

(1)

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

**WRIT PETITION NO.108 OF 2019**

Maresh s/o Popatlal Gundecha,  
Age:42 years, Occu: Business,  
R/o: G-1, Riddhi-Siddhi Apartment,  
Phase-II, Gulmohar Road, Savedi,  
Ahmednagar

..PETITIONER

**VERSUS**

1. The State of Maharashtra,  
Through Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai-32

2. The Collector,  
Collector Office,  
Ahmednagar

3. The Deputy Collector/  
Sub Divisional Officer,  
Ahmednagar, Taluka Ahmednagar,  
Dist. Ahmednagar

4. The Tahsildar,  
Tahsil Office, Ahmednagar ,  
Taluka Ahmednagar, Dist. Ahmednagar

..RESPONDENTS

**WITH  
WRIT PETITION NO.116 OF 2019**

Pradeep s/o Devidas Jadhav,  
Age:31 years, Occu: Business,  
R/o: Samarth Nagar, Waruda Road,  
Osmanabad, Taluka and  
District Osmanabad

..PETITIONER

**VERSUS**

(2)

1. The State of Maharashtra,  
Through Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai 400 032
2. The Collector,  
Collector Office,  
Osmanabad
3. The Deputy Collector/  
Sub Divisional Officer,  
Osmanabad, Taluka Osmanabad,  
Dist. Osmanabad
4. The Tahsildar,  
Tahsil Office, Osmanabad,  
Dist. Osmanabad

..RESPONDENTS

WITH  
**WRIT PETITION NO.110 OF 2019**

Changadev s/o Baburao Rathod,  
Age:40 years, Occu: Business,  
R/o: Ghatangri, Taluka Osmanabad,  
District Osmanabad

..PETITIONER

VERSUS

1. The State of Maharashtra,  
Through Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai 400 032
2. The Collector,  
Collector Office,  
Osmanabad
3. The Deputy Collector/  
Sub Divisional Officer,  
Osmanabad, Taluka and  
Dist. Osmanabad
4. The Tahsildar,  
Tahsil Office, Osmanabad,  
Dist. Osmanabad

..RESPONDENTS

(3)

WITH  
**WRIT PETITION NO.112 OF 2019**

Bhagwan s/o Abhimanyu Bangar,  
Age:28 years, Occu: Business and Agriculture,  
R/o: Gondli, Taluka Ambad,  
District Jalna

..PETITIONER

VERSUS

1. The State of Maharashtra,  
Through Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai 400 032
2. The Collector,  
Collector Office,  
Aurangabad
3. The Deputy Collector/  
Sub Divisional Officer,  
Aurangabad, Taluka and  
Dist. Aurangabad
4. The Additional Tahsildar,  
Tahsil Office, Aurangabad,  
Taluka and Dist. Aurangabad

..RESPONDENTS

WITH  
**WRIT PETITION NO.117 OF 2019**

Basaveshwar s/o Chandrakant Patil,  
Age:42 years, Occu: Business,  
R/o: At Post 165/2, Shantinagar,  
Near Maruti Mandir, Pachgaon,  
R. K. Nagar, Karveer, Taluka Karveer,  
District Kolhapur

..PETITIONER

VERSUS

1. The State of Maharashtra,  
Through Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai 400 032

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2. The Collector,  
Collector Office,  
Latur
3. The Deputy Collector/  
Sub Divisional Officer,  
Ahmedpur, Taluka Ahmedpur,  
Dist. Latur
4. The Additional Tahsildar,  
Tahsil Office, Ahmedpur,  
Taluka Ahmedpur,  
Dist. Latur

..RESPONDENTS

WITH  
**WRIT PETITION NO.380 OF 2019**

Sachin s/o Dnyanoba Lokhande,  
Age:24 years, Occu: Business,  
R/o: Sanja Road, Near Bus stand,  
Indira Nagar, Osmanabad, Taluka and  
District Osmanabad

..PETITIONER

VERSUS

1. The State of Maharashtra,  
Through Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai 400 032
2. The Collector,  
Collector Office,  
Osmanabad
3. The Deputy Collector/  
Sub Divisional Officer,  
Osmanabad, Taluka and  
Dist. Osmanabad
4. The Tahsildar,  
Tahsil Office, Osmanabad,  
Dist. Osmanabad

..RESPONDENTS

(5)

WITH  
**WRIT PETITION NO.381 OF 2019**

Siraj s/o Babulal Pathan,  
Age:32 years, Occu: Business,  
R/o: Dargah Road, Gazipura,  
Osmanabad, Taluka and  
District Osmanabad

..PETITIONER

VERSUS

1. The State of Maharashtra,  
Through Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai 400 032
2. The Collector,  
Collector Office,  
Osmanabad
3. The Deputy Collector/  
Sub Divisional Officer,  
Osmanabad, Taluka and  
Dist. Osmanabad
4. The Tahsildar,  
Tahsil Office, Osmanabad,  
Dist. Osmanabad

..RESPONDENTS

WITH  
**WRIT PETITION NO.382 OF 2019**

Shivaji s/o Mahadeo Shendge,  
Age:38 years, Occu: Business,  
R/o: New Mondha, Athawada Bajar,  
Osmanabad, Taluka and  
District Osmanabad

