

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.97 OF 2011****WITH****WRIT PETITION NO.98 OF 2011**

M/s. Black Gold Exim Pvt. Ltd. and another ..Petitioners.

versus

The State of Maharashtra and others ..Respondents.

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Mr. S.U. Kamdar, Senior Advocate with Mr. Devvrat Dhankar i/b Mr. Parag Sharma for the Petitioners.

Mr. Vijay Patil, Government Pleader for Respondent No.1.

Mr. S.R. Borulkar for successful bidder.

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CORAM : DR.D.Y.CHANDRACHUD & ANOOP V. MOHTA , JJ.**12 January 2011.****PC. :**

1. On 25 October 2010 the State Government in the Revenue and Forest Department formulated a policy to govern the excavation of sand from nallahs, rivers and creeks in the State of Maharashtra and more specifically with reference to four districts of the Konkan region. The policy has been translated into a government resolution of that date. A Division Bench of this Court was seized of a writ proceeding under Article 226 of the Constitution in which inter alia the grievance that was highlighted related to the deficiencies in the formulation and implementation of norms relating to the excavation of sand and the consequential damage to river flows, streams and the

environment. After taking into consideration the earlier Government Resolutions dated 3 July 1998, 27 February 2001, 4 February 2003 and 5 September 2003, the Division Bench has issued several directions in the petition from time to time. Eventually the Government of Maharashtra in pursuance of an order of the Division Bench appointed a committee headed by the Divisional Commissioner at Aurangabad and formulated a policy in terms of a Government Resolution dated 25 October 2010. While disposing of the Petition (Sagar Shramik Hatpati Walu Utpadak Sahakari Sanstha Maryadit v. State of Maharashtra – Writ Petition 4830 of 2010), the Division Bench in its order dated 26 October 2010 observed as follows:

“Having given our anxious considerations to the policy so framed by the State Government vide Government Resolution dated 25th October 2010 and the suggestions made by the learned counsel for the respective parties, we are of the opinion that the policy has tried to address almost all the substantial issues and it provides adequate measures to ensure that in the process of excavation of sand, there is no damage to the river flow, streams and the environment. The Policy has tried to plug the loopholes by and large and it also seeks to make the government machinery accountable for its implementation.

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As the State Government has applied its mind to the existing deficiencies and brought out a mechanism for excavation of sand so as to ensure that it does not cause any damage to the river banks, streams and the land as well as environment, while ensuring that it generates reasonable revenue, its successful implementation solely depends on the Revenue officials, the cooperation of the Village Panchayats and the contractors commitment to abide by the terms and conditions of the policy. The policy appears to have dispel the fear of an emerging and sand mafia and almost all the issues raised in this petition has been sought to be address to and provided for in the policy.”

2. The State Government through the learned Advocate General also assured the Court that if in the implementation of the policy it was found that any provision was misused or misinterpreted, the State Government would take corrective steps.

3. The Petitioner was one of the bidders at an auction which was conducted by the Divisional Commissioner, Konkan, the Second Respondent in pursuance of a notice dated **23** December **2010** inviting bids for the extraction of sand from the Savitri river and Bankot in the Districts of Raigad and Ratnagiri for **2010-11**.

4. The Petitioner was not successful in obtaining the award of the contract. A letter of acceptance has been issued to the successful bidder who has intervened in these proceedings. On the request of Counsel appearing on behalf of the Petitioner we grant leave to the Petitioner to implead the successful bidder. The amendment shall be carried out forthwith.

5. The grievance of the Petitioner is that while the policy contemplates in Clause **4(e)** that permission must be obtained of the State Environment Department, as a matter of fact the permission has not been obtained. The policy contemplates that prior to the auction, the competent authority has to be moved for the grant of its permission. The contention of the Petitioner is that the auction that was conducted was invalid since no permissions were obtained prior to the date of the auction. The learned Government Pleader has drawn the attention of the Court to the conditions contained in the tender notice dated **23** December **2010**. The conditions specifically

spelt out that the tendering process was initiated subject to the environmental permission and that without the grant of permission no contract would be entered into and no steps would be taken for carrying out excavation of sand. Counsel appearing on behalf of successful bidder has also undertaken to the Court that his client will not begin the process of excavation of sand and shall not enter into a contract with the State Government until all the requisite permissions are obtained. The learned Government Pleader has stated before the Court that the meeting of the committee constituted by the State Environment Department is to take place on **17 and 18 January 2011**. The State Government, the Court is informed, had invited tenders since the extracting year commences on **1 August** and continues until **31 July** of the following year and as a result of the previous litigation, a substantial part of the year had already ended. The Government Pleader states that as a result of the interim orders which were operating in the earlier proceedings, there was an acute scarcity of sand required for construction purposes in the State. In these circumstances, the State Government did initiate the tendering process but it is made clear in the tender notice that no contract would be awarded and the process of excavation will not be permitted to commence until the requisite permissions are obtained.

6. We are of the view that it is not open to the State Government to deviate from the conditions which are stipulated in the policy which came to be formulated on **25 October 2010** in pursuance of the directions which were issued by the Division Bench in the earlier petition. As the Division Bench noted, the whole object of the policy is to ensure that there is no damage to the flow of rivers, streams

and nallahs and that the environment is not subjected to adverse effect as a result of unrestricted excavation of sand. Evidently there were serious loopholes in the earlier policies. As the Division Bench noted, the extraction of sand by an unrestricted use of mechanized devices was liable to result in serious damage to the environment. It was in this background and particularly having regard to the excesses and misuse of policy that came to light that the new policy was formulated. The Division Bench noted that the new policy in substance had the effect of taking care of the deficiencies and sought to make the government machinery accountable for proper implementation. Once the policy has been formulated by the government and has been sanctioned by the Court deviations from the policy cannot be countenanced. The policy is conceived in the public interest. The learned Advocate General has assured the Court that the government would monitor any instance of misuse and would take necessary corrective steps. The concern which has been expressed by the learned Government Pleader of the prevailing scarcity of the sand in the State is stated to be the ground on which the government had commenced the tendering process. At the same time, the State Government had made it clear that no excavation of sand would be permitted until requisite permissions are obtained. Besides, the statement which has been made before the Court by the learned Government Pleader a clause to that effect is also contained in the tender notice dated **23** December **2010**. While accepting the statement which has been made before the Court by the learned Government Pleader, we incorporate that statement as a direction of the Court and accordingly direct that the government shall not award any contract nor shall any excavation of sand commence until and

unless all the requisite permissions as contemplated in the Government Resolution dated **25 October 2010** are obtained. In this view of the matter, it is not necessary to issue any further directions in these Petitions which shall accordingly stand disposed of. No costs.

(Dr. D.Y. Chandrachud, J.)

(Anoop V. Mohta, J.)