IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 436 OF 2019
WITH
CRIMINAL APPLICATION NO. 1121 OF 2019
AND
CRIMINAL APPLICATION NO. 2187 OF 2019
IN
CRIMINAL WRIT PETITION NO. 436 OF 2019

Prashant s/o. Bansilal Bamb,
Age-48 years, Occu. Social Service,
R/o. 3-B, Chhabda Building,
Opp. Gurudwara, Sindhi Colony,
Jalna Road, Aurangabad **.. Petitioner**

Versus

1. The State of Maharashtra,
Through the Secretary,
Department of Home,
Mantralaya, Mumbai – 400 032

2. The Chief Engineer,
National Highway, 5th Floor,
Konkan Bhavan, New Mumbai

3. Director General,
Anti-Corruption Bureau,
Mumbai **.. Respondents**

Shri Sachin S. Deshmukh, Advocate for the Petitioner.
Shri M. M. Nerlikar, A.P.P. for Respondents/State.

WITH

CRIMINAL WRIT PETITION NO. 859 OF 2018
WITH
CRIMINAL APPLICATION NO. 2601 OF 2019

AND
CRIMINAL APPLICATION NO. 2602 OF 2019
AND
CRIMINAL APPLICATION NO. 1512 OF 2021
IN
CRIMINAL WRIT PETITION NO. 859 OF 2018

Prashant s/o. Bansilal Bamb,
Age-47 years, Occu. Social Service,
R/o. Plot No. 3-B, Chhabra Building,
Opp. Gurudwara, Sindhi Colony,
Jalna Road, Aurangabad .. **Petitioner**

Versus

1. The State of Maharashtra,
Through the Secretary,
Public Works Department,
Mantralaya, Mumbai – 400 032

2. The Chief Secretary,
Home Department, Mantralaya,
Mumbai – 32

3. The Chief Engineer,
Public Works Department,
Bandhkam Bhavan,
Adalat Road, Aurangabad

4. The Superintending Engineer,
Public Works Department,
Nanded Division, Nanded

5. The Director General,
Anti-Corruption Bureau,
First Floor, Pandurang Budhkar Marg,
Mumbai – 400 013

6. The Police Inspector,
Shivaji Nagar Police Station,
Nanded .. **Respondents**

Shri Sachin S. Deshmukh, Advocate for the Petitioner.
Shri V. D. Sapkal, Senior Advocate and Special Prosecutor i/by Shri M. M. Nerlikar, A.P.P. for Respondents/State.

CORAM :	**S. V. GANGAPURWALA, J.**

Reserved For Orders On:	**17.12.2021**
Order Pronounced on:	**30.03.2022**

<u>JUDGMENT</u> ***(Per S. V. Gangapurwala, J.)*** **:-**

1. All these criminal writ petitions and criminal applications came up for hearing before the Division Bench *(Coram: T. V. Nalawade and K. K. Sonawane, JJ.)*. The learned Judges delivered conflicting Judgments. The Hon'ble the Chief Justice assigned the writ petitions to me as a 3rd Judge.

2. Writ Petition No. 859 of 2018 is filed for the following reliefs-

> **"B. By issuing a writ of continuing mandamus or any other appropriate writ, order or direction of like nature, it be directed to respondent authorities to accord permission as prayed by the respondent No. 4 so as to hold the open inquiry including initiation of criminal action as contemplated under the provisions of Indian Penal Code and to conclude the same against the fraudulent officers and the contractor in the light of complaint dtd.13/7/2017; and for that purpose issue necessary directions.**
>
> **B-1 By issuance of writ of certiorari or writ or order in the like nature quash and set aside the impugned communication dtd. 21/5/2018 with consequent directions to initiate criminal prosecution for offence of fraud, forgery, misappropriation, criminal breach of trust and criminal conspiracy; and for that**

purpose issue necessary directions.

B-2 By issuance of writ of mandamus or writ or order in the like nature it be directed to the respondent no. 5 i.e. Director General, Anti Corruption Bureau to commence the investigation and conclude the same, in the wake of letter dtd.13/1/2017 & 23/3/2017 and submit the periodical investigation report to that effect; and for that purpose issue necessary directions."

