

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.4263 OF 2024

1. Chiplun Sand Mining & Trading Corporation,
2. Om Sai Enterprises,
3. R.R. enterprises,
4. Bashir Hamdule,
5. Gurunath Yashwant Patkar. ...Petitioners

Versus

1. The State of Maharashtra,
through its Secretary,
Ministry of Forest and Revenue,
Mantralaya, Mumbai-400032.
2. The Collector, Raigad,
having office at Alibaug,
District Raigad.
3. The Collector, Ratnagiri,
Having his office at Ratnagiri.
4. The Collector, Sindhudurg,
Having his office at Sindhudurg.
5. The Mining Officer, Ratnagiri,
Having his office at Ratnagiri.
6. The Mining Officer, Raigad,
having his office at Raigad at Alibaug.
7. The Mining Officer, Sindhudurg,
Having his office at Sindhudurg. ...Respondents

Mr. Mihir Desai, Senior Advocate i/b. Mr. Onkar Warang for the
Petitioners.

Mr. P. Kakade, G.P a/w Mr. N. C. Walimbe, Addl. G. P and Ms. G. R.
Raghuwanshi, AGP for Respondent-State.

CORAM : A. S. CHANDURKAR,
JITENDRA JAIN, J.J.

Date on which the Arguments were Heard : 2nd MAY 2024.
Date on which the Judgment is Pronounced : 7th May 2024.

JUDGMENT :- (Per Jitendra Jain, J.)

1. **Rule.** Rule made returnable forthwith. By consent of the parties, the petition is heard finally.

2. This Writ Petition under Article 226 of the Constitution of India is filed by five Petitioners who were successful bidders of the tender floated by the Respondent-State for excavation of sand from the river/creek beds and to transport the extracted sand to the depot created for storage of the said sand and for management of the said depot. Although, various prayers have been sought in the petition, the effective prayer pressed for our consideration is writ of mandamus directing Respondents not to make Government Resolution dated 16th February 2024 applicable to the contracts executed between the Petitioners and the Respondent-State pursuant to tender dated 24th May 2023.

Brief facts are as under:-

3. On 19th April 2023, the Respondent-State issued a Government Resolution detailing comprehensive policy regarding extraction, storage and sale of sand through online process. The objective of the said policy

was not to extract the sand commercially but to make it available for development work and also to avoid flood like situation which may arise due to accumulation of sand in river bed. Therefore, the Government on experimental basis, issued the said policy, for a period of one year with an objective to make the sand available to the citizens in the State at a cheaper rate and to curb unauthorised extraction. The said policy also provided for the terms and conditions regarding depot construction and management. The rate for sale of sand as per the said policy was determined at Rs.600/- per brass for one year for the entire State on experimental basis and the amount of royalty would be waived. The expenses of sand transportation will have to be borne by the citizens. The said policy also had a mechanism for redressal of grievances in sand extraction by a Committee at district level.

4. Pursuant to the above policy, on 24th May 2023, Respondent-State published the tender inviting the contractors to bid for sand extraction. The Petitioners along with other bidders applied for the said tender and ultimately the Petitioners were allotted the tender for five different sites. The successful bidders were issued a LOI and, thereafter, the Respondent-State and the Petitioners executed an agreement on 29th August 2023. In the present petition, one such agreement is enclosed between the Respondent-State and Petitioner No.1.

5. On 16th February 2024, Respondent-State issued another Government Resolution dated 16th February 2024 for extraction of the sand. The said Government Resolution dated 16th February 2024 modified and superseded earlier Government Resolution dated 19th April 2023 and a revised sand policy came to be issued by the said Government Resolution dated 16th February 2024. Chapter 10 of the said Government Resolution provides that the sand depots which are operative as per the provisions of earlier Government Resolution dated 19th April 2023 will continue to operate in the same manner. However, the terms and conditions for the said sand depot will be applicable as per this revised sand policy. Further the sale cost of sand/gravel mentioned in Chapter No.6 (III) in the revised policy, will be applicable from the date of the new Government Resolution dated 16th February 2024. It is on this backdrop that the Petitioners are before us.