..PETITIONER

VERSUS

1. The State of Maharashtra,  
Through Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai 400 032

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2. The Collector,  
Collector Office,  
Osmanabad
3. The Deputy Collector/  
Sub Divisional Officer,  
Osmanabad, Taluka and  
Dist. Osmanabad
4. The Tahsildar,  
Tahsil Office, Osmanabad,  
Dist. Osmanabad

..RESPONDENTS

WITH  
**WRIT PETITION NO.496 OF 2019**

Nilesh s/o Bhimrao Rathod,  
Age:28 years, Occu: Business,  
R/o: Rui Tanda, Post Sukhapuri,  
Taluka Ambad, District Jalna

..PETITIONER

VERSUS

1. The State of Maharashtra,  
Through Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai 400 032
2. The Collector,  
Collector Office,  
Beed
3. The Deputy Collector/  
Sub Divisional Officer,  
Beed, Taluka and  
Dist. Beed
4. The Tahsildar,  
Tahsil Office, Georai,  
Taluka Georai,  
Dist. Beed

..RESPONDENTS

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Mr A. B. Kharosekar, Advocate for petitioner;  
Mr V. S. Badakh, A.G.P. for respondents

**CORAM : PRASANNA B. VARALE  
AND  
S.M. GAVHANE, JJ.**

**DATE : 25<sup>th</sup> February, 2019**

**ORAL ORDER:**

Heard learned Counsel appearing on behalf of the petitioners.

2. These petitions involve an identical issue, namely, the seizure of vehicles under a panchnama carried out by Talathi of the village wherein the vehicle is seized on an allegation of transporting sand quantity more than permitted and not possessing the requisite documents at the time of apprehending these vehicles. As we have stated that the issue is identical, we take Writ Petition No. 108 of 2019 as a lead petition to dispose of this bunch of petitions by a common order.

3. The petitioner is a Government contractor and a work order was issued in his favour. A copy of the work order is placed on record at Exhibit-B. This work order relates to the construction work of a road under the scheme, namely, "*Mukhyamantri Gramsadak Yojana*". It may not be necessary for us to refer to the other contents of the work order. The petitioner has placed on record an

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undertaking/bond and the Counsel submitted that this being a Government work, the Executive Engineer himself referred to in the undertaking that for this Government work, the petitioner who is a contractor be provided the transit pass. It is also stated that the amount of royalty paid for the transit pass be entered in the Government accounts. Then it is stated that the contractor is expected to transport mines/minerals only for the Government work. The petitioner then submitted an application to the Tahsildar, Newasa, District Ahmednagar for issue of transit pass. In the application, the petitioner refers to the places from where he is collecting mines/minerals and the places wherein the mines/minerals is being transported. In the list of these vehicles, vehicle No. MH-16-AE-6000 finds place. This really assumes importance for the reason that the very vehicle is the vehicle in question. A transit pass issued in favour of the mineral extractor is placed on record. It refers to the name of pass owner as Mr Suresh Warule and also refers to the name of the vehicle and also to the quantity of the minerals to whom it is sold and in this column, name of the petitioner's firm finds place. On 8th October, 2018 the said vehicle was apprehended. A panchnama was drawn on the very day. The contents of panchnama state that the vehicle was transporting the quantity of minerals more than permitted and then on asking, the driver failed to produce transit pass. A copy of the statement is placed on record. In both these

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documents, a reference is made to the vehicle owner and it is the petitioner i.e. Mahesh Popatlal Gundecha. The documents panchnama and the statement of driver Shri Navnath Mahapure bear signatures of one Circle Officer and two Talathis.

4. The petitioner was then faced with notice dated 9th October, 2018 and by this notice, penalty to the tune of Rs.2,38,700/- is imposed against him. The petitioner immediately submitted reply to the authority, namely, the Tahsildar raising an objection for imposition of penalty on various grounds. Then the petitioner was faced with the order dated 23rd October, 2018 affirming the imposition of penalty and in the order of penalty a reference is made to the amount i.e. amount to the tune of Rs.2,23,700/- and it seems that while passing the order, imposition of penalty is by multiplying the penalty amount by 3, in stead of multiplying it by 5 as in the notice dated 9th October, 2018. Be that as it may.

5. A strong reliance was placed on the judgment of the Division Bench of this Court dated 6th October, 2018 in Writ Petition No. 10942 of 2018. It is also submitted by learned Counsel that the Division Bench of this Court subsequently also consistently followed the same view and in the latest order dated 8th February, 2019, the Division Bench followed the same view in Writ Petition No. 12359 of

2018. A copy of the order dated 8th February, 2019 is placed on record and marked 'X' for identification. Learned Counsel also made a statement before this Court that the petitioner is ready to challenge the order of imposition of penalty before the competent forum, namely, the Sub Divisional Officer and he is only pressing this petition for release of the vehicle.

