

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (PIL) No. 67 of 2019**

1. S. Santosh Kumar S/o V. Sridhar Aged About 35 Years R/o LIG- 205, Housing Board Face - 3, Village Khilora, Tahsil Abhanpur, District Raipur Chhattisgarh.
2. Dilip Yadav S/o Gohari Ram Yadav Aged About 45 Years R/o House No. 82, Nayapara, Sirgitty, Bilaspur, Tahsil And District Bilaspur Chhattisgarh.

---- Petitioner**Versus**

1. Union of India, through the Secretary, Health and Women Development Department, New Delhi.
2. State of Chhattisgarh, through the Secretary, General Administration Department, Mantralaya, Mahanadi Bhawan, Naya Raipur Chhattisgarh.
3. State of Chhattisgarh, through the Secretary, Health and Family Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
4. Under Secretary, Health and Family Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur Chhattisgarh.
5. National Helath Mission Raipur New Raipur Chhattisgarh.
6. District Health Committee, President/Collector Bilaspur, District Bilaspur Chhattisgarh.

---- Respondents

For Petitioners : Shri Yogeshwar Sharma, Advocate.

For Respondent/State : Shri Gagan Tiwari, Deputy Government Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board**Per P.R. Ramachandra Menon, Chief Justice****14/11/2019**

1. The Petitioners have moved this Court with the following prayers:

"10.1 Issue a writ of mandamus directing the respondent authority to register FIR against CMHO namely Madhulika Singh under prevention of Corruption Act.

10.2 Issue a writ of mandamus directing the respondent authority to recover amount which has been embezzled and misappropriated by CMHO.

10.3 Issue a writ of mandamus directing the respondents authorities to conduct enquiry on irregularities done in utilization of fund allotted after new State was created.

10.4 Issue a writ of mandamus directing the respondent authority to maintain respondents WEB portal in which their utilization/allocation of funds and detail of their expenditure is uploaded timely.

10.5 Pass any other or further order(s) as this Court may deem fit and proper in the circumstances of the case."

2. The grievance is mainly with regard to the alleged instance of malpractice/financial irregularities stated as being pursued by one Smt. Madhulika Singh, the Chief Medical & Health Officer at Bilaspur.
3. According to the Petitioners, she has committed embezzlement of money, forged various public documents and has misused the power and authority for her personal gains. It is in the said circumstance, that a prayer is made to cause to register FIR against Smt. Madhulika Singh under the Prevention of Corruption Act and also seeking for a writ of mandamus to the Respondents to recover the amount which has been embezzled and misappropriated by the said CMHO, besides seeking for a direction to conduct enquiry as to the utilization of fund allotted after formation of the new State.
4. At the very outset, it is to be noted that the matter has been preferred as a 'Public Interest Litigation'. If at all there are any deeds or misdeeds by any of the employee of the State Government, it is for the State Government to pursue appropriate action, including by way of disciplinary action, besides the steps to have the loss, if at all any, to be recovered. It is also possible to pursue such other measures by way of prosecution, if at all any offence is involved. It is settled law that, no public interest litigation will lie in service matters.

5. With regard to the grievance if at all any, in respect of non-registration of crime by the Police, this Court does not propose to appreciate the version put up by the public spirited citizens who rushed to this Court by filing writ petition to cause an FIR to be registered. This is more so, since it is quite open for the parties concerned to bring such pieces of information before the Police Officer who is to register the FIR in terms of Section 154 of the CrPC, if any cognizable offence is made out. If there is no action from the part of the Police Officer, it is still open for the aggrieved party to bring it to the notice of the Superintendent of Police for appropriate action in terms of sub-section (3) of Section 154 CrPC. If it does not yield any positive result, it is further open for the parties to move the Magistrate in terms of sub section (3) of Section 156. Still further, if there is any grievance, it is open for the party to move to the Magistrate having jurisdiction over the area invoking the power, procedure and remedy under Section 190, read with Section 200 of the CrPC.
6. Coming to the other aspects sought to be projected by the writ petitioners, the State has filed its reply pointing out that a discrete enquiry has already been conducted, also giving the facts and figures with reference to the chronology of the dates and events. The Respondents point out that the basis for the writ petition is with reference to certain serious audit objections noted by the Accountant General. In fact, the various instances were pointed out under 13 different heads. Considering the importance of the matter, explanation was sought for from the CMHO at Bilaspur, pursuant to which reply was submitted, which was not satisfactory and hence, the Additional Director, Finance, Director, Health Services, returned the same to the CMHO, Bilaspur for giving proper explanation/clarification in respect of the points at paragraphs 1 to 3 of the Audit Objection, as borne by Annexure R/1 dated 22.02.2011. In furtherance to the above proceedings, the points were clarified and each and every instance was explained as

given in paragraph 7 to 15 of the return dated 16.10.2019. As averred in paragraph 15, the answers/clarifications given in respect of all such instances, except paragraphs 6 and 13 were considered and the Audit Committee was pleased to delete the same, as borne by Annexure R/4 dated 25.01.2012. It is further pointed out in paragraph 16 of the return, that in the course of subsequent proceedings, the audit objection in respect of paragraph 13 also came to be settled and the only outstanding instance was with reference to paragraph '6' which actually deals with the act of one A.K.Mukherjee and Dr. R.C.Shukla, the then CMHO. The Respondents point out that further steps have been taken and the above officers have been put under suspension and disciplinary action is being pursued in this regard. The above aspect is not connected with the affairs pointed out with reference to the involvement of Smt. Madhulika Singh, as specifically asserted by the Petitioners. The said officer by name Smt. Madhulika Singh is not even made a party in the writ petition.

7. The Respondent/State submits in paragraph 17 of the return that they are very much aware of the need to eradicate any instance of corruption, defalcation, misappropriation of funds and all the possible steps in this regard would be taken. The said paragraph is extracted below for convenience and reference:

"17. It is respectfully submitted that, the corruption adversely affects the economy of the State and eventually stunts the country's development considering the serious implication of the corruption in the government department, the answering respondents would deal with stern hands any allegation of defalcation and misappropriation which would come to the fore and appropriate action would be taken against the persons who may be found guilty. The answering respondents have the obligation to prevent the State from corruption so as to maintain the trust of the people in the State Government as it not only erodes the faith but also undermines the social contract. The answering respondent assure this Hon'ble Court

to make all efforts to make the department working corruption free and would adopt zero tolerance policy towards the corruption in its projects and working and if any allegation of fraud, embezzlement and corruption are substantiated then strict actions would be taken against the concerned persons/erring officials. Thus, moving the needle towards positive perceptions of government needed for longer and sustainable efforts to combat corruption."

8. In view of the turn of events, we are of the view that nothing further requires to be considered or adjudicated by this Court. The writ petition stands closed, leaving it open for the authorities concerned to proceed with further steps in accordance with law.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE