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

**WRIT PETITION NO.11462 OF 2022**

Ankush Ramdas Harpade,
Age 40 years, Occ. Business,
R/o. Bhabhad Sanap Wasti,
Tq. Nandgaon, Dist. Nashik ... **Petitioner**

VERSUS

1) The State of Maharashtra
Through its Secretary
Revenue Department, Mantralaya
Mumbai-32.

2) The Tahsildar,
Tahsil Office, Nandurbar,
Tq. & Dist. Nandurbar ... **Respondents**

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Advocate for Petitioner : Mr. Sonavane Narendra D.
AGP for Respondent Nos. 1 & 2 : Mrs. M.A. Deshpande

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**CORAM : MANGESH S. PATIL &**
**Y. G. KHOBRAGADE, JJ.**

**DATE : 20.12.2022**

**JUDGMENT : (Per: Y.G. Khobragade, J.)**

We have heard both the sides.

2. Rule. Learned A.G.P. waives service of notice for the respondent nos.1 & 2. Rule made returnable forthwith. Heard finally with consent of the parties.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks writ of certiorari and prays for quashing and setting aside the order dated 30.09.2022 passed by respondent no. 2 Tahsildar, Nandurbar directing to seize the vehicle of the petitioner and the show

cause notice dated 30.09.2022 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 petitioner also prays for writ of mandamus for an order and direction to release vehicle having Registration Nos. MH-18-BG-2199, forthwith.

4. It is the case of the petitioner that, he is the owner of truck having Registration Nos. MH-18-BG-2199 and also having permit in respect of transportation of goods. The said vehicle being used for transportation of the sand from village Nizar, Taluka Tapi, Gujarat State to the State of Maharashtra and sand was excavated and loaded in said vehicle in the State of Gujarat. The royalty pass to that effect was issued by the Commissioner of Geology and Mining, Gujarat on 30.09.2022 to transport the sand of 23 tons for the period from 30.09.2022 to 01.10.2022. The said royalty pass mentioned the vehicle number and name of the petitioner.

5. The royalty is paid by Alpeshkumar Panchal, who is successful bidder of the said spot. The petitioner was transporting the sand from Gujarat to Vaijapur in the State of Maharashtra within the time prescribed in the royalty pass and process of zero royalty pass was undertaken by the bidder. Since the said process was online and on 30.09.2022, 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 30.09.2022, the vehicle in question entered into Nandurbar and soon thereafter the Tahsildar stopped the vehicle and insisted for zero royalty pass with the Driver of vehicle but on failure 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 vehicle is illegal.

6. It is submitted that respondent no. 2-Tahsildar Nandurbar has issued order dated 30.09.2022 about seizure of vehicle of the petitioner 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.

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 as 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 transportion of minor minerals within the State of Maharashtra.

8. Learned A.G.P. on the other hand submits that when the petitioner's vehicle 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 in the case of M/s. Shree Rajesh Pathak (supra). He submits that rest of the conditions No. (I) to (IV). 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, which powers were not being taken away.

9. The point involved in the present petition is no more *res integra* because in judgment dated 7$^{th}$ April, 2022 passed in the case of M/s. Shree Rajesh Pathak (supra) it has been 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. Furthermore, in cited case it further 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 transportion 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 other view.

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

**ORDER**:

(i) The Writ Petition is allowed.

(ii) The impugned order dated 30.09.2022 impugned in this petition passed by the respondent No.2–Tahsildar, Nandurbar, thereby seizing vehicle of the petitioner and show-cause notice dated 30.09.2022 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 vehicle of the petitioner bearing Registration No. MH-18/BG-2199 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.

**( Y. G. KHOBRAGADE, J.)** **(MANGESH S. PATIL, J.)**

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