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

19 WRIT PETITION NO.8196 OF 2023

JITESH SUPDYA NAIK
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND OTHERS
….

Mr Ruchir S. Wani, Advocate for Petitioner;
Mr V. M. Kagne, A.G.P. for Respondents/State

**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRAGADE, JJ.**

DATE : 17th July, 2023

PER COURT:

1. In this petition, the Petitioner had received a show cause notice from the Tahsildar, Navapur, which was responded to. The Tahsildar passed a final order on 03/01/2023, which was carried to the Additional District Collector, Nandurbar. By an order dated 28/04/2023, the said authority held against the Petitioner.

2. The learned A.G.P. submits that, the Petitioner has an efficacious statutory remedy under Section 257 read with Schedule ‘E’ of the M.L.R. Code for challenging the decision of

the Additional District Collector, dated 28/04/2023, delivered in R.T.S. Appeal No.9/2023.

3. We have perused the judgment delivered by this Court at Nagpur, dated 07/04/2022 in Writ Petition No.2078/2021, filed by M/s Shree Rajesh Pathak Vs. State of Maharashtra and others and connected petitions, wherein a challenge was posed to the payment of 10% royalty amount to the District Mineral Foundation constituted under Section 9-B of the Mines and Minerals (Development and Regulation) Act, 1957. Another challenge was raised by inter-State Transporters of minor minerals as the State of Maharashtra required payment of 10% royalty amount to the District Mineral Foundation on entering the State borders. While allowing the writ petitions, it was observed in paragraph No.22 as under :-

> "22. As a sequel to the aforesaid discussion, the following order is passed:-
>
> *"(I) It is held that the State Government is not competent to demand an amount equivalent to 10% of royalty from an exporter of minor minerals who has excavated such minor minerals in another State and seeks to import such minor minerals into the State of Maharashtra since such power to demand contribution to be made to the DMF where such*

minor mineral is being brought has not been conferred on the State Government under the Act of 1957.

(II) It is held that the State Government is not competent to demand an amount equivalent to 10% of royalty from a transporter of minor minerals who seeks to transport such minor minerals excavated in another State to the DMF of the district while entering the State of Maharashtra since such power has not been conferred on the State Government under the Act of 1957.

(III) The petitioner in Writ Petition Nos.2078 of 2021 and 2086 of 2021 would be entitled to refund of an amount of Rs.2,00,000/- and Rs.8,300/- respectively being the amount paid by them to the DMF. Such refund be made within a period of eight weeks from today.

(IV) It is held that Clause 5 of Circular dated 05.02.2021 issued by the Ministry of Revenue and forest, Mantralaya, Mumbai is bad in law since the State Government has not been conferred with any authority or power to demand contribution to the DMF of the district on the entry and consequent transport of minor minerals within the State of Maharashtra. Clause 5 of the said Circular dated 05.02.2021 shall not operate being excessive and travelling beyond the rule making power of the State of Maharashtra. Circular dated operate excluding Clause 5 as aforesaid.

(V) The order dated 07.12.2021 impugned in Writ Petition Nos.2078 of 2021, 2086 of 2021, 172 of 2022 and 173 of

2022 calling upon the petitioners to pay an amount equivalent to 10% of amount of royalty to the DMF is set aside.

(VI) It is clarified that the respondents are free to act under the provisions of Section 48 of the Maharashtra Land Revenue Code, 1966 in accordance with law.”

4. In a judgment delivered by this Court, dated 20/12/2022 in Writ Petition No.11462/2022, to which one of us (Y. G. Khobragade, J.) is a party, the Petitioner had approached this Court challenging the order passed by the Tahsildar, directing to seize the vehicle of the Petitioner and a show cause notice for non-payment of royalty and for not obtaining ‘zero royalty pass’ for transportation of sand from another State to the State of Maharashtra.

5. In the present case, as the Petitioner has already travelled the path of litigation under the M.L.R. Code upto the Additional District Collector level, the next step is to take the matter to the Divisional Commissioner at Aurangabad.

6. The learned Advocate for the Petitioner submits that, if this remedy is to be taken recourse to, the authority may be directed to decide the proceeding within a particular time frame.

7. In view of the above, **this petition is disposed off**. If the Petitioner avails of a statutory remedy and approaches the Divisional Commissioner, Nasik, within 15 days from today, the concerned authority would decide the appeal of the Petitioner within 60 days. If an application for releasing the vehicle is filed by way of an interim order, the said authority would consider the said application expeditiously and pass an order within 30 days from the date of filing of the same.

(Y. G. KHOBRAGADE, J.) **(RAVINDRA V. GHUGE, J.)**

sjk