ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 40431 OF 2021

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

AFR

Madan Mohan Pradhan ..... Petitioner

-Versus-

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

For Petitioner : M/s. S.K. Dalai, S. Mohapatra and P. Swain, Advocates.

For Opp. Parties : Mr. P.P. Mohanty, Addl. Government Advocate.

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HON'BLE MISS JUSTICE SAVITRI RATHO

Date of hearing & judgment: 12.05.2022

DR. B.R. SARANGI, J. The petitioner, by means of this writ petition, seeks to quash the letter dated 20.12.2021 issued by the Tahasildar, Kashinagar under Annexure-6, by which he has been intimated that the Collector, Gajapati-cum-Controlling Authority has cancelled the bid of Khandava Sand Quarry in terms of Rule 27 (10) of the

Odisha Minor Mineral Concession Rules, 2016, owing to the reason, as communicated by the Additional District Magistrate, Gajapati in his letter dated 17.12.2021.

2. The factual matrix of the case, in brief, is that a notice bearing no. 4898/Sairat was issued on 20.09.2021 by the Tahasildar, Kashinagar-opposite party no.4 inviting applications from the intending bidders to participate in the auction for grant of long-term lease of different sairat sources under Kashinagar Tahasil in the State of Odisha, for a period of 5 years from the financial year 2021-22 to 2025-26, as per the Odisha Minor Mineral Concession Rules, 2016 (for short "OMMC Rules, 2016"). In the said notice, Khandava Sand Quarry, which was one of the sairat sources, had been put to auction. As per the said notice, interested bidders were required to apply in Form-M enclosing the required documents in a sealed cover and drop the same in the drop box at the Tahasil office between 08.10.2021 and 03.11.2021. It was also indicated that applications will not be accepted after the due date and time, i.e., 5.30 PM of 03.11.2021. The

name of the sairat source and number of the sairat case were to be reflected in the envelope. On 05.11.2021 at 11.00 p.m. scrutiny of the applications for opening of the bids in presence of the lease applicants or their authorized representatives was to be conducted and incomplete applications were to be rejected. Applications received after 5.30 p.m. of 03.11.2021 were not to be taken into consideration. The Competent Authority and the Collector, Gajapati shall have the right to cancel or suspend the auction without assigning any reason thereof.

2.1 Pursuant to the auction notice, as referred above, the petitioner made his application in Form-M, along with the required documents, in respect of "Khandava Sand Quarry", which was mentioned at sl. no. 14 of the details of the Sairat Sources of the notice dated 20.09.2021, within the time specified. The petitioner along with 9 others participated in the auction process. The petitioner quoted additional charges of Rs.156/- per Cum of sand. Out of 9 participants, 6 participants had quoted more additional charges than the additional charge quoted by the petitioner, but they were disqualified as they had not adhered to the conditions stipulated in the notice. Form-F was issued in favour of the petitioner directing him to deposit Rs.40,000/- towards cost of preparation of Mining Plan and for execution of agreement supported by deposit of security money, as envisaged under Rule 43 (1) of the OMMC Rules, 2016. The petitioner deposited such amount, which was duly acknowledged by the authority. On 04.02.2021, opposite party no.4 issued notice to the petitioner to submit pre-feasibility report and other required documents, before the Competent Authority for grant of environment clearance, which was under progress.

2.2 At that point of time, the petitioner was served with the letter of cancellation of his bid in respect of Khandava Sand Quarry by the Tahasildar, Kashinagar, vide Annexure-6 dated 20.12.2021, wherein the petitioner was intimated that the Collector, Gajapati-cum-

Controlling Authority had cancelled the bid of Khandava Sand Quarry dated 05.11.2021 as per Rule 27 (10) of the OMMC Rules, 2016, owing to the reason as communicated by the Additional District Magistrate, Gajapati, vide letter dated 17.12.2021, that the bid amount quoted by the petitioner was comparatively very less in comparison to the sources in the vicinity. Therefore, selection of the petitioner, as the highest bidder in respect of Khandava Sand Quarry, was cancelled.

3. Mr. S.K. Dalai, learned counsel appearing for the petitioner vehemently contended that while passing the order impugned no reason has been assigned nor the Tahasildar, Kashinagar has communicated any reason to the petitioner. Furthermore, Rule 27 (10) of the OMMC Rules, 2016 provides that 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. If that be so, the provisions of Rule 27 (10) of the OMMC Rules, 2016 has not been complied with and, as such, the cancellation made is without application of mind.

