

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

907 WRIT PETITION NO.5927 OF 2022

WITH  
WP/5940/2022  
WITH  
WP/5928/2022

AMOL SANJAY WALVE THROUGH POWER OF ATTORNEY HOLDER  
KIRAN MADHUKAR MORE  
VERSUS  
THE STATE OF MAHARASHTRA THROUGH PRINCIPAL SECRETARY  
AND OTHERS

...  
Advocate for Petitioner : Mr.Deshmukh Bhausaheb Sadashivrao  
AGP for Respondents-State : Mr.A.R.Kale  
...

CORAM : RAVINDRA V. GHUGE, &  
ANIL L. PANSARE, JJ.

DATE : 15.06.2022.

PER COURT :

1. We have considered the submissions of the learned counsel for the petitioners and the learned AGP for the respondent-State.

2. The petitioners have putforth prayer Clauses B & C as under :

B) The Hon'ble High Court may be pleased to issue a writ of certiorari or any other appropriate writ, direction or order thereby quashed and set aside the impugned order of penalty 23.07.2021 issued by respondent No. 4 and further orders confirmed by respondent Nos. 2 and 3 dated 21.10.2021 and 01.09.2021 consecutively.

C) Pending hearing and final disposal of present writ petition the respondent No. 4 may kindly be directed not to take any coversine action in respect with the vehicle bearing registration no. MH-15-FV-8085.”

3. We have perused the judgment delivered by this Court at the Nagpur Bench dated 07.04.2022 in Writ Petitions No. 2078 and 2086 of 2021 with Writ Petition No. 172 and 173 of 2022. It would be apposite to reproduce paragrapmh No. 22 as under :

“(I) It is 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.

(II) It is 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 direct while entering the State of Maharashtra since such power has not been conferred on the State Government under the Act of 1957.

(III) The petitioner in Writ Petition Nos. 2078 of 2021 and 2086 of 2021 would be entitled to refund of an amount of Rs. 2,00,000/- and Rs. 8,300/- respectively being the amount paid by them to the DMF. Such refund be made within a period of eight weeks from today.

(IV) It is held 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 5 as aforesaid.

(V) The order dated 07.12.2021 impugned in Writ Petition Nos. 2078 of 2021, 2086 of 2021, 172 of 2022 and 173 of 2022 calling upon the petitioners to pay an amount equivalent to 10% of amount of royalty to the DMF is set aside.

(VI) 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.”

4. In an identical set of circumstances, this Court (Division Bench) delivered a judgment on 26.04.2022 in Writ Petition No. 4397 and 4406 of 2022 at Aurangabad. Thereafter, Writ Petition No. 4961 of 2022 was considered by this Court (Division Bench) by the order dated 02<sup>nd</sup> May, 2022.

5. The learned AGP, opposes these petitions, not in the light of the conclusions drawn by the Nagpur Bench, as well as this Court, referred herein above, but on the ground that these petitions are likely to lie before the learned Single Judge.

6. Having considered the pleadings set out in these petitions, they are undisputedly identical to the pleadings in the judgments delivered by the Division Bench which we have referred to

in the foregoing paragraphs. We find that identical orders can be passed in these matters. Even if, all these petitioners were carrying sand excavated in the State of Gujarat across the borders of the State of Gujarat to Maharashtra, Clause 5 of the Circular dated 05.02.2021 is held to be inoperative by the above referred judgments. Those petitions are allowed. The impugned orders imposing penalty upon the petitioners are quashed and set aside.

7. In the first petition, as the Additional District Collector has passed an order dated 21.10.2021, directing the Tahsildar to once again consider the proceeding afresh, we dispose off the first petition with the direction to the Tahsildar that he shall read the above referred judgments which we are reproducing here under for ready reference :-

1. **M/s. Shree Rajesh Pathak Vs. State of Maharashtra and Ors – 2022 (3) BCR 231.**
2. **Vishal Babasaheb Dube @ Dhube Vs. The State of Maharashtra and Anr. -**
3. **Sudarshan s/o Rajkumar Badgujar Vs. The State of Maharashtra and Ors. -**

8. In so far as, second and third petitions are concerned, the impugned orders are passed by the Tahsildar, Shahada and

Nandurbar.

9. In Writ Petition No. 5928 of 2022, the Tahsildar has only issued a show cause notice dated 01.04.2022 to the petitioner. In Writ Petition No. 5940 of 2022, the Tahsildar, Nandurbar has also issued a show cause notice to the petitioners dated 04.06.2022.

10. Considering that, the two Tahsildars in these two matters have issued show cause notice, to which the petitioner has replied to, we deem it appropriate to direct the petitioners to place written notes of submissions along with the citations to appraise to both the Tahsildars that the proceedings for imposition of penalty would not be legally permissible. Let such written notes with copies of the judgments be placed before both these Tahsildars on 21<sup>st</sup> June, 2022 at 11.00 a.m. The Tahsildars would consider the judgments delivered by this Court at the Nagpur Bench, as well as at the Aurangabad Bench and pass appropriate orders within seven days on or before 28<sup>th</sup> June, 2022.

11. With these directions, these three petitions are disposed off.

( ANIL L. PANSARE )  
JUDGE

( RAVINDRA V. GHUGE )  
JUDGE