IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTERST LITIGATION NO. 164 OF 2012
WITH
CIVIL APPLICATION NO. 102 OF 2015
WITH
CIVIL APPLICATION NO. 102 OF 2015
IN
PUBLIC INTERST LITIGATION NO. 164 OF 2012

Shri Vishnu Radhaji Musale & ors. ... Petitioners

V/s.

The State of Maharashtra & ors. ... Respondents

Mr. Uday P. Warunjikar, Sr. Counsel for the petitioner.

Mr. Vikas Mali, AGP for respondents 1 to 7.
Mr. Mahesh Jethmalani, Sr. Counsel a/w. Mr. P.M. Patil, Chitra Pawar for respondents 10 and 11.
Mr. A.R. Varma a/w Mr. D.R. Shah a/w. Pradeep Pardeshi for respondent no.8.
Ms. Sangeeta yadav i/b. N.H. Singh for respondent no.9.
Mr. J.G. Reddy for applicant in CAI 102/15.
Mr. A.B. Girase i/b. Mr. Y.B. Bolkar for applicant in CAI 103/15.

CORAM : ***NARESH H. PATIL AND***
S.B. SHUKRE, JJ.

9th July, 2015.

P.C.

On 23rd June, 2015 we passed following order.

" Learned senior Counsel Shri Jethmalani appearing for respondents No. 10 and 11 submits that in view of the decision taken by the Director General of Anti Corruption Bureau, Maharashtra State, Mumbai on 25/3/2015 and the communication made on 07/4/2015 by the Home Department, State of Maharashtra, the petition could be disposed of.

Learned A.G.P. for the State placed on record a photo-stat copy of the communication addressed by petitioner Vishnu Rodhaji Musale to Deputy Superintendent of Police, A.C.B., Dhule on 28/4/2015 wherein the petitioner prayed that he does not want to prosecute the petition any further in view of the report submitted by the Anti Corruption Department. It is taken on record and marked 'X' , for identification.

Learned Counsel appearing for the petitioner submits that such a photo-stat copy has not been drafted by the office of the petitioner's counsel. Learned Counsel for the petitioner to verify as to whether the petitioner has signed such a communication and thereafter make a statement in that regard.

Learned Counsel for the petitioner prays for two weeks' time to ascertain the fact.

Learned senior Counsel submits that irrespective of the fact that whether the petitioner has signed the said communication or not, on merits, nothing would survive in the petition and the alternate remedy is open to the petitioner, if he desires to choose.

The matter can be disposed of on merits.

All the respondents waived notice on rule.

List the matter on 08/7/2015 at 3.00 pm."

2. Learned Counsel Shri Warunjikar submitted that necessary precautionary measures were adopted for ascertaining authenticity of the communication made by the petitioners praying for disposal of the petition in view of the report submitted by the investigating agency. Learned Counsel submits that the petitioners are present in Court. Learned Counsel had verified the identity of the petitioners. The petitioners have instructed the learned Counsel that they do not wish now to proceed with the petition in view of the report submitted by the Anti Corruption Bureau and the decision of the State to accept the said report. Learned Counsel submits that in this view of the matter appropriate orders be passed taking notice of the instructions given to the learned Counsel. We verified from them as to whether they desire to continue with this petition and whether they are making statement under any pressure. The petitioners submit that there is no pressure on them but in view of the findings of the Investigating Agency now, they do not want to continue with the petition any further.

3. Two applications bearing CAI Nos. 102/15 and CAI 103/15 were filed today by applicants praying for allowing them to intervene in this petition.

4. We have heard the learned Counsel Shri Girase and Shri Reddy appearing on behalf of applicants. Learned Counsel submitted that though the Anti Corruption Bureau did not find any material to register case against petitioner under the Prevention of Corruption Act but the respondent is answerable to other agencies like Income-tax department and Enforcement Directorate. Learned Counsel referred to order passed by this Court on 24th March, 2015 in which it was observed in paras 4 and 5 as under:

> "4. Learned Counsel appearing for Income Tax Department has produced two communications addressed to him by Income Tax Officer B.S. Jhala and N.C. Khonde. Communication does not disclose any substantial progress, except the fact that assessment for financial year 31st March 2015 is to be completed as the same will get time barred.
>
> 5. We expect Authorities concerned to expedite these proceedings and reach out to some conclusion based on the material produced before concerned Authorities. Commissioner of Income Tax-1, Nashik would look into the matter. Commissioner of Income Tax-1 Nashik shall give appropriate instruction for a timely decision on the assessment, on its own merits. We do not express any opinion on the merits of such assessment."

