ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 29516 OF 2022

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

AFR

Srinivas Satapathy ..... Petitioner

-Versus-

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

For Petitioner : M/s. T. Mishra, S. Das and D.K. Pattnaik, Advocates

For Opp. Parties : Mr. P.K. Muduli, Addl. Govt. Advocate

P R E S E N T:

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

Date of hearing and judgment : 11.11.2022

DR. B.R. SARANGI, J. The petitioner, by means of this writ petition, seeks to quash the order dated 14.10.2022 under Annexure-12 passed by the Sub-Collector, Gunupur in Quarry Lease Appeal Case No.1/22, as well as the office order dated 18.01.2021 (wrongly dated as

01.01.2021) passed by opposite party no.2-Colletor, Rayagada under Annexure-8, and to issue direction to the opposite parties to grant the quarry lease in favour of the petitioner within a stipulated time.

2. The factual matrix of the case, in a nutshell, is that the Tahasildar, Gunupur-opposite party no.4, issued a notice on 08.09.2020 inviting applications for grant of Turukaniguda Sand Bed under Gunupur Tahasil on long term lease of five years through auction. Pursuant to such auction notice, seven bidders submitted their applications in sealed cover within the time specified. Opposite party no.5, having quoted highest price, was found as successful bidder, whereas the petitioner was found as second highest bidder. Consequentially, opposite party no.4 issued notice in Form-F to opposite party no.5, vide letter dated 25.09.2020, for conveying the acceptance of the terms and conditions and for depositing the required amount within a period of 15 days. Though the said letter was received on 08.10.2020 by opposite party no.5, but he neither deposited the required amount nor did convey

the acceptance of the terms and conditions within a period of 15 days, as provided under Rule-27(7) of the Odisha Minor Mineral Concession Rules, 2016 (for short "OMMC Rules, 2016"). Therefore, opposite party no.4 issued a letter to opposite party no.2, on 29.10.2020, requesting for necessary order to issue intimation to the second highest bidder to convey the acceptance, as per Rule-27(9) of the OMMC Rules, 2016. As no reply was received thereto, again opposite party no.4 issued another letter on 10.11.2020 to opposite party no.2 requesting him for necessary order to issue intimation to the second highest bidder, the petitioner herein. Thereafter, opposite party no.5, vide letter dated 12.11.2020, intimated opposite party no.4 that he has deposited the amount, as per the notice dated 25.09.2020, and that the payment was made on 02.11.2020, i.e., much after expiry of the stipulated period, which was duly acknowledged by the office of the opposite party no.4. But, in the meantime, the petitioner represented opposite party no.4, vide letter dated 12.11.2020, requesting for permission to deposit the bid amount, as he was the second higher bidder.

Consequentially, opposite party no.4 forwarded the letters of both the petitioner and opposite party no.5 to opposite party no.2, vide letter dated 24.11.2020, for such permission, but the same was not acted upon and, as such, the Collector-cum-Controlling Authority directed the Tahasildar-opposite party no.4 to allow opposite party no.5, the highest bidder, as he has deposited the amount and there is huge difference between the amount deposited by opposite party no.5 vis-à-vis the petitioner. Consequentially, the EMD deposited by the petitioner was released in his favour on 28.07.2021, on the basis of which the petitioner could know that his bid has not been accepted, though he being the second highest bidder is eligible to get the auction as per Rule-27(9) of OMMC Rules, 2016.

2.1 Aggrieved by the above action of the authority, petitioner preferred appeal bearing Quarry Lease Appeal No.1/2022 before the Sub-Collector-cum-Appellate Authority, as provided under the OMMC Rules, 2016, on 18.05.2022. The said appeal was admitted on 18.05.2022 and opposite party no.4 was directed to submit the L.C.R. along with details of the tender papers. Subsequently, the matter was heard on 02.06.2022 and finally the same was dismissed, vide order dated 14.10.2022, on the ground that since the Collector has confirmed the quarry in favour of opposite party no.5, the appellate authority has no role to interfere with the same. Hence, this writ petition.

3. Mr. Tanmay Mishra, learned counsel for the petitioner vehemently contended that admittedly opposite party no.5 was the highest bidder but he did not comply with the provisions contained under Rule-27(7) of the OMMC Rules, 2016 by conveying his acceptance of the terms and conditions and depositing the amount calculated therein within 15 days. Since the amount was not deposited within the stipulated period of 15 days, no right accrued in favour of opposite party no.5 to get the lease. It is further contended that as per Rule-27(9) of the OMMC Rules, 2016, on default of opposite party no.5, who is the highest bidder, the petitioner, being the next highest

bidder, the competent authority should have issued him intimation, in terms of Sub-rule (6) of Rule-27, calling upon him to convey his acceptance. As such, pursuant to such provision, there was no intimation to the petitioner and, therefore, the petitioner, being the second highest bidder, filed appeal before the appellate authority and also undertook to match the bid price offered by opposite party no.5, who is the highest bidder. But the same was not taken into consideration and the appeal preferred by the petitioner was dismissed, in view of Rule-27(10) of the OMMC Rules, 2016. It is contended that the highest bidder, having failed to comply the provisions contained under the OMMC Rules, 2016 within the time specified, cannot be granted the lease and, on the other hand, the petitioner, being the second highest bidder, has a right to be considered for allotment of the lease in his favour. But the appellate authority, without considering the same and only relying upon the observation of the Collector-cum-Controlling Authority, dismissed the appeal, which cannot sustain in the eye of law.

