

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
PUBLIC INTEREST LITIGATION NO. 142 OF 2016
WITH CA/4168/2017 IN PIL/142/2016**

**SANTOSH HIRALAL CHOUDHARI ALIAS SARATALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. Agrawal Sumit S.
GP for Respondents: Mr. A. B. Girase
Advocate for Respondents 2,3&4 : Mr. Dilip Bankar Patil
Advocate for Respondent No.5 : Mr. K. A. Kale
Advocate for Respondent No.6 : Mr. B. S. Deshmukh

**CORAM : R. M. BORDE
K. L. WADANE, JJ.**

DATE : 29th March, 2017

ORDER:

1. The petitioner is seeking directions to respondent Nos. 2 and 3 to take action against respondent No.6 and others for committing financial irregularities.

2. It is the contention of the petitioner that in pursuance to the complaint lodged by the Sarpanch of village Banoti, Taluka Soegaon on 7/10th September, 2012, enquiry was initiated against the village Development Officer and then Upsarpanh in respect of the financial irregularities as well as preparation of false record. The enquiry was conducted by the

Committee constituted under the Chairmanship of Block Development Officer. Report of enquiry was submitted by the Block Development Officer in December, 2012. The Committee recorded conclusion to the effect that Upsarpanch and Village Development Officer are responsible for committing certain irregularities. The Committee has also drawn conclusion in respect of financial irregularities of an amount Rs.4,3,839/- and recommended recovery of the said amount, allegedly misappropriated by the concerned. The petitioner contends that though the Village Development Officer and then Upsarpanch were found to be responsible for committing financial irregularities, no steps have been taken against them.

3. In pursuance to the notice issued by the Court, an affidavit in reply has been presented by the Deputy Chief Executive Officer (Panchayat), Zilla Parishad, Aurangabad under the directions of respondent No.1. It is recorded in the affidavit that after receipt of complaint on 10.09.2012, the Office of respondent No.3- Deputy Chief Executive Officer(Panchayat) has issued directions to respondent No.4 (Block Development Officer) to conduct enquiry and submit report. In

pursuance to the directions issued by the office of respondent no.3, enquiry has been conducted by respondent No.4 and report has been submitted to the office of respondent no.3 on 30.12.2012.

4. It is further stated that in the meanwhile, the complainant had withdrawn the complaint by issuing letter dated 21.09.2012. However, considering the report tendered by the Enquiry Officer (BDO), Village Development Officer Shri V. D. Bidkar was found responsible for the irregularities and as such he was issued show cause notice on 12.06.2013. On receipt of explanation, the department took a decision to initiate departmental enquiry against him, which was ordered by communication dated 09.10.2013. Charge-sheet has been tendered against the Village Development Officer on 03.04.2014. It is stated that after conclusion of departmental enquiry, since the Village Development Officer was found responsible for the irregularities, punishment of stoppage of three increments permanently has been imposed.

5. So far as allegations against the Sarpanch and Upsarpanch are concerned, respondent No.3 issued show

cause notice on 06.01.2016 to the then Sarpanch and Upsarpanch of Village Banoti and after receipt of explanations from the concerned and after calling report from the Block Development Officer, Panchayat Samiti Soegaon, directions came to be issued by the Divisional Commissioner to the Chief Executive Officer for initiating enquiry under section 39(1) of the Maharashtra Village Panchayats Act, 1958. It is also stated in the Affidavit that Chief Executive Officer, Zilla Parishad, is called upon to submit report for taking further action. The Divisional Commissioner, vide order dated 02.01.2017, granted permission to enquire into the matter under section 39(1) of the Maharashtra village Panchayats Act, 1958. It is also stated that criminal prosecution has been initiated against the then Sarpanch and Upsarpanch and others who are found responsible for misappropriation of an amount of Rs.9,84,748/-. First information report has been lodged by the Extension Officer, Panchayat Samiti with the Police Station Soegaon on 24.03.2017. It is thus clear that in pursuance to the complaint lodged by the then Sarpanch of village Bonoti, appropriate steps have been taken and even criminal prosecution has

also been initiated against the concerned who are found to be involved in the financial irregularities. It also worthwhile to note that even after withdrawal of the complaint by the Complainant- Sarpanch, the respondents proceeded to initiate action against those who are found responsible for the misappropriation.

6. Considering these aspects, we are of the view that purpose of presentation of the instant P.I.L. is served since the steps have been taken against those who are found responsible for committing irregularities /misappropriation.

7. Learned counsel appearing for respondent No.6 contends that the instant PIL is presented with malafide intention and it is not a bona-fide litigation. It is contended that the petitioner is a person who has been enrolled as a Labour under the MNREGA Scheme and in all probability, he does not have financial capacity to prosecute the litigation and deposit an amount of Rs.50,000/- as directed by this Court on 16th November, 2016. It is suggested by respondent no.6 that the petitioner is being used as a front-man by the political rivals of respondent no.6.

It is submitted that the present P.I.L. is filed with a view to frustrate an attempt of respondent No.6 to secure dealership of selling the petroleum products offered by a Petroleum company. It is contended that instant PIL is presented in the month of September, 2016 and complaint came to be lodged with the Petroleum Company together with copy of the PIL informing the Petroleum Company that respondent no.6 is likely to face criminal prosecution. However, the respondent No.6 has not presented on record copy of the complaint lodged with the Petroleum Company. Unsubstantiated contention raised in this regard therefore, cannot be considered. A doubt is raised as regards bonafides of the petitioner in presenting the instant P.I.L.

8. This Court, by order dated 7th March, 2017, directed respondent no.1 to explain as to why authorization was issued to respondent no.3 to file affidavit when there was a prayer made by the petitioner seeking directions to respondent no.1 to take action against respondent no.3. Admittedly, respondent no.3 is an officer of the local authority i.e. Zilla Parishad and normally he should not have been authorized to file affidavit on behalf of the

State. It appears that since the issue pertains to the Zilla Parishad, direction appears to have been issued by the State to respondent no.3 to look into the matter.

9. As has been stated above, the State Government is not expected to issue directions to the local authority, more particularly, an officer functioning in the local authority, against whom direction is sought in the PIL, to file affidavit on behalf of the State Government. An affidavit has been presented by the Principal Secretary, expressing regret and he has tendered unconditional apology for the lapse. We accept the unconditional apology tendered on behalf of respondent no.1.

10. For the reasons recorded above, P.I.L. stands disposed of.

11. In view of disposal of the P.I.L., pending Civil applications do not survive and stand disposed of.

12. Learned counsel appearing for the petitioner, on instructions, assures to deposit an amount of Rs.10,000/- with the Library Committee of the

Advocates' Association. In view of the statement made, the amount of Rs.10,000/-, out of total amount of Rs.50,000/- deposited by the petitioner in pursuance to the directions dated 16th November, 2016, shall be transferred to the account of Library Committee of the Advocates' Association, High Court at Aurangabad. Balance amount of Rs.40,000/- shall be refunded to the petitioner.

(K. L. WADANE, J.)

(R. M. BORDE, J.)

JPC