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**(2000) 03 BOM CK 0084**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 38 of 2000**

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|---------------------------------------------|------------|
| Shri Rajendra Kashinath Dronkar and Another | APPELLANT  |
| Vs                                          |            |
| State of Maharashtra and Others             | RESPONDENT |

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**Date of Decision :** 29-03-2000

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19, 226

**Citation :** (2000) 4 ALLMR 484 : (2001) 1 BomCR 31

**Hon'ble Judges :** S.G. Mahajan, J; D.D. Sinha, J

**Bench :** Division Bench

**Advocate :** S.P. Dharmadhikari, for the Appellant; V.H. Deshpande, A.G.P., for the Respondent Nos. 1 and 2, V.R. Manohar, for the Respondent No. 3, for the Respondent

**Final Decision :** Dismissed

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## Judgement

D.D. Sinha, J.—Heard Shri Dharmadhikari, learned Counsel for the petitioners, Shri Deshpande, learned Assistant Government Pleader for the respondent Nos. 1 and 2, and Shri Manohar, learned Senior Counsel for the respondent No. 3. Rule made returnable forthwith by consent of parties.

2. Shri Dharmadhikari, learned Counsel for the petitioners, submitted that the petitioners are contractors. The second respondent on behalf of the first respondent enters into contracts with various contractors for excavation of sand from various places located in Nagpur District, which are commonly known as "sand ghats". Generally all tender notices are published about fifteen days prior to expiry of annual contract in the said calendar year, thereby inviting bids from aspiring Contractors to grant leases to excavate sand from various sand ghats. The contracts are executed for a period from 1st January to 31st December in every calendar year.

3. The learned Counsel for the petitioners further submitted that purpose for inviting bids ten-fifteen days prior to expiry of contract in the said calendar year

is to get best price and to practise fair play. It is open for the aspiring bidders to assess quantity of sand, which could be excavated during the next calendar year and if the Contractor, who is presently excavating sand does not succeed to get contract for the next year, shall not be allowed to extract sand on a war footing to deprive any Contractor whose bid is accepted for the next calendar year. It is contended by the learned Counsel that this practice has been followed by the respondent No. 2 for last few years.

4. The learned Counsel for the petitioners further contended that in the year 1997, respondent No. 2 as per the general practice prevailing in the Department, issued tender notice inviting bids for auction of sand ghats. The petitioners have annexed with the petition as Annexure I the list of sand ghats, which were put for auction by the respondent No. 2 in the year 1998. The period for which the contracts were given was from 1-1-1998 to 31-12-1998 only. The name of the sand ghat in question is "Singardeep Ghat", which was also included at Serial No. 20 in the said list. The upset price fixed for the year 1998 for the said Singardeep Ghat was rupees four lacs. The area of the Ghat is ten hectares. It is contended that the third respondent was the successful bidder of the said Ghat for the year 1998 and, therefore, he was directed to complete rest of the formalities in this regard. However, there was no formal agreement executed between respondent Nos. 2 and 3 which, in fact, is the mandatory requirement. It is submitted that as per the above referred list, contracts were executed between the parties and were in force from 1-1-1998 to 31-12-1998.

5. It is specifically submitted by the learned Counsel for the petitioners that as per the practice, a contract is given only for a year and thereafter fresh auction is held every year. The petitioners have also annexed with the petition as Annexure II a copy of draft agreement in which terms and conditions are given. The petitioners have also annexed a copy of terms and conditions for removal of minor minerals for the period from 1-1-2000 to 31-12-2000 as Annexure III to the petition. Shri Dharmadhikari specifically stated that the above referred agreement as well as terms and conditions for removal of minor minerals are similar every year and there is no change whatsoever in this regard for last many years. It is contended that the contracts are executed on yearly basis and Ghats are put for auction every year in the month of December. The learned counsel contended that even if the contract for Singardeep Ghat was executed in the year 1998, the same was in force till 31-12-1998 only and, therefore, the respondent No. 2 was duty-bound to put this Ghat for auction in subsequent years.

6. The learned Counsel for the petitioners further stated that the respondent No. 2 did not include Singardeep Ghat in the list of ghats auctioned in the year 1999. Likewise even for the year 2000, when the auctions were held Singardeep Ghat was excluded from the list of Ghats put for auction. The petitioners have annexed lists of Ghats, which were put for auction for the above referred period, as Annexures IV and V respectively.

