

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 912 OF 2018

Priya Constructions,
Through Murlidhar S/o. Sheshrao Khupse,
Age : 54 years, Occu : Business,
R/o. Shivram Nagar, Near Shivram Talkies,
Parbhani, Dist. Parbhani. ...Petitioner.

Versus

1. The State of Maharashtra,
Through Secretary, Revenue
and Forest Department,
Mantralaya, Mumbai – 32.
2. Additional Commissioner,
No. 2, Divisional Commissioner Office,
Aurangabad Division, Aurangabad.
3. The Collector, District Parbhani.
4. The Sub-divisional Officer,
Parbhani Sub-Division, Parbhani,
Dist. Parbhani. ...Respondents.

Advocate for the Petitioner : Mr. S.S. Tope.
AGP for Respondent Nos. 1 to 4 : Mr. V.S. Badakh.

CORAM : RAVINDRA V. GHUGE, J.
DATED : 28th February, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The Petitioner is aggrieved by the following orders:

(a) Order dated 10/07/2017, passed by the Sub-Divisional Officer, Parbhani.

(b) Order dated 20/09/2017, passed by the Additional Collector, Parbhani.

(c) Order dated 14/12/2017, passed by the Additional Commissioner, Aurangabad, in Appeal No. 143/2017.

3. I have considered the submissions of the learned Advocate for the Petitioner and the learned AGP, on behalf of the Respondents. An affidavit-in-reply along with certain documents have been filed on behalf of the Respondents.

4. The Petitioner claims to be a registered firm as a Government Contractor. It has four fully built tippers. The Petitioner/Firm also runs a Hot Mix Plant. It has a contract for laying the Tar Road at village Borwan, Taluka and District Parbhani.

5. The contention is that while transporting Stone Aggregate, which was converted into a construction

material in the Hot mix plant used for laying the Tar Road, on 07/06/2017, its Truck bearing No. MH-22-AA-3025 was apprehended purportedly by the Tahsildar, Parbhani. A notice was issued on the same day on 07/06/2017, under Section 47 (7 and 8) of the Maharashtra Land Revenue Code, 1966, calling upon the Petitioner to deposit the penalty of Rs. 31,850/- for having illegally carried the material called as Stone Aggregate or Gitti. It is undisputed that the said amount has been deposited by the Petitioner. He prayed for release of the Truck on 14/06/2017.

6. On 16/06/2017, a notice was issued by the Sub-Divisional Officer, Parbhani, contending that the Petitioner has committed the offence of unlawful transportation of minor minerals by using the same Truck, which is said to be a second offense. Hence, the bond executed earlier on 24/10/2016, was being pressed into service. He was called upon to show cause within 24 hours, as to why action should not be initiated against him. The Truck, however, seized on 07/06/2017, was not released.

7. The Petitioner tendered its reply on 20/06/2017,

contending that he has already deposited the royalty amount of Rs. 10,66,500/- with the Government for the year 2016-2017, towards purchase and the use of Stone Aggregate in order to perform his obligations under the contract. He had similarly paid a royalty of Rs. 84,56,307/- for the year 2016-2017. Learned counsel for the Petitioner submits that what was being carried through the Truck was the product manufactured by the Hot Mix Plant and not any minor mineral. In his reply, he, therefore, prayed for releasing the Truck as he has not deprived the State of a single penny of royalty.

8. Learned counsel for the Petitioner submits that the impugned orders are unsustainable in the light of the non-compliance of Section 48 (7 and 8), in as much as, the authorities have over looked the fact that the Truck, which was seized, was in fact carrying the material manufactured in the Hot Mix Plant by using the Stone Aggregate and the Petitioner had already paid the cost of the Stone Aggregate as well as the royalty.

9. Reliance is placed upon the following judgments :

(a) **Rumao Constructions and Others**
Versus State of Maharashtra [2010 (6) BCR

236,

(b) The judgment of the learned Division Bench dated 14/01/2016 delivered at Nagpur in Writ Petition No. 6481/2015 in the matter of **Abdul Wahid Shaikh S/o. Abdul Karim Shaikh Versus State of Maharashtra and another.**

(c) The judgment of the learned Division Bench at Nagpur, dated 19/12/2017, delivered in the matter of **Neha Anil Agre Versus State of Maharashtra and others in Criminal Writ Petition No. 1105/2017.**

(d) The judgment of the learned Division Bench at Nagpur, dated 25/01/2016 in Writ Petition No. 6812/2015 and 6848/2015.

10. The learned AGP has strenuously opposed the petition and prays that this petition be dismissed with heavy costs. He submits that a proper Panchnama was carried out on 06/06/2017, when the said Truck was seized. The order dated 07/06/2017, clearly indicates the quantity of the material illegally transported and for which the penalty of Rs. 31,850/- was imposed under Section 48 (7 and 8). The Petitioner has accepted the said order and deposited the penalty which indicates that he has no grievance against the order.

