

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

CIVIL APPLICATION (CAW)2862/2024 IN

WRIT PETITION NO.5310/2024

Firoze Wazir Sheikh Vs. The Additional Collector and Ors.

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

Court's or Judge's orders

Mr. A. R. Ingole, Advocate for Petitioner.
Mr. S. M. Ukey, Addl.G.P. for Respondent/State.

CORAM : NITIN W. SAMBRE AND
MRS.VRUSHALI V. JOSHI, JJ.
DATED : 25/10/2024.

. For the reasons stated in the application the application is allowed.

2. The amendment be carried out within a period of two week.

3. The application stands disposed of.

WRIT PETITION NO.5310/2024

. Our attention is invited to the Division Bench order dated 15.03.2019 delivered in Writ Petition No.7165/2018 (Harihar S/o. Mahadev Puri Vs. State of Maharashtra and Anr.) particularly paragraph No.10, which reads as under :

“10. The third submission of the learned counsel for the petitioner is that by the impugned order penalty in respect of illegal transport of the sand as well as the means of convenience employed for such illegal transport has been imposed under Section 48(7) by the

Tahsildar, but it is not permissible for him to do so. Upon perusal of subsections (7) and (8) of Section 48 we find that there is substance in the argument of learned counsel for the petitioner. What can be imposed by way of a penalty by the Tahsildar by invoking his power under subsection (7) of Section 48 of MLR Code is only that penalty which is for illegal transportation of sand only to the extent of five times of the market value of the minerals transported in addition to the amount of royalty and nothing more. But, in the present case the penalty imposed by the Tahsildar is of composite nature, one for the transportation of the minerals as such and the other for the user of the vehicle in question for such transport. For the later part of the offence, the penalty can be imposed only by the Collector or any officer not below the rank of a Deputy Collector specifically authorized in this behalf by the Collector himself. This is under Section 48(8) (2) of the MLR Code. It is here that the impugned order has made itself vulnerable to law and to this extent only, the impugned order deserves to be quashed and set aside.”

2. As such, it is claimed that the penalty cannot be imposed on the vehicle. There appears substance in the contention.

3. That being so, assurance given by the Additional Government Pleader Mr. Ukey that the Tahsildar shall reconsider the order in the light of the aforesaid Division Bench Judgment is accepted.

4. The Tahsildar to communicate the fresh order to the petitioner by 29.10.2024.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)