

Madhya Pradesh High Court

Shanker Singh vs State Of M.P. And Ors. on 31 July, 2002

Equivalent citations: AIR 2003 MP 46, 2002 (4) MPHT 522

Author: R Menon

Bench: R Menon

ORDER Rajendra Menon, J.

1. The petitioner by this petition has challenged the action of the respondents in proposing to recover the sum of Rs. 1,23,000.00 from him.

2. The petitioner on the basis of an advertisements for auction published in accordance with Rule 37 of the Madhya Pradesh Minor Minerals Rules, 1961 (hereinafter known as 'Rules of 1961') submitted his bid for grant of quarry lease of flag- stones in survey No. 1814 of Village Jakhoda, Tehsil Ghatigaon District Gwalior. Auction was held on 15-2-1988 and as the petitioner was the highest bidder his bid for Rs. 61,000.00 per annum was accepted. As per terms and conditions of the tender, the petitioner deposited a sum of Rs. 18,300.00 as security.

3. It is the case of the petitioner that thereafter he made repeated demands for supply of quarry map in terms of the Mining and Minerals Concession Rules of 1961 but quarry map was not made available to him. It is submitted by the petitioner that thereafter he went to the spot and found that no mineral was available in the quarry for operation, there was flag-stone to be mined from that quarry, he therefore submitted representation Annexures P-2 and P-3 respectively on 23-1-1989 and 17-4-1989 requesting for quarry map. It is the case of the petitioner that because of non-availability of flagstones in the quarry and in the absence of quarry map the agreement could not be entered in to and actual possession of the flag-stones quarry was also not given to him, as a result of which he could not operate the quarry in question. It is averred by the petitioner that to operate the quarry it is necessary to enter in to an agreement as provided in Article 229 of the Constitution and only after delivery of the possession he can work the quarry. However the respondents arbitrarily without giving him quarry map proceeded to re-auctioning the quarry and are recovering cost to the tune of Rs. 1,23,000.00 vide Annexure P-5. It is the case of the petitioner that it was only when matter was published in the news paper in March, 2000 that he came to know about this and therefore submitted application. The petitioner has also filed copy of judgment delivered by a Division Bench of this Court vide Annexure P-8 in M.P. No. 182/1979, decided on 7-4-1980 and it is submitted by learned Counsel for the petitioner that in view of the above no recovery can be affected from the petitioner as the State cannot insist upon entering in to an agreement without supplying the quarry map.

4. On being noticed the respondents have filed their return and it is averred in the return that as per the provisions of Madhya Pradesh Minor Minerals Rules the tender notice was issued and Annexure R-2 is a copy of the notice issued. The notice is as per the Form 1 in pursuance to instructions issued by the State Government under the provisions of Rule 37 of the Mineral Rules of 1961. Condition No. 5 of the notice clearly stipulates that before offering his bid the every bidder has to satisfy himself regarding the position " of quarry. Subsequently no complaint can be entertained. Thereafter in pursuance to the same instruction an agreement in Form No. 2 is entered in to and in

this agreement also similar conditions are stipulated. In the return it is stated that in view of the above no relief can be granted to the petitioner. It is also stated that the judgment relied upon by the petitioner is not applicable in the facts and circumstances of the present case.

5. I have heard Shri D.K. Katare, learned Counsel for the petitioner and Shri K.N. Gupta, Govt. Advocate for the State. Grant of quarry lease for trade quarry under the Minor Mineral Rules of 1961 is done in accordance to the provisions contained in Rule 37. The rule empowers the State Government for sale by public auction, right to remove any mineral on such terms and conditions as it may be deemed fit and proper. In pursuance to powers contained in Rule 37 instructions have been issued by the State Government from time to time. Instruction No. 9026-2224-XII, dated 8th September, 1961 contains the instructions with regard to disposal of Minor Mineral by public auction. The Division Bench in M.P. No. 182/79 has held that these instructions are statutory in nature and therefore binding on the parties. A perusal of the instructions indicates that notice of auction shall be published in accordance with the provisions of instruction No. 1 (III) and the form of notice of auction is contained in Form No. 1 to the said instructions. Clause 5 of the instruction reads as under :--

(5) Before offering bids every intending bidder should satisfy himself fully regarding position of the quarry, availability of mineral being auctioned in the quarry, etc. After offering bids no complaints in this regard will be entertained.