11. He, further, points out the undertaking dated 10/11/2016, executed by the Petitioner, by which, he has bound himself to pay an amount of Rs. 10,00,000/-, if his vehicle is once again apprehended unauthorizedly transporting any mineral or metal.

12. He, therefore, submits on the basis of the record that clause '6' of the Notification dated 12/01/2018, mandates that the licence holder should carry a pass/permit for transportation of minor minerals and failure to possess such a permit, would make a person or party liable for penalty or action. Clause '9' of the said Notification also indicates the manner in which the pass would be issued and the manner in which the pass should be preserved at least for one year by the concerned pass/permit holder.

13. The learned AGP, further, submits that the Notification of 2018, was introduced for effecting minor changes in the Rules which are called as the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013. The provisions which have been subjected to the amendment by the Notification dated 12/01/2018, would equally make the Petitioner

liable for action, considering the fact that his Truck was seized while illegally transporting the concerned Metal, which is commonly known as Gitti.

14. I find that the whole issue would turn upon the Panchnama prepared by the Circle Officer from Jamb Circle. Besides the Circle officer, two persons namely Ravi Laxmanrao Thorat and Raju Laxman Suryawanshi have signed as Pancha. I do not find that the Panchnama indicates that after the Truck was halted while being in transportation and was seized, that the Panchnama was prepared on the Spot.

15. The Panchnama indicates that the two Panch assembled at an unknown place (not mentioned in the Panchnama) on the directions of the Circle Officer, Jaamb. The Circle Officer has prepared the Panchnama in which it is written that the Sub-Divisional Officer namely Dr. Suchita Shinde has seized the Truck at Taroda Pati in the Jamb Circle bearing MH-22-AA-3025, as it was unauthorizedly carrying Gitti. The said Truck is now parked at the Tahsil Office, Parbhani. It is, therefore, a matter of speculation as to how did these two Panch know that this Truck is parked at Parbhani

and the Panchnama is carried out probably at Jaamb.

16. I do not find that the Panchnama would indicate that these Panch have witnessed the seizure of the Truck, have seen the material that it was allegedly unauthorizedly transporting and that the Sub-Divisional Officer was herself present at the Spot while intercepting the Truck while causing its seizure.

17. In the Rumao Construction's Case (Supra), the learned Division Bench has observed in paragraph No. 15 as under :

"15. In view of the fact that we have found the action of the authorities to be totally high handed, arbitrary and illegal, we would be failing in our duty, if we do not direct the higher officials of this revenue and the police departments to take corrective measures so that such actions are not repeated in future. We therefore direct to the Collector, Thane to conduct an inquiry in respect of the seizure of the two vehicles without any procedure being followed by the officials working under him and more especially the officials of the flying squad."

It is, therefore, obvious that the Collector, Thane was directed to conduct the enquiry in respect of

seizure of the two vehicles, as no procedure was followed by the officials of the Flying Squad.

18. In the Abdul Asif's Case (Supra), the learned Division Bench has observed in paragraph Nos. 4 to 7 as under :

"4. It is submitted that the action of seizing the trucks was undertaken by the Circle Inspector and in view of the provisions of Section 48(8) of the Code of 1966, he is not so authorized to do so. It is further submitted that this issue has been considered in Writ Petition No.6481 of 2015, wherein the order of seizure was set aside on the ground that the same was effected by the Circle Officer.

5. Shri Ambarish Joshi and Mrs. Mrunal Naik, the learned Assistant Government Pleaders appearing on behalf of the respondents, support the impugned action. It is submitted by them that as the trucks were overloaded and carrying sand in excess of the permission granted, the said action came to be initiated. It was further submitted that there was authorization by the Tahsildar in favour of the Circle Officer and, hence, there was no reason to interfere with the same.

6. Perusal of the seizure documents indicates that said action has been taken by the Circle Officer. An identical issue was considered in Writ Petition

No.6481 of 2015 in which it was held that under Section 48 (8) of the Code of 1966, it was only the Collector or an officer appointed by him not below the rank of Tahsildar who could take necessary action. Though there may have been an authorization in favour of the Circle Officer by the Tahsildar, such sub-delegation is not contemplated by the aforesaid provisions. The aspect that the trucks were overloaded would be no reason to justify the action by the Circle Officer. In absence of any jurisdiction to seize the trucks in the light of the provisions of Section 48(8) of the Code of 1966, said action cannot be sustained.

7. In view of the aforesaid, the writ petitions are allowed. The action of seizing the petitioners' vehicles is held to be without jurisdiction. The respondent no.2 shall release the aforesaid vehicles within a period of 3 days. The learned Assistant Government Pleaders shall communicate this order to the respondent no.2 for taking necessary steps.

Rule is made absolute in the aforesaid terms. No order as to costs."