7. It is contended by the learned Counsel for the petitioners that the respondent No. 2 for the reasons best known to him, in a most arbitrary manner and without following established practice, called the respondent Nos. 3 to his office in respect of Singardeep Ghat in the beginning of January 2000 and directed him to deposit an amount of Rs. 10,60,000/- and executed a contract by entering into an agreement for the purpose of excavation of minor minerals from the said Ghat. It is contended that the respondent No. 2 has no authority to enter into any contract with respondent No. 2 in such manner without putting Singardeep Ghat to auction. It is submitted that upset price of Rs. 10,60,000/- was fixed by the respondent No. 2 without there being any offers from other Contractors in this regard. The act of the respondent No. 2, according to the learned Counsel, is not only mala fide, but also arbitrary. It is specifically stated by the learned Counsel that had the respondent No. 2 put Singardeep Ghat for auction for the year 2000, the petitioners would have given a bid for rupees thirty lacs. However, the respondent No. 2 with an oblique motive privately negotiated with the respondent No. 3 and directed him to deposit Rs. 10,60,000/- in respect of Ghat in question and, therefore, action of the respondent No. 2 is violative of the established norms and practice followed by the Department in this regard.

8. It is submitted that all other sand Ghats were put for auction for the year 2000 and the highest bidders were given the contracts in regard to those Ghats. However, as far as Singardeep Ghat is concerned, the respondent No. 2 deviated from the normal procedure and, therefore, action of the respondent No. 2 is not sustainable in law and contract entered into by the respondent No. 3 with respondent No. 2 is liable to be cancelled.

9. Shri Dharmadhikari further contended that Singardeep Ghat was put for auction in the year 1997 and the period of contract was from 1-1-1998 to 31-12-1998. Since the respondent No. 3 was the highest bidder, his bid was accepted and contract was allotted to him for the above referred period. The price of rupees four lacs in regard to Ghat in question for the year 1998 was also deposited by respondent No. 3. It is submitted that as per terms and conditions for removal of minor mineral, i.e. sand by tender in Nagpur District, the period of auction sale and right of collection and removal of sand shall not be extended on any account in view of Condition No. 19. It is, therefore, contended that the respondent No. 2 in view of the above referred condition does not have any power or right to extend period of contract beyond the period of one year, i.e. 365 days on any account. The action of respondent No. 2 in respect of allotment of sand Ghat in question in favour of the respondent No. 3 in the year 2000 after expiry of one year period, i.e. from 1-1-1998 to 31-12-1998 is without jurisdiction.

10. It is further contended by the learned Counsel for the petitioners that respondent No. 2 is bound to distribute the largesse not only in an equitable manner, but also to ensure that the best price is fetched for the property of the State. The action of the respondent No. 2 is illegal and not sustainable in law and

hence, decision of awarding contract in favour of respondent No. 3 in regard to Singardeep Ghat may be quashed and set aside. In order to substantiate the contentions, reliance is placed by the learned Counsel on the judgment of Hon"ble Supreme Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, .

11. Shri Deshpande, learned Assistant Government Pleader for the respondent Nos. 1 and 2, specifically denied that the action of the respondent No. 2 is either mala fide or arbitrary as contended by the petitioners. It is submitted that respondent No. 2 had held auction for excavation of sand from various Ghats for the year 1998 in the month of December 1997. In the said auction, Singardeep Ghat was also put for auction along with other Ghats for the above referred period. The respondent No. 3 was the highest bidder for Singardeep Ghat. The respondent No. 3 had accordingly paid the tender amount of Rs. 4.11 lacs to the State of Maharashtra. However, Mining Officer in the office of the respondent No. 2 received a communication from the respondent No. 3 on 1-1-1998 in which it was stated that approach road from Tarsa road junction to Singardeep Ghat was under construction and villagers were requesting respondent No. 3 not to start operation of this Ghat till such time the road is completed. The respondent No. 3 in the above letter sought opinion of the Department. Similarly, respondent No. 2 also received representation from the villagers whereby it was requested that work of excavation of sand should be deferred till work of construction of road is completed. In the representation, the villagers had submitted that respondent No. 3 should be permitted to do excavation work only after completion of road, otherwise they would go on hunger strike. Copies of the letter of respondent No. 3 dated 1-1-1998 as well as representation of the villagers dated 5-1-1998 are annexed with the submissions filed on behalf of the respondent No. 2.