3. Writ Petition No. 436 of 2019 is filed for the following reliefs-

"B. By issuing a writ of mandamus or any other appropriate writ, order or direction in like nature, the respondents herein be directed to initiate criminal prosecution against the persons those who are involved in creating forged, fraudulent and fabricated tax invoices as stated by the Hindustan Petroleum Corporation Limited in its communication dated 20.11.2017; and for that purpose issue necessary directions.

C. By issuing a writ of mandamus or any other appropriate writ, order or direction in the like nature, the respondents be directed to register offence pursuant to the communication dated 20.11.2017, 23.1.2018 and 1.2.2018 and submit periodical progress report in respect of registration of the crime and further progress in investigation including registration of crime and further action as required under the Criminal Law."

4. Justice T. V. Nalawade under it's Judgment dated 18.09.2019 passed the following operative order-

"23) In the result, following order.

ORDER

(I) Both the petitions stand allowed and it is hereby declared that it is open to the investigating agency to make investigation against others including officers of PWD and file case against them. ACB to act after the investigation by police is over. There will be no need to ACB for taking permission of the Government for making investigation against the officers of PWD.

> **(II) Though in the affidavit filed by Chief Engineer of PWD, there is some information which can be called as false, this Court holds that at present there is no need to proceed against him under section 340 of Cr.P.C.. That application stands rejected.**
> **(III) Other applications filed for permission to produce the documents are allowed and disposed of.**
>
> **(IV) Thus petitions are partly allowed and rule made absolute in aforesaid terms."**

5. Justice K. K. Sonawane, the another learned Judge on the Bench delivered conflicting Judgment under it's Judgment and Order dated 03.10.2019. The operative part of the said order reads thus-

> **"19. In view of aforesaid discussion, it becomes manifestly clear that pursuant to communication dated 20-11-2017, 23-01-2018 and 01-02-2018, produced on record in Writ Petition No. 436 of 2019, the office personnel of P.W.D. has already filed the FIR bearing Crime No. 212 of 2018 and 115 of 2019 for the offences of forgery, cheating, mis-appropriation of public fund, criminal breach of trust, etc. The Police of Shivaji Nagar Police Station, Nanded, also swung into action and investigation is in progress. Therefore, the very purpose of filing the Writ Petition No. 436 of 2019 has been fulfilled and sub-served. Hence, the Writ Petition No. 436 of 2019 deserves to be disposed of.**
>
> **20. In Writ Petition No. 859 of 2018, the prayer to quash and set aside the communication dated 21-05-2018 cannot be acceded to allow the ACB Sleuth to commence the investigation and conclude the same in the wake of letters dated 13-01-2017 and 23-03-2017. It would be reiterated that pursuant to allegations of forgery, cheating and fraud with public fund, the Crime No. 212 of 2018 and 115 of 2019 are registered and investigation by the Police of Nanded, is going on. The investigation of forgery, cheating, mis-appropriation of public fund is not amenable within the jurisdiction of ACB Sleuth. However, the investigation of charges in regard to amass of disproportionate property by public servant is within domain of concerned ACB Sleuth. But, as referred above, there was administrative order issued by the State Government which came to be conveyed to petitioner vide letter**

dated 21-05-2018. In view of ratio laid down in *Tata Cellur's* case discussed above, it would fallacious to cause any interference in the decision of the Government authority communicated to petitioner vide letter dated 21-05-2018 by invoking powers of judicial review under Article 226 of the Constitution of India. Therefore, it would unjust and improper for this Court to set aside and quash the decision of Government authority pertains to open enquiry of P.W.D. personnels, at the behest of petitioner. This court is not inclined to interfere in the administrative order by exercising powers of judicial review, and consequently, the prayer to issue directions for open inquiry through ACB Sleuth, etc. found not considerable and appreciable one. In the result, the Writ Petition No. 859 of 2018 required to be dismissed.

21. The petitioner also filed the Criminal Application No. 2602 of 2019 and prayed to initiate inquiry as envisaged under Section 340 of Cr.P.C. against deponent Shri. Patil for submitting false affidavit in the court proceeding of present Writ Petition to shield the office personnel of P.W.D. In view of nature of the subject matter which is already under investigation by the appropriate authority, it would preposterous and illogical to draw any adverse inference against the office personnels of P.W.D. for any kind of mischief into the matter. There is no nay propriety to entertain the present application at this stage filed on behalf of petitioner. Rest of the applications for production of documents, which are already taken on record, deserve to be disposed off.

