

Sri Rajeeva Vs. The State Of Karnataka

Sri Rajeeva Vs. The State Of Karnataka

SooperKanoon Citation : sooperkanoon.com/1234821

Court : Karnataka

Decided On : Sep-25-2023

Judge : G.Narendar and Vijaykumar a Patil

Appeal No. : WP 2709/2022

Appellant : Sri Rajeeva

Respondent : The State Of Karnataka

Judgement :

- 1 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE25H DAY OF SEPTEMBER, 2023 PRESENT THE HON'BLE MR. JUSTICE G.NARENDAR AND THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL WRIT PETITION NO.2709 OF2022(GM-MM-S) BETWEEN: SRI RAJEEVA AGED ABOUT50YEARS, S/O LATE KUKKA, R/AT NO.3-112, PUCHHAGUTHU HOUSE, VITLA KASABA, BANTWAL TALUK, DAKSHINA KANNADA - 574 243. PETITIONER (BY SRI. SRI. I.THARANATH POOJARY, SENIOR COUNSEL FOR SMT. VEENA T.N, ADVOCATE) AND:

1. THE STATE OF KARNATAKA REPRESENTED BY ITS SECRETARY, DEPARTMENT OF COMMERCE AND INDUSTRIES, VIKASA SOUDHA, BENGALURU - 560 001.

2. THE DISTRICT SAND MONITORING COMMITTEE REP. BY IS CHIARMAN AND DEPUTY COMMISSIONER, JUGUL TOWER, 1ST FLOOR, MALLIKATTE, MANGALORE - 575 001.

3. DEPUTY DIRECTOR DEPARTMENT MINES AND GEOLOGY, JUGUL TOWER, 1ST FLOOR, - 2 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 MALLIKATTE, MANGALORE-575001. RESPONDENTS (BY SRI. S.S.MAHENDRA, AGA) - - - THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI QUASHING THE RESOLUTION NO.2 PASSED BY THE 2D RESPONDENT DISTRICT SAND MONITORING COMMITTEE IN TERMS OF PROCEEDINGS DATED 29/11/2021, IN SO FAR AS IT RELATES TO DECLARING THE PETITIONER AS INELIGIBLE TO BID FOR THE SAND BLOCKS IN THE LAND MEASURING 296 ACRES OF LAND IN SURVEY NUMBERS 52 53 AND 54 OF ARALA VILLAGE OF BANTWALA TALUK IN THE BANK OF PALGUNI RIVER, VIDE ANNEXURE-A. ISSUE A CONSEQUENTIAL WRIT OF MANDAMUS DIRECTING THE 2D RESPONDENT TO PERMIT THE PETITIONER TO PARTICIPATE IN THE E-TENDER CUM AUCTION PROCESS PURSUANT TO HIS BID IN TERMS OF THE NOTIFICATION DATED 13/12/2019 IN RESPECT OF THE SAND BLOCKS IN THE LAND MEASURING 296 ACRES OF LAND IN SURVEY NUMBERS 52 53 AND 54 OF ARALA VILLAGE OF BANTWALA TALUK IN THE BANK OF PALGUNI RIVER, VIDE ANNEXURE-B. PASS ANY OTHER

ORDER

OR GRANT ANY OTHER RELIEF. THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, VIJAYKUMAR A PATIL J., MADE THE FOLLOWING: - 3 - NC:

2023. KHC:34890-DB WP No.2709 of 2022

ORDER

This petition is filed under Article 226 of the Constitution of India seeking to quash the resolution No.2 passed by the respondent No.2 - District Sand Monitoring

Committee in terms of the proceedings dated 29.11.2021 insofar as it relates to declaring the petitioner as ineligible to bid for sand blocks in the land measuring 2.96 acres in Sy.Nos.52, 53 and 54, Arala Village of Bantwal Taluk and to issue writ of mandamus directing the respondent No.2 to permit the petitioner to participate in the e-tender - cum - auction process dated 13.12.2019.

