

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

WRIT PETITION NO.1189 OF 2022

Chandan s/o Hajari Rathod
Aged about 55 years,
Occupation: Business,
R/o Dabha, Tah. Mangrulpir,
District Washim.

..... **PETITIONER**

...V E R S U S...

1. State of Maharashtra, through its
Secretary, Revenue and Forest
Department, Mantralaya,
Mumbai-32.
2. The Additional Collector, Washim,
District Washim.
3. The Sub Divisional Officer,
Karanja, Tah. Karanja,
District Washim.
4. The Tahsildar, Manora,
Tah. Manora, Dist. Washim.
5. Police Station officer,
Police Station Manora,
District Washim.

..... **RESPONDENTS**

Mr. A. R. Ingole, Advocate for Petitioner.
Mr. S. M. Ukey, Addl. GP for Respondents 1 to 5/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **11th MARCH, 2022.**

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. The petition is

heard finally with consent of the learned counsel appearing for the parties.

2. The petitioner is assailing the order dated 24.09.2021 rendered by the Tahsildar, Manora, District Washim which is confirmed by the Sub-Divisional Officer (SDO) vide order dated 17.12.2021, while exercising appellate jurisdiction.

3. The Tahsildar has imposed royalty and penalty of Rs.1,32,400/- (Rupees One Lakh Thirty Two Thousand Four Hundred) for illegal transportation of sand. This penalty is acceptable to the petitioner who undertakes to deposit the same within the next seven days.

4. In so far as the penalty imposed due to illegal user of the vehicle is concerned, the same could have been imposed only by the SDO. In this view of the matter, the penalty of Rs.1,00,000/- (Rupees One Lakh) which is imposed for illegal user of vehicle is quashed, in view of the decision of Division Bench of this Court in Writ Petition No.7165/2018 (Harihar s/o Mahadev Puri Vs. State of Maharashtra and anr.) dated 15.03.2019.

5. It appears that the petitioner did prefer an appeal before the SDO who has confirmed the penalty on illegal user of vehicle. However, the fact that the SDO acting as the appellate authority confirmed the penalty is of no significance since the first order is without jurisdiction to the extent penalty is imposed also on illegal user of vehicle. The issue ought to have been considered by the SDO acting as the first authority.

6. The SDO shall hear the petitioner and decide the issue of release of vehicle and the conditions subject to which the vehicle can be released, including imposition of penalty, after hearing the petitioner, within ten days from the date of appearance of the petitioner.

7. The petitioner shall appear before the SDO, Karanja on 15.03.2022 and shall produce copy of this order.

8. The petition is partly allowed in the aforestated terms.

JUDGE