

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

WRIT PETITION NO. 2721/2021

M/s.Balaji Servicing Centre through its Proprietor-
Sachin s/o Ramesh Gupta, Aged about 40 years,
R/o. Gunjkheda, Arvi Road, Pulgaon,
Tahsil Deoli, District Wardha.

..... **PETITIONER**

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

- 1] State of Maharashtra through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
- 2] The Collector, Wardha.
- 3] The Additional Commissioner (Revenue),
Nagpur Division, Nagpur.

..... **RESPONDENTS**

Shri Anand Parchure, Advocate for petitioner.

Mrs. K. R. Deshpande, Assistant Government Pleader for respondents.

CORAM : A.S.CHANDURKAR and SMT. M.S.JAWALKAR, JJ.

DATE : 4th APRIL, 2022.

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2] The challenge raised in this writ petition is to the communication dated 29.04.2021 that has been issued by the Revenue and Forest Department of the State Government thereby directing refund of an amount of Rs.3,21,180/- instead of the amounts of Rs.18,84,150/- and Rs.1,88,415/- as determined by the Additional Collector.

3] The petitioner had participated in a tender process for grant of lease for extraction of sand. The Additional Collector on 31.08.2019 passed an order holding that since the petitioner had breached certain conditions of the tender notice dated 22.04.2019, his contract came to be cancelled. Being aggrieved the petitioner filed an appeal before the Additional Commissioner who had on 10.10.2019 allowed that appeal after setting aside the order passed by the Additional Collector on 31.08.2019. It was directed that as per Condition No.9 of the tender notice, the entitlement of the petitioner to refund be calculated. This determination was done by the Additional Collector on 09.12.2019 and the amount calculated was Rs.18,84,150/- alongwith Rs.1,88,415/- being payment made to the District Mining Foundation. It appears that the State Government on 29.04.2021 reduced the amount of refund to Rs.3,21,180/-. This order of reduction in the amount of refund is under challenge in this writ petition.

4] After hearing the learned counsel for the parties, we find that the impugned order has been issued without granting any opportunity of hearing to the petitioner. The Additional Collector pursuant to the order dated 10.10.2019 passed by the Additional Commissioner had determined the amount of refund. If the State Government was of the opinion that the amount as determined was liable to be reduced, the petitioner ought to have been

heard in the matter. It is obvious that by reducing the amount of refund prejudice has been caused to the petitioner. Hence on the sole ground that the impugned order dated 29.04.2021 has been issued without hearing the petitioner, it is liable to be set aside.

5] Accordingly, the following order is passed :

(i) The order dated 29.04.2021 passed by the Revenue and Forest Department, Mantralaya, Mumbai is set aside. If the said Department is of the view that the amount of refund as determined by the Additional Collector, Wardha, dated 09.12.2019 is liable to be reduced, the petitioner shall be granted hearing in that regard. Steps in that regard be taken by the respondent no.1 within a period of six weeks from today. The petitioner undertakes to appear before the respondent no.1 on 18.04.2022 to facilitate such determination.

(ii) It is noted that the petitioner has already received an amount of Rs.3,21,180/- in terms of the order dated 16.11.2021. Till such re-determination takes place, the petitioner shall not be required to refund the aforesaid amount. All points raised in the writ petition as regards its entitlement are kept open.

The writ petition is allowed in aforesaid terms. Rule accordingly.

No costs.

(SMT. M.S.JAWALKAR, J.)

(A.S.CHANDURKAR, J.)