3.1 It is further contended that the 2nd highest bidder though had quoted higher price of additional charges by offering Rs.239/-, but in the remark column it was shown as insufficient solvent. Consequentially, his application was rejected and the petitioner was called upon for production of environment clearance certificate. If the application of the petitioner was accepted and he was asked to go for subsequent follow up action, the Collector should not have turned around and cancelled the bid without assigning any reason, as required under the provisions of the OMMC Rules, 2016. Therefore, the order under Annexure-6 dated 20.12.2021 cannot sustain in the eye of law and the same is liable to be quashed.

4. Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State opposite

parties though admitted that the source had been settled in favour of the petitioner pursuant to the auction held and he was called upon to execute the agreement, but contended that on perusal of the comparative statement, it was found that one Subash Chandra Rout, S/o-Late Kailash Rout, resident of Kunheipada, P.o-Brahmanigaon, P.S-Barang, Dist-Cuttack had offered additional charge of Rs.651/- per cum of sand in respect of the source in question, but his application was rejected on the ground that the amount of the Solvency Certificate (Rs.6,85,00,000/-) submitted by him did not meet the required amount (Rs.6,86,00,000/-). Similarly, the bids of Eswar Gopal Chetty, Gopalsetty Srinivas Rao, Orissa Logistics, Pawan Kumar Bansal, Chitri Raja Nirmala, who had quoted the additional charge of Rs.481.01, Rs.372/-, Rs.263/-, Rs.240/- and Rs.239/- respectively, were also rejected on different grounds. Therefore, out of 9 participants, 6 participants had quoted the additional charges more than the additional charge quoted by the petitioner, but they were disqualified as they had not adhered to the conditions stipulated in the notice. The petitioner had offered the additional charge of Rs.156/- per Cum of sand and was selected as successful bidder by the Competent Authority, i.e. the opposite party no.4 and was allowed to comply the statutory provisions as per OMMC Rules, 2016, such as, to submit acceptance of the terms and conditions of the lease as per Rule 33 of the OMMC Rules, 2016, to deposit the security money, cost of approval Mining Plan etc. But, subsequently a report was submitted by the Additional District Magistrate on 17.12.2021 before the Collector, Gajapati, who is the Controlling Authority under the OMMC Rules, 2016. The Controlling Authority cancelled the bid of Khandava Sand Quarry dated 05.11.2021 as per Rule 27 (10) of the OMMC Rules, 2016, owing to the reason as communicated by the Additional District Magistrate, Gajapati vide letter dated 17.12.2021 that the bid amount quoted by the petitioner was comparatively very less in comparison to the sources in the vicinity. Therefore, the selection of the petitioner as the highest bidder in respect of Khandava Sand Quarry was cancelled. Thereby, the opposite parties have not committed any illegality or irregularity in cancelling the bid of the petitioner, having quoted lower price of additional charges, which is contrary to the provisions of OMMC Rules, 2016 and also justifies the order passed by the Collector, pursuant to the report of the ADM and communicated by the Tahasildar under Annexure-6 dated 20.12.2021. As a consequence thereof, the writ petition merits no consideration and the same is liable to be dismissed.

5. This Court heard Mr. S.K. Dalai, learned counsel appearing for the petitioner and Mr. P.P. Mohanty, learned Additional Government Advocate appearing for State-opposite parties by hybrid mode, and perused the records. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

6. Before delving into the merits of the case, let us examine the rudiment of law governing the field:-

In ***Cresswell on Building Contractors***, 1954 Ed., p.27, it is enlightened that tender is an offer. It is something which invites, and is intended to invite acceptance. Sometimes, in the case of large contracts a list is prepared, tabulated, and shows the name of all contractors who have tendered; and opposite each name, the total price tendered and also any observations made by the contractor or any peculiar conditions which the contractor wishes to govern his execution of the work, are stated.

In ***Meerut Development Authority v. Assn. of Management Studies***, (2006) SCC 171, the apex Court held as follows:-

> *"A 'tender' is an offer. It is something which invites and communicates to notify acceptance. Broadly stated it must be unconditional; must be in proper form, the person by whom tender is made must be able to and willing to perform his obligations. The invitation of tender is in the realm of contract."*

The terms of a contract should be interpreted and their legal effect determined as a whole. A word, phrase, sentence or a whole clause must be considered along with all the other words by which it is surrounded; and also along with-

(1) The history and education of the user,
(2) The nature of the business in hand,
(3) The purpose of the parties to the transaction, and
(4) The other relevant circumstances.

The intention of the parties should be collected from the instruments as an entirety. Disproportionate emphasis must not be laid upon a single provision. Word, phrase and clauses should not be isolated, but related to the context and the contractual scheme, as a whole, and given the meaning which accords with the probable intention.