Similarly Clauses 8 and 11 are reproduced as under :--

(8) The earnest money deposited will be refunded to all the bidders except the last bidder, or the person whose bid is likely to be accepted. The last bidder will have to deposit 25 per cent of the last bid as security deposit immediately the bid is knocked down in his favour for due observance of the rules and other conditions laid down in the agreement, which shall be refundable only after expiry of the contract period on satisfaction of the Collector/Additional Collector, that all rules and/or conditions of the agreements were observed satisfactorily by the contractor.

In case the bidder fails to deposit security deposit immediately after the bid is knocked down in his favour, the earnest money deposited by him shall be forfeited and the quarry shall be re-auctioned, re-auction if any loss is incurred deficit shall be recovered from him as an arrear of land revenue.

(11) The successful bidder will have to execute the agreement in Form 3/4 within thirty days from the date of receipt of intimation accepting his bid and to take possession of the quarry falling which earnest money and security deposit, deposited by him shall be forfeited to Government and the quarry will be re-auctioned. Any loss incurred by Government on re-auction will be recovered from him as an arrear of land revenue.

6. From the aforesaid it is clear that before submitting his bid every bidder is required to satisfy himself with regard to following factors, (i) position of the quarry; and (ii) availability of mineral in the quarry. It is only after satisfying the aforesaid that he should submit the bid. Complaints after offering the bid is clearly prohibited. Instruction No. 8 pertains to deposit of earnest money and

security and conditions for it's refunded and instruction No. 11 contains provision for execution of agreement within 30 days and recovery of loss that may be caused of re-auction. From the aforesaid it is clear that the notice for auction is in fact statutory in nature and the conditions stipulated therein are also binding on the parties. The notice of auction published vide Annexure R-2 is in fact a Hindi version of the Form 1 and instructions 5, 8 and 11 are reproduced therein.

7. Instruction No. 5 further provides that every bidder has to execute an agreement in Form No. 2 before he offers to bid. This agreement is also in the statutory Form No. 2 prescribed under the instructions. Clause 3 of the said agreement is similar to Clause 5 of the auction notice and other clause of the agreement are also similar. The provisions for executing the agreement is again contained in Clause 11 of this agreement. In the case of the petitioner also the agreement has been entered in to and the same is filed as Annexure R-4 with the return. The said agreement is said to have been executed by the petitioner and it bears his signature. The contract agreement is then prescribed in Form No. 3.

8. The question that requires determination in the present case is as to whether the earnest money and security money of the petitioner can be forfeited and whether loss cause to the government because of re-auction can be recovered from him without supplying quarry map to the petitioner and without agreement have not been executed. The arguments of learned Counsel for the petitioner is that after he had submitted his bid vide Annexures P-2 and P-3 the petitioner was insisting for supply of quarry map so that he could find out whether the quarry is situated and then execute the agreement. It is stated that as quarry map was not supplied he did not execute the agreement and therefore in the light of the law laid down by the Division Bench in M.P. No. 182/1979 the recovery is illegal.

9. The aforesaid argument of the learned Counsel is clearly misconceived. The facts in Misc. Petition No. 182/1979 are entirely different. In that case the Division Bench has only considered the requirement as per instructions issued under Rule 37 and has come to the conclusion that Clause 1 of the agreement as per Form No.3 contemplates that the quarry map has to be annexed with the agreement and therefore supply of quarry map is a condition preceding to signing of the agreement. That was a case where steps were taken in re-auctioning, as agreement was not entered into and the petitioner was insisting upon supply of quarry map before the agreement. The facts and circumstances of the case are clearly distinguishable. In the present case the petitioner even though he has contended that the agreement could not be entered into as quarry map was not supplied but the fact remains that the petitioner was not interested in entering into the agreement because according to the petitioner when he went to the spot he found that no flag-stone was available in the quarry. The aforesaid fact is mentioned by the petitioner in para 5.3 of the petition. That apart even though the petitioner in para 5.2 has made an averment that he demanded copy of the map but Annexures P-2 and P-3 filed by the petitioner does not indicate so. Reading of Annexures P-2 and P-3 would make it clear that the petitioner was all along making a grievance that after submitting the bid when he had gone to the spot he found that there was no flag-stones and only sand was available in the area. The demand made by Annexures P-2 and P-3 when read in its totality indicates that the grievance of the petitioner was only that there is no flag-stone in the quarry and therefore his earnest money and security money be refunded. In these representations and complaints the

