Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.340 OF 2023
WITH
MISC. CIVIL APPLICATION NO.1550 OF 2023(F)

1. Silverstone Logistics,
a registered Partnership Firm,
with Office at Terni, Gadhinglaj,
Kolhapur, Maharashtra 416506 represented by
its Partner, Mr. Abulkalam Kareem Jamadar,
son of Kareem Bapu Jamadar,
49 years of age, Indian National,
Business, having address at
Terani, Terni, Kolhapur,
Gadinglaj, Maharashtra - 416506

2. Abdulkalam Kareem Jamadar,
Son of Kareem Babu Jamadar,
49 years of age, Indian National,
Business, having address at
Terani, Terni, Kolhapur,
Gadinglaj, Maharashtra - 416506 ... Petitioners.

Versus

1. State of Goa through
Secretary — Mines,
Secretariat Complex,
Alto Porvorim, Bardez, Goa.

2. Directorate of Mines and Geology,
Institute Menezes Braganza,
Panaji — Goa ... Respondents.

Mr J.E. Coelho Pereira, Senior Advocate with Mr Vledson Braganza and Mr Vilas Pavithran, Advocates *for the Petitioners*.

Mr D.J. Pangam, Advocate General with Ms. Maria Correia, Addl. Govt. Advocate *for Respondents No.1 and 2*.

Mr Y.V. Nadkarni, with Ms S. Khadilkar, Advocates *for Respondent No.3.*

CORAM :	**M.S. SONAK, J & BHARAT P. DESHPANDE, J.**
RESERVED ON :	**24 July 2023**
PRONOUNCED ON :	**28 July 2023**

JUDGMENT: *(Per M.S. Sonak, J.)*

1. Heard the learned Counsel for the parties.

2. Misc. Civil Application No.1550/2023(F) is allowed. Necessary amendment to be carried out forthwith.

3. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned Counsel for the respective parties.

4. The Petitioners seek the following substantive reliefs by instituting the present Petition :

> *a) For a Writ of Certiorari, and/or any other appropriate writ, direction and/or order quashing the decision of the Respondent No. 2 communicated by the letter dated 22-06-2023 at*

Annexure B purporting to deny the Petitioners the balance ore allotted to the Petitioner No.1 vide the letter dated 23-03-2022.

aa) For a Writ of Certiorari or any other appropriate writ direction and/or order cancelling the 28" E-Auction in respect of the said Lot Nos. 16 and 17A sought to be allotted to the Respondent No. 3, which already stands allotted to the Petitioner No. 1 pursuant to letter dated 2303-2022.

5. The Petitioners participated in the 26th E-Auction held on 31/8/2021 and bid, *inter alia,* for Lots No. R16, R17A and R18 (concerning T.C. Nos. 3/57 33/57 19/54 42/56), containing 86,420 MT of ore. By an email dated 16/09/2021, Respondent No.2 informed the Petitioners that they were the successful bidders at the 26th E-Auction in respect of 5000 MT, having offered a bid price of ₹ 350 per MT for 1200 MT of ore, forming part of Lot No. R-16; ₹ 350 per MT for 1900 MT of ore, forming part of Lot No. R-17A, ₹ 360 per MT for 1800 MT of ore, forming part of Lot No. R-18; and Rs. 500 MT for 100 MT of ore, forming part of Lot No. ROM 3 at T.C No. 35/52. Mr Pereira learned Senior Advocate for the Petitioners, stated that the Petitioners have not challenged the allotment in the 26th E-Auction in this petition.

6. The 27th E-Auction was held on 19/01/2022. The Petitioners did not participate in the 27th E-Auction. The highest bidders at this 27th

E-Auction were M/s Aparanta Mineral Private Limited and M/s Avisha Shipping Corporation Limited. In a communication dated 1/3/2022, Respondent No.2 informed these bidders that their bids ranging between ₹300/- to ₹360/- were lower than those quoted during the 26th E-Auction. Therefore, these parties were informed that the State would be inclined to consider the request of the successful bidders in the 26th E-Auction unless the parties were willing to match their bid price at equal to or more than the bidder's bid price in the 26th E-Auction. Reference to the successful bidder at the 26th E-Auction was a reference to the Petitioners herein.

7. The highest bidders at the 27th E-Auction declined to increase their bids and match with the bid rates of ₹350/- per MT and ₹360/- per MT offered by the Petitioners at the 26th E-Auction.

8. Therefore, Respondent No.2 addressed an email dated 23/03/2022 to the Petitioners, which reads as follows :

> *"From : "Dir Mines, Goa |dir-mine.goa@nic.in"*
> *<dir-mine.goa@nic.in>*
> *To: "silverstonelogisticsak"*
> *< silverstonelogisticsak@gmail.com>*
> *Sent : Wednesday, March 23, 2022 12:58:35 PM*
> *Subject: Financial bid sheet for additional quantity allotted.*
>
> *As approved by DMG additional quantity towards lots of 26th E-auction financial bid sheet is enclosed.*
> *Kindly do the payments towards the same at the earliest.*
> *---*

Regards, Directorate of Mines & Geology,
Govt. of Goa."

