



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6414 OF 2019

M/s. Shivrtna Suppliers through
its Proprietor Shri Ganesh Sampat Kotkar,
Age-32 years, Occu:Business,
R/o-Kashti, Tq-Shrigonda,
District-Ahmednagar.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai,
- 2) The Desk Officer,
Revenue and Forest Department,
Mantralaya, Mumbai,
- 3) The Collector,
Ahmednagar,
- 4) The Additional Collector,
Ahmednagar,
- 5) The Tahsildar,
Shrigonda, Tq-Shrigonda,
District-Ahmednagar.

...RESPONDENTS

...
Mr. V.D. Sapkal, Senior Counsel i/b. Mr. S.R. Sapkal
Advocate for Petitioner.
Mr. A.M. Phule, A.G.P. for Respondent Nos. 1 to 5.
...

**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE OF RESERVING JUDGMENT : 28th MARCH 2024

DATE OF PRONOUNCING JUDGMENT : 10th MAY 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for the respective parties finally, by consent.

2. Present Writ Petition challenges the communication dated 28th March 2019 issued by Desk Officer and to direct the respondent authorities to issue communication in consonance with the order passed by the Hon'ble Minister in proceedings Gau. Kha. No./33/0216/ Pra. Kra. 66/ Kh., and consequently refund amount of Rs.1,54,01,117.05 including the amount which is already withdrawn by the petitioner by issuing appropriate writ. Directions are also sought against the Collector, Ahmednagar to pay the remaining amount to the petitioner in consonance with the order passed by the Hon'ble Minister.

3. The facts which are undisputed are, that there was auction of the sand through E-tenders by the Additional

Collector, Ahmednagar from 10th February 2015 till 18th February 2015. The tender was to be opened on 21st February 2015. The petitioner submitted E-tender for sand depot. The petitioner was the highest bidder and therefore, as per the norms he had deposited 1/4th amount of the tender on 23rd February 2015 with the Government. Remaining 3/4th amount of the tender was thereafter deposited on 5th March 2015 through a challan. The entire auction amount of Rs.1,61,76,400/- was deposited and then the agreement was entered into on 20th March 2015. The Additional Collector has sanctioned the sand depot No.2 of village Sangvi from Taluka-Shrigonda, District-Ahmednagar to the extent of 7428 brass. The possession of the sand depot No.2 was given to the petitioner under panchnama on 28th March 2015 and accordingly possession receipt to that effect was issued. The petitioner had then filed an application to the Additional Collector for permitting him to use the suction pump, on 30th March 2015. Local leaders as well as villagers from Sangvi had agitated against the lifting of the sand on 6th July 2015. The petitioner has then sought protection to him by giving a letter to Tahsildar on 9th July 2015. The petitioner had even approached Police Sub Inspector for the help. Once again communication was issued by the petitioner to Tahsildar on 5th August 2015. Report was

prepared by Tahsildar by drawing panchnama on 9th September 2015 and submitted to the Circle Inspector. It is further admitted position that the Tahsildar has communicated to the Additional Collector on 16th October 2015 stating that the petitioner had lifted 362 brass of sand.

4. With the above said admitted facts, the petitioner has come with the case that since the villagers had stopped lifting of the sand, petitioner had made several representations to the Additional Collector, however, no action was taken. The petitioner approached the Hon'ble Minister by filing Appeal on 20th January 2016 for refund of the amount to the extent of Rs.1,54,09,828/- with interest. In the Appeal the Additional Collector filed detailed affidavit in reply. In the meanwhile the Additional Commissioner passed an order on 14th March 2015 that since there was no breach on the part of the petitioner, an amount of Rs.19,31,280/- may be refunded. According to the petitioner, the Appeal was heard by the Hon'ble Minister but no decision was communicated and therefore, the petitioner had filed Writ Petition No.1192 of 2018. After the instructions were received from the Hon'ble Minister, statement was made before this Court and by order dated 8th February 2018, this Court had directed the Hon'ble Minister to decide the Appeal in particular time

