



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.1017/2024

1. Santosh Rambhau Shende
Aged : 47 years, Occ. : Agriculturist,
R/o. Vakhariya Jin,
Akot, Tq. Akot, District: Akola
2. Sandeep Shrikrushna Kasde
Aged : 32 years, Occ.: Agriculturist,
R/o. Dattapur, Tq. Akot, District: Akola

... PETITIONERS

...VERSUS...

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-440032
2. Sub Divisional Officer, Akot,
Tq- Akot, District: Akola
3. The Tahsildar, Tq. Akot,
District: Akola

...RESPONDENTS

Shri V.B. Bhise, Advocate for petitioners
Shri B.M. Lonare, AGP for respondent Nos.1 to 3

CORAM : SMT. M. S. JAWALKAR, J.

DATED : 20/01/2025

ORAL JUDGMENT

. Heard learned Counsel for petitioner and learned A.G.P for respondents/State.

2. The present petition is filed challenging the order dated 31.07.2023 passed by the learned Sub Divisional Officer, Akot in Revision Case No.MNL-37/Ambadi/39/2022-2023 and order dated 27.09.2023 passed by the respondent No.2. The petitioner is the owner of Truck and petitioner No.2 is driver of the said vehicle. The petitioners have used the said vehicle for transportation of goods or minor minerals by strictly complying the provision of Maharashtra Land Revenue Code, Rules and Regulations framed by the Government. On 26.05.2023, at 6.40 p.m. Nayab Tahsildar, Akot seized the Truck of the petitioner No.1 bearing No.MH-28-AB-7453 at Ambadi, Akoli, Jahagir Road alleging that petitioner No.2 was transporting 4 Brass 'crushed sand' from the said vehicle without having valid transit pass. The Tahsildar, Akot after receiving report from Nayab Tahsildar on 29.05.2023, submitted the proposal to the Sub Divisional Officer, Akot for taking necessary action against the

petitioners under the provisions of Section 48 of the Maharashtra Land Revenue Code and Rule 9 of the Maharashtra Minor Minerals Extraction Rules, 2017. Notices were issued to the petitioners to file their reply, however, petitioner failed to appear. It is alleged that there were no notice of proceedings. Thereafter, respondent No.3 Sub Divisional Officer by an order dated 31.07.2023, imposed penalty of Rs.92,400/- under Section 48(7) of the Maharashtra Land Revenue Code, on the petitioners for transporting 'crush sand' without transit pass and further imposed penalty of Rs.2,00,000/- on the vehicle of petitioner No.1 under Section 48 (8) (2) of the Maharashtra Land Revenue Code and as per Rule 9 of Maharashtra Minor Minerals Extraction Rules, 2017.

3. Upon getting knowledge of this order, the petitioners have filed Revision under Section 258 before the Sub Divisional Officer. It is specifically contention that there was no notice of proceedings before the Tahsildar to the petitioners as per Note Sheet. The petitioners also relied on Judgment in ***Bansilal Chandak Vs. State of Maharashtra reported in 2019 (4) ALL MR 249***, wherein it is held that crush sand is finished product and same

came to be prepared after (kaptchi) process and crush from the stone crusher and, therefore, no transit pass is required for transporting the crush sand. The Sub Divisional Officer, Akot rejected the Revision without considering the citation relied on.

4. There is no dispute by the learned A.G.P. that the Truck was carrying crush sand in ***Bansilal (supra)***, wherein the Division Bench of this Court held in paragraph No.4 held as under:

“4. In the present case, it is not the charge that the petitioner has extracted the raw material (Kapchi) from any working or derelict mines, quarries, old dumps, fields, bandhas, nallas, creeks, river-beds, etc., as contemplated by the provision of sub-section (7) of Section 48 of the Maharashtra Land Revenue Code. Undisputedly, the vehicle in question was carrying the finished product of Gitti (metal stone) collected from the stone crusher of the petitioner, for which no transit pass is required. The question as to whether the transporter was required to explain his source of metal stone or extraction of clay has been dealt with in Para 7 of the aforesaid decision, which is reproduced below:

"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.”

5. The learned Counsel for petitioner also relied on judgment in ***Vishwas Ratan Murtadak Vs. The State of Maharashtra through its Secretary and others in Writ Petition No.5885/2024*** dated 02.07.2024 of this Court, Bench at Aurangabad in paragraph No.9 is as under:

“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 ML 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.”

And also held further in paragraph No.10 as under:

“10. 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."

6. In view of this legal position, the crush stone which is obtained from the crusher is not raw mineral and will not require any transit pass. As such, the impugned orders are patently illegal and without jurisdiction and needs to be quashed and set aside. Accordingly, I proceed to pass the following order:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The impugned order dated 31.07.2023 passed by respondent No.2/ Sub Divisional Officer, Akot in Rev. Case No. MNL-37/Ambadi/39/2022-23 and order dated 27.09.2023 passed by respondent No.2 are hereby quashed and set aside.
- (iii) The respondents are directed to release the vehicle bearing No.MH-28-AB-7453.

7. The Writ Petition stands disposed of in above terms. No orders as to costs.

R.S. Sahare

(Smt. M.S. Jawalkar, J.)