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942&943 WP-11088-2024

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

942 WRIT PETITION NO. 11088 OF 2024

Neha Enterprises Ltd Through Samir Digambar Devkar

VERSUS

The State Of Maharashtra Through Principal Secretary And Others

AND

943 WRIT PETITION NO. 11089 OF 2024

Pratibha Mohan Chaudhari Through Samir Digambar Devkar

VERSUS

The State Of Maharashtra Through Principal Secretary And Others

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Mr. A. M. Reddy i/by Mr. B. S. Deshmukh, Advocate for the Petitioner
in both petitions.

Mr. K. S. Patil, AGP for Respondent-State.

**CORAM : KISHORE C. SANT, J.
DATE : 19th NOVEMBER, 2024**

PC :-

1. Heard the learned Counsel for the parties.
2. In both these writ petitions, the orders passed by the learned Additional Collector are challenged in respective appeals dated 6th February 2024. The main ground on which the orders are assailed is that, when the vehicles were seized, it was found to have carried excess sand. In one case, the excess sand was found to be 400 k.g. and in other case, the it was found to be 330 k.g. However, the

authorities did not allow to recalibrate the weight of the vehicles alongwith sand, though it was the order by this Court in writ petitions. Second ground stated is that, the authorities found that the vehicles were having a valid transit permission and also valid license for transportation of the sand and there is no dispute still the action is taken. The learned Advocate relied on the Judgment of this Court at Nagpur Bench in the case of **Sheikh Arif S/o. Sheikh Salim Tah. Warud, Dist. Amravati Vs. The State of Maharashtra Through its Secretary, Revenue and Forest Dept. Mantralaya, Mumbai and Ors.** passed in Writ Petition No.1065 of 2023 on 24th March 2023.

3. It is the case of the petitioners that when the vehicles were seized and the action was taken, the petitioners approached this Court seeking direction to the authorities to allow the petitioners to go for recalibration of the vehicles. The reason stated is that because of the rainy season, the water accumulated in the vehicles, and thereby sand became more weighty. In fact, the sand carried in the vehicles was not in excess. In spite of the order passed by this Court, the learned Appellate Authority did not allow to go for

recalibration and decided the appeals.

4. Another ground agitated is that, when the vehicles were seized, it was found to have valid license and permission. The Authorities itself have observed that the vehicle was carrying royalty pass and zero royalty ETP pass and, there is no objection raised by the Officers. The case of the petitioners further is that the petitioners had filed application for recalibration alongwith the appeals. It was necessary for the authority to go for recalibration before deciding the appeals. The learned Advocate for the petitioners thus submits that the impugned judgment and order deserve to be quashed and set aside by remanding the appeals with direction to recalibrate the vehicles.

5. The learned AGP vehemently opposed the writ petitions. He submits that the vehicles were intercepted on 24th August 2024. Now directing recalibration will be of no use. The vehicles were found carrying excess sand at the time of measuring the sand. The vehicle bearing Registration No.MH-15-JC-7699 was found carrying 400 kg excess sand whereas, in vehicle No. MH-15-JC-6799 was found with excess sand of 330 kg. The petitioners cannot go for

recalibration as a matter of right. There is no provision under the act giving such opportunity to the vehicle owners. In any case, there is no proper explanation for excess weight itself that the vehicles were carrying. He submits that in fact, there are instructions given to the vehicle owners to cover the sand with tarpaulin. It is thus the responsibility of the vehicle owners to cover the sand with tarpaulin, for the fault of the vehicle owners, the authority need not go for recalibration. Though this Court had passed an order directing recalibration, and though it is not carried, that itself cannot be a reason to set aside the impugned judgment and order. In any case now no purpose would be served by recalibration.

6. After hearing the parties, this Court finds that the main ground is that the recalibration was not done in spite of the order passed by this Court. The question therefore is whether there is any provision for recalibration of the vehicle before taking action. No such provision is pointed out. Recalibration is done in view of the order passed by this Court. However, for some reason, it is not being done whether that would vitiate the proceeding before the

authorities. Answer is clearly no. New the recalibration is directed in some of the cases only by way of indulgence by using the powers of this Court. However, not going for recalibration by itself cannot be said to be a ground to set aside the judgment. The second ground agitated is that, the vehicle was found to be carrying license, ETP pass etc. and therefore, the action needs to be set aside. From the order passed by the learned Additional Collector and the authorities, it is seen that the action is not taken for not carrying the royalty pass, zero royalty pass and permission but it is for transporting excess sand. Certainly that is in violation of the provision as the permission is granted to carry only certain amount of sand and not more. If the vehicle is found carrying excess sand, it is for the vehicle owner to take proper care. The vehicle owner is well aware that the transportation was to be done in the rainy season and there is every chance of the sand getting wet. New this Court has gone through the impugned Judgment and order, this Court does not find any case is made out to call for interference with the impugned judgment and order passed by the learned Additional Collector, Nandurbar Dist. Nandurbar.

7. For this reason, both the writ petitions stand dismissed.

ORDER

- (i) Writ Petitions stand dismissed and disposed off.
- (ii) No order as to costs.

[KISHORE C. SANT, J.]