frame. When there was no compliance even after the statement was made, contempt proceedings were filed. But then order passed in the Appeal came to be communicated to the petitioner on 31st October 2018. It was then observed in the order passed by the Hon'ble Minister that the petitioner has lifted only 356 brass of sand out of 7428 brass of sand and the petitioner is entitled for refund of the amount in proportionate to the sand remained to be lifted. The Desk Officer, Revenue and Forest Department then issued communication dated 28th March 2019 to the Divisional Commissioner, Nashik and the Collector, Ahmednagar to refund the amount of Rs.75,25,520/-. Now as regards the remaining amount is concerned, it is impliedly refused. Hence this Petition.

5. Respondent No.3 has filed affidavit of District Mining Officer, Collector Office, Ahmednagar, Mr. Vaseem Gulab Sayed and further on behalf of respondent Nos. 3, 4 and 5, one Mahendra Eknath Mali, Tahsildar, Shrigonda, District-Ahmednagar has filed affidavit-in-reply and they have taken almost similar stand. It is stated that partly amount has been withdrawn by the petitioner. The Revenue and Forest Department has determined the amount to be refunded to the petitioner at Rs.75,25,520/-. The other facts have been denied. According to

him, the petitioner had approached the Hon'ble Minister and the proportionate refund which was directed by the Minister was to the extent of 3455.64 brass of sand. The details of the amount of Rs.75,25,520/- have been given. The petitioner's interpretation cannot be put as it is and if the facts turned out to be in dispute then the better solution would be to file civil suit. In fact in the affidavit in reply it is said that the order passed by the Revenue Minister is just and proper.

6. Heard learned Senior Counsel Mr. V.D. Sapkal instructed by learned Advocate Mr. S.R. Sapkal for the petitioner and learned AGP Mr. A.M. Phule for respondent Nos. 1 to 5.

7. Learned Senior Counsel Mr. V.D. Sapkal instructed by Mr. S.R. Sapkal Advocate for petitioner has taken us through the tender document, terms and conditions therein and how the matter went up-to the District Collector and then to the Hon'ble Minister. He draws our attention to the Judgment and order passed by the Hon'ble Minister and especially internal Page No. 8 of the order dated 22nd March 2017. He points out that the petitioner could excavate only 356 brass of sand out of 7428 brass of sand to which the petitioner is entitled for refund.

8. Learned AGP supported the affidavit-in-reply filed on behalf of the respondents and the order issued by the Hon'ble Minister.

9. In fact when it comes to the refund of the amount, disputed facts have been raised and therefore, the question is, whether it can be entertained in Writ Petition under Article 226 of the Constitution of India. Though there was an attempt on the part of the learned Senior Counsel to point out the observations from the order passed by the Hon'ble Minister that the State has not raised dispute that there is any illegal excavation by the petitioner. It was also admitted that out of 7428 brass of sand, the excavation could be done only in respect of 356 brass of sand and it was evident from SMATS (Sand Mining Approval and Tracking System) *Pranali*. It is said that due to the resistance by the villagers, the petitioner could not excavate the sanctioned quota of the sand. However, we would like to say that the order of the Hon'ble Minister will have to be read in its entirety. Though certain part appears to be admitted to the State yet there were other factors which were also considered by the Hon'ble Minister. At one place the Hon'ble Minister has observed that:-

".....पर्यायाने अर्जदार यांनी लिलावातील बोलीप्रमाणे मोठी रक्कम शासन जमा करूनही त्यांना त्यांच्या हक्कापासून वंचित रहावे लागले, ही वस्तुस्थिती आहे. त्यामुळे अर्जदार यांची विनंती अंशतः मान्य करून अर्जदार यांना उत्खनन न करता आलेल्या वाळू साठ्याची प्रमाणशीर रक्कम परत करणे उचित राहिल. तथापि, अर्जदार यांच्या विनंतीप्रमाणे सदर रकमेवर व्याज देता येणार नाही.
[Stress supplied]

