

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL WRIT PETITION NO.592 OF 2022

MSPL LIMITED

A company incorporated under the
Indian Companies Act, 1956
having its registered office at Baldota
Bhavan, 117, Maharashi Karve Road,
Mumbai-400020 and its corporate office
at Badota Enclave Abharaj Baldota Road,
Hosapete 583203 Karnataka India
represented herein by its authorised signatory
Amarnath TS, age 45, in service, resident of
A201, Second Floor, Krishnapriya Apartments, NC
Colony, Hospete 583201, Karnataka, India.

...Petitioners

Versus

1. The State of Goa,
Through its Chief Secretary
Secretariat, Porvorim, Goa.

2. The Director,
Directorate of Mines and Geology,
Government of Goa,
Ground Floor of Institute of
Menezes Braganza, Panaji,
Goa.

3. Union of India,
through the Secretary
Ministry of Mines,
Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi, 110 001.

4. Vedanta Limited
Sesa Ghor, 20 EDC Complex,
Patto, Panaji-Goa

5. Salgaokar Shipping Company Pvt. Ltd.
Salgaocar Bhavan, Altinho Panaji- Goa.

6. Rajaram Bandekar (Shirigao)
Mines 6th Floor, 601 Dr. Ozler Forum
Near St. Andrews Church, Vasco-Goa.

7. Fomento resources Pvt. Ltd.
1st Floor, Kamat Metropolis-1,
Behind caculo Mall, St. Inez
Panaji-Goa.

...Respondents

Mr.Nitin N. Sardessai, Senior Advocate with Ms. Swati S. Kamat-Wagh and Mr. S. Sardessai, with Ms. Deepati Valvaikar Advocates for Petitioner.

Mr. D. Pangam, Advocate General with Mr. Deep Shirodkar, Additional Government Advocate for the Respondent Nos. 1 and 2.

Mr. Pravin Faldessai, Dy. Solicitor General of India with Mr. Raviraj Chodankar, Central Government Standing Counsel for the Respondent No.3.

Mr. S. S. Kantak, Senior Advocate with Mr. Preetam Talaulikar, Mr. A. Gosavi and Mr.Guruprasad Naik, Ms. Neha Kholkar, Ms. Saicha Dessai, Ms.Krupa Naik, Advocates for the Respondent No.4.

Mr. A. D. Bhobe with Ms. S. Shaikh & Ms. A. Fernandes, Advocate for Respondent No.5.

Mr. A. F. Diniz, Senior Advocate with Mr. Ryan Menezes, Ms. Gina Almeida, Mr. Nigel Fernandes and Ms. Stephanie C. Alvares, Advocates for the Respondent No.6.

Mr. Parag Rao with Mr. Ajay Menon, Mr. Akhil Parrikar, Ms. Soumya Drago, Advocates for the Respondent No.7.

**CORAM : PRAKASH D. NAIK &
BHARAT P. DESHPANDE, JJ.**

**RESERVED ON : 29th SEPTEMBER 2023
PRONOUNCED ON : 12th FEBRUARY 2024**

JUDGMENT: (PER PRAKASH D. NAIK, J.) :-

1. The petitioner has preferred the present Petition under Article 226 of the Constitution of India for following reliefs:-

- (i) Strike down clause 1.3 of the tender document and clause 11(a) of the bid document to the extent it fails to disclose basic and essential facts such as approved mine plan, borehole data, exploration data, production data of the previous five years etc.
- (ii) Quash and set aside e-auction process initiated by respondent No.1 and 2 pursuant to Notice Inviting Tender dated 30th September 2022 with respect to viz. Bicholim (Block-I), Sirigao-Mayem (Block-II), Monte De Sirigao (Block-III) and Kalay (Block-IV) mines.
- (iii) Quash and set aside letter of intent (LOI) issued by the Respondent No.1 and 2 pursuant to declaration of Respondent Nos. 4 to 7 as preferred bidders with respect to respective viz. Bicholim (Block-I), Sirigao-Mayem (Block-II), Monte De Sirigao (Block-III) and Kalay (Block-IV) mines.
- (iv) Quash and set aside any process initiated by Respondent No.1 and 2 pursuant to letter of intent (LOI) issued to Respondent Nos. 4 to 7 as preferred bidders with respect to respective viz. Bicholim (Block-I), Sirigao-Mayem (Block-II), Monte De Sirigao (Block-III) and Kalay (Block-IV) mines.
- (v) In the alternative issue, direction to the Respondent to provide basic and essential data i.e. exploration data, borehole data, approved mine plan, etc. which it is duty bound to disclose to all bidders.

