

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

WRIT PETITION NO. 393 OF 2022

Shri Rajesh s/o Shankar Meshram,
Aged about 36 years, Occ.: Business,
R/o. Bhisi, Taluka Chimur,
District Chandrapur

}

.. Petitioner

Versus

1. State of Maharashtra,
In the Ministry of Revenue & Forest,
Mantralaya, Mumbai – 32
Through its Secretary
2. The Divisional Commissioner,
Nagpur Division, Nagpur
3. The District Collector,
Chandrapur, Tah. & District Chandrapur

}

.. Respondents

Ms. Ramaa Kukday, Advocate for petitioner.

Mr. N. R. Patil, AGP for respondent Nos.1 to 3.

CORAM : MANISH PITALE, J.

DATED : 21/09/2022

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally
with consent of the learned counsel for the rival parties.

(2) By this writ petition, the petitioner has approached this Court being aggrieved by order dated 01/12/2021, passed by the respondent No.3, rejecting an application for grant of dealer's license submitted by the petitioner and order dated 13/12/2021, passed by the respondent No.2, dismissing an appeal filed by the petitioner challenging the said order passed by respondent No.3.

(3) The facts leading upto filing of the present writ petition in brief are that the petitioner was allotted sand ghat at Mouza Kaag, Tah. Chimur, District Chandrapur for excavation of minor, mineral i.e. sand for the period 2020-21, 2021-22, 2022-23. The said allotment was by an order dated 18/03/2021. Pursuant thereto, an agreement was executed between the petitioner and the concerned authority facilitating excavation of sand from the aforesaid ghat. The petitioner was to excavate 2208 brass of sand by 30/09/2021. It is the case of the petitioner and the same is not disputed by the respondents that 2184 brass of sand was indeed excavated.

(4) The petitioner claims that having excavated the sand and sold some part of it, about 950 to 1000 brass sand remained and it was kept by the petitioner in stockyard on a piece of

non-agricultural land at Mouza Sonegaon, Siras.

(5) In this backdrop, the petitioner submitted an application for grant of dealer's license before the respondent No.3. On 01/12/2021, by the impugned order, the respondent No.3 rejected the application, erroneously recording it as an application for renewal of such a license, while this was an application for grant of fresh dealer's license moved on behalf of petitioner. The ostensible reason for rejection of the application was that the petitioner had failed to remove the excavated sand from the sand ghat within ten days i.e. by 10/10/2021, in terms of the policy of the State. According to the petitioner, the said reason was wholly unsustainable and not applicable to the facts of the present case, although the policy pertaining to requirement to remove the excavated sand, at the most by 10th October of each year, as per Government Resolution dated 03/09/2019, was not disputed.

(6) The petitioner was aggrieved by the aforesaid reason recorded in the order dated 01/12/2021 and rejection of the application for grant of dealer's license and accordingly, filed appeal before respondent No.2. The said appeal was dismissed on the ground

that the rejection of application for dealer's license was on the basis of "letter dated 01/12/2021" and not an "order". On this basis, the respondent No.2 held that since there was no order passed in the present case, the appeal could not be considered.

(7) This Court recorded the specific contentions raised on behalf of the petitioner and on 13/06/2022, issued notice for final disposal. The respondents entered appearance through the learned AGP and filed reply.

(8) Ms. Ramaa Kukday, learned counsel appearing for the petitioner reiterated the submission that was made on 13/06/2022, when notice was issued and further submitted that in the reply, the respondents have not denied the assertion made on behalf of the petitioner that about 950 to 1000 brass excavated sand was kept in stockyard by the petitioner and that the dealer's license was sought in order to sell the aforesaid sand. It was submitted that the reason given in the impugned order dated 01/12/2021, is wholly unsustainable and it is based on erroneous appreciation of the facts as also the policy of the State. As regards, the impugned order dated 13/12/2021, it was submitted that the respondent No.2 erred in

proceeding on the basis that the order dated 01/12/2021 issued by the respondent No.3 rejecting the application for grant of dealer's license, could not be said to be an order and that it was merely a letter. On this basis, it was submitted that the impugned order deserved to be set aside and the application for grant of dealer's license ought to be allowed, so that the petitioner can proceed to dispose of 950 to 1000 brass sand kept in the stockyard.

(9) Mr. N.R. Patil, learned AGP appeared on behalf of the respondents and submitted that the petitioner claims to have excavated sand and transported the same to be kept in a stockyard. Although in the reply filed on behalf of the respondents there is no specific denial of the same, it is submitted that the dealer's license was rejected in the facts of the present case, taking note of the fact that the entire excavated sand was supposed to be removed from the sand ghat by the 10th of October, 2021. It was submitted that in the facts of the present case there were no circumstances brought to the notice of respondent No.3 for issuance of dealer's license, because the online system had recorded that the petitioner had already excavated 2184 brass of sand out of the allotted 2208 brass. In any case, attention of

this Court was invited to Rule 77 of the Maharashtra Minor mineral Extraction (Development and Regulation) Rules, 2013, to contend that such a dealer's license expires on the 31st December of every year.

(10) Having heard the learned counsel for the petitioner and the learned AGP on behalf of the respondents, this Court finds that the material on record does show that the petitioner had excavated 2184 brass sand from the allotted sand ghat. The respondents have not been able to dispute that about the 950 to 1000 brass sand was kept in stockyard by the petitioner and that the dealer's license was submitted in the context of the aforesaid sand already kept in the stockyard.

(11) A perusal of the impugned order dated 01/12/2021, shows that the only reason for rejecting the application for grant of dealer's license, was that the petitioner was supposed to have removed excavated sand from the sand ghat under all circumstances by the 10th October, 2021, in terms of the State policy manifested in Government Resolution dated 03/09/2019. Beyond recording the aforesaid reason, the impugned order dated 01/12/2021, does not show any other reason for rejecting the application for dealer's license.

(12) Perusal of the impugned order dated 13/12/2021, passed by the respondent No.2 shows that the said respondent proceeded on an erroneous basis that the said order dated 01/12/2021 could be said to be a letter and not an order, without appreciating that the said document dated 01/12/2021, clearly rejected the application for dealer's license submitted by the petitioner and it adversely affected the claim of the petitioner. The impugned order dated 13/12/2021, passed by the respondent No.2 rejecting the appeal, deserves to be set aside only on this short ground.

(13) Insofar as the impugned order dated 01/12/2021 is concerned, this Court finds that the reason stated in the said order for rejecting the application for grant of dealer's license is not germane and it is wholly irrelevant to the consideration of the application filed on behalf of the petitioner. Therefore, the said order also deserves to be set aside.

(14) In view of the above, the Writ Petition is allowed. The impugned orders are set aside.

(15) The respondent No.3 is directed to issue dealer's

license to the petitioner, if he is otherwise eligible for grant of such a license in terms of the relevant Rules and in accordance with law.

(16) The respondent No.3 shall proceed expeditiously and take necessary steps in terms of the directions granted by this Court within two weeks from today. This Court has taken note of the fact that the period of such a license under the aforesaid Rules would be only till **31/12/2022** and that the petitioner is conscious about this fact.

(17) Rule made absolute in above terms.

[MANISH PITALE J.]

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