

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.25888 of 2022

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

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**AFR**

*Narayana Biswal* .... *Petitioner*

-versus-

*State of Odisha and others* .... *Opposite Parties*

*For Petitioner* : M/s. Soumya Ranjan Mohanty and  
Dipankar Acharya, Advocates

*For Opp. Parties* : Mr. Prabhu Prasad Mohanty,  
Additional Government Advocate  
[O.Ps. No.1 to 4]  
M/s. Giridhari Singh, (Ms.) Manasi  
Panda, C. Singh and R.C. Swain,  
Advocates  
[O.P. No.5]

PRESENT:

THE HONOURABLE ACTING CHIEF JUSTICE DR. B.R. SARANGI  
AND  
THE HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

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DATE OF HEARING & JUDGMENT : 05.01.2024

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*DR. B.R. SARANGI, ACJ.*

Invoking extraordinary jurisdiction of this Court, the petitioner has  
approached this Court challenging the order dated 12.08.2022 passed in

Misc. Appeal No.5 of 2022 by the Sub-Collector, Paralakhemundi under Section 46 of the Odisha Minor Minerals Concession Rules, 2016, *vide* Annexure-7, whereby the order dated 16.12.2021 passed by the Tahasildar, Kasinagar selecting the petitioner as the highest bidder has been set aside.

2. At the time of hearing, Mr. Giridhari Singh, learned counsel appearing for opposite party no.5, referring to the impugned order dated 12.08.2022 passed in Misc. Appeal No.5 of 2022 under Annexure-7 raised a preliminary objection and contended that the name of the appellant before the Sub-Collector, Paralakhemundi in the above noted Misc. Appeal was described to be one Subash Ch. Routa and respondent no.1 therein was one Sri Madan Mohan Pradhan. Therefore, the present petitioner is in no way concerned or affected and, as such, at his instance, the present writ petition is not maintainable.

2.1. In reply to such objection, Mr. Soumya Ranjan Mohanty, learned counsel appearing for the petitioner has contended that there is wrong description of parties in the cause title of the impugned order. He, however, draws the attention of this Court to the unnumbered 2<sup>nd</sup> paragraph of the impugned order to demonstrate that the name of the present petitioner finds mentioned as “respondent no.2-Narayana Biswal quoted Rs.557/-”. Therefore, he has contended that the petitioner, being one of the

bidders and having quoted Rs.557/-, has got substantial participation. The wrong description in the cause title made by the authority cannot preclude the petitioner from filing the present writ petition.

2.2. In view of above position, the objection so raised by Mr. Giridhari Singh, learned counsel appearing for opposite party no.5 is overruled and, as such, the petitioner-Narayana Biswal is permitted to prosecute the case.

3. The petitioner, who has been declared as the highest bidder, sought to quash the order dated 12.08.2022 under Annexure-7 and to issue a direction to the Controlling Authority to take necessary action in conformity with the provisions contained under Rule 27(10) of the OMMC Rules, 2016.

4. The factual matrix of the case is that opposite party no.4, the Tahasildar, Kashinagar issued a tender call notice bearing no.4898/Sairat dated 20.09.2021 inviting applications from intending candidates for various minor mineral quarries and prescribed the date within which the form was to be filed along with supporting documents. The petitioner, being capable and eligible, filed the necessary application along with documents and participated in the process of awarding bid in respect of Kittingi Sand Quarry (Serial No.6 of the tender call notice) on a long term

lease for a period of 5 years and also filled the Form 'M' along with all requisite documents, as per the tender call notice, by complying with the provisions contained in Rule 27 of the OMMC Rules, 2016.

