

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

WRIT PETITION NO. 1921 OF 2022

Aadesh Sayub Pathan,
aged about 31 years,
r/o. Babhulgaon, Tahsil 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,
Ralegaon, Tahsil – Ralegaon,
District – Yavatmal.

4) The Tahsildar, Kalamb,
Tq. Kalamb, District – Yavatmal.

5) Police Station Officer,
Police Station Kalamb,
Tahsil Kalamb, District Yavatmal

.... **RESPONDENTS**

Mr. A.R. Ingole, Counsel for the petitioner,
Mr. S.M. Ukey, Addl.GP for the respondents 1 to 5/State.

CORAM : ROHIT B. DEO, J.

DATED : 2nd May, 2022

ORAL JUDGMENT :

The affidavit filed by the State is taken on record.

2. Heard. **Rule.** Rule made returnable forthwith. The petition is heard finally with consent of the learned Counsel appearing for the parties.

3. The petitioner is assailing the order dated 22.11-2021 rendered by the Tahsildar, Kalamb. The order impugned is in two parts.

4. The petitioner allegedly excavated and transported sand illegally. The Tahsildar was pleased to act under the provisions of Section 48(7) of the Maharashtra Land Revenue Code, 1966 (Code) and saddled the petitioner with royalty for Rs.1,20,600/- (Rupees One Lac Twenty Thousand Six Hundred) for illegal transportation of sand.

5. The other part of the order impugned is the imposition of penalty of Rs. 2,00,000/- (Rupees Two Lac) in purported exercise of power under Section 48(8) of the Code for illegal use of vehicle for transportation of sand.

6. Learned Counsel for the petitioner Mr. A.R. Ingole submits that in so far as royalty and penalty on transportation of sand is concerned, the petitioner is not pressing the challenge and shall comply with the

order impugned within the next ten days. However, Mr. A.R. Ingole points out that the other part of the order which imposes penalty as regards the allegedly illegal vehicular use for transportation of the minor mineral, is without jurisdiction as held by the Division Bench in ***Writ Petition No. 7165/2018 (Harihar s/o Mahadev Puri Vs. State of Maharashtra and anr.) dated 15-3-2019***. The relevant paragraph of the said decision reads 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.”

7. In view of the settled position of law, the order impugned is confirmed to the extent, royalty and penalty is demanded in respect of excavation of sand, and is set aside to the extent of amount of penalty of Rs. 2,00,000/- (Rupees Two Lac) demanded as regards the alleged illegal vehicular use for transportation of sand.

8. It is made clear that nothing is decided on merits.

9. It is common ground that the appropriate authority to decide the issue is the Respondent 2 or such authorized officer not below the rank of Deputy Collector. The matter is, therefore, remitted to the respondent 2, who may decide the matter personally or assign the same to duly authorized officer not below the rank of Deputy Collector.

10. The petitioner shall appear before the appropriate authority on 10-5-2022 and shall apprise the authority of this order.

11. The authority is requested to take an appropriate decision on release of the vehicle and the conditions subject to which the release can be ordered, within ten days from the appearance of the petitioner.

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

JUDGE

belkhede