

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

WRIT PETITION NO. 7012 OF 2022

Shaikh Ansari Zameer S/o Shaikh
Abdul Haq,
Age : 38 Years, Occu. : Business,
R/o At Post Ajintha, Tq. Sillod,
Dist. Aurangabad.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Revenue and Forest Ministry,
Mumbai – 32.
 2. The Tahsildar, Jamner,
Tq. Jamner, Dist. Jalgaon.
- .. Respondents

**WITH
WRIT PETITION NO. 7050 OF 2022**

Deoram S/o Pandit Mahajan,
Age : 49 Years, Occu. : Business,
R/o Varkheda, Tq. & Dist. Dhule.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Revenue and Forest Ministry,
Mumbai – 32.
 2. The Tahsildar, Nandurbar,
Tq. & Dist. Nandurbar.
- .. Respondents

Shri Bhausahab S. Deshmukh, Advocate for the Petitioner in
both matters.

Shri S. B. Pulkundwar, A.G.P. for the Respondent Nos. 1 and 2
in both matters.

CORAM : SANDEEP V. MARNE, J.

DATE : 17TH OCTOBER, 2022.

ORAL JUDGMENT :

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. In these petitions, petitioners challenge show cause notices issued by the Tahsildar directing the petitioners to pay amounts demanded therein for release of their vehicles. During the pendency of the present petitions, final orders have been passed by the Tahsildar on 04th July, 2022 in Writ Petition No. 7012 of 2022 and 29th June, 2022 in Writ Petition No. 7050 of 2022. By amending the petitions, those orders have also been challenged.

3. Though the facts of both the petitions are similar, for the sake of convenience, facts of Writ Petition No. 7012 of 2022 are narrated.

4. Petitioner obtained permit from the State of Gujrat on 18.06.2022. The permit was valid from 18.06.2022 at 3.17 p.m. till 11.17 a.m. of 19.06.2022. Petitioner paid amount representing 10% of royalty to the Government of Maharashtra as per circular dated 05th February, 2021 and obtained zero royalty pass. According to the petitioner zero royalty pass is issued in the form of e-Transport Permit (eTP). The eTP was valid upto 02.48 a.m. on 19.06.2022. His vehicle was inspected by Talathi, Jamner on 19.06.2022 at 9.00 a.m. As he was found transporting sand beyond the time limit specified in the eTP, the vehicle was seized and show notice dated 20.06.2022 was issued

demanding an amount of Rs. 3,37,310/-. Petitioner responded to the show cause notice and order dated 04th July, 2022 has been passed demanding total amount of Rs. 3,37,310/- from the petitioner. Both show cause notice dated 20.06.2022 and final order dated 04.07.2022 are subject matter of challenge in the present petition.

5. Mr. Pulkundwar, learned Assistant Government Pleader for the State Government has raised a preliminary objection to maintainability of the petitions on the ground of availability of alternate remedy of challenging the order of Tahsildar by filing appeal under Section 247 of the Maharashtra Land Revenue Code, 1966 (for short “M.L.R. Code”).

6. Appearing for the petitioner, Mr. Deshmukh, learned counsel has submitted that since the order of Tehsiladar is without jurisdiction, Petitioners need not be relegated to alternate remedy of filing appeal. His plea of lack of jurisdiction is essentially referable to the judgment of this Court, Bench at Nagpur in **M/s Shree Rajesh Pathak Vs. State of Maharashtra**, Writ Petition No. 2078 of 2021 decided on 07th April, 2022. He would submit that by that judgment, para No. 5 of the circular dated 05th February, 2021 has been set aside and that therefore it is no longer necessary for the transporters transporting sand from other States to the State of Maharashtra to pay any amount to State of Maharashtra. He would further submit that the condition of obtaining zero royalty pass has been incorporated in para No. 6 of the circular only to ensure that due amount of 10% is recovered from the transporters. He would submit that since the condition of payment of such amount itself been set aside by

this Court, there would be no necessity of obtaining zero royalty pass. Therefore the order passed by Tehsildar is without jurisdiction.

7. Mr. Deshmukh would further submit that the petitioner was issued permit by the State of Gujrat, which entitled him to transport sand till 11.17 a.m. on 19.06.2022 and, therefore, at 9.00 a.m. on 19.06.2022, the petitioner was well within permitted time. He would submit that the action of seizure of vehicle carried out by the respondents is totally erroneous.

8. Per contra, Mr. Pulkundwar, learned Assistant Government Pleader for the State Government in support of his preliminary objection would contend that only para No. 5 of the circular has been set aside by this Court and it has been specifically directed that circular dated 05.02.2021 would operate excluding para No. 5. He also invites my attention to various other clauses of the circular to submit that under those paragraphs, the petitioner was bound to obtain E-permit and transport the sand within the time limit stipulated in the same.

