IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11451 OF 2022

Sanket s/o Pravin Chaudhari,
Age 24 years, Occ. Business,
R/o. Flat No. 9, Bypass road,
In front of Jijamata College, C.B.
Plaza, Nandurbar, Tq. & Dist.
Nandurbar. ... **Petitioner.**

VERSUS

1) The State of Maharashtra
Through Principal Secretary,
Revenue and Forest Ministry,
Mumbai-32.

2) The Sub Divisional Officer,
Faizpur, Dist. Jalgaon.

3) The Tahsildar, Yawal,
Tq. Yawal, Dist. Jalgaon. ... **Respondents.**

...

Advocate for the Petitioner : Mr. B.S. Deshmukh h/f Mr. A.M. Reddy
A.G.P. for the Respondents/State : Mr. P. K. Lakhotiya

CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.

DATE : 03.01.2023.

JUDGMENT : (PER : MANGESH S. PATIL)

Heard. Rule. The Rule is made returnable forthwith. Learned A.G.P. waives service for all the respondents. At the request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner is questioning legality of the notices dated 20.10.2022 and 28.10.2022 served upon him by the respondent nos. 3 and 2

respectively in purported exercise of the powers under Section 48 (7) and under Section 48(8) of the Maharashtra Land Revenue Code, 1966 read with Government resolutions dated 12.01.2018 and 05.02.2021 for alleged illegal importation of sand from Gujrat State into the State of Maharashtra.

3. The petitioner avers that he is the owner of truck nos. MH-39/AD-2183 and MH-41/AU-7311 and transports sand. Since the sand was available at Nizar, District Tapi in the State of Gujrat, with an authorized licencee Avadh Enterprises, he purchased the sand and was importing it into the State of Mahashtra. By the Government resolution dated 05.02.2021 the State of Maharashtra has resolved to levy 10% tax. It provides that it is only after payment of such tax and obtaining a Zero Royalty Tax/Electronic Transit Pass the mines and minerals can be imported into the State. This Court in several matters has declared Clause 5 of the Government resolution dated 05.02.2021 to be illegal. The proposed action by issuing notices and imposing penalty is *void ab initio.*

4. Learned advocate Mr. Deshmukh for the petitioner submits that this Court having struck down Clause 5 of the Government resolution dated 05.02.2021, the petitioner's vehicles should not have been seized as he was not under any obligation to obtain a Zero Royalty Pass and therefore the proposed action of imposing penalty and even seizure of the vehicles is illegal.

5. Mr. Deshmukh would further submit that the delivery Challans were not verified by the concerned Talathi on the 'CGM Gujrat' Application and the proposed action is based on incorrect premise.

6. Learned A.G.P. referring to the affidavit in reply justifies the proposed action. He fairly concedes that this Court has struck down clause 5 of the Government resolution dated 05.02.2021 and the State is not entitled to levy 10% of royalty. However, he would submit that the royalty slips that were issued to the petitioner mentioning starting time as 9.05 a.m. and 9.35

a.m. respectively for the two vehicles and which were valid for 24 hours, the vehicles of the petitioner were intercepted while transporting sand beyond those 24 hours. Even the receipt that was handed over by the drivers containing a bar code and invoice number, in spite of scanning of the bar code, it was not traceable on the 'CGM Gujrat App'. In view of such state of affairs, the petitioner should approach the respondents and respond to the notices. The impugned communications are barely notices. The petitioner can very well convince the respondents-authorities on facts and appropriate decision should be allowed to be taken instead of abruptly stalling any further enquiry.

7. So far as the legal aspect is concerned, the issue is no longer *res integra.* In the matter of ***M/s. Shree Rajesh Pathak Vs. State of Maharashtra and others in Writ Petition No. 2078/2021 by the order dated 07.04.2022 (Nagpur Bench of this Court)*** which is subsequently followed in several other matters, this Court has held that the State Government is not competent to demand an amount equivalent to 10% of royalty from an importer of minor minerals excavated in another State and it has no authority under the Act of 1957. However, the facts of the matter in hand are not exactly similar. Another factual dispute has been raised as regards the validity of the transportation passes. It is being alleged that the vehicles were intercepted beyond the permitted time limit while carrying sand. Since it is purely a factual dispute, this Court cannot indulge into any scrutiny in that respect. Suffice for the purpose to observe that by the impugned communication the petitioner has been called upon to show cause before passing a final order. It would be appropriate, therefore, that he approaches the authorities and convinces them as regards the factual dispute.

8. In view of such peculiar circumstances, following the precedents, the only declaration which the petitioner would be entitled to is as regards the requirement of Zero Royalty Pass by virtue of clause 5 of the Government resolution dated 05.02.2021 which has been struck down. As far as rest of

the violations are concerned, he will have to approach the authorities, show cause and let the respondents authorities pass appropriate order, which needless to state he would be entitled to challenge if not satisfied with the final order.

9. The Writ Petition is partly allowed. It is declared that the respondents cannot impose any penalty only on the ground of clause 5 of the Government resolution dated 05.02.2021 which has been struck down.

10. The petitioner may approach the respondent No. 2, show cause and the respondent No. 2 shall pass appropriate orders after extending him an opportunity of being heard.

11. We direct the respondent No. 2 to pass final orders after hearing the petitioner as expeditiously as possible and in any event within three weeks from today.

(S. G. CHAPALGAONKAR, J.) **(MANGESH S. PATIL, J.)**

mkd/-