9. By the above email, the Petitioners were offered additional quantity of 59,820 MT at the rates quoted by the Petitioners in the 26th E-Auction. Upon receipt of the above email dated 23/3/2022, the Petitioners, on 24/3/2022, paid an amount of ₹1,42,20,360/- towards ore in Lot No.18 admeasuring 29,700 MT and lifted the ore in Lot No.18. However, the Petitioners failed to pay any amount towards the balance of 30,110 MT of ore, amounting to ₹1,42,18,093/- within the period prescribed in E-Auction Procedure Rules/Conditions.

10. The Petitioners, after nine months, on 30/12/2022, unilaterally deposited an amount of ₹1,42,18,093/- purportedly towards the balance ore of 30,110 MT in the designated bank account of Respondent No.2.

11. The Respondents held the 28th E-Auction on 17/5/2023 and 18/5/2023. At this auction, even regarding the balance ore of 30,110 MT, the Respondents received from Respondent No.3 a bid of ₹1597.40 per MT in respect of Lot Nos.16 and 17A. Thus, for the balance ore of 30,110 MT under Lots No.16 and 17A, the Respondents received a bid 4.5 times higher than the Petitioners' bid of ₹360/- per MT for the same ore.

12. The Petitioners now contend that the email dated 23/3/2022, referred to above, constituted an offer to the Petitioners for the purchase of a total quantity of 59,820 MT of ore from Lots 18, 16 and 17A at the rate of ₹360/- per MT. After the Petitioners made part payment of ₹1,42,20,360/- on 24/3/2022, there was a concluded contract between the Petitioners and Respondents No.1 and 2 regards the purchase of ore quantity of 59,820 MT. Time was never the essence of the contract. Besides, since the Petitioners were not the bidders at the 27th E-Auction, E-Auction Procedure Rules/Conditions would not apply to the Petitioners. Nevertheless, the Petitioners paid the balance amount of ₹1,42,18,093/- to the Respondent No.2 on 30/12/2022. At least, from this date, there was a concluded contract regarding the entire quantity of 59,810 MT of ore. The Petitioners contend that both sides partly performed the contract after the Petitioners paid ₹1,42,20,360/- to Respondent No.2 and were permitted to lift the 29,700 MT of ore from Lot No.18.

13. The Petitioners, based on the above facts and circumstances, contend that the Respondents were not entitled to include the balance ore of 30,110 MT from out of 59,800 MT of ore, in respect of which the Petitioners had a firm contract with the Respondents in the 28th E-Auction. The Petitioners contend that such an action on the part of the Respondents amounts to a breach of contract, apart from such an action being arbitrary, unfair and violative of Article 14 of the Constitution.

14. The Petitioners, therefore, represented to the Respondents. But such a representation was turned down by the Respondents vide communication dated 22/6/2023, which reads as follows :

"Government of Goa
Directorate of Mines Geology Institute
Menezes Braganza, Panaji-Goa

Website: www.dmggoa.goa.gov.in e-mail:dir-mine.goa@nic.in

No. 03/03/2023/Major/Mines | 1019 Date : 22/06 /2023

To:
Silverstone Logistics,
Terni-Tal Gadhinglal
Dist. Kolhapur,
Maharastra-410506,

Sub: Payment of Rs.1,42,18,093/- made by by Silverstone Logistics towards additional quantity on 30/12/8022.

Sir,

This is regarding payment Rs. 1,42,18,093/- made by you on 30/12/2022 towards additional quantity in 26th e-auction held on 19/01/2022. In this regard, it is informed that Government has not approved allotment of said quantity for which you have made payment.
Therefore, your request to issue invoice for the said amount is rejected and you cannot lift the said cargo.

Yours faithfully,

Sd/-
(Pundalik Parab)
Deputy Director."

15. The Petitioners, therefore, challenge the communication dated 22/6/2023 and seek an order for cancellation of the 28th E-Auction in respect of Lots No.16 and 17A, now allotted to Respondent No.3 because the ore in these lots already stood allotted to the Petitioners. Hence, the Petitioners pray for the reliefs in terms of prayer clauses (a) and (aa) referred to above.

