IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO. 181 OF 2025

Ajay s/o Pralhad Lahane
Aged about 56 Years; Occupation: Service,
R/o Rallies Bungalow, Opp. R.T.O. Office,
Camp, Amravati. ... **PETITIONER**

V E R S U S

1. **The State of Maharashtra**,
through the office of Deputy Superintendent of Police, Anti Corruption Department, Akola.

2. **The Director General**,
Anti Corruption Department, Maharashtra State, Mumbai. ... **RESPONDENTS**

Shri F. T. Mirza, Senior Advocate, assisted by Ms Madhura Bhande, Counsel for Petitioner.
Shri S. M. Ghodeswar, Additional Public Prosecutor for Respondents.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.
DATE : APRIL 02, 2025

ORAL JUDGMENT (PER NITIN W. SAMBRE, J.) :

1. **Rule.** Shri S.M. Ghodeswar, learned Additional Public Prosecutor, waives notice of hearing for the respondents. Heard finally by consent of the learned counsel appearing for the parties.

2. The petitioner, an Officer in the State Government is presently posted as a Director of Dr. Punjabrao Deshmukh Vidarbha Administrative and Development Training Academy, Amravati.

3. It is claimed that in the past while serving as the Municipal Commissioner of Akola Municipal Corporation, the petitioner initiated disciplinary enquiry proceedings against an employee, which led to the said employee lodging a false complaint of acquiring disproportionate assets by the petitioner. The said complaint was duly taken cognizance by the respondent No.2 and the respondent No.2 accordingly started issuing communications calling information from the petitioner for conducting an open enquiry. Such notices/summonses are questioned in the present writ petition alleging that the same are contrary to the mandate provided by the State Government in the Circular dated July 27, 2015.

4. Shri F.T. Mirza, learned Senior Counsel appearing for the petitioner, would invite the attention of this Court to the Circular dated July 27, 2015 issued by the General Administration Department, which also refers to the earlier circular dated March 03, 2015. According to the learned Senior Counsel Shri Mirza, the Petitioner, being Group-A Officer, in the matter of open enquiry against such Officer, it is necessary for the Director General, Anti-Corruption Department to examine the case on his own and only after the satisfaction, shall obtain consent of the Secretary, Home Department so as to conduct such open enquiry. According to him, it is also necessary that the Additional Chief Secretary, Home Department, before submitting such proposal to the State Government, shall obtain consent of the Head of the

Administrative Department of such employee against whom an open enquiry is proposed.

5. The learned Senior Counsel in this background would claim that the additional consent of the Revenue Department is not obtained while submitting the proposal. He would claim that even if the earlier circular dated March 03, 2015 provides for grant of deemed permission, same has been merged in the circular dated July 27, 2015. Perusal of the circular dated July 27, 2015 will make it clear that the clause of deemed sanction has been modified in view of the mandate provided therein. He would further claim that the respondents, contrary to the above, has issued the notices to the petitioner calling upon him to submit information, as could be inferred from the communication dated January 01, 2025.

6. Shri Mirza, learned Senior Counsel, so as to substantiate the claim that the Government has not consented for conducting an open enquiry against the petitioner, has drawn the attention of this Court to the communication dated October 29, 2024 issued from the Administrative Department of the petitioner, viz. the Revenue Department. By drawing support from the said communication, in Paragraphs 2 and 3, he has specifically urged that the Administrative Department has not consented for conducting an open enquiry against the petitioner. That being so, he would claim that the notices issued by the respondent No.2 are liable to be quashed and set aside, viz. the declaration that the respondents cannot proceed against the petitioner in the matter of open enquiry to be conducted in regard to the disproportionate assets.

7. As against above, Shri S.M. Ghodeswar, learned Additional Public Prosecutor appearing for the Respondents, has opposed the prayer. According to him, the respondent No.2 has conducted an enquiry in accordance with the mandate provided in the circular dated March 03, 2015. The learned Additional Public Prosecutor has drawn support from clause (3) of the said circular so as to claim that there is a deemed sanction/approval for conducting an enquiry, if not decided by the Competent Authority, within a period of ninety days. As such, it is claimed that based on the circular dated March 03, 2015, the respondent No.2 has decided to proceed against the petitioner and that being so, the writ petition is liable to be dismissed, as the decision of the respondent No.2 is based on the Government policy.

