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2023 SCeJ 0068

Supreme Court of India

JUSTICE M.R. Shah , JUSTICE B.V. Nagarathna

Debidutta Mohanty v. Ranjan Kumar Pattnaik & Ors.

CIVIL APPEAL NO. 4939 of 2022

3rd March 2023

Orissa Minor Minerals Concession Rules, 2016, R.51(7) - Solvency certificate - Respondent misused the solvency certificate which as such was illegally issued in his individual capacity/name as though the same was required to be issued in the name of the Trust - Cancellation of lease by collector - Upheld.

Orissa Minor Minerals Concession Rules, 2016, R.51(7) - Challenge to order passed by the Collector cancelling the lease deed was without authority under the law inasmuch as the competent authority to cancel the lease deed under Rule 51(7) of the Rules, 2016 would be Tehsildar is concerned - It is required to be noted that the Rule 51(7) shall be applicable in case of breach of any condition of the lease deed - The present case is not a case of breach of any condition of the lease deed, but a case of producing invalid solvency certificate at the time of submission of the bid - Therefore, Rule 51(7) shall not be applicable at all to the facts .[Para 7.1]

Petitioner Counsel: BHABNA DAS, Respondent Counsel: ASHOK PANIGRAHI, ANINDITA PUJARI

JUDGEMENT

M. R. Shah, J. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Orissa at Cuttack in Writ Petition (Civil) No.16437 of 2021 by which the High Court has allowed the said writ petition preferred by the respondent no.1 herein and has set aside the order passed by the Collector, Cuttack dated 24.03.2021 by which the lease in favour of the original writ petitioner was cancelled and consequently the lease in favour of the original writ petitioner has been revived, the original respondent no.5 before the High Court has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

2.1 That an auction notice for grant of the lease in question was published on 08.01.2018. Clause 5 of the auction notice stated that the bidder should submit a solvency certificate from the Revenue Officer which amount should not be less than the royalty and the additional charges fixed for the source. The bidder was also required to submit the details of the movable properties. The auction notice referred to the Orissa Minor Minerals Concession Rules, 2016 (hereinafter referred to as 'OMMC Rules, 2016'). The respondent no.1 - original writ petitioner participated in the tender process and submitted his application along with a Solvency Certificate dated 07.12.2017 issued by the Tehsildar, Narasinghpur. The above solvency certificate was issued despite the above order passed by the SubCollector, Athagarh on 06.12.2017. At this stage, it is required to be noted that an order was passed by the SubCollector, Athagarh on 06.12.2017 specifically stating that a solvency certificate be issued in favour of "Gurukrupa Charitable Trust, Chairman of Village Kendupali". However, the Tehsildar issued the solvency certificate in favour of the original writ petitioner individually who at the relevant time was the Chairman of the Trust. The said solvency certificate was enclosed with the original writ petitioner's bid.

2.2 When the bids were opened, the highest bid was of one Sukanti Sahoo, the original writ petitioner was the second highest bidder and the appellant herein - original respondent no.5 Debidutta Mohanty was the third highest bidder. The bid of the first highest bidder Sukanti Sahoo was cancelled as she was found to be a defaulter. Since the original writ petitioner was the second highest bidder a letter dated 08.05.2019 was issued to him asking him to communicate his willingness to operate the sand sairat at Rs.142 per cubic meter which was the rate quoted by the highest bidder. On the same date, the original writ petitioner submitted his willingness. He was then asked to execute a lease deed. The original writ petitioner then deposited Rs.26,28,450/ and complied with the requirements. That Sukanti Sahoo filed the Writ Petition (C) No.9023 of 2019 before the High Court questioning the cancellation of her bid and the selection of the original writ petitioner. Initially the High Court granted the order of status quo which came to be vacated subsequently. Thereafter the present original writ petitioner filed Writ Petition (C) No.22660 of 2019 in the High Court for a direction to the competent authority i.e. the Tehsildar, Sadar for execution of the lease deed in his favour. Thereafter on 01.01.2020, a lease deed came to be executed in his favour. That thereafter a second writ petition came to be filed by Sukanti Sahoo against the grant of lease in favour of the present original writ petitioner being Writ Petition (C) No.951 of 2020. Initially the High Court stayed the operation of the lease deed executed in favour of the original writ petitioner. However, thereafter the stay came to be vacated clarifying that the operation of the lease would be subject to the final outcome of the pending writ petition.

