

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 365 OF 2017**

SHRI DHARMA K. BHOMKAR,
son of Krishna Shanu Bhomkar,
aged 68 years, Indian National,
business, resident of House No.
244, Voilo Wado, Bhoma,
P.O.Marcel, Ponda-Goa.

... **Petitioner**

Versus

1. STATE OF GOA, through its
Chief Secretary, having Office at
Secretariat, Porvorim,
Bardez-Goa.
2. THE REVISIONAL AUTHORITY,
SECRETARY (MINES),
Government of Goa, having
Office at Secretariat,
Porvorim, Bardez-Goa
3. THE DIRECTOR OF MINES &
GEOLOGY, Directorate of
Mines & Geology, having Office
at Institute Menezes Braganza,
Panaji – Goa

... **Respondents**

Mr. Devidas J. Pangam, Advocate for the Petitioner.

Mr. Pravin Faldessai, Additional Government Advocate for Respondents no.
1 and 3.

Coram:- F. M. REIS &

NUTAN D. SARDESSAI, JJ.

Date : 24th July, 2017.

ORAL JUDGMENT: (Per. F. M. REIS)

Heard Mr. Devidas J. Pangam, learned Counsel for the Petitioner and

Shri Pravin Faldessai, learned Additional Government Advocate for the respondents no. 1 and 3.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the respondents waive service.

3. The challenge in the above Petition is to the Order dated 20.10.2016 passed by the Secretary, Mines & Geology, Government of Goa whereby penalty of five times the royalty payable was imposed on the Petitioner. Mr. D. Pangam, learned Counsel appearing for the Petitioner points out that similarly placed persons who had bonafidely extracted mineral ore were imposed penalty to the extent of two and half times by an Order dated 30.04.2013 passed by the same Department. Learned Counsel further submits that though such Orders were produced before the concerned authority, there are no discussions found therein to disclose why a different view was taken with regard to the Petitioner.

4. Mr. Faldessai, learned Additional Government Advocate points out that though, according to him, the Respondent no. 2 is empowered to impose such penalty as it deems fit, nevertheless, the impugned order does not disclose the reason why such Orders produced by the Petitioner were not examined. Learned Counsel also points out that jurisdiction exercised by the Respondent no. 2 is in accordance with law.

5. We have duly considered the rival contentions and we have also gone through the records. On perusal of the records it appears that the reasons to discard the Order dated 30.04.2013 has not been categorically disclosed by the Respondent no. 2 whilst passing the impugned order. In such circumstances, without going into the merits of the rival contentions, in the interest of justice it would be appropriate to quash and set aside the impugned order and remand the matter to the Respondent no. 2 to consider the imposition of penalty afresh after hearing the Petitioner in accordance with law.

6. In view of the above, we pass the following:

ORDER

- (i) The impugned order is quashed and set aside.
- (ii) Respondent No. 2 shall proceed to take a fresh decision in the subject matter in accordance with law.
- (iii) All contentions of the parties on merit are left open.
- (iv) Rule stands disposed of, accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

msr.