12. It is further submitted by Shri Deshpande that Village Panchayat of Village Singardeep also issued a proclamation in its meeting dated 2-5-1998 that till construction of road is completed, trucks should not be allowed to ply on the said route. It is further submitted that similar communication was also received from Public Works Department.

13. The learned Assistant Government Pleader further submitted that the respondent No. 2 received a representation dated 27-3-1998 from the respondent No. 3 wherein respondent No. 3 had stated that though he had deposited the tender amount and since it was not possible for him to start excavation work due to non-completion of construction work of the road, he should be granted permission to excavate sand for 365 days from the day of commencement of the work. The respondent No. 2, after taking into consideration the situation that tender of the respondent No. 3 was accepted and he had already deposited the tender amount, but due to non-completion of construction work of the road as well as requests of the villagers, it was not possible to grant permission therefore, decided to award work of the road as well as requests of the villagers, it was not possible to grant permission therefore,

decided to award work of excavation to the respondent No. 3 for 365 days after completion of road in question. The Mining Officer working in the office of respondent No. 2, under the instructions of the respondent No. 2, addressed a communication dated 9-6-1998 to the respondent No. 3 in which it is stated that if respondent No. 3 was ready to offer 15% more on his tender amount and if he is ready to submit an affidavit to that effect, his request for grant of possession of the sand Ghat for 365 days would be considered. A copy of communication dated 9-6-1998 is annexed as Annexure R-III to the submissions of the respondent No. 2. The respondent No. 3 accordingly submitted affidavit dated 20-6-1998, which is annexed as Annexure R-IV to the submissions of the respondent No. 2.

14. It is further contended by the learned Assistant government Pleader that Sub-Divisional Engineer, Zilla Parishad, Public Works, Ramtek vide communication dated 13-10-1999 informed the respondent No. 2 that construction of road was complete and it was open for traffic. A copy of the said letter is annexed with the submissions as Annexure R-VI. It is submitted that since period of approximately two years had elapsed from the date on which offer of respondent No. 3 was accepted and since rates of royalty were also revised, the Mining Officer under the instructions of the respondent No. 2, addressed a communication dated 25-10-1999 to the respondent No. 3 expressing therein willingness on the part of the respondent No. 2 to allot work of excavation to the respondent No. 3 for the period of one year if he is willing to pay the revised upset price. The said communication dated 25-10-1999 is annexed with the submissions as annexure R-VII. It is further contended that the respondent No. 2 after considering the revised royalty rates and 15% escalation for every year, determined the upset price at Rs. 10.60 lacs. The respondent No. 3 agreed to pay revised upset price and as such, the respondent No. 2 decided to permit respondent No. 3 to do the work of excavation for the period of one year commencing from 1-1-2000.

15. The learned Assistant Government Pleader, therefore, contended that considering the claim of the respondent No. 3 and other peculiar facts and circumstances involved in the present case, the respondent No. 3 was awarded a contract since his tender was already accepted in respect of Singardeep Ghat for the year 1998 and he had already deposited the tender amount. However, for the reasons beyond the control of the respondent No. 2, the work of excavation could not be carried out by the respondent No. 3 for 365 days for which he was entitled in law and, therefore, decision was taken by the respondent No. 2 to permit respondent No. 3 to do excavation work for the period of 365 days to the extent of 32,724 brass of sand.

16. It is further submitted by the learned Assistant Government Pleader that work order in favour of respondent No. 3 has already been issued on 1-1-2000 and respondent No. 2 had entered into contract with the respondent No. 3 before filing of the petition. It is, therefore, contended that if petitioners had any grievance, they ought to have approached this Court before execution of contract

in question in favour of the respondent No. 3 and on this ground, the petition may not be entertained.

17. It is contended that even otherwise, action of the respondent No. 2 in the facts and circumstances of the present case is sustainable in law and cannot be termed as arbitrary and illegal. It is submitted that the contention raised by the petitioners in respect of procedure of auction not being followed by the respondent No. 2 is absolutely incorrect since sand Ghat in question was put to auction along with other sand Ghats in the year 1997 and since respondent No. 3 was the highest successful bidder, his claim was considered. It is, therefore, contended that the action of the respondent No. 2 in awarding contract to the respondent No. 3 cannot be said to be violative of established norms of the Department in this regard.

