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

WRIT PETITION NO. 7417 OF 2022

M/s. Daksha Traders,
Trough its Proprietor-Shri Vijay s/o Mulchand Shadija
Aged about 35 years, Occupation-Business,
R/o Nehru Ward, Sindhi Colony, Bhandara,
Tahsil and District Bhandara. ..... **PETITIONER**

...V E R S U S...

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

2. The District Collector, Chandrapur.
Tahsil and District Chandrapur.

3. The Additional District Collector,
Chandrapur, Tahsil and District Chandrapur. ....**RESPONDENTS**

Shri Sunil Manohar, Senior Advocate with Ms Rama V. Kukday, Advocate for petitioner.
Shri Amit Madiwale, Assistant Government Pleader for respondents.

CORAM :- A.S.CHANDURKAR AND M. W. CHANDWANI, JJ.
DATE :- 25th APRIL, 2023

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

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

2. Challenge raised in this writ petition filed under Article 226 of the Constitution of India is to the communication dated 25.11.2022 issued by

the third respondent-Additional Collector, Chandrapur, calling upon the petitioner to deposit 75% of the bid amount pursuant to acceptance of the petitioner's bid for excavation of sand ghat at Mouza Soundri, Taluka Bramhapuri, District Chandrapur.

3. The facts relevant for considering the aforesaid challenge are that it is the case of the petitioner that on 01.11.2022 the second respondent-Collector, Chandrapur conducted auction of various ghats located in Chandrapur District. In the said auction, the petitioner's bid for sand ghat at Mouza-Soundri, Taluka Bramhapuri, District Chandrapur was found to be highest and a letter of acceptance was accordingly issued to the petitioner. Though the period of excavation under the terms of the tender notice was till 30.09.2023, the environment clearance had been obtained only till 28.02.2023. In response to the communication dated 25.11.2022, the petitioner on 26.11.2022 issued a communication to the third respondent seeking clarification in the matter as the petitioner was required to deposit 75% of the bid amount in terms of the tender conditions. There being no reply to the aforesaid communication, this writ petition came to be filed on 29.11.2022 raising a challenge to the communication dated 25.11.2022 by which the petitioner was called upon to immediately deposit the aforesaid 75% bid amount. Besides challenging that communication, the petitioner has sought setting aside of the e-auction notice with regard to the said sand

ghat since there was no environment clearance from 01.03.2023 till expiry of the lease period on 30.09.2023.

4. On 30.11.2022 while issuing notice in the writ petition the following order was passed:

> *"According to the petitioner, its bid for the period from 01.10.2022 to 30.09.2023 for excavation of sand has been accepted. However, the environment clearance in question is valid only up to 28.02.2023. The petitioner has thus challenged the demand of 3/4th amount in terms of tender notice that has been made on 25.11.2022 on the ground that though excavation is permissible till 30.09.2023, the environment clearance obtained is only till 28.02.2023.*
>
> *Issue notice returnable in four weeks.*
>
> *Learned Additional Government waives notice for the respondents.*
>
> *The petitioner shall deposit the amount as demanded under the impugned notice without prejudice to the challenges raised in the writ petition. The consequence of failure to obtain the environment clearance from 01.03.2023 will be taken into consideration at the appropriate stage. The respondents to indicate whether the environment clearance has been sought from 01.03.2023 onwards."*

Since it was informed on 05.04.2023 that no decision with regard to grant/refusal of environment clearance had been taken by the appropriate Authority, further time was granted till 18.04.2023 to consider passing of an appropriate order in that regard. It was accordingly informed on the said date that environment clearance had been granted on 11.04.2023. In the aforesaid backdrop, the aforesaid writ petition has been heard.

5. Shri Sunil Manohar, learned Senior Advocate for the petitioner submitted that while issuing the auction notice the prospective bidders were not put to any notice that the environment clearance had been obtained only till 28.02.2023. Only after the said sand ghat was allotted to the petitioner it was informed that the environment clearance was valid for the said sand ghat till 28.02.2023. Since total quantity of 3887 brass of sand was liable to be excavated during the contractual period and as the environment clearance had been obtained only till 28.02.2033, the petitioner's challenge to the auction notice ought to be upheld. It was not possible for the petitioner to excavate the total quantity of sand in the absence of such environment clearance. It was further submitted that as per policy of the respondents the work of excavation is not permissible in the rainy season and such excavation would be permissible only till 10.06.2023. Thus in effect the petitioner could excavate the sand only from 02.11.2022 to 28.02.2023. This relevant aspect was required to be disclosed prior to issuing the auction notice. The petitioner had on 26.11.2022 brought to the notice of the third respondent these relevant facts but no steps whatsoever were taken till 11.04.2023 when the environment clearance was further obtained. It was thus submitted that in these facts, the tender notice was liable to be set aside having been issued without clearly disclosing the aforesaid relevant aspects.

