

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO.132 OF 2016

Shaikh Nizam Shaikh Jainuddin.

Petitioner

Versus

The State of Maharashtra and others.

Respondents

...

Mr. H.V. Tungar, Advocate for the petitioner.

Smt. M.A. Despande , A.G.P. for the State/respondent Nos.1 to 3.

Mr. G.K. Naik - Thigle, Advocate for respondent No.4.

Mr. V.D. Sapkal, Advocate for respondent No.7.

...

**CORAM : PRASANNA B. VARALE &
AVINASH.G. GHAROTE, JJ.**

DATE : 5 September 2019.

ORAL ORDER :-

. By way of the present Public Interest Litigation, the petitioner prayed for conducting Departmental Enquiry of the delinquent officers / Authority of Municipal Council, Beed, who are responsible for causing loss to the Municipal Council, Beed and the State of Maharashtra.

2. The entire emphasis on the backdrop of prayer referred above was on an interim Audit Report and the submission was made that due to these irregularities, various

schemes were not implemented properly or due to substandard work under the scheme, loss was caused to the public exchequer.

3. Mr. Thigle, learned Counsel appearing for respondent No.4 submitted before this Court that these schemes were to be implemented and executed by the Municipal Council, Beed through various agencies by following due procedure. Tender notices were published in the widely circulated newspapers. Response was received from various tenderers. Considering the competitive rates offered by the tenderers and after seeking technical sanction from the Competent Authority, the work was allotted to the successful tenderers. Mr. Thigle then submitted that Maharashtra Local Fund Audit Act provides a detailed scheme of submission of Audit Report and assessment of distribution of funds.

4. Mr. Thigle then invited our attention to the document placed on record alongwith affidavit-in-reply i.e. communication dated 13 January 2015. By way of communication dated 13 January 2015, the Municipal Council informed the Joint Director/ Local Auditor, Municipal Council, Beed that as certain deficiencies are pointed out in the preliminary Audit Report of the year 2011-2012, these deficiencies are now cured and

compliance report is being submitted to the Authority. Copy of this communication is also forwarded to respondent No.6 – Joint Director / Local Auditor, Municipal Council, Aurangabad. Alongwith the letter a tabular statement is also placed on record referring to each deficiency and its compliance. This compliance report runs into more than 60 pages. Then there is another communication dated 13.10.2015 referring to the deficiencies in the Audit Report of the year 2012-2013 alongwith the compliance report. This compliance report also runs into more than 70 pages. Thus, it was the submission of Mr. Thigle, learned Counsel appearing for respondent No.4 that the grievance raised in this petition of alleged misdeeds was only on the basis of an interim Audit Report and unless and until the Authority arrives at final conclusion on considering the compliance report, it will not be possible to reach at the definite conclusion that any mischief was played and certain officers are responsible for the so called mischief.

5. Our attention was invited to the order of this Court dated 26 April 2018 by Mr. Thigle to submit that all the necessary documents are supplied to the State and its Officials and in case they need further documents, the Municipal Council is ready to

supply the same to the State and its Officials.

6. In a reply affidavit filed on behalf of respondent No.3 Collector, Beed, certain statements are made in paragraphs 6, 7 and 8 and it is necessary for our purposes to refer to these statements. Those statements are reproduced as below :

Para-6. *I say and submit that it is pertinent to note that said Abdul Khaled Painter filed Writ Petition No.1368 of 2016 against State of Maharashtra seeking directions to take decision on the enquiry report submitted by enquiry committee. The Writ Petition came to be disposed off by this Hon'ble High Court on 11/03/2016. Copy of order dt. 11/03/2016 is annexed and marked as **Exhibit R-3**.*

Para-7. *I respectfully submit that the grievance of the present petitioner and one Abdul Khaled painter is one and the same. As per the prayer clause of present petition, Enquiry Committee has submitted its report and recommended to carry out special Audit of Beed Municipal Council for the year 2010-11 to 2014-15. Divisional Commissioner, Aurangabad as well as the State has sent letter to Chief Auditor, Konkan Bhavan to carry out special Audit of Beed Municipal Council. Hence the grievance of petitioner in present petition is already redressed by this answering respondent.*

Para-8. *I say and submit that after completion of special Audit of Beed Municipal Council necessary and proper action will be taken on the recommendation of special Auditor.*

7. Now, a statement is made in the affidavit-in-reply that the Divisional Commissioner, Aurangabad as well as the State Government has sent a letter to the Chief Auditor, Konkan

Bhavan to carry out special audit of Beed Municipal Council. Mr. Tungar, learned Counsel appearing for the petitioner vehemently submitted that inspite of the directions from the Divisional Commissioner as well from the office of Joint Director / Local Auditor, Municipal Council, Beed, there is no positive response from respondent No.4. Mr. Tungar invited our attention to the communication placed on record dated 09.04.2018 whereby the Joint Director / Local Auditor, Municipal Council Beed informed the Chief Officer, Municipal Council, Beed that inspite of the various communications certain documents are not made available to the office of Joint Director. The letter also refers to a request made on behalf of the office of Chief Officer, Municipal Council, Beed for grant of time to provide necessary material on the ground that the employees of the Municipal Council were engaged in election duty and it is further submitted that as soon as the elections are over, necessary documents would be made available to the Authority. Then it is stated that inspite of the subsequent communications, no documents are made available. As such, there is delay in undertaking exercise of special audit.

8. Learned Addl. Government Pleader appearing for respondent Nos.1 to 3 supports the contention made by Mr.

Tungar that the Municipal Council is not making available necessary documents or final Audit Report so as to undertake exercise of special audit report. On this specific grievance Mr. Thigle, learned Counsel appearing for respondent No.4 submitted that there seems to be communication gap and respondent No.4 is ready to extend all co-operation by providing documents, record and Audit Report to the Authorities as required for the exercise of special audit. By accepting this statement of Mr. Thigle, we see no impediment to dispose of the Public Interest Litigation as it would provide an opportunity to the appropriate Authority to assess the aspect of distribution and utilization of funds and in case Special Audit Report refers to any irregularities or fixes responsibility on the officer of State Government by exercising its powers, they may take appropriate steps as per the provisions of relevant law. Mr. Thigle submits that the Audit Report and all necessary documents required for Special Audit would be submitted by respondent No.4 within three weeks from today. This statement made by Mr. Thigle on behalf of respondent No.4 is accepted as an undertaking to this Court. Mr. Thigle also submitted that respondent No.4 is not only ready and willing to provide necessary documents and Audit Report required for

Special Audit, but also ready to extend all co-operation in case the Special Audit Team is willing to have local inspection of the documents in the office of Municipal Council, Beed and such communication is already issued to the respective Authority.

9. In view of the statements referred to above and accepted as an undertaking to this Court, the Public Interest Litigation is accordingly disposed of.

10. The petitioner had deposited an amount of Rs. 50,000/- to show his bonafides. Mr. Tungar, the learned Counsel for the petitioner, on instructions, fairly submitted that the amount may be directed to be released for any social cause as this Court deems appropriate. Accordingly, we direct the Registry to release the amount of Rs. 25,000/- in favour of the Collector, Sangli and an amount of Rs. 25,000/- in favour of the Collector, Kolhapur so as to utilize the said amounts for the flood relief activities. Needless to state that the amount be released alongwith the interest, if any, accrued on the said amount.

(AVINASH .G. GHAROTE, J.)

(PRASANNA B. VARALE, J.)

vdd