2. Sri.Tharanath Poojary, learned Senior counsel appearing for Smt.Veena T.N., learned counsel for the petitioner submits that the respondent - authorities have issued notification dated 13.12.2019 for allotment of sand blocks in non-CRZ areas of coastal district under the provisions of Karnataka Minor - 4 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 Minerals Concession Rules, 1994 (hereinafter referred to as 'the KMMC Rules') for disposal of sand blocks through tender-cum-auction of coastal districts including land measuring 2.96 acres in Sy.Nos.52, 53 and 54, Arala Village of Bantwal Taluk on the bank of river Palguni. It is submitted that respondent No.2 - District Sand Monitoring Committee, vide its proceedings dated 29.11.2021, has declared the petitioner as an ineligible bidder by altering the requirements of stockyard area, after the tender process is complete. The respondent No.2 has increased the minimum requirement of stockyard to 0.50 acres which made the petitioner ineligible and rejected his bid.

3. It is further submitted that the respondent No.2 - Committee has arbitrarily altered the conditions after the tender process was completed only with an intention to favour other bidder by excluding the - 5 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 petitioner from the bidding process. The entire exercise of the respondent No.2 smacks mala fides as unrealistic requirement was imposed only with an intention to do the favour to the favourable bidder. The respondent No.2 - Committee is not competent to alter the conditions subsequent to the tender process contrary to the KMMC Rules. It is also submitted that no notice has been given to the petitioner before prescribing 0.50 acres of stockyard area. The action of the respondent No.2 - Committee is arbitrary, unjust, illegal and in violation of principles of natural justice. It is also submitted that the respondent No.2 - Committee in the said proceedings, has arbitrarily altered the condition of maintaining a stockyard within the distance of 200 meters of the river

bed to 500 meters. It is contended that the petitioner's stockyard is within the radius of 200 meters, hence the petitioner is not questioning the said modifications.-. 6 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 However, the petitioner is only aggrieved by the action of the respondent No.2 - Committee abruptly prescribing minimum requirement of 0.50 acres of stockyard that too after the tender process was finalised. It is further contended that there were three bidders who participated in the tender process insofar as subject block including the petitioner herein and the respondent - authorities have made the petitioner ineligible by making one Sri.Narayan Panchame as the sole eligible bidder. However, the authorities subsequently found that the said sole bidder has produced forged documents to the extent of land offered by him for the purpose of stockyard, resultantly his bid was rejected on 20.01.2022. He seeks to set aside the impugned orders by directing the respondents to award the tender of subject block in favour of the petitioner.-. 7 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 4. Per contra, Sri.S.S.Mahendra, learned Additional Government Advocate appearing for the respondents supports the impugned order and submits that the petitioner's bid was rejected since the petitioner is possessing the stockyard area of 0.38 acres which is lesser than the prescribed area. It is submitted that in the tender process, three bidders have participated and two of them became ineligible including the petitioner and one Narayan Panchame was eligible bidder. However, the authorities later found that he has produced forged documents in respect of land measuring 0.45 acres. Hence, the authorities have cancelled his bid.

5. It is further submitted that the respondent - authorities are competent to prescribe the area required for the stockyard and the said prescription is in consonance with KMMC Rules. It is also submitted that sub-Rule (6) of Rule 31-ZB-A mandates that a - 8 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 person shall fulfill such other conditions as specified by the competent authority and the competent authority has specified that the minimum stockyard area should be 0.50 acres. Hence, no

fault can be found in the impugned proceedings. It is contended that the tender receiving authority has observed that the petitioner has failed to produce the required documents. Hence, the respondent No.2 - Committee has resolved that the petitioner is ineligible and rejected his bid. It is further contended that the petitioner cannot have any vested right to get the tender in his favour, he has a right to participate in the tender process. It is also contended that now the KMMC Rules are amended with effect from 05.05.2020 and in view of the said amendment, the respondent - authorities are required to issue fresh tender notification calling for disposal of the sand blocks. Therefore, he seeks to dismiss the writ petition.-. 9 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 6. We have heard the learned Senior counsel for the petitioner, the learned Additional Government Advocate and perused the material available on record. On careful consideration of the rival submissions and the material available on record, the points that arise for consideration in this petition are: (1) Whether the respondent No.2 - Committee is justified in altering the requirement of stockyard after completion of the tender process?. (2) What orders?.