5. As it appears, eleven persons had participated in the bid process in respect of Kittingi Sand Quarry. On opening of the bid, it was found that the petitioner quoted Rs.557/- and the Tahasildar declared the petitioner as the highest successful bidder. As it appears, opposite party no.5 though participated in the bid and quoted Rs.777/-, but his bid was not accepted due to insufficient solvency and, thereby, he was disqualified from participating in the process of bid. In the notice dated 05.11.2021 under Annexure-2, the reasons for accepting the bid submitted by the petitioner and rejecting the bid of opposite party no.5 have been mentioned. Pursuant to such notice, the petitioner made the statutory deposits, as demanded by opposite party no.4, and also deposited the amount for preparation of mining plan and environmental clearance. On accepting such deposits, opposite party no.4, vide Letter No.545/Sairat dated 04.02.2022, recommended the case of the petitioner to the Chairman, State Environment Impact Assessment Authority (SEIAA) for issuance of environmental clearance in respect of the Kittingi Sand Quarry. When the petitioner was in the process of executing the lease deed and getting the statutory clearances, as per the OMMC Rules, 2016, opposite party no.5-

Satyajit Sahu, whose bid was rejected by the competent authority for not being found eligible to participate in the auction process as he failed to submit sufficient solvency in terms of Rule 27(4)(iv), challenged such rejection by way of filing W.P.(C) No.36520 of 2021, which was disposed of by this Court *vide* order dated 13.12.2021 with a direction to opposite party no.4-Tahasildar, Kashinagar to furnish, not later than 24.12.2021, the complete reasons for rejection of bid and in particular, the explanation for expression “Insufficient Solvent” used in the remark column against his name in the notice dated 05.11.2021. Thereafter, opposite party no.4 communicated the same to opposite party no.5 in compliance with the order dated 13.12.2021 passed in W.P.(C) No.36520 of 2021. Consequently, opposite party no.5 again approached this Court by filing W.P.(C) No.6962 of 2022, which was allowed to be withdrawn with liberty to file appeal under Rule 46 of the OMMC Rules, 2016. Pursuant thereto, he approached the appellate authority, *i.e.*, the Sub-Collector, Paralakhemundi-opposite party no.3 by filing Misc. Appeal No.5 of 2022 under Rule 46 of the OMMC Rules, 2016, wherein challenge was made to the order passed by opposite party no.4 and following reliefs were sought for:-

*“It is, therefore, humbly prayed that this Hon’ble Court may graciously be pleased to admit this Appeal and set aside the order dtd.5.11.2021 passed by the Opposite Party No.1*

*under Annexure-2 declaring the same as illegal, arbitrary and contrary to the advertisement conditions and provisions under the Odisha Minor Minerals Concessions Rules, 2016 and pass appropriate direction shall not be given to the Opp. Party No.1 to issue work order forthwith declaring the Appellant as highest bidder in terms of the advertisement by furnishing fresh solvency to secure ends of justice.”*

6. The appellate authority, i.e., opposite party no.3 in the said appeal issued notice to the petitioner and in obedience to the same, the petitioner appeared before the appellate authority and filed his note of arguments. Thereafter, affording opportunity of hearing to all the parties, the appellate authority passed the order impugned on 12.08.2022 setting aside the order dated 16.12.2021 passed by the Tahasildar, Kashinagar declaring the present petitioner as the highest bidder and directed to bring the matter to the notice of the Controlling Authority, as provided under Rule 27(10) of the OMMC Rules, 2016, for taking further action. Aggrieved by such order passed by the appellate authority, the petitioner has approached this Court by filing the present writ petition.

7. Mr. Soumya Ranjan Mohanty, learned counsel appearing for the petitioner vehemently contends that taking into consideration the nature of prayer made by opposite party no.5, the order passed by the appellate authority cannot be sustained. In the appeal filed before the appellate authority, opposite party no.5 had prayed for setting aside the order dated

05.11.2021 passed by the Tahasildar, Kashinagar by declaring the same as illegal, arbitrary and contrary to the conditions stipulated in the advertisement and also contrary to the provisions of the OMMC Rules, 2016. He further urged to issue direction to the Tahasildar, Kashinagar to issue work order in his favour by declaring him as the highest bidder, in terms of the advertisement, by furnishing fresh solvency to secure ends of justice. He further contends that the relief so sought before the appellate authority cannot be sustained at the behest of the present opposite party no.5, as he had been disqualified because of non-furnishing of adequate solvency certificate. It is further contended that in compliance with the order passed by this Court in W.P.(C) No.36520 of 2021, which was disposed of on 13.12.2021, the Tahasildar, Kashinagar had already communicated the reasons for declaring opposite party no.5 as disqualified because of the insufficient solvency. Said fact was clearly mentioned in his order dated 16.12.2021 and it was indicated in the said order that solvency certificate of Rs.6,49,60,000/- was the requirement, whereas opposite party no.5 submitted the solvency certificate for a sum of Rs.1,56,00,000/- only. Therefore, there was insufficient solvency furnished by opposite party no.5. Consequently, the Tahasildar was well justified in not accepting the bid submitted by opposite party no.5 even though he had quoted higher price of Rs.777/-.