2. The Respondent Nos.1 and 2 filed Affidavit in reply dated 14th December 2022. The petitioner filed Affidavit in rejoinder on 26th December 2022. Respondent NO.6 filed Affidavit in reply on 21st April 2023. The respondent No.5 filed reply dated 7th June 2023. Thereafter, petitioner filed affidavit in rejoinder to replies of respondent Nos. 4, 5, 6 and 7 dated 21st June 2023 and Additional Affidavit in rejoinder dated 14th July 2023 to Affidavit of Respondent No. 1 and 2.

3. Respondent No.4 is preferred bidder in whose favour Respondent No.2 has issued letter of intent (for short “LOI”) with respect to mining block viz. Bicholim (Block-I). Respondent No.5 is preferred bidder in whose favour Respondent No.2 has issued LOI with respect to Sirigao-Mayem (Block-II), Respondent No.6 is preferred bidder in whose favour Respondent No.2 has issued LOI relating to Monte De Sirigao (Block-III) and the Respondent No.7 is preferred bidder which has been issued LOI in respect to Kalay (Block-IV).

4. The Respondent No.2 issued Notice Inviting Tender (for short “NIT”) dated 30th September 2022 inviting bids for grant of mining lease for iron ore. It was stated that, in exercise of powers conferred by Section 10(B) of the Mines and Minerals (Development and Regulation) Act, 1957 and in accordance with the Mineral (Auction) Rules, 2015, as amended from time

to time notified thereunder, the Government of Goa has identified four minerals blocks of iron ore mineral for electronic auction and invites tenders for the purposes of grant of mining lease. Accordingly, financial bids are invited in digital format only and technical bids are invited in digital and physical format from eligible bidders. Eligibility conditions, date and time for participating in the electronic auction are provided in the tender document. Detailed tender documents along with timelines, notifications, updates and other details for the e-auction process for the mineral blocks are available in electronic form only and can be downloaded from the website of MSTC Ltd. interested and eligible bidders can register themselves on the provided website. On successful registration, eligible bidders will obtain login ID and password necessary for participation in the e-auction process. Model tender document and mineral block summary are available free of cost on the website of MSTC Limited. The last date for purchase of tender document after payment of tender fee on website of e-auction platform provider is 15th November 2022 and the last date for submission of the bid is 21st November 2022. Corrigendum-1 dated 8th November 2022 to tender document for grant of mining lease for Iron Ore mineral was issued by Government of Goa.

5. Clause 1.3 of the tender document reads as under:-

“1.3. This Tender Document is neither an agreement nor an offer by the State Government to the prospective Bidders or any

other person. The purpose of this Tender Document is to provide interested parties with information that may be useful to them in making their bids pursuant to this Tender Document. This Tender Document includes statements which reflect various assumptions and assessments arrived at by the State Government in relation to the mineral block. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This Tender Document may not be appropriate for all persons, and it is not possible for the State Government, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this Tender Document. The assumptions, assessments, statements and information contained in the Tender Document may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements, and information contained in this Tender Document and obtain independent advice from appropriate sources.”.

6. Clause 11(a) of the bid cover letter is as under:-

“11. I/We have declare that:-

(a). I/We have examined and understood the Act, all Rules framed thereunder, the Tender Document and all documents referred therein including the Information Memorandum.”