16. Mr Pereira learned Senior Advocate contends that there was a concluded contract between the Petitioners and Respondents No.1 and 2 regarding the ore from Lots No.18, 16 and 17A, quantified at 59,810 MT. He submitted that a part payment followed by part performance, was evident and was not even denied. He submitted that the balance amount was deposited with Respondent No.2 on 30/12/2022, which was accepted without any demur. He submitted that time for payment was not the essence of the contract. He submitted that the auction procedure rules requiring payments within the period prescribed in the auction notice did not apply to the Petitioners because the Petitioner was not one of the bidders for the 27th E-Auction. He submitted that the Respondents were acting in breach of the concluded contract. Their actions were *ex-facie* unreasonable, arbitrary and unfair. He submitted that such actions violate Article 14 of the Constitution of India. He relied on ***Jawahar Lal Burman vs. Union of India*** AIR 1962 SC 378. In support of his contention regards the concluded contract. Based on all these contentions, Mr Pereira submitted that Rule should be made absolute in terms of prayer clauses (a) and (aa) of the Petition.

17. The learned Advocate General submitted that in terms of Clauses 6 and 7 of the E-Auction Procedure Rules/Conditions, only the State Government had the right to entertain a higher offer and call upon the highest bidder in the auction to match such higher bid in the interest of the Revenue. He submitted that the email dated 23/3/2022 does not constitute a decision of the State Government. He submits that there was no Government approval, based upon which the email dated 23/3/2022 could have been issued to the Petitioners by the Director of Mines and Geology. He, therefore, submits that the Petitioners' claim lacks a fundamental basis.

18. The learned Advocate General, without prejudice to the above, submitted that it is only due to clauses 6 and 7 of the E-Auction Procedure Rules/Conditions that the Petitioners were offered the ore under Lots No.18,16 and 17A, even though the Petitioners did not participate in the 27th E-Auction. The learned Advocate General, therefore, submitted that the Petitioners were bound by the payment schedule prescribed in the E-Auction Procedure Rules/Conditions. Admittedly, a unilateral deposit of the balance amount of ₹1,42,18,093/- in the Director's bank account was beyond 60 days from the date of an email dated 23/3/2022. Based upon such payment, therefore, the Petitioners could never insist upon lifting the balance quantity of 30,110 MT of ore, based on some alleged concluded contract. The learned Advocate General submitted that this was not a concluded contract, and the facts in *Jawahar Lal Burman* (supra), were not comparable to those in the present case.

19. The learned Advocate General submitted that the State has received an amount of ₹1597.40 per MT, which is 4.5 times more than the bid offered by the Petitioners. The learned Advocate General submitted that the interests of State Revenue cannot be sacrificed when the so-called offer vide email dated 23/3/2022 was itself without any approval from the Finance Department, Government of Goa. He submitted that in any case, no payment for this balance ore was made by the Petitioners within the time limit prescribed. He submitted that time was clearly of the essence and the Petitioners, having failed to pay within the prescribed tme limit, could not urge violation of Article 14 of the Constitution or the Law of Contracts. The learned Advocate General submitted that this Petition may be dismissed.

20. The rival contentions now fall for our determination.

21. The facts, as discussed above, are clear. The Director, on affidavit, stated that there was no Government approval or approval from the Finance Department of the Government of Goa to back the email dated 23/3/2022. The Petitioners were not the bidders for the 27th E-Auction. Therefore, the only claim that the Petitioners could raise was based on Rules 6 and 7 of the E-Auction Procedure

Rules/Conditions. Clause 6 had the right to entertain a higher offer and call upon the highest bidder in the auction to match such a higher offer in the interest of the Revenue only in the State Government and not the Director of Mines and Geology.

22. Therefore, the email dated 23/3/2022 cannot be relied upon by the Petitioners, at least to claim the right to the balance ore of 30,110 MT. However, at the same time, the Court will have to consider the actions of the Respondents, who not only accepted the part payment of ₹1,42,20,360/- from the Petitioners but also allowed the Petitioners to lift 29,700 MT of ore from Lot 18. This portion of the transaction cannot now be disturbed even though the email dated 23/3/2022 may have been issued without the approval of the State Government or the Finance Department of the Goa Government. But the question is whether the Petitioners can legitimately insist on this unauthorised situation to continue to the detriment of the State's revenue any further.

23. Clauses 6 and 7 of the E-Auction Procedure Rules/Conditions read as follows :

> *'"6. The State Government reserves the Right to entertain higher offer and call upon highest bidder in the auction to match such higher offer in the interest of the Revenue.*
>
> *7. In case Iron ore remains unsold in the auction, it will be offered in the subsequent e-auction by revising the base price as per the*

> *formula for fixation of base price. This process will continue till ore is sold in the bidding process."*

24. Regarding the payments made by the successful bidder, the E-Auction Procedure Rules/Conditions provide for the following :

> *a.* ***Stage I-*** *40°% of the bid amount along with 10% ad valorem royalty and other taxes shall be deposited within 30 bank working days after declaration of successful Bidder,*
>
> *Failure to adhere to the timeframe will result in the forfeiture of the EMD.*
>
> *b.* ***Stage II-*** *balance 60% shall be deposited within 60 days from the date of declaration of the successful Bidder. A grace period of 30 days is available to the Successful Bidder subject to a request being made to this effect for extension of time.*
>
> *Failure to adhere to the time frame will result in forfeiture of the 40% deposited along with the EMD.*

25. As noted earlier, the Petitioners failed to adhere to timelines prescribed in the E-Auction Procedure Rules/Conditions referred to above regards payment towards the balance ore of 30,110 MT, which the Petitioners now claim, stands sold to them.

