

suresh

18-PILG-153.2012.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.153 OF 2012

Bahiram Popatrao Motiram & Anr. Petitioners
Vs.
The State of Maharashtra & Others Respondents

WITH

CIVIL APPLICATION NO.33 OF 2018

IN

PUBLIC INTEREST LITIGATION NO.153 OF 2012

Chandrakant Dagdu Bharmal & Others Applicants
In the matter between
Bahiram Popatrao Motiram & Anr. Petitioners
Vs.
The State of Maharashtra & Others Respondents

WITH

CIVIL APPLICATION NO.34 OF 2018

IN

PUBLIC INTEREST LITIGATION NO.153 OF 2012

Janubhau Punaji Puram & Others Applicants
In the matter between
Bahiram Popatrao Motiram & Anr. Petitioners
Vs.
The State of Maharashtra & Others Respondents

WITH

CIVIL APPLICATION NO.35 OF 2018

IN

PUBLIC INTEREST LITIGATION NO.153 OF 2012

Tanaji Baburao Pawade & Others Applicants
In the matter between
Bahiram Popatrao Motiram & Anr. Petitioners
Vs.
The State of Maharashtra & Others Respondents

WITH

suresh

18-PILG-153.2012.doc

CIVIL APPLICATION NO.36 OF 2018
IN
PUBLIC INTEREST LITIGATION NO.153 OF 2012

Gulab S/o Tanaji Pawar Applicant
<i>In the matter between</i>	
Bahiram Popatrao Motiram & Anr. Petitioners
Vs.	
The State of Maharashtra & Others Respondents

WITH
WRIT PETITION NO.13463 OF 2018

Ek Nath Girjappa Bhalerao & Others Petitioners
Vs.	
The State of Maharashtra & Others Respondents

Mr. R.B. Raghuvanshi i/by Mr. Ratnesh Dube for the Petitioners in PIL-153.2012 & the Applicant in CAI-36/2018.

Dr. Vijay Singh Thorat, Senior Advocate with Dr. Abhinav Chandrachud i/by Mr. Datta Mane for the Petitioners in WP-13463/2018.

Dr. Milind Sathe, Special Counsel (Senior Advocate) with Ms Reena A. Salunkhe, AGP, for the Respondent -State in all matters.

**CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.**

DATE : DECEMBER 09, 2019

P.C:

1. This PIL is pending in this Court from 2012.
2. A very detailed order was passed in this PIL which really triggered the action. On 13-6-2013, this Court passed an

suresh

18-PILG-153.2012.doc

order on the basis of the prayers in the petition and the allegations. The gravamen of the charge or the allegation was that there are schemes launched by the State Government as also the Central Government. The benefits of the same do not reach the real beneficiaries. The Budgetary allocations and financial provisions are made but when the amounts are actually released, they are siphoned off and misappropriated. The para 2 of this order in this PIL employs these two phrases, namely, "siphoned off" and "misappropriated". It is not for nothing that this Court employs such phrases, expressions and words. The petitioners' case was that budgetary provision of 9% has to be made in the yearly budget for tribal development and 24 project offices were established to implement the various schemes. Action has been taken pursuant to another PIL which related to non-implementation of such welfare schemes.

3. The corruption alleged in the scheme is then summarised in para 3 of this order.

4. After this detailed order, the State Government instituted an inquiry because of the directions of this Court by appointing a retired Judge of this Court. The report of the retired Judge of this Court has been received.

5. The complaint of the PIL petitioners is that ordinarily

suresh

18-PILG-153.2012.doc

this inquiry report is enough for taking further action, civil as well as criminal. However, in its wisdom, the Government appoints a retired Indian Administrative Officer (“IAS”) to study the report of the retired Judge of this Court and to suggest remedial measures and actions. Mr. Raghuvanshi would submit that this is an extra-ordinary decision and was not at all supportable given the pendency of this PIL, the observations, findings and conclusions in the Justice (Retd.) Mr. M.G. Gaikwad Committee Report. That should have formed the basis for the criminal and civil action as also the recovery measures. However, delaying tactics were adopted to shield and protect the officers close to the political parties in power at the relevant time. Therefore, for studying and analysing the Justice Gaikwad Committee’s Report, the appointment of Mr. P.D. Karandikar, an IAS officer, was made. The motive was obvious.

6. Regardless of all that, even that report of the IAS officer does not absolve everybody but suggests that disciplinary action has to be taken.

7. Everything of what is alleged above, according to Mr. Raghuvanshi, is stated in the memo of Civil Application No.36 of 2018. Today, according to him, the criminal proceedings are not taken to their logical end inasmuch as in the cases of some of the accused persons, charge-sheets have

suresh

18-PILG-153.2012.doc

also not been filed. Disciplinary proceedings may have been initiated but there is no end in sight even after more than seven years of the filing of the PIL and the report of the Justice Gaikwad Committee, which also came two-and-half years before today's date.