2.3 That thereafter the appellant herein Debidutta Mohanty filed the Writ Petition (C) No.3326 of 2021 in the High Court questioning the solvency certificate issued in favour of respondent no.1 herein - original writ petitioner. The said petition came to be disposed of by the High Court vide order dated 04.02.2021 directing the Collector, Cuttack to consider his representation. While the matter was pending with the Collector, the appellant herein filed Writ Petition (C) No.14241 of 2021 which came to be disposed of on 19.04.2021. In the said order, it was noted that on 08.03.2021, the Tehsildar, Narasinghpur had cancelled the solvency certificate produced by respondent no.1 herein with his bid and that against the

said cancellation order, an appeal had been filed before the Collector. A direction was issued to the Collector to also dispose of the representation of the appellant herein questioning the solvency certificate which was issued in favour of the original writ petitioner, not later than 12.05.2021. In the meanwhile, the respondent no.1 was permitted to operate the sairat and then it was stopped at the instance of the Tehsildar. On 02.03.2021 a letter was written by the Tehsildar, Narasinghpur to the SubCollector, Athagarh stating that the respondent no.1 herein – original writ petitioner was the Chairman of the Gurukrupa Charitable Trust. He had filed an application for issuance of a solvency certificate in his own name, but since he was the Chairman of the Gurukrupa Charitable Trust, the solvency certificate that had to be issued in the name of the Trust was issued in his name. It was stated therein that the notice had been issued to the party and necessary steps have been taken for correction of the said certificate.

2.4 Subsequently, another letter was sent by the Tehsildar on 08.03.2021 to the Collector, Cuttack stating that the earlier solvency certificate issued in favour of the original writ petitioner – Respondent no.1 herein stood cancelled and another certificate was asked to be issued in favour of the “Gurukrupa Charitable Trust, Chairman of Village Kendupali”.

2.5 That meanwhile, on 29.01.2021, the original respondent no.1 herein original writ petitioner wrote to the Tehsildar, Sadar Cuttack to substitute/exchange the solvency certificate given with his bid with another one in the value of Rs.4.6 crores which had been issued on 27.01.2021. That thereafter on the representation made by the appellant herein, the Collector cancelled the lease in favour of respondent no.1 herein original writ petitioner by observing and concluding that the solvency certificate which was required to be issued in favour of the “Gurukrupa Charitable Trust Chairman of Village Kendupali”, was issued in the name of respondent no.1 and therefore, the solvency certificate had not been issued following the stipulated provisions of the law and hence, the utilization of the same by respondent no.1 herein original writ petitioner in auction of the sairat is illegal. The order passed by the Collector dated 24.03.2021 was the subject matter of the present writ petition before the High Court at the instance of Respondent no.1 herein.

2.6 Before the High Court it was the case on behalf of respondent no.1 herein original writ petitioner that under the provisions of the OMMC Rules, 2016 the competent authority in regard to minor minerals is the Tehsildar and therefore, the lease deed could not have been cancelled by the Collector. It was also the case on behalf of the original writ petitioner respondent no.1 herein that he rectified the defect of not furnishing a solvency certificate in his own name. It was submitted that it is true that earlier the solvency certificate should have been issued in the name of the Trust of which he was the Chairman, however, on 29.01.2021 itself he had written to the Tehsildar for substituting the solvency certificate submitted with the bid with another issued in his own name and, therefore, even the said defect stood cured. It was submitted that without taking note of this, the Collector had cancelled the lease.

2.7 The writ petition was opposed by the State as well as the appellant herein original respondent no.5. It was submitted on behalf of the appellant herein that the bid submitted by respondent no.1 herein original writ petitioner was ab initio void and should never have

been accepted since it was not accompanied by a valid solvency certificate in the name of the original writ petitioner. It was submitted that the document that was enclosed as a solvency certificate was in fact not correctly issued and was contrary to the express order of Sub-Collector. It was submitted that as the bid of the first highest bidder Sukanti Sahoo was earlier cancelled and the original writ petitioner was the second highest bidder whose lease has been rightly cancelled by the Collector, being the third highest bidder the lease ought to have been granted in his favour.

2.8 By the impugned judgment and order and having opined that the initial solvency certificate was issued in favour of the original writ petitioner which was issued in the name of the original writ petitioner, though required to be issued in the name of the Trust, was a bona fide error which subsequently came to be cancelled and even a fresh solvency certificate was issued in favour of the original writ petitioner, the Collector had erred in cancelling the lease deed in favour of the original writ petitioner. The High Court also has observed that under the OMMC Rules, 2016, the competent authority in terms of Schedule (IV) who can cancel the lease deed, is the Tehsildar and therefore, the competent authority's power under the OMMC Rules, 2016 would not have been straight way exercised by the Collector in the first instance. Therefore, the High Court by the impugned judgment and order has set aside the order passed by the Collector cancelling the lease deed in favour of the original writ petitioner.

2.9 The impugned judgment and order passed by the High Court quashing and setting aside the order passed by the Collector, Cuttack dated 24.03.2021 cancelling the lease in favour of the original writ petitioner respondent no.1 herein is the subject matter of the present appeal at the instance of the original respondent no.5 – third highest bidder.