Submissions of the Petitioners:-

6. The primary contention of the Petitioners is that Respondent-State cannot unilaterally change the terms and conditions of the agreement dated 29th August 2023, which was executed pursuant to the tender floated on 24th May 2023. The Petitioners submit that this would be contrary to the principle of promissory estoppel and also contrary to the contract executed between the Petitioners and the Respondent-State.

The Petitioners submitted that they have arranged their business affairs on the basis of the agreement executed on 29th August 2023 and now the Respondent-State cannot unilaterally make Government Resolution dated 16th February 2024 applicable to such contract. The action of the Respondent-State, therefore, is unfair and contrary to the decision of the Coordinate Bench of this Court in the case of *Musale Constructions, Builders and Contractors, Nagpur Vs. Vidarbha Irrigation Development Corporation, Nagpur & Anr.*¹. The Petitioners further submitted that on account of onset of the monsoon season, the sand extracted and lying on the beds will be washed away and huge loss would be incurred. The Petitioners in its rejoinder have enclosed month-wise daily lifting chart for the period December 2023 to April 2024 and submitted that post introduction of the impugned Government Resolution, the daily lifting has reduced substantially. The Petitioners have, therefore, prayed for a declaration that Respondent-State cannot unilaterally make the Government Resolution dated 16th February 2024 applicable to the contract executed under the earlier Government Resolution dated 19th April 2023.

Submission of Respondent-State:-

7. Per contra, the learned counsel for Respondent-State submitted that the petition is misconceived. The Respondent-State brought to our

1 2021 (1) Mah.L.J. 355

notice the reply filed by the State, wherein it is stated that the Petitioners would receive the same amount as they were receiving under the old policy. The Respondent-State also justified the issuance of the impugned Government Resolution dated 16th February 2024, which was issued on the basis of no profit no loss policy and the Respondent-State further submitted that sale of sand is not included in the tender and, therefore, the Petitioners have nothing to do with the sale of sand. The Respondent-State has also filed a chart giving comparative table of the policy dated 19th April 2023 and revised policy dated 16th February 2024. The Respondent-State, therefore, prayed for dismissal of the present petition.

8. We have heard the learned Senior Counsel for the Petitioners and the learned counsel for Respondent-State and with their assistance have perused the documents, reply and rejoinder filed in the present proceedings which were brought to our notice.

Analysis and Conclusion:-

9. There is no dispute that the agreement executed by the Petitioners and Respondent-State on 29th August 2023 was for a maximum duration of one year or until the sand reserved of the said sand gat is exhausted. Clause 2 of the said agreement further provides that the period of authorisation shall expire on 9th June 2024 and from

10th June to 30th September on account of monsoon, sand mining cannot be done during the said period. There is no clause in the agreement which empowers the Respondent-State to change the terms and conditions unilaterally. It is also a settled position in law that contract executed between two parties cannot be changed or modified unless both the parties to the contract agrees to the said changes or modification. In the absence of any clause in the agreement dated 29th August 2023, the Respondent-State cannot alter or modify the said agreement unilaterally.

10. Clause (4) of Chapter 10 of the Government Resolution dated 16th February 2024 provides that the sand depots which are operative as per the provisions of Government Resolution dated 19th April 2023 will continue to operate in the same manner. However, in the same clause it is also provided that the terms and conditions for such sand depots would be as per the revised sand policy of 16th February 2024. The said clause further provides that the sale and cost of sand/gravel mentioned in Chapter No.6 in the revised policy of 16th February 2024 will be applicable from the date of Government Resolution dated 16th February 2024. In our view, the said clause is self contradictory. On the one hand the Government Resolution of 16th February 2024 provides that the sand depots operating as per earlier Government Resolution of 19th April

2023 would continue to operate in the same manner, but later on states that the terms and conditions of the revised sand policy as per Government Resolution dated 16th February 2024 would be applicable to such sand depots. This would also amount to modifying the agreement dated 29th August 2023 executed between the Petitioners and Respondent-State. We have already opined that agreement dated 29th August 2023 cannot be modified unilaterally. There is no approval by the Petitioners to the applicability of the terms and conditions of the revised sand policy to the agreement dated 29th August 2023. Hence clause (4) of Chapter 10 of Government Resolution dated 16th February 2024 to the extent it makes the terms and conditions of the said Government Resolution applicable to the agreement dated 29th August 2023 cannot be applied to the Petitioners.