8. This Court, *vide* order dated 06.11.2023 passed in the present writ petition, directed the learned counsel for the petitioner to get necessary instructions as to if the petitioner could match with the offer made by opposite party no.5, *i.e.*, Rs.777/-. It has been informed to this Court that the petitioner has already expressed his ability to match the highest price offered by opposite party no.5, who was disqualified on the ground of non-furnishing of requisite solvency certificate. Such conceded position has been filed by way of an affidavit for appraisal of this Court. As the petitioner has agreed to match the price quoted by the opposite party no.5, the contention of the latter with regard to possible loss caused to the State exchequer cannot be sustained. As such, since the petitioner is willing to match the highest price offered by opposite party no.5, *i.e.*, Rs.777/- and as the State has also accepted such offer, in that view of the matter, the contention raised by opposite party no.5 is liable to be repelled and, as such, the claim made by him should be rejected and the quarry be settled in favour of the petitioner for immediate action.

9. Mr. Prabhu Prasad Mohanty, learned Additional Government Advocate appearing for the State admits the factual contentions raised by learned counsel appearing for the petitioner, but contends that it is the paramount consideration of the State authority to fetch higher amount for raising revenue of the State for its development. Therefore, when the



petitioner has already filed an affidavit to match with the highest price offered by opposite party no.5, who has been disqualified because of non-furnishing of required solvency certificate, and the petitioner being declared as the highest bidder for having quoted the price of Rs.557/- and now being ready and willing to match with the highest price offered by opposite party no.5, i.e., Rs.777/-, the objection as to possible loss of revenue does not exist. Therefore, it is contended that the source should be settled in favour of the petitioner at the price matched to the highest price of Rs.777/-.

10. Mr. Giridhari Singh, learned counsel appearing for opposite party no.5 vehemently contends that since opposite party no.5 has quoted the highest price of Rs.777/-, due to inadequate solvency certificate, he should not have been debarred to get the lease. It is the admitted fact that the solvency certificate submitted by opposite party no.5 did not match with the solvency required to be furnished in the process of bid, but the same should not have been a ground to reject his application, since he had quoted the highest price. To substantiate his contentions, he has placed reliance on the decision of this Court rendered in **Madan Mohan Pradhan v. State of Odisha** [W.P.(C) No.40431 of 2021 disposed of on 12.05.2022].

11. This Court has heard Mr. Soumya Ranjan Mohanty, learned counsel appearing for the petitioner, Mr. P.P. Mohanty, learned Additional Government Advocate for the State-opposite parties and Mr. Giridhari Singh, learned counsel appearing for opposite party no.5. The pleadings having been exchanged between the parties, with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

12. For just and proper adjudication of the case, Sub-rules (4), (9) and (10) of Rule 27 of the OMMC Rules, 2016, being relevant, are quoted below:-

*“(4) Subject to other provisions of these rules for settlement of quarry lease, the intending applicant may apply to the Competent Authority in a sealed cover for grant of quarry lease for such area or areas in Form-M in triplicate accompanied by the following documents and particulars, namely:—*

*(i) Treasury challan showing deposit of one thousand rupees (non-refundable) towards the application fee;*

*(ii) An affidavit stating that no mining due payable under the Act and the rules made thereunder, is outstanding against the applicant;*

*(iii) Proof of payment of earnest money equivalent to five per centum of the minimum amount of additional charges specified in the notice and the amount of royalty, both calculated on the basis of minimum guaranteed quantity for one whole year*

*for the minimum guaranteed quantity of minor mineral to be extracted in one full year; and*

*(iv) a solvency Certificate or Bank guarantee valid for a period of eighteen months for an amount not less than the amount of additional charge offered and the royalty payable for the minimum guaranteed quantity for one whole year and a list of immovable properties from the Revenue Authority.*

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*(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.*

12.1 On perusal of the aforementioned provisions, it is made clear that 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) and further 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.

