

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

WRIT PETITION (WP) NO. 3133 OF 2018

Ashwinsingh @ Guddusingh s/o
Bhudevising Thakur Aged 32 years, Occ.
Business, R/o Sarkar Nagar, Vivekanand
Marg, Chadrapur.

.... Petitioner

// VERSUS //

1. State of Maharashtra, Through Secretary
Revenue Department, Mantralaya,
Mumbai.
2. The Sub-Divisional Officer,
Chandrapur, Office of Sub-Divisional
Officer, Chadrapur.
3. The Tahsildar, Tahsil Office, Chandrapur.

... Respondents

Shri A.R. Wagh, Advocate for the Petitioner
Shri K.L. Dharmadhikari, AGP for the Respondent Nos.1 to 3 - State

CORAM : ANIL S. KILOR, J.
DATED : 27.01.2023

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by
consent of the parties.

3. In this writ petition, the order imposing penalty on the vehicle allegedly carrying sand illegally, is under challenge. As far as the seizure of truck and imposition of fine, the petitioner does not want to press any challenge in relation to the same, as the truck was released and the fine has already been paid by the petitioner.

4. After going through the impugned order, it is evident that much emphasize is given to the time gap between issuance of transit pass and interception of truck. It is observed in the order that on 03.04.2018 in the morning at 6.15 hours Invoice Receipt No.3233382 was issued, however, the truck was intercepted on 03.04.2018 in the night at 11.30 p.m., whereas, the distance was only 50 k.m. The said observations were the basis to hold against the petitioner.

5. In the above referred backdrop, on perusal of the show cause notice dated 04.04.2018 issued to the petitioner, calling upon him to submit explanation, there is no mention of the above referred fact as regards time gap. Thus, it is clear that the impugned order is based on finding of a fact, on which explanation was never sought by the respondent SDO or Tahsildar.

6. In the circumstances, I am of the opinion that only on the point of imposition of penalty, the matter needs to be remanded back to the SDO, Chandrapur, who shall give sufficient opportunity to the petitioner to explain the above referred allegations levelled against the petitioner and thereupon the SDO, Chandrapur shall decide the matter afresh.

7. Accordingly, I pass the following order:

(i) The petition is **allowed**.

(ii) The order passed by the SDO, Chandrapur dated 11.05.2018, is hereby quashed and set aside.

(iii) The matter is remanded back to the SDO, Chandrapur to decide afresh after giving sufficient opportunity as observed above.

(iv) The petitioner shall appear before the SDO, Chandrapur on 16.02.2023 at 11.00 and the SDO, Chandrapur shall take decision afresh, within three months thereafter.

The writ petition is **disposed of** accordingly.

[ANIL S. KILOR, J.]

Digitally signed by NIRANJAN
DOMAJI THAWRE
Signing Date: 30.01.2023
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