

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

PUBLIC INTEREST LITIGATION NO.136 OF 2018

1]Santosh S/o Vitthal Purhe
2]Balkrushana S/o Panditrao Bange
3]Sakhahari S/o Sarjerao Bhavar .. PETITIONERS

VERSUS

1]The State of Maharashtra
2]The Divisional Commissioner Aurangabad
3]The District Collector, Aurangabad
4]Chief Executive Officer Zilla Parishad
Aurangabad
5]The Deputy Collector, Employment
Guarantee Scheme, Aurangabad.
6]Shri V.L. Rathod,the then B.D.O.
7]Shri Y.R. Aghude,Branch Engineer
8]Shri K.B. Pawar,the then
Village Development Officer
9]Smt. Ranjanabai Bhikan Chandel,
the then Sarpanch
10]Krushna S/o Pundlik Mohre
the then Gram Rojgar Sevak
11]Shivaji S/o Bhikanrao Chandel ..RESPONDENTS

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Mr. C.R. Thorat Advocate for Petitioners.
Mr. S.S. Dande, A.G.P. for Respondent/State.

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**CORAM : PRASANNA B. VARALE &
MANGESH S. PATIL,JJ.
DATE : 27/11/2018**

PER COURT :-

The petitioners are before this Court in the present Public Interest Litigation with following prayers :

A] By issuing writ of mandamus or any other appropriate writ or direction in the like nature, the respondents be pleased to be directed to take all the necessary actions against the respondent no.6 to 11 for misappropriation of funds in view of the report of the inquiry committee which is directed as per the order dated 18.05.2017 by the chief executive officer Zilla Parishad Aurangabad.

B] Be please to direct the chief executive officer to implement the order dated 24.04.2018 issued for recovery of misappropriation amount from respondent no.6 to 10.

C] Be pleased to direct the chief executive officer Zilla Parishad Aurangabad to register the crime against the respondent no. 6 to 11 for misappropriation of amount in view of the report by the inquiry committee dated 26.04.2018 and 21.01.2017.

2] The submission of the learned Counsel appearing for the petitioners is that the State Government with a laudable project floated various schemes and employment guarantee scheme is

one of such schemes and under the said scheme certain works were carried out during period from 2007 to 2012. It is submitted by the counsel for the petitioners that various Government officials such as Tahsildar, Block Development Officer, Gramsevak as well the Sarpanch and Up-Sarpanch of village panchayat have shown on papers the works done under the scheme, whereas in reality these works neither were initiated nor were completed.

3] The learned counsel then submitted that as the complaints were raised, an inquiry was conducted by the then Chief Executive Officer. The learned counsel for the petitioners then submitted that a preliminary report is submitted to the Chief Executive Officer. Our attention was invited to the copy of the preliminary report placed on record. Then it was submitted before us that those erring officers were served with the orders, copies of these orders are also placed on record. On the backdrop of this material, the learned counsel for the petitioners makes submission before us that as the inquiry report shows that these officers, employees and the other private parties misappropriated the Government funds and as the orders are issued against these erring officers, the respondent authorities be directed to initiate appropriate action so as to recover the money from these erring officers so that the money so recovered can be utilized for the better purpose or for undertaking activities which are in the larger interest of the public.

4] On considering these submissions of the learned counsel,

we are of the opinion firstly that the petitioners are under impression that the preliminary inquiry report is a fact finding report, as if it leads to a conclusion that these persons have indulged in act of misappropriation of the Government funds. Heavy reliance was placed on preliminary inquiry and it would be useful for our purpose to refer to final observations in the inquiry report which is a preliminary report and it states that in the process of inquiry, the material was under scrutiny as such the Gram Sabha Resolution, Administrative Orders, Proceedings of Gram Sabha, then the Demand Proposals. In the preliminary inquiry it is the opinion of the inquiry committee that certain employees as well as the Sarpanch, Gramsevak committed irregularities and then the inquiry report states that the matter is submitted for further necessary action.

5] Then the reliance was placed on the orders issued against the employee of the Zilla Parishad, such as the Block Development Officer. As an example, we refer to one of such order issued to Shri V.L. Rathod the then Block Development Officer dated 24.04.2018. This order refers to certain amount and the nature of work and then it states that as the amount of Rs. 5,25,095/- is fixed as an amount of recovery from Mr. Rathod, Mr. Rathod may deposit this amount in Government Treasury within a stipulated period and submit the receipt thereof. Then the order states that if the amount is not deposited, necessary criminal action would be initiated against Mr. Rathod. Now considering these documents i.e. preliminary report and orders issued to the erring officers, it can safely be

said that the proper authority has taken note of the complaints lodged to it, had set up an inquiry committee. The inquiry committee submitted its report. The inquiry committee found that there are certain irregularities and the order issued against these officers call for an action of depositing the money which is fixed as recovery from these persons.

6] In view of these facts, it cannot be said that the superior authorities are the only silent spectators but have promptly acted on receiving the complaint. Petitioners themselves pray in the Petition that the Chief Executive Officer, Zilla Parishad, Aurangabad be directed to register crime against respondents No.6 to 11 for misappropriation of amount in view of reports of the inquiry committee dated 21.01.2017 and 24.04.2018. In this situation the petitioners are not prevented either by any reason or by logic to lodge report in the nearest Police Station, if the petitioners are of opinion that certain private persons have committed an act which would cover the provisions of Indian Penal Code and if such a remedy which is efficacious remedy is available to the petitioners, we see no reason to entertain this Petition for such prayer. In so far as prayer clause-B is concerned, the order is already issued by the Officer. The person to whom the order is issued as an employee and it is open for the superior officers to act in furtherance of the order and also open for the person to whom the order is issued to take recourse to any other legal proceedings to defend.

7] The alternate submission of the learned counsel that the

parties be directed to recover the amount as there is material that this amount is of misappropriation and this amount so recovered be utilized for other purposes, least we can say is that this is only a wishful and theoretical submission and not legal submission, this Court cannot entertain the Petition on such submission of the petitioners. Considering all these aspects, we are not inclined to entertain the petition. Accordingly, the Petition is dismissed.

8] We further make it clear that in so far as it concerns to initiate criminal action by approaching the appropriate forum, the petitioners are still at liberty to avail such remedy if so advised.

(MANGESH S. PATIL,J.)

(PRASANNA B. VARALE,J.)

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