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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

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WITH
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
<i>Vs.</i>	
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.

Mr. A.Y. Sakhare, Senior Advocate/Special Counsel, with Mr. P.P. Kakade, GP and Mr. B.V. Samant, AGP, for the Respondent-State.

Mr. Dinesh Khaire for the Applicants in CAI-33/2018.

Mr. D.P. Adsule for the Applicant in CAI-35/2018.

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

DATE : FEBRUARY 10, 2020

P.C:

1. When these matters were listed, a further affidavit of the Principal Secretary, Tribal Development Department has been already filed in the PIL. The same has been carefully perused by us together with the affidavit in rejoinder of the petitioners.

2. On perusal of the further affidavit of the Principal Secretary, stated to be of compliance of our order passed on

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the previous occasion (17-1-2020), we find that the same does not meet the required standards, norms and expectations from the highest functionary in the Department.

3. On the previous occasion, through Mr. Sakhare, Special Counsel/Senior Advocate, we had already indicated to the Principal Secretary, who was then present in the Court, that she ought to view this matter with greater seriousness. The gravity of the situation is that, the Department of Tribal Development, in matters of implementation of benevolent and welfare schemes meant for the tribals, has allowed the public to be defrauded. It is because of lack of vigilance, care and attention of the Department's officials together with their connivance and collusion that a fraud of this magnitude can be committed and such frauds occur only on account of the above.

4. Today's affidavit informs us that the Justice M.G. Gaikwad (Retired) Committee Report mentions 104 Government employees against whom criminal action should be taken.

5. Now, out of these 104 persons/employees, 8 have expired. The affidavit informs that out of the 96 remaining, the Department has registered police complaints against all of them.

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6. Firstly, when these police complaints have been filed is not informed by the Principal Secretary to this Court. Then, she has not informed this Court as to how, when 96 complaints alleging commission of serious offences and punishable under the Indian Penal Code, 1860 so also the Prevention of Corruption Act, 1988 have been lodged, only 78 are converted into FIRs. Why is the police machinery not inclined to even register an FIR against the others, is not explained by her. Now, on the previous occasion and whenever she was present, she was proclaiming innocence about intricacies and niceties in the provisions of law. She was proclaiming her lack of awareness about how criminals take advantage of the loopholes in the prosecution version as also the law. We had impressed upon her then that within the Government there are officials who can help her so that these loopholes are plugged and the defects and deficiencies in the prosecution version, if any, are taken care of. That the Department can demand from the other Wings of the State, including the police machinery, the necessary information, particulars and details, ought to be known to this Principal Secretary.

7. She does not inform us when the 78 complaints have been converted into FIRs and which number has, according to Mr. Sakhare, increased upto 89 by Saturday,

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8-2-2020 and why the rest are not converted and the reason for the same. Pertinently, when she says that there is continuous follow up with the Home Department, why is she unable to pinpoint the names of the persons who are styled as accused.

8. Now this action and which this Principal Secretary says has been taken, possibly not until earlier orders by this Court in this PIL, none seem to have viewed this matter seriously. None seem to have realised the gravity of the situation. None seem to be aware that those who are *prima facie* guilty of the offences punishable by law and even liable for civil action and recovery measures on account of their acts of omission and commission should not be allowed to escape. If the Gaikwad Committee's Report, on the own showing of the Government, is submitted to it on 30-1-2017, after that Committee was appointed by Government Resolution dated 15-4-2014, to this date, may be the predecessors in office of the present Principal Secretary, in the Department of Home, Government of Maharashtra ought to have maintained complete secrecy and confidentiality insofar as the records are concerned. Nobody should even be allowed to access the records and documents which have been placed before the Gaikwad Committee. The Departmental heads are in such circumstances expected to take prompt action. They must shift the officials or transfer those who are coming in direct contact

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with the *prima facie* guilty persons and against whom the needle of suspicion was pointing throughout. It is when this Court activated the authorities and impressed upon them the urgency in holding an inquiry, that the Justice Gaiwad Committee was appointed. For nearly three years that Committee was inquiring into the matter. Such was the volume of the transactions, deals, etc.. When the Committee took pains and sincere efforts to complete the job and presented the inquiry report, the expectation of the Committee was that all the findings and conclusions so also some observations would help the Government in improving the situation. Firstly, preventive measures were expected to be taken after the Committee pointed out the lapses in the tendering system and award of the contract. Secondly, responsibility ought to have been fixed immediately. Thirdly, apart from inquiries if there was a systemic fault, then that ought to have been corrected after identifying it. The Committees are appointed so that in future there are no frauds of this magnitude.