4. Mr. P.K. Muduli, learned Addl. Government Advocate appearing for the State-opposite parties contended that at the instance of the petitioner, who is claiming to be the second highest bidder, the writ petition is not maintainable, as because he was not intimated in terms of the provisions contained in Rule-27(9) of the OMMC Rules, 2016 to convey his acceptance and to make the security deposit calculated in the manner mentioned in Sub-rule (7). Therefore, when no intimation was given to the petitioner, no right accrued in his favour and, more so, cancellation of lease due to non-compliance of the provisions contained under Rule-27(7) of the OMMC Rules, 2016 is not automatic. It is contended that as per Rule-27(10) of the OMMC Rules, 2016, it is the duty and responsibility of the Controlling Authority to cancel the bid and direct for fresh auction, after proper verification and with due justification. As such, in the present case, the Controlling Authority, on verification, did not find any justification to cancel the bid or to direct for fresh auction, in view of the fact that the highest bidder had already deposited the amount, which was duly accepted. Mr.

Muduli, learned Addl. Govt. Advocate makes a comparison with regard to Rule-27(7) of OMMC Rules, 2004 vis-à-vis Rule-27(9) of OMMC Rules, 2016, where right of the second highest bidder is not mandatory. Rather, it is stated that the same is mandatory in Rules, 2004 by using the word "shall" instead of "may". Thus, it is contended that the petitioner has no *locus standi* to claim the benefit for settlement of the quarry in his favour.

5. This Court heard Mr. Tanmay Mishra, learned counsel for the petitioner; and Mr. P.K. Muduli, learned Addl. Government Advocate appearing for the State-opposite parties by hybrid mode and perused the records. With the consent of learned counsel for the parties, this writ petition is being disposed of finally at the stage of admission.

6. For just and proper adjudication of the case, the provisions contained under Rules-27(6), (7), (8), (9) and (10) of the OMMC Rules, 2016, are extracted hereunder:-

> *"(6) The selected bidder shall be intimated by the Competent Authority within seven days*

in Form-F about the selection and terms and conditions of the lease.

(7) Within fifteen days of such intimation, the selected bidder shall be required to convey his

acceptance of the terms and conditions and to deposit an amount which shall be calculated in such a way that it shall be equivalent to one-fourth of the total amount of royalty and additional charge and the amount of contribution payable to the District Mineral Foundation on the annual minimum guaranteed quantity, taken together, reduced by the amount of earnest money, which, along with the earnest money, shall be held as interest-free security deposit.

(8) The selected bidder shall also deposit the costs of obtaining the mining plan and environmental clearance approvals, in case those have been obtained by the Competent Authority (non-refundable) before executing the lease deed.

(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).

(10) If the second highest bidder has quoted unusually low price in comparison to the highest bidder of the same source or other sources in the vicinity, the competent authority may bring it to the notice of the Controlling Authority, who after proper verification and with due justification may cancel the bid and direct for fresh auction."

7. A cursory glance over the materials available on record would make it clear that pursuant to auction notice issued by opposite party no.4, all total seven bidders had submitted their bids for grant of Turukaniguda Sand Bed under Gunupur Tahasil on long term lease of five years. Opposite party no.5, having quoted highest price, was found to be successful bidder and, as such, as provided under Rule-27(7) of OMMC Rules, 2016, he was to convey his acceptance of the terms and conditions within a period of 15 days. Although he failed to do so within the time stipulated, but, however, within a short time thereafter, he deposited the entire amount, in the manner it is calculated in Sub-rule (7), and conveyed his acceptance as per the terms and conditions, which was also duly acknowledged by the competent authority. But, after the lapse of 15 days period, the petitioner, who is claiming to be the second highest bidder, approached the authority by stating that once opposite party no.5 failed to comply with the requirements of Rule-27(7) of OMMC Rules, 2016 within the time stipulated, he lost his right and, as such, a right accrued in favour of the petitioner and

consequentially the lease should be settled in his favour. But fact remains, even though conveyance of acceptance of terms and conditions and deposit of security amount was not made by opposite party no.5 within 15 days of intimation, that *ipso facto* cannot create a right in favour of the petitioner unless he is duly intimated by the competent authority in prescribed form, as provided under Rule-27(9) of OMMC Rules, 2016.

