

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 2759 OF 2014

Yunus Khan s/o. Ajij Khan Pathan,
Age 46 years, Occu. Agril.,
R/o. Demni Wahegaon,
Tq. And District Aurangabad.**Petitioner.**

Versus

1. The State of Maharashtra,
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.
2. The Collector, Aurangabad,
Tq. & Dist. Aurangabad.
3. The Divisional Commissioner,
Revenue Department,
Aurangabad.
4. Sambhaji s/o. Irwantrao Adkune,
Age 45 years, Occu. Sub-Divisional
Officer, R/o. Sub-Divisional Officer,
Land Acquisition, Head Quarter at
Mukundwadi, Aurangabad.
5. Superintendent of Police,
Anti Corruption Bureau,
Aurangabad, Taluka and
District Aurangabad.**Respondents.**

Mr. Y.R. Barhate, Advocate for petitioner.

Mr. A.B. Chate, AGP for respondent Nos. 1 to 3.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**
DATED : 26/02/2019.

ORAL JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent heard the learned counsel for petitioner and the learned AGP for respondent Nos. 1 to 3. In view of the nature of reliefs claimed, there was no necessity to hear respondent No. 4 as this is not the stage at which hearing needs to be given to respondent No. 4.

2) In the petition, relief is sought by the original complainant of one Anti Corruption crime against the respondent Nos. 1 to 3 to act as per the Government Resolution (G.R.) dated 3.4.2000, and Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The submissions made and the record show that the present petitioner had approached Anti Corruption Bureau (A.C.B.) with the complaint that decision of mutation on the basis of sale deed decided against him was challenged before the appellate authority Sub-Divisional Officer (S.D.O.) Aurangabad and in that proceeding, for giving order of statusquo, S.D.O., present respondent No. 4 had demanded illegal gratification of Rs.30,000/-. One Clerk working in the office of respondent No. 4 had demanded the amount, but it was the contention of the present petitioner that the amount was

demand by and for respondent No. 4. After receipt of the complaint on 13.2.2013 for verification panchanama panch witnesses were given and with them the complainant approached first to Bhosle, Clerk. In the presence of panch witnesses, Bhosale repeated that demand. The conversation was recorded. As there was no confirmation of demand made by respondent No. 4, again panch witnesses were given and with them the petitioner approached Bhosale and respondent No. 4. This time, the conversation was recorded and the demand of Rs.20,000/- for respondent No. 4 was made and the amount of Rs.5,000/- was to be given to Bhosale. This conversation was recorded and then trap was laid. The trap became successful and the amount of Rs.25,000/- was recovered from one Advocate Shri. Anil Patni as the amount was given to that advocate as per the instruction of Bhosale. As the trap became successful, Bhosale came to be arrested. Present respondent No. 4 also came to be arrested, but respondent No. 4 was released on bail on the day of his arrest. Thus, he was not kept behind bars for 48 hours or more.

3) The submissions made and the record show that report about this incident was given to appointing authority,

Secretary of the department of respondent No. 4. After completion of investigation proposal was also made for obtaining sanction to the Secretary, who is disciplinary authority. The submissions made show that the Secretary rejected the proposal given for obtaining sanction for prosecution. Reply affidavit shows that investigating agency has again requested to Secretary to consider the matter and that application, which is called as revision of the proposal is still pending before the Secretary, the competent authority.

4) The learned counsel for petitioner took this Court through G.R. dated 3.4.2000. In this G.R., specific directions were given to the Officers to see that when such incident takes place and report is received from A.C.B., the competent authority needs to take action immediately for suspension of the public servant involved. The submissions made do not show that on the basis of report given by A.C.B. even show cause notice was issued by the disciplinary authority. This Court has carefully gone through the F.I.R. given by the officer of A.C.B. and that report shows that as per the investigating agency, in verification panchanama it revealed that there was demand of illegal gratification from respondent No. 4. This material needs to be

considered by the disciplinary authority for both purposes like for considering the matter of according sanction and also for considering the matter of starting departmental inquiry. It can be said that action is taken against Bhosale, who was found at the place of demand on all the three occasions. He came to be suspended, but no action at all was taken against S.D.O. when there is material against him of verification panchanama. Apparently, somebody is trying to protect respondent No. 4.

5) The learned counsel for petitioner placed reliance on some observations made by the Apex Court in the case reported as **(2012) 3 SCC 64 [Subramanian Swamy Vs. Manmohan Singh and Anr.]**. This case is mainly on the procedure which is required to be followed for considering the proposal given for sanction and the Apex Court has laid down that if the proposal is not decided within three months or the extended period of one month, intimation needs to be given about it to the original complainant and if no decision is taken within prescribed time, sanction will be deemed to have been granted to the proposal for prosecution and it becomes open to the private complainant and also to the prosecuting agency to commence prosecution within 15 days of the expiry of the aforesaid period. In the

present matter, this ratio need not be used as different kind of relief is claimed and original complainant is interested in taking departmental action against respondent No. 4. The learned AGP placed reliance on some observations made by the Apex Court in the case reported as **(2013) 10 SCC 705 [Anil Kumar and Ors. Vs. M.K. Aiyappa and Anr.]**. This case shows that the Court is not expected to take cognizance of the case including of the private complaint unless sanction is given under section 19 of the Prevention of Corruption Act, 1988. This Court is not considering the matter of sanction. Other case reported as **2009 (17) SCC 92 [State of Punjab & Anr. Vs. Mohammed Iqbal Bhatti]** can be referred. In that case, when sanction was refused on the basis of material, it was held that sanction could not have been given for prosecution and order of sanction was set aside. The learned counsel for petitioner in the present matter submitted that within the period given by the Apex Court in the case of **Subramanian Swamy** cited *supra* as the decision was not taken one needs to go with the presumption that there was deemed sanction and further, steps ought to have been taken. The case reported as **(2014) 8 SCC 682 [Subramanian Swami Vs. Director, Central Bureau of Investigation and Anr.]** can also be referred on this point.

6) This Court has already observed that relief claimed in the present matter is of different nature. There is the G.R. quoted above and there is one more G.R. dated 4.2.2011 showing the duties which needs to be discharged by the Superior Officer. When the Superior Officer does not take action immediately then action is expected against such Superior Officer also in such cases. On the basis of the material, this Court has formed opinion that there is a positive attempt to protect respondent No. 4 and that is why no disciplinary action was initiated. This Court is hereby directing the competent authority, the Secretary of the department of respondent No. 4 to consider the matter immediately and take further action. As there is mention that proceeding is filed for review of the previous order and as there is no reasoned order produced before this court, this Court expects that the Secretary to pass reasoned order on the new proposal given by the investigating agency. Rule 4 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 shows that after registration of the crime, the competent authority is expected to consider the material and competent authority can take action like suspension. Such order may not have any relation with the custody of the public

servant beyond 48 hours. When there are such provisions, the authority has not used those provisions and so, the petition is allowed and direction is given to the competent authority, Secretary of the department of respondent No. 4 to consider the matter for taking departmental action against respondent No. 4 and pass reasoned order on the basis of material produced by A.C.B. The authority is also expected to consider the matter of according sanction and pass reasoned order in that matter also. Rule is made absolute in those terms.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/