

## CHAPTER III

### MANAGEMENT OF SAND LEASES

Ordinary sand is classified as a ‘minor mineral’ under MMDR Act. Sand is widely available in the coastal zone in West Godavari, East Godavari, SPSR Nellore, Guntur, Khammam, Krishna and Srikakulam districts.

Till 1999, “auctioning of sand” was vested with Industries and Commerce (Mines) Department. In November 1999, GoAP transferred “auctioning of sand” to Panchayat Raj & Rural Development (PR&RD) Department, so that Gram Panchayats could enhance their income. In February 2007, GoAP again withdrew the subject “auctioning of sand” from PR&RD Department and transferred it back to Industries and Commerce Department<sup>45</sup>. In March 2012, DMG instructed<sup>46</sup> all the DDsMG and ADsMG to implement the orders of AP High Court which had restrained the respondents (DMG) from giving any sand mining/sand quarrying lease to any person with effect from 1 April 2012. Subsequent to Supreme Court orders (May 2012), quarrying activities restarted and GoAP notified<sup>47</sup> new sand policy (October 2012) by making amendments in the APMMC Rules, 1966. The auctioning of sand reaches was again entrusted to PR&RD Department.

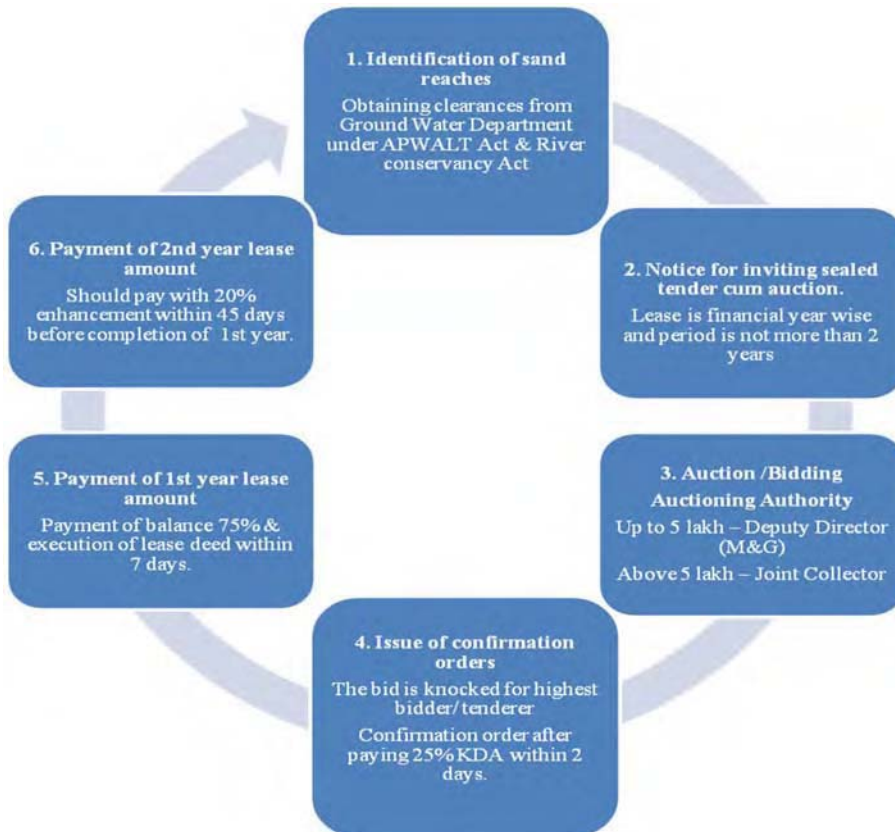
Rule 9 of APMMC Rules stipulates provisions relating to revenue aspects, auction procedures in management of sand quarrying in the State. Rule 23 of APWALT Rules, 2004 stipulate provisions relating to environmental aspects such as deciding area of sand reaches to be allowed for quarrying, quantity of sand to be extracted, conditions for quarrying of sand, etc. As per Rule 9-B of APMMC Rules, 1966, cyclic activity of sand quarrying starts with notification for auction after obtaining Ground Water Department (GWD) clearance. Lease is granted financial year wise, for not more than two years. Cycle is completed at the end of lease period. Periodic cyclic activity in the process of auctioning of sand reaches and follow-up action by Mines and Geology Department has been shown in the following flowchart:

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<sup>45</sup> However, 95 *per cent* of the revenue collected would be transferred to the local bodies.

