



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

WRIT PETITION NO.5885 OF 2024

Vishwas Ratan Murtadak

VERSUS

The State Of Maharashtra Through It's Secretary And
Others.

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Advocate for the Petitioner : Mr. A.B. Kharosekar

AGP for Respondents : Mr. K.B. Jadhavar

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : July 02, 2024

COURT'S ORDER :-

1. The petitioner impugns the show cause notice dated 11.6.2024 issued by the Tahsildar, Sangamner-Respondent no.4, by which the petitioner was called upon as to why penalty of Rs.82,400/- shall not be imposed upon him in terms of Section 48(7) of the Maharashtra Land Revenue Code (for short MLR Code).

2. The petitioner contends that he is the owner of the truck bearing registration no.MH-15-DK-8644. While his vehicle was carrying stone metal, Circle Officer Ghulewadi intercepted, seized vehicle and prepared panchnama dated 7.6.2024. Consequently, petitioner has been served with the impugned show cause notice alleging

that metal stone was transported in the vehicle without authorization in terms of Rule 71 of the Maharashtra Minor Mineral Extraction (Development and Regulations) Rules, 2013 (for short Rules of 2013).

3. Mr. Kharosekar, learned advocate appearing for the petitioner submits that, since metal stone (Gitti) is a finished product, it cannot be termed as minor minerals. Consequently, Revenue Authority does not possess power to regulate its transportation or propose any action under section 48 (7) of the MLR Code. Therefore, the impugned show cause notice issued is without jurisdiction. In support of his contentions, he relies upon the Division Bench Judgment of this Court in case of **Pralhad s/o Vishnu Wayade Vs. State of Maharashtra and others dated 19.3.2010 in Writ Petition No.4077 of 2009 (Nagpur)**, judgment of this Court in Writ Petition No.8194 of 2022 in case of Vishal Laxman Shinde Vs. State of Maharashtra and others dated 25.8.2022 and similar orders passed in writ petition Nos.13216 of 2022, 3504 of 2023 and WP 9850 of 2023 (at Aurangabad).

4. Per contra, Mr. Jadhavar, learned AGP appearing for the respondents relying upon the affidavit-in-reply filed by Mr. Sandip Bhangare, Naib Tahsildar, on behalf of respondent no.4 submits that for transportation of minor minerals authorization/permit is necessary in

terms of Rules of 2013. When petitioner's vehicle was found carrying the stone metal, no authorization was produced as required under section 46 (26), and 78 of the Rules of 2013. Consequently, show cause notice has been served upon the petitioner. Mr. Jadhavar would further invite attention of this court to the Government Resolution dated 9.5.2023 which stipulates guidelines for issuance of authorization to the stone crushers.

5. Having considered the submissions advanced, the crucial issue that raised for consideration in this matter is as to whether stone metal can be termed as Minor Mineral within the meaning of Mines and Mineral (Development and Regulation) Act, 1957. In fact the issue is no more res-integra. This court in case of **Pralhad Vishnu Wayade and others Vs. State of Maharashtra and others in (WP 4077 of 2009)** observed thus :-

“6. While the learned Assistant Government Pleader Ms. T.H. Khan would advance serious and prolonged submissions on the lines of what is stated in the affidavit, it is difficult to agree with the submission that gitti or metal stone is not a finished product and further, even if it is assumed that gitti or metal stone is a finished product, its transportation can be regulated. The argument that ‘gravel’ which is defined as a ‘mineral’ in the Act of 1957 must be widely and expansively interpreted to include gitti or metal stone, merits rejection. The term ‘gravel’ which is used in the company of several other products which are defined as ‘minerals’ clearly refers to gravel in the natural form found in the river-bed etc. Moreover, the

Division Bench has already held that ‘gitti’ or metal stone is a finished product and it would neither be appropriate nor permissible for me to take a contrarian view. The other submission is that even a finished product can be regulated under the Code considering that the efficacy of the regulatory regime depends on such control and regulation, which argument is negated by the Division Bench in Pralhad s/o Vishnu Wayade and others v. The State of Maharashtra and others in Writ Petition 4077/2009. I am bound by the said decision of the Division Bench.”

6. It is, therefore, evident that metal stone or ‘gitti’ being finished product does not fall within the stope of minor minerals and cannot be regulated by the Mines and Minerals (Development and Regulation) Act, 1957. Similar view is re-iterated by this Court in subsequent judgments particularly in case of Vishal Shinde (supra).

7. In that view of the matter, no action could have been proposed under section 48 (7) of the MLR Code against the petitioner in pursuance of the transportation of stone metal in his truck.

8. Mr. Jadhavar, learned AGP submits that penalty is proposed if the petitioner could not explain the source of stone metal and authorization of stone crusher.

9. Apparently, in the present case, show cause notice clearly depicts that truck of the petitioner was carrying stone metal, which is a finished product. He

could not point out any provision under the MLR Code or the Rules of 2013 stipulating that for transportation of stone metal authorization is necessary. The provisions contained under Rule 71 of Rules 2013 prescribes for authorization to be obtained by the owner of stone crusher for carriage of minor minerals, however, there is nothing in the Rules that prescribes authorization for transportation of the finished product i.e. stone metal. In similar circumstances, the Division Bench of this Court in case of Pralhad Wayade (supra), observed as under :-

"7. As regards the justification offered by the respondents for requiring transit passes, if at all the respondents in reality have wished to see if the clay extracted is being properly used for the purposes of manufacturing bricks, then for verifying the same they could have resorted to a simple procedure for inspection as may be authorized by law. Having regard to the same, it is wholly unnecessary to go in the question of the action taken by respondents being innocent as observed by the Apex Court in a decision in the case of Smt. S.R. Venkataraman .vs. Union of India and another reported in (1979) 2 Supreme Court Cases 491 wherein while considering the question of malice in law by quoting the observations of Viscount Haldane in the decision in the case of **Shearer Vs. Shields reported in (1914) AC 808**, it has been observed by Apex Court in paragraph no.5 of the said decision :-

"5. Malice in law is, however, quite different. Viscount Haldane described it as follows in Shearer V. Shields :

A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of his mind is

concerned, he acts ignorantly and in that sense innocently.

Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause."

10. In light of the aforesaid observations, in the present case, authorities could have resorted to the inspection of the stone crusher site. However, there is absolutely no justification for intercepting or seizure of the vehicle carrying stone metal or proposing any penalty in terms of section 48 (7) of the MLR Code. Consequently, the impugned show cause notice or consequential action cannot be approved. Hence, Writ Petition succeeds and allowed in terms of prayer clause "**B**". Respondent Nos.3 and 4 shall forthwith release the vehicle/truck bearing registration No.MH-15/DK-8644. Writ Petition accordingly stands **disposed off**. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

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aaa/-