceptance of the terms and conditions and complied with the same. Shri Sukant Muduli being the 3rd highest bidder, he has no *locus standi* to assail the selection and execution of the lease deed in favour of Shri Nanda. Under the rules, there is no provision for settlement of any Sairat in favour of the 3rd highest bidder. Needless to mention here, Shri Muduli being the 3rd highest bidder raised objection with regard to the genuineness of the solvency certificate produced by Shri Nanda. The same was inquired into and verified and the Tahasildar gave a report that the solvency certificate is genuine. As a consequence thereof, the objection which was raised at the behest of Shri Muduli being overruled, he cannot claim for settlement of Sairat Source in his favour.

15. Reliance was placed on ***Vidarvha Irrigation Development Corporation*** (supra) by learned Senior Counsel appearing on behalf of Shri Muduli, referring to

Paragraph-11, wherein it was observed by the apex Court to the following effect:-

> *"11. We may now come to Clause 2.35 which makes it clear that a substantially responsive bid is one which conforms to all terms, conditions and specifications without any material deviation. Inter alia, a material deviation is one which limits, in any substantial way, or is inconsistent with the bidding documents or the employer's rights or bidder's obligations under the Contract. It cannot be gainsaid that a bank guarantee, which is for a period of six months and not for a period of 40 months, would not only be directly inconsistent with the bidding documents but would also be contrary to the employers' right to a bank guarantee for a longer period. This being the case, since a material deviation from the terms and conditions of the tender document was made by Respondent No. 2, when it furnished a bank guarantee for only six months initially, it would be clear that such bid would have to be considered as not substantially responsive and ought to have been rejected by the employer. Clause 2.35.2 also makes it clear that such a bid would have to be rejected outrightly and may not be subsequently made responsive by correction."*

By referring to the above quoted observation of the apex Court, it was contended that substantially responsive bid is one which conforms to all terms, conditions and specifications without any material deviation. As such, the material deviation is one which limits, in any substantial way, or is inconsistent with the bidding documents or the employer's rights or bidder's obligations under the Contract.

The ratio decided by the apex Court may not have any assistance to Shri Muduli, rather it supports the case of Shri Nanda, in favour of whom the sairat source has been settled, reason being adhering to the terms and conditions of the bid, Shri Nanda participated in the process of bid and complied the requirements thereof. Therefore, there is no question of non-adherence to the terms and conditions by Shri Nanda so as to disentitle him to workout with the bid itself. On the other hand, the advertisement no.342 dated 29.01.2021 clearly specifies that the competent authority has got the power to amend or correct any condition issued in the advertisement itself. So far as the contention raised that the Minimum Guaranteed Quantity specified as 10820 Cum has been reduced to 4800 Cum, that has not been specified in the advertisement itself. Therefore, fixation of Minimum Guaranteed Quantity as 4800 CUM is within the complete domain of the tendering authority, which Shri Nanda has complied with, by depositing the security deposit, royalty, additional charges etc, as determined by the authority. Therefore, execution of lease agreement by the authorities with Shri Nanda cannot be faulted with, so as to cause interference by this Court in the present writ petition.

16. In view of the foregoing factual and legal discussions, this Court quashes the orders of the Sub-Collector, Anandapur, dated 05.05.2022 passed in Tauzi Misc Case (Enquiry Purpose) No. 01 of 2022 under Annexure-6 as well as the order dated 24.06.2022 under Anenxure-7, which are impugned in W.P.(C) No. 17464 of 2022 and accordingly the said writ petition is allowed. Consequentially, the writ petitions filed by Shri Sukant Muduli bearing W.P.(C) Nos. 11018 and 13628 of 2022, being devoid of merit, stand 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 1st November, 2022, Arun/GDS