

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

WRIT PETITION NO. 1959 OF 2018

Balaji Sand Suppliers, Through its
proprietor Satish s/o. Dnyandev Waghole,
Age- 35 Years, Occupation – Business,
R/o. Delvandi, Tq. Daund, Dist. Pune. .. **PETITIONER**

VERSUS

1. The State of Maharashtra,
through the Secretary,
Revenue and Forest Department,
Mantralaya Mumbai 400 032.
2. The Collector, Ahmednagar Collector
Office, Ahmednagar.
3. The Additional Collector, Ahmednagar,
Dist – Ahmednagar.
4. The Tahsildar, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.

..RESPONDENTS

...
Mr.Shaikh Mazhar A. Jahagirdar, Advocate for the petitioner.
Mr.S.R.Yadav-Lonikar, AGP for respondent nos.1 to 4.
...

**CORAM : RAVINDRA V. GHUGE &
S. G. MEHARE, JJ.**

DATED : 21.09.2021

JUDGMENT [Per Ravindra V. Ghuge, J.] :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. By this Petition, the petitioner has put-forth prayer clause B, as under :

B) To issue directions to the respondents to return the amount of Rs.40,95,195/- and 6,19,668/- deposited with the Tahsildar to the petitioner within one week with the interest at the rate of 18% p.a. from the date of deposit for the Sand Spot of Village Wangi, Tq. Shrirampur, Dist. Ahmednagar or extend the period of contract, by issuing writ of mandamus or any other writ of like nature.

3. The contention of the petitioner is that he has a sand supplying agency. He transfers and sells sand. The Government Notification inviting the tenders for excavation of sand in Ahmednagr District was published for the financial year 2016-17. The petitioner participated in the auction sale for the sand spot at village Wangi Khurd for excavating 1031 brass of sand, held on 22.02.2017. The petitioner was the highest bidder. He deposited 1/4th of the amount on 27.02.2017. He tried to deposit the remainder (3/4th) amount which was refused by the respondents on 02.03.2017. The petitioner, therefore,

filed Writ Petition No. 3081 of 2017 for challenging the said action and the same was allowed by order dated 30.03.2017.

4. The possession of the sand spot was handed over to the petitioner by panchanama dated 20.04.2017. The tenure of the excavation activity was 31.03.2017 till 30.09.2017.

5. In the earlier Writ Petition No. 3081 of 2017 filed by the petitioner, an entity by name M/s. K.B.Mobile had moved an application for intervention for opposing the allotment of the sand spot to the petitioner. His Civil Application was rejected. This M/s. K.B.Mobile filed Special Leave Petition (Civil) No. 7565 of 2017 before the Hon'ble Apex Court and by its order dated 11.04.2017, 'status quo' was ordered. The National Green Tribunal, New Delhi, by that time, had passed order on 19.04.2017 prohibiting the Government of Maharashtra for allowing the excavation of sand with the use of 'suction pump'. On 08.08.2017, the Special Leave Petition filed by M/s. K.B.Mobile was dismissed.

6. The petitioner had applied to the Tahsildar, Shrirampur for permission to use a suction pump on 01.04.2017. The Tahsildar recommended to the District Collector, Ahmednagar, recommending grant of permission to use of suction pump. The communication of the Tahsildar indicates that on 06.04.2017, the area of sand excavation was

measured and by putting a specific mark / nishani, the sand was handed over to the petitioner. However, the said communication also indicates that the petitioner had applied for permission to use the suction pump vide application dated 01.04.2017.

7. Vide communication dated 03.05.2017, the petitioner was intimated by the Additional Collector that the Hon'ble Apex Court has directed *status quo* to be maintained vide order dated 11.04.2017 and the petitioner was restrained from excavating the sand. This was the first communication.

8. The Senior Geologist, Ground Water Survey Department opined to the Additional Collector that the conventional method should be used for excavating the sand and only in certain circumstances, which are by the act of nature rendering excavation impossible, that suction pump can be permitted.

9. The petitioner had moved an application on 20.04.2017 again seeking permission to use a suction pump. It is admitted that such permission was never granted to the petitioner. Due to the order of the Hon'ble Apex Court dated 11.04.2017, till the dismissal of the Special Leave Petition on 08.08.2017, there was a 'status quo'. Such order of the Hon'ble Apex Court was communicated to the petitioner on 03.05.2017. We do not have the details before us as to whether,

the petitioner carried out the excavation activity till 03.05.2017. However, subsequently, the State of Maharashtra has compensated the petitioner for being unable to excavate the sand from 11.04.2017 till 08.08.2017 by making a proportionate payment of Rs.25,53,247/-, vide order dated 20.03.2019, by way of a proportionate refund of auction amount deposited by the petitioner.

10. The grievance of the petitioner before us is that he could not excavate the sand from 31.03.2017 till 10.04.2017 and from 09.08.2017 till 30.09.2017, as earlier in April there was water in the sand spot and subsequently in August and September, 2017, the water level had risen. He was not granted the permission to use the suction pump and hence he could not excavate the sand. It is also canvassed that the petitioner had delivered a letter to the Revenue Minister of the State of Maharashtra (undated), which was received by the office of the Hon'ble Minister on 11.09.2017, declaring that as he was not granted the permission to use the suction pump, he could not excavate the sand and hence his entire amount of Rs.40,95,915/- and tax amount of Rs.6,19,668/-, should be returned to him along with interest. He also declared that he would not be able to excavate the sand till 30.09.2017 since he has not been granted the permission to use the suction pump.