8. Mr. Raghuvanshi would submit that by now some heads ought to have rolled but there is no certainty inasmuch as those officers, who are primarily guilty of the wrong doings, have been spared and as complained in some other litigation before this Court that petty officials have been made the scapegoats. The third objection is that there are no recovery measures initiated at all.

9. We can understand that recovery has to precede with proper adjudication or crystallisation of the liability. Possibly that can be done by rendering findings, supportable by cogent and satisfactory reasons, in the disciplinary or departmental inquiries.

10. However, we do not understand this enormous delay in ensuring that the officials against whom criminal investigation has commenced or prosecution is launched, have not even been named as accused. Nothing like filing a charge-sheet or framing charges with due diligence by moving the Competent Criminal Court.

suresh

18-PILG-153.2012.doc

11. What astonishes and surprises us is that although The Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 are in force since 1979, traceable to the powers conferred by the proviso to Article 309 of the Constitution of India, the accused Government servants have not been placed under suspension.

12. The term "Government servant" is defined in Rule 2 Clause (g) and equally the terms "appointing authority" and "disciplinary authority" are defined. There is also available, the definition of the terms "major penalty" and "minor penalty". These Rules apply to all those who are Government servants and excluded from the category set out in Rule 3. Part II of these Rules is titled as "Suspension" wherein falls Rule 4.

13. To our mind, therefore, if the Justice Gaikwad Committee's Report is accepted by the State, it has launched civil and criminal proceedings so also departmental action, how is that from the *prima facie* material being placed before it, the authority appointing the Government servant, or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in this behalf by the Governor by general or special order, have not placed the Government servants under suspension. Mr. Raghuvanshi complains that some of them continue in

suresh

18-PILG-153.2012.doc

service.

14. Dr. Sathe, learned Senior Counsel appointed as Special Counsel by the State invites our attention to the last affidavit filed in this PIL/CA in which he says that the Government has taken action pursuant to the report of Justice Gaikwad Committee. This is an affidavit of compliance which enlists that there are 1729 paragraphs in this report of Justice Gaikwad Committee. The actionable paras, where police complaints to be initiated, are listed as Type "A". The Type "B" are those paras where departmental inquiry and action is indicated and the Type "C" are cases where further investigation is ordered. Then there are other paragraphs suggesting remedial measures.

15. We would like to know, at what stage the investigation is pending against these officials. Have all the 123 officers/employees been named as accused, are FIRs lodged against all of them with the Competent Police Authorities, has the investigation been commenced and during the course thereof any arrest effected, and if arrests have been effected of these 123 employees, why they have not been placed under suspension?

16. If there are categories of employees against whom departmental action has to be taken, whether that has been

suresh

18-PILG-153.2012.doc

initiated and at what stage the same is pending and whether the departmental action has concluded as against any official and such official visited with major penalty?

17. Once the concluded departmental action is in place, then there should not be any hesitation in initiating recovery measures or proceedings against those found guilty for they have, then, according to the State, misappropriated public funds.

18. The affidavit filed in this case on 29-3-2019 hardly answers any of these queries. We do not expect a Joint Secretary of the Tribal Development Department of the State of Maharashtra to come out with the above details for, or some cause or the other, this Officer may have reported for duties to at least some *prima facie* guilty Senior official. We would like an affidavit to be filed by none other than the Secretary in the Department of Tribal Development. His affidavit should be a complete compliance report. If the State has accepted the Justice Gaikwad Committee's Report and initiated action, it is bound to take it to its logical end. We hope that none would be protected and shielded even if close to the political dispensation, presently in power in the State or the Centre. Ultimately public funds are entrusted to public officials and public servants. If one takes any statute and particularly the

suresh

18-PILG-153.2012.doc

penal statutes, they come within the purview of the definition of the term “public servant”. To our mind, therefore, all the penal laws including The Prevention of Corruption Act, 1988 would have to be invoked. Similarly, discipline and control rules would have to be invoked and applied and if already invoked and applied, bearing in mind the magnitude of the fraud, as alleged, one cannot allow such servants to report for duty for they have every opportunity to tamper with the evidence or influence the witnesses. Hence, an action in the nature of suspension is also warranted.

19. It is only the Secretary in the Department whom we trust for we do not think that others will realise the seriousness of the High Court entertaining a PIL, issuing directions and setting up Committees of Inquiry.

20. We grant time to the Secretary till 7-1-2020 to file such an affidavit. We would also expect the affidavit to disclose the details of the action taken against the contractors and suppliers who were engaged to supply and provide machinery, manpower, equipment, training, etc.. If indeed they have benefited, as found in the report of inquiry, civil and criminal action against them is also contemplated.

21. List on **8-1-2020**.

suresh

18-PILG-153.2012.doc

22. Civil Writ Petition No.13463 of 2018 is segregated and to be listed as per its turn.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)