

(2020) 01 BOM CK 0043
In the Bombay High Court
Case No : Writ Petition No. 6203 Of 2016

M/s. Wasim Khan Material Suppliers	Vs	APPELLANT
State Of Maharashtra And Ors		RESPONDENT

Date of Decision : 08-01-2020

Acts Referred:

Citation : (2020) 01 BOM CK 0043

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : V.S. Kukday, K.R. Deshpande

Final Decision : Allowed

Judgement

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

2] The petitioner is aggrieved by the order dated 11.03.2016 passed by the Principal Secretary and Special Executive Officer (Revenue) by which the petitioner has been declined refund of an amount for unexcavated sand.

3] The petitioner had participated in a public auction for acquiring the rights to excavate sand. The auction was held on 16.01.2015. The petitioner was the highest bidder having quoted Rs.1,10,23,125/- and he was allotted the Godegaon Sand Ghat on 30.01.2015. The said excavation permit was valid upto 30.09.2015. The petitioner was permitted to excavate 31,800 brass of sand from the said sand ghat.

4] The petitioner was earlier using JCB and poclain machines for excavation of the sand with the due permission of the State. He was prevented from using the said machines midway through his contract which compelled him to approach the learned Division Bench of this Court in Writ Petition No.3924/2015. By judgment dated 14.07.2015, this Court allowed the petition and has passed an order thereby issuing directions under paragraph 13 which are as under:

13] In the result, we hold that the impugned action is not sustainable in law. The impugned orders are, therefore, quashed and set aside. Since we hold that the action of the respondents in prohibiting the petitioners from using JCB and Pock land is not sustainable in law, the petitioners would always be at liberty to take such action as is permissible in law for the period for which they were illegally prevented from using mechanical means.

5] The learned Advocate for the petitioner points out that the above stated judgment was delivered on 14.07.2015 and by that time the rainy season had already commenced. The petitioner had excavated 18876 brass of sand by the time and he had to abort excavation of sand on account of the onset of monsoon. Consequentially, he has not excavated 12924 brass of sand.

6] The learned Advocate for the petitioner has placed reliance upon an unreported order of the learned Division Bench at Nagpur dated 05.11.2015 passed in Writ Petition No.2707/2014 in the matter of Amit v. State of Maharashtra and another. I have perused the said order which deals with the interpretation of clause 15 of the policy of the government.

It would be apposite to reproduce paragraph nos. 4, 5, 6 and 7 of the said order here under:

4. Perusal of impugned order reveals that as per terms and conditions of auction, total 11900 brass of sand was available to the petitioner and it was to be lifted in 205 days. Excavation was not done for about 87 days and the State Government has found that the total sand stock available when proportionately divided into working days, during said period of 87 days, petitioner could not excavate 5060 brass of sand. Thus, proportionate cost there of i.e. Rs.36,24,528/- was ordered to be refunded to petitioner.

5. Perusal of clause 15 of the policy on which petitioner has placed reliance shows that it is part of terms and conditions of lease dated 25.10.2010. The State Government has relied upon revised policy dated 12th March 2013, but then substantial part of clause 15 which regulates refund under both the policies is identical. It does not contemplate such average arrived at by dividing sand quota and the total number of days available for excavation. On the contrary, perusal of clause 15 of 2013 policy reveals that the actual sand excavated needs to be subtracted from approximate total quantity of sand auctioned. Scheme of sub-clause (c) of clause 15 of 2010 policy is same.

6. In present part, report of Collector, Nagpur dated 30th December 2013 contains a table in which the days on which sand ghat could be worked with the transport permit/passes and quantity transported/excavated find mention. Thus, against total sand quantity of 11925 brass available at sand ghat, only 1047 brass is shown to be excavated.

7. The Authority ordering refund, therefore, ought to have considered report of the Collector and then taken a suitable decision. Impugned order dated 8th May

2014 does not even refer to this report of the Collector. Thus, there is total non-application of mind.

