

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

WRIT PETITION NO. 2354 OF 2020

Mahendra s/o Jaypal Wanjari

vs.

State of Maharashtra and others

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

Court's or Judge's orders

Shri. J. K. Matala and Shri. S. A. Mohta, counsel for petitioner.
Shri. N. R. Patil, AGP for respondents.

CORAM : MANISH PITALE J.

DATED : 29/09/2020

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this writ petition, the petitioner has challenged orders passed by the respondent No.6 Tahasildar and the respondent No.5 Sub Divisional Officer by exercising powers under The Maharashtra Land Revenue Code, 1966.

3. In the present case, the documents on record show that a Police Sub Inspector sent a communication on 30/10/2019 to the respondent No.6 Tahasildar, stating that on 17/10/2019 at about 10.00 a.m. a tractor and trolley belonging to the petitioner was found to be transporting minor mineral i.e. sand illegally. On the

basis of a general diary entry dated 17/10/2019, it was stated that when the driver of the tractor and trolley was asked to produce documents regarding transport of sand, he was unable to do so and he revealed the fact that the petitioner was owner of the tractor and trolley.

4. It appears that Circle Officer further submitted a communication dated 11/11/2019 to the respondent No.6 Tahasildar reiterating the aforesaid facts. On this basis, it appears that the respondent No.6 Tahasildar passed impugned order dated 11/11/2019 under Section 48(7) and (8) of the aforesaid Code to impose penalty on the petitioner.

5. Aggrieved by the said order, the petitioner filed appeal before the respondent No.5 Sub Divisional Officer. In the appeal, the petitioner specifically raised grounds to the effect that the necessary documents were indeed produced before the authorities and that the respondent No.6 Tahasildar failed to take into consideration the documents and also failed to provide proper opportunity of hearing. It was specifically stated in the appeal that the petitioner had sent a message to the concerned authority about breakdown of the tractor, due to which the sand could not be transported within the time period for which the transit pass was valid. The petitioner also placed on record a written statement supporting the grounds raised in the appeal before the respondent No.5 Sub Divisional Officer.

6. By the impugned order dated 24/02/2020, respondent No.5 Sub Divisional Officer has dismissed the appeal, thereby confirming the order passed by the respondent No.6 Tahasildar.

7. The petitioner has filed the present writ petition challenging the said orders passed by the aforesaid respondents. Upon notice being issued, affidavit-in-reply has been filed on behalf of respondent No.7. In the said reply, it is stated that the petitioner failed to produce relevant papers when the tractor with trolley were seized along with the sand being illegally transported. It is submitted that as per Rule 78 of the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013, any minor mineral being transported without valid papers amounted to illegal transportation of such minor mineral, leading to penal consequences. It was also pointed out that the petitioner was a regular offender and there were at least four similar cases registered against him.

8. The learned counsel for the petitioner has vehemently submitted that there was a valid transit pass available in the present case and that therefore, the transportation of sand could not be said to be illegal. It was submitted that although the time period for which the transit pass was valid was between 6.04a.m. to 8.19a.m. on 17/10/2019, due to breakdown of the tractor, the sand came to be transported beyond the aforesaid time period. It was submitted that an attempt

had been made to place the aforesaid explanation before the authorities below, but they had refused to take cognizance of the same and even proper hearing was not granted to the petitioner. It was further submitted that the petitioner had specifically sent a message to the concerned authority in the morning on 17/10/2019 itself about the breakdown of the tractor and this was evident from the document at page No.21 (Annexure – C) filed along with writ petition. It was submitted that none of these aspects have been adverted to by the authorities below and that therefore, the impugned orders deserved to be set aside.

9. On the other hand, the learned AGP appearing on behalf of the respondent submitted that it was an admitted position that when the tractor and trolley were apprehended, relevant papers were not produced before the authorities. This was further evident from the communication sent by the respondent No.7 to respondent No.6 and the Circle Officer to the respondent No.6 Tahasildar. It was submitted that the petitioner sought to give an explanation on the basis of transit pass and the validity of its time period for the first time before the respondent No.5 Sub Divisional Officer and then this Court. It was submitted that since the petitioner was a repeat offender, he did not deserve any indulgence from this Court.

10. Having heard the rival parties and upon perusal of the documents on record it is evident that as

per the communications sent by the respondent No.7 to respondent No.6 and the Circle Officer to respondent No.6, it was claimed by the authorities that the petitioner had utterly failed to produce any document to show that the transportation of the sand was legal. Yet, there is a transit pass placed on record before this Court showing its validity for the time period between 6.04a.m. to 08.19a.m. for 17/10/2019. There appears to be no dispute about the fact that the tractor and trolley carrying the sand were indeed apprehended by respondent No.7 at about 10.00a.m on 17/10/2019. This was clearly beyond the time period for which the transit pass was valid. But, it is also relevant to appreciate at this stage that the document at page No.21 placed on record with the writ petition by the petitioner shows that the petitioner claims to have informed the concerned authority about breakdown of the tractor. The petitioner is seeking to relate this to a message at 8.07a.m. from the concerned authority stating that “breakdown is not allowed to District Bhandara.”

11. It is on the basis of this document that the petitioner claims that the tractor had broken down and that therefore, sand could not be transported within the time period for which the transit pass was valid. This was an aspect which ought to have been taken into consideration by the authorities below while passing the impugned order.

12. The appeal memo filed before the Sub Divisional Officer in the present case, does show that the aforesaid specific ground was indeed taken by the petitioner in his appeal before the Sub Divisional Officer. Yet, perusal of the impugned order dated 24/02/2020 passed by the respondent No.5 Sub Divisional Officer shows that there is no reference made to such ground and the relevant document while dismissing the appeal. There are other aspects of the matter highlighted on behalf of the respondents which also do not find mention in the impugned order dated 24/02/2020 passed by the Sub Divisional Officer. Therefore, this Court is of the opinion that it would be appropriate to send this matter back to respondent No.5 Sub Divisional Officer for a fresh consideration of the appeal filed by the petitioner, with particular reference to the document mentioned above. The respondent No.5 Sub Divisional Officer shall consider the aspect of alleged breakdown of tractor claimed by the petitioner and the document on the basis of which such a claim is made. The respondent No.5 Sub Divisional Officer shall also call for the record pertaining to earlier offences registered against the petitioner to verify as to whether the petitioner has indulged such activities earlier also and if so, what is the stage at which such proceedings are pending against the petitioner. Respondent No.5 Sub Divisional Officer shall give reasonable opportunity of hearing to all parties concerned before disposing of the appeal.

13. In view of the above, writ petition is partly allowed in the following terms :-

(A) The impugned order dated 24/02/2020 passed by the respondent No.5 Sub Divisional Officer is quashed and set aside.

(B) The matter is remitted back to the said respondent for fresh consideration of the appeal filed by the petitioner, in terms of the observations made above in the present order.

(C) The petitioner shall appear before the respondent No.5 Sub Divisional Officer on **5th October, 2020** and the appeal filed by the petitioner shall be disposed of by the said respondent within a period of four weeks from 05/10/2020.

14. Writ petition is disposed of in above terms.

JUDGE