

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 364 OF 2022

Kalimoddin Fakaroddin Quazi Aged
about : 46 years, Occupation :
Business, R/o Ward No. 1, Rani
Amravati, Babhulgaon, Tah.
Babhulgaon, District – Yavatmal.

.... PETITIONER

// VERSUS //

1. State of Maharashtra, through its
Secretary, Revenue and Forest
Department, Mantralaya, Mumbai –
32.
2. The Additional Collector, Yavatmal,
District – Yavatmal.
3. The Sub Divisional officer, Yavatmal,
District – Yavatmal.
4. The Tahsildar, Babhulgaon, Tq.
Babhulgaon, Distt. Yavatmal.

.... RESPONDENTS

Shri A.R. Ingole, Advocate for the petitioner.
Shri Ukey, Addl. G.P. for respondent nos. 1 to 4.

CORAM : ROHIT B. DEO, J.
DATED : 25.02.2022

ORAL JUDGMENT :

Heard. **RULE.** With consent, the petition is heard finally.

2. By the order impugned dated 14.12.2020, the Tahsildar, Babhulgaon has directed the petitioner to pay royalty and penalty for illegal transportation of sand to the extent of Rs.9,915/- (Rupees Nine Thousand Nine Hundred and Fifteen only). This part of the order is accepted by the petitioner and the petitioner undertakes to pay the said amount within the next seven days.

3. However, the grievance of the petitioner is that contrary to the mandate of Section 48(8)(2) of the Maharashtra Land Revenue Code 1966 (the Code), the Tahsildar has also imposed penalty of Rs.1 lakh (Rupees One Lakh) for alleged illegal user of vehicle.

4. The issue is not *res integra* and is settled by the Division Bench of this Court in Writ Petition No.7165 of 2018 (Harihar s/o Mahadev Puri Vs. State of Maharashtra and anr.) dated 15.03.2019. The relevant observations in the said decision read thus :

“10. The third submission of the learned Counsel for the petitioner is that by the impugned order penalty in respect of illegal transport of the sand as well as the means of convenience employed for such illegal transport has been imposed under Section 48(7) by the Tahsildar, but it is not permissible for him to do so. Upon perusal of subsections (7) and (8) of Section 48 we find that there is substance in the argument of learned counsel for the petitioner. What can be imposed by way of a penalty by the Tahsildar by invoking his power

under sub-section (7) of Section 48 of MLR Code is only that penalty which is for illegal transportation of sand only to the extent of five times of the market value of the minerals transported in addition to the amount of royalty and nothing more. But, in the present case the penalty imposed by the Tahsildar is of composite nature, one for the transportation of the minerals as such and the other for the user of the vehicle in question for such transport. For the later part of the offence, the penalty can be imposed only by the Collector or any officer not below the rank of a Deputy Collector specifically authorized in this behalf by the Collector himself. This is under Section 48(8)(2) of the MLR Code. It is here that the impugned order has made itself vulnerable to law and to this extent only, the impugned order deserves to be quashed and set aside.”

5. It is manifest that the order of the Tahsildar is illegal to the extent power under Section 48(8)(2) of the Code is exercised. The order of the Tahsildar to the extent referred supra, is without jurisdiction and will have to be set aside.

6. While the petitioner appears to have preferred an appeal before the Sub Divisional Officer, Yavatmal, which is dismissed, the dismissal is irrelevant since the original order under Section 48(8)(2) of the Code ought to have been passed by the said authority.

7. In this view of the matter, the matter is remitted to the Sub Divisional Officer, Yavatmal / respondent 3 for considering the release of the vehicle, and the conditions to which the release is required to be ordered, if at all. Needful shall be done within ten days from the appearance of the petitioner.

8. The petitioner shall appear before the Sub-Divisional Officer, Yavatmal on 02.03.2022 and shall place before him a copy of this order.

9. The petition is partly allowed.

(ROHIT B. DEO, J.)

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