2025 INSC 1295

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(@ OUT OF S.L.P. (C) NO. 5829 OF 2023)

M/S SHANTI CONSTRUCTION PVT. LTD. ...APPELLANT

VERSUS

THE STATE OF ODISHA & ORS. ...RESPONDENTS

WITH

CIVIL APPEAL NO. OF 2025
(@ OUT OF S.L.P. (C) NO.16140 OF 2023)

JUDGMENT

ALOK ARADHE, J.

Leave granted.

2. Both these appeals emanate from the judgment dated 01.03.2023 passed by the High Court of Orissa in a writ petition. These appeals involved the issue of interpretation of the term 'previous Financial Year' as defined in Rule 27(4)(iv) of Odisha Minor Mineral Concession Rules, 2016 (hereinafter, referred to as 'the Rules').

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3. The relevant facts leading to filing of these appeals are as under.

3.1 The Tehsildar, Tangi Chowdwar, Cuttack on 11.07.2022 issued a notice inviting bids for extraction of sand on lease for a period of five years of Mahanadi Sand Quarry under Tehsil Tangi Chowdwar, District Cuttack, in the State of Orissa (hereinafter, referred to as 'auction notice'). The bids were required to be submitted in a sealed cover on or before 18.07.2022. The sealed envelopes were to be opened on 19.07.2022 and after verification of bid documents, the lease was to be granted in favour of the highest bidder. Clause 5 of the tender incorporates provision of the amended Rule 27(4)(iv) of the Rules and requires the bidders to submit either (i) 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*** (ii) Bank Guarantee valid for a period of eighteen months for the amount not less than the amount as above.

3.2 In response to the auction notice, 20 bidders submitted their bids. The unsuccessful bidder submitted its bid for grant of

quarry lease for a period of five years quoting rate of Rs.2127.27 per cubic meter, whereas, the successful bidder submitted its bid quoting a rate of Rs.1250/- per cubic meter.

3.3 The Tender Committee in its meeting held on 19.07.2022 examined the bids. The bid of the unsuccessful bidder who had quoted the highest rate was declared non-responsive on the ground that it failed to comply with provision of Rule 27(4)(iv) of the Rules, as it did not submit the Income Tax Return for financial year 2021-2022. The bid of the successful bidder was found to be technically responsive and he was declared to be the highest bidder.

3.4 The Tehsildar on 25.07.2022 issued Form-F by which intimation was sent to the successful bidder informing him that he is successful bidder and he was called upon to (i) convey his acceptance to the terms and conditions and (ii) to deposit an amount of Rs.1,26,75,000/- under Rule 27(7) and 27(9) of the Rules. The successful bidder on 25.07.2022 conveyed his acceptance to the terms and conditions prescribed in the communication dated 27.07.2022 and deposited an amount of Rs.1,26,75,000/- through RTGS from Bank of India.

3.5 The unsuccessful bidder filed a writ petition, on 10.08.2022, before the High Court, in which challenge was made to award of tender in favour of successful bidder. The High Court by an *ex-parte* interim order dated 24.08.2022 directed that any action taken in pursuance of issuance of Form-F to the successful bidder shall not be given effect to till further orders.

3.6 The High Court by an order dated 01.03.2022 *inter alia* held that bid of the unsuccessful bidder was rightly rejected on account of non-compliance with Rule 27(4)(iv) of the Rules and upheld the grant of tender in favour of successful bidder. However, the High Court held that there is a huge difference between the rates quoted by unsuccessful and successful bidder and the grant of tender to successful bidder shall result in huge loss to public exchequer. The Tehsildar was, therefore, directed to call upon the successful bidder to match the highest price offered by the unsuccessful bidder, in the interest of the State exchequer and public at large. The unsuccessful bidder is aggrieved by the impugned judgment in so far as it upholds the rejection of its bid, whereas the successful bidder is aggrieved by the impugned judgment in so far as it requires him to match bid of the

unsuccessful bidder. In the aforesaid factual background, both the unsuccessful bidder as well as the successful bidder, are before us.

