



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

37 WRIT PETITION NO. 34 OF 2016

Vivek Laxman Patil

VERSUS

The State Of Maharashtra & Others

...

Advocate for the Petitioner : Mr. Ram B. Deshpande

AGP for Respondent Nos.1 to 4: Mr. R. B. Dhaware

Advocate for Respondent Nos.5 to 9 : Mr. R. S. Pawar

...

WITH

CIVIL APPLICATION NO. 1046 OF 2026

CIVIL APPLICATION NO. 1045 OF 2026

...

CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 23.02.2026

PER COURT :

1. Heard learned counsel for the respective parties.
2. The petitioner is aggrieved by the order dated 05.10.2015 passed by Mr. B. R. Sonawane, Section Officer (Revenue and Forest Department), which is placed at page No.61 of the compilation.
3. On the previous occasion, when the matter was heard, a specific query was put to the learned AGP as to whether any order had been passed by the State Government granting prior approval. In response, the learned AGP tendered a copy of order dated 07.07.2015 passed by this Court in Writ Petition No.1512/2015 wherein a statement was made that the concerned officials would review the order and take a decision within

a period of four weeks from that date. The learned AGP has tendered communication dated 05.10.2015, wherein it is specifically observed as under :—

"सदर प्रकरणी मा. उच्च न्यायालय, औरंगाबाद खंडपीठ यांच्याकडे रिट पिटीशन क्रमांक २५१८/२०१५ मध्ये दिनांक ६/१०/२०१५ रोजी सुनावणी आयोजित करण्यात आलेली आहे. मा. मंत्री (महसूल) यांच्या उपरोक्त मान्यतेच्या अनुषंगाने उपरोक्त सुनावणीपुर्वी शासन जापन निर्गमित करणे अत्यावश्यक आहे त्यानुषंगाने सदर प्रकरणी निर्गमित करावयाच्या जापनाचे प्रारूप आवश्यक त्या अटी व शर्तीचा समावेश करून मान्यतेसाठी पृष्ठ १५९-१७१/पविकर सादर करण्यात येत आहे.
मान्य झाल्यास निर्गमित करण्यात येईल."

4. Upon perusal of the communication, it reveals that the matter was required to be placed before the concerned Minister for hearing and that an appropriate order was to be passed thereafter. The learned AGP has not pointed out that any such order has been passed by the State Government.

5. In fact, the impugned communication dated 05.10.2015 has been issued by the Section Officer. Admittedly, a Section Officer is not the State Government. At the most, he may communicate an order duly passed by the State Government; however, he cannot assume the role of the State Government and issue an order in that capacity.

6. The record does not indicate that any independent order has been passed by the State Government. The communication dated 05.10.2015 appears to have been issued by the Section Officer without there being an order passed by State Government expressed in the name of the His Excellency Governor of State of Maharashtra.

7. Article 166 of the Constitution of India, which reads thus :—

“166. Conduct of Business of the Government of a State.-

(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.”

8. Upon perusal of the impugned communication dated 05.10.2015, it is evident that the same has not been issued by the State Government in the manner known to law. Though there is a reference in the impugned order to the name of the His Excellency Governor, there is no material to demonstrate that the order has been duly expressed and authenticated in accordance with Article 166 of the Constitution of India. A Section Officer does not have the authority to pass such an order in the capacity of the State Government.

9. It has been sought to be contended by the learned counsel for the respondent nos.5 to 9 that the State Government had passed the order and that the Section Officer merely communicated the same. However, despite sufficient opportunity, no independent order passed by the State Government has been placed on record. In absence of any such substantive order, the communication dated 05.10.2015 cannot be sustained. If an order is indeed passed by the State Government, the role of a Section Officer is confined only to communicating the same and not

to assume the authority of the State Government.

10. In the present case, the Section Officer has acted beyond his authority and issued the impugned communication as if it were an order of the State Government. Such exercise of power is wholly without jurisdiction. Consequently, I am inclined to quash the communication dated 05.10.2015.

11. Considering the above facts, and particularly the manner in which the communication has been issued by projecting it as an order of the State Government without there being any lawful authority, I deem it appropriate to impose costs quantified at Rs.1,00,000/- upon the Mr. B. R. Sonawane, Section Officer (Revenue and Forest Department), who issued the communication dated 05.10.2015. The said costs are imposed for having acted beyond jurisdiction and for issuing the communication as if he were the State Government, which is impermissible in law.

12. In view of above, the writ petition is allowed. The communication dated 05.10.2015 issued by Mr. B. R. Sonawane, Section Officer (Revenue and Forest Department) is quashed and set aside.

13. All Pending Civil Applications are disposed of.

[SIDDHESHWAR S. THOMBRE]
JUDGE