7. Petition was heard on 23rd November 2022 for considering grant of interim relief. The prayer for grant of interim relief was declined. It was

observed that the last date of submission of the bids is 28th November 2022. The petition was filed on 22nd November 2022. The grievance relates to the NIT published on 30th September 2022 and the alleged lack of adequate information in the same. If the petitioners were serious about the information they press, they could have instituted the petition earlier. The NIT has atleast prima facie disclosed adequate information. General queries have been responded to. Over 50 applicants have evinced interest in the auction process and have not raised any grievance of lack of transparency or information. In determining and formulating the conditions of NIT, the State has sufficient freedom and the scope of judicial review is generally limited. No case of patent arbitrariness or lack of transparency is made out at this stage. The records of the petition indicate that voluminous responses have been furnished to the general queries concerning the tender document. All these responses are contained in Annexure E. Clause-4 of notice inviting tender deals with information about mineral block. There is a reference to the precise map of the mineral block identified, including geographical coordinates, revenue survey detail, demarcation using total station etc. and also a geological report of the mineral block specifying particulars and estimated mineral resources Iron Ore found in the identified mineral block determined under the Minerals (Evidence of Mineral Content) Rules, 2015. This clause refers to a separate information memorandum attached along with the tender document as

schedule-V. The petitioners ought to have placed schedule-V along with the memorandum of Petition. Any grant of interim relief at this stage will affect the auction schedule. The entire process might be derailed. The petitioner has not explained why the voluminous information supplied is inadequate. The petitioner did not place the complete information already provided along with the NIT on record. Interim relief was declined. The petitioner stated that the petitioner would participate in the auction process without prejudice to the rights and contentions raised in the petition. It was clarified that mere participation in the process would not prejudice the rights, if any, in this petition.

8. The petitioner participated in the auction process by submitting its bid. E-auction was conducted by respondent No.2 and list of preferred bidders was published by the ministry of Mines, Government of India. Liberty was granted vide order dated 7th February 2023 to the petitioner to amend the petition. Since the amendment involved addition of parties, notice was issued to newly impleaded parties.

9. Learned Senior Advocate Mr.Sardessai appearing for Petitioner submitted that, clause 1.3 of tender document and clause 11(a) of the bid cover letter is contrary to Rule 5 and 6 of the Minerals (Evidence and Mineral Contents) Rules, 2015 and Rule 9(2) of the Mineral Auction Rules, 2015. The Respondent Nos.1 and 2 had duty to disclose basic essential facts

including the approved mine plan, borehole data, exploration data, production data of the previous five years, etc. in correct format. The tender document does not disclose the basic information. The tender document is not in line with Mineral Auction Rules, 2015 and Minerals (Evidence of Mineral Contents) Rules, 2015. Rule 9(2) of the Mineral Auction Rules, 2016 stipulates that the tender document issued by the State Government shall contain geological report pursuant to the Minerals (Evidence of Mineral Contents) Rules, 2015 specifying particulars and estimated quantities of all minerals discovered in the area; the revenue survey details of the area identified and demarcated using total station and differential global positioning system divided into forest land, land owned by the State Government; the land not owned by the State Government; the scheduled date of commencement of production in case of auction of mining lease in respect of an area having existence of mineral contents established in accordance with Rule 5 of the Minerals (Evidence of Mineral Contents) Rules, 2015. Rule 5 of the Minerals (Evidence of Mineral Contents) Rules 2015 stipulates that Existence of mineral contents (for grant of mining lease under clause (a) of sub-Section 2 of Section 5 and) for auction of mining lease under sub-Section (3) of Section 10B and sub-Section (2) of Section 11 of the Act- at least General Exploration has been completed to establish indicated mineral resource and a geological study report prepared conforming to part-IV of Schedule-I. Provided that