18. Shri Manohar, learned Senior Counsel for the respondent No. 3, strongly refuted the allegations of mala fides made by the petitioners against the respondent Nos. 2 and 3. It is submitted that it is absolutely incorrect to suggest that right to excavate sand from Singardeep Ghat has been granted to the respondent No. 3 without holding auction. On 15-12-1997, respondent No. 2 had put Singardeep Ghat for auction for the year 1998 and upset price was fixed at Rs. 4 lacs. The bid of respondent No. 3 in the sum of Rs. 4.11 lacs being highest, was accepted by the respondent No. 2. The total bid amount of Rs. 4,11,000/- was deposited in time by the respondent No. 3.

19. The respondent No. 2 informed respondent No. 3 by letter dated 13-1-1998 that his bid has been finally accepted and since full bid amount has been deposited by him, he should take possession of Singardeep Ghat from Tahsildar. A copy of this letter is annexed as Annexure IV to the reply filed by the respondent No. 3. It is further contended by Shri Manohar that the respondent No. 3, however, was not put in possession of the said Ghat as Public Works Department, Gram Panchayat and villagers had requested the respondent No. 2 to postpone commencement of work relating to excavation of sand as the approach road to Singardeep Ghat was under construction. The respondent No. 3, therefore, contacted the Mining Officer of the office of the respondent No. 2 with a request that the period of contract, namely, 365 days should commence from the day respondent No. 3 is allowed to start his work at Singardeep Ghat. It is contended that vide letter dated 9-6-1998 respondent No. 2 informed respondent No. 3 that respondent No. 3 will have to pay 15% more than the bid amount and affidavit should be filed by him to this effect. The respondent No. 3 agreed to pay additional amount equal to 15% of the bid amount and also submitted an affidavit to this effect in the office of respondent No. 2.

20. Since construction of road was going on, no further action was possible by respondent No. 3 till completion of construction of road. The respondent No. 3 requested the respondent No. 2 permit him to construct his own road and start work of excavation of sand from Singardeep Ghat. However, request of the respondent No. 3 was rejected by the respondent No. 2. On 1-7-1999, the

respondent No. 3 visited Singardeep Ghat and found that construction of road was completed and, therefore, he addressed letters dated 2-7-1999 and 23-8-1999 to respondent No. 2 and requested that he be allowed start work relating to excavation of sand. The respondent No. 3 received reply dated 25-10-1999 from respondent No. 2 whereby respondent No. 3 was informed that he would be given possession of Singardeep Ghat with effect from 1-1-2000, but he will have to pay consideration for the same as per revised rates. The respondent No. 3 agreed to pay an extra amount of 15% of the bid amount. The respondent No. 2 vide letter dated 11-11-1999 informed respondent No. 3 that revised amount of consideration was fixed at Rs. 9,45,300/- and respondent should deposit the balance amount of Rs. 5,34,300/-. The respondent No. 3 immediately deposited the said amount on 15-11-1999 and on 31-12-1999, respondent No. 2 informed respondent No. 3 that the revised amount payable by the respondent No. 3 was Rs. 10,60,000/- and, therefore, respondent No. 3 is required to make further deposit of amount of Rs. 1,14,700/-. Since respondent No. 3 deposited entire amount, lease deed was executed in his favour on 3-1-2000. A copy of the said Lease Deed is annexed with the reply of the respondent No. 3 as Annexure XVII. The respondent No. 3 was also granted work permission by letter dated 1-1-2000, a copy of which is annexed with the reply of respondent No. 3 as Annexure XVIII.

21. Shri Manohar, therefore, contended that though the auction held on 15-12-1997 was for the year 1998, commencement of work, namely, excavation and removal of sand from the said Ghat was deferred for the above referred reasons, which were beyond the control of the parties and action of grant of lease in favour of respondent No. 3 by respondent No. 2 on 1-1-2000 for the year 2000 is in pursuance of auction, which was held on 15-12-1997 for the sand Ghat in question and same is, therefore, not illegal, arbitrary or violative of established practice of the Department.

22. Shri Manohar emphatically submitted that the petitioners, who were bidders in the auction held on 15-12-1997 and rival Contractors, were completely in know of the matter and, therefore, they should not have waited till this date to approach this Court. It is further contended that though for the successive years, i.e. for 1999 and 2000 other sand Ghats were put for auction, Singardeep Ghat was excluded from the list of such Ghats, therefore, if petitioners really wanted to question the action on the part of the respondent No. 2, they ought to have approached this Court well within time. The contract in question has already been executed in favour of respondent No. 3. The work order is also issued and, therefore, it will not be proper at this stage to entertain this petition at such a belated stage.