Therefore, under the law of contract the term tender means a tender of performance or offer of performance of contract. It is also used to mean a quotation or an offer, just like an auction bid. The contract becomes complete when a tender is accepted by the party who had invited the tender.

7. On the basis of the factual matrix, as narrated above, for a just and proper adjudication of the case, it is

profitable to refer the relevant rules of OMMC Rules, 2016, hereunder:-

"Rule 27. Grant of Lease:-

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(5) Subject to the provisions of these rules, the quarry lease shall be granted in favour of the applicant who has quoted the highest rate of additional charge:

Provided that, if more than one applicant have quoted the highest rate of additional charge, then the applicant shall be selected by draw of lots.

(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.

xxx xxx xxx

(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.

(16) The Collector or the Conservator of Forest, as the case may be, shall have power to cancel the bid duly recording the reasons thereof, if he is not satisfied with the publicity, participation of bidders and amount of additional charge quoted."

8. In view of the aforesaid provisions, it is made clear that as per Rule 27(5), the quarry lease was to be granted in favour of the applicant quoting highest rate of additional charges. As such the selected bidder was to be intimated by the Competent Authority within seven days in Form-F about his selection and the terms and conditions of the lease, which were to be complied with by opposite party no.4. As required under Rule 27(7) of the OMMC Rules, 2016, within a period of fifteen days of such intimation, the selected bidder was required to convey his acceptance of the terms and conditions and to deposit the amount to be calculated in such a way that it would 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, would be held as interest-free security deposit.

9. The petitioner having been selected by opposite party no.4 was intimated in prescribed Form-F for compliance of the provisions and, as such, he was called upon to deposit Rs.40,000/-, which was complied with. At that point of time, the Additional District Magistrate, Gajapati- opposite party no.3, vide letter dated 17.12.2021, intimated the Collector, Ganapati-cum Controlling Authority under OMMC Rules, 2016 to cancel the bid of Khandava Sand Quarry dated 05.11.2021, as per Rule 27 (10) of the OMMC Rules, 2016, owing to the reason as communicated by him that the bid amount quoted by the petitioner was comparatively very less in comparison to the sources in the vicinity. Therefore, the selection of the petitioner as the highest bidder in respect of Khandava Sand Quarry was cancelled.

10. If Rule 27 (10) is taken into consideration, it would be clear that, 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.

11. Reverting back to the factual matrix, as has been delineated above, it is made clear that the Competent Authority (Tahasildar) has not brought to the notice of the Controlling Authority (Collector) with regard to the quoting of unusually low price by the petitioner, nor anything in that regard was placed by the Tahasildar before the Collector. Therefore, if there was no recommendation from the side of the Competent Authority to the Controlling Authority, question of proper verification and due justification for cancellation of bid does not arise. Meaning thereby, the provisions contained under the Rule 27 (10) of OMMC Rules, 2016 has not been complied with in letter and spirit.

12. But fact remains, nine bidders had participated in the auction process and the highest offer had been made by one Subash Chandra Rout towards additional charges quoting Rs.651/- per Cum of sand, but he was

disqualified because the Solvency Certificate of Rs.6,85,00,000/- produced by him did not meet the required amount of Rs.6,86,00,000/-. The other bidders, namely, Eswar Gopal Chetty, Gopalsetty Srinivas Rao, Orissa Logistics, Pawan Kumar Bansal, Chitri Raja Nirmala, though had quoted the additional charges of Rs.481.01, Rs.372/-, Rs.263/-, Rs.240/- and Rs.239/- respectively, but their bids were rejected on different grounds.

13. It is of relevance to mention here that the bids of 6 persons, who had quoted much higher additional charges than the petitioner, had been rejected as they had not adhered to the conditions stipulated in the notice. For example, Subash Chandra Rout had quoted Rs.651/- towards additional charges per Cum of sand, whereas additional charge quoted by the petitioner was Rs.156/- per Cum of sand. There was huge difference between the rate quoted by Subash Chandra Rout and the petitioner. Had the bid of Subash Chandra Rout been accepted, the Government would have been more