13. Undisputedly, pursuant to the tender invited by opposite party no.4, eleven persons had participated in the process of bid. Though opposite party no.5 had quoted highest price of Rs.777/-, his bid was not accepted on the ground that he had not complied with the statutory requirement by depositing the requisite amount justifying solvency. Thereby, his application was rejected on the ground of “insufficient solvent”. The petitioner having quoted the highest price of Rs.557/-, his bid was accepted and necessary steps were taken for execution of agreement and obtaining statutory clearance from the environmental authority. But, aggrieved by the order passed by the Tahasildar, Kashinagar disqualifying opposite party no.5 as he had not fulfilled the requirements, opposite party no.5 had approached this Court by filing W.P.(C) No.36520 of 2021, which was disposed of *vide* order dated 13.12.2021 with a direction to the Tahasildar, Kashinagar to furnish, not later than 24.12.2021, the complete reasons for rejection of bid, in particular, the explanation for expression “Insufficient Solvent” used in the remark column against his name in the

notice dated 05.11.2021. In compliance thereof, the Tahasildar passed an order on 16.12.2021, wherein it was observed as follows:

“xxx

*In the above context, you were required to enclose the solvency certificate or Bank guarantee valid for a period of eighteen months for an amount not less than the amount of additional charge offered and the royalty payable for the minimum guaranteed quantity for one whole year. The amount of the solvency certificate required is detailed below.*

Amount of Royalty as per schedule II of OMMC Rule 2016 (in ₹)	Amount of Additional charge offered by you (in ₹)	Total amount of Royalty + Additional Charge (in ₹)	MGQ to be lifted per annum (in Cum)	Amount of Solvency Certificate required (in ₹) (Col.3 x Col.4)	Amount of Solvency Certificate submitted (in ₹)
(1)	(2)	(3)	(4)	(5)	(6)
35	777	812	80000	64960000	15600000

*From the above it is apparent that, the amount of the solvency certificate submitted by you is not up to the required amount. For this reason the expression “Insufficient Solvent” has been used in the remarks column against your name in the notice dated 5<sup>th</sup> November, 2021. It is further intimated that, as you have not submitted the Solvency Certificate for the amount as required under Rule 27(4) of OMMC Rules, 2016 and is detailed above in col. No.5, your bid/ application for Quarry Lease has not been taken into account for selection of the successful bidder and you have been treated as unsuccessful bidder.”*

14. In view of the reasons assigned for not accepting the bid of opposite party no.5 and declaring him disqualified, obviously, the bid of

the petitioner, as per the bid sheet/notice dated 05.11.2021, with a quoted price of Rs.557/- was accepted. Again, aggrieved by the order passed by the Tahasildar, opposite party no.5 approached this Court by filing W.P.(C) No.6962 of 2022, which was disposed of permitting opposite party no.5 to prefer an appeal under Rule 46 of the OMMC Rules, 2016. In pursuance of the same, opposite party no.5 preferred an appeal and the order impugned has been passed setting aside the selection of the present petitioner. Therefore, the present writ petition has been filed.

15. It is of relevance to note here that the appellate authority, *i.e.*, the Sub-Collector, Paralakhemundi, while considering the appeal under Rule 46 of the OMMC Rules, 2016, had lost sight of the provisions contained in sub-rules (4), (9) and (10) of Rule 27 of the OMMC Rules, 2016, as mentioned above. The reasons as assigned by the appellate authority read as under:

*“From the argument advanced by the appellant & respondent no.2 as well as the report submitted by the Tahasildar, Kasinagar it is established that the appellant has quoted much higher additional charges than the respondent No.2. But the same was rejected by the Tahasildar, Kasinagar as he has not adhered to the condition stipulated in the notice. The appellant has quoted Rs.777/- towards additional charge per cum of sand; whereas additional charge quoted by the respondent No.2 was 557/- and by respondent No.3 was Rs.307/-. There is substantial difference between the rate quoted by the appellant and respondent no.2. Had the bid of the appellant been accepted, the Govt. would have*

