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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.3004/2015

Rajabhau @ Rajendra Digambar Mane
and another.

...Petitioners..

Versus

The State of Maharashtra & others.

...Respondents...

.....

Shri V.D. Sapkal, Advocate h/f Shri N.J. Patil, Advocate
for petitioners.

Smt.M.A. Deshpande, AGP for respondent nos.1 & 2.

Shri K.K. Kulkarni, Advocate for respondent no.3.

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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 20.09.2016

ORDER :

1] Learned counsel for the petitioners submits that there were large scale irregularities committed by the President of the Municipal Council alongwith other persons by issuing direct tender for the work of

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construction of small houses under the Integrated Housing and Slum Development Programme / Scheme at Tuljapur. The petitioners had made enquiry under the Right to Information Act for getting the proceeding books of the meeting in which the writ subject was under discussion. The petitioners received two different kinds of proceeding books. The learned counsel submits that the petitioners had made representation to the District Collector, Osmanabad, in the year 2012 and 2013 to the effect that the illegalities have been caused in the proceeding books of the meeting dated 16.2.2012 and the work order in respect of subject No.72 has been given to Navnirman Mahila Bahuuddeshiya Sanstha on 31.10.2011 without taking proper permission from the other members. According to the learned counsel, though the work was allotted to the said Navnirman Mahila Bahuuddeshiya Sanstha, the said work has been withdrawn from the said Sanstha and the said work has been allotted / awarded to M/s Pande Infra Pvt.Ltd., Solapur, on 31.3.2012. The work was to be completed in 11 months. The work was given at the estimated cost of Rs.23 crores without inviting tenders and without entering into proper

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agreement. Mobilization advance of huge amount was given i.e. Rs.1.10 crore against the bank guarantee of Rs.2 crores submitted by the contractor and second mobilization advance of Rs.90 lakhs was given against the bank guarantee of Rs.30 lakhs. The work of construction of the houses under the said scheme is not completed. The learned counsel submits that upon the complaint being made by the petitioner, the Collector had issued orders on 26.8.2012 to the Sub Divisional Officer, Osmanabad, directing him to conduct enquiry, so also enquiry was directed to be conducted by Principal of Government Polytechnic College, Osmanabad. The enquiries were conducted by the said officers. Enquiry reports were submitted. Illegalities were found to have been committed as per the said enquiry report. The Collector issued notice to the President of the Municipal Council on 30.4.2014 so also the Chief Officer and ex-President so also the petitioner no.1 stating that the hearing about the illegalities committed in the said scheme is scheduled on 5.5.2014. However, nothing has been done by the Collector. As such, eventually the present petition is filed. The learned counsel further submits that on

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large scale, the illegalities and mis-appropriation of the public funds has been done by the contractor, concerned officers, still no action has been taken against them. The enquiry reports are said to have been accepted by the Collector. In the said enquiry reports, recoveries and criminal action has been proposed. Still, no such steps are taken pursuant to the enquiry report. According to the learned counsel, stern action deserves to be taken by the Collector against the guilty. Even the last affidavit filed by the Collector does not depict his desire to take action as contemplated in the enquiry report.

2] The learned AGP submits that it was the Collector, who directed the enquiry to be conducted by the Sub Divisional Officer and the Principal of Government Polytechnic College. Upon receipt of the enquiry reports, steps have been taken by the Collector. The departmental enquiries have been initiated against the concerned persons so also notice has been issued to the contractor for refund of the amount and in case the same is not done, the Collector has proposed criminal action against the contractor also. The affidavit to that

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effect has been filed.

3] We have heard Shri K.K. Kulkarni, learned counsel for the Municipal Council and he submits that the affidavit is filed by the Chief Officer making his stand clear.

4] We have considered the submissions.

5] The work to be undertaken under the Integrated Housing and Slum Development Programme / Scheme at Tuljapur was involving public interest. The houses were to be constructed for allotment to the persons belonging to the lower strata of the society. Naturally, the authorities would be required to be more concerned with the implementation of the said scheme in a proper manner. Upon the complaints received, the Collector had directed the concerned Sub Divisional Officer and the Principal of Government Polytechnic College to conduct an enquiry. The enquiry report has been received. As per the enquiry report, it appears that all was not well and the shortcomings, the illegalities and irregularities are pointed out in the said enquiry reports. Earlier, the affidavit was filed by the Chief Officer of the Municipal Council, however, we had directed the Collector vide our

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order dated 29.2.2016 directing the Collector to file an affidavit clarifying on various aspects as detailed in the said order. Pursuant to the said order, the Collector, Osmanabad, has filed his affidavit in reply. The said affidavit makes it clear that he has proposed to initiate the departmental enquiry against the persons responsible for the irregularities committed in the said work of construction and the proposal has been sent to the Divisional Commissioner, Aurangabad, and the Director and Commissioner, Municipal Administration, with regard to the said persons. It has also been stated by the Collector that the reports submitted by various officers are accepted during the hearing. It is expected that the Collector would proceed further in that direction.

6] A notice has been issued to the contractor for recovery of the mobilization advance with interest. As per the said notice, directions were given to the contractor to repay the amount by 30.7.2016. The affidavit says that if the amount is not paid by the contractor then the steps would be taken for initiating criminal prosecution.

7] As contended by the petitioners, the contractor has

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given reply through his Advocate disputing his liability to refund the amount back. In that case, the Collector may proceed further as per the affidavit filed i.e. wherein the Collector has undertaken that if the contractor fails to reimburse the amount, criminal action will be taken against him without fail. We hope and trust that the Collector would take further steps as he has undertaken in the affidavit filed before the Court expeditiously and shall also take further steps with regard to the proposals submitted by him to the Commissioner proposing departmental enquiry against erring officials. Naturally, the Collector is bound by the affidavit filed by him before this Court.

8] Considering the affidavit in reply filed by the Collector, Osmanabad, and accepting the statements made therein, the writ petition is disposed of. No costs.

9] This Court had directed the petitioners to deposit an amount of Rs.50,000/- to show their *bona-fides*. It has been found that the petition was *bona-fide* one and the illegalities as averred by the petitioners, have been found in the enquiry conducted. As such the amount deposited by the petitioners shall be refunded to the

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petitioners. Shri V.D. Sapkal, learned counsel graciously states that the petitioners would deposit Rs.10,000/- from the said amount with the High Court Bar Association at Aurangabad Bench as a donation.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)