

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

WRIT PETITION NO.2947 OF 2017

Kiran s/o Chandrakant Maid

..Petitioner

Versus

The State of Maharashtra,
through the Principal Secretary,
Revenue Department, Mantralaya,
Mumbai and ors.

..Respondents

Mr K.G. Patil, Advocate h/f Mr S.S. Wagh, Advocate for petitioner
Mr A.S. Shinde, A.G.P. for respondents no.1 to 4

**CORAM : S.V. GANGAPURWALA &
A.M. DHAVAL, JJ**
Date : 1st March 2018

PER COURT

1. The petitioner had filed an application seeking refund of proportionate amount on the ground that the petitioner could not excavate necessary quantity of sand as per the contract given to him, on account of the stay granted by the authority for excavation and also because of natural calamity.

2. According to Mr Patil, learned Advocate for the petitioner, the authority had granted stay to excavate the sand from 24.6.2014 to 11.7.2014. So also, when the petitioner took steps to excavate the sand after the stay was vacated, there was flood and he was prevented from excavating the sand. The Government had called report. Tahsildar, Amalner directed the inspection and submitted the report, however, while passing the impugned order, the Government has not considered the said report. The petitioner was also not heard. If the petitioner would have been heard, he would have brought all the facts before the Government.

3. Learned A.G.P. submits that Clause 22 of the Government Resolution dated 12.3.2013 does not permit extension of time. The petitioner was given permission to excavate the sand by use of four suction pumps. As such, he could not take plea that he was not permitted to excavate the sand.

4. Government Resolution dated 12.3.2013, more particularly Clause 15 permits refund of the proportionate amount if the contractor is not in a position to excavate the sand because of the order of stay, objection of the villagers or because of natural calamity. We have perused the impugned order. It appears from the impugned order that respondent no.1 has not considered the report submitted by the Tahsildar. In fact, the same would have been relevant. It is not disputed that from 24.6.2014 to 11.7.2014, the order of stay was operating and petitioner was prevented from excavating the sand. So also from the report it appears that for a particular period, because of floods the petitioner was not in a position to excavate the sand. The said aspect is required to be considered.

5. In light of above, the impugned order dated 30.1.2017 passed by respondent no.1 is hereby quashed and set aside.

6. The respondent no.1 shall reconsider the application filed by the petitioner for refund of proportionate amount after considering the report given by the Tahsildar and after hearing the petitioner, same shall be decided expeditiously, preferably within six months.

7. Writ Petition is accordingly disposed of. No costs.

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)

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