IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 309 OF 2017
(Rajesh s/o Marotrao Khandar vs. The Collector, Bhandara & Ors.)
AND
CRIMINAL WRIT PETITION NO. 311 OF 2017
(Narendra s/o Chandrabhan Hajare vs. The Collector, Bhandara & Ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's Orders.	Court's or Judge's orders.

CORAM : B.P. DHARMADHIKARI &
V.M. DESHPANDE, JJ.
MAY 03, 2017.

Heard Shri S.P. Bhandarkar, learned counsel for the petitioners and Shri V.A. Thakare, learned Additional Public Prosecutor for the respondents.

2. The hearing is in furtherance of the orders passed on 19.04.2017.

3. The short grievance now made is about abuse of powers by Respondent No. 4.

4. Shri Bhandarkar, learned counsel submits that penalty if legally recoverable, could have been computed only on the quantum of sand found in excess and not on entire quantity of sand being transported. Thus, his submission is, quantity of sand in respective trucks supported by Transport Permit (TP) could not have been subjected to levy of penalty.

5. The learned APP disputes this. According to him,

provisions of Section 48(7) of the Maharashtra Land Revenue Code, 1966, enable the State Government to issue necessary guidelines/ circular. Accordingly, in exercise of that power, a circular has been issued and that circular envisages levy of penalty on entire quantity of sand found in the truck when it is checked. He is seeking time to produce that circular on record.

6. Shri Bhandarkar, learned counsel submits that this issue can be left open and as Respondent No. 4 has personal grievance against the petitioners, if the controversy is looked into by Respondent No. 1 – Collector and orders are passed by him, the petitioners shall, before challenging that order, deposit the amount with the competent authority.

7. The learned APP is opposing any such direction.

8. We are considering the controversy since 04.04.2017. The respondents have already filed their reply. We have also perused language of Section 48(7) of the Maharashtra Land Revenue Code. Instead of adjourning the matter, we find the request made by Shri Bhandarkar, learned counsel, fair and reasonable.

9. Accordingly, we direct Respondent No. 1 – Collector to consider the entire material available on record, to provide an opportunity of hearing to the petitioners and to pass fresh orders on the controversy within a period of

two weeks from today.

10. The petitioners shall appear before Respondent No. 1 for said purpose on 06.05.2017 and to abide of his further instructions in the matter. Respondent No. 1 shall look into all relevant documents, legal provisions and pass suitable orders within two weeks. Only to facilitate this exercise, we quash and set aside the order passed by Respondent No. 4 – Tahsildar, levying penalty upon the respective petitioners.

11. The contentions of Shri Bhandarkar, learned counsel for the petitioners, raised in reply to the arguments of the learned APP, are left open and can be looked into, if occasion therefor arises, after the order is passed by the Collector. However, as stated by the petitioners, they shall, before arguing such challenge, deposit the amount of penalty with the Competent Authority, as per orders of the Collector. After receipt of penalty amount, the vehicles shall be released to the petitioners immediately.

12. Writ petitions are thus partly allowed and disposed of. No order as to costs.

JUDGE **JUDGE**

*GS.