8. We have considered the rival submissions.

9. The record depicts that the Administrative Department under which the petitioner is working, viz. the Revenue and Forest Department, addressed a communication dated October 09, 2023 to the Divisional Commissioner, Amravati Division, Amravati calling upon the said Authority to furnish information on the issue which is referred to in the said communication. The issue pertains to the acquisition of plot and disposal of the same, the acquisition of shop block through gift-deed from mother, and the acquisition of the agricultural land so also the vehicle.

10. It appears that the petitioner submitted a detailed explanation thereby intimating not only his source of money but also factually correct information about the said property. Accordingly, the Divisional Commissioner vide covering letter dated November 10, 2023 submitted the explanation of the petitioner to the Administrative Department, as the Divisional Commissioner has sought information from the petitioner about the queries in the communication dated October 09, 2023 from the petitioner.

11. Based on the above, the State Government vide communication dated October 29, 2024 addressed to the respondent No.2 informed its decision to refuse the permission sought for conducting an open enquiry in the matter of the alleged disproportionate assets. The said communication by the Administrative Department, viz. the Department of Revenue and Forest, was based on the explanation tendered by the petitioner on the decision of the respondent No.2-Anti-Corruption Department to conduct an open enquiry, the Administrative Department has satisfied itself that the petitioner has maintained complete transparency not only about his acquisition of property but also about his source of money by giving every intimation in detail to the State Government. As such, the proposal for grant of consent for conducting an open enquiry was turned down and further directions were issued to the respondent No.2 to recall the order dated June 11, 2024 of conducting an open enquiry.

12. The respondent No.2 instead of acting on the instructions of the Administrative Department has taken a shelter of the circular dated March 03, 2015 issued by the General Administrative Department thereby claiming that since the refusal to grant consent for conducting an open enquiry was not communicated within a period of ninety days, there is a deemed permission and as such the decision of conducting an open enquiry was maintained and further called upon the petitioner to submit information vide communication dated July 05, 2024.

13. It appears that the respondent No.2 has conveniently ignored the mandate provided under the circular dated July 27, 2015 for the reasons best known to it.

14. The respondent No.2, though was put to notice has chosen not to file reply in the matter and it is the Police Inspector, Anti-Corruption Bureau, Akola, without any authority, who has placed an affidavit on record on behalf of the respondents, as could be inferred from the language employed in the said reply. In the said affidavit, though the shelter is taken of the circular dated March 03, 2015, the subsequent circular wherein it is made mandatory to have not only the consent of the Administrative Department but also the proposal to be routed through the Chief Secretary, Home, is conveniently ignored. The circular dated

July 27, 2015 was very much in existence even prior to the decision of the respondent No.2 dated June 11, 2024 of conducting an open enquiry against the petitioner.

15. The Circular dated July 27, 2015 in categorical terms refers to the earlier circular dated March 03, 2015. In view of the mandate provided in the circular dated July 27, 2015, which is later in point of time, we fail to understand as to what prompted the respondent No.2 not to adhere to the circular dated July 27, 2015. Rather both the respondents have chosen not to file their affidavit dealing with the aforesaid issue, but as observed hereinabove, the Police Inspector of the Anti-Corruption Bureau, Akola has filed an affidavit, which, in our opinion, is without any authority.

16. We are also unable to convince ourselves from the said affidavit that in spite of there being direction from the Administrative Department, as reflected in the communication dated October 29, 2024, still how is it open for the respondent No.2 to continue with the open enquiry. Once the State Government, particularly the Administrative Department, has decided not to grant consent, the circular dated July 27, 2015 will come into operation and the respondents are required to conduct themselves in accordance with the said circular.

17. In this background, we are of the view that the respondents have acted not only contrary to the mandate provided in the circular dated July 27, 2015 issued by the General Administration Department, but also has ignored the refusal of consent communicated by the Administrative Department, i.e. the Revenue and Forest Department, on October 29, 2024. The Revenue and Forest Department in categorical terms has accepted the explanation tendered by the respondents on the acquisition of the property and the source for the same.

18. In that view of the matter, the petitioner has made out a case for causing indulgence in extra ordinary jurisdiction.

19. As such, the writ petition stands allowed in terms of prayer clauses (a) and (b).

20. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.) **(NITIN W. SAMBRE, J.)**

LANJEWAR