

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**1055 WRIT PETITION NO.8552 OF 2019
WITH WP/9062/2019 WITH WP/9176/2019 WITH
WP/9177/2019 WITH WP/9181/2019 WITH WP/9188/2019
WITH WP/9191/2019 WITH WP/9053/2019 WITH
WP/9158/2019**

**SURESH KESHAV JAWARE AND OHERS
VERSUS
THE STATE OF MAHARASHTRA AD OTHERS**

...

**Advocate for Petitioners : Shri V.D.Hon, Senior Advocate I/b
Wagh Shirinivas S**

Adv.K.B.Borde(in WP9062/19)

Adv.R.N.Jain(in WPs9176,9177,9181,9188,9191/19

AGP for Respondents State : V.M.Kagne

...

WITH

1057 WRIT PETITION NO.9053 OF 2019

**KAILAS SAKHARAM NIKAM
VERSUS
THE STATE OF MAHARASHTRA AD OTHERS**

...

Advocate for Petitioner : Sonavane Narendra D

AGP for Respondents: V.M.Kagne

...

WITH

1061 WRIT PETITION NO.9158 OF 2019

**SHAIKH ISMAIL SHAIKH MUSA
VERSUS
THE STATE OF MAHARASHTRA AD OTHERS**

...

Advocate for Petitioner : Sonavane Narendra D.

AGP for Respondents: A.R.Kale

**CORAM : S.V.GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATE : 02/08/2019

PER COURT :

All these Petitions are based on similar set of facts and involve common question.

2] The petitioners claim to be engaged in the business of transport. In all these vehicles, the sand from Gujrat was being transported to Nasik and to other places in the State of Maharashtra. All these vehicles were intercepted at Nandurbar on the ground that the transportation of the sand was illegal and panchanama was drawn. It is the contention of the respondent State that the vehicles were seized by the Tahsildar.

3] We have heard Mr.V.D.Hon, Senior Advocate for the petitioners so also advocates for the respective petitioners and the learned AGP.

4] The common contention of the petitioners is that sand has been transported from Gujrat under valid pass and license from the State of Gujrat. It is not the case of illegal transportation of the sand. The respondents do not have any authority to detain their vehicles. The sand has not been excavated in the State of Maharashtra. The respondents do not have right to detain the said vehicles. The act of the petitioners do not come within the purview of the expression "illegal mining".

5] The petitioners placed reliance on the judgment of Supreme

Court in the case of State of Gujrat and others Versus Jayeshbhai Kanjibhai Kalathiya dated 1/3/2019 in Civil Appeals No.10373-10374 of 2010.

6] Mr.Kagne, learned AGP submits that the petitioners have no valid license of sand business of Maharashtra and Gujrat State. The vehicles of the petitioners are registered with the Gujrat State for the sand business. In view of Rule 83 of Chapter 16 of the Notification dated 24/5/2017 issued by Gujrat Government “No movement of ordinary sand shall be allowed beyond the border of the State”. The receipts issued by Gujrat are not valid beyond the State of Gujrat. In view of Section 48(7) and (8) of the Maharashtra Land Revenue Code, the Tahsildar is empowered to take necessary action against the vehicles that do not have valid receipts for transportation of sand. The petitioners have not submitted any valid license of Gujrat State in respect of transportation of the sand beyond the border of the Gujrat State. According to the learned counsel the Notification dated 24/5/2017 still stands.

7] We have considered the submissions canvassed by the learned counsel for the parties. The respondents seek to rely upon Clause 83 of the Notification dated 24/5/2017. The said clause reads thus :

“83. Prohibition of Transport of Minerals Beyond Border :-

(1) No movement of ordinary sand shall be allowed beyond the border of the State except to the Union Territory, Diu.

(2) The Government may, by notification, restrict the transport of any other mineral beyond the border of the State.

(3) In case any vehicle is found transporting any mineral referred to in sub-

rules (1) or (2), to the neighbouring State, it shall be treated as violation of Act and the rules made there under in this regard. In such case, the penal provisions as specified therein, except compounding provisions, shall be applicable.”

8] The Apex Court in the case of State of Gujrat referred to supra has observed and held thus :

“46] In order to justify any 'preference' or 'discrimination' under Article 303, a scarcity of goods would have to be made out. It is a matter of record that the Study Group's report on which reliance is placed by the appellant focuses on the need to restrict the export of sand outside India and not within India. In any case, nothing prevents the appellant from restricting the quantum of sand being excavated. However, once the appellant State permits sand to be excavated, neither can it legally restrict its movement within the territory of India nor is the same constitutionally permissible. Likewise, there is no restriction on the State importing sand from other states. If it is the case that the demand of any State is not being met, it may purchase sand from other States. In any event, the market will dictate trade in sand inasmuch as it may make no business sense for mining company to transport and sell its sand in a far away destination after incurring large costs on transportation.”

9] The Apex Court had considered the similar provisions as appearing in Clause 83 of the Notification dated 24/5/2017 while delivering the judgment in the case of State of Gujrat referred to supra. In the said case the Apex Court considered Rule 71 which reads thus :

“Rule 71. Prohibition to transport sand beyond border.
- No movement of sand shall be allowed beyond the border of the State. In case any vehicle is found transporting sand to the neighbouring State

even with authorized royalty pass or delivery challan, it shall be treated as violation of the Act and the rules made thereunder and the penal provisions, except compounding, as specified therein shall be applicable.”

10] The said provision is by virtue of the provision relied by respondents of Clause 83 of Notification dated 24/5/2017.

10] In view of the authoritative pronouncement of the Apex Court in the above referred judgment, it would not be possible to accept the contention of the learned AGP. The petitioners have produced the pass on record permitting transportation of the vehicle upto 500 Kms. The royalty passes/Permits issued by the Geology & Mining Department, Gujrat is placed on record. The same is for ordinary sand. The Issue Date and Time and Journey End Date is also specified. The name of the driver is also specified in the said royalty pass. The starting point of the journey and the destination is also specified in the said pass.

11] In light of the above, the action of the respondent cannot be sustained. The respondent shall release the vehicles detained by them under panchanama after confirming and verifying the documents. The respondent is also entitled to get the bond executed to its satisfaction.

12] As far as amount of penalty is concerned, the petitioners may avail the remedy of appeal as may be provided under the law. This order is subject to decision in appeal that may be filed by petitioners. Parties to act upon authenticate copy of this order.

13] Writ Petitions are accordingly disposed of. No costs.

(MANGESH S. PATIL,J.)

(S.V.GANGAPURWALA,J.)

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