

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 1210 OF 2019

Shaikh Hussain S/o. Dadabhai,
Age: 39 years, Occ.: Business and
Vice President, Maharashtra State,
National Federation Human Rights Council,
(Regn. No. 880/2014), New Delhi,
R/o.: Block No. 13, Saigagan Apartment,
Pragatinagar, Shirasgaon,
Tq. Shrirampur, Dist. Ahemadnagar.

... **PETITIONER**

VERSUS

1. The State of Maharashtra,
Through Chief Secretary,
Tribal Development Department,
Government of Maharashtra,
Mantralaya, Mumbai.
2. The Commissioner,
Tribal Development Department,
State of Maharashtra,
Old Agra Road,
Gadkari Chowk, Nasik.
3. The Divisional Commissioner,
Divisional Commissioner Office,
Aurangabad.
4. The Police Commissioner,
Police Commissioner Office,
Aurangabad.
5. The Additional Tribal Commissioner,
Tribal Development Department,
Amravati Division,
Behind T.B. Hospital, Amravati.

6. Girish Sarode,
The then Additional Tribal Commissioner,
Tribal Development Department,
Amravati Division,
Behind T.B. Hospital, Amravati.
At present Additional Tribal Commissioner,
Tribal Development Department,
Nasik Division, Old Agra Road,
Gadkari Chowk, Nasik.
7. G.N. Funde,
Project Officer,
Integrated Tribal Development Project Aurangabad,
Oriens Tower, Azad Chowk, N-8, Cidco,
Aurangabad.
8. Ramprabhu Deshmukh,
The then Assistant Project Officer and
the then House Master
Governments Tribal Boys Hostel,
(Divisional Level-Capacity 1000),
C/o. Integrated Tribal Development Project Aurangabad,
Oriens Tower, Azad Chowk, N-8, Cidco,
Aurangabad.
At present Joint Commissioner cum Vice-President,
Schedule Tribe Caste Verification Committee,
Plot No. 10, Sector, E-1, Cidco Bustand,
Near St. Lawrence School, Aurangabad.
9. D.N. Khokhle,
Assistant Project Officer,
(then Housemaster)
Governments Tribal Boys Hostel,
Integrated Tribal Development Project Aurangabad,
Oriens Tower, Azad Chowk, N-8, Cidco,
Aurangabad.
10. Raju Shinde,
The then Assistant Account Officer,
Integrated Tribal Development Project Aurangabad,
Oriens Tower, Azad Chowk, N-8, Cidco,
Aurangabad.

At present C/o. Assistant Commissioner Office,
Social Welfare, Dr. B.R. Ambedkar,
Samajik Nyay Bhavan, Khokadpura,
Near Shivaji High School, Aurangabad.

11. The Assistant Account Officer,
Tribal Development,
c/o. Additional Tribal Commissioner,
Amravati Division,
Behind T.B. Hospital, Amravati.
12. The House Master,
Governments Tribal Boys Hostel,
(Divisional Level-Capacity 1000),
Integrated Tribal Development Project Aurangabad,
Oriens Tower, Azad Chowk, N-8, Cidco,
Aurangabad.
13. V.G. Gore,
The Warden,
Governments Tribal Boys Hostel,
Gaikwad Complex,
Near Ayappa Mandir,
Beedbypass, Aurangabad.
14. B.B. Gadme,
The Warden,
Governments Tribal Boys Hostel,
Radhakrushna Complex,
Satara, Aurangabad.
15. S. B. Deshmukh,
The Warden,
Governments Tribal Boys Hostel,
Jaymalhar Complex,
Satara, Aurangabad.
16. U. N. Raut,
The Warden,
Governments Tribal Boys Hostel,
Jatwada Road, Gut No.240/1,
Near Harsool Lake,
Aurangabad.