9. We need not refer to all facets of the inquiry but presently we are concerned with another issue and that is primarily of not disclosing to the Court the full details. We do not know why this Principal Secretary does not realise that if our orders are read carefully and properly, possibly she herself may have to loose out on prime postings and may face departmental

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action. She may have to quit office as well. We do not think that we derive pleasure when we make this observation but the manner in which she files affidavits in this Court leaves a lot to be desired. She must realise that when details are being placed before the Court, the Court is bound to raise queries if the same are incomplete or there are gaps which may not be a deliberate job. However, when the Principal Secretary says that out of 104 prosecutions, prosecutions against 8 cannot be launched as they have expired, she should have been careful in ascertaining the details of their death. Whether these persons expired within the three years period after the report was submitted to the Department and to this Court or during the pendency of the action, namely, the inquiry or prior to the acts which are now termed as misdeeds. As against the 96 persons, the affidavit does not say that these 96 have been named as accused for which acts causing enormous financial loss or to *prima facie* deliberate and intentional measures and steps to shield each other and whether this include keeping the superiors in dark. In other words, if the police machinery has to be assisted, then it must be fully informed about the acts of omission and commission from which it can cull out specific offences such as criminal breach of trust, cheating, criminal misappropriation, offence of bribery and corruption by a public servant, criminal misconduct, etc.. Police action would be in cases of offences which are cognizable and where arrest can be effected. We are

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not informed, as rightly pointed out by Mr. Raghuvanshi, how many persons have been arrested after investigations by the police. Thus, this affidavit does not inform that if 89 of the complaints have been converted into FIRs, how many arrests have been effected till date, how many of these have secured bail and when the charge-sheet was laid in the Competent Criminal Court and what is the present status inasmuch as whether charges have been framed against all the persons named as accused. We are sure that these officials will adopt delaying tactics, including filing discharge applications and if they are dismissed or rejected, approach higher Courts. During the pendency of these proceedings, the Courts may have been misled into passing interim orders, having serious consequences. The long term legal consequences are that by these interim orders either charges cannot be framed or if charge-sheet is yet to be filed, it cannot be laid. On occasions, persons who have approached higher Courts were unsuccessful in obtaining reliefs on grounds of parity. We have also taken note of the fact that several of these who have approached this Court by filing proceedings to preempt the investigation were not successful. Their petitions or proceedings were dismissed but the orders therein were conveniently interpreted so as not to proceed against them. This is where we fault the Principal Secretary for not being diligent about proceedings before this Court and not

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understanding fully and properly the implication of her stand and the statements she makes before this Court or while orally instructing the Senior Counsel. The expectation from a Principal Secretary is that she is well and truly conscious about her task and studies the files thoroughly. This is not too much. Is it too much to ask somebody appointed as Principal Secretary and deposing before a Court on oath to keep aside everything else and take all matters in hand promptly so that no impression is given by him/her that he/she is not truthful to the Court. We are pained and anguished to say this because in the affidavit filed today she states compliance is fully made. However, it is not compliant at all. Even if our order does not say something specifically, the implications and consequences of the same and read as a whole, should be understood and if there is any problem, the solution is available within Mantralaya. There is a Principal Secretary in the Department of Law and Judiciary with whom the deponent of this affidavit says that she was regularly interacting and who could have been requested to apprise the deponent of the affidavit the legal provision. A minimal legal knowledge is expected and that it can be possessed by experienced officials. They can improve upon their skills and that is what public service really means. A public servant must be so diligent, careful and vigilant that nothing escapes his/her attention. We have also to blame ourselves. The citizenry including the political bosses must realise that if frauds of this

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magnitude have to be avoided, then we must allow the officials to work. They must not be involved in non-official and routine work. They should not be summoned by the political bosses repeatedly. If they are not available in the office and do not study the files in the office and/or at home, then, the result is for everybody to see.

