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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 13562 of 2025

And

W.P.(C) No.16738 of 2021

W.P.(C) No.13562 of 2025

Phakir Mohan Naik

....

Petitioner

-Versus-

State of Odisha and others

....

Opposite Parties

W.P.(C) No.16738 of 2021

Nabin Kumar Mishra

....

Petitioner

-Versus-

State of Odisha and others

....

Opposite Parties

Advocates appeared in these cases:

For Petitioners : Mr. Jaydeep Pal, Advocate along with
Ms. A. Pal, Advocate [*in W.P.(C) No.13562 of 2025*]
: Mr. Sidharth Sahu, Advocate
[*in W.P.(C) No.16738 of 2021*]

For Opposite Parties : Mr. Saswat Das, Additional Government Advocate

Mr. Sidharth Sahu, Advocate
[*in W.P.(C) No.13562 of 2025*]

Mr. Jaydeep Pal, Advocate along with
Ms. A. Pal, Advocate [*in W.P.(C) No.16738 of 2021*]

CORAM:

HON' BLE THE CHIEF JUSTICE

AND

HON'BLE MR. JUSTICE CHITTARANJAN DASH



JUDGMENT

Date of hearing and Judgment: 27th July, 2026

HARISH TANDON, C.J.

1. The action of the Tendering Authority is sought to be challenged in the instant writ petition, primarily on the ground of arbitrariness and violation of principles of natural justice, even in relation to the cancellation of a tender.
2. Both the writ petitions have been taken up together as the question of law involved in these writ petitions are intertwined and/or interconnected to each other.
3. In course of the hearing, it transpires that the successful bidder, who was subsequently prevented from operating the quarry, filed a writ petition being W.P.(C) No.13562 of 2025 for execution of the lease deed for the balance period in respect of “*Sabara Sand Bed*” with consequential direction to operate and to quash the Letter dated 5th December, 2022 issued by the Tahasildar, Bonai directing stoppage of operation from the date of the receipt of the said letter.
4. However, the other writ petition being W.P.(C) No.16738 of 2021 is taken out by the second highest bidder in the selection



process, challenging the order of the Appellate Authority which ruled out the objections taken by the said writ petitioner and directed the execution of the lease deed in favour of the successful bidder immediately and complete all the process required for operation of the quarry.

5. At the very outset, we must record the genesis of the litigation and the decision taken by the authority in the helm of affairs in order to ascertain whether such authority exercised by the persons can withstand on the legal parameters.

6. Undeniably, the advertisement was made to settle three sand quarries in favour of the intending participants, which includes the sand quarry being the subject matter of the instant writ petitions. Admittedly, the writ petitioner in W.P.(C) No.13562 of 2025 was adjudged as the highest bidder offering higher additional charges and was duly communicated by the tendering authorities. Form 'F', which is the mandatory condition enshrined therein, was also issued in favour of the said writ petitioner.

7. In the interregnum, an objection is taken by the writ petitioner in W.P.(C) No.16738 of 2021 taking twin pleas. Firstly, the solvency certificate submitted by the highest bidder is



insufficient, as he applied for two sand sairats by using single solvency certificate and if the additional charges so offered are combined together, the solvency certificate falls short thereof and, therefore, the authority should have rejected such bid; secondly, the petitioner has committed an offence by lifting the sand without any permission from the sand sairats and, therefore, the authority should cancel the settlement made in favour of the highest bidder.

8. Interestingly, the objections, which founded upon the aforementioned twin pleas, were immediately attended to by an authority and the authority did not find any semblance of truth in it, which led the decision to be challenged before the Appellate Authority and ultimately to this Court on the ground of violation of principle of natural justice. The writ petition was disposed of setting aside the order of the authority with the consequential direction to decide afresh after affording an opportunity of hearing to such objector. As the record reveals that the Appellate Authority did not find any *iota* of piece of evidence in relation to both the objections so raised, he directed the authorities to settle the quarry in favour of the highest bidder with all consequential benefits.



9. The objector has approached this Court and Mr. Sidharth Sahu, learned counsel appearing on behalf of the said objector submits that the authorities ought to have rejected the offer made by the successful bidder when the single solvency certificate does not meet the requisite amount offered as additional charges for the two sand sairats and have ignored the provisions contained in Rule-27(4)(iv) of the Odisha Minor Minerals Concession Rules, 2016 (in short 'the Rules'). He arduously submits that the successful bidder was lifting the sand without any authority or permit having granted to him and the Appellate Authority has committed grave error in not taking into consideration the aforesaid objections in its true and proper perspective.

10. *Per contra*, Mr. Jaydeep Pal, learned counsel appearing on behalf of the successful bidder submits that the authorities, being the fact-finding authority, considered both the objections elaborately and did not find any substance therein, while rejecting the same and allowing the appeal in favour of the successful bidder. He further submits that the provisions contained under Rule-27(4)(iv) of the said Rules is misplaced, as it does not create any embargo in using one solvency certificate covering more than one sand sairats, if only one sand sairat has been awarded or sought to



be awarded to a successful bidder. He, thus, submits that there is no illegality and/or infirmity in the order of the Appellate Authority and, therefore, the writ petition filed by the objector warrants immediate dismissal thereof. Furthermore, he submits that because of the pendency of the disputes, both before the authorities and this Court, substantial period has already expired and, therefore, his client is entitled to adequate reliefs as permissible in law.