17. S.A. Kawre,
The Warden,
Governments Tribal Boys Hostel,
Chawda Complex,
Beedbypass, Aurangabad.
18. S.D. Gavit,
The then Warden,
Governments Tribal Boys Hostel,
Mangrulpir, Taluka Manglurpir,
Dist. Washim.
19. N. Y. More,
The then Warden,
Governments Tribal Boys Hostel,
Plot No. 13, behind Savarkar Corporation Hospital,
Bahadurpura, N-8, Cidco, Aurangabad.
20. Ganesh Dube,
The Warden,
Governments Tribal Boys Hostel (Jinsi),
Plot No. 13, behind Savarkar Corporation Hospital,
Bahadurpura, N-8, Cidco, Aurangabad.
21. V. N. Biradar,
The then Warden,
Governments Tribal Boys Hostel,
Morewadi, Ambajogai, Dist. Beed.
22. Smt. Sunita Thore,
The then Warden,
Governments Tribal Girls Hostel,
Ambajogai, Dist. Beed.
At present, Governments Tribal Girls Hostel,
Near Shani Mandir Gate, New ST Colony,
Thakreynagar, N-2, Aurangabad.
23. Smt. Amrapali Ramteke,
The House Master,
Governments Tribal Boys Hostel,
(Divisional Level-Capacity 500),
Samarthnagar, Near Goturkar Child Hospital,
Aurangabad.

24. R. B. Tadvī,
The then Warden,
Governments Tribal Boys Hostel, Sillod,
At present, Governments Tribal Boys Hostel,
Kannad, Dis. Aurangabad.

25. Smt. Ranjana Bhojane,
The Warden,
Governments Tribal Girls Hostel,
(Divisional Level-Capacity 500),
Jublee Park, Aurangabad.
At present, Project Office,
Integrated Tribal Development Department,
Kinwat, Dist. Nanded.

... RESPONDENTS

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Mr. Saeed S. Shaikh, Advocate for Petitioner.

Mr. K. D. Mundhe, APP for Respondent/State.

Mr. K. D. Khade, Advocate for Respondent No.13.

Mrs. Kavita S. Bhale, Advocate for Respondent Nos.14, 15 & 17.

Mr. Mahesh K. Bhosle, Advocate for Respondent No.25.

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CORAM : T. V. NALAWADE &
M. G. SEWLIKAR, JJ.

DATE : 14th February, 2020.

JUDGMENT: (Per T. V. Nalawade, J.)

. Rule. Rule made returnable forthwith. By consent, heard
both the sides for final disposal.

2 The present proceeding is filed for relief of giving direction to the Respondent, police to register crime in respect of allegations made in the complaint already given to police and to other authorities, which is with regard to alleged illegal and corrupt activities of Tribal Department of the State Government. Other reliefs are also claimed like asking the State to take action against the officers, who are involved in the illegalities and misappropriation of the amount. The allegations are in respect of mainly two activities viz (i) purchase of books for hostels and for boys under the Tribal Development Department for the years 2016-17 and 2017-18; (ii) irregularities in respect of diet / food supply under the scheme of the Government to Tribal students.

3 After hearing both the sides, this Court formed opinion that there are specific allegations in respect of irregularities noticed in purchase of books and complaint was already given to the Tribal Development Department, the Revenue Department, the Director General of Police and the Director General of Anti-Corruption Bureau etc. The complaints were given to the authorities supervising the Government hostels created for Tribal students in Aurangabad. No such specific complaint was given in respect of irregularities, which are alleged in respect of food / diet, which was to be supplied to the

Tribal Students. It was submitted that one complaint was sent to police online. On the basis of such complaint, things could not have moved and further, allegations in that regard are very vague and this Court expressed that the Petitioner, who is a social worker, may file other proceeding in respect of those so-called irregularities after giving proper complaint to police. This Court is deciding the present matter on the basis of record produced by the Petitioner, on the basis of submissions made for the State and on the basis of inspection of one such hostel / library done under the order of this Court by the Court Commissioner. Copy of the report of the Court Commissioner was supplied to both State and the Petitioner. The expenses in respect of the Court Commissioner work are borne by the Petitioner and to show his *bona-fides*, he has deposited Rs.1,00,000/- in this Court.