*benefitted through higher revenue earnings 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 respondent No.1 who is the Competent authority, should have brought to the notice of the Controlling Authority, i.e. Collector, Gajapati with regard to the quoting of substantially low additional charge of Rs.557/- per CUM by the respondent no.2, as provided under Rule 27(10) of OMMC Rules, 2016, instead of proceeding with the settlement of the source in favour of Respondent No.2.*

*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 16.12.2021 passed by Tahasildar, Kasinagar for selecting the respondent No.2 as the highest bidder is liable to be set aside. He is directed to bring the matter to the notice of the Controlling Authority as provided under Rule 27(10) of OMMC Rules for taking further necessary action.”*

16. In view of such position, it is made clear that the appellate authority has not taken into consideration the provisions contained in sub-rules (4), (9) and (10) of Rule 27, as mentioned above, in proper perspective. The present petitioner having quoted the highest price of Rs.557/- and he, having been selected, is only competent to operate the quarry and, as such, no illegality or irregularity has been committed by the Tahasildar in selecting the petitioner.

17. As a matter of fact, opposite party no.5 had quoted Rs.777/- whereas the petitioner had quoted Rs.557/- as additional charge. Under such premise, anxiety has been shown by opposite party no.5 that the State

exchequer may lose some revenue, if the selection of the petitioner as the highest bidder is upheld. Therefore, this Court, on 06.11.2023, passed an order to the following effect:

- “1. This matter is taken up through hybrid mode.*
- 2. Heard Mr. Soumya Ranjan Mohanty, learned counsel for the Petitioner.*
- 3. Mr. Mohapatra, learned counsel for the Petitioner undertakes to take instruction that the Petitioner is willing to match with the offer made by Opposite Party No.5 an amount of Rs.777/-.*
- 4. List this matter next week.”*

17.1. In response to the above order, Mr. Prabhu Prasad Mohanty, learned Additional Government Advocate appearing for the State contends that the petitioner has already furnished an affidavit before the authority indicating that he is willing to match with the highest price offered by opposite party no.5, *i.e.*, Rs. 777/-. Therefore, the question of loss of revenue to the State exchequer does not arise; rather it will be in the interest of the State, if the source in question is settled in favour of the petitioner with the quoted price of Rs. 777/-, as agreed to by the petitioner by way of furnishing an affidavit.

18. Reliance has been placed on the judgment of this Court in *Madan Mohan Pradhan (supra)* by the learned counsel for opposite party



no.5. But, on perusal of the same and on consideration of the factual matrix delineated therein, this Court finds that since there was a huge difference between the price quoted by the parties, this Court passed the order and, as such, the ratio decided in the said case cannot have any application to the present case. Rather, the present case stands on a different footing than that of the case of *Madan Mohan Pradhan (supra)*, inasmuch as, opposite party no.5, whose bid has not been accepted because of non-furnishing of solvency certificate of required amount to the authority, has been declared disqualified from the very beginning. Therefore, he has no right to claim the benefit merely because he has quoted highest price. Now, that question has been resolved on account of the affidavit filed by the present petitioner before the authority concerned to the effect that he would match with the highest price quoted by opposite party no.5.

19. In view of such position, the impugned order dated 12.08.2022 passed by the Sub-Collector, Paralakhemundi under Annexure-7 cannot be sustained in the eye of law and accordingly, the same is liable to be quashed and is hereby quashed. The State-opposite parties are directed to proceed to settle the quarry in question in favour of the petitioner as expeditiously as possible by complying with all formalities.

20. In the result, the writ petition stands allowed. However, under the facts and circumstances of the case, there shall be no order as to costs.

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**DR. B.R. SARANGI**  
**ACTING CHIEF JUSTICE**

**M.S. RAMAN, J.** I agree.

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**M.S. RAMAN**  
**JUDGE**

*Orissa High Court, Cuttack*  
*The 5<sup>th</sup> January, 2024, S.K. Guin/PA*