for the minerals specified in schedule-11 occurring in such type of deposits or specified therein, the existence of mineral contents for the purpose of auction shall be deemed to have been established under this Rule, if in respect of such area- at least preliminary exploration (G3) has been completed to establish inferred Mineral Resource which shall be considered akin to indicate mineral resource and a geological study report has been prepared conforming to part IV of Schedule-I. The geological report provided by respondent is in violation of G2 level exploration and the provision of part-IV A as required under Rule 5 of the Minerals (Evidence of Mineral Contents) Rules, 2015. The respondent has to act in conformity with Rule-6 of the Minerals (Evidence of Mineral Contents) Rules, 2015 to prepare a geological study report on the basis of last approved mining plan wherein either copy of mining plan has to be provided as part of geological report or extract of all the exploration data including lithology, borehole locations co-ordinates, borehole survey data etc. The geological report as required in part-IV schedule-I was not provided to the petitioner. Although, petitioner made representation calling for information from Respondent Nos. 1 and 2, there was no response. Respondent Nos. 2 issued corrigendum to tender document for grant of mining lease for iron ore mineral issued by Respondent No.1. The Respondents issued responses to general queries common to all mineral blocks as well as responses to technical queries on tender document for each block. However,

respondents had deflected the questions and did not give conclusive answers to the queries. The petitioner participated in the auction process by submitting bid on the last day of submission. Bids were opened on 29th November 2022. The petitioner was declared as technically qualified bidder for the auction to be conducted between 14th December 2022 to 21st December 2022 with incomplete data without essential information that was vital for a fair and competitive bidding. E-auction was conducted from 14th December 2022 to 21st December 2022. In Block-I and III, the erstwhile lessees i.e. Respondent Nos. 4 and 6 were declared as preferred bidders and in block-IV, the respondent No.7 was declared as preferred bidder. The erstwhile lessees had an advantage of having basic and essential information/data pertaining to the mineral blocks leading to their full and effective participation in the bidding process with well informed decision thereby leading to their selection as preferred bidders. There was no level paying field in the e-auction process. The process of issuance of tender by the State Government is not in accordance with law. The petitioner is prejudiced by not providing basic and essential information. Clause 1.3 of tender document indicate that, entire ownership of bidders without providing essential data to the bidders. The tender document lack basic information and essential data. The tender document does not contain copy of last approved mining plan which is vital and directly link to the tender of blocks. The respondent Nos.1 and 2 were duty bound to initiate e-auction

process in terms of mineral auction Rules. Auction of the State Government to proceed with assurance of LOI to Respondent Nos.4 to 7 in respect to four blocks is unreasonable and arbitrary. The discriminatory auction initiated the entire e-auction process. The material on website does not contain information in terms of rules. Along with affidavit in reply, the respondent Nos.1 and 2 have filed Schedule-V form of information memorandum i.e. summary of the mineral block. No further order or other material is produced by the Respondent No.1 to prove that basic and essential data sought by the petitioner has been provided. Clause 4.1 of the tender document has to be read with Rule 5 of Manual Auction Rule, 2015 which mandates for the State Government to survey and demarcate each mining lease block by using total station and differential global position system and divided into forest land, land owned by the State Government and land not owned by the State Government. Point No.(ii) of clause 4.1 point (i) referred to geological report of the Mineral Block specifying particulars and estimated mineral resources of iron ore found in the identified Mineral Block determined pursuant to the Minerals (Evidence of Mineral Content) Rules, 2015. The geological report in compliance with the Minerals (Evidence of Mineral Content) Rules, 2015. Rule 5 and 6 speaks about requirement of geological report for auction of mineral block. It mandated that geological study report should be prepared conforming to part-IV of the Schedule-I. Geological report attached as information

