

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.5480/2021

M/s Jai Gajanan Shri Gajanan Building Material Suppliers,
 through its Proprietor,
 Shri Dilip s/o Sahadeorao More,
 Aged 53 years, Occ.-Business,
 R/o.-Lohari-Bz. Post Jalgaon Nahate,
 Tehsil Akot, District Akola.

..... Petitioner.

- Versus -

1. State of Maharashtra,
 In the Ministry of Revenue and Forest
 Mantralaya, Mumbai-32, through its Secretary,

2. The District Collector, Akola.Respondents.

Mr. V.S. Kukday, Advocate for petitioner.
 Ms N.P. Mehta, Assistant Government Pleader for respondents.

**CORAM : A.S. CHANDURKAR &
 PUSHPA V. GANEDIWALA, JJ.**

DATE : 13-01-2022.

Oral Judgment (Per : A.S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard learned
 Counsel for the parties.

2. The petitioner is in the business of excavation and transportation of sand. Under the revised excavation policy document dated 03-09-2019 such excavation is permissible through e-auction. The respondent no.2 on 18-11-2021 and thereafter on 09-12-2021 has issued e-auction notices and invited bids for excavation of sand from

various Sand-Ghats in the district of Akola. The petitioner being desirous of participating in that auction process found that environmental clearance was yet to be obtained by the respondents on the date of the e-auction. It is the case of the petitioner that as per the policy decision dated 03-09-2019 it was necessary for the respondents to have obtained environmental clearance prior to issuing the e-tender notice as excavation without such environmental clearance was not permissible. Since according to the petitioner, the e-auction was being held in the absence of the appropriate environmental clearance, he has approached to this Court raising a challenge to the e-auction notices.

3. Mr. V.S. Kukday, learned Counsel for the petitioner submitted that pursuant to the judgment of the Hon'ble Supreme Court in the case of **Deepak Kumar etc vs State of Haryana and others**, reported in **2012 AIR(SC) 1386**, it was mandatory for the respondents to have permitted excavation activities only after obtaining the environmental clearance from the competent authority. Referring to the Government Resolution dated 03-09-2019 and specially Clause (VII) thereof he submitted that in the absence of such environmental clearance, excavation was not permissible. Despite this mandatory requirement, the respondent no.2 proceeded to issue e-auction notices in the absence of environmental clearance. Inviting attention to the judgment of this Court in Writ Petition No.6305/2013 (**Khemchand Nemichand Kosare vs State of Maharashtra and**

others) decided on 02-07-2014 it was submitted that this very question of issuing e-tender notices prior to obtaining environmental clearance was considered. At that relevant time, the policy dated 12-03-2013 was in operation and as per Clause 4(D) therein excavation was not permissible unless environmental clearance was obtained. It was after considering the aforesaid policy that this Court had quashed the e-auction notices as they were issued before receipt of environmental clearance. Inviting attention to the impugned auction notices as well as the revised policy dated 03-09-2019 it was pointed out that while submitting the bids, 25% of the bid amount was required to be deposited within a period of 48 hours from the auction and the balance amount was to be deposited within a period of one month from the date of the auction. Conducting e-auction prior to obtaining environmental clearance resulted in uncertainty since the petitioner was not in a position to gather as to which Sand-Ghat would receive environmental clearance as per the prevailing policy. On the contrary, if the auctions were held after obtaining environmental clearance the position would become clear which would facilitate participation in the e-auction. There was no justifiable reason to disregard the mandatory requirement as prescribed by the Hon'ble Supreme Court and thereafter incorporated in the revised policy dated 03-09-2019. On this count, it was submitted that the impugned notices proposing to conduct e-auction in the absence of environmental clearance were liable to be set aside.