4 The Petitioner has made allegations that in the scheme of the Government of purchasing books for libraries and for supply to the Tribal Student, big Government money came to be misappropriated in the years 2016-17 and 2017-18 and that is done by the concerned Warden, librarian and other persons involved in the management and for that even false record is created by them. The allegations are of following nature:

- a) When the value of the books, which were to be purchased was in lakhs, no tender notice including E-tender was issued. In every case, the value was more than three lakhs. Specifically, the Warden of the institution situated in the local jurisdiction of Jinsi and CIDCO Police Stations, was involved in this matter ;
- b) The persons, who have misappropriated the money, joined hands with the supplier Swami Samarth Book Agency and no advertisement was given to have competitive rates. The purchase was shown to be distributed in small portions, but continuously all the books were shown to be purchased from Swami Samarth Book Agency ;
- c) The benefit of the scheme of the Government did not reach to the students as some books, which were actually purchased were not reached to the students in the beginning of the academic year. Even when purpose of purchasing the books was over, at the end of the term, books were shown to be purchased. At

the time of date of purchase shown in the record, some final exams were also over ;

- d) When the books were to be purchased as per the contract rate (DGS & D rate), the books were not purchased as per the rate fixed by the Government and the books were shown to be purchased from the aforesaid agency at higher cost. When big discount is available on the books in the open market, that discount was not shown even on the record and this was done intentionally to see that both supplier and persons, who were involved in taking the decision for purchases get opportunity to make money. Ordinarily, discount is given by the publisher or seller of 30% to 40%, but in no case even on record this discount is shown and that entire amount is misappropriated ;
- e) The purchase of other articles like practical books, registers and project papers is shown to be made for the library and such purchase in the name of books was not possible as per the Government policy. When separate provision is made for stationery of library,

such purchase was shown to be made from the amount made available for purchasing books and that way also the amount was misappropriated ;

- f) No record like requisition from the concerned libraries of the colleges was collected to ascertain the requirement and that also shows that the purpose of the scheme is defeated and this was done intentionally to make money ;
- g) When as per the scheme, after the end of academic year the students are expected to return the books and these books are required to be considered at the time of purchasing new books, there is no record to show that such books collected from the students were considered before spending money for purchase of new books and by using that *modus-operandi* also, amount of the Government has been misappropriated ;
- h) All the bills of purchases appear to be bogus as they are vague, they do not show names of writers, names of publishers and they do not give particulars of the

books. That is done intentionally and the intention is to see that no scope is left for verification ;

- i) Whatever record in respect of purchase of books is available in the form of bills, is highly suspicious. The bills of different dates bear same bill numbers. Specific instances are given in the complaint in that regard ; and
- j) No entries were made of the books, which are shown in the aforesaid bills and in fact, the books are not available and this circumstance shows that the books were not purchased, but the amount was shown to be spent and that amount has been misappropriated.

5 In view of the aforesaid nature of allegations, this Court made order on 24th January, 2020 and this Court appointed a counsel practicing in the Court to work as Court Commissioner and help the Court for ascertaining as to whether there is any substance in the aforesaid allegations. Necessary precautions were taken in the order dated 24th January, 2020 to see that the concerned do not get opportunity to adjust things and it becomes a surprise inspection. The

Court Commissioner did the work by taking assistance of one more counsel and he submitted the report, which is of following nature :

- i) They paid visit to the Government Hostel for Boys, Bahadurpura, Aurangabad (*Adivasi Mulanche Shaskiya Vasatigruha*) on 27th January, 2020. After giving introduction to the Warden and other staff of the hostel and library, they did the inspection ;
- ii) The aforesaid institution has two hostels. One is at Bahadurpura CIDCO, which is called as CIDCO Boys Hostel and other is Jinsi Boys Hostel. Each hostel was having separate staff of Warden, Clerk, Peon, Cleaner etc. There was no separate post of librarian. One Shri Ganesh Dube was appointed at Jinsi hostel and he was having charge of Bahadurpura hostel also. This staff remained present during the inspection done by the Court Commissioner. The entry of the order of Court and the visit of the Court Commissioner was made in the concerned register before starting the work of commission ;

