

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6393 OF 2023

Deepak s/o Vijay Sapkale
Age : 28 years, Occu. : Business
R/o. Bambhori,
Tq. Dharangaon, Dist. Jalgaon. .. Petitioner

Versus

1. The Tahsildar,
Tahsil Office, Jalgaon,
Tq. and Dist. Jalgaon
2. The Sub Divisional Officer,
Jalgaon Division, Jalgaon,
Dist. Jalgaon. .. Respondents

Mr. N. D. Sonavane, Advocate for the Petitioner.
Mr. S. B. Pulkundwar, AGP for Respondent Nos. 1 and 2.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 11th August, 2023.

Date on which order pronounced : 07th October, 2023.

ORDER :-

. The petition is filed challenging an order dated 19.08.2022 passed by the learned Tahsildar, Jalgaon and the order passed by learned S.D.O., Jalgaon dated 08.03.2023. By way of impugned order, the learned S.D.O. has imposed fine of Rs. 2,57,652/- and towards District Mineral Fund Rs. 4,500/- under Section 48 (7) (8) of the Maharashtra Land Revenue Code, 1966 (for short "MLRC") and in view

of notification dated 12.01.2018.

2. The petitioner is owner of a vehicle having registration No. MHS-7585 having transport permission. He uses the vehicle for transport of the sand. For the purpose of transport of sand he has obtained royalty pass from the State of Gujrat.

3. On 05.02.2021, the Government of Maharashtra has issued circular in respect of transportation of sand. As per clause 5 of the said circular, a transporter has to deposit 10% of the royalty amount prescribed by the State when the sand is imported from some other State. The said pass is called as zero royalty pass. Vide clause No. 9 of the circular if the sand is more than prescribed limit or without zero royalty pass the action under Sections 48 (7) and 48 (8) of the MLRC is to follow.

4. It is the case of the petitioner that, on 02.07.2022 his vehicle was carrying sand from Gujrat. His vehicle was intercepted in Jalgon by the Tahsildar. The Tahsildar insisted for zero royalty pass. Since it was not shown a panchanama was drawn. The vehicle came to be seized. Thereafter, the Tahsildar passed an order dated 19.08.2022 imposing penalty of Rs. 57,652/- and also charged District Mineral Fund of Rs. 4,500/- for carrying two brass of sand. The said action was

confirmed by the learned S.D.O. by order dated 08.03.2023. The petitioner is thus before this Court.

5. It is the submission of the petitioner that, since the mineral is excavated from Gujrat State, State of Maharashtra does not have the authority over the mineral from other State. Therefore, the State of Maharashtra does not have any authority to charge royalty on the sand transported from other State. The Division Bench of this Court at Nagpur in Writ Petition No. 2078/2021 with other connected matters has held that, clause No. 5 of the circular dated 05.02.2021 is illegal. The State Government cannot charge royalty on the mineral transported from other State and consequently, the order passed by the revenue authorities was quashed and set aside. The Court in the said judgment has clearly held that, the State Government is not competent to demand the amount of 10% of royalty in such cases. Thus, it is prayed that even in this case the action taken by the learned Tahsildar and the learned S.D.O. needs to be set aside being illegal as no royalty can be insisted and consequently no order can be passed for not possessing zero royalty pass.

6. Learned A.G.P. has opposed the petition by filing affidavit in reply. It is submitted that, though clause No. 5 of the circular is held to

be not applicable and is quashed, still the other clauses in the circular are binding. Clause No. 6 prescribes issuance of zero royalty pass by the Collector. As per clause No. 9, the authorities are empowered to take action under Sections 48 (7) and 48 (8) of the MLRC. Thus, it is submitted that, in view of clause No. 9 the authority has rightly taken the action and the same need not be set aside. On facts it is submitted that, the vehicle of the petitioner was found transporting the sand without zero royalty pass and therefore, the action is rightly taken.

7. This Court finds that, the circular dated 05.02.2021 is issued by the Government for effective implementation of provisions of Sections 48 (7) and 48 (8) of the MLRC. The Division Bench of this Court at Nagpur in Writ Petition No. 2078/2021 with other connected matters had an occasion to deal the said circular. It is clearly held by the Division Bench of this Court at Nagpur that, the State does not have the authority to ask for royalty for transportation of the sand from other State. This Court in paragraph No. 19 has observed that, clause No. 5 of the circular seeks to achieve indirectly that what is not permissible under the statutory provisions by relying upon the judgment in the case of Kunj Beharilal Butail Vs. State of Himachal Pradesh reported in (2000) 3 SCC 40. It is held that, power under delegation cannot be exercised to bring into existence substantive rights, obligations or

disabilities not contemplated by the provisions of the Act itself. In that view clause No. 5 was held to be illegal. The said judgment was also considered by the Division Bench of this Court in Writ Petition No. 4397/2022. In that petition, the judgment in Writ Petition No. 2078/2021 is considered and the writ petition was allowed. The notice issued by the Tahsildar and the action of seizure of vehicle was set aside. In that case also the action was sought to be taken for not having zero royalty pass for transportation of sand from other State to the State of Maharashtra.

8. This Court finds that, in this case also there is no dispute that the sand was being transported from the State of Gujrat. In view of the judgment of the Division Bench discussed above, the action of the authorities is contrary to the judgment of this Court at Nagpur in Writ Petition No. 2078/2021 and the same deserves to be quashed and set aside. In view of the above, the following order is passed.

9. The writ petition stands allowed in terms of prayer clause (A). The vehicle of the petitioner shall be released forthwith.

10. The writ petition stands disposed off accordingly.

(KISHORE C. SANT, J.)

PS.B.