7. The answer to the aforesaid question No.1 is negative for the following reasons:
a) The disposal of sand in river bed is governed under Chapter IV-B of the KMMC Rules. The KMMC Rules have been framed in exercise of power conferred under Section 15 of the Mines and Minerals - 10 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 (Development and Regulation) Act, 1957 by the State Government to regulate the quarrying of ordinary sand in river bed, patta land, removal of sand bars in coastal regulation zone area of coastal districts and special provision for production of m-sand as well as for transportation of sand and m-sand. Therefore, the KMMC Rules is a complete code for grant of permission for quarrying of sand in river bed. Rule 31-R of the KMMC Rules contemplates the constitution of Sand Monitoring Committee at each District. The Deputy Commissioner of the concerned District is the Chairman of the said Committee, consists of other members. Sub-Rule (3) of Rule 31-R of the KMMC Rules speaks of powers and functions of the District Sand Monitoring

Committee. Rule 31-S of the KMMC Rules provides for reservation of sand blocks. In the instant case, the sand blocks auctioned are for the persons belonging to deprived class reserved under - 11 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 Rule 31-S of the KMMC Rules. Rule 31-T of the KMMC Rules provides for mechanism for disposal of sand blocks through tender-cum-auction. Rule 31-Y of the KMMC Rules speaks about the responsibilities of a lessee and holder of license. Relevant extract of Rule 31-Y of the KMMC Rules reads as under:

"31-Y. Responsibilities of the lessee and holder of licence.- Sand quarrying activity shall take place only in accordance with terms and conditions of the environmental clearance and the lease deed or licence under these rules and methods approved in the quarry plan.-. (i) the lessee may store the sand beyond 20 meter but within 200 meter (or such distance from the river bank area as decided by the Competent Authority depending on the geographical condition) from the river bank. The lessee shall make his own arrangements for the same; xxxx" [emphasis supplied].

- 12 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 b). Rule 31-ZB-A of the KMMC Rules speaks about the disposal of sand blocks through tender-cum- auction in non-CRZ areas of the coastal districts which reads as under:

"31-ZB-A. Disposal of Sand Blocks through Tender-cum-Auction in Non-CRZ areas of Coastal Districts - (1) In non-CRZ areas of Coastal Districts, viz., Uttar Kannada, Dakshina Kannada and Udupi Districts, sand blocks shall be allotted through tender-cum-auction amongst the traditional sand extracting communities to be identified and subject to the following conditions. (2) A person shall be resident of the (concerned Taluk for not less than five years) and to that effect residential certificate shall be obtained from jurisdictional Tahasildar. (3) The person shall present document as proof of having engaged in extraction of sand -

13 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 in coastal areas through manual methods for at least five years. (4) The person shall own a stockyard near the river

bank or shall have an agreement with owner of the land to the effect. (5) Motor boats and dredger for removal of sand is prohibited. (6) Shall fulfill such other conditions as specified by the Competent Authority)."

[emphasis supplied]. c) There is no dispute that sand is a minor mineral and the aforesaid Rules provide a complete mechanism for disposal of sand blocks through tender-cum-auction in non-CRZ areas of coastal districts. The aforesaid Rules are governing the field insofar as the subject notification is concerned.-. 14 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 d) It will be useful to refer the decisions of the Hon'ble Supreme Court in cases of 1. MONARCH INFRASTRUCUTRE (P) LTD. Vs. COMMISSIONER, ULHASNAGAR MUNICIPAL CORPORATION AND OTHERS reported in (2000) 5 SCC287 wherein paragraphs 10 to 12 read as under:

"10. There have been several decisions rendered by this Court on the question of tender process, the award of contract and have evolved several principles in regard to the same. Ultimately what prevails with the courts in these matters is that while public interest is paramount there should be no arbitrariness in the matter of award of contract and all participants in the tender process should be treated alike. We may sum up the legal position thus: (i) The Government is free to enter into any contract with citizens but the court may interfere where it acts arbitrarily or contrary to public interest.-. 15 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 (ii) The Government cannot arbitrarily choose any person it likes for entering into such a relationship or to discriminate between persons similarly situate. (iii) It is open to the Government to reject even the highest bid at a tender where such rejection is not arbitrary or unreasonable or such rejection is in public interest for valid and good reasons.