8. Mr. Tanmay Mishra, learned counsel for the petitioner very fairly states that in compliance of the provisions contained under Rule-27(9) of the OMMC Rules, 2016, no intimation was given to the petitioner. Therefore, whether the petitioner is the second highest bidder or not, that fact was not intimated to him. Consequentially, no right has been accrued in favour of the petitioner, as because under Rule-27(9) of the OMMC Rules, 2016 no intimation was given to him by the competent authority in Form-F about his selection and terms and conditions of the lease. The same having not been done, the petitioner has no *locus sta*ndi to file this

writ petition and, as such, at the behest of the petitioner, the present writ petition is not maintainable.

9. In ***Taylor v. Taylor***, (1876) 1 Ch D 426, it was laid down that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. This doctrine has often been applied to Courts.

Lord Roche in ***Nazir Ahmad v. King Emperor***, AIR 1936 PC 253 followed the aforesaid principle. Subsequently, the said principle has been well recognized by the apex Court and is holding the field till today, as would be evident from ***State of Uttar Pradesh v. Singhara Singh***, AIR 1964 SC 358; ***Chandra Kishore Jha v. Mahabir Prasad***, AIR 1999 SC 3558, ***Babu Verghese v. Bar Council of Kerala***, (1999) 3 SCC 422; ***Dhananjay Reddy v. State of Karnataka***, AIR 2001 SC 1512; ***Gujurat Urja Vikas Nigam Ltd. v. Essar Power Ltd***., AIR 2008 SC 1921; ***Ram Deen Maurya v. State of U.P.***, (2009) 6 SCC 735 and ***Zuari Cement Limited v. Regional Director, Employes' State Insurance***

Corporation, Hyderabad and others, (2015) 7 SCC 690. The said principle has also been referred by this Court in the case of ***Subash Chandra Nayak v. Union of India***, 2016 (I) OLR 922; ***Rudra Prasad Sarangi v. State of Orissa***, 2021 (I) OLR 844; ***Bamadev Sahoo v. State of Orissa***, 132 (2021) CLT 927: 2021 (Supp.) OLR 674; and ***Raj Kishor Deo v. State of Odisha***, 2022 (II) OLR 415.

Applying the above principle to the present context, this Court is of the considered view that since no notice was given to the petitioner under Rule-27(9) of the OMMC Rules, 2016, at the behest of the present petitioner, the writ petition cannot be sustained in the eye of law.

10. Now, coming to the merits of the writ petition, this Court finds that even though Rule-27(7) of OMMC Rules, 2016 provides that the selected bidder shall be required to convey his acceptance of the terms and conditions and to deposit the security amount in the manner calculated therein within a period of 15 days, but admittedly after 15 days opposite party no.5 deposited the

amount and the same was duly accepted by the competent authority. As a matter of principle, the authorities cannot go beyond their commitment and, as such, when the Tahasildar brought such fact to the notice of the Collector, he, in turn, as the Controlling Authority under the OMMC Rules, 2016, caused due verification and came to a conclusion that since there was huge difference of Rs.2,33,43,000/- between the offer of the petitioner and opposite party no.5, the State Ex-chequer would put to loss in the event of acceptance of second highest bidder and, more so, opposite party no.5 has already deposited the amount, which is duly acknowledged by the authority. Referring to such observation of the Collector, the Sub-Collector dismissed the appeal of the petitioner with the following observations:-

> *"…….. The Tahasildar, Gunupur has not been followed the rules as required in this case as per OMMC Rules, 2016. On the other hand, after receipt of the report from the Tahasildar, Gunupur vide letter No.10/2021 dated 01.01.2021 (Annexure-F), the Collector-cum-Controlling Authority confirmed the tender in favour of the 1st highest bidder Sri Subasis Sahu with the reason that the State ex-*

> *chequer will loss substantial amount of revenue amounting to Rs.2,33,43,000/- if the 2nd highest bidder is selected for the said sand bed.*
>
> *Keeping in view of the above facts on recorded evidence, I am of opinion that, since the Collector-cum-Controlling Authority, Rayagada has confirmed the sand bed quarry in favour of the respondent as required under Rule-27, sub-rule (10) of the OMMC Rules, 2016, this court has no role to interfere on the orders of the Controlling Authority. Hence, the appeal/case is disposed of accordingly."*

In view of the finding arrived at by the Sub-Collector in appeal, this Court does not find any error apparent on the face of record so as to warrant interference with the same.

11. In the result, the writ petition merits no consideration and the same is accordingly dismissed. However, there shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

B.P. SATAPATHY, J. I agree.

....
B.P. SATAPATHY,
JUDGE

Orissa High Court, Cuttack
The 11th November, 2022, Ashok/GDS