4. Ms. N.P. Mehta, learned Assistant Government Pleader for the respondents opposed the aforesaid submissions and relied upon the affidavit in reply filed by the respondent no.2. It was submitted that pursuant to various directions issued in Public Interest Litigation No.110/2018 and Public Interest Litigation No.65/2018, the State Government has formulated a revised policy dated 03-09-2019. By following the law laid down by the Hon'ble Supreme Court in the case of **Deepak Kumar** (supra), it was mandatory to obtain the environmental clearance prior to conducting the work of excavation. In the absence of such environmental clearance since excavation was not permissible, conduct of e-auction would not cause any prejudice to any party as actual excavation would be permitted only after receiving the environmental clearance. It was further submitted that the decision relied upon by the learned Counsel for the petitioner in **Khemchand Kosare** (supra) was delivered when the earlier policy of 2013 was in operation. Since a revised policy has now been framed on 03-09-2019 and it was mandatory to obtain environmental clearance prior to actual excavation there was no breach of any order passed by the Hon'ble Supreme Court. Attention was also invited to the impugned auction notices to submit that it was clearly mentioned therein that excavation work would be permissible only after receiving such environmental clearance and that on failure to receive such clearance the contract would be treated as cancelled. The bidders therefore had noticed that unless such environmental clearance was received no excavation would be possible. It was open for the petitioner to participate in the

e-auction and undertake excavation activities only after receiving the necessary clearance if his bid is successful. Since the revised policy dated 03-09-2019 was framed pursuant to the decision in the Public Interest Litigation there was no reason to interfere in the e-auction notices. Moreover, the earnest amount deposited pursuant to a bid as submitted was returned in case the environmental clearance was not received and hence no prejudice was caused to any bidder if such clearance was not received. As a matter of fact, it was submitted that the environmental clearance has now been received on 29-12-2021 and excavation activities pursuant to the auction notice could be undertaken. It was therefore submitted that there was no case made out to grant any relief to the petitioner.

5. We have heard the learned Counsel for the parties at length and we have perused the documents placed on record. We have given due consideration to the respective contentions.

6. At the outset, it may be stated that in view of the judgment in **Deepak Kumar** (supra), it is mandatory for the concerned authority to permit excavation activities of minor minerals only after obtaining environmental clearance from the competent authority. This position was reflected in the earlier Government Resolution dated 12-03-2013 issued by the State Government. Clause 4(D) thereof specifically states that excavation activities would not be permissible until the environmental clearance was duly received. It is further seen that in

Public Interest Litigation No.110/2018 and Public Interest Litigation No.65/2018 the State had assured the Court that a fresh mining policy would be framed by the State Government pursuant to the observations made in the order dated 07-12-2018. In the light thereof, the revised policy was brought into force on 03-09-2019. Clause (VII) of this policy also stipulates that unless environmental clearance is received it would not be permissible to excavate any minor mineral.

From the aforesaid it is clear that unless environmental clearance is duly granted by the competent authority it would not be permissible to excavate any minor mineral in the State.

7. In **Khemchand Kosare** (supra) e-auction notices that were issued after long after commencement of the lease period were challenged. This Court after considering the judgment in **Deepak Kumar** (supra) had held that issuance of e-tender notices after commencement of the lease period were not sustainable in law especially when they were issued without seeking environmental clearance from the Ministry of Environment and Forest. The following observations in the said judgment are relevant and are reproduced herein :-

".....Actions which ought to have been performed before issuance of etender notices are thought of being performed after the auction is concluded. Securing an environmental clearance would be a precondition for grant of lease for extraction of minor minerals. It would be worthwhile to refer to the judgment reported in AIR 2012 SC 1386 (Deepak Kumar, etc. Versus State of Haryana & Ors.), in this regard. If the respondents were aware that it was

necessary to secure the environmental clearance before the grant of lease for extraction of minor minerals, it was expected in the least, of the Officers to have secured the environmental clearance before the issuance of the e-auction notices. The object of issuance of e-auction notices for granting lease of sandghats for extraction would be frustrated in the absence of environmental clearance. At the cost of repetition, we hold that it is necessary for the respondents to secure the environmental clearance for the particular sandghats in respect of which the e-auction notices are sought to be issued, before they are issued. We do not expect the respondents to ask the bidders to complete the exercise of participation in pursuance of the e-auction notices merely to inform them later that the entire process conducted by the respondents for auctioning the sandghats has frustrated in view of the refusal from the Ministry of Environment and Forest to grant environmental clearance for the extraction of the minerals from the concerned sandghats. The submission made on behalf of the respondents that the bidders have nothing to worry about if environmental clearance is not secured and the 1/4th amount deposited by them would be refunded immediately without any hassles is nothing but mockery. While holding that there was impropriety in issuance of impugned e-auction notices, we expect the respondents to ensure that the environmental clearance is secured before issuance of e-auction notices for auction of the sandghats in future and also ensure that the e-auction notices are issued at such point of time before the commencement of the lease period that the successful bidders-lessees would be entitled to execute the contract for extraction of minor minerals for the entire lease period.