11. The learned AGP has strenuously canvassed that

the above conduct of the petitioner clearly indicates that he did not desire to excavate the sand as he was bent upon using the suction pump. Now he prays for return of the remainder amount on the ground that he was not able to excavate the sand. His letter to the Hon'ble Minister indicates that he himself has declared that he would not be able to excavate the sand till 30.09.2017.

12. The petitioner has not placed before us the agreement signed with the Government. There are no pleadings. The learned AGP relies on the Government Resolution dated 12.03.2013 issued by the Revenue Department in relation to the excavation of sand and specifically points out clause 11, which contains prohibitory clauses as follows :-

- (a) Clause 11 (c) indicates that the suction pump should not be used for excavation of sand. This is within the knowledge of the petitioner. It is further provided that in exceptional circumstances, the Government may permit the use of suction pump.
- (b) Clause 11 (b) clearly indicates that the conventional method of excavation of sand has to be used and the use of suction pump is prohibited.

13. He, therefore, canvasses that the petitioner was aware of the prohibition of the use of suction pump and, therefore, claiming that he could not excavate the sand as he was not permitted to use the suction pump and, hence, he should be returned his amount with interest, is an unsustainable demand.

14. We have considered the entire submissions of the learned counsel for the respective parties in light of the pleadings in the Writ Petition and the record available.

15. There is no dispute that the possession of the sand spot was handed over to the petitioner on 06.04.2017 and not on 31.03.2017. There was a proportionate refund of the amount to the petitioner considering the litigation before the Hon'ble Apex Court due to which excavation was practically stayed from 11.04.2017 till 08.08.2017.

16. Issue is whether, the petitioner was prevented by the act of the Government or by any natural circumstances, from excavating the sand from 06.04.2017 to 10.04.2017 and 09.08.2017 to 30.09.2017. Therefore, the following factors assume importance:-

- (a) Clause 11 (b) in the Government Resolution dated 12.03.2013 prescribes the methods of excavation, which are apprised to the petitioner.

- (b) He participated in the auction with his eyes wide open in the light of the Government Resolution dated 12.03.2013.
- (c) The conventional methods of *Hath Pati / Dubi* were prescribed to be the methods permitted for excavation.
- (d) The specific ban on use of suction pump is writ large under clauses 11 (b) and 11 (c).
- (e) The petitioner has pleaded in paragraph 4 that he did not get the permission to use the suction pump due to the order of the National Green Tribunal.
- (f) As there was water level in the river bed, he could not excavate the sand without the use of suction pump.
- (g) In paragraph 5, he has pleaded that due to the aforesaid circumstances, he could not excavate the sand and therefore, made a representation to the Government on 11.09.2017 that he should be permitted to have an extension of the contract or the bid amount be returned with interest along with the tax amount.

- (h) It is an admitted position that the day the petitioner got the possession of the sand spot, he applied for permission to use the suction pump on the same day i.e. 06.04.2017 and did not even attempt to excavate sand.
- (i) He has not even pleaded that he engaged even a single labourer to start the excavation of the sand by conventional / permissible methods.

17. In the backdrop of the relevant factors / pleadings as above, we find that the petitioner, despite being aware of the requirement to use *Hath Pati* and *Dubi* method for excavation, he made no effort to use the conventional methods. Vide his representation dated 11.09.2017, he has virtually declared that because he did not get the permission to use the suction pump, he would not be able to excavate the sand till 30.09.2017.

18. We are of the view that when the National Green Tribunal, in its wisdom, prohibited the State of Maharashtra from permitting the use of suction pump coupled with the prohibition on such use as set out in clause 11 of the Government Resolution dated 12.03.2013, the petitioner who put forth his bid for the excavation of sand over the period from April, 2017 to September, 2017, was aware about the rainy season setting in from July, 2017. He was also aware that

despite the summer season, there would be some water in certain parts of the river bed and he was aware about the prohibition on use of suction pump.

19. As such, not making a *bona fide* attempt to excavate the sand with the use of conventional methods and refusing to excavate the sand relying on the demand for the use of suction pump, indicates that the petitioner was not willing to excavate the sand by permissible methods and he desired to excavate the sand only with the use of suction pump. His obstinate stand of not excavating the sand unless the permission to use the suction pump is granted, is evident from his own representation dated 11.09.2017 when he declared to the Government that he can not excavate the sand unless the permission to use the suction pump is granted and thereby practically declined to excavate the sand with the use of permissible conventional methods.

20. There is no dispute that such auction bidders like the petitioner are aware about the challenges to excavation of sand. They are also aware about the permissible methods of excavation and prohibition on machineries like suction pump, dredgers from being used. They are conversant with the business and the challenges to be faced in excavation of sand. In this backdrop, the conduct of the petitioner of moving an application for use of suction pump on the very day he took

possession of the sand spot and declining the excavation of sand between 06.04.2017 to 10.04.2017 (the Hon'ble Apex Court granted status quo on 11.04.2017, which was communicated to the petitioner on 03.05.2017) and from 09.10.2017 to 30.09.2017 would clearly indicate that he never desired to use the permissible methods for excavation and was obstinate on the use of the suction pump alone for excavation.

21. In the light of the above, we do not find that the request of the petitioner to refund the amount for the period 31.03.2017 to 10.04.2017 and 09.08.2017 to 30.09.2017 along with interest, could be accepted. He has already been refunded the proportionate amount of Rs.25,53,247/- and the tax amount of Rs.6,19,668/-. This Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

[S. G. MEHARE]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE

DDC