23. It is further contended by Shri Manohar that although to ensure fair play and transparency in State action, distribution of largesse by inviting open tenders or by public auction is desirable, it cannot be held that in no case distribution of such largesse by negotiations is permissible. However, so far as present case is

concerned, the procedure of auction has been followed by the respondent No. 2.

24. It is further contended that even otherwise in the instant case, rate of royalty has also been fixed on the accepted principle of pricing formula and, therefore, action of the respondent No. 2 cannot be said to be violative of Article 14 of the Constitution. It is also contended that if there is an objective and rational foundation for the fixation of royalty, the Court may not interfere with the exercise of Government's decision by undertaking an exercise to find out as to whether better fixation was possible or not. In matters of economic rights and policy decision, the scope of judicial review is limited. In the instant case, fixation of rate royalty is on the established principles and, therefore, it cannot be held that fixation of royalty by the respondent No. 1 in the agreement was without any basis and wholly arbitrary and designed to favour respondent No. 3.

25. It is further submitted by the learned Counsel for the respondent No. 3 that provisions of Maharashtra Minor Mineral Extraction (Vidarbha Region) Rules, 1966 inter alia, empower the Collector to grant mining lease by issuing permit or dispose of right to remove minor mineral by public auction or otherwise. It is further contended that State of Maharashtra has also framed the Maharashtra Minor Mineral Extraction (Vidarbha Region) (Amendment) Rules, 1998 and by amended Rules, rates for sale of various minor minerals are prescribed. Insofar as sand is concerned, the prescribed rate is Rs. 28/- per brass. A copy of the aforesaid amendment is annexed with the reply filed by the respondent No. 3 as Annexure II. It is contended that respondent No. 2 has granted lease in question to the respondent No. 3 on 1-1-2000 and permitted to excavate and remove 32,724 brass of sand from the said singardeep Ghat. The price of aforesaid quantity of sand works out to Rs. 9,16,412/- at the statutorily prescribed rate of Rs. 28/- per brass. As against this amount, the respondent No. 2 has fixed consideration for grant of lease in question at Rs. 10,60,000/-, which the respondent No. 3 has already deposited. It is submitted that amount of Rs. 10,60,000/- has been arrived at in the following circumstances :

For the year 1998 (auction held on 15-12-1997), the price of sand was Rs. 14/- per brass and upset price for Singardeep Ghat was fixed at rupees four lacs.

For the year 2000, the price of sand was increased to Rs. 28/- per brass. Hence, upset price was accordingly fixed at rupees eight lacs. To this sum, equivalent to 15% of the upset price which comes to Rs. 1,20,000/-, was added for the year 1999 and a further sum of Rs. 1,38,000/- was added to the said sum of Rs. 9,20,000/- being 15% increase in the upset price for the year 1999. The total sum arrived at in this manner on the basis of these aspects was Rs. 10,58,000/- and, therefore, respondent No. 3 was directed to deposit Rs. 10,60,000/-.

The learned Senior Counsel Shri Manohar, therefore, contended that fixation of price was done by the respondent No. 2 on the basis of Rules in this regard which, in fact, is also a known method for determining the market price. The learned Counsel contended that issue in question falls within the ratio laid down

by the Apex Court in M.P. Oil Extraction and Another Vs. State of M.P. and Others, .

26. It is further stated that petitioners being Contractors operating in the same field, were well versed with the statutory Rules and procedure on the basis of which royalty/price of the sand per brass is computed, however, they have not denied the criteria suggested by respondents on the basis of which amount of Rs. 10,60,000/- is arrived at by the respondent No. 2 by filing additional submissions and, therefore, it is not open to the petitioners now to contend that the amount of Rs. 10,60,000/- arrived at by the respondent No. 2 is without any basis in absence of any denial to that effect. In fact, criteria suggested by the respondent No. 3 in his reply is also not disputed by the petitioners. Therefore, action of the respondent No. 2 is sustainable.

27. It is further contended by learned Senior Counsel Shri Manohar for the respondent No. 3 that the respondent No. 3 has already deposited the huge amount as per directions of the respondent No. 2. The contract in question is already concluded with effect from 3-1-2000 and work order has already been issued in favour of respondent No. 3 and work in question has been commenced. However, because of the interim order passed by this Court, the same was required to be stopped. The learned Senior Counsel, therefore, contended that action of the respondent No. 2 is just and proper and also sustainable in law.