For the reasons aforesaid, the writ petition is partly allowed. Since the lease period in the impugned e-auction notices is to expire on 30th of September, 2014, we hope and trust that the respondents would conduct the auction of sandghats in future, after securing the environmental clearance from the Ministry of Environment and Forest and after issuing the e-auction notices at such point of time before the commencement of the lease period that the e-auction is held before the commencement of the lease period and the successful bidder-lessee is entitled to execute the contract for the entire lease period."

From the aforesaid observations it becomes clear that after considering the judgment of Hon'ble Supreme Court referred to herein above it was held that issuance of e-auction notices prior to obtaining environmental clearance was impermissible. This Court had expected that in future such e-auction notices would be issued after securing necessary environmental clearance.

8. The stand of the respondent no.2 is that even if e-auction notice is issued prior to receipt of environmental clearance, the actual work of excavation of any minor mineral would be permissible only after receiving such environmental clearance. This was also mentioned in the e-auction notices that were impugned in the Writ Petition. Another justification sought to be put forth is that the judgment of this Court in case of **Khemchand Kosare** (supra) was delivered on 02-07-2014 when the earlier policy dated 10-03-2013 was in vogue. Since that policy has now been replaced by the revised policy dated 03-09-2019, the observations made in that judgment could not be made applicable in the context of the revised policy dated 03-09-2019. We are unable to accept these contentions made on behalf of the respondents. This Court in its earlier judgment dated 02-07-2014 has considered this very aspect including the action of the respondents of issuing e-auction notices prior to grant of environmental clearance. The aspect of deposit of 1/4th bid amount while submitting the bid and the return of that amount on cancellation of the auction for want of environmental clearance has also been considered by this Court. We

find that since it is mandatory to obtain environmental clearance prior to permitting excavation of the concerned minor mineral, the rationale behind directing the authorities to first obtain such environmental clearance and then issue e-auction notices would continue to apply even in the context of the revised policy dated 03-09-2019. No useful purpose would be served by first issuing an e-auction notice and subsequently proceeding to cancel the work in question for want of environmental clearance. It is rightly submitted on behalf of the petitioner that on acceptance of a bid, 25% of the bid amount has to be deposited within 48 hours and the remaining 3/4th amount has to be deposited within a period of one month from that date. Thus, if environmental clearance is not received after a period of one month from the date of the e-auction a bidder would be required to deposit the entire bid amount only to be subsequently told that for want of environmental clearance excavation would not be permissible pursuant to his successful bid. This would result in undue hardship and would also restrict a prospective bidder from participating in other e-auctions at other mining sites as his funds would unnecessarily remain locked. On the contrary, e-auction notices issued after receiving environmental clearance would present a clear picture before a prospective bidder and it would also indicate the specific period for which the mining lease would be granted. We do not find any merit or justification whatsoever in the contentions put forth by the respondents for issuing e-auction notices even prior to receipt of the mandatory environmental clearance. We find that the observations made by this Court and the

reasons that weighed it in **Khemchand Kosare** (supra) are relevant even with regard to the revised policy dated 03-09-2019 notwithstanding the fact that the earlier policy dated 10-03-2013 has now ceased to operate.

9. Hence for aforesaid reasons, the challenge as raised to the e-auction notices dated 18-11-2021 and 09-12-2021 on the ground that the same were issued before receipt of environmental clearance deserves to be upheld. Accordingly, the e-auction notices dated 18-11-2021 and 09-12-2021 are set aside. It is open for the respondent no.2 to issue fresh e-auction notice of Sand-Ghats for which environmental clearance from the State Level Committee has been issued.

10. Rule is made absolute in aforesaid terms with no order as to costs.

(Pushpa V. Ganediwala, J.)

(A.S. Chandurkar, J.)