

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

WRIT PETITION NO.428/2023

Razique Ahmad Nasir Ahemad

...Versus...

State of Maharashtra, through its Secretary, Revenue and Forest Department,
Mantralaya, Mumbai -32 and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri A.R. Ingole, Advocate for petitioner
Shri N.R. Patil, AGP for respondent nos.1 to 4

CORAM : AVINASH G. GHAROTE, J.

DATE : 17/03/2023

1. The petition challenges the order dated 14/11/2022 (pg.24) by the Tahsildar imposing a penalty of Rs.1,85,400/- on the ground that the petitioner was found transporting 09 brass of sand on the basis of an illegal transport permit. This order has been confirmed by the learned Sub Divisional Officer by his order dated 16/11/2022 (pg.27) and so also by the Additional Collector by his order dated 06/01/2023 (pg.29).

2. It is contended that the petitioner had a Transit Pass (for short, "TP", hereinafter) for 24 cubic meters of sand, which comes to 8.4 brass of sand. According to the TP (pg.20), the transportation was to be effected up to 13/11/2022 till

11.40 a.m. Since the transport permit was issued by the Mineral Resources Department, Government of Madhya Pradesh, a zero royalty pass was issued by the State of Maharashtra on its basis (pg.21), which permitted transport of 09 brass of sand. However, the time limit for transportation appears to have been restricted to 06.44 a.m. of 13/11/2022.

3. This is being objected to by Shri Ingole, learned counsel for the petitioner contending that since the original TP permitted the time limit up to 11.40 a.m. of 13/11/2022, the State of Maharashtra could not have reduced the transportation time.

4. This plea appears to be reasonable, as while issuing the zero royalty pass what the State of Maharashtra has to ensure is the valid TP by the State from which the TP originates. The State therefore cannot change any of the parameters, as contained in the original TP issued by the originating State. In that view of the matter, the time limit could not have been reduced by the State of Maharashtra while issuing the zero royalty pass at page 21. Thus, the petitioner would be entitled to transport the sand up to 11.40 a.m. of 13/11/2022.

5. It is not in dispute that when the vehicle was apprehended on 13/11/2022 at 7.45 a.m., as is indicated by the seizure memo (pg.59), which was near the Dharam Kata, Akot Road, Anjangaon Surji, the petitioner had still substantial

time available with him to complete the transportation as per the original TP issued to him. That being the position, the transportation could not have been interdicted by the respondents before the time period for the same, as per the original TP, had expired. This aspect has not been considered by any of the authorities below while passing the impugned orders and therefore, on which count they cannot be sustained.

6. The plea that the petitioner was carrying 09 brass of sand and therefore was liable for penalty as the original TP mentioned only 24 cubic meters, i.e., 8.4 brass of sand, is also untenable as the zero royalty pass permitted the petitioner to transport 09 brass of sand. The respondents, therefore, would be bound by the quantity, as mentioned by them in the zero royalty pass, as that was a position, which was of their own making.

7. In view of the above discussion, all the impugned orders, as indicated above, cannot be sustained and the same are hereby quashed and set aside.

8. The writ petition is accordingly allowed in the above terms. No order as to costs.

(AVINASH G. GHAROTE, J.)