



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO. 8897 OF 2024

Taslim Abdul Kadir Patel

....Petitioner

VERSUS

The Sub Divisional Officer
Jalgaon Division & another

.....Respondents

Mr. N. D. Sonavane, Advocate for the Petitioner.
Mr. S. B. Jadhav, AGP for the State.

CORAM : R. M. JOSHI, J.

DATE : 12th MARCH, 2025.

PER COURT :

1. This petition takes exception to the orders dated 05.09.2023 and 18.04.2024 passed by the Sub-Divisional Officer, Jalgaon.

2. At the outset, learned counsel for the Petitioner restricts challenge in this petition to the extent of order dated 18.04.2024 passed by the Sub-Divisional Officer, Jalgaon. On instructions, he seeks withdrawal of the petition in respect of order dated 05.09.2023 with liberty to file appeal in accordance with law.

3. Petition is allowed to be withdrawn to the said extent with liberty as prayed for.

4. Petitioner is the owner of the vehicle in which there was alleged transportation of minerals without license. The said vehicle was intercepted and taken into custody. Tahsildar, by order dated 04.05.2023 imposed penalty of Rs. 68,655/-. This order came to be challenged by filing Writ Petition No. 5495/2023 wherein this Court had directed realisation of the vehicle upon depositing the amount of fine as ordered by the Tahsildar. On 16.06.2023, the Sub-Divisional Officer, without considering the order of Tahsildar dated 04.05.2023, on the basis of previous order dated 04.05.2023, imposed penalty of Rs. 3,14,425/-. This order also came to be challenged by filing Writ Petition No. 6169/2023 which came to be allowed on 04.05.2023. In the said petition direction was issued to the Sub-Divisional Officer for passing further order. It is the contention of the Petitioner that the Sub-Divisional Officer, without considering the order of this Court and without giving an opportunity of hearing, passed order dated 05.09.2023. Suffice it to say that since the petition is withdrawn to the extent of this order, no further observations are required in this regard.

5. It is further case of the Petitioner that on 23.03.2024 the vehicle of the Petitioner was again seized and the Tahsildar issued notice for imposing penalty of Rs. 96,920/-. The Sub-Divisional Officer issued notice on 05.04.2024 for recovery of the earlier fine amount so also the penalty imposed subsequently. On 18.04.2024, i.e. even before Tahsildar could pass the final order, without granting any hearing, the Sub-Divisional Officer passed order of imposing penalty of Rs. 5,65,575/-. It is after this order was passed, the Tahsildar passed final order on 18.04.2024. Hence, this petition.

6. Learned counsel for Petitioner has placed reliance on order dated 30.01.2024 passed by this Court in Writ Petition No. 1048/2024 in case of Sanjay Namdeo Dhekale vs. Tahsildar and another wherein, after taking into consideration relevant provisions of law, it is held that the order passed by the Sub-Divisional Officer of imposing penalty without giving opportunity of hearing as well as without waiting for the order of Tahsildar is not sustainable. He, therefore, seeks similar order in the present case.

7. Though learned AGP has opposed the petition, however, he does not dispute that the said judgment cited on behalf of the Petitioner would apply to the present case.

8. In the instant case, record indicates that the Tahsildar has passed final order on 28.04.2024 and proposed penalty on the Petitioner. Even before passing of the said order, the Sub-Divisional Officer, by order dated 18.04.2024 has imposed penalty on the Petitioner. It is held in the judgment cited supra that there has to be a notice before imposing penalty on use of vehicle for transporting the minor minerals. Similarly, no such order could be passed by Sub-Divisional Officer even before Tahsildar passes any order. In the circumstances, this Court has no reason to take any different view i.e. one taken in the judgment cited supra.

9. In view of above, the order impugned dated 18.04.2024 is set aside. Proceedings are relegated back to the Sub-Divisional Officer for decision afresh after giving an opportunity of hearing to the Petitioner. The Sub-Divisional Officer also to consider application

dated 26.06.2024 filed by Petitioner before the said authority and to pass appropriate order in accordance with law.

(R. M. JOSHI)
Judge

dyb