memorandum is not in compliance to Part IV of the Schedule-I of the Minerals (Evidence of Mineral Content) Rules, 2015 as approved mining plan is referred for the majority of the information and copy of approved mining plan is missing from information memorandum. The information memorandum uploaded on the website is nothing more than summary of the Mineral Block tabulated further bifurcated with details by way of text as to locations, area, exploration, quantity of minerals, mineralised zones, accessibility, hydrography etc. In terms of Rule 9(2) of the Mineral Auction Rules the tender document issued by the State Government shall contain geological report. Under Rule 6 of Minerals (Evidence of Mineral contents) Rules, 2015 for any mining lease which has been expired or surrendered or terminated, the detailed reassessment of resources is not required to be carried out in cases where the estimate of Mineral Resource required for auction can be assessed on the basis of the available report of exploration or geological study report or last approved mining plan for the said area, after adjusting for the mineral already produced from the mine. The State is duty bound to provide information in the tender document as per rules. In spite of representations, the petitioner was not provided required information. In the absence of drill core analysis of each borehole drilled, the geological report renders incomplete. When the mandatory requirement of the law is not followed by the respondents, the tender process is violative of Article 14 and 19(1)(g) of the Constitution of India. Clause 4 of the tender document

mentions that the information regarding the mineral block is included in a separate ‘information memorandum’ attached along with tender documents as schedule-V. Point No.(i) of clause 4.1 has to be read with Rules 5 of the Mineral Auction Rule 2015 which mandates for the State Government to survey and demarcate each mining lease block by using total station and differential Global positioning system and divided into forest land, land owned by State Government and land not owned by State Government. The details of DGPS report should have been provided by the State Government. The bidders are entitled to know details of DGPS survey report. Geological Report in accordance with point No. (ii) of clause 4.1, should be in compliance with Mineral (Evidence of Mineral Content) Rules, 2015. The information memorandum uploaded on website of MSTC is merely summary of Mineral Block. A thing to be done in particular manner should be done in that manner. No response was given to representation made by petitioner. Mandatory requirement of law is not followed by respondents. It is not correct that petition was filed to stall the tender process at the behest of erstwhile lease holders. Hence, the petition may be allowed by granting reliefs sought in the petition.

10. Learned Advocate General Mr.Pangam appearing for the Respondent Nos. 1 and 2 submitted that, the requisite information which is required to be supplied was available to the petitioner. The petition was on behalf of

some erstwhile lease holder. Attempts were made by erstwhile lease holders to hold onto the lease. The petition filed by erstwhile lessees was dismissed by this Court by order dated 7th October 2022. The SLP challenging said order was dismissed by Apex Court by order dated 21st November 2022. It is submitted that, geological report of the mineral block specifying particulars and estimated mineral resources of iron ore found in the identified mineral block determined pursuant to the Minerals (Evidence of Mineral Content) Rules, 2015 was part of information which was available to the petitioner. The tender document mentions that, the said information regarding mineral block is included in separate information memorandum attached along with the tender document. The tender document also provided information about precise map of mineral block identified including geographical co-ordinates, revenue survey details, demarcated using total station and differential global positioning system and divided into forest land, land owned by the State Government and land not owned by the State Government. The tender document also mentioned that, bidders are encouraged to review the information memorandum. It is further submitted that, the tender document refers to Schedule-V viz. form of information memorandum attached separately to the tender document on the e-auction website of MSTC Limited. The point no.4 of tender document relates to mineral block. The same specifies that, the information is included in separate 'information memorandum' attached along with the

document as schedule-V. In schedule-V it is mentioned that, the same is attached separately to the tender document on the e-auction website of MSTC Limited. The said document contains all the information relating to the mineral block. The tender document was made available on 30th September 2022. Pre-bid meeting was held and queries raised by the parties were responded to by the Department. The Responses were uploaded on 9th November 2022. The grievance of the petitioner is that, tender notice/document failed to disclose the basic and essential facts. The tender document is framed on the lines of the model tender document prescribed by the Ministry of Mines. Schedule-V gives elaborate details of the mineral block. Schedule-V has been suppressed by the petitioner. The bidders were provided access upon payment of necessary charges, to the geological report. The report contains several details. Apart from elaborate report, summary of mineral block has been additionally provided. The summary provides the latitudes and longitudes. The total number of bore holes have been given with meterage. The summary also contains the other details. The contention of the petitioner about failure to disclose the basic and essential facts is misconceived. The details of mineral block have been provided. The tender document provides all the relevant information of the mineral block. There is no requirement that, the mining plan submitted by the erstwhile leaseholder to the Government has to be provided for the purpose of auction. The tender process is held in the most transparent,

open and fair manner. The petitioner had participated in block-IX on the basis of same document and did not make any grievance about lack of supplying requisite information. Hence, there is no substance in the petition. It is devoid of merits and deserves to be dismissed.