In the alternate, it was submitted that in the light of the environment clearance now received on 11.04.2033, the petitioner can excavate sand within permissible period till 10.06.203 and for the balance un-excavated sand the petitioner may be refunded the amount after deducting the value of the sand that has been excavated.

6. Shri Amit Madiwale, learned Assistant Government Pleader for the respondents relied upon the affidavit in reply and opposed the aforesaid submissions. He submitted that having been successful in the auction process, it was necessary for the petitioner to have deposited 75% amount as per the relevant terms and conditions of the tender notice. The environment clearance was valid till 28.02.2023 and till that period, the petitioner had excavated sand in question. Though the respondents had sought necessary environment clearance, the necessary decision by the State Environment Impact Assessment Authority - SEIAA was taken only on 10.03.2023 in its meeting after which the environment clearance certificate came to be issued. The petitioner having participated in the tender process, it was not permissible now to seek to raise a challenge to the tender notice. In view of grant of environment clearance, it was open for the petitioner to excavate the sand till 10.06.2023 in accordance with the auction process. Hence no interference in writ jurisdiction was called for.

7. We have heard the learned counsel for the parties at length and we have perused the documents placed on record. Perusal of the tender notice issued by the third respondent indicates that the auction process was to be

conducted for about forty sand ghats including the present sand ghat located at Soundri, Taluka Bramhapuri District Chandrapur. The said notice does not indicate that the environment clearance for the said sand ghat had been granted only till 28.02.2023 while the period of excavation was to be till 30.09.203. The said notice merely states that the successful bidders would be bound by the directions issued by the SEIAA. It is not in dispute that the petitioner's bid for the said sand ghat was accepted and initial amount as required was deposited. In the third week of November, 2022, as pleaded by the petitioner, he got knowledge that the environment clearance had been granted only till 28.02.2023. On making further enquiries, the order of environment clearance dated 25.07.2022 was obtained which indicated that the validity of the environment clearance was only till 28.02.2023. In that backdrop the petitioner sought clarification from the third respondent on 23.11.2022 but without issuing any clarification, the impugned communication dated 25.11.2022 requiring the petitioner to deposit the balance 75% amount came to be issued.

8. We find from the aforesaid that since the respondents were aware of the fact that environment clearance had been obtained and granted only till 28.02.2023 while the period of excavation under the tender notice was till 30.09.2023, it was incumbent upon the respondents to have informed this factual fact to the prospective bidders. It is also to be noted that as per

prevailing policy, excavation is not permissible from 10.06.2023 onwards due to onset of monsoon. Thus the effective period of excavation under the tender notice would have been till 09.06.2023. However for want of environment clearance from 01.03.2023, excavation has not been possible to be undertaken at the said sand ghat. There is no justification indicated by the respondents in the affidavit in reply as to why these material aspects were not made known to the prospective bidders while issuing the tender notice. The averments made by the petitioner have not been denied by the respondents and their reply in that regard is totally silent. We therefore find that had the respondents informed the prospective bidders of this factual aspect that the environment clearance was valid only till 28.02.2023, it would have been open for a bidder to have considered the said aspect prior to participating in the tender process. The same has however not been done. There is also no explanation put-forward in that regard.

9. In the aforesaid factual backdrop, we find that the interest of justice would be served by permitting the petitioner to excavate sand in accordance with the terms of the contract pursuant to acceptance of the petitioner's bid. Total quantity permissible to be excavated is stated to be 3887 brass of sand. If the petitioner is unable to excavate the entire permissible sand till 30.09.2023, we find that the petitioner would be entitled for refund of the value of the remaining quantity of sand that would

remain to be unexcavated. This is for the reason that the period from 01.03.2023 till 11.04.2023 during which the petitioner could have excavated sand under the contract has been lost for want of environment clearance.

10. It is accordingly directed that on 30.09.2023, the second and third respondent shall take into account the exact quantity of sand excavated by the petitioner in terms of the contract entered into by the petitioner. If it is found that the petitioner has excavated lesser amount of sand than what was permissible under the terms of the contract, the petitioner would be entitled to refund of the proportionate value of sand that remains unexcavated after deducting the value of the sand actually excavated from the permissible quantity of sand as per the terms of the contract. If the petitioner is found entitled to refund of any such amount, the same shall be made over to the petitioner at the contractual rates on completing necessary formalities. The entire exercise be completed within a period of eight weeks from 01.10.2023. Needless to state that any grievance of the petitioner with regard to determination of such balance quantity of sand that remains to be excavated would furnish a fresh cause of action to the petitioner and he is free to take such steps as are permissible in law in that regard.

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

(M. W. CHANDWANI, J.) **(A.S.CHANDURKAR, J.)**

Andurkar.

Digitally Signed byJAYANT S ANDURKAR
Personal Assistant
Signing Date: 26.04.2023 17:18