

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 32063 OF 2022

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

AFR

M/s P.K. Minerals Private Ltd. Petitioner

-Versus-

State of Odisha and others Opp. Parties

For Petitioner : M/s S.K. Dash, A.K. Otta,
S. Das, A. Sahoo and P. Das,
Advocates

For Opp. Parties : Mr. P.P. Mohanty,
Addl. Govt. Advocate
[O.P.Nos.1 to 3]
Mr. U.C. Beura, Advocate
[O.P.No.4]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE M.S. RAMAN**

Date of hearing: 10.05.2023 : Date of judgment: 18.05.2023

DR. B.R. SARANGI, J. M/s P.K. Minerals Private Ltd., a
company registered under the Companies Act, 1956, has

filed this writ petition seeking to set aside the order dated 20.10.2022 passed in OMMC Appeal No.33 of 2022 by the Appellate Authority-cum-Sub-Collector, Keonjhar, as well as the order dated 05.08.2022 passed by the Competent Authority-cum-Tahasildar, Banspal in Sand Stone Quarry Case No. 4/2020-21, and to issue direction to the opposite parties to settle the Karangadihi Stone Quarry in its favour in accordance with law.

2. The factual matrix of the case, in a nutshell, is that the Tahasildar, Banspal, on 18.07.2022, floated an auction notice for long term lease of Karangadihi Stone Quarry for a period of five years, i.e., from the financial year 202-23 to 2026-27. The last date of submission of bid was fixed to 04.08.2022 and the date of opening of bid was fixed to 05.08.2022. The auction notice also specified the list of documents to be enclosed by the bidders along with the bid application. Duly complying with the conditions of the auction notice, the petitioner submitted its bid incorporating the documents as required. The tender drop box was opened, on 05.08.2022 at 11.30

A.M., by the selection committee, comprising of Tahasildar, Banspal, Addl. Tahasildar, Banspal and Revenue Inspector. Five sealed envelopes were found to be submitted by Dileswar Behera, Anil Khirwal, Soumyajit Mohanty, M/s P.K. Minerals (P) Ltd. (petitioner herein) and M/s Sri Venkateswar Construction. On scrutiny of the documents, it was found that bids of Dileswar Behera, Anil Khirwal, Soumyajit Mohanty were not accompanied with required documents.

2.1 The tender notice contained a mandate that the incomplete applications will not be taken into consideration and those will be rejected, and that the bid applications will be scrutinized in presence of the bidders or their representatives, and only the bid applications complying with all the terms will be taken into consideration, and the bidder quoting highest rate of additional charges will be selected. The purpose behind it is only transparency in the matter of selection of the bidder. Since bid applications of Dileswar Behera, Anil Khirwal and Soumyajit Mohanty were incomplete, those

bid applications were rejected on the ground of “insufficient documents”.

2.2 The petitioner had enclosed all the required documents along with the bid application. As per Rule 27(4)(iv) of the Odisha Minor Minerals Concession (Amendment) Rules, 2022, which required the bidder to submit the income tax return of previous financial year for an amount not less than the amount of additional charge offered and other dues or bank guarantee valid for a period of 18 months for the amount of additional charges etc. offered, the petitioner, in compliance thereto, had also offered bank guarantee issued by the Banker, i.e., Axis Bank Ltd. to the tune of Rs.75, 00,000/- and Rs.5,00,000/- in favour of the Tahasildar, Banspal for a period of 18 months to comply with the requirements of the Rules and Clause-5 of the tender call notice. The petitioner had no dues of Goods and Service Tax (GST) and, on 28.07.2022, he applied before the Superintendent of Central Excise, CGST, Keonjhar-1 Range for issuance of a “No Dues Certificate” to comply with Clause-7 of the

auction notice. But, the CGST authorities advised the petitioner to download the information from their website and, accordingly, the petitioner had downloaded the information from their website, which contained the information that the petitioner had no outstanding GST dues.

