

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10037 OF 2016

MOTIRAM SOPA VALVI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Shri Deshpande Milind K.
AGP for Respondents/ State : Shri S.G.Karlekar.
Advocate for Respondent 4 : Ms.Chaudhari Vaishali S..
...

**CORAM: S.C. DHARMADHIKARI
AND
MANGESH S. PATIL, JJ.**

DATE :- 27th June, 2017

PC.:

1 The Petitioners are likely to be arrayed as accused. A criminal prosecution is launched and by the impugned communication dated 18.08.2016, which is challenged, directions have been issued to go ahead and prosecute it.

2 On 12.06.2017, we had passed an order not on the basis that the Petitioners possess any right much less vested right, but what is the foundation for proceeding to charge the Petitioners and dragging them to the criminal court while others involved have to be only punished departmentally, though placed identically.

3 An additional affidavit is now filed by the Chief Executive

Officer, Zilla Parishad, Nandurbar.

4 At pages 42 and 43 in paragraphs 2 and 3 of the said affidavit, this is what is stated:-

- "2. *The deponent submits that upon the direction of Resp.No.3 Collector, the Joint Measurement Committee was constituted and order dated 08.07.2016 was passed, in which, it was directed to the Zilla Parishad Nandurbar to take action against the employees involved in the misappropriation. It is further submitted that a letter dated 11.12.2015 was sent to Resp.No.3 Collector by deponent, by which it was informed that the responsibility upon the employees was not fixed. The Resp.No.3 Collector specifically mentioned in the order dated 08.07.2016, that as all the concerned employees are working under the control of the present deponent, the present deponent has to take action against them. The letter dated 11.12.2015 is annexed herewith this addl. reply and marked as Exhibit "RJ-1".*
3. *Deponent further submits that upon the direction of Resp.No.3 Collector, a report from the additional CEO, ZP, Nandurbar was called regarding the duties and responsibilities of employees concerned. This report was submitted to deponent on 16.06.2016 from which it appears that the actual measurement was taken by the Petitioner No.2 and 3 and Check Measurement was done by the Petitioner No.1. Deponent further submits other officials of deponent are merely supervising authority, who supervise the work. The report of additional CEO, ZP, Nandurbar dated 16.06.2016 is annexed herewith this Addl. Reply and marked as Exhibit RJ-2."*

5 We do not think that the Chief Executive Officer is the Judge and can decide for himself coupled with others as to how the law should take it's course. Today, the First Information Report is lodged. During the

course of investigation, if the Police machinery finds that apart from the Petitioners others are involved, then, no amount of explanations placed on affidavits by the Chief Executive Officer will influence the investigation and ultimate outcome thereof. It is province of the competent criminal court and when reports of investigation are filed, to issue appropriate directions and in accordance with law.

6 We clarify that the competent criminal court shall not be influenced by the allegations in the present petition and explanations on affidavits. The competent criminal court shall proceed in accordance with law. We also direct that no communications from the Government officials or explanations on affidavits in this Court, will influence the outcome of the investigation and the powers conferred in the criminal court. Equally, we clarify that departmental/ disciplinary proceedings shall also proceed strictly in accordance with law.

7 The Writ Petition is, accordingly, disposed of.