

Ct. 05
Item No.07
20.04.2023
(Suvendu)

WPA 7740 of 2023

**Bhuvneshwar Pathak Construction
Private Limited & Anr.
Vs.
West Bengal Mineral Development and
Trading Corporation Limited & Ors.**

Mr. Ratnanko Banerji
Mr. Suddhasatva Banerjee
Mr. Varun Kothari
Mr. Rajesh Upadhyay
.....for the petitioners
Mr. Sanjay Saha
Mr. Subhasish Bhattacharya
.....for the respondent nos.1-2

The affidavit of service is kept on record.

The respondent nos. 1 and 2, being the
West Bengal Mineral Development and Trading
Corporation Limited is represented.

The petitioner no.1 emerged as the
successful bidder in a Sand Mining Auction in the
State and is entitled to enter into a lease
agreement with the State respondents on that
basis. The petitioners seek a direction on the
respondent authorities to modify a decision dated
14.11.2022 applying 25% of the Bank Guarantee
of Sand Premium Fees to the successful bidders as
approved by the Department of Industry,

Commerce and Enterprises in relation to all future auctions of sand blocks.

The basis of the relief sought for is that the terms of the tender as contained in Clause 8.4 are unconscionable terms. Learned counsel appearing for the petitioners submits that the decision of the State respondents to reduce the Sand Premium Fees from 100% to 25% to the successful bidders but restrict the said reduction to future tenders is contrary to the petitioners' rights under Articles 14, 19(1)(g) and 21 of the Constitution of India.

Learned counsel appearing for the respondent nos. 1 and 2 submits that the said respondents have been engaged in the tender only for management purpose and the decision to reduce the Sand Premium Fees was taken on the part of the concerned Department of the State.

Clause 8.4 of the Request for Proposal issued by the respondent Nos. 1 and 2 require the successful bidders to submit a Premium Fee Guarantee in the form of Bank Guarantee as per enclosed format equal to the amount obtained by multiplying the highest Sand Premium Rate quoted by the bidder with the total actual annual sand quantity valid for a period of five years (Clause 8.4.3). Clause 8.4.4 additionally requires

an Advance Premium Amount to be paid annually from the 2nd year onwards till the fifth year of operation.

Even at a cursory glance of Clause 8.4, it is clear that the respondents are seeking to enrich themselves twice over. This is by reason of the fact that apart from a Premium Fee Guarantee, the bidder is also required to pay the Advance Premium Amount. The Clause is hence onerous and contains no indication as to why the respondents would seek a double financial benefit from the successful bidder.

The letter of 14.11.2022 issued by the Deputy Secretary, Department of Industry, Commerce and Enterprises can be seen as containing an admission that Clause 8.4 may not survive legal scrutiny. This is clear from the Department reducing the Sand Premium Fees from 100% to 25%. Significantly however, the benefit of relaxation/ reduction is only made available for future tenders. The concerned authorities have not disclosed the reason for restricting the reduction to future tenders while depriving the existing successful bidders of the said reduction.

The action of the authorities is hence arbitrary and unreasonable on the face of it. The

restriction of the benefit to future tenders would without doubt have an impact on the petitioners who would be constrained to exhaust their financial resources in future tenders.

Clause 8.8(f) provides for the option of alterations and modifications to be made by the authorities even after executing the agreement with the bidder. Hence, the respondents can easily take appropriate steps in this regard.

The above reasons persuade this Court to direct the respondents to extend the benefit of the reduction, namely providing 25% of the Sand Premium Fees in the form of the Bank Guarantee, to the petitioners for the present tender. The State respondents shall take necessary steps in compliance with the directions within fifteen days from date.

Since nothing further remains to be adjudicated in the writ petition, WPA 7740 of 2023 is disposed of in terms of the above.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)

