

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

**911 CONTEMPT PETITION NO.606 OF 2019
IN WP/11072/2017**

VISHAL SAMBHAJI KUDALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Petitioner : Mr.U.R.Awate h/f.
Talekar And Associates
AGP for Respondents State : Mrs.P.V.Diggikar

...
**CORAM : PRASANNA B. VARALE AND
ANIL S. KILOR, JJ.**

DATE: 14th November, 2019

PER COURT:-

1. Heard learned counsel for the petitioner.
2. On a submission that an order passed by the Collector, referring matter back to the Honourable Minister, seeking approval for release of amount, is in breach of the order of this Court on 18.12.2017 passed in Writ Petition No.11072 of 2017, simple notice was issued to respondent No.2. In response to the notice, a detailed reply is filed on behalf of respondent No.2 - Collector, Aurangabad. Perusal of the order of this Court dated 18.12.2017 shows that the Division

Bench of this Court by the said order directed the petitioner to appear before the respondent No.2 i.e. Collector on 15.01.2018 and further directed that 'after hearing the petitioner, respondent No.2 shall take decision about entitlement of the petitioner to receive the amount of refund'

3. It was the submission of the learned counsel for the petitioner that the order of the Collector dated 16.06.2018, placed on record at Annexure-D, is not in consonance of the order of this Court.

4. Perusal of the communication clearly shows that the Collector had arrived at a conclusion that the petitioner is entitled to receive the amount of refund but for the reason that the Collector is not competent authority to refund the amount and the power vests with the State Government, the Collector forwarded the communication addressing to the Additional Secretary, Revenue and Forest Department, with his opinion that the petitioner is entitled to receive the amount but the refund can be initiated under the orders of the Honourable Minister for the State. In the affidavit-in-

reply, these facts are specifically stated. In Paragraph No.7, respondent No.2 - Collector reiterates that respondent No.1 i.e. the State of Maharashtra is the competent authority to refund the amount as proposed by the Collector. Then, it is stated that respondent No.1 has initiated re-enquiry in respect of the proposal.

5. Be that it may, the only issue for consideration is whether there is willful default or an act of breach of order is committed by respondent No.2 - the Collector, Aurangabad, as alleged by the petitioner. On perusal of the documents and more particularly, the documents referred by us in the earlier part of our order as well the statement of respondent No.2 - Collector reflected in paragraph No.7 of the affidavit-in-reply, we are of a clear opinion that it is only assumptions and presumptions of the petitioner that respondent No.2 - the Collector had committed breach of order of this Court or has indulged in act of non-compliance of the order of this Court. The petitioner himself never bothered to submit before this Court, at the time of presenting the petition, to verify whether the power of refund lies with the Collector or the State Government.

6. An order passed by the Honourable Minister was subject matter of the Writ Petition. The submissions were advanced on the backdrop of the order passed by the Honourable Minister on 17.07.2014. The Division Bench of this Court passed the order on 18.12.2017. At the cost of repetition, we state that even the Division Bench in its order has directed respondent No.2 - Collector to take a decision about the entitlement of the petitioner to receive amount of refund. If the collector is not the competent authority to refund the amount and if the power vests with the State Government, it cannot be said that respondent No.2 - Collector took a departure from the order of this Court by passing the order dated 16.06.2018.

7. These being our observations, an opinion which ultimately we have arrived at and the conclusion we have reached at, it can be safely said that the Contempt Petition is devoid of any merit and deserves to be dismissed. The same is accordingly dismissed.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)

SPT