10. This affidavit should therefore now set an example before all the officers of the Government. They must now learn how not to file affidavits with incomplete details for falsehood can be then inferred or something deliberate and intentional can be attributed to them. They must honestly say that they have not verified or scrutinised the files so as to answer all queries of the Court. Some queries are not raised specifically during the hearings for the Court has other pressing matters to attend. However, from the counsel appearing it is possible for the official to ascertain as to what is the expectation of the Court. If this minimal expectation is not fulfilled by the official chosen to file affidavit, then we must make everybody aware and let them realise that they are before the highest Court in the State. The highest Court being misled means enormous blow to the reputation, dignity and prestige so also the status of the State as well. The State includes the Executive, Legislature and the Judiciary. Together the State of Maharashtra would be blamed for not being able to handle the job and perform it

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efficiently. If these officials do not wish that this Court should earn such a reputation, then they must not keep back anything from the Court which is vital and crucial for a matter.

11. Why we say so is clear from the affidavit in rejoinder filed today. In the affidavit in rejoinder, the deponent says that the Principal Secretary is silent on the aspect whether she had informed the CID, ACB, the Department of Women and Child Development and the Department of Home about the findings of the Gaikwad Committee and what follow up action has been taken. Similarly, the Principal Secretary has not informed the Court about the discrepancies in the statements which have been made in the previous affidavit and today. In para 10 of the affidavit in rejoinder, the deponent (petitioner) says as under:-

"10. I say that, the affidavit filed by the Principal Secretary is contrary to the earlier affidavits filed by the department before this Hon'ble Court. Her own affidavit dated 06.01.2020 in para 11 on page 212 stated that, out of 690 paras which are actionable, in Type "A" category, 362 para deals with 123 persons against whom police complaint is to be loged and also departmental inquiry is to be initiated. In the written submission filed before this Hon'ble Court on 17.01.2020, on page 14, it is stated that FIR / Police Complaints is already done against 119 government officers / employees out of 172. However, the latest affidavit dated 31.01.2020, in para 3, page 264, it is now stated that Gaikwad Committee only mentions criminal action against 104 government employee out of which 8 have expired, so against 96, Department has registered complaints. I apprehend that, the department is not serious in implementing the Gaikwad Committee Report and is trying to protect the delinquent officials. All these affidavits and Written Submissions are available in Court's record and I crave leave to refer and rely upon the same. I further say that, the Tribal

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Development Department is deliberately playing jugglery with number of prosecutions to be launched based on the recommendation of Gaikwad Committee Report. It is submitted that, in every new affidavit, the department comes out with new number against number of officials against whom FIR / Complaints would be filed. It is submitted that, Gaikwad Committee after going through all the records, depositions have particularly set out number of prosecutions to be launched against which officials in each district. The state should consider that, Gaikwad Committee recommendation is based on per schemes basis, therefore, any official who is involved in more than one schemes, equivalent number of FIR's would have to be filed against such officials. For example, if one Government official is proposed for prosecution by Gaikwad Committee in 10 schemes, equivalent 10 FIR's are required to be filed against such delinquent official, however, the State in its reply is simply quoting that they would be filing complaints against only 104 government officials. The State itself has submitted before this Hon'ble Court that total FIR would not be less than 266, whereas according to Gaikwad Committee report it should not be less than 300."

12. A perusal of this paragraph would denote that the Gaikwad Committee's Report has not been perused by the Principal Secretary while deposing before this Court. This report should have been perused in its entirety. Had that been perused, possibly the Principal Secretary would have realised that initially she says that 123 persons were named for being criminally prosecuted. She had named about 119 Government officers out of 172 named in the report. Now the affidavit says there are 104 Government employees against whom the Gaikwad Committee's Report recommends criminal action. Out of them, 8 have expired and the remaining 96 are therefore proceeded against.