22. In sequel, the Writ Petition No. 436 of 2019 stands disposed of as the very purpose of filing the present petition is satisfied and fulfilled. The Writ Petition No. 859 of 2018 being devoid of merit is hereby dismissed. The Criminal Applications No. 2601 of 2019 and 1121 of 2019 are also disposed of as the documents prayed all are already taken on record. The Criminal Application No. 2602 of 2019 being inapt stands rejected. However, in view of great persuasion and anxiety on the part of petitioner, it is desirable that the investigating agency shall examine all ramifications of the crime by going deep into the allegation to unearth the truth an shall ensure that real perpetrator of the crimes are brought to book. The investigation agency shall conduct the investigation of the present crime in a fair, prompt and unbiased manner and submit a report under Section 173 of Cr.P.C. to the Magistrate concerned for further process.

23. Accordingly, both the petitions are disposed of in above

terms. Rule stands discharged. No order as to costs."

6. I have heard Mr. S. S. Deshmukh, learned Advocate for the petitioner and Mr. Sapkal, learned Senior Advocate appearing for the respondents / State and it's Authorities.

7. Pursuant to the tender notice work order was issued on 27.03.2015 for the work namely NH-61 Km. 565/00 to 578.400 for an amount of Rs. 4.72 Crores.

8. The petitioner Member of Legislative Assembly alleges large scale misappropriation, fraud by the contractor and the officers of the Public Works Department i.e. Engineer In-charge. The *prima donna* allegation is about the fraudulent invoices produced of H.P.C.L., the dereliction and the connivance of the Engineer In-charge with the contractor.

9. Mr. S. S. Deshmukh, learned Advocate submits that the stipulation in the tender document Viz. Clause no. 7.1(ii)(iii) mandates the sample and testing of all materials including asphalt shall be approved in advance by the Engineer In-charge and shall pass the test and analysis required by him upon the necessary expenses to be incurred by the contractor for such a testing. Similarly, Clause 25(i) and (iii) mandates prior approval in advance from the Engineer In-charge and shall pass the test or analysis and until required test or analysis have been made and the material is finally accepted by the Engineer In-charge, same shall not be utilised in the work. The learned Counsel also refers to the following conditions-

> Condition No. 2 to maintain the record of material by the Engineer In-charge. Condition No. 5 obligates the production of sufficient documentary evidence in respect of the purchase of material brought on work site at once, failing which Executive Engineer will not make payment to the contractor. Condition No. 15 mandates that agency should produce original gate pass / asphalt challan purchase for refinery and shall bear purchaser as an agency and the name of the work where asphalt to be used. Condition No. 16 requires the asphalt 60/70 graded should be procured from the reputed Government refinery only like BPCL, HPCL and IOC. Condition No. 17 requires that the contractor shall get the damber from the refinery and the contractor is not permitted to purchase the same from another contractor. The procurement of the asphalt shall be from the Government Oil Companies refineries only. The contractor is also required to provide for the necessary equipments to test the grade of the asphalt and unless the contractor produces the original gate pass amount of asphalt shall not be paid. On the gate pass, the signature of Executive Engineer is mandatory and thereafter only the payment shall be made.

10. The learned Advocate submits that all these mandatory conditions are deliberately violated in clandestine manner by the contractor *vis-a-vis* by the fraudulent wing of the officers whose names are appearing in the Charge-sheet in Crime No. 212/2018 and are actively involved in the process of accepting the fraudulent gate pass, preparing the bogus bitumen test report also. The test report apparently does not contain the viscosity nor same bears the necessary remarks in respect of grade and moreover the document is post dated i.e. after the release of final bill. These facts establishes the active and pro-active involvement of the fraudulent wing of officers causing loss to the public exchequer to enormous extent and the same is reveled in the Discrete Enquiry by the ACB on 21.09.2017. It is established

