

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

WRIT PETITION NO. 1177 OF 2019

Ujwalkumar Namdev Borse,
Age 35 years, Occ. Business,
R/o. Shanti Nagar, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.

... **Petitioner.**

Versus

1) Special Superintendent @ Chief
Engineer, Public Works Department,
Regional Office, Nashik.

2) Superintending Engineer,
Public Works Department
Jalgaon Circle, Jalgaon.

... **Respondents.**

...

Mr. Deshmukh Mahesh S., Advocate for petitioner.
Mrs. R. P. Gaur, A.G.P. for respondents.

**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 25th JANUARY, 2019.

ORAL ORDER :

1. Heard Mr. Deshmukh, learned counsel for petitioner.
2. By claiming urgency, the petition is circulated before us, as such, we heard the learned counsel extensively. The petitioner by way of present petition challenges the communication date 10.01.2019.

The communication refers to certain recommendation by the representative of people of Jalgaon area. In the petition a ground is raised to submit that the petitioner is a political rival of the local representative and an influence is exercised by the representative to settle personal score. Though these are the allegations in the petition we see no reason to consider these allegations and by keeping these allegations away we are proceeding with the petition on the merits.

3. The petitioner is a registered contractor. The State Government issued government resolution dated 28.11.2018, copy of the same is placed on record. The government resolution opens with an object of initiation of criminal action, in the matters pertaining to submitting false/fabricated documents. Now, the government resolution states that in the various works, in Public Works Department, such as, construction of roads, construction of bridges, the tender notices are floated. In response to these tender notices, the contractors submit their claim. Initially, the procedure was not streamlined and the State Government thought it fit to streamline the procedure and to seek affidavit from the contractors that the documents filed along with the tender documents, documents filed in response to tender notice, are genuine documents. This statement by

way of affidavit is made as a condition precedent. Then it is stated in the resolution that the contractor owes the responsibility of filing affidavit and making a statement in the affidavit that the documents submitted by him are true and genuine documents and the authorities of the Public Works Department owes no responsibility about the authenticity of these documents. Then the resolution deals with the aspect wherein it is revealed that certain documents are untrue or false. Now, the two fold action is referred to. The first action is about black listing the contractor. The resolution specifically states that if the contractor is registered contractor, a notice be issued to him, then on considering the explanation submitted by him in response to the notice, the proposal be submitted to the State Government in regard to black listing the contractor. Then it is stated that if the contractor is not registered then notice be issued to the contractor and at the same time a caveat be filed in the Court of Law. On receiving a response to the notice from the unregistered contractor, an action of forwarding the proposal to the State Government for black listing the contractor be taken after scrutiny. Now, insofar as this action is considered, it clearly shows that the State Government is following the principle of natural justice and an opportunity of hearing is offered to the contractor.

4. Now, the second limb of action as per the government resolution is lodgment of a report. It is stated in the resolution that on finding in the scrutiny that the false documents or untrue documents are submitted, the relevant authority, namely, the Engineer, to initiate an action of lodgment of report against the contractor, a person or a partnership firm, director of a company, if it is a company, it is specifically stated that action of lodgment of report be initiated as per the procedure, in view of the Indian Penal Code.

5. Our attention was invited to a copy of order placed on record, copy of work order issued in favour of the petitioner, dated 21.07.2017, Exhibit 'A' and then exchange of communications between Superintendent Engineer, Public Works Department and Chief Engineer, Public Works Department, Regional Division, Nashik. These are the communications dated 10.12.2018, 18.12.2018 and 19.12.2018. In all these communications the Superintending Engineer has reiterated the fact of registration of offences, already registered against one of the officers of the department itself and a contractor and then in communication dated 10.1.2019 again it is informed to the Superintending Engineer to take immediate steps for lodgment of report/offence.

6. Mr. Deshmukh, vehemently submitted that a notice ought to

have been issued to the petitioner to apprise the petitioner that which were those documents, which are alleged to be the untrue or false documents. The respondents also ought to have informed the petitioner that where these documents used by the petitioner. It was also the submission of the learned counsel that the government resolution refers to an action of black listing the contractor and if such action is proposed then there would be no need asking the contractor to face criminal prosecution.

7. Thus, it was the submission of Mr. Deshmukh, that the petitioner would be deprived of his liberty and will have to face a criminal action at the sweet will of the officers. We are unable to accept the submissions of Mr. Desmukh for more than one reasons. Firstly, it is the settled position of law that any person can set criminal law in motion and for that purpose there is no requirement of issuance of notice prior to setting the law in motion. The person against whom such an action is initiated namely, lodgment of report, is not left remediless, either to protect his liberty or to even challenge the launching of prosecution, seeking appropriate remedies under the law and more particularly under the Code of Criminal Provision, needless to state that the person who is of the opinion that the lodgment of report is unsustainable for any reason can go before the Competent

Judicial Forum for seeking quashment of the report. Thus we are unable to accept the submission of Mr. Deshmukh on this count also.

8. The other submission of Mr. Deshmukh that as the government resolution refers to an action in the form of black listing the contractor, the same would suffice the purpose so as to take action against the erring contractor. Again, we cannot accept these submissions for the reasons that these are two distinct and different actions. Black listing of the contractor may be an action in the nature of civil consequence. But merely if an action leading to civil consequence is taken, that itself would not prohibit the State or the Officer empowered by the State to initiate a criminal action, in case, if the mischief played by a person is covered under the scope and compass of Indian Penal Code. Apart from all these facts we cannot lose sight of the fact that these all works which are referred to in government resolution dated 28.11.2018, are the works relating to general public and providing the infrastructural facilities to the citizens such as, construction of roads and bridges. We feel no hesitation to state that, if the State Government is desirous of taking an action against those persons, who are approaching the State Government, making a false statement on the affidavit and are indulged in any mischief which would cover the provision of Indian Penal Code must

be dealt with by a serious action and if the State Government is giving a signal that the State will not permit the persons who are indulged in act of such nature are left scot-free. In any case, the petitioner is not left remediless even if the action is taken by the State Government. Therefore, we are unable to accept the submission of learned counsel that the notice dated 10.01.2019 is required to be quashed and the petitioner be protected.

9. On the backdrop of above referred observations, as we are of the opinion that the petition is thoroughly meritless, the petition is dismissed at the threshold.

(S. M. GAVHANE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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