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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**  
**NAGPUR BENCH : NAGPUR.**

**PUBLIC INTEREST LITIGATION NO.7/2015**

High Court Bar Association, Nagpur

..Vs..

State of Maharashtra and others

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Office Notes, Office Memoranda of  
Coram, appearances, Court's Orders  
or directions and Registrar's order

Court's or Judge's Order

Shri Sudhir M. Puranik, Advocate for the petitioner.  
Ms K.S. Joshi, I/c. G.P for respondent Nos.1 to 5 and 7.  
Shri D.M. Kakani, Advocate for respondent No.8.

**CORAM :- SUNIL B. SHUKRE AND**  
**ANIL S. KILOR, JJ.**

**DATED :- 19.6.2021.**

Hearing is conducted through Video Conferencing and all the learned Advocates agreed that the audio and visual quality was proper.

2. Heard Shri Sudhir Puranik, learned counsel for the petitioner and Ms K.S. Joshi, learned In-charge Government Pleader for respondent Nos.1 to 5 and 7.

3. Today this public interest litigation has been listed on board for final hearing after long time as the situation of emergency arose in the precincts of this very Court. About two days ago in the evening, when there was a heavy rainfall outside, to the concern and dismay of all, it was also to be seen inside the Court room CC. The video recording of such inside rainfall has been reportedly made and it is also shown to us as well as learned counsel for the petitioner and learned Government Pleader. If the Court rooms are leaking in this fashion,

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we ask a question to ourselves - Would it be possible for the High Court to dispense justice in performance of its sovereign function? The question does not beg any answer and the answer is too manifest to be expressly stated here.

4. Shri Puranik, learned counsel states that such heavy leakage from the Court ceiling of Court room CC appears to be because of the civil work which was going on till yesterday and which has been stopped by the contractor perhaps because of not making available to him any funds inspite of administrative approval for the work having been granted and also the civil contractor having spent from his own resources a substantial sum of about Rs.1 Crore. He also points out that there are several other civil and electrical works which have been completed by now after grant of administrative approval but hardly any funds have been made available by the State Government.

5. Shri Puranik further submits that some complaints are there that the works which are going on in this Bench at Nagpur are not being given their due importance by the State authorities as a result of which, when it comes to release of the funds for execution of these works, the State authorities hold back their hands while preferring other institutions.

6. Shri Puranik invites our attention to specific directions issued by this Court to the State authorities in at least two of the matters and yet, he submits, the State

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authorities have failed or neglected to comply with the directions.

7. Ms Ketki Joshi, learned Government Pleader submits that the grounds raised today by the learned counsel for the petitioner have been duly noted by her and she would be seeking instructions in respect of each of them and on receipt of same, she would place a detailed affidavit of the concerned authority before this Court, for which she prays for grant of reasonable time.

8. Of course, State will have to be given sometime to make its appropriate response to the various issues raised today but, before doing that we would like to remind the State of its constitutional duty towards providing of workable and effective infrastructure and adequate funds to the third pillar of our democracy which is judiciary so that judiciary is able to perform its sovereign function and discharge its constitutional duty in an effective manner.

9. Article 39-A which is one of the directive principles of State Policy as contained in Part IV of the Constitution of India mandates that the State shall secure that the operation of legal system promotes justice on the basis of equal opportunity and access to justice. It goes on to lay down that it shall also be the duty of the State to provide for free legal aid and ensure that opportunities for securing justice are not restricted by reason of economical or other disabilities. Of course, classically speaking, the directive principles of State policy are not

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justiciable under law but, when these principles are read in the light of fundamental rights, constitutional duties and the scheme of separation of powers between Legislative, Executive and the Judiciary, these principles assume their enforceability at law.<sup>1(i)</sup> The directive principles are fundamental in the governance of the country and they cannot be isolated from the fundamental rights guaranteed under Part III of the Constitution of India, which enumerates fundamental rights. These principles have to be read into the fundamental rights and the State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Non-compliance with the directive principles has been held to be unconstitutional on the part of the State and it has been considered by law as constituting a breach of faith with the people who imposed this constitutional obligation on the State.<sup>1(ii)</sup> When right to equal justice and right to equal opportunities for securing justice both are declared to be fundamental rights by the Apex Court<sup>2</sup>, the directive principle contained in Article 39-A assumes an enforceable character and, therefore, it enjoins upon State a fundamental duty to ensure that the opportunities for securing justice are not denied to any citizen for any reason or disability, whatsoever. In this context, we find

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1(i) [I.C.I.C. Golaknath and others V/s. State of Punjab and another, 1967 AIR 1643.]

1(ii) [Minverva Mills and others V/s. Union of India and others, 1980 AIR 1789]

2[Anita Khushwa V/s. Pushpa Sadan, AIR 2016 SC 3506]

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that a porous roof of Court hall letting in rain water, not in drops or trickles, but heavy showers is much more than a disability, it is an obstruction, for a justice-seeker and justice-dispenser.

10. It is here that we would like to stress upon the need for the authorities to pay their urgent attention to the infrastructural and financial requirements of this Bench of the High Court. Absent appropriate provisions made in this regard, we are afraid, several difficulties and complications may arise.

11. We, therefore, request the State authorities to consider urgent infrastructural and financial needs of this Court and make adequate provisions and also release the funds immediately so that the opportunities for securing justice are not denied to any litigant. After all, a leaking Court hall, rather water pouring Court hall, lack of adequate space in Courts, absence of Court buildings etc. are some of the physical obstacles in dispensing as well as securing justice, and it is the constitutional duty of the State to remove them without any delay.

12. In this regard we would like to remind the Chief Secretary, Principal Secretaries of all the concerned departments including the Principal Secretary of Law and Judiciary that this Court in Writ Petition No.1665/2021 (Stamp No.5725/2021) [Mr. Kamlesh s/o Baburao Lanjewar V/s. Vidarbha Irrigation Development Corporation, Nagpur and others] directed the State of

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Maharashtra to endeavour to make payment to the contractors who had carried out the civil work entirely or who were carrying out the civil works after securing due administrative approval from the competent authorities immediately and in any case within four months from the date of submission of their financial bills. Similarly, this Court had passed yet another direction while disposing of the petition on 20<sup>th</sup> April, 2021. This Court directed the State Government to give effect to the directions issued by this Court in paragraph 6 of the order dated 15<sup>th</sup> April, 2021 without any delay or demur. This Court had also directed the Registry to send both these orders for information and their due compliance to the Registrar General of this Court, Principal Secretary, Law and Judiciary, Mantralaya Mumbai and Principal Secretary, Public Works Department, Mantralaya, Mumbai. It appears that these directions have not so far seen any compliance from the State authorities.

13. Registry of this Court has placed before us a chart containing pendency of demand of funds in current financial year 2021 - 2022. It is taken on record and marked "A" for compliance. This chart shows the works which have been completed or which are being carried out, the estimated cost of each of the works, the status regarding administrative approval, the position of the demand of funds and grants released and also status of the works. Copy of this chart be provided to the learned Government Pleader to enable her to seek appropriate instructions and placing the same before this Court.

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14. We hope that the observations made in this order are given their due consideration and weightage and accordingly funds are immediately released so that there is no obstruction caused to the administration and dispensation of justice by this Court.

15. Learned Government Pleader to seek instructions in the matter.

16. Stand over to 30<sup>th</sup> June, 2021 at serial No.1.

17. Authenticated copy of the order be furnished to the learned counsel for the petitioner and learned Government Pleader.

**JUDGE**

**JUDGE**

*Tambaskar.*