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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6361 OF 2018

Sudhir Harishchandra Patil & Anr.

..Petitioners.

V/s.

State of Maharashtra & Ors.

..Respondents.

Mr.Uday Warunjikar with Mr.Omkar Geedha for the petitioners.

Mr.Sandeep Babar, AGP for the respondent-State.

Mr.R.B.Raghuvanshi i/b. Mr.Ratnesh Dube for petitioner in PIL/153/2012.

***CORAM: SHANTANU KEMKAR AND
NITIN W.SAMBRE, JJ.***

DATE : JUNE 14 , 2018

PC. (PER NITIN W.SAMBRE, J.)

The petitioners claim to be retired employees of the respondents-State, who were in the employment of Tribal Development Department. It is the claim of the petitioners, in Public Interest Petition No.153 of 2012, this Court was pleased to pass certain orders, pursuant to which the State Government

appointed enquiry committee headed by retired High Court Judge Mr. Justice M.G. Gaikwad, who has conducted inquiry along with other committee members pursuant to the provisions of sections 4 and 11 of the Commissions of Inquiry Act, 1952. According to them, said Committee has looked into the allegations of corruption and has submitted its report.

2. According to the learned counsel for the petitioners, the report that was submitted by the aforesaid Committee to the Bombay High Court, was in terms of reference made by the Tribal Development Department for necessary action.

3. Thereafter, the State Government (Tribal Development Department) appointed Karandikar Committee, headed by retired IAS officer by making terms of reference to the said Committee. He would then urge that the terms of reference to the said Committee were as under :-

“TDD prescribed the following terms of Reference for the Karandikar Committee.

(i) To study the report submitted by Gaikwad Committee and submits its findings and

recommendation to the Govt. in TDD for implementation of Gaikwad Committee's report. (The findings of the Karandikar Committee shall include suggest ways to fix responsibility of the delinquent officers, to insitute criminal prosecution against them and other justified legal actions which can be taken against the delinquent officers.

- (ii) *To suggest measures to avoid recurrence of such irregularities in future. ”*

4. According to the learned counsel for the petitioners, the said Karandikar Committee submitted its report and from para 25 onwards describes the procedure to be adopted in the matter for initiating criminal prosecution.

5. In the said backdrop, the learned counsel for the petitioners would urge that if the minutes of the Karandikar Committee of its 12th meeting is read with the impugned communication dated June 11, 2018 issued by the Additional Commissioner, Tribal Development Department, a complete contradictory stand is taken by the State Government. The learned counsel for the petitioners would urge that a categorisation of the

high priority cases for launching criminal prosecution was to be made and thereafter after following procedure as referred to in para 25 onwards, action is required to be initiated. According to him, para 27 of the first part of the Karandikar Committee report prescribed for identifying the proposed / probable delinquent and after seeking necessary documentary evidence against them to be analysed to ascertain as to whether if a prosecution is initiated the case could stand to judicial scrutiny. It is further claimed that the Committee report provides for a preliminary inquiry by issuing a show cause notice to the proposed delinquents which should contain a statement of charges and summary of evidence and keeping in view the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 or any other relevant standing orders of the State Government in compliance of the principles of natural justice, etc., a criminal prosecution be initiated.

6. The learned counsel submits that in contravention to the aforesaid observations of the Karandikar Committee's report, directions to file F.I.R. against the ex-employees vide impugned communication is issued. As such, this Court should grant reliefs

as under :-

- “(a) this Hon'ble Court may kindly be pleased to issue Writ of Mandamus or suitable writ, order or direction and
- (b) to command the respondents to not to take any action on the basis of the alleged report submitted by Justice Gaikwad Committee, it being contrary to the provisions of the Commissions of Inquiry Act, 1952;
- (c) to order the respondents to not initiate any action either of criminal prosecution or otherwise without following principles of nature justice and granting opportunity of hearing to the petitioners;
- (d) to declare that the action on the part of Karandikar Committee of issuing directions to the Officers of the Tribunal Development Department is without jurisdiction and such directions need not be followed;
- (e) to grant interim and ad-interim relief by refraining the respondents from initiating any action on the basis of the report of Justice Gaikwad Committee during the pendency of this petition. ”

7. He submits that till the respondents filed their reply,

this Court needs to stay the effect and operation of the impugned communication dated June 11, 2018.