9. Rival contentions of the parties now fall for my consideration.

10. The sheet anchor of Mr. Deshmukh in support of his contention is the judgment of this Court in **M/s Shree Rajesh Pathak** (supra). Therefore, it would be appropriate to reproduce operative portion of the said judgment which reads thus :

(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 district 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.

11. Perusal of the judgment in **M/s Shree Rajesh Pathak** (supra) would indicate that this Court was essentially dealing with the issue of entitlement of the State Government to demand amount equivalent to 10% of royalty from a transporter of minor minerals who seeks to transport such minor minerals excavated in another State. This Court has held in the said judgment that State of Maharashtra is not entitled to raise such a demand. Therefore, it has been directed that paragraph No. 5 of the circular dated 05.02.2021 would be non-operational. However while ordering so, this Court has specifically clarified that circular dated 05.02.2021 shall operate excluding para No. 5.

12. Now, I turn to the various terms and conditions of the circular dated 05.02.2021 to examine the submissions of Mr. Deshmukh that setting aside of para No. 5 of the circular would obviate the necessary for obtaining e-permit or to follow the time limit stipulated in any such e-permit. Para No. 5 of the circular made it mandatory for every transporter transporting minor minerals excavated from another State to State of Maharashtra to pay an amount equivalent to 10% of royalty. Para No. 6 of the circular provides for issuance of zero royalty pass. It further provides that such zero royalty pass should be issued only after payment of amount under para No. 5 of the circular. As observed hereinabove, this Court has set aside para No. 5 of the circular dated 05.02.2021 with a specific clarification that all other terms and conditions of the circular would operate. Under para 1 of the circular, it is mandatory for a person transporting minor

minerals from other states to register himself in the computer software programme in the concerned App. Various other conditions are also stipulated in the circular for issuance of the permission through that App. It is thus, undisputed that for the purpose of transport of minor minerals excavated from another State in the State of Maharashtra, permit of the State of Maharashtra is mandatory. Undoubtedly, the petitioner in Writ Petition No. 7012 of 2022 has obtained such permit in the form of eTP No. 5071956. Thus, it cannot be stated by any stretch of imagination that, the judgment of this Court in **M/s Shree Rajesh Pathak** (supra) would have the effect of nullifying requirement of obtaining permit from the State of Maharashtra for transport of minor minerals excavated in another State into the State of Maharashtra. Therefore, reliance of Mr. Deshmukh on the judgment in the case of **M/s Shree Rajesh Pathak** (supra) is of no avail.

13. Mr. Deshmukh has also placed strong reliance on the judgment of the Division Bench of this Court in **Vishal Babasaheb Dube @ Dhube Vs. The State of Maharashtra** in Writ Petition No. 4397 of 2022 decided on 26.04.2022. However, after going through that decision as well, I do not find that this Court has dealt with the issue of mandatory requirement of obtaining eTP for transport of minor minerals excavated in another State into the State of Maharashtra. It is therefore incomprehensible as to how the decision in **Vishal Babasaheb Dube @ Dhube** (supra) would assist the petitioner in the present case.

14. In the present case, the only reason why the petitioners' vehicles have been seized is because, they were found to be

transporting sand in violation of eTP, which permitted them to do so only within time stipulated in the same. The issue of entitlement of the State Government to pay an amount equal to 10% of royalty under para 5 of the circular dated 05.02.2021 is not involved in the present case and Mr. Deshmukh submitted that such amount have been paid by the petitioners. Even though Mr. Deshmukh has questioned the need for obtaining permit for transport of sand in the State of Maharashtra, it is also matter of fact that such permits have indeed been obtained by them. Having obtained such permits, petitioners cannot now take a *volte face* and question the need for procuring them. Since conditions of eTP were binding on Petitioner, they ought not to have violated the time limit stipulated therein.

15. I, therefore, conclude that the requirement of obtaining eTP for transport of minor and minerals excavated from another State in the State of Maharashtra would continue to operate notwithstanding setting aside of para 5 of the circular dated 05.02.2021 in the judgment of **M/s Shree Rajesh Pathak** (supra). The contention of Mr. Deshmukh that the order of Tahsildar is without jurisdiction is rejected. The preliminary objection raised by Mr. Pulkundwar is upheld.

16. Accordingly, present petitions are disposed of granting liberty to the petitioners to file appeals under Section 247 of the M.L.R. Code. If such appeals are filed within a period of two (02) weeks from today, same shall be decided on their own merits, in accordance with law and without being influenced by any of the observations made hereinabove within a period of four (04) weeks from the date of filing of the such appeals. Since the issue of

necessity of obtaining a permit or eTP is decided in this judgment, the Petitioners shall not be entitled to raise that issue in their appeals. With these observations, the Petitions are disposed off. There shall be no order as to costs. Rule is discharged.

[SANDEEP V. MARNE, J.]

bsb/Oct. 22