

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH, PUNE**

OA No: 162 of 2024

IN THE MATTER OF: -

Pramod Dhanraj Khursange ...Applicant

Versus

Dist. Collector Nagpur &Ors. ...Respondents

INDEX

| Srl. | Particulars | Pg. No. |
|-------------|--|----------------|
| 1. | Short Affidavit on behalf of Respondent No. 5 | |
| 2. | Annexure A A True Copy of the judgment dated 07.05.2024 of the Hon'ble High Court of Judicature at Bombay in WP No. 4263 of 2024 | |
| 3. | Vakalatnama | |

Through:

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PUNE/NEW DELHI
28.04.2025

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SHORT AFFIDAVIT ON BEHALF OF RESPONDENT NO. 5

MOST RESPECTFULLY SHOWETH: -

1. That the present short Affidavit is being filed on behalf of Respondent No. 5.
2. At the outset, it is submitted that the Deponent is in receipt of Notice issued by the Registry of this Ld. Tribunal, however, he has not received the Original Application, or the Annexures and documents relied upon by the Applicant.
3. It is humbly submitted that since the Deponent is not in receipt of the OA, he is handicapped to the extent he is not aware of what has been stated in the OA against the Deponent or what specific relief has been sought for.
4. That the Applicant reserves his right to file a detailed Reply to the OA as and when the Deponent is served with a copy of the OA and the Annexures/Documents.
5. That the Deponent was entrusted to manage Sand Depot No. 5 Khapa (B), Saoner, Nagpur District
6. That from the orders passed by the Ld. Tribunal in the captioned matter, it is seen that the main prayer in the OA is with respect to setting aside of the Draft District Survey Report

(DSR) dated December 2023 along-with the Tenders, which are said to be floated for 3 years for mining purpose under the said DSR. That the OA is defective on this count alone as the DSR is not a 'draft' anymore and is now the final DSR.

7. It is humbly submitted that as evident from the orders passed by the Ld. Tribunal, the Applicant had also challenged Environmental Clearances (EC) and it can be surmised that the Applicant is essentially aggrieved by the EC granted to the Deponent, which forms the basis of the work order issued in its favour.
8. That it is settled law that EC can only be challenged in an Appeal filed under Section 16 of the NGT Act, 2010 and therefore, the present OA is not maintainable in law. In order to circumvent the provisions of the NGT Act, 2010, the applicant has attempted to seek omnibus directions against mining operations in and around the District of Nagpur and also possibly challenged the work order.
9. It is submitted that in absence of a challenge to either the EC or the final DSR, the validity of any contract or work order concerning the Deponent cannot be examined in the present OA.
10. It is also pertinent to point out that the Applicant's contentions appear to be premised on the applicability of the State Government's Sand Mining Policy dated 16.02.2024. It is submitted that the invitation of concerned tenders for excavation, transportation and storage of sand by the public notice, handing over to the successful bidders and work orders were issued prior to the new Policy being notified and the new

sandmining policy dated 16.02.2024 was not even in existence, and all mining activities were governed by the existing sand policy which was implemented by the Government Resolution dated 19.04.2023. Consequently, any contention regarding the sand policy implemented on 16.02.2024 is irrelevant and inconsequential.

11. It is also pertinent to mention that Chapter 10 of the said Government Resolution dated 16.02.2024 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. The Hon'ble High Court of Judicature at Bombay was considering inter-play between the Sand Policy dated 19.04.2023 and the new Sand Policy dated 16.02.2024 and categorically held that contracts awarded pursuant to Policy dated 19.04.2023 will be governed by the said Policy and new Sand Policy dated 16.02.2024 would be applicable only to the tenders issued thereafter. The relevant portion is reproduced hereinbelow;

11.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.

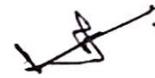
A True Copy of the judgment dated 07.05.2024 of the Hon'ble High Court of Judicature at Bombay in WP No. 4263 of 2024 is annexed herewith and marked as **Annexure A**.

12. The Applicant has misled the Hon'ble Tribunal by depicting that contractors are carrying out mining operations without authorization. As pointed out by the Respondents No.1 and 3, prior to the interim order of this Hon'ble Tribunal, the contractors were carrying out mining operations strictly in accordance with the work order after emerging as the successful bidder in a transparent, lawful tender process which was never challenged by the Applicant before any competent forum.
13. That the Applicant by misrepresenting facts also obtained certain observations by this Ld. Tribunal, although prima facie regarding lack of authorization. It is clarified that a contractor is authorized and entitled to excavate sand throughout the contract period. The issuance of a work order or execution of an agreement pursuant to a tender process itself constitutes authorization for carrying out mining activities in terms of the work order or the agreement.
14. Further as far as prohibition of mining during monsoon is concerned, it is submitted that since it is not advisable to excavate sand in the monsoon, possession of sand ghats is handed over to the authorities in a transparent process only for the limited period of monsoon. This ensures that mining activities are not carried out during this period under any circumstances. Subsequently, after the period of monsoon is over, possession of the sand ghat is duly returned to the

contractor to ensure that mining activities can be resumed. It is humbly submitted that mere resumption of mining activities in terms of the contract does not require any additional authorization or grant of permission from the authorities. Thus, it is incorrect to suggest that the contractor does not have authorization to resume mining activities post the monsoon period. It is submitted that the applicant has failed to demonstrate the alleged non-compliance of law while resuming mining activities post monsoon period.