11. Broadly stated, the courts would not interfere with the matter of administrative action or changes made therein, unless the Government's action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is mala fide.

12. If we bear these principles in mind, the High Court is justified in setting aside the award of contract in favour of Monarch Infrastructure (P) Ltd. because it had not fulfilled the conditions relating to clause 6(a) of the Tender Notice but the same was - 16 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 deleted subsequent to the last date of acceptance of the tenders. If that is so, the arguments advanced on behalf of Konark Infrastructure (P) Ltd. in regard to the allegation of mala fides of the Commissioner of the Municipal Corporation in showing special favour to Monarch Infrastructure (P) Ltd. or the other contentions raised in the High Court and reiterated before us are insignificant because the High Court had set aside the award made in favour of Monarch Infrastructure (P) Ltd. The only question therefore remaining is whether any contract should have been awarded in favour of Konark Infrastructure (P) Ltd. The High Court had taken the view that if a term of the tender having been deleted after the players entered into the arena it is like changing the rules of the game after it had begun and, therefore, if the Government or the Municipal Corporation was free to alter the conditions fresh process of tender was the only alternative permissible. Therefore, we find that the course adopted by the High - 17 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 Court in the circumstances is justified because by reason of deletion of a particular condition a wider net will be permissible and a larger participation or more attractive bids could be offered.

2. MICHIGAN RUBBER (INDIA) LIMITED Vs. STATE OF KARNATAKA AND OTHERS reported in (2012) 8 SCC216 wherein paragraph 23 reads as under:

23. From the above decisions, the following principles emerge: (a) The basic requirement of Article 14 is fairness in action by the State, and non- arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be - 18 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 legitimate to take into consideration the national priorities; (b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited; (c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted; (d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the - 19 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 resources to successfully execute the work; and (e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government. e) Keeping in mind the legal position and enunciation of law laid down by the Hon'ble Supreme Court referred supra, in the case on hand, the parties to the proceedings do not dispute that the respondent - authorities have issued notification dated 13.12.2019 for disposal of sand blocks in respect of land measuring 2.96 acres in Sy.Nos.52, 53 and 54, Arala Village of Bantwal Taluk in the bank of Palguni river. It is a case of the petitioner that he has participated in the tender-cum-auction proceedings as a bidder along with other bidders. However, abruptly the respondent - 20 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 No.2 - District Sand Monitoring Committee, in its proceedings held on 29.11.2021, has modified the requirement of area of stockyard to 0.50 acres. There is no dispute that the respondent No.2 has modified the requirement of tender on completion of the entire tender process and at the time of award of the tender. It is also not in dispute that by applying the modified requirement of the tender condition, the bid of the petitioner was held to be ineligible. The respondent - authorities, on the basis of modified conditions of

stockyard, have made Narayan Panchame as an eligible bidder, however, bid was rejected at a later point of time on the ground of production of fake documents. It would be useful to extract relevant observation made by the respondent No.2 while accepting the bid of Narayan Panchame and while rejecting the bid of the petitioner in the impugned proceedings dated 29.11.2021 which reads as under: -
21 - NC:

2023. KHC:34890-DB WP No.2709 of 2022

"2. The sand blocks in the land comprising of 2.96 acres in Sy.Nos.52, 53 and 54 of Arala village in the bank of river Palguni, which is reserved for the members of the schedule caste: SI Name The details Recommen The .N of the of the dations of resolution of o bidder report of the the sand tender reviving monitoring reviving authority committee authority 1. Ashok The turn Ineligible Since the over bidder has not certificate, uploaded the and turnover stockyard certificate and agreement stockyard not agreement, it uploaded. was decided not consider him eligible for bidding.

2. Naraya Documents Eligible Decided to na are consider him Pancha favourable as eligible me bidder.

3. Rajeev The RTC Ineligible Since the a and the stockyard sketch area is pertaining measuring to the only 0.38 stockyard acres, it was - 22 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 land is not decided not uploaded. to consider him as eligible for bidding."

