

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 WRIT PETITION NO.10514 OF 2022

GANESH SURESHRAO BORIKAR
VERSUS
ADDITIONAL DIVISIONAL COMMISSIONER AND OTHERS

...
Advocate for Petitioner : Mr. Nirmal Ramrao G.
AGP for Respondents-State : Mr. K. B. Jadhavar
...

CORAM : ARUN R. PEDNEKER, J.
DATE : 23rd January, 2023

PER COURT :

1. Heard the learned Advocate Mr. R. G. Nirmal appearing on behalf of the petitioner.
2. The petitioner is challenging the order dated 10/08/2022, passed by the respondent No.1 Additional Divisional Commissioner, Aurangabad Division, Aurangabad, in Case No.ROR/Appeal/274/2022.
3. It is the case of the petitioner that he was transporting sand in a truck bearing No.MH-12-HD-0517 on the relevant date i.e. 20/05/2022. He was having a license to transport sand from Nandgaon Tq. and Dist. Parbhani to Mhasla Tq. Badnapur Dist.Jalana. His license was valid from 08.17 a.m. to 06.17 p.m. on 20/05/2022. On 20/05/2022 at 03.00 p.m. the vehicle was stopped by the respondent No.4 Tahsildar with the help of the vigilance cell at Vasantrao Naik Statue in Parbhani while he was transporting sand

(minor mineral). On verification of the license copy on the online tab, the App showed that the license is invalid. Thereafter, show cause notice was issued to the petitioner. Since the petitioner had not crossed the boundary of Parbhani District within a period of five hours from the issuance of a license so as to enable him to reach his destination before 06.17 p.m., the respondent No.3 passed order dated 30.05.2022 and imposed fine of Rs.1,57,400/- for illegal transportation of sand. The petitioner challenged the said order passed by the respondent No.3 Sub Divisional Officer, Parbhani which is appealable before the respondent No.2 Additional Collector, Parbhani. The respondent No.2 the Additional Collector maintained the order passed by the respondent No.3 Sub Divisional Officer. Hence, the present writ petition challenging the order passed by respondent No.2.

4. It is the contention of the petitioner that he had a valid pass for carrying the minor mineral i.e. sand from 08.17 a.m. to 06.17 p.m. on 20/05/2022 and that nowhere in the pass it is mentioned that the truck has to leave Parbhani district within a period of five hours. Unfortunately on the same date when he went to collect the sand, there was some ongoing agitation from the villagers because of which he could not collect the sand in time and there was delay of

two hours. After collecting the sand, the vehicle also broke down on account of puncture/blasting of the tire. The learned Advocate for petitioner submits that, tire was replaced by the petitioner and he also filed proof the same before the authorities. The learned Advocate further submits that, when the petitioner made an attempt to register the fact of the delay on the mobile App of the Revenue authorities, the App did not show the option of break down and thus he was not able to register the reason for the delay on the App.

5. The learned AGP submits that this is the second occasion on which the petitioner has been found carrying miner mineral i.e. sand in violation of the license agreement. He further submits that there are two contradictory stands taken by the petitioner, in one instance the petitioner has submitted that the vehicle's tire blasted and the other instance he has submitted that there was a blockage of the road, which resulted in delay in transporting the sand.

6. Having considered the rival submission. The stand of the petitioner is not inconsistent as he has consistently taken a stand before the authorities that his vehicle had broken down and that there was a delay of two hours on account of some blockage. The petitioner has further stated that he has made an attempt to upload the information of the delay on the App, however, the App did not

have an option of break down. This fact is not disputed by the learned AGP. As regards leaving the District boundary within five hours, the petitioner contends that he was not aware of the same and in any event the delay of 2 hours and 40 minutes is explained by the fact that on the given date there was blockage and also the vehicle had broken down. This is a case I feel that the explanation offered by the petitioner can be accepted as he was having a valid license on the given date. So also his stand is consistent that on the given date there was a blockage of road and that the vehicle had broken down and that he was not in a position to intimate the said fact to the authorities in view of option of break down being not available on the App. Thus, there is a delay of 2 hours and 48 minutes in passing the district borders. He has also produced the receipt of replacement of tire, which is not disputed.

7. The learned AGP submits that there are various instances where the vehicles owner deliberately taken licenses to transport minor mineral of long distance, and on the very same license, they ply on the very shortest road and vehicle instead of leaving their district do business within the same district and on one license they travel for multiple times and supply illegally extracted sand. However, in the absence of the evidence that there was illegal

extraction of sand which the petitioner was carrying illegally within the district multiple times, cannot be accepted. In this case having regard to the explanation given by the petitioner, the general observations of the authorities, cannot be applied in the instant case. In fact situation, I have held that the explanation given is a possible one.

8. In the facts and circumstances, the delay in transporting the minor mineral is accepted and I hold that the petitioner was holding a valid transit pass for the transportation of the minor mineral on 20/05/2022 at the time of interception at 03.00 p.m. The impugned orders dated 30/05/2022 and 10/08/2022 passed by respondent Nos.2 and 3 is set aside. The authorities are directed to release the truck bearing No.MH-12-HD-0517 forthwith.

(ARUN R. PEDNEKER, J.)

vj gawade/-.