on record that the fake and bogus invoices to the extent of 33.23 Crores was produced during the period 2008 to 2013 and the same is recorded by the Public Accountability Committee of the Accountant General of Maharashtra. The 112 fake, bogus and reused invoices were used to cause loss to the public exchequer to enormous extent of Nanded Circle and still no action is initiated. The learned Advocate submits that on the strength of the complaint by the petitioner a Discrete Enquiry came to be conducted by the local Anti-corruption Bureau to the greater extent. The permission dated 21.09.2017 was sought to hold an open enquiry by the Additional Superintendent of Police, ACB, Mumbai. The permission was not granted nor the ACB proceeded to hold the enquiry. The learned Advocate submits that although Crime No. 212/2018 and 115/2019 have been registered only after the intervention of this Court, however, the same is controlled since inception by the Public Works Department. The crime is confirmed as against the contractors only and have shielded the fraudulent officers. The fraudulent officers are the real culprits while disbursing the payment to the contractor on the basis of the forged and bogus invoices.

11. The learned Advocate further submits that obligation of the department is to ensure verification of the bills before the payment of the final bills still in absence of the production of the bitumen invoices the same is not done as it is clear from the statement of the erstwhile Executive Engineer who said that when the concerned Executive Engineer cleared the running bills the bitumen invoices were not produced and still the bills were

cleared. The bills were not accompanied with the invoices as well as bitumen test reports which is mandatory. Defying the mandate of the Circulars and the tender conditions which establishes that when the act prohibited by law is done directly or indirectly it establishes the malafides and entails criminal prosecution on account of the defiance with the public trust doctrine which is part of rule of law. The learned Counsel relies upon the Judgment of the Hon'ble Apex Court in case of **Noida Enterpreneurs Association Vs. NOIDA** reported in ***(2011) 6 SCC 508***. After recording the statement of the erstwhile Executive Engineer who unequivocally admitted that at the time of clearing the bills neither the invoices of asphalt nor the test reports were accompanied to the said bills is a serious breach of mandate of the tender conditions i.e. Condition No. 7.1(ii)(iii), Condition No. 15, 16 and 17. Condition No. 25(i)(iii) as well as the Government Circulars dated 09.04.1996, 01.12.2004 and 08.09.2007. Clearing the bills is not an accident but is deliberate defiance on the part of the officers. The same is fraudulent act but no action is taken against them on the contrary these officers are shielded. The learned Advocate further submits that, although much is submitted about the Charge-sheet filed, however, the investigation officer has not undertaken the exercise to process the source of the bogus invoices and at which juncture those were introduced in the Government file. As at the relevant time the Executive Engineer unequivocally admits that those were not forming part of the bills. The independent investigation by the CBI needs to be directed. The reliance is placed in the case of **Narmadabai Vs. The State of Gujrath** reported in ***(2011) 5 SCC 79***. The approach of the State in the affidavit displays the character of infidelity. This Court may decide the entire matter in it's entirety as is held by the Hon'ble Apex Court in case of **Sajjan Singh Vs. State of MP** reported in ***(1999) 1 SCC 315***.

12. The learned advocate further submits that the stand of the State that the Circular dated 12.04.2017 is introduced for the first time, the same is misplaced as the Circular uses the expression '*reiterate*' that sufficiently establishes existence of such mandate from beginning. The Circular dated 09.04.1996 provides for the procedure to send the documents to the refinery for the purpose of verification, as such is aimed to protect and confer shield upon the fraudulent wing of the officers of the Public Works Department. The Resolution / Circular dated 09.04.1996, 08.10.2007 and 01.12.2004 as well as the tender conditions are misread. The learned Advocate submits that after the matter was referred to the 3rd Judge because of pandemic the matter came to be listed on 08.07.2021 and in the interregnum certain documents have seen light of the day relating to the subject matter in issue and they would have it's own significance. The petitioner has sought to bring on record the said documents by filing Criminal Application 1512 of 2021. The said documents deserve to be appreciated. The learned Advocate submits that it was not open to the contractor to procure the asphalt from the other refineries in contravention of the Circular dated 09.04.1996, 01.12.2004 and 08.10.2007 and tender condition No. 5, 15, 16 and 17. The field officers i.e. Officers In-charge were not justified in disbursing bills in absence of the original

challan / gate pass and without making grade verification of the bitumen and also without the documents of grade test. On the basis of the fraudulent documents the bills in respect of the work which is never done is withdrawn caused loss to the public exchequer. There is no investigation in the direction that at what juncture those forged and fraudulent documents were introduced and at whose instance and collusion, the same is required to be made. Stringent action deserves to be taken against the erring officers and the same requires to be enquire into by the agency like CBI.