6. Learned A.G.P. appearing on behalf of respondents - authorities vehemently opposed the petition. It was submitted by learned A.G.P. that the State Government has formulated an exhaustive and comprehensive policy. A copy of the said policy is placed on record in Writ Petition No.116 of 2019 along with affidavit in reply at annexure R-1. Learned A.G.P. then submitted that the panchnama is drawn in presence of the officers who are the members of the squad duly constituted in view of the Government Resolution dated 3rd January, 2018.

7. On the backdrop of aforesaid rival submissions, we have gone through the material placed on record as well as the Government Resolution dated 3rd January, 2018. Though learned A.G.P. vehemently submitted before us that the action taken by the respondents - authorities is due and proper and though he prayed for dismissal of the petition on the basis of Government Resolution dated 3rd January, 2018, we are unable to persuade ourselves to

accept the submissions of learned A.G.P. True it is, the State Government formed a comprehensive policy and the title of the policy under Government Resolution dated 3rd January, 2018 itself reads as "Modified policy of the State Government in respect of sand excavation and transportation". The Government Resolution refers to various aspects, such as the procedure to be adopted for issuance of tenders for sand spots, fixing the location of sand spots, making the provision for allocation of funds to the Grampanchayats, making provision for reservation of sand spots for the purposes of State Mineral Corporation. It also refers to the circular issued by the Central Government for necessary permission keeping in view the environmental and ecological controlling policies. Though it may not be necessary for us to refer to these procedural modalities in detail, it would be relevant for our purposes to refer to clause-14 and clause-15 of the said Resolution. Clause-14 deals with preventive measures. The policy is formulated on 3rd January, 2018 and sub clause (3) of clause-14 deals with installation of Close Circuit T.V. Cameras and then the requirement of 24 x 7 recording through these cameras of each of the sand spots. It also refers to installation of CCTV cameras on the way of transport, namely, lifting of sand and its transportation. It also mentions about bearing of expenses of installation of these cameras at the sand spots by the successful bidders. Clause-15 deals with the controlling acts. Sub clause (b) of

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Clause-15 states that for effective control and implementation in respect of sand excavation and transportation, various committees would be constituted. These committees are at Tahsil level, Sub Division level, District level and Division level. Clause (b) then refers to the vigilance committees as well as mobile squad. The vigilance committee as per clause-1 at State level consists of the Joint or Deputy Secretary of Mineral Department as the committee head and the other members are one Under Secretary or the Desk Officer, Assistant Desk Officer, the concerned District Mining Officer and concerned Superintendent of Land Records.

8. Insofar as vigilance committee at Tahsil level is concerned, the constitution of committee is, Tahsildar - the Chairman of the committee, Deputy Superintendent of Land Records - member, Block Development Officer - member, Police Inspector - member and Naib Tahsildar (Revenue) as the Member Secretary.

9. Learned A.G.P. made an attempt to submit before us that the panchnama was carried out by a competent committee and reliance was placed on the order passed by the Collector, Ahmednagar dated 12th April, 2017. Now this relates to the committee at Tahsil level and perusal of the order further shows that the Naib Tahsildar is the head of the mobile squad being assisted by one Circle Officer and two Talathis. The order of the Collector further states that the Tahsildar is

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required to pass such orders for constitution of committee. Even though learned A.G.P. made an attempt to submit before us that the panchnama was carried out by the competent authority, the documents annexed to the reply filed on behalf of the respondent No.4 i.e. Shri A.C. Shinde, Tahsildar, Ahmednagar shows that the panchnama was drawn in presence of two Talathis, namely, one Talathi of village Pokhardi and another of village Shendi and Circle Officer of Kapoorwadi. Thus, the panchnama clearly shows that this squad is in absence of the Naib Tahsildar who should have been the head of the committee as per the order of the Collector. Since the committee so constituted is in absence of Naib Tahsildar, who is head of the committee and is an integral part of the committee, we are unable to accept the statement of learned A.G.P. that this committee was the duly and properly constituted committee.

10. Learned A.G.P. also made an attempt to submit before us that at times, secret information is received by the officers and the officers have to rush and reach the spot to apprehend the vehicle and thereby stop the activities of illegal transport of sand and in such cases, it is not always possible that the Tahsildar would be in a position to attend the spots or accompany the squad. If that is so, the State Government is not prevented from making such a provision either by amending the policy which is said to be the latest policy of

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the State Government under Government Resolution dated 3rd January, 2018 or to issue the circulars making such a provision as a corrective measure. At present, there is nothing on record to infer that the panchnama drawn by these authorities was an attempt which was undertaken by this squad in an urgent situation or there was some reason making the presence of the Naib Tahsildar impossible at that point of time and if that is so, we see no reason to accept the submission of the learned A.G.P.

11. Considering all aforesaid aspects, the only escapable conclusion which can be drawn is of allowing the petitions partly. Thus, the respondents - authorities are directed to release the vehicles of the petitioners which are seized under panchnamas, on execution of a bond to the satisfaction of respondent - Tahsildar and this exercise of release of the vehicles would be subject to the outcome of appeals which would be filed by the petitioners as per their undertaking to this Court.

Writ Petitions are accordingly partly allowed in terms of above directions.

**(S.M. GAVHANE, J.)**

**(PRASANNA B. VARALE, J.)**

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