It would also be relevant to extract relevant paragraphs of the proceedings dated 29.11.2021. "xxxx The Deputy Commissioner addressing the meeting has queried about the distance to be maintained between sand blocks and the stockyard. In response, the Deputy Director, citing Rule 31-Y (1) has stated that the stockyard has to be located beyond 20 meters but within 200 meters from the river bank or at such a distance from the river bank area as decided by the competent authority depending upon the Geographical condition. The Deputy Commissioner asserted that the sand stockyard area has to be physically examined. In the non-CRZ

regions of karavali district large extent of land alongside river banks on both sides are - 23 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 being patta lands with extensive plantations and agricultural operations and also are sloppy uneven lands, keeping in mind this topographical condition, the Deputy Commissioner suggested that the limitation with regard to the location of the stockyard has to be extended to 500 meter from the river bank and any location of stockyard beyond five hundred meter would give scope for illegal sand transportation. The suggestion of the Deputy Commissioner that, the restriction with regard to the location of the stockyard has to be extended to 500 meters and the applications with stockyard beyond five hundred meters should be rejected, has been unanimously approved in the meeting. That, the Deputy Commissioner asked as to the extent of land required for the stockyard, the Deputy Director replied that there is no mentioning or stipulation in the rules in that regard and it is not prescribed even in the tender conditions. The stockyard is - 24 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 required to store the excavated sand and in that place the lessee is required to maintain his camp office, computer system, CC camera and place appropriate security. When the Deputy Commissioner suggested minimum requirement of 0.50 acres as stockyard, the committee unanimously approved it. xxxx" [emphasis supplied]. f) On bare perusal of the aforesaid extracts, it is evident that the District Sand Monitoring Committee, without any prior notice or intimation to the bidders and that too after submission of the final bid, has altered the requirement of stockyard abruptly and made the petitioner ineligible. Hence, this Court is of the considered view that the action of the respondent No.2 is wholly arbitrary, illegal and contrary to the settled principles of law. The respondent - authorities - 25 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 are required to act fairly in the process of tender-cum- auction of the State largess, in the instant case, the respondent No.2, in the impugned proceedings, has altered the requirements/conditions of tender during the process of award of contract. In our view, the respondents have grossly erred in increasing the stipulation of stockyard area after the bidding

process is completed. The petitioner has specifically pleaded in the writ petition that the action of the respondent No.2 is smacked by mala fides. It is well settled law that the party alleging mala fide is required to prove the same by proper foundation of pleadings, by producing the cogent and acceptable evidence and by making the concerned as a party to the proceedings. In the instant case, we do not find any such material evidence on record to accept the contentions of mala fide. Further, the respondent - authorities have changed the rules of the game once the game has - 26 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 begun and such an attempt on the part of the respondent - authorities is illegal and arbitrary. On bare perusal of the Rules as noted supra, Rule 31-Y mandates that the lessee may store the sand beyond 20 meters but within 200 meters from the river bank and lessee shall make his own arrangements for the same. The aforesaid Rule does not stipulate the extent of stockyard to be maintained / possessed by the bidders. The statute has specifically given liberty to the lessee to make his own arrangements for the same within the distance referred supra. The attempt of the respondent No.2 altering the requirement of stockyard to 0.50 acres after the tender process is complete, is beyond Rule 31-Y of the KMMC Rules. There is no dispute that sub-Rule (6) of Rule 31ZB-A of the KMMC Rules provides that the lessee shall fulfill such other conditions as specified by the competent authority. In the instant case, the exercise - 27 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 undertaken by the respondent No.2 under the impugned proceedings dated 29.11.2021 is subsequent to the submission of the bid and the competent authority is not empowered to put any such conditions once the bidding process is completed. As per sub-Rule (6) of Rule 31ZB-A of the KMMC Rules, any conditions by the competent authority should be specified in the tender notification itself or before the last date of submission of bids and not after the bidding process is completed. The contention of the learned Additional Government Advocate that sub-Rule (6) of Rule 31ZB-A of the KMMC Rules provides for stipulation of additional condition by the competent authority, has no merit consideration to the facts of the case on hand. g) On careful perusal of the impugned proceedings dated 29.11.2021, it appears