11. The Respondents in their reply have also admitted that the Petitioners would receive the same amount as they were receiving under the old policy of 19th April 2023 pursuant to which the agreement of 29th August 2023 was executed. If that be so, then we fail to understand as to why in the Government Resolution dated 16th February 2024 the terms and conditions of the revised sand policy is made applicable to the existing sand depots. In our view, the contracts awarded to the Petitioners pursuant to Government Resolution of 19th April 2023 would

govern the agreement executed on 29th August 2023. The Government Resolution dated 16th February 2024 would be applicable only to the tenders to be issued thereafter and not to the Petitioners contracts which were executed by the Petitioners and the Respondent-State prior to the Government Resolution of 16th February 2024 coming into force.

12. As per agreement of 29th August 2023, Clause 20 provides that the tenderer shall excavate the sand from the quarry sand Ghat and shall transport the sand by boat/barge to the sand depot on the shore and transport the sand from the boat/barge to the shore by 6 wheel tipper with the help of a crane and from there directly bring the sand to the sand depot. Sand will not be allowed to be stored/discharged along the bay shore. Clause 22 of the terms and conditions regarding “Establishment and Management of Depot” of the said agreement provides that the tenderer shall excavate sand from the river bay basin and store the sand suitable for construction in the sand depot. Therefore, the obligation of storing the sand in sand depot is that of the Petitioners and not the Respondent-State. The other provisions relating to protection of sand also indicates that the responsibility is that of the contractor-Petitioners. Therefore, in our view, the Petitioners are not justified in contending that at the time of onset of the monsoon they will suffer loss on account of washing away of the sand. It is for the

Petitioners to make necessary arrangement as per the agreement to store the sand to avoid it being washed away and it is not the responsibility of the Respondent-State.

13. Under the agreement executed on 29th August 2023, there is no obligation on the Respondent-State that they would lift minimum quantity of sand everyday or every month. Therefore, the contention of the Petitioners in the rejoinder that post February 2024 there is a substantial reduction in lifting of the sand is not justified. The sale of sand is online and no malafides can be attributed to the Respondent-State on this count.

14. The Petitioners are justified in placing reliance on the decision in the case of ***Musale Constructions, Builders and Contractors, Nagpur (supra)***, wherein the Coordinate Bench of this Court in paragraph 16 has observed as under :-

“16. In the case in hand, the issue as to price adjustment of the difference in increase in the royalty charges is covered by the terms of the contract tender agreements/contract, particularly Clause 33 of the said terms and conditions of the tender agreement, which have been acted upon and implemented since the date of tender agreements. In this view of the matter, according to us, the petitioner has rightly invoked the doctrine of promissory estoppel. The second respondent is estopped from unilaterally altering the terms and conditions of the tender agreement by applying the impugned circular to the case of the petitioner. In the light of the above referred decisions, according to us, the respondents are not justified in applying the impugned circular to the case of the petitioner.”

15. In view of above, we pass the following order:-

O R D E R

(i) The following part of the Clause 4 of Chapter 10 of Government Resolution dated 16th February 2024 is held to be not applicable to the contracts of the Petitioners executed pursuant to the tender notice dated 24th May 2023 tender and on the basis of Government Resolution dated 19th April 2023 till the end of the period of the agreement dated 29th August 2023:

“तथापि, सदर वाळू डेपो करीता या सुधारीत वाळू धोरणातील अटी व शर्ती लागू राहतील.”

(ii) The Petitioners would be governed by the terms of their contracts executed on 29th August 2023.

(iii) The Petitioner/tenderer will receive the same amount as they were receiving under the old policy dated 19th April 2023.

(iv) The Writ Petition is partly allowed in above terms. No costs.

[JITENDRA JAIN, J.]

[A. S. CHANDURKAR, J.]