

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.12185/2016

Ramesh S/o Laxman Naik & others.

..Petitioners..

Versus

The State of Maharashtra & others.

...Respondents...

.....

Shri S.B.Talkar, Advocate for petitioners.

Ms.R.P.Gour, AGP for respondent Nos.1 to 4.

Respondent No.5 Served.

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

DATE: 20.12.2016

ORDER :

1] The petitioners assail the order passed by the Lok Ayukta dated 7.11.2016 so also the order issued by the Under Secretary to the Government, Rural Development and Water Conservation Department, dated 29.11.2016.

2] Mr.Talekar, learned counsel for the petitioners submits that the recommendations of the Lok Ayukta, Maharashtra State, Mumbai, made to the Secretary,

Government of Maharashtra, Water Conservation and Employment Guarantee Scheme Department and the Secretary, Government of Maharashtra, Agricultural, Animal Husbandry, Dairy Development and Fisheries Department, to lodge First Information Report with Beed (Rural) Police Station against the concerned known erring officials, and the officials and contractors, who could not be traced in the enquiry with regard to the mis-appropriation of the Government funds by the District Superintendent, Agricultural Officer, Beed, is passed behind the back of the petitioners and without notice to the petitioners. The learned counsel submits that such an order passed behind the back of the petitioners is violative of the principles of natural justice and cannot be used against the petitioners for any further consequences also. The learned counsel relies on the judgment of the Apex Court in the case of *State of Bihar v. Lal Krishna Advani* reported in (2013) 8 SCC 361 so also the judgment of the Apex Court in the case of *Nirmala Jhala v. State of Gujarat* reported in (2013) 4 SCC 301 and submits that the order of the Lok Ayukta directing the authorities of the Department to register the criminal case and about the

amount of mis-appropriation is in the nature of a preliminary enquiry. The same cannot be used against the petitioners for further consequences. Further consequences would stand vitiated on account of not providing any opportunity to the petitioners. The reputation of the petitioners is at stake. The learned counsel submits that the petitioners are basically challenging the order of the Secretary, Rural Development and Irrigation Department dated 29.11.2016, by virtue of which the Secretary accepting the recommendations of the Lok Ayukta had directed to register the criminal case against the petitioners. The learned counsel submits that even a review is filed by the petitioners in respect of the order dated 20.11.2016 passed in Writ Petition No.11729/2016 filed by the petitioners challenging the recommendations of the Lok Ayukta. The learned counsel submits that even without doing any violence to the said order, this Court can consider the challenge to the order passed by the Secretary on 29.11.2016 as in the earlier order, this Court had given liberty to the petitioners to take appropriate steps as permissible in law if the criminal proceedings are initiated against them. Under

the order dated 29.11.2016, the Secretary had directed initiation of criminal proceedings. As such, the petitioners would be entitled to assail the same. The order passed by the Secretary is also without hearing the petitioners and without notice to the petitioners and is directly implementing the recommendations of the Lok Ayukta passed behind the back of the petitioners. Such a recourse is not permissible. The learned counsel also relies on the judgment of the Apex Court in the case of *Namit Sharma v. Union of India* reported in **(2013) 1 SCC 745**.

3] We have heard the learned AGP also.

4] The petitioners have also challenged the recommendations of the Lok Ayukta dated 7.11.2016 by filing Writ Petition No.11729/2016. This Court under the order dated 20.11.2016 did not entertain the petition. It dismissed the petition. The following observations were made by the Division Bench of this Court in its earlier order dated 29.11.2016 :-

"4. It may be noted that the Lokayukta did not issue specific direction against an individual or group of individuals. A direction has been issued to the Secretary of the State of

Maharashtra to consider the matter and initiate the criminal proceedings against the erring officials in respect of the alleged misappropriation of the Government funds. It is further recommended by the Lokayukta that the police officials be requested to investigate as to whether there is further misappropriation in addition to the Government fund allegedly misappropriated by the District Superintendent Agriculture Officer, Beed. It would be open for the petitioners to take appropriate steps as permissible in law, if the criminal proceedings are initiated against them.

5. Considering the above aspects of the matter, this petition need not be entertained in exercise of the extraordinary jurisdiction of this court under Article 226 of the Constitution. The petition is devoid of substance. The Writ Petitioner stands dismissed."

5] The Secretary, pursuant to the recommendations of the Lok Ayukta, has given directions to the District Superintendent, Agricultural Officer, Beed, to take steps in tune with the recommendations made by the Lok Ayukta.

6] When this Court had specifically refrained from entertaining the writ petition challenging the

recommendations of the Lok Ayukta and liberty was given to the petitioners to take appropriate steps as may be permissible in law if the criminal proceedings are initiated against them, meaning thereby that if the criminal proceedings are initiated, the petitioners are at liberty to take steps qua the criminal proceedings initiated.

7] In view of the aforesaid order passed by this Court, it would not be possible to appreciate the arguments of Mr.Talekar, learned counsel for the petitioners. Judicial propriety would not permit the same.

8] In view of above and on the ground that earlier, the challenge to the order of the Lok Ayukta has failed, we are not entertaining the writ petition. It is made clear that we have not made any observations on merits. As submitted, the petitioners have already filed a review application of the earlier order. The same can be considered in the said review application.

9] In case the petitioners succeed in the review application, it would be open for the petitioners to challenge all consequential orders arising therefrom. It would be open for the petitioners to challenge the orders

passed consequent to the orders passed by the Lok Ayukta.

10] Writ petition is disposed of accordingly. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)