

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.33727 of 2022

***B.P. Construction and
Engineering Pvt. Ltd.,
Jagatsinghpur***

.....

Petitioner

*Mr. S. Palit, Sr. Advocate
along with Mr. S. Bose, Advocate*

Vs.

State of Odisha & Ors.

.....

Opposite Parties
Mr. P.P. Mohanty, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE B.P. SATAPATHY

ORDER
20.12.2022

Order No.

2

This matter is taken up through hybrid mode.

2. Heard Mr. S. Palit, learned Senior Counsel appearing along with Mr. S. Bose, learned counsel for the petitioner and Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties.

3. The petitioner has filed this writ petition seeking direction to the opposite parties to declare the petitioner as the successful highest bidder for grant of long term lease in respect of Lunibar Black Stone Quarry No.2, vide Sairat Case No.12 of 2022-23 pursuant to advertisement no.4283 dated 22.09.2022.

4. Mr. S. Palit, learned Senior Counsel appearing for the petitioner contended that though advertisement was issued twice inviting applications from the eligible candidates for grant of long term lease in respect of Lunibar Black Stone Quarry No.2, vide Sairat Case No.12 of 2022-23, but the same were not successful. When notice was issued for 3rd time putting the source into auction,

the petitioner participated in the same quoting Rs.375/-, which is the highest price ever been quoted in the entire Tahasil, but the same was not opened and returned to the petitioner saying that the petitioner is the single bidder. It is contended that all the time the petitioner was not permitted by the opposite parties to operate the quarry. He refers to Clause-7.5.10 of the Manual for Procurement of Goods issued by the Government of India, Ministry of Finance Department of Expenditure, wherein it is stated that it has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable, and to go for re-tender as a 'safe' course of action. This is not correct. Re-bidding has costs; firstly the actual costs of retendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid. Even when only one Bid is submitted, the process may be considered valid provided the following conditions are satisfied:

- i) The procurement was satisfactorily advertised and sufficient time was given for submission of bids.*
- ii) The qualification criteria were not unduly restrictive; and*
- iii) Prices are reasonable in comparison to market values*

However, restricted powers of Single tender mode of procurement would apply, in case of price not being reasonable, negotiations (being L1) or retender may be considered as justifiable.

It is further contended that the petitioner has satisfied the requirement as envisaged under Clause-7.5.10 of the Manual for Procurement of Goods issued by the Government of India, Ministry of finance Department of Expenditure, therefore its bid should have been accepted. More so, it is contended that in the entire Tahasil if anybody gives quotation of higher price than the

petitioner, it is also willing to pay the said price because it does not want to put the State Exchequer to loss. Therefore, conducting several bids to find out a suitable candidate is also detrimental to the Government as per Clause-7.5.10 of the Manual for Procurement of Goods issued by the Government of India, Ministry of Finance Department of Expenditure.

5. Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties produced instructions, which reads thus:-

"1. With the interest of generating the maximum revenue for the Govt. Exchequer, tenders were invited for the auction of the sairat sources under Dharmasala Tahasil. In the process, the sources for which multiple proposals were received within the stipulated time i.e. 26.10.2022, sealed tenders were opened on the date fixed in the presence of the participants/authorized representatives i.e. 27.10.2022.

*2. Single proposals were received for 05 nos of BSQs as on 26.10.2022. These sealed tenders were not opened on the day of auction as single participation did not result in competitive bidding. Further, opening the sealed tenders would have exposed the bid amount for the participants. Therefore, the sealed tenders returned to the representatives of the 03 BSQs present in-hand, so that they could participate in the next auction for the same sources for which the **advertisement has already been made on 13.12.2022** and the tenders for Lunibar BSQ No. 02 and Dankari BSQ was returned via regd. post, as no representatives were present for the petitioner on the date of tender opening i.e. 27.10.2022.*

3. It is also submitted that, apart from the 15 nos of unauctioned Blackstone quarries, 70 BSQs are already auctioned under Dharmasala with finalized bidders out of which presently 23 BSQs are operational with locations throughout the tahasil area and the remaining are pending for mandatory clearances from various Competent Authorities following which they will move into operation. Therefore, it is assured that, no Govt./Private projects need be halted for unavailability of sources.

4. The claim of the petitioner for having quoted the highest amount as Additional Charges (beyond the govt. approved royalty rate) than what has been quoted in the

vicinity is untrue in its entirety. A compilation of all the sairat sources with higher rate of quoted additional charges is submitted herewith along with the source and highest/ selected bidder details:

Sl. No	Sairat Sources	Name of the highest bidder	Quoted additional Charges
1	Dankari BSQ No-6	Rangadhar Pradhan	444.00
2	Dankari BSQ No 2	Sribash-Jena	380.00
3	Dankari BSQ No	Rasmiranjan Panda	389.00
4	Dankari BSQ No	Niranjan Rout	327.00
5	Rahadpur BSQ No 5	Satya Multiplex Pvt.	395.00
6	Bhabanipur Sand	Sarat Ch. Nayak	1141.00
7	Raichhanda Sand	Sribash Jena	675.00
8	Badanahanagara	Dusmata Kumar	292.00
9	Uttarpratap Sand	Sarat Ch. Nayak	493.00
10	Baraman BSQ No 2	Kuna Pradhan	427.00
11	Barada BSQ	Ajit Sahoo	405.00
12	Barada BSQ No 4	Ajit Sahoov	569.00'
13	Bajabati BSQ No 6	Samarendra Nayak	291.00
14	Rahadpur BSQ No 1	Sandeep Chandak	332.00
15	Rahadpur BSQ No 4	Sarat Ch. Sahoo	439.00
16	Rahadpur BSQ	Satyamulti Plex Pvt.	273.00
17	Anjira- BSQ No 10	Kuna Pradhan.	383.00
18	Anjira BSQ No 5	Utkal Mines	416.00
19	Anjira BSQ No 14	Utkal Mines	454.00

As it appears from the above instructions, Ajit Sahoo has quoted Rs.569.00 in respect of Barada BSQ No.4 in Dharmasala Tahasil. Therefore, learned Additional Government Advocate contended that the price quoted by Ajit Sahoo is the highest price in the said Tahasil, if the petitioner is willing to take the quarry matching with the said price, it may approach the tendering authority so that the source can be settled in its favour.

6. Considering the contentions raised by learned counsel appearing for the parties and after going through the records, this Court finds that so far as Dharmasala Tahasil is concerned, since highest price of Rs.560/- has been offered for other source as against the bid of the petitioner quoting Rs.401 and the petitioner

has expressed its willingness to operate the quarry by offering the highest price, i.e. Rs.560/-, it is open to the petitioner to approach the Tahasildar, Dharmasala by filing an application within a period of seven days from today offering the highest price of Rs.560/-. In the event the petitioner files such application, the Thasildar, Dharmasala shall consider the same and pass appropriate order in accordance with law in compliance of the provisions contained in OMMC Rules, 2016 and the circular, which has been referred to above. The entire exercise shall be completed as expeditiously as possible, preferably within a period of four weeks from the date of filing of the application by the petitioner.

7. With the above observation and direction, the writ petition stands disposed of.

8. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(B. P. SATAPATHY)
JUDGE