11. On the conspectus of the aforesaid factual matrix, the first and foremost point involved in the instant writ petitions is whether the Court should interfere with the decision and the order of the fact-finding authority, if such decision is based upon the record available before it in exercise of its extraordinary powers conferred under Article 226 of the Constitution of India.

12. It is no gainsaying that the High Court exercising the power under Article 226 of the Constitution of India does so within the limited contour and does not act as a Court of appeal, meaning thereby to go into the nuances and the nitty-gritty of the facts which were before the fact-finding authority. The Court should seldom interfere with the decision of the fact-finding authority, provided the same is based upon the facts revealed in course of the adjudicatory



process, unless it is found to be perverse and diametrically opposite to the settled legal proposition of law. The statute in place contains not only an exhaustive provision in relation to settlement of the quarry lease but also the forum to agitate the grievance.

13. The facts narrated hereinabove would reveal that the objections were two-folds, which appear to have been extensively dealt with by the Appellate Authority based on the record and did not find any legs to stand upon. Though the Appellate Authority has held that the advertisement so issued does not contain any express condition to file a separate solvency certificate in submitting bids for different sand sairats by a single applicant, we feel that the provision of law as relied upon by the objector needs consideration as an attention of this Court is drawn to the same.

14. Chapter IV of the said Rules, 2016 encompasses an exhaustive provision relating to the grant of quarry leases across the State and sub-rule (4) of Rule-27 of the said Rules assumes significance as it encapsulated a solvency certificate or a Bank Guarantee to be submitted by the successful bidder. The said provision is quoted as under:-



“Rule-27 (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 percentum 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.”



15. Though it starts with the expression “subject to the other provision of these Rules”, which connotes that in the event any other rule which runs contrary to any of the provisions therein, those would have an edge over the said provision. We have not been taken to any other provision which would remotely impact the applicability and the workability of Rule-27 and, therefore, we can safely proceed to interpret and understand the applicability of such provision as it stands.

16. Sub-rule (4) of Rule-27 postulates that the intending applicant may apply to the Competent Authority in a sealed cover for grant of quarry lease of such area or areas in Form ‘M’ in triplicate, accompanied by the following documents. The language employed in sub-rule (4) is indicative of the fact that if the application is to be submitted in a prescribed form or manner, it has to be done in such form and manner. Once it provides certain documents to be appended to or enclosed with the application in prescribed format, it is a mandatory provision, as any dispensation of the same would be opposed to the legislative intent. Clause (iv) of sub-rule (4) of Rule-27, which in the instant case, has taken a front seat, pertains to a solvency certificate or a Bank Guarantee to be valid for eighteen months for an amount not less than an amount



of additional charge so offered and the royalty payable for a Minimum Guaranteed Quantity for a whole year. What it ordains is a solvency certificate or a Bank Guarantee covering an amount not less than an additional charge so offered by the intending bidder, which is inclusive of the royalty payable for a Minimum Guaranteed Amount for a whole year. It does not hover around nor engulf within itself a notion that in the event, the offer is made for grant of more than one sairat, there should be a separate solvency certificate or a Bank Guarantee. It also does not forbid an applicant to apply for more than one sairat, if the advertisement is made in this regard nor the rejection of a bid as a whole as the solvency certificate falls short of the cumulative additional charges offered for more than one sand sairat.

17. The objectivity must be adhered to with the subjectivity. The legislative intent underlying the mandatory condition of providing the solvency certificate or Bank Guarantee is to adjudge the financial capability and/or capacity of the intending bidder to meet the requisite royalty and the other charges leviable on the same sairat and in the event, it is found that the said solvency certificate meets the requirement in relation to sand quarry, it is within the



discretion of the authority to consider such intending bidder for any of the same.

18. The object is laudable in the sense that while granting the quarry lease, the financial capacity and the capability should meet the subjective satisfaction of the authorities otherwise, the expression “the quarry lease shall be granted” appearing in sub-rule (5) of Rule-27 would be rendered otiose and/or redundant.

19. There is an apparent distinction between "an offer for grant of the quarry lease" and "the quarry lease granted to the successful bidder" and both have different connotations depending upon the distinct stage of selecting the successful bidder and, in the event, the provision relates to a thing to be done at the time of granting the quarry lease, it has to be understood in such perspective and cannot override and/or control the provisions relating to a stage anterior thereto.

20. It admits no ambiguity in our mind that if a document is required to be appended and/or enclosed while offering the bid, it is mandatory but if at the time of granting the lease such document meets the requisite requirement, we do not find any ambiguity in this regard and, therefore, the interpretation sought to be made by



the learned counsel for the objector to the above mentioned provision is misplaced and cannot be accepted. Apart from the same, the petitioner has been adjudged as successful bidder in one of such sand sairats and the requisite amount in relation to a solvency certificate or a Bank Guarantee is eminently and evidently present before the authority and, therefore, we do not find any illegality and/or infirmity in the decision of the authority in granting the quarry lease in favour of the successful bidder.