- iii) The Court Commissioner showed the bills in respect of purchase of the books, which are produced in the present matter and asked the Warden to show the books and also the registers in respect of books like entry register and distribution register. The Warden produced stock register of Jinsi hostel for the year 2015-16. There was description of the books alongwith price written in the register with the value of the books and below the entries, there were signatures of Warden Shri Gore. Similarly, stock register of Bahadurpura CIDCO Hostel was produced for the year 2015-16 and it was also bearing the signature of Shri Gore as the Warden ;
- iv) On the basis of inspection and inquiry made with Warden Dube, the Court Commissioner formed opinion that the entries in the aforesaid registers were made in respect of the books purchased prior to 12th August, 2016 and not a single book was purchased after 12th August, 2016. The Warden informed that not a single book was handed over to him after 12th August, 2016 as a book purchased for the hostel,

library or for distribution to students. He informed that there was no record available in respect of the books supplied to the students and he was not aware as to whether in the past also such record was maintained or not. He was appointed on this post on 12th October. 2017 ;

- v) The Court Commissioner noticed that there was entry dated 30th November, 2017 showing that amount of Rs.3,00,974/- was deposited in the account of the hostel by demand draft and this amount was given to Swami Samarth Book Agency, Aurangabad under Cheque No.189660 ;
- vi) The Commissioner tried to tally the books with the stock register and he found that for the year 2015-16, there were entries in the register as per the purchases made of the books at that time, but those books were not available and there was no record of showing distribution of those books. During inspection, previous Warden Shri More came there and as charge was taken by Dube from More, opportunity was given

to More also to supply information. They could not supply the information with regard to aforesaid circumstances ;

- vii) The Court Commissioner then went to the godown to have inspection, to ascertain as to whether books were kept in the godown. He found many packs, boxes of unutilized buckets, a computer and other miscellaneous articles in scattered condition, but there were no books. As the hostel was expected to keep the bills in respect of purchases, Shri More and Shri Dube were asked to show the bills in respect of purchases involved in the present matter. They informed that one Shri Gore was holding the charge of Warden and they have no personal knowledge about the books mentioned in the bills. In respect of previous bills, which were available, the Commissioner noticed that they were bearing the signatures of More and Dube and on the basis of those bills, bill was prepared and amount was paid to the book seller and so these two persons were asked to explain the thing, but they could not explain this circumstance ; and

viii) Some books were there in the library, but the books did not bear stamps and they were not numbered. No inventory of the books was found to be prepared. Some very old books were found there but they were not part of the books, which were shown to be purchased in the year 2015-16 in the stock register. Every opportunity was given to these persons to contact the previous Warden also, but they could not explain the things. Specific information, which was sought from Dube is mentioned in the Commissioner's report and it shows that he was not aware of anything ;

6 On the basis of inspection made, the Court Commissioner came to the conclusion that the persons working in the hostel were not able to show that the books were actually purchased as per the bills.

7 The aforesaid circumstances support the allegations made by the Petitioner. The circumstances have created probability that the books were actually not purchased, but false record of

purchase of books was created and the money, which was made available is misappropriated. In view of these circumstances, this Court holds that direction needs to be given to the concerned police station to register the crime and make investigation into the allegations. In the result, the following order is passed:

ORDER

- I. The petition is partly allowed.
- II. Direction is hereby given to register the crime in CIDCO Police Station, Aurangabad. That can be done on the basis of complaint, which was sent to the higher ups on 24th September, 2018 by the Petitioner and copy of it can be supplied by him to police. However, it is open to CIDCO Police to record statement of Petitioner for getting more particulars.
- III. The crime needs to be registered for the offences punishable under Sections 420, 468, 471, 409, 120-B, 34 etc. of the Indian Penal Code and other Sections if the police find that under other Sections

also the crime needs to be registered.

IV. No relief is granted in respect of other contentions,
in respect of food / diet.

V. The amount of Rs.1,00,000/- is deposited by the
Petitioner already and out of that amount, the
amount of Rs.50,000/- is to be returned to the
Petitioner and the remaining amount is to be
credited in the account of High Court Legal Aid Sub-
Committee, Aurangabad.

VI. Rule is made absolute in those terms.

[M. G. SEWLIKAR, J.]

[T. V. NALAWADE, J.]