2.3 The opposite party no.4 had enclosed a check list along with its bid application and vide sl.no.5 though it had enlisted “income tax return of FY 2021-22”, but in effect it had enclosed the income tax return for the assessment year 2021-22 for the financial year 2020-21. The tender notification was issued on 18.07.2022 and, therefore, the bidder was required to submit the income tax return for the financial year 2021-22 ending 31.03.2022. Therefore, the bid submitted by opposite party no.4 was without the income tax return of the financial year 2021-22. Apart from the same, opposite party no.4 at sl.no.8 of the check list had described as “GST no dues certificate”. But it was not a statutory certificate and the same was issued before his submission

of income tax return of financial year 2021-2022 and, as such, the same was issued on the request made by the assessee, as a conditional and not absolute. As such, the GST authorities had made it clear that the certificate is not valid in case of any liability arises for the said period and at the time of scrutiny of the details. Meaning thereby, the authority reserved the right to cancel and declare the certificate to be invalid.

2.4 The petitioner raised objection to the effect that the bid application of opposite party no.4 is incomplete and, therefore, the same is liable to be rejected. But the selection committee, instead of rejecting the bid of opposite party no.4, deferred the selection of the bid and decided to seek clarification from the concerned Department of the Government as to the validity of the income tax return submitted by opposite party no.4 for the assessment year 2021-22. As such, the bid submitted by opposite party no.4 should have been rejected as per sl.no.5 of the check list, which was not complied with, as the GST no dues certificate submitted by opposite party

no.4 was not in order and the same was conditional one. Though the selection committee had deferred the selection of the bid process and was waiting for clarification, but the competent authority, on the very same day, proceeded with the selection by declaring opposite party no.4 as successful bidder. Hence, this writ petition.

3. Mr. S.K. Dash, learned counsel appearing for the petitioner vehemently contended that though the bid submitted by opposite party no.4 had suffered from deficiency and the same was objected to by the petitioner, but such objection was not taken into consideration. On information being received under the Right to Information Act, 2005, since it was found that vide order dated 05.08.2022 the competent authority has declared opposite party no.4 as successful bidder, the petitioner preferred appeal under Rule 46 of the OMMC Rules, 2016 and also presented application for stay of impugned order in terms of Sub-rule (3) of Rule 46 of the Rules, 2016. The same having not been acceded to, the petitioner has approached this Court by filing the present writ petition.

It is contended that opposite party no.4 having not complied with all the requirements of the auction notice, its bid should have been rejected, as because non-compliance of the requirements of the tender call notice vitiates the entire proceeding of selection of successful bidder. Therefore, the order of selection passed by the competent authority cannot be sustained in the eye of law.

3.1 It is further contended that opposite party no.4 got selected merely because it had quoted highest price, even if it was an unsuccessful bidder, but even though the petitioner wanted to match with that price, it was not called upon by the opposite parties, although the bid of the petitioner was in order. It is further contended that the competent authority had shown undue haste in settling the source in favour of opposite party no.4, inasmuch as, though decision was taken on 05.08.2022 by the selection committee to take confirmation from the respective department, but on the same day the source was settled in favour of opposite party no.4, which shows

that the action of the competent authority is arbitrary and unreasonable. As such, the decision making process by settling the source in favour of opposite party no.4 cannot be sustained in the eye of law. Thus, it is contended that in exercise of power under judicial review, this Court can interfere with the same and pass appropriate order in accordance with law.

3.2 To substantiate his contention, learned counsel appearing for the petitioner has relied upon the judgments of the apex Court as well this Court in the cases of ***Vidarbha Irrigation Development Corporation and others v. Anoj Kumar Agarwala***, (2020) 17 SCC 577; ***Sachin Kumar Agrawal v. State of Odisha*** [W.P.(C) No. 31112 of 2022 disposed of on 03.04.2023]; and ***Rahul Mishra v. Collector, Bolangir***, 114 (2012) CLT 97.

4. Mr. P.P. Mohanty, learned Addl. Government Advocate appearing for the State-opposite parties contended that pursuant to the auction notice dated

18.07.2022, the tender box was opened on 05.08.2022, wherein five bidders, including the petitioner, were found to have participated in the bid. After scrutiny, it was found that the bids of Dileswar Behera, Anil Khirwal and Soumyajit Mohanty were rejected due to insufficient documents, whereas the petitioner had quoted a sum of Rs.271/- as additional charge and opposite party no.4 had quoted a sum of Rs.589/-. As opposite party no.4 had quoted highest bid of Rs.589/- as additional charge, it was selected as highest bidder. It is further contended that as per Clause-7 of the auction notice dated 18.07.2022 the bidder should have furnished a certificate/letter from the concerned GST jurisdictional officer that no GST dues are pending against such bidder and, as such, such condition has been inserted in the bid documents pursuant to letter dated 13.05.2022 of the Govt. of Odisha, Revenue and Disaster Management Department, wherein the State Government had specifically directed to furnish such certificate by the bidder with regard to no GST dues pending against such