8. Though, the communication dated June 11, 2018 is not part and parcel of the petition, since the same was tendered by the petitioners during the course of hearing and not objected by the learned AGP, it is taken on record and marked 'X' for identification.

9. In the backdrop of the submissions made, the directions issued by the respondent State-Government in the impugned communication dated June 11, 2018 are examined keeping in view the existing prayer clauses in the petition.

10. It is not in dispute that in Public Interest Litigation No.153 of 2012, this Court vide order dated June 13, 2013 was of the *prima facie* opinion of directing CBI inquiry in regard to the corruption as alleged therein *qua* purchase of items, cattles and implementation of other schemes.

11. Pursuant to the statement made by the Government, in the said PIL, report submitted by the Committee headed by the

retired Judge Mr.Gaikwad of this Court was made over to the Government. Committee headed by the retired IAS (Karandikar Committee) was formed and the terms of reference *qua* the said new committee is to study the report submitted by the Gaikwad Committee and submit the findings *qua* implementation of the said report of fixing the responsibility of the delinquent officers and to institute criminal prosecution against the officers responsible for corruption and to suggest measures to avoid recurrence of such irregularities in future.

12. The said Karandikar Committee has set out the procedure to be adopted by the Special Enquiry Team. The report of the Committee prescribes for, procedure to be adopted by Special Enquiry Team and mode to be followed to implement the Enquiry Committee Report.

13. The procedure adopted by the Special Enquiry Team, is sought to be assailed based on impugned order in this Petition on the ground that same is contrary to the one suggested in the Report of Karandikar Committee.

14. At the outset, it is required to be noted that what has been sought by the petitioners through the prayer clauses in the petition is declaration that the report submitted by Justice Gaikwad Committee is contrary to the provisions of Commission of Inquiry Act, 1952. It is worth to observe here that the report submitted by the Gaikwad Committee is neither produced nor assailed in the argument. As such, this Court has no occasion to examine the same.

15. So far as the other prayer clause *qua* not to initiate criminal prosecution is concerned, in our opinion, such a blanket relief cannot be granted in favour of the petitioners as there is no right in law much less a statutory right to claim the reliefs. It is required to be noted that in case if the F.I.R. is filed against the petitioners, remedy to seek redressal against the said act of registration of crime or filing of F.I.R.. is already provided under the relevant statute. It is premature for this Court to conclude that no criminal action needs to be initiated against the petitioners.

16. The issue about whether the Karandikar Committee

was in its lawful authority to issue directions for criminal prosecution *qua* ordering of registration of F.I.R. is concerned, in our opinion, the same issue is also not required to be dealt with at this stage of the matter, as it is always open to the petitioners to raise the said issue at an appropriate stage of the proceedings in case if the F.I.R. is filed or crime is registered against the petitioners.

17. Apart from this, it is required to be noted that the petitioners are questioning the report of the Gaikwad Committee and further authority of the Karandikar Committee to issue directions. Upon perusal of the report of Karandikar Committee which the petitioners has relied upon for making out a case for grant of reliefs depicts that the terms of reference made to Karandikar Committee speaks of instituting criminal prosecution against the delinquents as could be inferred from clause (4) of the said report which is at page 327 of the petition. Apart from above, it is settled position of law that lodging of F.I.R. or initiation of criminal action need not be proceeded with compliance of principles of natural justice in the form of issuing notice or opportunity of hearing.

18. That being so, this Court is of the opinion that the reliefs claimed by the petitioners cannot be granted as there is no lawful right in favour of the petitioners.

19. No case for interference in the extra-ordinary jurisdiction is made out. The petition as such fails and the same is dismissed.

(NITIN W.SAMBRE, J.)

(SHANTANU KEMKAR, J.)