11. Learned Senior Advocate Mr. Kantak appearing for Respondent Nos. 4 and 7 submitted that, there is no defect in the tender process. There is no defect in tender document. The petitioner is guilty of suppression of vital information. The claim of petitioner is that material ought to have been given to him. The material has been provided in Schedule-V. There is no challenge to the fact that, the data given by the Government is sufficient. All the details are furnished to the petitioner. The petitioner has participated in the auction in April 2023 on same document. The petitioner has not made any statement as to how petitioner is prejudiced. The conduct of the petitioner is questionable. Point No.4 of the subject tender document relates to mineral block and specifies that, the information is contained in separate information memorandum which is attached to the tender document as Schedule-V. All information relating to the mineral block is contained in the said document. This document has vital bearing on the subject matter of the petition and therefore, the petitioner is duty bound to produce its copy with this petition. The petitioner contended that, the information was not available though in fact it was made available. The

petitioner has made various statements which are incorrect and contrary to factual position. The issue whether the information contained in the tender document is sufficient or not being issue concerning questions of facts is not capable of resolution in the exercise of writ jurisdiction. The respondent Nos.1 and 2 have placed on record the fact that schedule-V contains the entire information in respect of mineral block. The information contained in schedule-V is adequate and sufficient to enable the bidder to submit his bid. Except stating that, information supplied is deficient and not adequate to submit a bid, the petitioner has not disclosed in what manner, the submission of bid would be affected or how it is not possible to submit proper bid. This Court in exercise of jurisdiction under Article 226 of the Constitution of India cannot undertake to ascertain whether the information supplied in terms of tender document is sufficient or adequate or not when the author of the document has categorically stated that, the information is sufficient and adequate to entertain the bids and has also put the bidders to notice that any other and further information should be obtained by the bidders before they submit the bid. The information given in schedule-V is based on the mining plan itself and necessary and relevant information is contained in Schedule-V. The tender document is detailed document furnishing the necessary and adequate information to entertain bid from serious prospective bidder. Insofar as clause 11(a) of the bid is concerned, the same has got no bearing on the ability to submit the bid on

account of alleged deficient information contained in the tender document.

12. Mr. Kantak has relied upon the following decisions:-

- (i) K. Jayaram and Ors. Vs. Bangalore Development Authority and Ors.¹
- (ii) Agmatel India Pvt. Ltd. Vs. Resoursys Telecom and Ors.²

13. Learned Senior Advocate Mr. Diniz submitted that, the petitioner did not participate in block-III. The petitioner has suppressed the details of which block his bid in the subject e-auction process relates to, and in respect to which block it was declared as technically qualified bidder. The elaborate details of the mineral block were set out in schedule-V. The bidders were provided access to the geological report of payment of necessary charges. All information/data which the respondents were obliged under the rules to make available was provided to the bidders desirous of participating in the e-auction. The list of preferred bidders was published by Ministry of Mines. In block-I and III, the respondent Nos. 4 and 6 were declared as preferred bidders. In block-IV, the group company i.e. Respondent No.7 of them operating contract of the lessees has been declared as preferred bidder. The contention of the petitioner that, the erstwhile lessees have an advantage of having basic and essential information/data pertaining to the mineral blocks is devoid of substance.

¹ (2022) 12 SCC 815

² (2022) 5 SCC 362

14. Mr. Diniz has relied upon the following decisions:-

- (i) National Highways Authority of India Vs. Gwalior Jhansi Expressway Limited³
- (ii) Subir Ghosh Vs. The State of West Bengal and Ors. delivered by Calcutta High Court in F.M.A. No.910 of 2020 decided on 6th October 2020.