26. Apart from the fact that no rights accrue to the Petitioners in respect of the balance ore of 30,110 MT, even if it is assumed that some rights flow from the email dated 23/3/2022, no case is made out to infer some concluded contract regarding such balance ore, *inter alia,* because of the failure of the Petitioners to make entire payments within the timeline scheduled in the E-Auction Procedure Rules/Conditions. Even the unilateral deposit in the Respondent No.2's Bank account was only on 30/12/2022 i.e. after about nine months beyond the timeline prescribed, which was only 60 days.

27. The consequences for failure to make payment within 60 days were also prescribed under the E-Auction Procedure Rules/Conditions. However, to escape the consequences of delayed payment, the Petitioners urge that the E-Auction Procedure Rules/Conditions do not apply to the Petitioners because the Petitioners had not participated in the 27th E-Auction, under which the Petitioners were offered the ore under Lots No.18, 16 and 17A, though without the approval of the State Government. The Petitioners, thus, approbate and reprobate.

28. The contention about time not being of the essence is entirely misconceived in the facts of the present case. This contention is sought to be supported by the Petitioners by distancing themselves from clear and unambiguous E-Auction Procedure Rules/Conditions. The Petitioners' acceptance must be absolute and unqualified for a concluded contract. The Petitioners cannot accept the alleged offer conditionally or contend there was no condition to deposit the entire balance price within the prescribed period. Some difficulties were cited for the failure to deposit. Considering these factors, no case of a concluded contract was made out. There is also no case of unfairness or arbitrariness to infer a violation of Article 14 of the Constitution.

29. Finally, this Court has to consider that in the 28th E-Auction, the State has received a bid of ₹1597.40 per MT for the ore under Lots 16 and 17A, which the Petitioners now claim. The Petitioners' bid was only for ₹360/- per MT. Thus, the bid now received by the State Government is 4.5 times higher than the Petitioners' bid. Therefore, we had requested the learned Senior Advocate for the Petitioners to obtain instructions on whether the Petitioners would be agreeable to match Respondent No.3's bid of ₹1597.40 per MT or whether an inter se auction between the Petitioners and Respondent No.3 could be held, taking the base price at ₹1597.40 per MT. This suggestion was in line with the course adopted by the Hon'ble Supreme Court in the case of ***Ram and Shyam Company vs State Of Haryana and Ors*** – AIR 1985 SC 1147.

30. Mr Pereira, on instructions, reported that the Petitioners were neither willing to match the bid of ₹1597.4 per MT nor agree to an inter se auction with Respondent No.3. As discussed earlier, there is no merit in the Petitioners' contentions. Accepting Petitioners' arguments will deprive the State Government of crores of rupees, given the difference between the bid offered by the Petitioners and Respondent No.3. As discussed earlier, there is neither any case of a concluded contract made out nor a case of arbitrariness, unreasonableness or unfairness made out by the Petitioners.

31. The unilateral deposit of the balance amount by the Petitioners in the Director's bank account creates no right to favour the Petitioners. Based upon such unilateral deposit, the Petitioners cannot legitimately insist upon striking down the 28th E-Auction, in which the State Government has secured bids 4.5 times higher than the bid submitted by the Petitioners at the 26th E-Auction.

32. The Equitable jurisdiction, under Article 226 of the Constitution, cannot be invoked in such circumstances to deprive the State of the revenue it has obtained. Mr Nadkarni submitted that Respondent No. 3 has complied with all the rules and conditions. About Rs 6,50,00,0000/- (Rupees six and a half crores) is already deposited with the Government. The Petitioners' stance is unclear since the Petitioners approbate and reprobate. The petitioners were not even prepared to match Respondent no 3's bid or participate in an inter se auction with a base price of Rs 1597.4.

33. The decision in *Jawahar Lal Burman* (supra) was in the facts, which cannot be compared to the fact situation in the present case. Here auction procedure is governed by a set of rules binding upon the Petitioners. The Petitioners, after taking advantage of the Rules/Conditions, now seek to distance themselves from such regulations when it comes to depositing the balance consideration within the period prescribed.

34. For all the above reasons, we find no merit in this Petition and dismiss the same. The rule is discharged. Misc. Civil Application also stands disposed of. There shall be no order for costs.

BHARAT P. DESHPANDE, J. M.S. SONAK, J.

SANTOSH S MHAMAL

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