

HIGH COURT OF CHHATTISGARH, BILASPUR

WPIL No. 10 of 2007

1. Rajdhani Vikas Manch through the President Dinu Prasad Sharma, aged 63 years, S/o Munshiram Sharma, resident of Raipur Deepak apartment Budhapara, Distt Raipur (CG)
2. Dinu Prasad Sharma, S/o Munshi Ram Sharma, aged 63 years, Vice President and acting President for the State Chhattisgarh under the organization Akhil Bhartiya Samachar Patra Sangthan as well as President of Rajdhani Vikas Manch Raipur, Office and residence at Deepak Apartment Budhapara Raipur District Raipur (CG)

---- Petitioners

Versus

1. The (Deputy) Divisional Forest Officer, Raipur District Raipur CG
2. The State of Chhattisgarh through the Principal Secretary Department of Forest, Secretariat, DK Bhawan, Mantralaya, Raipur (CG)
3. The Divisional Forest Office Raigarh, Distt Raigarh (CG)
4. The Collector Raipur Distt Raipur (CG)
5. The (Joint) Director, Divisional Forest Office east Raipur in the Distt Raipur (CG)
6. M/s Subham enterprises, Proprietor Tapan Banarji Resident of B-10, Deepak Apartment Kankalipara Raipur, Distt Raipur (CG)
7. Tapan Banarjee resident of Raipur Deepak Apartment Kankalipara Raipur Distt Raipur (CG)
8. M/s Kailash Chandra Agrawal, Resident of Kankali Para Raipur, Distt Raipur (CG)
9. M/s Navin Bhai B Patel Resident of Jawahar Nagar Raipur Distt Raipur (CG)
10. M/s Rajkumar and Co (Proprietor) office at Tagore Nagar, Raipur Distt Raipur (CG)
11. M/s Manish (Enterprises) Proprietor Farishta Complex Raipur Distt Raipur (CG)
12. M/s Sunil (Enterprises) Proprietor office at Farishta Complex Raipur Distt Raipur (CG)
13. M/s Sunil Kumar Agrawal (Proprietor) at Samata Colony Raipur, Distt Raipur (CG)
14. M/s Mahalaxmi (trading Co) proprietor at Naharpara Raipur Distt Raipur (CG)
15. M/s Ashok Parakh (Proprietor) at Chaubey Colony Raipur Distt Raipur (CG)
16. M/s BK Enterprises Office at Farista Complex Raipur, Distt Raipur (CG)
17. M/s Kamal (Bidi leaves) proprietor office at Civil Line Raipur, Distt Raipur (CG)
18. Bhanu Kumar Proprietor of Business office at, Farishta Complex Raipur, Distt Raipur (CG)

19. Union of India through the Principal Secretary, Forest Department
Secretariat New Delhi

----- Respondents

For Petitioners	: Shri Janak Ram Verma, Advocate
For Respondent/State	: Shri YS Thakur, Additional Advocate General
For other respective Respondents	: Shri Shrawan Agrawal, Ms Mandavi Bharadwaj, Advocates

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Justice Sharad Kumar Gupta

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

24.01.2018

1) This Writ Petition was instituted on 30.01.2007 as a Public Interest Litigation pointing out that the State Government authorities have demonstrated that they are not keen in recovering amounts outstanding from different contractors to whom contracts for collecting *Tendu* leaves were awarded from time to time. This Writ Petition has sailed in the sluggish path of pendency of litigations for over a decade by now.

2) On 08.02.2017 this Court minuted the following since there was no response from the Government and other official respondents to the issues raised in the Writ Petition. The said order dated 08.02.2017 reads as follows:

"We have gone through the affidavit specially Annexure R/B. Accepting what is stated in the affidavit to be correct, it is apparent that the transactions in question relate to the year 1990-1995. The amount recoverable even as per this document is Rs.97,09,274.46/- This is the principal amount. If we were to calculate the interest at the rate of 12% per annum from the date when the amounts became

due, then the amount may be as much as three times. What is shocking is that in not even in one case, a single paisa has been recovered. What is even more shocking is the fact that between 2007-2014 in most of the cases for many years, sometimes as many as 7-8 years, not even a reminder has been sent.

We are not at all happy with this state of affairs. Public funds are involved. This money belongs to the public and it is the duty of the public servant to ensure that this money is recovered. This Court had entertained in the present petition in the year 2007. For many years not even a letter was written to the defaulting parties.

We therefore direct the Respondent authorities to initiate action within one month from today to recover the amount due along with interest from the defaulting parties. Once the property of the defaulters has been attached or identified, the same shall be put to auction within 60 days from today. Where the property has not been identified, steps will be taken to identify the property within 30 days from today and thereafter steps be taken within two months for recovery of the amount.

We also find that most of these defaulters are industrialist or builders. In case, the promoters of these industries are doing the business, then they shall also be identified and the matter shall be placed before this Court on the next date.

We grant three months time to do the needful.

We make it clear that in case, no progress takes place, we shall not hesitate to pass very harsh orders including orders directing recovery of the amounts from the erring officers."

