

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.25949 of 2021

Pooja Gupta

.....

Petitioner

Mr. Yasobant Das, Sr. Advocate

Vs.

State of Odisha and others

.....

Opposite parties

Mr.B.P.Tripathy, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

14.03.2022

Order No.

08.

This matter is taken up through hybrid mode.

2. Heard Mr. Yosobant Das, learned Senior Counsel for the petitioner and Mr. B.P.Tripathy, learned Addl. Government Advocate for the State.

3. The petitioner has filed this writ petition with a prayer to quash the letter dated 23.08.2021 at Annexure-9 by which the Collector, Mayurbhanj, on the basis of instructions received from the Government in R & D.M. Department, Government of Odisha communicated through letter No.24811 dated 19.8.2021, directed the concerned Tahasildars to initiate the process for tender afresh at their level as per OMMC Rules, 2016, by cancelling the tender notice for 48 numbers of minor mineral sources pursuant to advertisement bearing No.41/2021 (Touzi) of the Collectorate, Malkangiri; as well as letter dated 25.08.2021 at Annexure -10, by which the Tahasildar, Mathili has cancelled the tender notice for the Saradaput Stone query with which the petitioner is concerned.

4. Mr. Y. Das, learned Senior Counsel appearing for the petitioner contended that the order impugned under Annexure-9 dated 23.08.2021

does not assign any reason as to why the tender in quotation, pursuant to advertisement bearing No.41/2021 of the Collectorate, Malkangiri, was cancelled. Though reference has only been made to letter dated 19.08.2021 of the Government in R & D.M. Department and the Tahasildars concerned have been directed to process for tender afresh at their level as per OMMC Rules, 2016, but nothing has been indicated with regard to the reasons mentioned in the letter dated 19.8.2021 for cancellation of the tender notice issued under advertisement No. 41/2021 (Touzi) of Collectorate Malkangiri. Therefore It is further contended that the subsequent order dated 25.8.2021 under Annexure-10 passed with regard to cancellation of tender process of Minor Mineral Sources initiated vide notification No.41/2021 dated 3.3.2021 of the Collectorate, Malkangiri, which was issued consequent upon Annexure -9, also cannot sustain in the eye of law. To substantiate his contention, he has relied upon the judgment of this Court in the case of *M/s. Shree Ganesh Construction v. State of Orissa and others* reported in 2016 (II) OLR, 237, in which one of us (Dr. Justice B.R.Sarangi) is a member, wherein the judgments of the apex Court in the cases of *Air India Ltd. v. Cochin International Airport Ltd. and others*, (2000) 2 SCC 17; *Maa Binda Express Carrier and another v. North-East Frontier Railway and others*, (2014) 3 SCC 760; *Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others*, AIR 1978 SC 851; *Commissioner of Police, Bombay v. Gordhandas Bhanji*, AIR 1952 SC 16; and *Bhikhubhai Vithlabhai Patel and others v. State of Gujarat and another* (2008) 4 SCC 144, have been referred to.

5. Mr. B.P.Tripathy, learned Addl. Government Advocate appearing for the State-Opposite Parties though admits that the order under Annexure-9 has been passed without assigning any reasons, but contended that in the counter affidavit the explanation has been given

as to why the cancellation of tender process has been made. He also place reliance on the letter dated 19.8.2021, basing upon which the order under Annexure-9 has been passed, wherein it has been specifically indicated that based on allegations on enquiry was conducted by the RDC and a report was submitted indicating therein that the participation of bidders is far from all fairness, thereby the Collector, Malkangiri was directed to invoke the power so conferred under Rule 27(16) of OMMC Rules 2016 and cancel the bid. Therefore, on enquiry since it was found that the selection of tender was done without following due procedure of law, the government vide letter dated 19.08.2021, directed the competent authority to pass the order of cancellation of the tender notice, and to that extent the pleadings are made in the counter affidavit.

6. Having heard learned counsel for the parties and after going through the records, it appears that only relying upon the letter dated on 19.8.2021 issued by the Government in R& DM Department, the Collector Malkangiri, vide Annexure-9 cancelled the tender notice issued pursuant to the advertisement No. 41/2021 and directed the Tahasidars concerned to initiate a fresh tender at their level as per OMMC Rules, 2016 and in response thereto, the Tahasildar, Mathili vide Annexure-10 cancelled the tender process, in which the petitioner is concerned. The orders impugned under Annexures-9 and 10 do not indicate the reason for cancellation of the tender, and the reasons so assigned in the counter affidavit filed by the State, by referring to the letter dated 19.8.2021 vide Annexure-A/3, cannot be taken into consideration because of the fact that the counter affidavit cannot supplement the reasons for which the cancellation has been made in Annexures- 9 and 10. Thereby, the ratio decided in *M/s. Shree Ganesh Construction (supra)*, on which reliance has been placed by learned counsel for the petitioner, is fully applicable to the present case.

Subsequently, this Court has also passed a judgment in the case of ***SRB Transport, Sambalpur v. Union of India and others and batch of cases, (W.P.(C) No. 2430 of 2022 and batch decided on 14.02.2022)*** taking into consideration the judgments passed by this Court as well as by the apex Court, as relied in the previous judgment.

7. In view of the above, this Court is of the considered view that the impugned orders dated 23.08.2021 and 25.08.2021 under Annexures-9 and 10 passed by the Collector, Malkangiri and Tahasildar, Mathili respectively, so far as they relates to the petitioner, cannot be sustained in the eye of law and the same are liable to be quashed and are hereby quashed. The Collector, Malkangiri is directed to pass fresh cancellation order assigning reasons in terms of letter dated 19.08.2021 marked as Annexure-A/3 to the counter affidavit. Thereafter, the Tahasildar, Mathili (opp. party No.3) shall take appropriate steps in accordance with OMMC Rules, 2016.

8. With the aforesaid observations and directions, the writ petition is disposed of.

Urgent certified copy of this order be granted as per rules.

(DR. B.R. SARANGI)
JUDGE

Arun/Bichi

(SAVITRI RATHO)
JUDGE