5. Learned Counsel further submits that Intervenors are not convinced with the report submitted by the Anti Corruption Bureau which was accepted by the State for the reasons mentioned in the application and they desire to continue with this public interest litigation. Learned Counsel submits that this Court may appoint them as amicus curiae and continue with the petition or allow them to intervene.

6. Learned Senior Counsel appearing for respondents has referred to substantive prayers in the petition which reads as under:

> "C. By way of Writ of Mandamus or any other appropriate writ, order or direction in the like nature directing the respondent Nos. 1 to 8 to constitute a Special Investigation Team consisting of independent persons to investigate into the Financial Affairs of the respondent Nos. 10 to 12 and also into the allegations made in the Complaint and in the petition by the present petitioners against the respondent Nos. 10 to 12 and to report to this Hon'ble High Court from time to time.
>
> D. By way of appropriate writ, order or direction in the like nature, the Hon'ble High Court may kindly direct the respondent Nos. 1 to 9 to register an offence against the respondent Nos. 10 to 12 under the relevant provisions of Prevention of Corruption Act, 1988, Income Tax and Indian Penal Code and to prosecute the same expeditiously."

It was submitted by the learned Counsel that petition is pending since last three years. This Court was monitoring the investigation by Anti Corruption Bureau. The Anti Corruption Bureau, Maharashtra State, Mumbai submitted a report on 25th March, 2015 exonerating the respondent. The Home Department, State of Maharashtra in a communication made on 7th April, 2015 has accepted the report of the Anti Corruption Bureau. According to learned Counsel the petition itself is worked out. Learned Counsel submits that continuation of petition at the behest of intervenors would be prejudicial to the interest of the respondent and would be damaging his reputation in public. The principles governing such a situation has been taken note of by the Courts. Learned Counsel places reliance on following judgments in support of his submissions.

I) Divine Retreat Centre v/s. State of Kerala & ors. {(2008) 3 SCC 542}.

II) All India Institute of Medical Sciences Employees' Union v/s. Union of India & ors. {(1996) 11 SCC 582}.

III) M.C. Abraham & anr. v/s. State of Maharashtra & ors. {(2003) 2 SCC 649}.

IV) S.P. Anand, Indore v/s. H.D. Deve Gowda & ors. {(1996) 6 SCC 734}.

Learned Counsel submits that in case the Intervenors desire to challenge the report of the Anti Corruption Bureau or the decision of the State or to resort to any proceedings against the respondents, they may adopt appropriate proceedings as permissible in law but in view of these developments now there is no point in continuing this petition, more so, when the petitioners themselves do not desire to continue with their petition any further.

7. We have perused the orders passed by this Court from time to time. The report of the Anti Corruption Bureau and the decision of the State Government in respect of the reliefs claimed by the petitioners under the orders passed by this Court to investigating agency conducting the investigation were submitted before the Court. The investigating agency did not find any material for taking action against the respondents under the Prevention of Corruption Act. The decision of the investigating agency was accepted by the Home Department of the State of Maharashtra. In respect of income-tax assessment proceedings pending with the income-tax authorities, if any, we are of the view that income-tax department is entitled to assess the returns in accordance with law.

8. We have appreciated the concern shown by the Intervenors. We observe that if the Intervenors desire to take up the cause and raise certain issues concerning the respondents, then they may resort to appropriate remedies as permissible in law. We do not express any opinion on the merits of the allegations made by the intervenors in their application.

9. We do not express any opinion in respect of the merits of the report submitted by the Anti Corruption Bureau and the decision of the State in accepting the said report of the Anti Corruption Bureau.

10. In view of the aforesaid events and developments and the fact that the petition itself is worked out, we are of the considered opinion that petition may not be now continued any further. Writ Petition is accordingly disposed of.

(S.B. SHUKRE, J.) **(NARESH H. PATIL, J.)**

L.S. Panjwani, P.S.