<sup>46</sup> File No. 12722/R8-1/SAND/2012-2 dt 31 March 2012.

<sup>47</sup> G.O.Ms No. 142 Ind. & Com (Mines-I) Dept., dt 13 October 2012.



In this Performance Audit out of the total 229 sand reaches, 116 sand reaches covering 160 leases were test checked.

### 3.1 Pre-auction activities

#### 3.1.1 Non-obtaining of Ground Water Department (GWD) Clearance before notification of sand reach for auction

According to Rule 9-B (6) of APMMC Rules, 1966, District Level Committee (DLC) comprising Joint Collector as Chairman and DDMG, District Panchayat Officer, Deputy Director of GWD, Executive Engineer from Irrigation Department and ADMG as members is the competent authority to identify sand reaches to be leased out, for conduct of auction on proposals submitted by ADMG concerned, only after duly obtaining clearance regarding impact of sand mining from Director, Ground Water Department (GWD).

Audit noticed (January-April 2012) that in respect of 34 sand reaches<sup>48</sup> in four ADMG offices<sup>49</sup>, auction notifications for auction period 2007-09 to 2009-11 were issued and auctions conducted without obtaining prior clearance from GWD. For 22 reaches out of these 34, lease deeds were entered into<sup>50</sup> and quarrying was done without obtaining GWD clearance defeating purpose of preserving ground water level.

Government replied (February 2014) that auction notifications were issued with prior approval of DLCs concerned, under the impression that clearance from GWD was not necessary for rivers like Godavari, Krishna, Penna etc. However, prior clearance from GWD was mandatory and the Department had in fact obtained GWD clearance in two other cases of SPSR Nellore District (November 2008) before notifying the sand reaches for auction.

### **3.1.2 Improper fixing of Minimum Bid Amounts (MBAs)**

According to Rule 9(B)(6) of APMMC Rules, 1966, minimum bid amount (MBA) is to be fixed by DLC by taking the following points into consideration on proposals received from ADMG concerned:

1. Quantity of sand available;
2. Demand and supply of sand, prevailing concessions for transportation of sand by bullock carts, animals, and sand consumed by weaker section housing schemes; and
3. Average knocked down amount (KDA) i.e., the final bid amount on which the lease is granted, for the last three years.

Audit scrutiny revealed that in two ADMG offices<sup>51</sup> in respect of auction of 12 direct ramp sand reaches<sup>52</sup>, MBAs were fixed without taking into account quantity of sand available, even though GWD clearance specifically furnished dimensions of sand pockets feasible for quarrying.

Department fixed MBAs as ₹ 89.45 lakh without considering quantity of sand as per the reports furnished by GWD. Because of fixing lower MBAs, department could generate only ₹ 1.47 crore as KDA. Based on dimensions furnished by GWD, audit quantified MBAs as ₹ 3.51 crore. Difference between KDAs and MBAs estimated by audit indicate the loss of at least ₹ 2.04 crore.

<sup>48</sup> **Eluru:**-Chidipi, Khandavalli, Koderu (2007-09), Polavaram, Pendyala-Kanuru, Pandalaparru, Teeparu, Sidhatam, Karugorumilli (2007-09 & 2009-11);

**Guntur:**-Kolipara (2008-10), Kolluru-Juvalapalem, Godavarru, Belamkonda (2007-09);

**Rajahmundry:**-Kulla-Kotipalli-Masakapalli, Gopalapuram (2008-10), Kothapeta-Kedarlanka, Ankampalem, Muggalla, Korumilli, Kapileswarapuram, Jonnada, Inavalli-Veeravallipalem (2007-09 & 2009-11);

**SPSR Nellore:**-Mudivarthypalem, Sangam, Viruvuru, PadamatiKambampadu, Pottepalem, Apparaopalem, Mohmadapuram, Mulumudi, KalluruRajupalem, Devarayapalli, Telugurayapuram and Timmayapalem (2009-11).