4. A Bench of this Court in the Special Leave Petition filed by the unsuccessful bidder, granted an ad-interim order on 29.03.2023, directing the parties to maintain *status quo* in relation to the contract in question until further orders.

5. Learned senior counsel for the unsuccessful bidder submitted that the Tender Committee ought to have appreciated that the unsuccessful bidder had submitted the Income Tax Return for the financial year 2020-2021 along with its bid. It is further submitted that Tender Committee ought to have appreciated that the tender was floated in the midst of the year and the unsuccessful bidder had filed the provisional balance sheet for the financial year 2021-2022, as, the last date for filing the Income Tax Return for unsuccessful bidder, which is a company, was 31.10.2022. It is, therefore, urged that Tender Committee had misinterpreted Rule 27(4)(iv) of the Rules and it ought to have appreciated that the unsuccessful bidder had complied with the mandate of the Rule. It is urged that the High

Court has failed to exercise its jurisdiction under Article 226 of the Constitution of India. It is pointed out that out of the period of five years of lease, a period of three years and three months, has already expired. Therefore, in the facts and circumstances of the case, the Tehsildar be directed to issue a fresh tender. In support of aforesaid submissions, reliance has been placed on the decisions in **B.S.N. Joshi & Sons Ltd.** v. **Nair Coal Services Ltd. & Others**[1], **Jagdish Mandal** v. **State of Orissa & Others**[2] and **UFLEX Limited** v. **Government of Tamil Nadu & Others**[3]**.**

6. Learned counsel for the State submitted that it is ready and willing to award the tender for the remainder of the period in favour of successful bidder, on the rate quoted by the unsuccessful bidder. Alternatively, it is submitted that respondent Nos. 1 and 2 are willing to refund the amount deposited by the successful bidder without any interest, as the lease deed could not be executed in favour of successful bidder due to the litigation.

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[1] (2006) 11 SCC 548

[2] (2007) 14 SCC 517

[3] (2022) 1 SCC 165

7. On the other hand, learned counsel for the successful bidder urged that the decision of the Tender Committee which rejected the bid of the unsuccessful bidder is justified, as it failed to comply with Rule 27(4)(iv) of the Rules. It is pointed out that the Income Tax Returns now produced by the unsuccessful bidder do not disclose an annual income above the threshold value. It is urged that, in the absence of arbitrariness or *mala fides,* the terms of a Tender are not open to judicial scrutiny. In support of aforesaid submission, reference has been made to a decision of this Court in **Afcons Infrastructure Ltd.** v. **Nagpur Metro Rail Corporation Ltd. & Anr.**[4] It is contended that upon declaration of successful bidder coupled with acceptance of terms and conditions of the grant and on deposit of statutory amount, a vested right is created in favour of a successful bidder and execution of formal lease deed is a ministerial act. In support of aforesaid submission, reliance has been placed on decisions of this Court in **Gujarat Pottery Works** v. **B.P. Sood, Controller of Mining Leases for India**[5], **Bhushan Power and Steel Ltd.** v. **S.L. Seal, Addl. Secretary (Steel and Mines), State of Odisha**

[4] (2016) 16 SCC 818

[5] 1966 SCC OnLine SC 126

& Ors.[6] and a decision of Karnataka High Court in **Aane Mines and Minerals, Nagarjuna Hills, Panjagutta, Hyderabad** v. **State of Karnataka & Another**[7].

8. It is submitted that delay in execution of the lease deed is not attributable to the successful bidder and the lease deed could not be executed due to litigation. It is further submitted that an act of Court cannot prejudice a party i.e. *actus curiae neminem gravabit.* In support of aforesaid proposition, reference has been made to a decision in **Doiwala Sehkari Shram Samvida Samiti Ltd.** v. **State of Uttaranchal and Ors.**[8] It is contended that public auctions are corner stones of public accountability and transparency and concluded auction in the absence of mala fides or breach of law should not be cancelled. In support of aforesaid submission, reliance has been placed on the decisions in **Subodh Kumar Singh Rathour** v. **Chief Executive Officer and Ors.**[9] and **Prakash Asphaltings and Toll Highways (India) Ltd.** v.