15. As regards the issue of grant of Consent to Operate (CTO), as recorded in the Hon'ble Tribunal's order dated 04.04.2025, Respondent-MPCB has already clarified, that it is not required to grant any such consent and as such nothing survives in the OA.
16. It is submitted that a contractor such as the answering respondent incurs great expenditure in building and managing the infrastructure for carrying out mining activities, transportation of sand and management of the depot. That the stoppage of mining activities has resulted in great financial loss to the deponent.
17. Further, as stated by the Respondents No.1 and 3, sand is required to be excavated, stored and transported for use in all infrastructure projects of public importance. It is submitted that if mining activities become financially unviable for contractors, it would be prejudicial to public interest, since the Government relies on sand contractors for proper excavation, storage and transportation.

18. Not only does the OA appear to be misconceived but also appears to be replete with half-truths and blatant misrepresentations and deserves dismissal on that count alone.
19. The interim orders passed by the Ld. Tribunal have caused great prejudice to the answering respondent and that too when they appear to have been obtained by obfuscating facts. In this view of the matter, this Hon'ble Court may consider vacating the order stopping mining activities if not dismissing the OA.



RESPONDENT

Through:



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Versus

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AFFIDAVIT

I, Vinod Radheshyam Gupta, aged about 52 years, Occ. Business R/o. Main Road, Saoner Dist. Nagpur PIN Code-441107, Maharashtra, presently at Pune, do hereby solemnly affirm and declare as under:

1. That I am the Proprietor of Respondent No. 5 in the captioned OA, and I am well aware of the facts and circumstances of the present matter, therefore I am competent to affirm the present Affidavit.
2. That the accompanying Reply has been prepared under my instructions, I have read and understood the contents thereof are true and correct to the best of my knowledge, belief and information.


DEPONENT

VERIFICATION

Verified at Pune on this _____ day of April 2025 that the contents of the above affidavit are true and correct to the best of knowledge and belief and no part of this Affidavit is false nothing materials has been concealed therefrom.

NOTED AND REGISTERED
AT SR. NO. 1020/2025
DATE 28-4-2025

28 APR 2025

BEFORE ME


MAHENDRA PARBATI KAMBLE
NOTARY, GOVT. OF INDIA
PUNE CITY (MAHARASHTRA)
REGD. No. 10369


DEPONENT



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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

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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:-

ORDER

(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.]

VAKALATNAMA

IN THE COURT OF NATIONAL GREEN TRIBUNAL, WZ, PUNE

OA No 162 of 2024

In re: -

Pramod Dhanraj Khursange Plaintiff / Petitioner/ Complainant/Applicant

VERSUS

District Collector, Nagpur & Ors. Defendant/ Respondent/ Accused

KNOW ALL to whom these presents shall come that I/We M/s Namaswi Traders
the above named Resp. No. 5 do hereby appoint:

AAYUSHMAN AERON, ADVOCATE

D/3812/2017

139, MUNIRKA VIHAR, NEW DELHI-110067

aeronaayushman@gmail.com ; 9818670696

(herein after called the Advocate/s) to be my/our Advocate in the above noted case authorize him:-

- To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court including High Court subject to payment of fees separately for each Court by me/us.
- To sign, file, verify and present pleadings, appeals, cross-objections or petitions for executions review revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages subject to payment of fees for each stage.
- To file and take back documents, to admit and/or deny the documents of opposite party.
- To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.
- To take execution proceedings.
- To deposit, draw and receive monthly cheques, cash and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
- To appoint and instruct any other Legal Practitioner authorizing him to exercise the power and authority hereby conferred upon the Advocate whenever he may think fit to do so and to sign the power of attorney on our behalf.
- And I/We the undersigned do hereby agree to rectify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and proposes.
- And I/We undertake that I/We or my/our duly authorized agent would appear in Court on all hearings and will inform the Advocate for appearance when the case is called.
- And I/We the undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case.
- The adjournment costs whenever ordered by the Court shall be of the Advocate, which he shall receive and retain for his self.
- And I/We the undersigned to hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/we hereby agree that once fee is paid, I/We will not be entitled for the refund of the same in any case whatsoever and if the case prolongs for more than 3 years the original fee shall be paid again by me/us.

IN WITNESS WHEREOF I/We do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this 28th day of April..... Accepted subject to the terms of the fees.

I/We ratify all or any acts done by Advocates or upon his instructions by her court staff in the present case with effect from date of institution of the present case.

Aayushman Aeron
ADVOCATE

Accepted & Identified

Vinod Radheshyam Gupta
CLIENT

Vinod Radheshyam Gupta
Proprietor, M/s Namaswi Traders