21. So far as the other ground, i.e., illegal lifting of the sand and the seizure of the machineries and/or vehicles are concerned, it is essentially a question of fact, which has been elaborately and exhaustively dealt with by the Appellate Authority. The Appellate Authority has recorded its reasons that in the event, there is an illegal lifting of the sand by some persons employing vehicles having found during the inquiry made by the Tahasildar and other Revenue Officers, it is surprising that no actions were taken and the persons were let go loose. It is also observed that there is neither any document regarding the seizure of the vehicles for illegal lifting of the sand from the said sairat nor imposition of any penalty on the applicant is available in the case record.



22. Once the fact-finding authority has consulted the record produced before it and does not find the existence of any such documents, the writ Court should not enter into such aspect and the findings of the fact-finding authority should be preserved. On both the aspects, the Appellate Authority did not find any justification in the action of the authorities as well as sustainability of the same.

23. We do not think that it is a fit case where the writ Court should interfere with the findings based upon the facts available before the fact-finding authority and on record.

24. The writ petition being W.P.(C) No.16738 of 2021 filed by the objector sans merit and the same is hereby dismissed.

25. Since we have dismissed the writ petition filed by the objector upholding the judgment and the decision of the Appellate Authority, the writ petition, being W.P.(C) No.13562 of 2025 filed by the successful bidder, is disposed of with a direction for implementation of the decision and order passed by the Appellate Authority with immediate effect without causing any reasonable delay in this regard.



26. Since the period of the quarry lease is going to expire in the near future and the petitioner was prevented from operating the quarry lease for full tenure, it is open to the authority to take a conscious decision in this regard. In the event, the petitioner is allowed to operate less than the period of the lease, it is open to the petitioner to claim compensation before the authority and, in such event, the authority would award compensation as found just and equitable.

27. Though we disposed of both the writ petitions, we cannot overlook the sterling facts unearthed in course of hearing, more particularly, when the letters are issued from the Office of the learned Advocate General to the authorities to do or forbid to do certain things, solely on the premise that the dispute has been created and the matter has travelled in the domain of the Court. It is to be reminded that mere approaching and filing a proceeding before the Court does not *ipso facto* render the decision of an authority to be kept in abeyance or in suspended animation till the final decision is taken.

28. The Indian jurisprudence has developed in course of time, even by drawing an inspiration from the English Courts and the



power to issue prerogative writs that mere institution of a proceedings does not tantamount to stay in the operation of the decision nor be perceived a suspension thereof.

29. Though the doctrine of *lis pendens* does not apply rigorously, yet it is ingrained into the legal system which depends on the verity of the claim and the ultimate decision taken by the Court in the said proceeding, it does not automatically over-shadow the power of the Court to pass an interdict in the interregnum protecting the interest of the warring litigant pending final adjudication.

30. The empirical data collected from different Courts across the country initially evince that the moment the matter becomes subjudice before the Court, an automatic interdiction is perceived and the Courts lower in hierarchy used to refrain from proceeding any further. The *Malimath* Committee recommended the amendment to be brought in some of the provisions in the procedural law, obviously upon perceiving such notion being prevalent in the judicial parlance, which led an amendment to be brought not only in the procedural law but in the substantive Act as well, in the sense that mere pendency of a proceedings, even before



the higher forum, in absence of any express order, does not automatically stay further progress of the litigation pending in the Courts below in hierarchical system.

31. Taking a clue and drawing an inspiration from the same, mere filing a writ petition before the Court does not render the decision of the authority automatically over-shadowed nor the implication and efficacy thereof can be undermined, unless the Court passes an express, preventive and/or protective order in the said proceedings.

32. The Office of the learned Advocate General should be more responsive to the advancement of law and a proper decision to be taken in pursuit of understanding and a due implementation of law and should not act as a deterrent to the authorities to discharge their solemn duties or to act further thereupon.

33. In the instant case, the letter was issued from the Office of the learned Advocate General to the Competent Authority to forbear from taking any further decision on the basis of the decision taken by the fact-finding authority simplicitor on the premise that an unsuccessful bidder has challenged the order of the Appellate Authority in the writ proceedings. Admittedly, there is no interim



order passed in the said writ petition, yet because of such advice being given to the authorities, the right accrued to the successful bidder is put in jeopardy and ultimately impacted justice to be rendered in a time-bound manner.

34. We hope and trust that the Office of the learned Advocate General should not be a mere messenger but a meaningful advice is required to be given to the authorities to respect the law and to act within the precincts of the law and not to direct the non-implementation of the order when there is no prohibitory order passed by the Court in the proceedings. We appreciate the standing of the learned Additional Government Advocate representing in the instant case and such letter/direction was passed much prior to the new regime having embraced in the presentee.

35. Urgent certified copy, if applied for, will be given within three days from the date of the application.

(Harish Tandon)
Chief Justice

(Chittaranjan Dash)
Judge