<sup>49</sup> Eluru, Guntur, Rajahmundry, SPSR Nellore.

<sup>50</sup> ADMG offices Eluru, Guntur, Rajahmundry.

<sup>51</sup> Ongole and Srikakulam.

<sup>52</sup> Ongole (Mugachintala (2009-11), Ramayapalem (2010-12)); Srikakulam (Muddadapeta, Yeragam, Allena, Pedasavalapuram, Kimmi, Nimmathoralavada, Bonthalakoduru, Batteru, Vasudevapatnam and Korada (2007-09)).

Government replied (February 2014) that due to absence of specific information on quantity of sand available, MBAs were fixed on the basis of information provided by District Panchayat Officers who dealt with the subject prior to 2007. However, information on dimensions of sand pockets, from which the amount of sand available for quarrying can be calculated, was available in GWD clearance reports of reaches.

### 3.2 Auction of sand reaches

#### 3.2.1 Short collection of statutory dues

As per Rule 9-I (1), the successful bidder should remit, in two working days, 25 *per cent* KDA in addition to EMD. Bidder should also pay remaining 75 *per cent* along with Security deposit (10 *per cent* of the KDA subject to the minimum of ₹ one lakh or equal to MBA, whichever is less) and execute lease deed within seven days of confirmation order (Rule 9-I). Lease deed should be registered (Section 17(1) (c) of the Registration Act 1908) and is chargeable with stamp duty at five *per cent* (Article 31 (b) of Schedule I-A to the Indian Stamp Act 1899).

Audit observed following compliance deficiencies at ADMG offices:

Audit observation	No. of cases	Short Collection (₹ in lakh)
<b>Security Deposit (SD):</b> In three ADMG Offices <sup>53</sup> , in four cases, SD was collected proportionate to the period of lease in the first year as the lease period commenced in the middle of the financial year which was against the rules. Further, in another case of sand reach <sup>54</sup> , the Department collected SD of ₹ one lakh only, against the prescribed amount of ₹ 1.76 lakh on the lease amount.	5	70.96
<b>Earnest Money Deposit:</b> The department adjusted EMD amount towards initial payment of 25 <i>per cent</i> amount, in contravention to Rule 9-I(1) in three offices <sup>55</sup> .	9	208.69

<sup>53</sup> Eluru, Nandigama and Rajahmundry.

<sup>54</sup> YV Lanka sand reach.

<sup>55</sup> Eluru, Guntur, Vijayawada.

Audit observation	No. of cases	Short Collection (₹ in lakh)
<p><b>Stamp duty:</b> Section 17 of Registration Act provides for compulsory registration of lease deeds. Rule 9-I (2) of APMMC Rules, 1966 stipulate that a sand lease holder shall execute the lease deed for two year lease period with the ADMG concerned on stamp paper as per the provisions of Registration and Stamp Act. Audit noticed in 11 sand lease agreements, the lease holders executed lease deeds after payment of stamp duty on first year premium only, instead of on the total lease premium for two years, resulting in short payment of stamp duty. In respect of six other agreements, stamp duty was paid at a lesser rates resulting in short payment of stamp duty. Thus, the Mines department did not ensure correct remittance of stamp duty as stipulated in APMMC Rules, 1966. Besides, these lease deeds were not registered and registration fee also was foregone as the Mines department did not insist on registration of lease deeds.</p>	17	212.19

Government replied that (May 2013) short collection of SD was due to misinterpretation of rules and oversight by ADsMG concerned. Regarding incorrect adjustment of EMD and short collection of stamp duty, it was replied that there was no provision in the APMMC Rules specifying the due date for refund of EMD. ADsMG had collected lease amounts in four instalments and the EMD was considered as the first instalment. Stamp duty was collected on the first year lease amount since the lease was not continued for the second year.