bidder. It is contended that the petitioner had not furnished a certificate/letter from the concerned GST jurisdictional officer that no GST dues are pending against it and, as such, the petitioner had submitted a document downloading from the GST site/portal, which was not accepted by the competent authority, as it was not in consonance with the letter dated 13.05.2022 of the State Government and Clause-7 of the auction notice. It is contended that opposite party no.4 had submitted income tax return dated 31.10.2021 along with its bid, which discloses that its current business was of Rs.1,81,06,830/- and, thereby, opposite party no.4 has been selected. Consequentially, he sought for dismissal of the writ petition.

5. Mr. U.C. Beura, learned counsel for opposite party no.4 contended that opposite party no.4, having quoted highest price, was got selected by the authority. It is contended that as per Sub-section (1) of Section 139 of the Income Tax Act, 1961 for the financial year 2021-22 the income tax returns was due on 31st October, of the

assessment year 2022-23. Opposite party no.4 is legally liable to submit its audit report up to 7th October 2022 and income tax returns attaching the said order on or before 31st October, 2022, for which the previous year return of the opposite party no.4 is financial year 2020-21 relating to assessment year 2021-22, which was filed by opposite party no.4 along with the bid documents. Thereby, no illegality or irregularity has been committed by opposite party no.4 in submitting its bid and the same cannot be rejected. It is contended that opposite party no.4, having quoted highest price of additional charges, has been granted with the lease to operate the stone quarry for a period of five years. Thereby, granting the said lease in favour of the petitioner with a low price does not arise, and that the same would be improper on the part of the authority. As a consequence thereof, dismissal of the writ petition is sought for.

6. This Court heard Mr. S.K. Dash, learned counsel for the petitioner; Mr. P.P. Mohanty, learned Addl. Government Advocate appearing for the State

opposite parties no.1 to 3; and Mr. U.C. Beura, learned counsel appearing for opposite party no.4 in hybrid mode and perused the record. 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.

7. On the basis of the factual matrix, as delineated above, before delving into the merits of the case itself, Clause-(iv) of Rule-27(4) of the Odisha Minor Minerals Concession (Amendment) Rules, 2022, which is relevant for the just and proper adjudication of the case, is taken note of:-

“R-27(4)(iv). Income tax return of previous financial year showing annual income 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 or bank guarantee valid for a period of eighteen months for the amount not less than the amount as above.”

8. As per the provision mentioned above, the bidder has to submit the income tax return of previous

financial year 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 or bank guarantee for a period of 18 months for the amount of additional charges offered. As required under Clause-5 of the auction notice, though opposite party no.4 had enclosed a check list along with bid application and vide sl.no.5 had enlisted "income tax return of FY 2021-22", but had enclosed the income tax return for the assessment year 2021-22 for the financial year 2020-21. As the tender notification was issued on 18.07.2022, the bidder was required to submit the income tax return for the FY ending 31.03.2022. If the same would be taken into consideration, the bid application submitted by opposite party no.4 was without any income tax return of the financial year 2021-22, therefore, the same should have been rejected. Apart from the same, against sl.no.8 of the check list, opposite party no.4 had mentioned "GST no dues certificate", but the certificate enclosed was not a statutory certificate and, as such, the same was issued

before the submission of income tax return of FY 2021-22. Furthermore, the said certificate was issued on the request made by the assessee and, as such, the same was a conditional one. The GST Authorities had made it clear that the certificate is not valid in case of any liability arises for the said period and at the time of scrutiny of details. Meaning thereby, the authority had reserved the right to cancel and declare the certificate to be invalid.

9. So far as the petitioner is concerned, it had no dues of Goods and Service Tax (GST). On 28.07.2022, the petitioner had applied to the Superintendent, Central Excise (CGST, Keonjhar-I Range for issue of a “No Dues Certificate” to comply with Clause-7 of the auction notice. But the CGST Authorities advised the petitioner to download the information from their website. Accordingly, the petitioner had downloaded the information from their website, which contained the information that the petitioner had no outstanding GST dues. Thereby, the same is in compliance of Clause-7 of the auction notice. As a consequence thereof, the petitioner objected to the

		1) M/s Sri. Venkateswara Construction, M.P.G.N .S.Rao of Ruti sila has quoted Additional Charge @589 However the IT return submitted for the assessment year 2021-22. Which is to be clarified by the undersigned in consultation with the concerned department /Authority and the No dues certificate obtained from C.T GST,Jajpur also needs to be confirmed from concerned authority ,if necessary.
		2) M/s P.K.Minerals P.Ltd, Md.Soumyaranjan Pahi, kenonjhar has quoted Additional Charge @ 22% However the No dues obtained from GST portal needs to be confirmed from concerned department /Authority, if necessary .
		Hence, after receiving the above mentioned clarification and confirmation, the tender will be finalized.