7] The learned AGP has strenuously opposed this petition and has supported the impugned order contending that though the petitioner was restrained from using the JCB and poclain machines, for a brief period of about 68 days as contended by him, there was no impediment for the petitioner to excavate the sand upto 30.09.2015. The State cannot be blamed for his inability to excavate sand after the learned Division Bench granted him permission to use the machinery for such excavation.

8] I however, find that the issue of the 'act of nature' in preventing the petitioner from excavating the sand, was not a subject matter before the Court in the case of Amit (supra). In the instant case, it is the contention of the petitioner that due to the onset of the rainy season, as the rivers were flooded, he could not excavate any sand from the Godegaon sand ghat. The issue therefore, would be as to whether an individual like the petitioner can be entitled for a refund on account of the act of nature.

9] I have before me the Marathi version of the policy of the government introduced through the Government Resolution dated 12.03.2013. The learned Advocate for the petitioner and the learned AGP have pointed out the relevant clause 15 of the said policy which reads as under:

15) लिलावाने दिलेल्या ठेक्याच्या कालावधीत षासनाने तो ठेका रद्द केल्यास किंवा त्याला मंजूर केलेल्या क्षेत्राचे उत्खनन करण्यास किंवा वाळू/रेती काढण्यास बंदी घातल्यास लिलावधारकास षासनावर खटला भरता येणार नाही.

लिलावधारकास कोणत्याही वैध कारणामुळे ग्रामस्थांचा विरोध, न्यायालयीन निर्णय, नैसर्गिक अडीअडचणी, प्रशासकिय यंत्रणांचा विरोध यांमुळे उत्खननास किंवा वाहतूकीस बाधा आल्यास किंवा वाळूगटाचा ताबा न दिल्यास, लिलावाची मुदत संपण्यापूर्वी ज्या कालावधीसाठी ठेका रद्द केला जाईल त्या कालावधीसाठी, त्याने ज्या किंमतीला लिलाव घेतला त्या रकमेच्या प्रमाणात त्याला परतावा देण्यात येईल. अशी रक्कम परत करतांना लिलावाची देकाराची रक्कम लिलावातील अंदाजीत वाळूसाठा व प्रत्यक्ष उत्खनन केलेला वाळूसाठा विचारात घेऊन त्यानुसार परताव्याच्या रकमेची परिगणना करण्यात येईल.

10] I find from the Marathi version reproduced above that there are several contingencies in which, refund of the amount is permissible if the contract holder is restrained from excavating the land. Some of the reasons are like the opposition of the local villagers or court orders or administrative exigencies or failure to allot the sand ghat or cancellation of the contract or on account of natural difficulties (uSlfxZd vMhvMp.kh). In my view, the impediment in the path of the petitioner in excavating the land was the rainy season which is an act of nature. After the learned Division Bench permitted him to use the JCB and poclain machines by order dated 14.07.2016, the rainy season had already arrived and as the waters started flowing through the rivers, the petitioner was restrained by the act of nature in excavating the sand from the Godegaon sand ghat. I am therefore, of the view that the petitioner's case would be covered by natural difficulties as set out in clause 15.

11] I do not find any dispute as regards the unexcavated quantity of sand being 12924 of brass in the additional affidavit filed by the State dated 06.01.2020. As such, it will have to be accepted that the petitioner was unable to excavate 12924 brass of sand on account of act of nature and he is therefore, entitled to the refund of the proportionate amount for such quantity of unexcavated sand. The petitioner has stated on oath in paragraph 24 that the amount would be about Rs.44,71,704/-.

12] In view of the above, this petition is allowed.

The impugned order dated 11.03.2016 is quashed and set aside and the Revision Application No.1921/2015, filed by the petitioner, stands allowed. The petitioner shall be entitled for a refund for the unexcavated sand quantity of 12924 brass. Respondent no.2 District Collector, Bhandara shall calculate the exact value in terms of money as regards the unexcavated sand and the said amount shall be paid to the petitioner within a period of eight weeks, failing which the said amount shall carry interest at the rate of 4% per annum from the date of the filing of this petition which is 10.10.2016, until the amount is actually paid.

13] Rule is made absolute in the above terms.