However, (i) the EMD was adjusted as first instalment in contravention of Rules, (ii) as per provisions of Indian Stamp Act, stamp duty is payable at time of entering into lease agreement for which lease period is two years and there was no provision for payment of stamp duty in yearly instalments.

### 3.3 Operation of sand leases

#### 3.3.1 Undue benefit to leaseholders due to incorrect reckoning of lease period

According to Rule 9-B (1) of APMMC Rules read with Andhra Pradesh Government clarification<sup>56</sup> (June 2008) irrespective of the date of auction, period of lease of first year would cease by 31 March of that financial year, with the second year coinciding with the subsequent financial year. Further, as per Rule 9-P(a), the lessee should pay second year lease amount with 20 per cent enhancement on or before 45 days of the expiry of the first year lease period.

<sup>56</sup> Government Memo No. 4919/SPIU & Sand/2008-2 Dt. 13 June 2008.

In four ADMG offices<sup>57</sup>, in respect of 24 sand leases for lease period 2007-09, the Department incorrectly reckoned the first year lease period for 365 days from the date of execution of lease deed, instead of restricting the same up to 31 March 2008. As a result, lease amount was not enhanced by 20 *per cent* for the lease period starting from 1 April of the subsequent financial year (2008-09). This resulted in undue benefit of ₹ 56.05 lakh to the lessees.

Government replied (May 2013) that by the time they had issued clarification regarding tenure of a lease period, the sand auctions for 2007-09 were already finalized. ADMG, Guntur recovered an amount of ₹ 7.32 lakh from the sand lease holder. The same could not be collected in respect of other lease holders as lease period had expired and some of the leases were not operational in the second year. However, corrective measures could have been taken earlier in 2008 itself.

### **3.4 Grant of relaxations by State Government**

Audit scrutiny revealed following deficiencies in 80 cases of relaxations given by Government during the period 2007-2012:

#### **3.4.1 Incorrect condoning of delay in payment of second year lease amounts**

Rule 9-P of APMMC Rules provides that lessee shall pay KDA along with 20 *per cent* enhancement towards second year lease amount before 45 days of date of expiry of the first year lease period. DMG may condone delay in payment on a request before the expiry of first year lease period. If lessee fails to make payment before date of expiry of first year, Government may condone the delay in genuine cases if the request is received within 15 days after date of expiry of first year lease period. If no such payment is received, lease period gets expired by the first year ending itself and security deposit gets forfeited to the Government. The ADMG shall make necessary arrangements for leasing out the area through auction.

Under Rule 9-K(3), the Government shall have power to issue orders/clarifications, if any, not specifically mentioned in implementation of these rules.

Audit noticed in two cases<sup>58</sup> in two ADMG offices<sup>59</sup> and in one case<sup>60</sup> in AP Secretariat that Government irregularly condoned delay in payment of second year lease amount after expiry of due date for condoning. While the first year lease period of the sand reaches in these cases expired on 31 March 2008, lessees did not pay the second year lease amount within the stipulated time and represented to the Government between May 2008 and June 2009, with delays ranging from 21 to 421 days from the stipulated last date (15 April 2008). These late applications should have been rejected as invalid and the department should

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<sup>57</sup> Dachepalli, Eluru, Guntur and Srikakulam.

<sup>58</sup> Lankapally sand reach, Vemunur-Madiryal sand reach.

<sup>59</sup> Karimnagar, Vijayawada.

<sup>60</sup> Murmur - Goliwada sand reach.

have forfeited the security deposits and made arrangements for re-auction of these sand reaches. But this was not done.

Government replied (February 2014) that as per proviso to Rule 9-P, it is vested with power to condone the delay in payment of second year amount subject to conditions specified therein. They also stated that as per Rule 9-K(2), the Government has the power to condone the delay in the issue of confirmation orders, execution of lease deeds, etc., for valid reasons which were to be recorded. Also, as per 9-K(3), Government can issue orders/ clarifications if any, not specifically mentioned in the implementation of APMMC Rules.