13. In order to uphold the rule of law and majesty of the Court proceedings, the direction be given for investigation by an independent agency like CBI to unearth the colossal scale corruption and book the real culprit. The learned Advocate also refers on the Judgment of the Hon'ble Apex Court in case of **Dr. Subramanian Swami Vs. Dr. Manmohan Singh and another** reported in ***(2012) 3 SCC 64***.

14. Mr. Sapkal, the learned senior advocate (Special Prosecutor) for respondents submits that, the Special Investigation Team constituting of Chief Engineer, Mumbai and Superintending Engineer, Vigilance and Quality Controller, Pune concluded in their report that the works are executed. The investigating officer i. e. Deputy Superintendent of Police, Nanded in his charge sheet submitted to the Hon'ble Court also certified that the works are executed. The photographic evidence submitted to the Hon'ble Court also establishes that the works are executed. All the competent agencies of the Government and

the documentary evidence produced before this Court has established on fact that all the works are executed and payment made to the contractor is valid. The learned senior advocate (Special Prosecutor) further submits that, the basis for payment to the contractor is the physical work done, quantity and quality of the work done and the payment is never based on the invoices of any material brought at site. Hence the question of misappropriation of Government money does not arises. However, the entire petition is based on the ground that, since the Bitumen invoices submitted by the contractor, which, when verified four years after the execution of the work by the refineries by using system and data which is available with the refineries only were found fake and hence the work is not executed and there is misappropriation of the Government money is misleading and false.

15. The learned senior advocate for respondents further submits that, the observations made in para No. 19 and 20 of the judgment of the Justice T. V. Nalawade are based on surmises and conjunctures. The learned Judge presumes that there is possibility that bitumen of expected quantity and quality was not used and the work shall have got damaged immediately. The learned Judge also inferred that there is corruption in the department for which research is not necessary. The observations of the learned Judge that the officers are protected and it wants to put blame only on contractors is erroneous. The same are not based on law. As per the contract agreement and the investigation carried out, it is found that the contractor is

mainly responsible and hence the necessary action against the contractor is already taken by the Government and for procedural lapses, the departmental enquiry against concerned officers is also initiated by the Government. The correspondence file of the A.C.B. produced before the Court reveals that, the discrete enquiry conducted by the A.C.B. is not based on material, but only on the basis of complaint of the petitioner. It is only under the pressure of the petitioner. In the charge sheet submitted by the investigating officer also no substance is found against the officers of the Public Works Department.

16. The learned senior advocate further submits that, it is prerogative of the investigating agency and the investigating agency i. e. respondent No. 5 exercised its authority and discretion and conducted the investigation and based upon that charge sheet is filed against the contractor on 06th February, 2020. As no substance is found against the officers of the P. W. D., question of any action against officers of P.W.D. does not arise. The learned senior advocate submits that, observations in the judgment that there will be no need for A.C.B. to take permission of the Government for making investigation against officers of P.W.D. is erroneous. The Government Resolution dated 27.07.2015, so also amendment to Section 17A of the Prevention of Corruption Act mandates previous approval. The said aspect has been considered by the learned Judge Shri K. K. Sonawane, J. It has been observed that, the investigating agency has to follow the procedure prescribed under law. The observations of the learned Judge Shri K. K. Sonawane, J. are in