4. Shri R. Basant, learned Senior Advocate has appeared on behalf of the appellant and Shri A.N.S. Nadkarni, learned Senior Advocate has appeared on behalf of Respondent no.1.

4.1 Shri Basant, learned Senior Advocate appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case the Division Bench of the High Court has materially erred in quashing and setting aside the order passed by the Collector, Cuttack dated 24.03.2021 cancelling the lease in favour of respondent no.1 herein.

4.2 Shri Basant, learned Senior Advocate has further submitted that the High Court has materially erred in observing and holding that the initial subject solvency certificate which as such was in the name of Gurukrupa Charitable Trust, but was used by respondent no.1 in his individual capacity in order to participate in the tender was a genuine mistake and not a deliberate act and therefore a rectifiable defect.

4.3 It is submitted that it is an admitted position that the property belonged to the Gurukrupa Charitable Trust and was not owned by respondent no.1. It is submitted that therefore, the subject solvency certificate used by respondent no.1 in his individual capacity in order to participate in the tender was an exercise in fraud which rendered his bid nonest and void ab initio.

4.4 It is submitted that the High Court has not properly appreciated the fact that it was the modus operandi of respondent no.1 to attempt to pass off the property of the Trust as his own property inasmuch as the selfsame subject solvency certificate had been misused by respondent no .1 in another tender and detecting the fraud played, the Tehsildar and the SubCollector had disqualified him from the said tender.

4.5 It is further submitted that the High Court has materially erred in applying Rule 51(7) of the OMMC Rules, 2016. It is submitted that the said SubRule shall be applicable only in a case where there is a breach of any condition of the lease deed, whereas in the instant case there has been a breach of the auction/tender call notice and the Rules governing bids.

4.6 It is further submitted that the High Court has materially erred in holding that the competent authority under the OMMC Rules, 2016 was the Tehsildar and therefore the Collector could not have been approached in the first instance despite being aware that there were allegations against the Tehsildar of conspiring with respondent no.1.

4.7 Shri R. Basant, learned senior counsel appearing on behalf of the appellant has further submitted that the High Court has materially erred in taking into consideration the subsequent conduct on the part of respondent no.1 in obtaining the fresh solvency certificate. It is submitted that what was required to be considered was the solvency certificate at the time of bid and not the subsequent solvency certificate.

5. Present appeal is vehemently opposed by Shri A.N.S. Nadkarni, learned Senior Advocate appearing on behalf of respondent no.1. It is submitted that as rightly observed and held by the High Court the initial solvency certificate dated 07.12.2017 issued in favour of Respondent no.1 was by mistake and instead of Gurukrupa Charitable Trust, the same was issued in favour of Respondent no.1 being the Chairman of Trust.

5.1 It is submitted that thereafter respondent no.1 himself made an application for substitution of the solvency certificate. That thereafter respondent no.1 obtained the fresh solvency certificate in his favour which came to be permitted to be substituted/filed. Therefore, it cannot be said that the initial solvency certificate produced by respondent no.1 along with the bid was nonest and void ab initio as sought to be contended on behalf of the appellant.

5.2 It is further submitted that even otherwise the power to cancel the lease deed would vest with the Tehsildar who is the competent authority under Rule 51(7) of the OMMC Rules, 2016. That in the present case the lease deed was cancelled by the Collector and therefore, the High Court has rightly observed and held that the order passed by the Collector, Cuttack cancelling the lease was without authority under the Law.

5.3 It is further submitted that even during the pendency of the present proceedings not only the lease period has expired but even subsequently the fresh lease deed has been executed pursuant to the impugned judgment passed by the High Court.

6. We have heard learned Senior Counsel appearing on behalf of the respective parties at length.

7. By the impugned judgment and order the High Court has set aside the order passed by the Collector, Cuttack dated 24.03.2021 cancelling the lease which was in favour of respondent no.1 herein inter alia on the grounds that:

(i) the order passed by the Collector cancelling the lease deed was without authority under the law as under Rule 51(7) of the Rules, 2016 the Tehsildar is the competent authority to cancel the lease deed;

(ii) That the original solvency certificate dated 07.12.2017 produced by respondent no.1, produced along with the bid was issued in his favour by mistake.

7.1 Now so far as the finding recorded by the High Court that the order passed by the Collector dated 24.03.2021 cancelling the lease deed was without authority under the law inasmuch as the competent authority to cancel the lease deed under Rule 51(7) of the Rules, 2016 would be Tehsildar is concerned, it is required to be noted that the Rule 51(7) shall be applicable in case of breach of any condition of the lease deed. The present case is not a case of breach of any condition of the lease deed, but a case of producing invalid solvency certificate at the time of submission of the bid. Therefore, Rule 51(7) shall not be applicable at all to the facts of the case at hand.

