

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2910/2018

Devendra S/o Dhanraj Thakare & anr.

..VS..

State of Maharashtra & anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI AND

Z.A.HAQ, JJ.

DATED : 22/06/2018

1] Heard Advocate Shri K.A. Kothari for petitioner and Shri N.R. Patil, learned AGP for respondents.

2] Before proceeding to pass orders, we gave opportunity to petitioner to appear before SDO and to raise all contentions before him. However, learned Advocate upon instructions, states that his experience at the office of SDO is not good. Therefore we are proceeding further to pass orders on merits.

3] The respondents have on 11/04/2018 seized a truck of petitioner no. 1 and JCB machine of petitioner no. 2 at a place known as Kirnapur. It is mentioned in seizure memo that at that time sand was being loaded in truck with JCB. It is mentioned that total five brass of sand was seen and truck was carrying four brass. After describing truck and JCB, name of driver of JCB is mentioned. JCB driver disclosed that he did not have any royalty. When investigation was going on, driver for truck ran away. He returned back after some

time. He then stated that the truck was being loaded as per orders of one Devendra Thakare (petitioner no. 1) and Tukadia. He also then disclosed that he was not having any royalty. Both vehicles were then seized.

4] Petitioners do not dispute that they learnt about the seizure of vehicle on same day. However, they have not made any representation or grievance in writing about alleged high handedness or illegalities.

5] In these facts, contention before this Court is, provisions of Section 48 (8) of Maharashtra Land Revenue Code have been violated by respondents. Seized machinery was not produced before respondent no. 1/SDO within 48 hours and contention of petitioners that truck was having a valid transport permit issued online by State of Madhya Pradesh has not been considered. It is further pointed out that order has been passed by respondent no. 1 without stipulating any amount and asking Tahsildar to pass necessary orders.

6] Copy of an electronic transport pass issued by Government of Madhya Pradesh on 10/04/2018 at 11:10 pm is also shown to this Court.

7] Reliance has been placed upon order of this Court dated 25/04/2018 at Aurangabad in W.P. No. 3616/2018 and the judgment dated 19/12/2017 delivered by Division Bench at Nagpur in Criminal W.P. No. 1105/2017.

8] Learned AGP on the other hand is relying upon the reply affidavit. He submits that vehicles were being used

together to transport sand and seizure has been effected at 4:00 am at a place which is not supported by alleged transport permit. Our attention is invited to the route map placed on record to show alternate routes available. Learned AGP submits that distance from alleged sand ghat in Madhya Pradesh to destination was less than 60 kilometers and truck could have completed that journey at the most in 1 hour and 32 minutes. The spot at which truck and JCB were seized is also shown in map pointing out its location away from these routes. Contention is, if the truck was to deliver sand at a prescribed destination, it was not necessary for that truck to deviate from that route. Our attention is also drawn to one more map to show that at a distance of 6.7 kilometers from spot of seizure, river bed of Kanhan river is located and according to respondents, sand was unauthorizedly collected from that ghat.

9] After hearing respective advocates, we find that though in para no. 8 of reply affidavit, respondents state that the vehicle had electronic transit pass, they have mentioned it as alleged electronic transit pass. They also mention that driver of truck ran away. In specific reply in para no. 14, entire chain of events has been disclosed. The affidavit sworn by Naib Tahsildar reveals that vehicles were first accosted, there was no royalty pass. Driver of truck had ran away and when he came back, he had a electronic transport permit in his mobile. The seizure memo and also reply disclose that earlier said driver had pointed out that he did not possess any transport permit.

10] Perusal of transport permit reveals that it is issued in District Chhindwara without mentioning the village of sand

ghat. The date and time of transportation recorded therein is 10/04/2018 at 11:10 in the night. It mentions the quantity to be 344.83 Cubic feet and place of loading is shown as Lohani stock. Destination is UTCL Uppalvade, Nagpur-18. Distance between two places is mentioned as 600 kilometers and travelling duration is 20:00 hours. TP is shown to be generated at 11:08 pm on 10/04/2018 and it is valid upto 11/04/2018 9.10 pm. The distance between Chhindwara and Nagpur City itself is not more than 150 kilometers. The transport permit mentions distance lesser than it to be 600 kilometers and time allotted to complete that journey is about 22 hours.

11] The maps placed on record show the available roads from spot of loading to destination. First map mentions that distance to be 59 kilometers and time taken is 1 hour 32 minutes. That map itself also gives alternate route and that route shows time required to be 1 hour 56 minutes. In said map, time taken to cover distance on foot is disclosed to be 10 hours. The other map, gives distance between Lohani to Kirnapur to be 24 kilometers.

12] When all these maps and map on which place of seizure is shown are compared, it is apparent that seizure is at a spot which is out of way for a driver who is carrying a mineral on transport permit.

13] The presence of JCB of petitioner no. 2 is also not explained. Learned advocate for petitioner no. 2 submits that that JCB was standing at a distance from truck and it was employed for some road work. No such document employing JCB machine for road work is produced on record.

14] The judgment dated 19/12/2017 delivered at Nagpur in Criminal W.P. No. 1105/2017 shows that there respondent no. 4 was assignee authorized by State Government to extract sand ghat. Petitioner before this Court was his agent who rendered transportation services. No action was taken against respondent no. 4 and action was initiated only against petitioners for transporting the sand allegedly illegally. It is in these facts that this Court has found initiation of action only against petitioners unjustified.

15] In order dated 25/04/2018 in W.P. No 3616/2018, Division Bench of Aurangabad has admitted writ petition for final hearing. It is therefore not a judgment which contains reasons in detail. The facts like one looked into by us are not appearing in that order. Only grievance was made in relation to violation of Section 48 (8).

16] We find that petitioners are not in a position to establish the legal relationship with the sand which was loaded in the truck. In this jurisdiction and in these facts, we are not inclined to disbelieve the narration of events recorded in seizure memo and reproduced on affidavit before us. Seizure memo itself shows that seizure has been effected at 4:00 pm in the afternoon at a place which is only 24 kilometers away from alleged place of loading in Chhindwara district.

17] Perusal of order dated 13.04.2018/19.04.2018 at Annexure-II shows that by that order, SDO had authorized Tahsildar to proceed further under Section 48 (8) of Maharashtra Land Revenue Code in terms of the Gazette

Notification No. 18 dated 12/01/2018. Contention that because petitioner no. 1 has got TP issued by Madhya Pradesh Government, action under Section 48 of MLRC cannot be taken, is not substantiated at all.

18] Petitioners have not approached this Court with clean hands and have made an attempt to mislead it. Taking overall view of the matter, we refuse to intervene in extraordinary jurisdiction. Writ petition is therefore dismissed. Rule discharged. No costs.

JUDGE

JUDGE

Ansari