28. We have considered the contentions raised by the learned Counsel for the parties and perused the documents annexed to the petition as well as submissions/reply filed by the respondent Nos. 2 and 3 respectively. There are few undisputed facts, which are as follows:

i) On 15-12-1997, the auction was held by respondent No. 2 in respect of Singardeep Ghat. The petitioners as well as respondent No. 3 participated in the said auction and gave their bids in respect of Singardeep Sand Ghat. The upset price for Singardeep Ghat was fixed at rupees four lacs. The respondent No. 3 was the highest bidder and the bid of the respondent No. 3 was for sum of Rs. 4,11,000/-. The respondent No. 3 being the highest bidder, his bid was accepted by the respondent No. 2.

ii) The respondent No. 3 deposited total amount of Rs. 4,11,000/- within the stipulated period.

iii) Permission to grant excavation work in favour of the respondent No. 3 was deferred by respondent No. 2 in view of non-completion of construction of road at the relevant time as well as objections raised by the villagers and Public Works Department.

iv) The respondent No. 2 after considering the revised royalty rates, determined the upset price as Rs. 10,60,000/- as against Rs. 4,11,000/- for the year 1997. The amount of Rs. 10,60,000/- has been deposited by the respondent No. 3.

v) The respondent No. 2 entered into a contract with respondent No. 3 on

3-1-2000 before filing of the petition, i.e. 7-1-2000 and work order in this regard is also issued in favour of the respondent No. 3 on 1-1-2000.

vi) The contract is for 365 days and respondent No. 3 is entitled to excavate only 32,724 brass of sand.

Since the petitioners have not filed additional submissions denying the above referred facts, we are inclined to hold that these are undisputed facts in the instant case.

29. In view of the above referred undisputed facts, it can safely be held that the respondent No. 2 in fact held auction for Singardeep Ghat on 15-12-1997 and respondent No. 3 being the highest bidder, his bid was accepted. Hence, respondent No. 2 has not deviated from normal practice of auctioning Ghats. The contention raised by the learned Counsel for the petitioners in this regard, in the circumstances, cannot be considered.

30. The next important question, which falls for our consideration, is whether respondent No. 2 was justified in postponing formal execution of the contract and allotment of work order till 1-1-2000, i.e. beyond duration of original period of contract, which expired on 31-12-1998, as well as in view of stipulations 11 and 19 of terms and conditions for removal of minor mineral sand/by tender in Nagpur District.

31. In the present case, respondent No. 3 after acceptance of his bid by respondent No. 2 deposited an amount of his bid by respondent No. 2 deposited an amount of Rs. 4,11,000/- within the prescribed time. The respondent No. 2 informed respondent No. 3 by letter dated 13-1-1998 that his bid has been accepted and since full bid amount has been deposited, possession of Singardeep Ghat should be taken from Tahsildar. However, the respondent No. 3 was not put in possession of the said Ghat as Public Works Department, Gram Panchayat and Villagers requested the respondent No. 2 to postpone commencement of work relating to excavation of sand as approach road to Singardeep Ghat was under construction. Since construction work of the road was not completed during 1998, respondent No. 3 submitted representation dated 1-1-1999 to the respondent No. 2 showing his willingness to undertake construction work of the road and further requested to grant him permission to do so. The respondent No. 2 refused to grant such permission for construction of approach road. The respondent No. 2 informed respondent No. 3 that on submission of Certificate of Deputy Engineer, public Works Department regarding completion of construction of road, respondent No. 3 would be granted permission to start excavation/removal of sand work from the said Ghat. It appears that though respondent No. 3 submitted various representations to the respondent No. 2 to grant permission to start excavation/removal of sand work before completion of construction of road, same were rejected by the respondent No. 2.

32. Since all the efforts made by the respondent No. 3 to persuade respondent No. 2 for grant of permission to start excavation/removal of sand failed,

respondent No. 3 in the year 1998 itself requested respondent No. 2 that period of contract, i.e. 365 days should commence from the date respondent No. 3 will be allowed to start work of excavation/removal of sand at Singardeep Ghat. The respondent No. 2, in the circumstances of the case, accepted the request of the respondent No. 3 only on the condition that respondent No. 3 will have to pay 15% more than the bid amount and he should file affidavit in this regard. On 13-10-1999, respondent No. 2 received communication from the Public Works Department that construction of road is complete and it was open to public. The respondent No. 2 after taking into consideration the revised rates of royalty and 15% escalation for every year, determined upset price at the sum of Rs. 10,60,000/-. The respondent No. 3 agreed to pay the revised upset price. Hence, respondent No. 2 decided to permit respondent No. 3 to start excavation-removal of sand work for the period of one year with effect from 1-1-2000.

