



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

WRIT PETITION NO. 7771 OF 2023

(NILESH NARENDRAPRASAD DUBE..VS.. ASSISTANT DISTRICT MAGISTRATE & SDO PUSAD & OTH,)

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

Court's or Judge's orders

Shri A.R.Ingole, Advocate for Petitioner.
Shri N.S.Rao, A.G.P. for Respondent Nos. 1 to 3.

CORAM : ANIL S. KILOR, J.
DATED : JANUARY 16, 2024.

1. Heard.
2. The order dated 04/08/2023 passed by the Sub-Divisional Officer, Pusad setting aside the order of the Tahsildar imposing penalty on alleged illegal excavation of sand and thereby imposed higher penalty on the ground that the Tahsildar refers to only one breach of e-TP but, there are breaches of e-TP on 10 occasions, is under challenge in this writ petition.
3. The learned counsel for the petitioner submits that no show cause notice was issued to the petitioner along with relevant documents and no specific charges about such breaches on 10 different occasions were communicated. It is submitted that the petitioner did not get sufficient opportunity to reply such allegations and therefore, according to the petitioner, the impugned order suffers from principles of natural justice. He, accordingly,

prays for quashing and setting aside the order dated 04/08/2023 impugned in the present writ petition.

4. On the other hand Shri Rao, learned A.G.P. submits that the show cause notice was issued to the petitioner on 11/07/2023 which refers that the petitioner misused the e-TP on 10 occasions and the same was revealed from the e-TP history and GPS location. He, therefore, submits that there was a compliance of the principles of natural justice and accordingly, he prays for dismissal of the writ petition.

5. In light of the rival contentions, I have perused the record and the impugned order.

6. The show cause notice, which the learned A.G.P. is referring to, says that from e-TP history and GPS it was revealed that as per last 10 e-TP the said vehicle did not go to the location. Hence, the explanation was called in relation to the same from the petitioner vide show cause notice dated 11/07/2023.

7. The petitioner in his reply has categorically stated that no documents were supplied to the petitioner in respect of misuse of the e-TP and therefore, the petitioner has shown his inability to give reply to the show cause notice.

8. Thus, it was expected that the Sub-Divisional Officer before passing the order ought to have made clear that what are the specific allegations against the petitioner and what material the Sub-Divisional Officer possesses and ought to have supplied the same to the petitioner so as enable him to give detail reply to the show cause notice. However, the Sub-Divisional Officer has failed to do so and did not supply the necessary documents requested by the petitioner.

9. In that view of the matter, the only option left with this Court to remit the matter back to the Sub-Divisional Officer to decide the same after giving detailed show cause notice along with the documents on which the Sub-Divisional Officer wants to rely upon while determining the penalty as regards breaches allegedly committed by the petitioner. Accordingly, I pass the following order:

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 04/08/2023 passed by respondent No.1-Assistant District Magistrate and Sub-Divisional Officer, Pusad in Rev. Case No.21/MNL-37/2023-2024, Mouza : Gaimukh Nagar is hereby quashed and set aside.

iii) The matter is remanded back to the Sub-Divisional Officer, Pusad to decide the same afresh by taking into consideration the above referred observations.

iv) The Sub-Divisional Officer is directed to take decision at the earliest, on its own merits.

The Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE

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