15. Learned Advocate Mr. Bhobe has adopted the submissions of learned Counsels representing other respondents.

16. We have scrutinized the document on record and the counter filed by Respondents. Primary grievance of the petitioner is that, the tender notice/document failed to disclose the basic and essential facts which affects the tender process as such process should be open, fair and transparent. The tender documents are contrary to Rule 5 and 6 of the Minerals (Evidence and Mineral Contents) Rules, 2015 and Rule 9(2) of the Mineral Auction Rules, 2015.

17. The responses filed by Respondent Nos.1 and 2 discloses that 51 parties purchased the tender document and 28 bids have been received from 11 different parties, including the petitioner in relation to the 4 blocks which are being put to auction and no other party has any grievance about information not being disclosed. The four mineral blocks were Bicholim

³ 2018 DGLS(SC) 662

(Block-I), Sirigao-Mayem (Block-II), Monte De Sirigao (Block-III) and Kalay (Block-VI) Mines. E-auction was conducted by Respondent No.2 from 14th December 2022 to 21st December 2022.

18. Bidders were provided access upon payment of necessary charges to the geological report. The report contains ownership details, details of erstwhile lessees, details of auction block area with DGPS, co-ordinates of boundary pillars of the mine lease area, cadastral details of the area with land use, accessibility, physiography, regional geology details, geology of the mining block, type of mineralisation, details of exploration undertaken in the block, borehole details including drilling type, diameter, spacing, inclination number of bore holes, meterage, depth details etc., details of the mining pit, details of sample analysis, reserves and resource estimation, etc. report also provides the plans, maps, satellite images, geological sections and cross-sections. Apart from the report, the summary of mineral block is provided which contained latitudes and longitudes co-ordinates of the corner points as per DGPS have been specified total area and the villages and taluka under which the blocks fall, details of the mineralised area as provided. Total number of boreholes have been given with meterage. Density (spacing) of the boreholes is provided. The summary contained other details of ore, estimated quantity, grade of ore, particulars of lump ore and fine ore, mineralised zones with the number, trend and

thickness, accessibility, hydrography etc. technical data for the block for preparing in terms of Minerals (Evidence and Mineral Contents) Rules, 2015. The technical data consist of geological cross section which have been prepared based on bore holes data.

19. The elaborate details of the mineral block were set out in schedule-V i.e. the separate information memorandum. The bidders desirous of participating in the e-auction were given access to geological report which contained several details. In schedule-V attached separately to the tender document provided all the information relating to the mineral block contained in the said document. The petitioner had not produced the said document in the petition. The petitioner is calling upon the Court to adjudicate on the issue whether the information supplied is sufficient or adequate to entertain the bids. While exercising powers under Section 226 of the Constitution of India, the Court cannot enter into arena of ascertaining sufficiency of material. It is pertinent to note that, other bidders has not made any grievance about non supply of sufficient material. The petitioner has also contended that, the information is not in accordance with requisite rules. We do not find any merits in the submission, the requisite information was provided and available to the petitioner. The petitioner has not demonstrated prejudice caused to it. In clause No.1.3 of tender document it is stated that the tender document is neither an

agreement nor an offer by State Government to the prospective bidders or any other person. The purpose of tender document is to provide interested parties with information that may be useful to them in making bids. Each bidder should conduct its own investigation and analysis and should check the accuracy adequacy correctness reliability and completeness of assumptions, assessment, statements and information contained in the tender document and obtain independent advice from appropriate sources. Apart from that requisite information was available to bidder. Point No.4 of tender document relates to 'The Mineral Block' and specifies that information is contained in a separate 'information memorandum' which is attached to tender document as 'Schedule-V'. Information is available on website. All information relating to Mineral Block is contained in the said document. The author of document has stated that the information is sufficient and adequate to entertain the bids and put the bidders to notice that any other information should be obtained by bidders before they submit bid. The petitioner has not satisfied that there is case of patent deficiency of information which would disable bidder to submit bid. There is no defect in clause 1.3 of tender and clause 11(a) of bid document. The tender document is framed on the lines of model tender document prescribed by Ministry of Mines, Government of India. There is no evidence to show that respondent No.1 and 2 have discriminated between any persons and all material and information as per Rules has been disclosed to