33. On the backdrop of above facts, when we consider the conduct of respondent No. 3, we do not find any fault on his part in the entire transaction. The respondent No. 3 was a genuine bidder and since he made the highest bid in the auction, same was accepted and, therefore, he deposited necessary bid amount within the stipulated period with the respondent No. 2. In spite of performing his part of contract, respondent No. 3 could not get permission to start work from the respondent No. 2 for unavoidable circumstances, which were beyond the control of respondent No. 2 and, therefore, respondent No. 3, in our opinion, cannot be deprived of his legitimate claim to carry out work in question for the period of 365 days, to which he is legally entitled.

34. Insofar as power of respondent No. 2 to defer execution of contract and work order is concerned, it will be appropriate at this stage to consider contents of aforesaid condition No. 19, which read thus :

"19) The period of auction sale of right of collection and removal of sand shall be from 1-1-2000 to 31-12-2000 and shall not be extended on any account."

The above referred condition contemplates that right of collection and removal of sand shall be from 1-1-2000 to 31-12-2000. However, in the present case, the period is from 1-1-1998 to 31-12-1998 and this period shall not be extended on any count. We have given our anxious thought to the above referred condition and are of the view that the condition would operate or will be applicable only if formal contract pursuant to auction sale is entered into between the parties, possession of the Ghat is handed over and work order is issued in favour of the bidder, who is legally entitled to start work of excavation-removal of sand from such Ghat. However, in the absence of formal contract and work order, right to remove sand, in our opinion, does not commence. Hence, contractual period of one year also does not come into existence in such situation. Consequently, question of extending the same does not arise.

35. In the instant case, in the absence of formal contract between respondent Nos. 2 and 3 and for want of necessary work order till the year 2000, no right to

remove sand was created in favour of the respondent No. 3 till 1-1-2000. Therefore, in our opinion, above referred condition No. 19 is not attracted in the present case. The contention raised by the learned Counsel for the petitioners in this regard cannot be accepted and same must fail. Consequently, action of the respondent No. 2 cannot be upset on this ground.

36. As far as condition No. 11 is concerned, it reads thus :

"11) The auction purchaser shall not sue Government for loss or damage in the event of Government cancelling the contract during the period of its existence nor shall prohibit excavation or removal of sand within the area for which contract is given in case of cancellation of contract before the period contract is completed. He shall be entitled to the refund of the proportionate amount of bid."

Condition No. 11, in the circumstances of this case, is not relevant since it disentitles the auction purchaser to sue the Government for loss or damage in the event of Government cancelling the contract during the period of its existence or prohibit excavation or removal of sand within the area for which contract is given. In the instant case, as we have already held that contract between respondent Nos. 2 and 3 for removal of sand did not come into existence till 1-1-2000, question of cancelling the same or prohibition as contemplated in this condition does not arise. Hence, the contention raised by the learned Counsel for the petitioners in this regard cannot be accepted.

37. Another important aspect which needs our attention is whether revised upset price, i.e. Rs. 10,60,000/- offered to the respondent No. 3 by respondent No. 2 is without any basis or foundation as contended by the learned Counsel for the petitioners and, therefore, decision taken by the respondent No. 2 is arbitrary and with oblique motive to favour respondent No. 3.

38. We have already referred to hereinabove that respondent No. 2 has specifically mentioned in his affidavit that amount of upset price of Rs. 10,60,000/- for the year 2000 is arrived at by respondent No. 2 after considering the revised rates of royalty and 15% escalation for every year. Similarly, respondent No. 3 in his reply has given necessary data as per prevalent rules and procedure for the purpose of fixing upset price. The respondent No. 3 has also given break up of the rates of sand per brass since 1998 till 2000 with 15% increase per year. The petitioners, however, have not filed any affidavit or additional submission after reply/submission were filed by the respondents, denying the criteria for fixing the upset price and procedure shown and described by the respondent in their respective submissions for fixing the upset price for petitioners have suggested any other method or procedure in order to show that the upset price of Rs. 10,60,000/- arrived at by the respondent No. 2 is incorrect. In the circumstances, we felt that the upset price fixed by the respondent No. 2 for the year 2000 in respect of Singardeep Ghat has procedural sanction and rational basis and, therefore, same, in our opinion, is not arbitrary.