3) Unfortunately, no response was shown by the official respondents, inspite of the afore-quoted order. Therefore, this Court was constrained to issue another order on 29.06.2017, which reads as follows:

"We are sorry to note that there is no reasonable response to the order dated 8.2.2017 minuted by this Court expressing anguish at the gross breach of public and statutory duties by

the Government servants to obtain those amounts which were due to the Government officials by sale of *Tendu* leaves in auction. The period of auction was way back to 1990-1995. we wonder for ourselves as to whether there are any great godfathers in the executive for those contractors. If there are such persons in the administration now or if they are persons who had actually helped the contractors from keeping away from the contractual responsibility of making remittances, the failure on the part of the said employees of the Government necessarily indicate that they had actually acted in a manner where persons like those who had availed the purchase of *Tendu* leaves were permitted to enjoy the benefits which were not due to them under the law. This obviously means that all requisite elements in terms of the provisions of Prevention of Corruption Act may also stare at all such officials. Dereliction of duty includes not only acts of commissions but of omissions to perform statutory and public duties while in office.

Taking all circumstances into consideration, we are of the view that within the fortnight from today, the official Respondents should be able to place before this Court an affidavit of an officer not below the rank of Secretary, Government of Chhattisgarh, Department of Forest as to the modality in which the recovery of amounts would be ensured so that the public funds in the Treasury will not stand to lose. If such event is not going to happen, requisite action has to be taken for misfeasance, malfeasance, misconduct, etc., which could be attributed to the officials who hold office from time to time and who were responsible to ensure the recovery of amounts. Simultaneously with that, the said official Respondents will also state as to what action could be taken against such officials for dereliction of duty including in the realm of service law as well as the penal laws."

4) Though the matter was thereupon adjourned time and again, the response of the official respondents is not placed on record even as of now. This is nothing short of shame on the face of the Constitution of India resulting from the institutional bunking off by the executive limb of governance.

5) Today we have again heard the learned Advocate for the petitioner, the learned Additional Advocate and the learned counsel appearing for respondents- 6, 7, 10, 11, 12, 15 and 16.

6) None of the respondents has disputed the fact that amounts are due to the State as pleaded by the petitioner. The fact of the matter remains that the amounts shown through the documents, clearly indicate that nobody had at any point of time raised any dispute as to the eligibility of the State Government that such amounts are due to the State.

7) We are not only surprised but pained, on behalf of the People, that those in authority in the State administration has turned Nelson's eye to the contents of the afore-quoted orders issued by the highest Court of his State on 08.02.2017 and 29.06.2017.

8) The function, efficacy and efficiency of governance depends upon the executive, *inter alia*, in consolidating and securing the Treasury. Moneys which have to flow into the Treasury include revenue income which the State is entitled to get in exercise of its Sovereign authority. If the executive does not function in a manner which is conducive to the exercise and preservation of such Sovereign power, it will lead to anarchists wagging tentacles into governance; a situation which cannot be

tolerated on the scales of situational and constitutional commands and requirements. It cannot be the whims and fancies of the executive to keep away from enforcing recoveries due to the State.

9) It would have been, altogether, a different matter when, under very peculiar facts and circumstances of exceptional nature, an executive decision is taken to right off payables from those who may need support. That is not the case here. None of the private respondents has pleaded any such premise. The lethargy of the executive to duly enforce recovery cannot but be presumed to be motivated by extraneous considerations.

10) When law prescribes and requires certain things to happen in a particular manner, it is the mandate of the Constitution that in relation to governance, those things ought to happen. This is part of the trusteeship doctrine which ought to run with any public office, including those manned by the executive cadre of governance of a State. Financial mismanagement includes concerted deficiency in recovering amounts that is due to the revenue of the State.

11) On the whole, we are of the view that this case abundantly demonstrates, clinchingly, that those in the helm of affairs in the executive, dealing with recovery of moneys that were due from the *Tendu* leaves contractors, had graced the dubious interest of the contractors to ensure that recoveries do not take place. Whether anyone in the executive had also grazed the sweetened and juicy pastures of gilt edged provinces, by letting their palms to be greased at the peril of the State's coffers is a matter that needs to be examined. For the aforesaid reasons, this Writ

Petition is ordered directing that the second respondent - State of Chhattisgarh, through its Chief Secretary, as well as the Principal Secretary in the Department of Forest and the Principal Secretaries to the Government who deal with the Department of Finance and/or Revenue, shall immediately initiate action for recovery of the amounts due to the Government from different contractors to whom contracts for collecting Tendu leaves were awarded, as pleaded in the Writ Petition. The Government shall also initiate immediate action for recovery of the losses caused to the Government on account of the non-recovery of amounts as pleaded in the Writ Petition, from those officers of Government who were responsible to enforce such recovery from time to time. The State Government shall also consider whether the acts and omissions of such officials relate to acts or omissions disclosing commission of offence punishable under the penal laws, including those relating to corruption and dereliction of official duties by government servants, within the terms of the penal laws. This Writ Petition is ordered accordingly and further requiring that the Chief Secretary to the Government of Chhattisgarh, shall place a personal affidavit on record, before this Court within a period of one month from today stating the entire action taken in terms of this order. The Registrar General of this Court will take such affidavit on record and place it for perusal of the Chief Justice in chambers, seeking appropriate directions to list this matter again on the judicial side, if need be.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge