

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION (L) NO. 51 OF 2017

Kewladevi Ramnayan Yadav }	Petitioner
versus	
The State of Maharashtra }	
and Ors. }	Respondents

Mr. U. P. Patil for the petitioner.

Ms. P. P. Shinde-APP for State.

Mr. N. R. Bubna for respondent no. 5.

Mr. Sandesh D. Patil with Mr. Prithviraj S.
Gole i/b. Ms. Anusha P. Amin for
respondent no. 6.

**CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATE :- JANUARY 29, 2018

P.C. :-

1. By this Public Interest Litigation (PIL), the petitioner says
that the PIL petition has been filed to seek the following reliefs:-

“a) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, direction or order under Article 226 of the Constitution of India with following directions to Respondent No. 1 State of Maharashtra.

b) That this Hon'ble Court be pleased to direct State Government to take action against Respondent No. 6 Mr.Pramod Nimbalkar for committing fraud of public money to the tune of Rs.29 Crores.

c) That this Hon'ble Court be pleased to direct Respondent No. 4 to suspend Respondent No. 6 pending inquiry.

d) That this Hon'ble Court be pleased to direct Respondent No. 4 to recover salary pay to Respondent No.6 pending inquiry.

e) That this Hon'ble Court be pleased to direct State CID, Pune and Anti Corruption Bureau to hold inquiry and take action against Respondent No. 6.”

2. The petitioner before this court has disclosed that she is the sitting corporator of the Thane Municipal Corporation (TMC). She has filed this PIL against the State and the Corporation officials for the simple reason that there has been an instance of corruption to the tune of Rs.29 crores in award of a contract for construction of Nallah in Mumbra Division, which falls under the TMC. The illegalities and gross irregularities in the award of the contract, non-fulfillment of the essential terms and conditions, apart from causing monetary loss, also involve serious acts of omission and commission on the part of the municipal officials, particularly the engineers. Departmental action was taken, but that was insufficient and inadequate. Besides the fact that the departmental action was not deterrent enough, in the sense those proceeded against departmentally were benefited later on by earning promotion, it is alleged that this fraud, which resulted in the Municipal Corporation and the exchequer being deprived of the essential amenities and loss of precious funds, are criminal offences and invite punishment.

3. The petitioner has given the details of such fraud and she has also impleaded respondent no. 6, who was then serving in the Municipal Corporation, as the party respondent. The petitioner says that in the body of the PIL petition, she has highlighted the seriousness and gravity of the allegations.

4. This PIL has been opposed by respondent no. 6 and equally the TMC. Mr. Bubna appearing for the Municipal Corporation and Mr. Sandesh Patil appearing for respondent no. 6, who was serving as a Junior Engineer, argued that such petitions are filed in order to blackmail and threaten honest officials. These hardworking, honest and efficient officials are targeted by none other than the municipal corporators, who have their own links with the contractors. These corporators are not seeking to protect public interest, but because the officials do not allow these corporators and the colluding contractors to get benefit, that these persons turn around and make baseless allegations. This PIL petition is one of the tactics, which has been employed regularly in the TMC.

5. Mr. Bubna has tendered the affidavit of the Deputy Municipal Commissioner. The Deputy Municipal Commissioner has highlighted the fact that the petitioner is not challenging the award of the contracts from the year 1990 to 1992. She has only

targeted one of the officials, namely, respondent no. 6. The petitioner has never come forward to give any particulars of the alleged fraud. The petitioner has repeated the allegations made by her son several years ago. Thus, this is nothing but a part of the usual tactics employed by the corporators and we should, therefore, not entertain this petition. No public interest is involved.

6. After perusal of the criminal PIL, its annexures and the affidavit placed on record, we are of the firm view that it is not our business to probe into the truthfulness or otherwise of the allegations. The truth will come out, as the petitioner claims there are proceedings and which are launched in the competent criminal court. The petitioner wishes to set the criminal law in motion. We do not see what prevented her for all these years from walking into the police station and registering a FIR. If that FIR was not registered, nothing further prevented her from walking into a competent criminal court with a private complaint and requesting that court to set the criminal law in motion. The petitioner has highlighted the fraud and which was investigated by the TMC in a departmental/disciplinary inquiry and way back in the year 2003. We are mindful of the fact that the rule of limitation cannot be set up as the plea in defence to institution of

a criminal prosecution. The crime is against the whole society. However, we want to ensure that there is no threat nor is an attempt to use the present proceedings as blackmailing tactics.

7. On the last occasion and even today, we inquired from Mr. Patil as to whether the petitioner is ready and willing to walk into a nearest police station and have her statement recorded. On instructions, Mr. Patil states that if the charge and allegation against the petitioner is that she is not furnishing particulars, then, she is ready and willing to attend the police station and have her statement recorded by the Investigating Officer. Upon such a stand of the petitioner, we inquired from Ms. Shinde-APP as to whether she can walk into the nearest police station and for recording her statement. On instructions, it is stated that the petitioner is welcome to attend both, the nearest police station as also the office of the Director of Anti Corruption Bureau, Worli, Mumbai. Needless to, therefore, clarify that in the event the petitioner wants her statement to be recorded, she is free to attend both the offices and distinct agencies so that if a crime is to be registered, that will be registered and the criminal law would be set in motion. Presently, we clarify that we have not expressed any opinion on the rival contentions or the merits of the allegations. However, we want these public spirited citizens to

show courage and guts to walk into a police station and set the criminal law in motion. If that is not done at their instance, then, they are free to file a private complaint in a competent criminal court. If none co-operates and though there is a crime committed, *prima facie*, it is only as a last resort such people should walk into this court.

8. We, therefore, remind the petitioner of her duty and particularly as a vigilant corporator of TMC that her job is not to drop a PIL petition in this court and then leave everything to this court. She must, as expected from her, substantiate the allegations as well and if at all mandated by law, it is her duty to stand as a witness before a competent criminal court and, if required, face cross examination.

9. In these circumstances, by allowing the petitioner to avail of both remedies, we dispose of the Public Interest Litigation.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)