7.2 It is also required to be noted that in fact Collector passed the order dated 24.03.2021 pursuant to the directions issued by the High Court directing the Collector to take an appropriate decision on the representation/(s) made by the appellant. Under the circumstances the High Court has materially erred in holding that the order dated 24.03.2021 passed by the Collector cancelling the lease deed was without authority under the law.

8. Now so far as the findings recorded by the High Court that the original Solvency Certificate dated 07.12.2017 in favour of respondent no.1 was a mistake and there was no other mala fide intention is concerned, it is required to be noted that despite the fact that Gurukrupa Charitable Trust was the owner of the property and on the said basis the solvency certificate was claimed, the respondent no.1 made an application for issuance of the solvency certificate in his own name in his individual capacity. The SubCollector, Athagrah vide communication dated 06.12.2017 as such had specifically directed the Tehsildar to issue the certificate in the name of Gurukrupa Charitable Trust. However, despite the same the Tehsildar issued the solvency certificate dated 07.12.2017 in favour of respondent no.1 in his individual capacity, which as such cannot be said to be by mistake. If the communication by the SubCollector, Athagarh dated 06.12.2017 addressed to the Tehsildar would not have been there and the Tehsildar would have issued the solvency certificate in favour of respondent no.1 in his individual capacity as he was the Chairman of the Trust then one can understand such a mistake. However, in the present case the SubCollector, Athagarh specifically directed not to issue the solvency certificate in favour of respondent no.1 herein in his individual capacity and specifically directed to issue the certificate in the name of Trust. Under the circumstances it cannot be said that the original solvency certificate dated 07.12.2017 was issued in favour of respondent no.1 in his individual capacity by mistake. It appears that the respondent no.1 deliberately and

willfully obtained the solvency certificate in his own name though the property belonged to the Trust and the solvency certificate was required to be issued in the name of the Trust. He misused/used the solvency certificate dated 07.12.2017 for his own benefit illegally and submitted the same along with his bid and on the basis of the said solvency certificate he got the lease bid. Under the circumstances, the bid by using the solvency certificate dated 07.12.2017 by respondent no.1 was nonest and void ab initio and therefore, the lease in his favour on the basis of such solvency certificate was rightly cancelled by the Collector.

8.1 At this stage it is required to be noted that subsequently the respondent no.1's application on 29.01.2021 permitting him to substitute the solvency certificate was not on the ground that the initial solvency certificate dated 07.12.2017 which was issued in his individual name was by mistake. The reason given was that the other partner may claim over the earlier solvency certificate and therefore we intend to substitute/exchange the fresh solvency certificate which was obtained against the other properties.

8.2 At this stage it is required to be noted that the respondent no.1 used the very solvency certificate in another tender and the Tehsildar and the SubCollector disqualified the respondent no.1 from the said tender.

8.3 Under the circumstances as such the respondent no.1 misused the solvency certificate dated 07.12.2017 which as such was illegally issued in his individual capacity/name as though the same was required to be issued in the name of Gurukrupa Charitable Trust. At this stage it is required to be noted that subsequently the solvency certificate dated 07.12.2017 has been cancelled by the Tehsildar vide order dated 08.03.2021 which has attained the finality.

8.4 Now so far as the submission on behalf of respondent no.1 that subsequently respondent no.1 obtained the fresh solvency certificate which was sought to be substituted/exchanged is concerned, it is required to be noted that what is required to be considered is the solvency certificate produced along with the bid and not the subsequent solvency certificate.

9. Now so far as the submission on behalf of respondent no.1 that thereafter pursuant to the impugned judgment and order passed by the High Court a fresh lease deed has been issued is concerned, at the outset, it is required to be noted that in the order dated 18.05.2022 it is observed by this Court that the fresh lease deed, pursuant to the impugned judgment and order shall be subject to the ultimate outcome of the present SLP/appeal and/or further orders that can be passed by the court in the proceedings.

10. In view of the above and for the reason stated above, we are of the opinion that the High Court has committed a very serious error in quashing and setting aside the order dated 24.03.2021 passed by the Collector, Cuttack cancelling the lease deed which was in favour of respondent no.1. Consequently, the impugned judgment and order passed by the High Court deserves to be quashed and set aside and is accordingly quashed and set aside. The order passed by the Collector, Cuttack dated 24.03.2021 cancelling the lease deed which was in favour of respondent no.1 is hereby restored. On the impugned judgment and

order being set aside the fresh lease deed in favour of respondent no.1 also deserves to be set aside and is accordingly set aside.

Present appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.