

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

WRT PETITION NO.868/2020

Sayyed Mushtaque Sayyed Yusuf and another
...Versus...
The District Collector Buldhana, Office of the Collector, Buldhana, Dist.
Buldhana and others

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

Court's or Judge's orders

Shri A.A. Syed, Advocate for petitioners
Ms Tajwar Khan, AGP for respondents

CORAM : AVINASH G. GHAROTE, J.
DATE : 27/08/2021

1. Heard Shri Syed, learned Counsel for the petitioners and Ms Tajwar Khan, learned Assistant Government Pleader for the respondents.

2. The order impugned is dated 23/12/2019, passed under the provisions of Section 47 (8) of the Maharashtra Land Revenue Code, 1966, on the ground that the time for transportation of sand, as per the transit pass, had expired when the vehicle was accosted and seized. The transit pass permits transportation between 6:40 a.m of 12/12/2019 to 6:25 p.m of the same day. However, the show-cause-notice dated 20/12/2019 is issued not on the

above ground but on the ground that there was suspected excess material. A statement has been placed on record dated 21/12/2019, addressed to the Tahsildar, which states that the vehicle had broken down and the bills of repairs were also annexed thereto. It is, therefore, submitted that since the show-cause-notice did not indicate that the transportation was beyond the permitted time limit, the consideration of such a plea in the impugned order, is clearly not justified. That apart, the statement given on 21/12/2019, has also not been considered.

3. Learned Assistant Government Pleader for the respondents tries to rely upon Appendix-XII, Regulation 6 of the Sand Policy in the Notification, dated 15/1/2016 to contend that in case of breakdown of the vehicle, it was necessary for the driver to send SMS in the specific format, which has not been done. She therefore submits that the plea of breakdown cannot be considered.

4. It is pertinent to note that the transit passes at page nos.14 and 15 permit the transportation of 2 (two) brass of sand and the vehicle was found, even as per the impugned order, not containing anything more than that.

5. Admittedly, the show-cause-notice, dated 20/12/2019, does not indicate that the vehicle was being

seized as it was found transporting sand beyond the permitted time limit, which being the case, passing of the impugned order on that basis, clearly would be impermissible, when such a plea has not been brought to the notice of the petitioners so as to afford them an opportunity to meet out the same. The impugned order dated 23/12/2019, passed by the Tahsildar, Buldhana therefore cannot be sustained on this ground alone. Similar is the position in respect of the order dated 6/1/2020, passed by the Sub-Divisional Officer, Buldhana in Revenue Appeal No.MNL-37/BULDHANA/10/2019-20.

6. That being the position, the impugned orders are quashed and set aside. The matter is remanded back to the Tahsildar, Buldhana to issue a fresh show-cause-notice and decide the matter afresh by affording proper opportunity to the petitioners, within a period of three weeks from today. No costs.

(AVINASH G. GHAROTE, J.)