

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

C.A. NOS. 605/16 & 614/16 IN PUBLIC INTEREST LITIGATION NO. 12 OF 2016.

(Jan Manch, through its Advisor .vs. The State of Maharashtra & others)

Applicant : R.J. Shah & Co. Ltd., D. Thakkar Construction Pvt. Ltd. (J.V.)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. Chitale, Senior Counsel with Mr. A. Parchure, Advocate
for applicants,
Mr. F.T. Mirza, Advocate for petitioner,
Mrs. B.H. Dangre, G.P. for respondent nos. 1 to 4,
Mr. S.G. Jagtap, Advocate for respondent no.5.

CORAM : B.R. GAVAI & MRS. SWAPNA JOSHI, JJ.

DATED : MARCH 31, 2016.

CIVIL APPLICATION NO. 605 OF 2016 :

The present application is filed by the applicant seeking prayer for permitting the applicant to be joined as party respondent in the P.I.L. No. 12/16. The second application, i.e. C.A. No. 614/16 is filed for restraining the respondents from taking any coercive steps against the applicant in any manner prejudicial to their interest.

The present Public Interest Litigation has been filed by the petitioner praying for issuance of writ, direction or order in the nature of mandamus to direct the respondent no.1 to hand over the investigation of irrigation scam of Vidarbha region from the State Anti-Corruption Bureau to Central Bureau of Investigation and complete the investigation within the time frame stipulated

by this Court. Another prayer made in the petition is for a direction to the respondent nos. 2 & 5 to complete all the irrigation projects within the stipulated time period to mitigate the distress of farmers in Vidarbha. The third prayer is made for directing the respondent no.2 to audit through an independent agency the work done by contractors to which payment has been made. It is also prayed that audit should also be done on the quality of construction with other important aspects like as to whether the work is done as per approved design, quantities and in proportion to payment made for the same.

Two Public Interest Litigations with respect to almost similar prayers made in the present petition were filed before this Court, one P.I.L. No. 92/12 filed by the present petitioner and the second one P.I.L. No. 83/12 filed by one Mohan Marotrao Karemore.

When these Public Interest Litigations were listed before this Court on 12.12.2014, the then learned Advocate General appearing on behalf of the State Government on instructions from the Hon'ble Chief Minister made a statement that the Hon'ble Chief Minister in the interest of public probity and administration has cleared the file for open inquiry by Anti-Corruption Bureau of the State, in so far as Shri Ajit Pawar, Shri Sunil Tatkare and Shri Chhagan Bhujbal are concerned. The learned Advocate General had also assured the Court that he will impress upon the Government to enquire into the conduct of the contractors and officers of the department and if found appropriate to take action against them.

Accepting the statement made on behalf of the Hon'ble Chief Minister by the learned Advocate General, we had

disposed of the said petitions. While disposing of the petition, we had also expected that the State would also look into the grievances of the people of Vidarbha and that the funds earmarked for Vidarbha region are utilized for the same.

The present P.I.L. has been filed with a grievance that though a specific assurance was given to the Court on 12.12.2014, nothing has progressed and the Government has not kept up the word of completing the enquiry in expeditious manner.

It could thus be seen that the scope of the present Public Interest Litigation is restricted as to whether the State has abided by the assurance given by it to the Court and as to whether an enquiry has been conducted by it as assured to the Court.

If the answer to the said question is in the affirmative, then there would be no necessity of considering the prayer of the petitioners for transferring the matter to the Central Bureau of Investigation. If the Court finds that the State has not abided by its assurance, then the question would arise as to whether the investigation should be transferred to the C.B.I. or not.

In no case the Court in the present PIL would be concerned with the cases of any individuals, either political figures or officers of the Government or the contractors. Only in the event if in the enquiry conducted by the State Government or some other agency if so directed by the Court, a *prima facie* material is found against any individual, it will be for such agency to consider as to what steps are to be taken against such individuals.

It is sought to be contended on behalf of the applicants

that under the garb of present PIL, it is only the applicants who are sought to be dragged. We find that the said apprehension is totally misconceived.

At the cost of repetition, we state that the Court is not concerned with any particular individual but it is only concerned with the issue as to whether the State is abiding by the assurance given by it to this Court that it will conduct open house enquiry through Anti-Corruption Bureau. Only upon consideration of the said question, the future question as to whether the enquiry should be permitted to be continued with the Anti-Corruption Bureau or whether it should be transferred to the Central Bureau of Investigation will arise for consideration.

We make it clear that we are concerned only with the larger issues in the present petition and in no way we would be going into the niceties of the investigation or the consequent actions to be taken by the investigating agencies. By now, it is a settled principle of law that even this Court cannot direct the investigation to be done in a particular manner and that the investigating agencies should have freedom to investigate the matter, in the manner they find it to be appropriate.

In that view of the matter, we do not find that the presence of the present applicants is necessary in the present proceedings. The application is rejected.

CIVIL APPLICATION NO. 614 OF 2016 :

In so far as the second application is concerned, we find that by no stretch of imagination the relief claimed in the said application can be granted by this Court.

If any proceedings are initiated against the applicants

and if in the view of the applicants the said proceedings are not in accordance with law, it is always open for them to take recourse to the remedy available to them in law.

In no case while exercising the powers under the Public Interest Litigation this Court would be exercising the jurisdiction of the Criminal Division Bench and that too at the instance of the intervenor.

The application is without any merit and, therefore, rejected.

Judge

Judge

J.