19. In Neha Anil Agre's Case (Supra), the learned Division Bench has observed in paragraph Nos. 6 and 7 as under :

6. *The aforesaid provisions are not at all attracted in case, where any person extracts or removes mineral i.e. sand in question, with lawful authority. It is attracted where extraction of minor mineral by any person, is without assignment of such right by the State Government. It is attracted if extraction is from the area in excess of one, which is assigned by the State Government. If the transporter of mineral is different than the assignee of rights of extraction then he cannot be booked under the said provisions for unauthorisedly carrying the sand extracted, unless it is shown that the extraction of sand by assignee is unauthorised and illegal. The provision does not empower the respondents to seize and confiscate the vehicle carrying minerals in excess of weight permitted to be carried by the vehicle in question.*

7. *It is not in dispute that the respondent no.4-M/s.S.R.Traders was the assignee, authorised by the State Government to extract the sand from the ghat in question. The petitioner was employed by the respondent no.4 to render services of transportation of sand from the ghat. There is neither any show cause notice issued nor any action is taken against the respondent no.4 for unauthorised or illegal extraction of sand nor any penalty is imposed for that purpose. In view of this, the petitioner, who is found to be transporting the extracted sand, cannot be booked for payment of royalty or fine. The*

provisions of sub-sections (7) and (8) are, therefore, not at all attracted and the action taken by respondents to seize and confiscate the minerals and the vehicle under the said provisions cannot be sustained.”

20. In Abdul Wahid's Case (Supra), the learned Division Bench has noted in paragraph No. 3, 4, 6 and 7 as under :

“3. It is the case of the petitioner that he is the owner of truck bearing No.MH-40-Y-8286 which is duly registered. On the basis of a transport pass issued by the competent authority, the petitioner's truck was loaded with black crush metal on 19.10.2015 from Sai Baba Stone Crusher owned by one Shri Sachin Laxmikant Pitle. After the truck was loaded and was being taken, the same was stopped by the respondent no.2 and on the ground that necessary documents were not made available, the truck came to be seized. On the next day, the petitioner sought release of the truck on the ground that no illegal activities had been committed by him. As the truck was not released, the petitioner has filed the present writ petition.

4. Shri T.H. Bewali, the learned Counsel for the petitioner submitted that the minerals in question were sought to be transported on the basis of a valid transit pass. The action of seizure of the

truck was initiated by the respondent no.2 in violation of Section 48 (7) and 48 (8) of the Code of 1966. It is submitted that despite all the relevant documents being furnished for inspection, the vehicle of the petitioner was not being released resulting in unnecessary loss to the petitioner.

6. A perusal of the provisions of Section 48 (8) of the Code of 1966 indicate that it is only the Collector or any Revenue Officer not below the rank of Tahsildar who can seize and confiscate any material or/and seize and confiscate any machinery and equipment used for unauthorized extraction. Under Section 7 (4) of the Code of 1966, it is the Collector who appoints a Circle Officer and the hierarchy mentioned therein clearly indicates that he is much below the rank of Tahsildar.

7. Thus, in view of the clear provisions of Section 48 (8) of the Code of 1966 and it not being disputed that the action of seizure having been effected by the Circle Officer, the entire exercise is without jurisdiction. Hence, on this short ground, the impugned order of seizure of the petitioner's vehicle is liable to be set aside. Accordingly, the following order is passed.

(i) The action of the Circle Officer of seizing the

petitioner's vehicle is held to be without jurisdiction. The respondent no.2 is directed to release the vehicle of the petitioner within a period of 24 hours.

(ii) The learned Assistant Government Pleader shall communicate this order to the respondent no.2 for necessary steps to be taken in that regard.

Rule is made absolute in the aforesaid terms with no order as to costs."

21. Considering the above, having noted the serious discrepancies in the Panchnama dated 06/06/2017 and the fact that the Circle Officer, Jamb, sent the vehicle to the office of the Tahsildar at Parbhani, which is quite contrary to the procedure that is expected to be followed under Section 48 (8) (1 & 2), it is obvious that the Truck was not seized by a Revenue Officer of the Rank of Tahsildar or above under the authorization from the Collector. Such Truck was admittedly not produced before the Collector or any Officer of the rank of the Deputy Collector or above within 48 hours of such seizure.

22. It is inconsequential whether, the said truck was actually produced before the District Collector or the Deputy Collector within 48 hours as I find that very seizure of the vehicle has been done without the due compliance of the procedure. The issue as to whether, the vehicle/machinery should be physically produced before the District Collector or Deputy Collector or whether, it is to be symbolically produced, only on paper, is an issue which I am not going into and therefore, the said issue is kept open for consideration in a given case.

23. In the light of the above, this petition is partly allowed. The impugned orders dated 10/07/2017, 20/09/2017 and 14/12/2017 are quashed and set aside. The said Truck bearing No. MH-22-AA-3025, shall be released forthwith. Respondent No. 3/Collector shall issue necessary orders to the competent authorities deployed in his district to ensure scrupulous compliance of Section 48 (8) in matters of seizure of Trucks/machinery/equipment etc. in such cases.

24. Nevertheless, it is made clear that the passing of this order would not amount to absolving the Petitioner

from any offence that is committed by him and the District Collector would be at liberty to follow the due procedure of law in the matter of alleged authorized transportation of Stone Aggregate or minor minerals by the Petitioner.

25. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

S.P.C.