

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

**WRIT PETITION NO.4397 OF 2022**

Vishal Babasaheb Dube @ Dhube,  
 Age 26 years, Occu. Business,  
 R/o. Aghur, Taluka Vaijapur,  
 District Aurangabad. .. Petitioner

Versus

1. The State of Maharashtra  
 Through its Secretary  
 Revenue Department, Mantralaya  
 Mumbai – 32.
2. The Tahsildar,  
 Tahsil Office Nandurbar,  
 Taluka and District Nandurbar .. Respondents

...

Mr. Narendra D. Sonawane, Advocate for Petitioner  
 Mr. S. P. Tiwari, A.G.P. for Respondents – State

...

**AND**

**WRIT PETITION NO.4406 OF 2022**

Akshay Pandurang Bangal,  
 Age 26 years, Occu. Business,  
 R/o. Rotegaon, Taluka Vaijapur,  
 District Aurangabad. .. Petitioner

Versus

1. The State of Maharashtra  
 Through its Secretary  
 Revenue Department, Mantralaya  
 Mumbai – 32.
2. The Tahsildar,  
 Tahsil Office Nandurbar,  
 Taluka and District Nandurbar .. Respondents

...

Mr. Narendra D. Sonawane, Advocate for Petitioner  
 Mr. S. P. Tiwari, A.G.P. for Respondents – State

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CORAM : R. D. DHANUKA &  
S. G. MEHARE, JJ.

DATE : 26-04-2022

ORAL JUDGMENT  
(PER : R. D. DHANUKA, J.) :-

Writ petition no. 4406 of 2022 is not board. Mentioned.  
Taken on board.

2. Rule. Learned A. G. P. waives service of notice for the respondents – State. Rule made returnable forthwith. Heard finally with consent of the parties.

3. By these petitions filed under Article 226 of the Constitution of India, the petitioners seek writ of *certiorari* and pray for quashing and setting aside the order dated 07.03.2022 passed by respondent no. 2 Tahsildar, Nandurbar directing to seize the vehicle of the petitioners and the show cause notice dated 07.03.2022 for non-payment of royalty and for not obtaining zero royalty pass for transportation of sand from other State to the State of Maharashtra, as the same is contrary to law. The petitioners have also prayed for writ of mandamus for an order and direction to release vehicles having Registration Nos. MH-20-EL-7599 and MH-20-EG-5299 of the petitioners, forthwith.

4. It is the case of the petitioners that, they are the owners of Truck having Registration Nos. MH-20-EL-7599 and MH-20-EG-5299 and also having permit in respect of transportation of goods. The said vehicles are used for transportation of the sand from village Nizar, Taluka Tapi, Gujarat State. Royalty passes to that effect were issued by the Commissioner of Geology and Mining, Gujarat on 05.03.2022 to transport the sand of 30 ton for the period from 05.03.2022 to 06.03.2022. The sand excavated in the State of Gujarat and transported to the State of Maharashtra. The said royalty passes mentioned the vehicle numbers and name of the petitioners.

5. The royalty is paid by Alpeshkumar Panchal, who is successful bidder of the said spot. Petitioners were transporting the sand from Gujarat to Vaijapur in the State of Maharashtra within the time prescribed in the royalty pass. Process of zero royalty pass was undertaken by the bidder. But, as the said process was online and on 05.03.2022, there was a problem in the server, zero royalty pass could not be issued by Collector office Nandurbar from where entry in the State of Maharashtra is taken by the vehicles transporting sand. On 5.3.2022, the vehicles of the petitioners entered into village Koparli of Nandurbar District when the Talathi of village Koparli stopped the vehicles and insisted for zero royalty pass. Panchnama was drawn, wherein it

has been stated that, the royalty pass issued by Gujarat State is shown but zero royalty pass is not shown and hence transportation of vehicles are illegal. The said report was forwarded to Tahsildar Nandurbar and vehicles are seized by Talathi Koparli.

6. It is submitted that respondent no. 2 Tahsildar Nandurbar has issued order dated 07.03.2022 about seizure of vehicle of the petitioner/s until further order and show cause notice was issued under Section 48(8) of the Maharashtra Land Revenue Code imposing penalty of the amount to the petitioner/s.

