

(2019) 08 GUJ CK 0067
In the Gujarat High Court

Case No : R/Writ Petition (PIL) No. 232 Of 2015

Jayntilal Manilal Patel

APPELLANT

Vs

State Of Gujarat And Others

RESPONDENT

Date of Decision : 23-08-2019

Acts Referred:

Citation : (2019) 08 GUJ CK 0067

Hon'ble Judges : S.R. Brahmbhatt, J;A.P. Thaker, J

Bench : Division Bench

Advocate : P.H. Pathak, Asmita Patel, Deepak P. Sanchela, Mahesh Bhavsar,
Reena M. Kamani,

Final Decision : Disposed Of

Judgement

S.R. Brahmbhatt, J

1. Heard learned counsel for the petitioner, learned counsel Shri. Sanchela for respondent no. 4, learned counsel Shri. Mahesh Bhavsar for respondent no. 5 and Ms. Asmita Patel, learned AGP for respondent no. 1.

2. Present petition is taken out as a public interest litigation with following prayers:-

"12.

(A) The Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondent authorities to take legal action for misappropriation of public funds by respondent No. 5 and direct the respondent No. 1, Director of Municipalities to give detailed report to this Hon'ble Court - by recording evidence of those who have filed complaint against the respondent No. 5 and also against the Chief Officer for not taking steps in accordance with law for misappropriation of public law.

(B) Be pleased to direct the respondent No. 1 to investigate the matter and file appropriate prosecution for misappropriation of funds against the concerned

employee and Chief Officer and report regularly the progress in the matter to this Hon'ble Court.

(C) Be pleased to direct the State Government to take action against the employee concerned on the complaint of the citizens for the offence committed by respondent No. 5 and direct the Central Bureau of Investigation to investigate the matter and supply the report to this Hon'ble Court.

(D) Any other and further relief as this Hon'ble Court may deem fit and proper in the interest of justice be granted.

PRAYERS FOR INTERIM RELIEF

(A) Pending admission and final disposal of the petition be pleased to direct respondent Nos. 1 to report to this-investigating all complaints against concerned employees and role of Chief Officer in supporting misappropriation of funds of Nagar Palika before this Hon'ble Court.

(B) Any other and further relief as this Hon'ble Court may deem fit and proper in the interest of justice be granted."

3. This Court passed an order on 21.8.2019 as under:-

"We are constrained to observe that there appears to be lack of desire to take appropriate action against the delinquent based upon the report and allegations. Shri. Deepak Sanchela, learned advocate for the respondent no. 4 invited Court's attention to page no. 86, which proposes to be an appointment of inquiry officer. We are of the view that that too is an order dated thth February 2016 and today we are in the year 2019 last quarter. Had there been a genuine desire to act, perhaps this matter would have been put an end long back. We therefore, propose to pass appropriate direction to the State Government also for initiation of appropriate action. Shri. Sanchela, learned advocate for the respondent no. 4 seeks time of a day to place on record the action taken in this regard. We therefore are inclined to place this matter on 23rd August 2019."

4. Learned counsel, Shri. Sanchela appearing for respondent no. 4 submitted that he has received instructions to state from the concerned Chief Officer that the inquiry, if required to be initiated, with amended charges, shall be completed within three months from today, i.e. on or before 30.11.2019 and if there is need be further action also would be contemplated.

5. Learned counsel appearing for the petitioner urged that the matter be kept pending and let there be a suspension order of respondent no. 5 and let there be a direction to the State for initiating action in case if inquiry officer is lax or not diligently conducting the inquiry. We are of the view that this Public Interest Litigation is, in fact, in respect of public money but the moment we observe qua the respondent no. 5's liability, which is to be examined and addressed, and if further directions are issued may tantamount to not only prejudicial to respondent no. 5 in the legal proceedings that may be initiated against him but

may essentially take a shape of service matter Public Interest Litigation, which is not permissible under the law, as there are catena of judgments of the Supreme Court on this aspect. However, at the same time, it cannot be lost sight of that public money embezzlement is found to be true, the persons involved may not be permitted to go scot-free. In this view of the matter, we are of the view that in addition to the statement of Shri. Sanchela on behalf of the Chief Officer, let there be a direction to the Commissioner of Municipalities to look into the matter and do the needful, bearing in mind the overall facts and circumstances of the case, and it would be open to the petitioner to make appropriate written submission to the Chief Officer as well as to the Commissioner of Municipalities.

6. With these observations, we are of the view that the petition is not required to be kept pending and it is disposed of. It goes without saying that liberty is reserved to the parties to approach the Court in case of need.