

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

**CIVIL APPLICATION NO.11887 OF 2021
IN WP/2503/2020
WITH
WRIT PETITION NO.2503 OF 2020**

**THE CHIEF EXECUTIVE OFFICER AND ANOTHER
VERSUS
VILAS KANTAPPA KATKAR AND ANOTHER**

...
Advocate for the Applicants : Shri More P. P.
Advocate for Respondent 1/ orig. Petitioner : Shri Subhash K.
Sawangikar
AGP for Respondent 2 : Shri S.B. Yawalkar
...

**CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.**

DATE :- 29th October, 2021

Per Court :-

1. By this Civil Application, the Chief Executive Officer, Zilla Parishad, Osmanabad as well as the District Malaria Officer of the said Zilla Parishad, who are present before us, have put forth prayer clause B as under :-

“B) By allowing this Civil Application, kindly cancel the warrant so issued by this Hon’ble Court vide its order dated 12.10.2021 passed in Writ Petition No.2503/2020 in the interest of justice.”

2. On 12.10.2021, as we noticed that there was non cooperation from the Zilla Parishad, Osmanabad and the Writ Petition could not be decided without their assistance, we were compelled to pass an order, relevant paragraph 5 of which reads as under :-

“5. *In the peculiar facts as above, we are of the view that the assistance of respondent Nos.2 and 3 is necessary. They have avoided appearing before the Court despite service of court notice. As such, issue bailable warrant against respondent Nos.2 and 3 in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each, so as to secure their presence before the Court on 29.10.2021.*”

3. The learned advocate for the applicants/ Zilla Parishad submits that the notice issued by this Court in Writ Petition on 11.02.2020 was served on the Zilla Parishad and it was brought to the notice of the then Chief Executive Officer (CEO) on 05.03.2020. On the very same day, the CEO took cognizance of the matter and issued directions to place the file before the District Health Officer on 07.03.2020. Thereafter, the file kept lingering in the office of the Health Department of the Zilla Parishad. Applicant No.2/ District Malaria Officer, namely, Dr.Madhukar Ramrao Panchal is the authority with whom the file

was pending.

4. The learned counsel for the applicants further submits that not only has he entered his appearance, he has also prepared the affidavit in reply on 25.10.2021 and the same has been already filed. Unconditional apologies are tendered.

5. Considering the peculiar fact situation, we find that the the present CEO Shri Rahul Gupta, who has actually joined in July, 2021 as well as the earlier CEO, do not seem to be at fault. The applicant/ CEO before us, Shri Rahul Gupta, is absolutely not at fault since he has joined in July, 2021. The earlier CEO reacted with promptitude by passing the order on 05.03.2020. Had this fact been known to us, we would not have issued the bailable warrant against the present CEO vide our order dated 12.10.2021. Since these facts were not before us, we had no option but to pass the said order. Needless to state, we are partly allowing this Civil Application to the extent of applicant No.1/ CEO and we recall our order dated 12.10.2021 to his extent.

6. Insofar as applicant No.2 Dr.Madhukar Ramrao Panchal is concerned, being the head of the Health Department of the Zilla Parishad, he was directed by the CEO on 05.03.2020 to

deal with the matter. A period of one year and 09 months of inaction has lapsed compelling this Court to pass an order on 12.10.2021. An unconditional apology has been tendered.

7. Applicant No.2 is voluntarily willing to donate an amount of Rs.10,000/- to the High Court Bar Library, Aurangabad and assures that there shall be no repetition.

8. As such, we accept the apology and the statement made by applicant No.2 of voluntary donating an amount of Rs.10,000/- to the High Court Bar Library, Aurangabad, within four weeks from today and accordingly, recall our order to his extent as well.

9. List the Writ Petition for admission hearing on 16.11.2021.

kps (S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)