7. Learned counsel for the petitioners has invited our attention to the State Government Circular dated 05.02.2021 regulating the transportation of sand from the other States in the State of Maharashtra and also Judgment delivered by Nagpur Bench of this Court dated 07.04.2022 in Writ Petition No. 2078 of 2021 (*M/s. Shree Rajesh Pathak Versus State of Maharashtra and others*) and other connected matters. He submits that on the identical facts and issues involved in the matters, this court has declared the clause no. 5 of the said Circular dated 05.02.2021 issued by the Ministry of Revenue and Forest, Mantralaya, Mumbai is bad in law since the State Government has not been conferred with any authority or power to demand contribution to the DMF of the district on the entry and consequent transport of minor minerals

within the State of Maharashtra.

8. Learned A.G.P. on the other hand submits that when the petitioners' vehicles had entered in the territory of Maharashtra, the Government circular dated 05.02.2021 was in operation. Learned A.G.P. does not dispute that Clause 5 of the said Circular dated 05.02.2021, has been declared to be bad in law by Nagpur Bench of this Court in the Judgment in the case of M/s. Shree Rajesh Pathak (*supra*). He submits that rest of the conditions No. (I) to (IV) are incorporated in the said order, setting aside the order impugned in those writ petitions and this Court has already clarified in the Judgment that the said Circular dated 05.02.2021 shall operate excluding Clause 5 as aforesaid. It is clarified that the respondents are free to act under the provisions of Section 48 of the Maharashtra Land Revenue Code, 1966 in accordance with law, are not taken away.

9. Perusal of the said Judgment in the case of M/s. Shree Rajesh Pathak (*supra*) clearly indicates that by the said Judgment taking into consideration various Judgment of this Court and also the Hon'ble Supreme Court, Nagpur Bench has clearly held that, the State Government is not competent to demand an amount equivalent to 10% of royalty from an exporter of minor minerals who has excavated such minor minerals in another State and seeks to import such minor minerals into the State of Maharashtra

since such power to demand contribution to be made to the DMF where such minor mineral is being brought has not been conferred on the State Government under the Act of 1957. This Court has also held that, the State Government is not competent to demand an amount equivalent to 10% of royalty from a transporter of minor minerals who seeks to transport such minor minerals excavated in another State to the DMF of the district, while entering the State of Maharashtra since such power has not been conferred on the State Government under the Act of 1957.

10. It is also held by the Nagpur Bench of this Court that Clause 5 of Circular dated 05.02.2021 issued by the Ministry of Revenue and forest, Mantralaya, Mumbai is bad in law since the State Government has not been conferred with any authority or power to demand contribution to the DMF of the district on the entry and consequent transport of minor minerals within the State of Maharashtra. Clause 5 of the said circular dated 05.02.2021 shall not operate being excessive and travelling beyond the rule making power of the State of Maharashtra. Circular dated 05.02.2021 shall operate excluding Clause as aforesaid. The facts and circumstances of the aforesaid Judgment are squarely applicable to the facts and case of the present petitioners. We do not propose to take any contrary view.

11. We, accordingly, pass the following order :-

ORDER

- (i) Writ petitions no. 4397 of 2022 and 4406 of 2022 are allowed.
- (ii) The impugned orders dated 07.03.2022 impugned in these petitions passed by the respondent – Tahsildar, Nandurbar, thereby seizing vehicles of the petitioners and show-cause notice dated 07.03.2022 for non payment of royalty and for not obtaining zero royalty pass for transportation of sand from other State to State of Maharashtra, are quashed and set aside.
- (iii) The respondent no. 2 - Tahsildar, Nandurbar is directed to release the vehicles of the petitioners bearing Registration No. MH-20-EL-7599 and MH-20-EG-5299, forthwith.
- (iv) It is made clear that, the respondents are free to act under the provisions of Section 48 of the Maharashtra Land Revenue Code, 1966 in accordance with law.
- (v) Circular dated 05.02.2021 shall operate excluding Clause 5 thereof.
- (vi) Rule is made absolute in aforesaid terms. No order as to costs.

( S. G. MEHARE )  
JUDGE

( R. D. DHANUKA )  
JUDGE