However, Rule 9-P specifically stipulated the time schedule for payment of second year lease amount and request for condoning delay and action of the Government in the cases pointed out by audit was in contravention of these provisions. Rule 9-K(3) was also not applicable as all the cases pertained to specific rules. The action of the Government to use a general rule to override a specific rule was not in order.

#### **3.4.2 Irregular grant of permission to pay Koncked Down Amount (KDA) in instalments**

As per Rule 9-I of APMMC Rules, successful tenderer or bidder shall remit 25 *per cent* of the KDA within two working days from date of auction and remit the remaining 75 *per cent* of KDA and execute lease deed within seven days of the order of confirmation, while as per Rule 9-P, the lessee shall pay the second year lease amount on or before 45 days of expiry of the first year lease period. Under Rule 9-C, Registered Boatsmen co-operative societies are allowed to pay KDA in four equal instalments.

Audit scrutiny of files in the AP Secretariat revealed that the Government granted permission to pay KDA in instalments in 30 cases during lease periods 2007-09 to 2010-12 for reasons preferred by applicants such as financial problems, business loss, recession in the economy, ill health etc., and in some cases, without assigning reasons too. Such relaxation for payment by instalments was not only against provisions but also vitiated the sanctity of the auction process which did not permit payment in instalments in these cases.

Government replied (February 2014) that they had in exercise of the powers conferred under Rule 9-K(3), allowed the bidders to pay the bid amounts in instalments. But Rule 9-K(3) extends the power to issue orders/clarifications, if any, not specifically mentioned in implementation of APMMC Rules but did not empower the Government to contravene the provisions of Rules 9-I and 9-P.

#### **3.4.3 Irregular extension of lease period**

Rules 9-B (1) and 9-L of APMMC Rules stipulate that sand lease period shall not be for more than two years, and that successful tenderer or bidder shall have no claims for any compensation due to floods or heavy rains or any other situation and extension of the lease period shall not be granted under any circumstances.

Audit scrutiny of files in Secretariat revealed that in 34 cases, Government irregularly granted extension which ranged from 23 to 317 days for the lease periods 2000-01 to 2009-11. Further, in six cases<sup>61</sup>, extensions were granted between April 2008 and May 2009 to leases that had expired between September 2002 and September 2005. Irregular extension on these sand reaches resulted in undue favour to lessees.

In contrast, in similar cases<sup>62</sup>, Government had rejected (April 2009 and September 2009) the representations of three lessees for extension on the ground that there was no provision in Rule 9-L to extend the lease period.

Government's reply (February 2014) that extension of lease period was allowed on a case to case basis was not tenable as there was no such provision in the rules. Hence, not only was extension of lease period granted by the Government irregular, but the differential treatment of applicants was also indicative of arbitrariness and lack of transparency.

#### 3.4.4 Irregular grant of refunds

As per Rule 9-P (a), lessee should pay second year KDA along with 20 *per cent* enhancement on or before 45 days of the expiry of the first year lease period. If no such payment is received, lease period gets expired by first year ending itself and the security deposit gets forfeited to the Government.

Audit scrutiny revealed in ADMG, Rajahmundry and in AP Secretariat that Government granted in 13 cases (between April 2009 and December 2011) (i) refund of EMD /proportionate KDAs in four sand reaches<sup>63</sup>, (ii) refund of security deposits in nine other sand reaches<sup>64</sup>. The details of refunds are shown in the following table.

Sl. No.	Name of the sand reach	Nature of refund	Amount of refund (₹)	Reasons for refund / Audit observation
1	Package No.1 Rajahmundry-Dowlaiswaram, East Godavari District	Refund of proportionate KDA.	47,85,274	Refunds for the non-operational period of the lease duration. Such refunds were in contravention to Rule 9-L.
2	Vemagiri – Kadiyapulanka	Refund of EMD and 25 <i>per cent</i> of KDA.	1,83,60,250	Non-payment of 75 <i>per cent</i> of KDA and lack of interest of the bidder in getting the lease. This refund was in contravention of Rule 9-I (4).