10. On perusal of the endorsement of the committee, it is made clear that opposite party no.4 had quoted additional charge at the rate of Rs.589/-, but, so far as its income tax return for the assessment year 2021-22 is concerned, a clarification was to be given by the competent authority in consultation with the concerned department/authority, and, as regards no dues certificate obtained from the CGST department, confirmation was to be made by the concerned authority. Similarly, it was observed that the petitioner had quoted additional charge of Rs.221/-, but, however, the no dues certificate obtained from GST portal was needed to be confirmed from the concerned department/authority, if necessary, and, thereafter, the tender would be finalized. If such requirement has to be complied with, pursuant to the observation made on 05.08.2022, without getting such

clearance from the respective departments and getting confirmation from the respective authority, as was observed, the authority could not have proceeded with the matter and finalize the tender in favour of opposite party no.4 on the very same day, i.e., 05.08.2022. Thereby, the entire decision making process of the tendering authority is arbitrary, unreasonable and contrary to the provisions of law. Under these circumstances, this Court, in exercise of the powers conferred under the judicial review, has got jurisdiction to interfere with the decision making process of the tendering authority.

11. In **Sterling Computers Ltd. v. M & N Publications Ltd.** (1993) 1 SCC 445, the apex Court observed as under:-

“18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the court is concerned primarily as to whether there has been any infirmity in the ‘decision-making process’. ... the courts can certainly examine whether ‘decision-making process’ was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.”

12. In **Tata Cellular v. Union of India**, (1994) 6 SCC 651 : AIR 1996 SC 11, the apex Court, referring to the limitations relating to the scope of judicial review of administrative decisions and exercise of powers in awarding contracts, held to the following effect:-

“(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative action. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. ... More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

The apex Court also noted that there are inherent limitations in the exercise of power of judicial review in contractual matter. As such, it was observed that the duty to act fairly will vary in extent, depending upon the nature of cases, to which the said principle is sought to be applied. It was further held that the State has the right to refuse the lowest or any other tender, provided it tries to get the best person or the best quotation, and the power to choose is not exercised for any collateral purpose or in infringement of Article 14.

13. In **Raunaq International Ltd. v. I.V.R. Construction Ltd.** (1999) 1 SCC 492, the apex Court held as under:-

“9. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations. These would be:

(1) the price at which the other side is willing to do the work;

(2) whether the goods or services offered are of the requisite specifications;

(3) whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring

specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important;

(4) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality;

(5) past experience of the tenderer, and whether he has successfully completed similar work earlier;

(6) time which will be taken to deliver the goods or services; and often

(7) the ability of the tenderer to take follow-up action, rectify defects or to give post-contract services.

Even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction.

10. What are these elements of public interest? (1) Public money would be expended for the purposes of the contract. (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work—thus involving larger outlays of public money and delaying the availability of services, facilities or goods, e.g. a delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation.

11. When a writ petition is filed in the High Court challenging the award of a contract by a public

authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers.”

14. In ***Air India Ltd. v. Cochin International Airport Ltd.*** (2000) 2 SCC 617, the apex Court, while summarizing the scope of interference as enunciated in several earlier decisions, held as follows:-

“7. ... The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations,

instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.”

15. In **B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd.** (2006) 11 SCC 548 : (2006) 11 Scale 526, the apex Court observed as follows:

“56. It may be true that a contract need not be given to the lowest tenderer but it is equally true that the employer is the best judge thereof; the same ordinarily being within its domain, court's interference in such matter should be minimal. The High Court's jurisdiction in such matters being limited in a case of this nature, the Court should normally exercise judicial restraint unless illegality or arbitrariness on the part of the employer is apparent on the face of the record.”