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13. At today's hearing we also invited the attention of Mr. Sakhare to the fact that the civil action proposed in the Report of the Gaikwad Committee has not been taken or if initiated, carried to its logical end. The expectation of the Court was that it will be informed about this action. The compliance is of action taken. The compliance cannot be understood as informing the Court that action has been taken after the Court made all concerned aware of the lapses or inaction on the part of the public officials. In other words, had action before the orders of this Court been taken, then details of the same would have been provided. In the instant case, such an action was never taken. That is clear from what the deponent informs us. It is only by a Government Resolution dated 22-1-2020 that 105 suppliers/vendors have been black-listed. Now, the wording of this Government Resolution would have been perused by the Principal Secretary before she filed this affidavit. The Government Resolution says that, hereafter the institutions/suppliers/vendors would stand black-listed. Now, such an order of black-listing has to be passed in exceptional circumstances. The law is that before black-listing, the affected persons would have to be issued a show cause notice, their version has to be called for and individual orders of black-listing are expected to be passed. Whether an executive fiat can be a substitute for individual black-listing action or orders will *prima facie* be an important issue and when raised, possibly the

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Government may not be able to defend the Resolution. That is why we told Mr. Sakhare that this affidavit is nothing but an eye-wash. If everybody knows that *prima facie* by an executive fiat you cannot black-list 105 suppliers, then, the affidavit enclosing a copy of that Government Resolution or executive fiat would never have been filed. That it has been filed itself shows the attitude of the Government officials and particularly the superiors in the Department.

14. On previous occasions, we had observed that some Departments of the State are notorious for their regular presence before us. They are present before us only because they are named as indolent, inefficient, insensitive, non-working or possibly non-functional. The Department of Tribal Development is a party to several cases, from the lower most of the Courts in this State to the highest Court. The Department as a whole has to learn a lesson. That has not been learnt and we are now expecting that the Departments who are regularly before this Court, at least their officials, would be imparted the basic and fundamental legal training. One need not be an Advocate or a Law Officer to know that affidavits have to be filed in the Court and on occasions they contain an undertaking or a binding commitment to the Court. That affidavits, which are misleading or termed as not disclosing total and complete facts, may invite action in contempt. Perjury is contempt as well. The

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gravity of the situation is, therefore, demanding that at least now the Government will take steps so that the officials in the Departments can be made aware of the legal consequences that the State as a whole faces when affidavits or statements before the Court are found to be either false, misleading or suppressing vital and crucial facts. We do not know whether a individual black-listing action is taken, initiated and orders passed, for what disturbs and worries us is the Government Resolution, its contents and annexures and which makes reference to 105 suppliers/vendors. This only means that the Government swung into action only after our previous directions and passed this blanket order covering 105 suppliers/vendors. Whether Article 162 of the Constitution of India together with Article 166 thereof could have been invoked or whether there was a need to pass individual orders, has not been clarified to us even today. We leave the matter at that.

15. As far as departmental action is concerned, that also in para 6 of the affidavit fails to disclose vital and crucial information. If 104 employees are named in the Report of the Gaikwad Committee, 8 have expired, 63 have retired, then it clearly means that somebody has allowed these 63 employees to retire. That is not informed to us. When did they retire is not informed to us and this compels us to make the observation that these officials may have retired between 15-4-2014 to

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31-1-2017 or between 31-1-2017 till 31-1-2020. Then, we do know why the Government feels inhibited in initiating any action against them and proceeds to rely upon Rule 27(2)(b) of the Maharashtra Civil Services (Pension) Rules, 1982. Para 6 of this affidavit says that the deponent had legal assistance and advice. That she took legal opinion but not wholly and completely is clear from the fact that such statements are made relying upon a Rule. This means no action much less departmental inquiries can be initiated against these retired employees. Why the deponent was so keen to state this and when *prima facie* it is for the advantage of these officials, is not clear to us at all. Possibly, as Mr. Raghuvanshi suggests, these are high powered officials and the Government is reluctant to frame them either as accused or *prima facie* guilty of serious misconduct. We do not know why 33 employees alone have been chosen for departmental inquiry and out of which 18 have been served with charge-sheet and as against others even the charge-sheet has not been prepared. Is the Department keen on taking any departmental action and measures at all is not clear. These 33 employees may not be high power officials but petty or junior level officials and we do not know their names and designations and why they were named as delinquents. The other Departments of the State have also taken some action but we do not think that the same is adequate.

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16. For filing further compliance affidavit with all relevant details, we list these matters on **5-3-2020**.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)