all bidders and auction was conducted in accordance with Rules. Schedule V contains elaborate details of mineral block. Apart from report, summary of Mineral Block is provided. The summary report provides latitudes and longitudes coordinates of corner points as per DGPS are specified. The total area and the villages and taluka under which block falls have been provided. The details of mineralised area and the non mineralised are provided. The total number of boreholes have been given with miterage. Summary provides details of mineralised zones, with number trend and thickness. Other details relating to accessibility, hydrography is provided which forms part of schedule-V. Technical data for blocks was prepared in terms of Mineral (Evidence of Mineral Contents) Rules, 2015. It consists of geological cross sections prepared on borehole data. It cannot be said that the respondent No.1 and 2 have not provided basic and essential facts. The clauses 1.3 and 11(a) cannot be said to be in breach of Rule 5 and 6 of Minerals (Evidence of Mineral Contents) Rules, 2015 and Rule 9(2) of mineral Auction Rules, 2015. The petition is based on the disputed question of fact. We are of the considered opinion that the relief sought in this petition cannot be granted in exercising powers under Article 226 of the Constitution of India.

20. In the case of K. Jayaram and Ors. Vs. Bangalore Development Authority and Ors. (supra) the Apex Court had observed that jurisdiction exercised by the High Court under Article 226 of the Constitution of India is

extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ Court must come with clean hands and put forward all facts before the Court without concealing or suppressing anything. In the case of **Agmate India Pvt. Ltd. Vs. Resoursys Telecom and Ors.** (supra) the Apex Court has held that, the scope of judicial review in contractual matters, and particularly in relation to the process of interpretation of tender document, has been the subject matter of discussion in various decisions of this Court. Reference was made to the three judge Bench decision of the Apex Court in the case of **Galaxy Transport Agencies v. New J K Roadways**⁴ wherein another decision in the case of **Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd.**⁵ was referred and the Court had disapproved the interference by the High Court in the interpretation by the tender inviting authority of the eligibility term relating to the category of vehicles required to be held by the bidders, in the tender floated for supply of vehicles for the carriage of troops and equipment. In the case of **Galaxy Transport Agencies** (supra) it was observed that he authority that authors the tender document is the best person to understand and appreciate its requirements, and thus, its interpretation should not be second-guessed by a Court in judicial review proceedings. In the case of **National Highways Authority of India Vs. Gwalior Jhansi Expressway Limited**, (supra) it was observed that only the

4 2020 SCC OnLine SC 1035

5 (2016) 16 SCC 818

entities who participate in the tender process pursuant to a tender notice can be allowed to make grievances about the non-fulfillment or breach of any of the terms and conditions. In the case of **Subir Ghosh Vs. The State of West Bengal and Ors.** (supra) has observed that, it is possible that prospective bidder finds the terms of the tender documents to be unfair or illegal and challenges the same; but such challenge has to be before the time to put in the bids is closed. If a bid is made and the bid is thrown out on the illegal or unfair ground contained in the tender documents even, then challenge can be fashioned. But a person who has not participated in the bidding process at all cannot challenge the tender conditions on any ground whatsoever.

21. We do not find any reason to interfere with the auction process and to declare and/or to strike down the clause 1.3 of tender document and clause 11(a) of bid document. Petition is devoid of merits and deserves to be dismissed.

ORDER

Civil Writ Petition No.592 of 2022 stands dismissed and accordingly disposed off.

(BHARAT P. DESHPANDE, J.)

(PRAKASH D. NAIK, J.)