

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

904 WRIT PETITION NO.8280 OF 2022

**PRASAD SHIVAJI PAWAR
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS**

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Advocate for Petitioner: Mr. S. S. Thombre
AGP for Respondents: Mr. S. G. Karlekar

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**CORAM: RAVINDRA V. GHUGE
AND
ARUN R. PEDNEKER, JJ.**

DATE: 12th AUGUST, 2022

PER COURT:

1. Leave to add a prayer clause. Addition be carried out forthwith.

2. The Petitioner has put-forth prayer clause 'B' and 'B-1', as under:-

"B. By issuing writ of mandamus or any other appropriate writ, order or directions in the like nature, direct the respondent Nos.2 and 3 to grant time till September 2022 or alternatively 20 days time from the date of order passed by

this Hon'ble Court and as sought by the petitioner in the application to transport the sand stored at the depot as per the quantity sanctioned to the petitioner in view of the tender and work order issued and for that purpose issue necessary orders.

B-1. By issuing writ of certiorari or any other appropriate writ, order or directions in the like nature, the impugned public notice dated 03.08.2022 issued by the Sub-Divisional Officer, Shrirampur, District Ahmednagar for the sand auction which is scheduled on 12.08.2022 may kindly be quashed and set aside and for that purpose issue necessary orders;"

3. This matter was heard extensively on 11.08.2022 for practically one and half hours and again, today. Considering a specific ground that has been raised by the Petitioner before the

District Level Sand Regulating Committee in the hearing that took place on 07.07.2022 and keeping in view that the said issue raised by the Petitioner was not considered at all, that we restricting our order to the said issue which we find to be significant.

4. The undisputed factors are as under:-

A] The Petitioner had applied through the e-tendering process for seeking the rights to excavate sand at the sand ghat in the river bed of the river Pravara from Gut Nos.120, 127, 129, 130 and 132 of village - Mahalgaon, Taluka - Rahuri. The period of the excavation of the sand was from 14.05.2022 till 09.06.2022.

B] On 09.06.2022, the rights for excavation concluded.

C] The Panchanama prepared by the Tahsildar - Rahuri, dated 10.06.2022,

indicates that the Petitioner had the rights of excavating 3321 brass of sand and he had actually excavated 3223 brass of sand.

D] The Panchanama also indicates that on 10.06.2022, the Tahsildar took the possession of the sand ghat and further recorded that 1800.4 brass of sand already excavated within the contract period and belonging to the Petitioner, was stored aside at Gut No.140/1.

E] It is also recorded in the Panchanama that the Petitioner had installed CCTV cameras and the CCTV footage indicated that the Petitioner has not violated any condition of the tender contract.

F] The Petitioner legally had the right to carry the excavated 1800.4 brass

of sand which was stored in Gut No.140/1 within a period of 10 days, that is up to 19.06.2022.

G] The Petitioner did not carry the sand in the said period of 10 days.

H] The Petitioner upon approaching the above stated authority, specifically mentioned in his communication dated 10.06.2022, that he did not have the transport pass for his transport vehicles after 09.06.2022, to lift 1800.4 brass of excavated sand belonging to him. He sought an extension of 20 days. The said communication was received by the office of the District Collector on 13.06.2022.

5. We find from the impugned order passed by the District Sand Regulating Committee dated 07.07.2022, that the Petitioner had specifically raised a ground that his transport pass, which is granted by the statutory authorities, expired on

09.06.2022. Even if he had the desire and the vehicles kept in readiness, he could not transport / carry the said sand since it would have been an offence to do so without a pass. This ground was specifically put-forth before the committee. However, from the impugned order of the committee, comprising of the District Collector - Ahmednagar, Additional District Collector - Ahmednagar and the District Mining Officer - Ahmednagar, it appears that the committee failed to take into account this legal impediment in the path of the Petitioner in carrying the sand. There can be no debate that if the Petitioner did not have a valid transport pass, he could not have moved his vehicles from the site for transporting the sand.

6. If he did not have a pass, the committee could have considered this aspect pragmatically. On scrutinizing the records, if the committee finds that no such pass was issued to the Petitioner for the said period of 10 days, it would be appropriate for the committee to issue

such pass for a period of 10 days and permit the Petitioner to carry the said sand under strict supervision of the revenue authorities.

7. Considering the above, this Petition is partly allowed and the impugned order of the committee dated 06.07.2022 is quashed and set aside by remitting the case of the Petitioner to the committee to consider after perusing it's record as to whether the Petitioner had any transport pass from 10.06.2022 till 19.06.2022, both days inclusive.

8. The Petitioner shall appear before the committee on 19.08.2022 at 04:00 p.m. The committee shall consider the solitary aspect as to whether the Petitioner had transport pass from 10.06.2022 to 19.06.2022. If no such pass was issued by the authorities, the committee shall issue such transport pass only for a period of 10 days, by giving a breathing time of 3 days in between to enable the Petitioner to arrange for his transport vehicles and submit the details of

the transport vehicles for issuance of the transport pass. The 1800.4 brass of sand or any quantity as may be actually lifted, but not more than 1800.4, shall be carried by the Petitioner within the said period of 10 days.

9. Consequentially, the auction scheduled on 12.08.2022 stands quashed and set aside.

10. The Petitioner shall be precluded from seeking extension of the said period on account of any reason whatsoever.

11. This order is passed in the peculiar facts and circumstances of this case and should not be cited as a precedent.

[ARUN R. PEDNEKER, J.]

[RAVINDRA V. GHUGE, J.]

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