[6] (2017) 2 SCC 125

[7] 2019 SCC OnLine Kar 3791

[8] (2007) 11 SCC 641

[9] 2024 SCC OnLine SC 1682, (2024) 15 SCC 461

Mandeepa Enterprises and Ors.[10] Lastly, it is contended that the successful bidder is now ready to match the rates offered by the unsuccessful bidder and therefore, the Tehsildar be directed to execute the lease deed in favour of the successful bidder for a fresh period of five years.

9. We have considered rival submissions and have perused the record. The contours of judicial review in contractual matters are settled by a long line of authority. The 'heart beat of fair play' in tender matters is non-arbitrariness and fairness in State action. The court's interference is limited to cases where the decision making process is shown to be arbitrary, irrational, mala fide or contrary to public interest. (See : **Michigan Rubber (India) Ltd.** v. **State of Karnataka & Others**[11]). The same principle resonates in **Banshidhar Construction Pvt. Ltd.** v. **Bharat Coking Coal Ltd. & Others**[12] wherein this Court reiterated that decisions of the Government must be free from arbitrariness and guided by the constitutional mandate contained in Article 14 of the Constitution of India. The principle of restraint enunciated in

[10] 2025 SCC OnLine SC 1959

[11] (2012) 8 SCC 216

[12] (2024) 10 SCC 273

TATA Cellular v. **Union of India**[13] that Courts do not interfere in contractual matters of the State, is accompanied by an equally strong duty to intervene in decision making process if the same is irrational, perverse or against public interest.

10. A public tender is not a private bargain. It is instrument of governance, a mechanism through which the State discharges its solemn duty as trustee of public wealth. Its purpose is not merely procedural compliance, but maximisation of public value through a process i.e. fair, transparent and competitive. The obligation of the Tendering Authority is therefore twofold, namely, to interpret its own terms with consistency and to ensure that such interpretation advances, not defeats, the object of tender. The court must intervene in a case of demonstrable misconstruction of a tender condition or irrationality which affects the public interest. When an interpretation of a tender condition narrows competition and excludes the highest bidder on a ground unsupported by law, the decision making process is vitiated. The interpretation of the terms of tender must, therefore, serve the

[13] (1994) 6 SCC 651

object and purpose of the tender mainly to maximise the revenue to the State, when it deals with a natural resource.

11. Now, we apply the aforesaid well settled legal principles to the facts of these cases. The controversy in both these appeals essentially turns upon the correct interpretation of Rule 27(4)(iv) of the Rules, as amended on 11.03.2022. The said Rules reads as under :-

> "(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."

12. Clause 5 of the auction notice which substantially incorporates the aforesaid Rule is extracted below:-

> "5. As per the provision of Section 27(4)(iv) of the OMMC Rules 2016, the applicant has to deposit the equivalent amount of the royalty against the minimum guaranteed quantity (MGQ) and the proposed additional charges or a bank guarantee of more than that amount valid for next 18 months or the income-tax return of the previous financial year. Bank Guarantee > MGQ X (Royalty + offered Additional Charge).

13. Thus, Clause 5 of the auction notice which incorporates Rule 27(4)(iv) of the Rules and inadvertently refers to it as Section 24(4) of the Rules, mandates the applicant (i) to deposit the equivalent amount of royalty against the minimum guarantee quantity and the proposed additional charges **or a** (ii) bank guarantee of more than that amount valid for next 18 months **or** (iii) the Income Tax Return of previous financial year.

14. The unsuccessful bidder is a company. It is axiomatic from the stand taken by the State in its counter, that the unsuccessful bidder had filed the Income Tax Return for the Financial Year 2020-2021. The auction notice was issued in the midst of the year i.e. on 11.07.2022. The proper construction of the phrase 'previous Financial Year' therefore, assumes critical importance. Rule 27(4)(iv) of the Rules requires the bidder to produce an Income Tax Return of the "previous Financial Year". The said Rule has to be read in harmony with the provisions of the Income Tax Act, 1961. Under Section 139(1) of the aforesaid Act, a company may file the Income Tax Return for the Financial Year 2021-2022 up to 31st of October, 2022. As per auction notice, the bids were required to be submitted on 18.07.2022. The period for

filing the Income Tax Return for Financial Year 2021-2022 (relevant to Assessment Year 2022-2023) was yet to expire. Therefore, on the said date the bidder could not have been expected to file an Income Tax Return for Financial Year 2021-2022 along with its bid documents, as the statutory period for filing the same had not expired.