Further observation is :-

".....लिलावधारकास कोणत्याही वैध कारणामुळे ग्रामस्थांचा विरोध, न्यायालयीन निर्णय, नैसर्गिक अडीअडचणी, प्रशासकिय यंत्रणांचा विरोध यांमुळे उत्खननास किंवा वाहतुकीस बाधा आल्यास किंवा वाळूगटाचा ताबा न दिल्यास, लिलावाची मुदत संपण्यापुर्वी ज्या कालावधीसाठी ठेका रद्द केला जाईल त्या कालावधीसाठी, त्याने ज्या किंमतीला लिलाव घेतला त्या रकमेच्या प्रमाणात त्याला परतावा देण्यात येईल, अशी रक्कम परत करतांना लिलावाची देकाराची रक्कम लिलावातील अंदाजीत वाळूसाठी व प्रत्यक्ष उत्खनन केलेला वाळूसाठी विचारात घेउन त्यानुसार परताव्याच्या रकमेची परिगणना करण्यात येईल," अशी तरतुद करण्यात आली आहे....."

".....अर्जदार यांची विनंती अंशतः मान्य करून अर्जदार यांना उत्खनन न करता आलेल्या वाळू साठ्याची प्रमाणशीर रक्कम परत करणे उचित राहिल....."

10. The Hon'ble Minister has not directly come to the conclusion that since the petitioner could excavate 356 brass of sand out of 7428 brass of sand then the amount for 7072 brass of sand deserves to be refunded. If that was so, then there would have been direct order to that effect. What was directed to be refunded was that proportionate amount should be refunded and therefore, it appears that the work of calculation was undertaken by the authorities. Now in the affidavit-in-reply filed by Vaseem Gulab Sayed, the District Mining Officer, calculations have been given. He has relied on condition No.56 as well as clause No.15 of the Government Resolution dated 12th March 2013 and submitted that if the contract has been terminated or the possession could not be given or there is obstruction in lifting of sand etc., then in that condition the time period, the amount of auction as well as the excavation made by the contractor would be considered while refunding the amount. The bid amount in the present case was Rs.1,61,76,400/- and total sand allowed to be excavated was 7428 brass. The time period for which the contract was to be enforced was from 28th March 2015 till 30th September 2015 i.e. approximately 187 days. The District Mining Officer further says that therefore, approximate per day excavation would come to 39.72 brass (7428 brass/187

days). He says that the obstruction by the villagers for excavation of sand was on 6th July 2015. That means he wants to say that from 28th March 2015 to 6th July 2015 the petitioner has ample time to excavate the sand. Thereafter, he says that the period from 6th July 2015 till 30th September 2015, the date on which the contract was to come to end, would be of 87 days. Therefore, he says that 87 days x 39.72 brass per day would come to 3455.64 brass and that was the sand which the petitioner could not excavate and thus, the amount to be refunded would come to Rs.75,25,520/-.

11. Here we would like to say that the present Writ Petition raises disputed facts and it cannot be only the implementation of the order passed by the Hon'ble Minister. When the Hon'ble Minister has permitted to refund the amount in proportion and if the department is calculating the said proportion, then it cannot be said that the approach of the respondent authorities was unjustified. Ultimately, whether it is sustainable or not can be decided in other forum and not under the writ jurisdiction, since it raises disputed questions of facts. It also depends on the interpretation of the clauses and terms of the contract as well as the Government Resolution.

12. In view of the said position that the petition raises disputes facts and requires interpretations, it cannot be gone into under Article 226 of the Constitution of India and therefore, the Writ Petition deserves to be dismissed.

13. Accordingly, the Writ Petition stands dismissed. Rule stands discharged.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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