petitioner has not categorically stated that he will execute the agreement after receiving of the quarry map. Even though as per record he has asked for the map but in totality his complaint was that there is no flag stone in the quarry and he has come to know about this only after the bid was submitted by him. This complaint of the petitioner is not sustainable in view of the specific provisions contained in Clause 5 of the notice of auction Annexure R-2 and the agreement Annexure R-4 entered in to by the petitioner, by both these a total bar is created for making complaints after offering the bids with regard to availability of the mineral. That being so having offered his bid after going through the conditions of the auction and before bidding having entered into agreement Annexure R-4 the grievance with regard to non-availability of the mineral in the quarry cannot be made by the petitioner. This is a distinguishing feature in the present case because of which I am of the considered view that the judgment relied upon by the petitioner as contained in Annexure P-8, i.e., M.P. No. 182/1979 does not held the petitioner.

10. The question of supplying the map arises only at the time of execution of the agreement held by the Division Bench in Annexure P-8, however a perusal of the provisions of Clause 11 as contained in notice of auction (Form No. 1) and agreement (Form No. 2) indicates that there is not requirement of supplying the map before execution of the agreement. The only requirement of supplying the map is at the time of signing the agreement because under Clause 1 of the agreement (Form No.3) the map is a part of the annexure that is why in its order the Division Bench in para 5 after reproducing Clause 1 of the agreement has held that map has to be annexed with the agreement and therefore supply of the same before entering into agreement is a statutory requirement.

11. In this case the record does not indicate that the parties were having any dispute with regard to supply of map on the contrary records indicate that the dispute between the parties was with regard to refund of Security and earnest money being made by the petitioner on the ground that no mineral is available in the area for which bid was submitted.

12. The case of the petitioner all along was that there is no mineral available for quarrying in the area and therefore the amount of security should be refunded to him. It was never the case of the petitioner that he wants to enter in to the agreement and the copy of map be supplied to him. This is further established from the fact that auction was held on 15-2-1988, the petitioner submitted his security amount on 15-2-88 thereafter when he inspected the site and found that there was no mineral, he submitted representations Annexure P-2 and P-3 on 23-1-89 and 17-4-89 thereafter he had kept quiet over the matter for reasonable period of time and then filed this petition only in the year 2000 when the recoveries were instituted against him. In fact when the petitioner had submitted his bid and if he wanted to really execute the agreement, he should have taken action when the agreement was not executed. He did not take any action from 1989 till filing of this petition for redressal of his grievance in fact it was only when the recovery proceedings were initiated against him that he had filed the petition. The conduct of the petitioner confirms the view that he was not interested in executing the agreement or working of the quarry because according to him there was no mineral. In view of these peculiar facts and reasons mentioned hereinabove I am of the considered view that the judgment relied upon by the petitioner as contained in Annexure P-8 does not help him. The petitioner having submitted his bid cannot go back on the same and in view of the statutory provisions and the agreements he was bound by the same and his complaint that

there was no mineral in the quarry cannot be entertained in view of the specific bar created in the agreement auction notice and the rules, instructions issued there under the statutory provisions. Under these circumstances the action of the State Govt. in re-auctioning the quarry and proposing to recover the loss from the petitioner cannot be said to be arbitrary or illegal. On the contrary the same is as per terms and conditions for which the petitioner had agreed to in view of the Annexure R-1 and R-2 therefore there is no substance in the submissions made by the petitioner.

13. The petition is being devoid of substance and is hereby dismissed.