<sup>61</sup> Kanneveedu Sand reach (Nandigama), Reach No.12-Vykuntapuram (Guntur), Reach No.4-Godavarru (Guntur), Vedadri (Krishna District), Kistapur (Nizamabad) and Dharmora (Nizamabad).

<sup>62</sup> Memo No. 3374/SPIU&SAND/2009-1 Dt 17 April 2009, Memo No. 7760/SPIU& SAND/2009-1 Dt 22 September 2009, Memo No. 12223/SPIU&SAND/2009-1 Dt 23 September 2009.

<sup>63</sup> Package No.1 Rajahmundry-Dowlaiswaram, Vemagiri – Kadiyapulanka, Kolachanakota (Prakasam District) and Alamuru.

<sup>64</sup> Ankampalem, Bodaskurru, Jonnada, Kapileswaram, Kondakuduru, Korumilli, Kothapeta-Kedarlanka, Muggalla and Pallamkurru.



Sl. No.	Name of the sand reach	Nature of refund	Amount of refund (₹)	Reasons for refund / Audit observation
3	Alamuru sand reach	Refund of proportionate KDA.	32,70,000	Non-operation of sand reach for three months and 17 days though alternate ramp point was provided by the department. This was in contravention to Rule 9-L.
4	Kolachanakota sand reach, Maddipadu Mandal, Prakasam District	Refund of KDA	50,70,000	The bidder had requested the Government to refund the amounts paid by him since he was unable to run quarry due to ill health. The refund was made in contravention of Rule 9-L.
5	Nine sand reaches <sup>64</sup> in Rajahmundry	Refund of Security deposit	1,04,66,205	The lessees did not pay second year lease amount and had voluntarily withdrawn from leases. Refund of security deposit was in contravention to Rule 9-P (a).
			<b>4,19,51,729</b>	

The refunds in 13 cases amounted to ₹ 4.19 crore. In contrast, in a similar case of request for refund of KDA in case of Madanuru and Ethamukkala sand reach of Prakasam District, Government had rejected (September 2009) the representation of a lessee on the ground that there was no provision to refund the amount as per rule 9-L. This indicates differential treatment of lessees by the Government.

Government replied (February 2014) that they had ordered for refunds in exercise of their power under Rule 9-K(3). However, Rule 9-K(3) did not empower the Government to contravene the existing rules.

### 3.4.5 Delay in disposal of cases by Government

There is no time limit in the Rules within which the applications/ representations of the lease holders/bidders/general public are to be disposed of by the Government. In 52 cases, Audit observed delay in disposal of cases/ applications at Government level, ranging from two to 468 days, besides loss of revenue. Illustrative cases of undue delay at Government level are summarised as follows:

Date of application/date of disposal/delay	Remarks
02 April 2008/ 13 May 2009/ 13 months	A lessee who was given lease of Viloachavaram Sand reach, Karimnagar district for the lease period 22 August 2007 to 31 March 2009 failed to pay the second year amount on the due date (15 February 2008) and approached the Government vide application dated 2 April 2008 to reckon the first year lease period from 22 August 2007 to 21 August 2008. Such reckoning is against Rule 9-B (1) of APMMC Rules. The lessee stopped quarrying from 1 April 2008. Though the necessary reports were