that the - 28 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 respondent No.2 - Committee has not specified any agenda of the meeting by issuing prior notice to the other members of the respondent No.2 - Committee, in our view, without any agenda or the subject of the meeting, the various subjects have been taken for discussion and the decision has been taken to alter the requirement of stockyard area to 0.50 acres is arbitrary action on the part of the respondents. In that view of the matter the procedure adopted by the respondent No.2 - Committee is unfair and it appears that the Chairman of the Sand Monitoring Committee has alone taken the decision on 29.11.2021 and that too without any prior intimation or notice to the other members and without any agenda of such notice. Further, chapter IV-B of the KMMC Rules provides complete mechanism for disposal of the sand blocks including powers and functions of the District Sand Monitoring Committee. It prima facie appears that the - 29 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 respondent No.2 - Committee has not adhered to any of the procedures contemplated under the Rules. There is no unfettered discretion vested in the respondent No.2 - Committee, the exercise of power by the respondent No.2 - should be within the powers conferred under the KMMC Rules. The respondent No.2 - Committee is expected to act fairly by adopting a procedure which is "fair play in action". The respondent No.2 - has an obligation as a part of good administration and raises a reasonable and legitimate expectation of the bidders to be treated fairly in the process. Further, the element of fair play is a mandatory requirement in the decision making process on the part of respondent No.2 - Committee and in the absence of any such element, the action of the Committee can be termed as arbitrary. However, in the instant case, the entire process adopted by the respondent No.2 is contrary to the element of fair play - 30 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 resulting in taking arbitrary decision on 29.11.2021. In that view of the matter, this Court is of the prima facie opinion that the impugned order is arbitrary and contrary to law and is required to be interfered by this Court. This Court is conscious of the fact that the judicial review in

contractual matter is very limited, however, in the instant case, the action of the respondent No.2 - Committee on the face of it is arbitrary. On bare perusal of the impugned resolution dated 29.11.2021 of the Committee, it is clear that the Deputy Director, Mines and Geology Department who is the Member Secretary of the respondent No.2 has expressed that there is no mention or stipulation in the Rules, tender notification regarding the stockyard prescriptions. Despite the same, the Chairman of the respondent No.2 i.e. the Deputy Commissioner has directed to stipulate 0.50 acres as a stockyard. Such an action of the Chairman even - 31 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 without the concurrence of other members is not only arbitrary, illegal, irrational but also amounts to colourable exercise of power. The Authority clothed with power under the subject Rules, is expected to exercise its power within such Rules and not beyond. The exercise of power by the Authority which is more than the statutory stipulation would amount to exercise of power beyond the jurisdiction conferred on it. Hence, this is a fit case to exercise its extra- ordinary jurisdiction under Article 226 of the Constitution of India. h) The respondent - State has raised the contention that now there is an amendment to the KMMC Rules in 2021 and the sole bid of Narayan Panchame has been rejected. They would call for fresh tender as per the amended Rule. In our considered view, the said contention has no merit consideration for the simple reason that the subject - 32 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 tender was in pursuant to the directions issued by this Court dated 20.07.2021 in W.P.No.9930/2020 and the subject tender is much prior to the amendment of 2021, hence, the question of calling for fresh tender under the amended Rule would not arise. In that view of the matter, the respondent No.2 - Committee is duty bound to consider the bid of the petitioner de hors the conditions specified in the impugned order dated 29.11.2021.

8. For the reasons stated supra, we pass the following order: (i) The impugned proceedings dated 29.11.2021 passed in resolution No.2 by the respondent No.2 - District Sand Monitoring Committee insofar as it relates to the petitioner is set aside.-. 33 - NC:

2023. KHC:34890-DB WP No.2709 of 2022 (ii) The respondent No.2 - Committee is directed to consider the bid of the petitioner without insisting for 0.50 acres as a stockyard and take appropriate decision in accordance with law within a period of six weeks from the date of receipt of copy of this order. There shall be no order as to costs. Sd/- JUDGE Sd/- JUDGE RV

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com