16. The scope of judicial review has also been taken into consideration elaborately in **Jagdish Mandal**

(supra). In paragraph-22 of the said judgment, the apex Court held as follows:-

“.....Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”;

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

Similar view has also been reiterated in

Michigan Rubber (India) Limited v. State of Karnatak,

(2012) 8 SCC 216 and Maa Binda Express Carrier v.

North East Frontier Railway, (2014) 3 SCC 760.

17. In **Vidarbha Irrigation Development Corporation and others** (supra), the apex Court, in paragraph-16 of the judgment, held as under:-

“16. It is clear even on a reading of this judgment that the words used in the tender document cannot be ignored or treated as redundant or superfluous they must be given meaning and their necessary significance. Given the fact that in the present case, an essential tender condition which had to be strictly complied with was not so complied with, the appellant would have no power to condone lack of such strict compliance. Any such condonation, as has been done in the present case, would amount to perversity in the understanding or appreciation of the terms of the tender conditions, which must be interfered with by a constitutional court.”

Since in the instant case opposite party no.4 has not complied with the conditions, as stipulated in the auction notice, and the committee has decided to make a verification and confirmation from the concerned authorities, instead of doing so, the same could not have been settled in favour of opposite party no.4.

18. In **Sachin Kumar Agrawal** (supra), this Court already held that once the bid submitted by the petitioner

was not incorporated by the bank guarantee or the previous year's income tax return, it was defective one and cannot be entertained as per the tender notice. It was also clarified in the tender notice that in absence of any documents, as enumerated in clauses-1 to 14, the application submitted by the bidder would not be taken into consideration. Therefore, fully knowing the conditions stipulated in the tender notice, the petitioner should not have filed the writ petition for consideration of the bid on the ground that he had quoted higher price than opposite party no.5. If the bid submitted by the petitioner was absolutely void ab initio, in view of non-compliance of the tender conditions stipulated in the tender notice, he is estopped from claiming the benefit, as has been claimed in the writ petition.

19. In **Rahul Mishra** (supra), this Court in paragraph-24 of the said judgment held as under:-

“24. Therefore, the application of the Petitioner, who is already a lessee, may be considered by putting the sairat source to auction. It is open for any category of applicant

referred to in Rule 27 including the Petitioner to participate in public auction of minor mineral & in case the Petitioner is not found to be the highest bidder, but agrees to match with the price at which the bid is knocked, preference shall be given to him even though he is not the highest bidder. We make this observation keeping in view the provision of Rule 27, 35& 36 of the Rules, 2004 vis-à-vis interest of the State which really means the larger interest of the people of the State. If the Sairat is settled in favour of the Petitioner then the same may be renewed at least for a period of five years in terms of the observation made by the Hon'ble Supreme Court in its order in the case of Deepak Kumar etc (supra) subject to payment of consideration money each succeeding year which shall be fixed by increasing 15% of the consideration money of the immediate preceding year pending framing of Rules.”

20. A contention was raised that opposite party no.4 had quoted highest price of Rs.589/- as additional charge and the petitioner had quoted Rs.221/-, therefore, opportunity should have been given to the petitioner to match with the bid price of opposite party no.4. But that question does not arise, in view of the fact that the document, which had been submitted by the petitioner with regard to no dues certificate from GST authority, is also required to be verified by the concerned department/

authority, if necessary. Thereby, this Court is of the considered view that even if the petitioner is called upon to match the highest price, but its bid will suffer from deficiency like that of opposite party no.4. Therefore, the question of calling upon the petitioner to match the highest price offered by opposite party no.4 may not arise.

21. In view of the aforesaid facts and law, as discussed above, it is made clear that the decision making process in selecting opposite party no.4, being arbitrary, unreasonable and contrary to the provision of law, cannot be sustained in the eye of law. Consequentially, the order dated 05.08.2022 so passed by the Tahasildar, Banspal settling the source in favour of opposite party no.4 and confirmation thereof made by the Sub-Collector, Keonjhar by order dated 20.10.2022 passed in O.M.C.C. Appeal No.33 of 2022 are liable to be quashed and are hereby quashed. The opposite party-authorities are directed to go for fresh tender in respect of Karangadihi Sand Quarry as expeditiously as possible in the interest of justice, equity and fair play.

22. In the result, the writ petition is allowed.

However, there shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

M.S. RAMAN, J. I agree.

.....
M.S. RAMAN,
JUDGE

Orissa High Court, Cuttack
The 18th May, 2023, Ashok