39. The statement made by the petitioners in the petition that they are ready to

pay upset price of rupees thirty lacs is with a view to misguide this Court. The petitioners are rival contractors, who had participated in auction along with respondent No. 3 and could not succeed. The petitioners have not give any data regarding computation of upset price nor denied the procedure shown and described by the respondent Nos. 2 and 3 in this regard. In the absence of this, it is not possible for us to rely on the vague statements of the petitioners particularly when they are rival contractors operating in the same field.

40. The contention of the petitioners that respondent No. 2 should have invited tenders or sand Ghat is question ought to have been put for auction for the year 2000 by the respondent No. 2 before allotting it in favour of respondent No. 3 is devoid of substance. We have already observed hereinabove that auction of Singardeep Ghat did take place on 15-12-1997 and respondent No. 3 being the highest bidder, was considered for the allotment of said Ghat. In that view of the matter, whole argument of Shri Dharmadhikari in this regard is misconceived and cannot be accepted. Similarly, in the face of the present case, ratio laid down by the Apex Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , with respects, is not applicable in the present case.

41. So far as aspect of mala fides raised by the petitioners against respondent No. 2 is concerned, the facts of the present case are otherwise. Though respondent No. 3 was the highest bidder and had also deposited the said amount in the year 1998 itself, even then respondent No. 2 did not grant him permission to excavate or remove sand from the Ghat in question till 1-1-2000 in spite of repeated requests made by the respondent No. 3 in this regard. The fact of postponing grant of permission to remove sand by the respondent No. 2 for all these years by itself is sufficient to destroy contention of mala fides raised by the petitioners against respondent No. 2. If respondent No. 2 really to favour respondent No. 3, he would have entered into a contract with respondent No. 3 without caring for the objections raised by the Public Works Department, Gram Panchayat and villagers and could have also granted permission to remove sand in the year 1998 itself particularly when there was no legal impediment to do so. However, respondent No. 2 in view of the above referred objections raised by various authorities thought it fit not to grant such permission and postponed the same till construction work of road was complete. In this view of the matter, the contention of mala fides raised against respondent No. 2 is misconceived.

42. Lastly we cannot ignore the fact that the petitioners though being contractors themselves and had factually participated in the auction, which was held on 15-12-1997, along with respondent No. 3, kept quiet till 1-1-2000 when the work order was issued by the respondent No. 2 in favour of respondent No. 3. We cannot also lose sight of the fact that the respondent No. 3 deposited upset price of Rs. 4,11,000/- in the year 1998 itself and also deposited upset price of Rs. 10,60,000/- thereafter for the year 2000 and formal contract is already entered into between respondent Nos. 2 and 3. In such situation, it will not be proper to show indulgence at this belated stage particularly when there is nothing on

record to show that action of the respondent No. 2 is arbitrary, mala fides or violative of Article 14 of the Constitution.

43. We must make it clear that respondent Collector in the normal course, is expected to enter into a formal contract immediately in favour of highest bidder after auction is held for the relevant year. The interpretation arrived at by us in regard to condition No. 19 should not be construed as a licence by the concerned authorities to defer execution of a formal contract as per their whims and fancies. We have upheld the action of respondent no. 2 in the present case only in view of peculiar facts and circumstances, which were beyond the control of the parties and in view of conduct of the respondent.

44. For the stated above, the petition is misconceived and devoid of substance. Hence, the same is dismissed. Rule is discharged. However, in the circumstances, there will be no order as to costs.

45. At this stage, Shri Kukdey, learned Counsel for the petitioners, requested that effect and operation of this judgment may be suspended for a period of two weeks. Shri Deshpande, learned Assistant Government Pleader for respondent Nos. 1 and 2, submitted that work order was issued and work was also started by the respondent No. 3. However, same came to be suspended only because of an interim order passed by this Court. Even otherwise, in the circumstance of the present case, it is difficult for us to accept the request of the learned Counsel for the petitioners. In that view of the matter, the request of the learned Counsel for the petitioners is rejected. Interim order, if any, stands vacated.