tune with the principles of law. The respondent No. 5 has conducted the investigation and based on the findings submitted the charge sheet against the contractor and the same is pending before the Court for consideration. The only conflicting issue is whether permission for prosecution is to be obtained by the A. C. B. The Government Resolution dated 27.07.2015 provides a detailed procedure. For open enquiry permission of the authority with whom employee is working is necessary, so also as per Section 17A of the Prevention of Corruption Act. The Government has also constituted the S.I.T. for enquiry to find out whether work is done. The S.I.T. has given a report clarifying that the work is done. The main mandate of the circular dated 08th October, 2007 is to ensure whether the grade of the bitumen received at site is same as printed on the challan and nothing to do with the genuineness of challan submitted by the contractor. Various circulars relied directs instructions to the field staff and all the instructions mentioned therein are followed by the field engineers. There were works of road repairs. The works were completed during the period from December 2012 to May 2013. The payment is made on 04th August, 2013. The petitioner has filed the petition in the year 2018, almost after five years of completion of work. As per the contract agreement, all the payments made to the contractor are always paid as a completed item based on quality and quantity and payment is never based on the rate at which the material is bought by the contractor. The bill is certified as per the contract agreement and the P.W.D. norms by the Junior Engineer, Deputy Engineer, Auditor and other persons. When the work is completed, there was no complaint either by the petitioner or any other person. Every material used in the work is to be tested prior to its use in the work. The payment of testing charges is to be borne by the contractor. The testing of material is invariably conducted by the Vigilance and Quality Control lab i.e. third party agency. The testing of bitumen is carried out for all the above works and found that the material brought by the contractor is as per the IS Code provisions. The procedure of Public Works Manual Appendix 24 while making the payment is also followed. The contractor has purchased bitumen from M. S. Ganjewar Construction, Nanded. The same was allowed by the Superintending Engineer, P.W.D. under letter dated 27.06.2008. The same was as per tender condition. The Accountant General, Nagpur during regular audit found that there is condition in the contract agreement that contractor shall submit the original copy of the bitumen purchase invoice from the Government Refinery only. When such original invoices submitted by the contractor were verified from the concerned refineries, in some cases, it is found that they are fake. The responsibility of producing sufficient documentary evidence of submitting the genuine gate pass lies with the contractor. The contractor only can produce the gate pass/tax invoices and no other person can do this as the material purchased is by the contractor only.

17. The learned senior advocate further submits that, the job of the field Engineers was limited to verify the grade and quality of the bitumen from the tax invoice. Though, it is desirable to verify genuineness of invoice by departmental officer, there was

no mechanism with the Executive Engineer, Deputy Engineer and Junior Engineer to verify the genuineness of invoice so submitted by the contractor with any authentic system. However, payment was never made on the basis of invoices, but on the basis of work done and for a completed items. After coming to know the loop hole in the system, in the year 2016, Government has issued circular on 01.07.2016. The circular No. 2 consists of five aspects. Now the mechanism is provided. Present work is prior to the system introduced under circular dated 01.03.2016. The corrective measures are taken by the Government. The Government Resolution dated 28.11.2018 is also issued suggesting that the documents submitted by the contractor, if, subsequently found to be not genuine, the contractor will be solely liable and the concerned Engineer would not be responsible. The said Government resolution is applicable retrospectively and was also subject matter of consideration before the learned Single Judge of this Court in Criminal Application No. 707 of 2019 decided on 19th May, 2020. It was held that said resolution has retrospective operation. The Government superseding all the previous circulars issued new policy guidelines by notification dated 27.03.2019, wherein the importance is given to the test results of the bitumen which is more appropriate and relevant rather than the copy of invoice/gate pass submitted by the contractor and the supply from the private refineries was also allowed.

18. Entire petition is based on the ground of taking invoices of the refineries and because the invoices of bitumen are fake, it is

presumed that the work is not executed and there is misappropriation of Government money. No substance is found against the officers of the Public Works Department.

19. I have considered the submissions of learned advocate for the respective parties and also gone through the judgments delivered by the learned Judges of the Division Bench.

20. As I have referred to the submissions of the learned counsel covering factual aspects of the matter and also factual matrix have been discussed in detail in the judgment by the learned Judges, I have not reproduced the factual matrix in detail.

21. The case of the petitioner appears to be that the contractors had used forged record and invoices shown to have been issued by the Hindustan Petroleum Corporation Limited to demonstrate that H.P.C.L has issued bitumen for construction of road and on that basis it is sought to be conveyed that the work has not been properly done and misappropriation of Government funds has been made. The same is in connivance with the officers of the Public Works Department. The State Government refused to give permission for open enquiry as per communication dated 25.05.2018, when the permission was sought by the Anti Corruption Bureau. The petitioner also seeks direction to register criminal prosecution against the person who has created forged invoices shown to have been issued by the H.P.C.L.

