

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 29 OF 2016

Dharmendra P. Bhatt and another. ... Petitioners.
V/s.
State of Maharashtra and others. ... Respondents.

Mrs. Neeta Karnik for the petitioners.

PP. Kakade, AGP for respondent Nos. 1, 3 and 6.

B.D. Joshi for respondent Nos. 4 and 5.

**CORAM : DR. MANJULA CHELLUR, C.J.
AND M.S. SONAK, J.**

DATE : 21st October 2016.

P.C. :

The petitioners are before this Court as *pro bono publico* contending that first petitioner is an advocate and second petitioner is a social worker who are interested in taking up many social issues, especially that of the downtrodden complaining inaction on the part of certain officers who were initially appointed in the Department of Urban Development and posted to other departments to carry out activities. According to the petitioners, there is total lack of efficient

and transparent functioning of fourth respondent- Municipal Council of Palghar which requires suspension of the Chief Officer of the said Council. According to them, in spite of detailed report with regard to nexus between the fifth respondent and various contractors, the elected municipal councilors who are being benefited out of the said various activities of the fifth respondent are quite happy to continue the services of fifth respondent. Ultimately, according to them, the public money is wasted and some of the officers of the municipal council at the instance of the contractors are getting monetary benefits. This is nothing but defrauding public exchequer in collusion with the contractors by the statutory authorities who are required to discharge their functions for the benefit of the general public. Various instances were alleged regarding negligence of fifth respondent or undue favoritism shown by him to certain persons. Ultimately, the petitioners have sought for the following directions by way of writ of mandamus:

“(a) direct the respondent No.1 and 6 to investigate into the illegal grant of Municipal contracts by the respondent No 5 on behalf of the Respondent No 4 and

(b) direct the Respondent No 1 to proceed and punish the Respondent No 5 by holding a departmental enquiry, for illegal grant of Municipal Contracts by Respondent No 5 on behalf of respondent No 4

(c) direct the respondent No 6 to proceed against and prosecute the Respondent No 5 under the Prevention of Corruption Act before the Special court constituted thereunder for the corruption in grant of Municipal contracts by Respondent No 5 on behalf of Respondent No 4.”

2. In response to this PIL, the sixth respondent has placed on record affidavit-in-reply wherein they have clearly mentioned that first petitioner submitted an application on 24th June 2016 to the Director General, A.C.B., Maharashtra for enquiry about the alleged malpractices/ corruption charges said to have been committed in the tender process of drainage construction work by the Municipal Council of Palghar. In response to the preliminary enquiry, the Director General, A.C.B. entrusted the matter to Dy.S.P, A.C.B., Palghar to make enquiry and submit report. Accordingly on 30th September 2016, Dy.S.P submitted report to the Director General, A.C.B. which reads as under:

“1) That the applicant (complainant) also filed PIL No.34007/2016. Therefore the permission was sought from the Director General, A.C.B., Maharashtra State, Mumbai for obtaining relevant record from the Office of Nagar Parishad, Palghar and also for the recording the statements of concerned persons. As the said permission was accorded, the statements of following persons viz. The applicant (complainant), respondents and officers and employees of the nagar parishad and

other persons related with the said PIL were recorded.

- I) Applicant Shri. Dharmendra Pranal Bhatt, Advocate, R/o Shop no.03, Ground Floor, Congress Bhavan, Kacheri Road, Palghar
- II) respondent the then Chief Officer, Palghar Nagar Parishad Vaibhav Vinayak Aware
- III) Respondent the then Asstt. Accountant, Palghar Nagar Parishad Balkrishna Jagannath Jadhav
- IV) Respondent Nagar Parishad Palghar Engineer Premchand Jaynarayan Mishra.
- V) Santosh Chandrasen Joshi, Clerk from Construction Section, Nagar Parishad, Palghar
- VI) Eknath Sitaram Bhangale, Advisor, M/s. OCE Projects Pvt.Ltd., Belapur, Navi Mumbai
- VII) Contractor M/s.Shivsai Construction, Thane Prop. Sau. Nita Dilesh Sankhe
- VIII) Tenderor Hasmukh Rajmal Hirani, Hirani Enterprises
- IX) Tenderor Imran Yusuf Shaikh, Amar Construction
- X) Tenderor Mafatsingh Mansingh Parmar, Kamal Enterprises”

3. According to the Director General, A.C.B., for the reasons mentioned from paragraph-4 onwards of the affidavit, the enquiry

report is placed before the concerned department to which the fifth respondent is accountable and the said department has to take a call on the enquiry report of A.C.B. and proceed further in the matter. Paragraphs- 4 to 8 of the affidavit are reproduced herein to understand the opinion of the sixth respondent:

“4. I say that, on perusal of above said statements and records, it is seen that Asstt. Accountant Shri. Jadhav was supposed to deposit the demand draft of tender form and the earnest money deposit money but said Jadhav returned the DD of unsuccessful tenderors and also returned the DD of 3 Tender forms of tenderors inadvertently. However when he realised his mistake he got the amount of tender form from the said tenderors in cash and deposited in the bank account of Nagar Parishad of Palghar.

5. I say that, the Engineer Mishra of Nagar Parishad of Palghar was to get the construction material and concrete cube tested from The Government Laboratory but he got those materials and concrete but did not send immediate to quality control test.

6. I say that, in fact there was condition that the contractor will not submit his bill without submitting the certificates from government lab in respect of test of the material used for the construction. But the contractor submitted his bills without submitting such certificates and violated the condition of the tender. The then Chief Officer of Palghar Nagar Parishad released payment for work done before receiving quality control certificate from concerned laboratory. All the shows that there was lack of control, supervision on the said work.

7. I say that, the then Chief Officer Vaibhav Aware, The then Asst. Accountant Balkrishna Jadhav, Engineer Mishra of Palghar Nagar Parishad, Palghar are failed in their duties to discharged it properly. There is a negligence, dereliction in duties by them. Hence to initiate Departmental enquiry against them is recommended.

8. I say that, in the enquiry it is found that the tender process for said gutter construction of work, there is no violation of rules. In this work no wrongful loss was caused to the Nagar Parishad or to the Government nor no wrongful gain was caused to any public servant.

In view of this enquiry, enquiry report sent to the The Director General, A.C.B., Maharashtra State, Mumbai by Dy.S.P. Ankush Bangar vide his letter bearing O.w.No.ACB/Palghar/2016/743, Dt. 30/09/2016 and was requested to close the matter Exhibit-A.”

4. In the light of the above enquiry report of sixth respondent through Dy.S.P, A.C.B. the first respondent has to take a call since the petitioners, after exhausting all the remedies available to them i.e. A.C.B. and the State, have approached this Court for appropriate directions. If the petitioners are of the opinion that the activities complained also amount to offences and if the concerned authorities are not acting on the said complaint, the petitioners are at liberty to approach the Magistrate Court with private complaint.

5. In the light of the above discussion and reasoning, nothing else remains in this petition except disposing of the petition with a direction to the first respondent to consider the enquiry report of ACB and take suitable action, strictly adhering to the procedure contemplated, within three months from the date of receipt of copy of this order. Petition is disposed of accordingly.

(M.S.SONAK, J.)

CHIEF JUSTICE