

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

WRIT PETITION NO. 2434 OF 2015

Shaikh Yunus Shaikh Chand
& another

.. PETITIONERS

VERSUS

State of Maharashtra
& others

.. RESPONDENTS

Mr. V. Y. Bhide, advocate for petitioners.
Mr. P. P. More, AGP for the State.

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CORAM : R.M. BORDE &

P.R. BORA, JJ.

DATE : 4th MARCH, 2015.

PER COURT :

1. Petitioners are praying for issuance of directions to respondents to postpone auction of sand proposed for the year 2014-2015 for Naigaon-2, Tq. Paithan, Dist. Aurangabad xsand block. Petitioners contend that in view of contract executed between petitioner no. 1 and the Collector on 27.06.2014, they have entitlement to excavate the sand for 114 days or to the extent of 5300 brass. According to petitioners, in pursuance to the directives issued by the Hon'ble Minister in an appeal presented by them, agreement has been executed and in terms of the said agreement, they are entitled to excavate the sand. Petitioners place reliance on the judgment delivered by the Hon'ble Minister on 31.01.2014 permitting extension of time for excavation of sand.

2. It is not a matter of dispute that in the year 2011, petitioners were

permitted excavation of sand to the extent of 5300 brass. Since petitioners could not excavate sand during the relevant period, they presented appeal to the State Government which was considered favourably and petitioners have been granted permission as stated above, in the year 2014.

3. We have perused the order passed by the Hon'ble Minister on 31.01.2014. We have noticed that in number of matters the Hon'ble Minister has issued similar orders permitting such of these contractors to excavate the sand, who were granted permission for excavation during the preceding year ranging from 2 to 20 years. We have also taken cognizance of such identical order issued by the same Hon'ble Minister in a Public Interest Litigation and directed issuance of notices. Appropriate orders would be issued in said Public Interest Litigation.

4. On perusal of the order passed by the Hon'ble Minister, we are of the considered opinion that the order has been issued in breach of the policy declared by the State Government in respect of excavation of sand. Under the policy declared by the State, the Hon'ble Minister is not invested with authority to grant extension of time for excavation of sand after expiry of tender period. It is also to be taken note of that sand is minor mineral the stock and quantity of which may get diminished or fluctuate or vary by passage of time depending upon the geological and environmental factors. It would not be prudent for the authority to permit excavation of sand on the basis of licence issued a few years prior since the situation prevailing in the tender year would not be a relevant factor for consideration of

environmental and geological changes at the time of consideration of request for grant of extension by Government. Taking into consideration these relevant aspects, the State Government in its wisdom has issued directives to secure geological report under its policy before declaring auction of sand block.

5. Since, in our opinion the order passed by the Hon'ble Minister itself is in breach of the policy and even on consideration of merits of the order, same is not sustainable, we do not propose to cause interference in the matter. Action taken by the State Government declaring auction of sand block during the year 2014-2015 is in consonance with the declared policy and as such said action deserves to be maintained.

6. For the reasons recorded above, the writ petition stands rejected.

(P. R. BORA)
JUDGE

(R. M. BORDE)
JUDGE

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