15. The reasonable understanding of the term 'previous Financial Year' must therefore, be treated to mean the year immediately preceding Financial Year i.e. 2020-2021, for which the unsuccessful bidder had filed the Income Tax Return. The term 'previous Financial Year' in the case of unsuccessful bidder was to be treated as Financial Year 2020-2021 and not 2021-2022. The aforesaid interpretation is in consonance with the provisions of the Income Tax Act, 1961. The Tender Committee, however, proceeded on a narrow and erroneous understanding of the expression of the term 'previous Financial Year' and erroneously concluded that since the unsuccessful bidder had not filed the Income Tax Return for Financial Year 2021-2022, therefore it had not complied with the mandate contained in Rule 27(4)(iv) of the Rules. The Tender Committee has erroneously

interpreted the tender condition which excludes the highest bidder and defeats the purpose of the tender. Such an interpretation by the Tender Committee undermines the principle that State must act to enhance and not diminish, the public exchequer in case it is dealing with natural resources. When an authority acting under a tender misinterprets the tender condition that diminishes competition and deprives the State of its legitimate revenue, the constitutional duty of the court to interfere is beyond question. The High Court while deciding the writ petition has failed to advert itself to the aforesaid aspect of the matter. The impugned judgment passed by the High Court, therefore, cannot be sustained. In view of our aforesaid conclusion, it is not necessary for us to advert to various other contentions urged by the parties.

16. Now, we advert to the relief which may be granted to the unsuccessful bidder. It is well settled that tenders and public auctions, specially for natural resources, are not mere commercial transactions, but an exercise in public trust. The State as custodian of natural wealth is obligated to secure the best value for public resources consistent with the principles of

fairness and transparency [(See : **Natural Resources Allocation, In Re, Special Reference No.1 of 2012**[14] and **Subodh Kumar Singh Rathour (supra)**]. In the instant case, the auction notice was issued on 11.07.2022. The Tehsildar issued a Form-F in favour of the successful bidder on 25.07.2022. The bid of the successful bidder was accepted for a period of five years, out of which a period of three years and three months has already lapsed. There is no material on record to indicate the present rate of sand per cubic meter. However, there is an upward trend so far as prices of sand is concerned which can safely be inferred from the fact that successful bidder after filing the Special Leave Petition, at the time of hearing of the appeal, has submitted that successful bidder is now willing to match the rate offered by the unsuccessful bidder. However, the successful bidder is entitled to refund of the amount deposited by him along with interest on the principle of restitution. Therefore, in the facts and circumstances of the case, we issue following directions :-

(i) The impugned judgment dated 01.03.2023 passed in Writ Petition (C) No. 20402 of 2022 passed by the High Court is quashed and set aside.

[14] (2012) 10 SCC 1

(ii) The Tehsildar Tangi Chowdwar, Cuttack, shall issue a fresh auction notice for grant of lease of extraction of sand for Mahanadi Sand Quarry as per Odisha Minor Mineral Concession Rules, 2016.

(iii) The unsuccessful and successful bidders, including all concerned, shall be entitled to submit their bids.

(iv) The contract for extraction of sand shall be awarded in respect of Mahanadi Sand Quarry in accordance with Odisha Minor Mineral Concession Rules, 2016.

(v) The State shall refund the amount deposited by the successful bidder within 30 days along with interest at the rate of 6% per annum from the date of deposit till such payment is made.

17. Accordingly, the appeals are disposed of.

.....J.
[SANJAY KUMAR]

.....J.
[ALOK ARADHE]

NEW DELHI,
NOVEMBER 7, 2025.