	received from the DMG in April 2008, the Government disposed of the application only in May 2009 after a delay of 13 months. Till that time, the reach was not quarried. The lessee was given extension of lease period in contravention of Rule 9-L of APMMC Rules for one year up to 31 March 2010 which has been commented upon in para 3.4.3 <i>ibid</i> . Delay in disposal of the application by the Government resulted in loss of revenue of at least ₹ 130.21 lakh <sup>65</sup> due to non-re-auction of the reach for 13 months during the period from 01 April 2008 to 13 May 2009.
15 October 2008/ Not disposed (March 2012)/ 20 months	<p>Krishna Country Canal Boat Works LCC Society appealed (Oct 2008) to the Government to stay the auction of Gollapudi Sand reach, Krishna district proposed to be conducted on 03 November 2008 in view of a writ petition (WP 13885/2007) pending in AP High Court relating to sand quarrying in that reach. The Government ordered (18 October 2008) stay of auction process until further orders and requested DMG to send a detailed report on the matter. Meanwhile, the writ petition was dismissed by the High Court on 15 June 2010. The Government did not dispose the appeal (March 2012) in spite of receiving reports (August 2010) from the officials concerned.</p> <p>Thus, due to non disposal of the application the reach remained un-auctioned and such delay had resulted in loss of revenue of ₹ 1.77 crore<sup>66</sup>.</p>

Government admitted (May 2013) that delay on the part of the Government in these cases was mainly due to administrative reasons.

### 3.5 Other points of interest

#### 3.5.1 Cancellation of sand reach auction resulting in undue benefit to a cement company

As per Rule 9-M(2) of the APMMC Rules, due to any exigency and with the approval of State Government, DMG may order for issue of temporary permits (TPs) in any area on nomination basis through Andhra Pradesh Mineral Development Corporation (APMDC), pending finalization of auctions. Such TPs shall be issued for a period not exceeding 60 days.

During audit scrutiny it was noticed that notification (17 December 2007) for auction of sand in Shiva Sagar submergence area<sup>67</sup> was issued by the ADMG, Tandur, Rangareddy district. The auction was scheduled to be held on 7 January 2008; 22 tenders were received, out of which 21 bidders had paid EMDs.

Meanwhile DMG recommended (20 December 2007) to the Government for issuance of TPs to APMDC for a cement manufacturing company for lifting

<sup>65</sup> Calculated at ₹ 1,00,16,000 (KDA) with 20 per cent enhancement for 13 months.

<sup>66</sup> Worked out at the minimum bid amount of ₹ 1.06 crore p.a. fixed by the DLC during the year 2008-09 for the period from August 2010 to March 2012 (20 months).

<sup>67</sup> Over an extent of 1,200 metres length, 50 metres width and two meters depth with an MBA of ₹ 30 Lakh.

sand quantity of 30,000 cu. m. from the notified sand reach, for construction of their cement plant at Belkatur village of Tandur Mandal. Just before the scheduled auction of the sand reach, Government permitted<sup>68</sup> (3 January 2008) TPs for a period of 60 days to lift 30,000 cu. m of ordinary sand in favour of APMDC. Before issuing the TPs, the DMG instructed (16 January 2008) the ADMG, Tandur, Rangareddy district for refunding EMDs to the bidders, although the auction was not formally cancelled by the Government. TPs were issued on 23 April 2008 for a period of 60 days i.e. up to 30 June 2008.

However, on completion of the term of TPs, Government extended<sup>69</sup> (18 July 2008) the validity period for another 60 days as the cement company could lift only 20,000 out of 30,000 cu. m in the first 60 days. Contravening provisions of Rule 9-M(2) of APMMC Rules which provides that TPs should be issued pending finalization of auctions, Government cancelled (18 February 2008) the auction notification dated 17 December 2007 itself and also ratified action of the DMG in refunding the EMDs to the bidders. The cancellation of auction and extension of TP rendered undue benefit to the cement company. Government's action resulted in loss of revenue of at least ₹ 30 lakh (minimum bid amount as mentioned in the auction notification).

Government (February 2014) replied that District Level Committee requested Government to cancel the auction notification and that grant of TPs to the cement company was done on the recommendations of DMG. Action of Government in cancelling the auction notification was in contravention to Rule 9-M(2) of APMMC Rules as per which TPs can be issued only for 60 days, pending finalization of auction and not by cancelling the auction itself.

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<sup>68</sup> Memo No.19457/SPIU & SAND/2007-1 Dt.3 January 2008.

<sup>69</sup> Memo No.9023/SPIU & SAND/2008-1 Dt.18 July 2008.