

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

Writ Petition No. 2334 of 2021

(1) Mr. Amjad Said Khan,
Aged : Major, Occ-Business,
R/o. Near Gurudwara
Gadchandur Road, Rampur,
At Rajura,
Dist. Chandrapur-442905

... Petitioner

... Versus ...

(1) State of Maharashtra,
Through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.

(2) Mr. Ravindra Holi,
Tehsildar Office, Tah-Rajura,
Dist : Chandrapur.

... Respondents

Mr. Manish O. Shukla, Advocate for the petitioner
Mrs. M. A. Barabde, A. G. P. for the State/respondent no. 1

CORAM : MANISH PITALE, J.

DATED : 5-9-2022

ORAL JUDGMENT

Heard learned counsel for the petitioner and learned
Assistant Government Pleader for the respondents – State authorities.

2. Rule. Rule made returnable forthwith.

3. By this petition, the petitioner has challenged the order dated 22-5-2020 passed by the respondent - Tahsildar imposing penalty of Rs. 1,10,900/- on the petitioner for allegedly illegally transporting sand in a tractor and trolley. It is an admitted position that the petitioner has deposited the said penalty amount under protest and accordingly, tractor and trolley were released in his favour.

4. At the outset, learned Assistant Government Pleader submitted that the present petition ought not to be entertained as alternative remedy of approaching the Sub Divisional Officer was available to the petitioner. In response, learned counsel for the petitioner submitted that in the present case, the petitioner is alleging violation of principles of natural justice on the part of the respondent – Tehsildar, while passing the impugned order and, that therefore, the present writ petition can be entertained by this Court.

5. According to the learned counsel for the petitioner, the sand in question was being transported on the basis of valid transit pass and therefore, the impugned action is wholly unjustified. On the other hand, learned Assistant Government Pleader submitted that the transit pass was found to be invalid and therefore, no interference was called for.

6. Perusal of the material on record shows that there was transit pass available with the petitioner when he claims to have legally transported one brass of sand on 12-12-2019 from the sand ghat where he purchased it, to transport it at his private place for stocking the same. It is claimed that this very transit pass could be the basis for further transporting the sand, as was being done on 16-5-2020. It is also submitted on behalf of the petitioner, by relying upon the response and explanation given to the show cause notice, that the copy of transit pass and certain details were placed before the Tehsildar along with written explanation.

7. Perusal of the impugned order shows that the written explanation submitted by the petitioner has been rejected by the respondent - Tehsildar by recording that the transit pass was found to be invalid on verification through on-line system. It is then recorded that GPS photograph of the vehicle in question falsified the claim of the petitioner and that report of the Police Patil also recorded adverse findings against the petitioner. Thereupon from the respondent – Tehsildar has given a finding that sand was being illegally transported by the petitioner and accordingly, penalty was imposed.

8. There is nothing on record to show that the report, if any, upon verification through on-line system about transit pass was

supplied to the petitioner. There is also nothing to show that the GPS photo of the vehicle in question, upon which reliance was placed, was ever put to the petitioner or a copy of the same was supplied to him. The record also does not show the report of Police Patil was made available to the petitioner. In these circumstances, this Court convince that the contention raised on behalf of the petitioner about the violation of principle of natural justice on the part of respondent - Tehsildar is supported by the material on record. The said action taken by the respondent – Tehsildar by imposing penalty in the impugned order stands vitiated due to the aforesaid violation of principles of natural justice. Since the said contention is specifically raised on behalf of the petitioner and this Court is inclined to accept the same, the aspect of alternative remedy being available to the petitioner becomes irrelevant. Even otherwise, the rule of not exercising writ jurisdiction due to availability of alternative remedy is a rule of prudence and not necessarily a rule of law. In these circumstances, it is found that the writ petition filed by the petitioner can certainly be entertained.

9. In view of findings recorded herein above, there is violation of principles of natural justice while imposing penalty on the petitioner. Therefore, the writ petition deserves to be partly allowed.

10. Accordingly, writ petition is partly allowed. The impugned order is quashed and set aside.

11. The matter is remanded to the Tehsildar for proper consideration. The respondent-Tehsildar shall furnish copies/ documents, photographs and other such material upon which reliance was placed to proceed against the petitioner. Material be provided to the petitioner within two weeks of appearance of the petitioner before the respondent – Tehsildar.

12. The respondent – Tehsildar is directed to pass appropriate order after giving proper opportunity to the petitioner within six weeks of appearance of the petitioner before the respondent – Tehsildar.

13. The petitioner shall appear before the respondent – Tehsildar on 12-9-2022. The Tehsildar shall then proceed to act in accordance with the direction given herein above, so as to ensure that order is passed within six weeks of 12-9-2022.

JUDGE

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