benefited by getting higher revenue in the auction sale. The sole purpose behind putting the source into auction was to augment more revenue for the greater public interest. In this case, opposite party no.4, who is the Competent Authority, instead of bringing to the notice of the Controlling Authority, i.e. the Collector with regard to the quoting of low price of additional charges of Rs.156/- per Cum of the sand by the petitioner, as provided under Rule 27 (10) of the OMMC Rules, 2016, had proceeded with the settlement of the source in favour of the petitioner. This clearly indicates the mala fide intention of the opposite party no.4, the Tahasildar, Kashinagar. Instead of looking to the Government interest of augmenting more revenue, he has tried to settle the source in favour of the petitioner at a much lower price of Rs.156/- per Cum of sand. Thereby, it casts a doubt on the conduct of such officer, who has taken steps for settling the source in favour of the petitioner at a much lower price of additional charge in comparison to the additional charges offered by other bidders, whose bids were rejected for some reason or other. But, it is a fact that they had quoted much higher price than that of the petitioner. In that view of the matter, this Court is of the considered view that the Government should take cognizance of this fact and caution such officer not to indulge in such activities in future at the cost of the interest of the Government and public at large in settling the largess at a much lesser price with the bidders.

14. Since opposite party no.4 was going to settle the source in favour of the petitioner with a much lesser additional charge of Rs.156/- per Cum of sand, grievance was made before the Collector, who called for a report from the ADM. Accordingly the ADM submitted the report on 17.12.2021 where he had specifically mentioned that the bid amount quoted by the petitioner was comparatively very less in comparison to the sources in the vicinity. Therefore, the selection of the petitioner as the highest successful bidder in respect of Khandava Sand Quarry was cancelled. The said action taken by the Collector, being the Controlling Authority, is not in adherence to the provisions contained in Rule 27 (10) of

the OMMC Rules, 2016. Though, taking a broad view of the issue, the action taken by the Collector is justified, because of the difference in additional charge, but technically the order so passed under Rule 27 (10) of the OMMC Rules, 2016 cannot sustain as no recommendation has been made by the Competent Authority to the Controlling Authority, so as to pass an order under Rule 27 (10). Thereby, such order dated 20.12.2021 under Annexure-6 cannot sustain in the eye of law.

15. Bereft of the provisions contained in Rule 27 (10) of the OMMC Rules, 2016, power has also been vested with the Collector to pass an order under Rule 27 (16) of the said Rules, wherein it has been specifically mentioned that the Collector or the Conservator of Forest, as the case may be, shall have power to cancel the bid duly recording the reasons thereof, if he is not satisfied with the publicity, participation of bidders and amount of additional charge quoted. Therefore, instead of awaiting for recommendation of Competent Authority, as required

under Rule 27 (10) of the OMMC Rules, 2016, the Collector, being the Controlling Authority, could have exercised the power under Rule 27 (16) of the OMMC Rules, 2016 for cancellation of the bid on three grounds, namely, (1) publicity, (2) participation of bidders and (3) amount of additional charge quoted. However, he could have exercised such power by passing a reasoned order.

16. Even though a counter affidavit has been filed in this case, the order passed by the Collector assigning reason for cancellation of the bid has not been enclosed, save and except the order under Annexure-6 dated 20.12.2021, which has been issued as per Rule 27 (10) of the OMMC Rules, 2016. Since there is no strict adherence to the provisions contained under Rule 27 (10), while passing the order dated 20.12.2021 under Annexure-6, the same cannot sustain. The Collector could have passed an order under Rule 27 (16) by assigning reasons that he is not satisfied with the publicity of notice or participation of bidders or amount of additional charge quoted. In the present case, the additional charge quoted by one Subash

Chandra Rout was Rs.651/- per Cum of sand and in such circumstance settlement of the source with the petitioner at Rs.156/- per Cum of sand, which is inordinately low, will affect the very purpose of augmentation of revenue for the State for greater public interest. As such, the Collector could have passed order under Rule 27 (16), that he was not satisfied with ground no.(iii), i.e. amount of additional charges quoted.

17. In view of the facts and circumstances as well as the principles of law, as discussed above, this Court is of the considered view that the order dated 20.12.2021 under Annexure-6 communicated by the Tahasildar, Kashinagar, pursuant to the order of the Collector, Gajapati basing on the report of the ADM dated 17.12.2021, under Rule 27 (10) of the OMMC Rules, 2016 cannot sustain in the eye of law and same is liable to be quashed and is hereby quashed. The matter is remitted back to the Collector, Gajapati to pass appropriate order by complying the provisions contained either under Rule 27(10) or Rule 27 (16) of the OMMC Rules, 2016, as the

case may be, in the interest of justice, equity and fair play, and above all in the interest of augmentation of revenue of the State.

18. The writ petition is accordingly disposed of. No order as to costs.

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DR. B.R. SARANGI,
JUDGE

SAVITRI RATHO, J. I agree.

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SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 12th May, 2022, Arun/GDS