22. The H.P.C.L., it appears has communicated that the invoices as sought to be relied by the contractor were never issued by its office.

23. In fact, both the learned Judges of the Division Bench, in fact, have agreed on many aspects, however, differed only on the limited issue. According to the learned Judge Mr. T. V. Nalawade, though in both the crimes allegations are made only against contractors, the investigation can be made and continued by the concerned police station. If they find that officers had joined hands with the contractor, they can take concrete action. The other contentions like enquiry in disproportionate asset of the officer can be made by the A.C.B. and for filing a case against Government officers for misappropriation of Government money, the permission of Government to make any investigation in the crime would not be necessary. Whereas, according to learned Judge Mr. K. K. Sonawane, the decision of the department to keep on hold permission of open enquiry is an administrative action. It cannot be said that, the decision making authority exceeded its power by exercising its discretion in arbitrary manner. The FIR has already been filed by the officers of the Public Works Department for offence of forgery, cheating, misappropriation of public funds, etc. The investigation is in progress. The very purpose of filing Writ Petition No. 436 of 2019 is sub-served. The learned Judge did not accede to the prayers of the petitioner made in Writ Petition No. 859 of 2018 to quash and set aside communication dated 21.05.2018, so as to allow the A.C.B. to commence the investigation and conclude the same.

24. It appears that, parties do not dispute about presentation of forged invoices allegedly issued by the H.P.C.L. It appears that, the persons from Public Works Department had filed FIR against the contractor for producing false, forged bitumen invoices of H.P.C.L. The contention of the petitioner appears to be that the officers of the P.W.D. have connived with the contractor in the process of the forged invoices. It appears that, the charge sheet has been filed against the contractor. Investigation has been made by the investigating authority. The petitioner alleges procedural lapses on the part of the officers of the P.W.D. in verifying the invoices.

25. It has been brought on record that the departmental enquiry is also initiated against the officers of the Public Works Department. Certainly, while deciding petitions, the Court cannot give its conclusive findings only on presumption and/or assumption. The investigation, certainly can be made by the police and they can ascertain whether officers of the department were involved in the matter considering the nature of the duty.

26. I do not find major difference in the judgment of the learned Judges of the Division Bench. Justice T. V. Nalawade in his judgment has observed that, if the concerned police station during investigation finds that the officers joined hands with the contractor then they can take concrete action and the other contentions like enquiry in disproportionate asset of the officer can be made by the ACB. As such, the learned Judge did not give direction to the ACB and further observed that, after filing

charge sheet, copy of the same can be sent to the ACB and from that point ACB can take over. In the operative part of the order also, the learned Judge declared that, it is open to the investigating agency to make investigation against others including officers of PWD and file case against them. ACB to act after the investigation by police is over and that there would be no need to take permission of the Government for making investigation against the officers of the PWD.

27. Justice K. K. Sonawane in his order also observed that, it is desirable that the investigating agency shall examine all ramifications of the crime by going deep into the allegations to unearth the truth and shall ensure that real perpetrators of the crime are brought to book. He also observed that, the investigation agency shall conduct the investigation of the crime in a fair, prompt and unbiased manner.

28. In the first place, both the learned Judges were of the opinion that investigation is necessary at the hands of the police authorities. It is submitted that, the police authorities have investigated the matter and charge sheet is filed. Pursuant thereto further steps can be undertaken. I have been told that departmental enquiry is initiated. Depending upon the result of the departmental enquiry further action can be taken by the department against the erring officers.

29. It appears that, after the judgments were delivered by the learned Judges of the Division Bench, the investigation is

completed by the police authorities and the charge sheet has been filed. It is also submitted that, subsequently departmental enquiry is also initiated against the officers for the procedural lapses, according to respondents. As such, in view of that based upon the investigation made and depending upon the result of the departmental enquiry, the ACB can act in tune with the investigation by the police officer. As charge sheet is already filed, it is for the ACB to consider the investigation made by the investigating agency, so also the result of Departmental enquiry and may proceed further in accordance with law and procedure. The authorities of P.W.D. may take further steps in tune with the findings in the Departmental enquiry.

30. The criminal writ petitions and criminal applications accordingly are disposed of. No costs.

[S. V. GANGAPURWALA, J.]

bsb/March 22