

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.21833 of 2019

Jayaram Nayak and others ***Petitioners***
Mr. H.N. Mohapatra, Advocate
-Versus-

State of Odisha and others ***Opp. Parties***
Mr. D.K. Mohanty, AGA

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

Order No.

ORDER
30.06.2022

R.K. Pattanaik, J

9. 1. Invoking writ jurisdiction under Article(s) 226 and 227 of the Constitution of India, 1950, the Petitioners have approached this Court challenging the auction notice dated 4th October, 2019 (Annexure-1) published by the Tahasildar, Baliana (O.P.No.4) on the grounds *inter alia* that the same contravenes the guidelines of the Government issued vide notification dated 26th April, 2019 (Annexure-2) and further seeking a direction to the Opposite Parties to show cause as to why, it shall not be quashed.
2. As per the Petitioners, the auction notice under Annexure-1 was published inviting applications for the sand sairat in question which is not in consonance with the set out guidelines of the Revenue and Disaster Management Department, Government of Odisha issued under Annexure-2 for regulating the quarrying activities in the State. It is claimed by the Petitioners that as per the clause-A of the guidelines, there was a need of a joint

verification conducted by the Tahasildar with the assistance of the Water Resources Department for identification of river stretches before grant of quarry leases with the boundary of the sources being properly demarcated and as per clause-B thereof, a mining plan duly approved with the Environment Clearance (EC) in place. It is submitted by the Petitioners that no such joint verification was conducted nor any mining plan was prepared in advance as required under Annexure-2 which is again to endanger the lives of the inhabitants of the villages situated nearby apart from damaging temples and other structures which are lying within the vicinity of 200 meters of the sand sairat. It is lastly stated that representations have been submitted to O.P.No.4 as well as the Collector, Khurda (O.P.No.2) which are still pending consideration. On the above grounds, the auction notice dated 4th October, 2019 under Annexure-1 is under question at the instance of the Petitioners.

3. Heard Mr. H.N. Mohapatra, learned counsel for the Petitioners and Mr. D. K. Mohanty, learned AGA appearing for the Opposite Parties.

4. Mr. Mohapatra reiterated the grounds and submitted that there has been non-compliance of the guidelines of the Government as notified under Annexure-2 before publication of the auction notice dated 4th October, 2019 which is likely to affect the lives of the villagers and damage the environment and therefore, it should be quashed. It has been brought to the notice of the Court that representations under Annexures-3 and 4 have been submitted but no decision was taken by the authorities

concerned. Mr. Mohapatra highlighted upon the relevant provisions of Annexure-2 regarding identification of sources for the sand quarry with the requirement of an approved mining plan and environment clearance. Lastly, it is contended that despite protest being held by the villagers which is evident from Annexure-5, clipping of a daily news paper, no action was taken by O.P.Nos.2 and 4 and under the above circumstances, where the sand sairat is not in accordance with the provisions of Annexure-2, it is required to be interfered with and quashed in the interest of justice.

5. On the contrary, Mr. Mohanty contended that proper enquiry has been conducted before publication of the auction notice dated 4th October, 2019. In fact, a counter affidavit has been filed by O.P.No.4 denying the contentions of the Petitioners by stating that a field enquiry was carried out before creation of the sand source and in that respect, a report was submitted by the concerned R.I. and further, a spot visit was made. It is further revealed therein that since there was objection to the auction sale on various grounds, the Executive Engineer, Irrigation Division, Nimapara has been requested to hold a joint enquiry in respect of the river embankment and for submission of technical views and in the meantime, by office letter No.3059 dated 29th October, 2019 of O.P.No.4, Director, Geo Consultant Private Limited, Bhubaneswar was engaged to prepare an approved mining plan and only after receipt of report, action would be taken on the objections received and till then, the auction has been postponed by way of a notice for information of the general public. With regard to the claim that certain structures situate within a radius

of 100 meters from the sand source, it is stated in the counter affidavit that no bridge or any temple exist within that area and therefore, the contention in that respect is totally baseless and without substance. Referring to the counter affidavit, Mr. Mohanty contends that there is no just ground for the Court to interfere in so far as the auction notice is concerned.

6. There is no denial to the fact that the locals had raised objection and submitted representations under Annexures-3 and 4, where after, in order to examine the same, the auction was deferred which is revealed from the counter affidavit itself filed by O.P.No.4. On a bare reading of Annexure-2, it would suggest that the Government of Odisha in Revenue and Disaster Management Department issued guidelines for regulating the sand quarrying in the State in continuation of various instructions released in the past. As per clause-A, a joint verification by the Tahasildar with Executive Engineer of Water Resources Department for identification of specific river stretches is to be conducted and under clause-B, a mining plan is to be prepared in advance by engaging a Registered Qualified Person (RQP) and also to obtain EC, the cost of which is to be incurred by the selected bidder. By citing the above provisions of Annexure-2, Mr. Mohapatra has contended that the auction notice was published without any such steps being taken. On the other hand, Mr. Mohanty would contend that in view of the field enquiry and other measures duly being taken, the apprehension of the Petitioners is unjustified and totally misplaced.

7. From the counter affidavit of O.P.No.4, it is made to understand that local enquiry was held by the Tahasildar in presence of concerned RI and Revenue Supervisor, Baliana in the year 2018 and even a spot visit was made and thereafter, the objection of the locals was also taken note of and awaiting technical views, the auction was deferred and not only that, the Geo Consultant Private Limited, Bhubaneswar has been requested to submit an approved mining plan in the month of October, 2019. In view of the above developments as indicated in the counter affidavit, it appears to the Court that though the auction notice was published on 4th October, 2019 in respect of the sand sairat but after objection was received, necessary steps were taken requesting the Irrigation Division, Nimapara for their technical views and the concerned RQP was engaged to submit an approved mining plan pending which the auction was postponed by a notice to the general public. Mr. Mohanty, learned AGA has apprised to the Court that EC has been obtained in respect of the newly created source. In the counter affidavit, while denying all the contentions including the apprehension about plying of sand loaded vehicles on the river embankment leading to its damage as misconceived, it has been asserted therein that no illegality has been committed vis-à-vis the auction notice with an assurance at the end that only after receipt of the technical feasibility report from the competent authorities, necessary action would be taken keeping in view public interest. In such view of the matter, when the auction sale was deferred on receiving objection and thereafter, technical views have been sought for besides requesting a consultancy to submit an

approved mining plan and regard being had to the fact that further action in the matter to be taken only after the technical feasibility report is submitted, the Court is of the considered view that adequate steps have been taken by the authorities in the meantime complying the guidelines of the Government notified under Annexure-2 and therefore, no interference with the auction notice is required as all the objections raised have duly been taken care of and addressed. In other words, since necessary steps and measures have been taken in the meantime with the assurance by the Opposite Parties that after receipt of the technical views and approved mining plan, further action would be taken vis-à-vis the sand sairat being alive to the interest of the public, there appears no need for the Court to intervene and set aside the auction notice under Annexure-1.

8. Accordingly, it is ordered.

9. In the result, the writ petition stands dismissed.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice