



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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SHRC/VGM/03/2010/
Date: 31 March 2010

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Case No. – 34/2002

Name of the Complainant : Digambar Haribhau Pachgade
Jamankar Nagar, Yavatmal
Tal Dist. Yavatmal – 445 001

Vs.

Secretary
Urban Development Department
Mantralaya, Mumbai

Divisional Commissioner,
Amravati Division, Amravati

The Collector
Yavatmal

The Chief Executive Officer
Yavatmal

Date : 25 March 2010

Coram : **Justice V G Munshi, Member**

ORDER

Read the averments made in the complaint and the reply received from Respondent Collector, Yavatmal, Commissioner (Amravati Division), Amravati and Chief Executive Officer – Nagar Parishad. Read the inquiry report received from Commissioner, Amravati. Read the orders passed by my predecessor (Coram – M R Patil – Member, SHRC) in this matter from time to time. Read the case papers.



2. Before proceeding with the merits of the case, points to be decided etc it is necessary to acquaint ourselves with the facts and circumstances of the case with which we are concerned.

The complainant is resident of Yavatmal and is a social worker. He is Member of Human Rights Protection Committee, Yavatmal. The complainant has made present complaint about the construction work taken place in Yavatmal City as business centre, apartments, lodge, hotels, beer bar, permit room etc. According to him such construction was illegal and was made contrary to rules and laws. The complainant made following allegations.

- (i) It was alleged that officers and officials of Corporation, Urban Development, and other Departments joined hands with builders and did huge corruption.
- (ii) Permissions were given for the illegal constructions as business centres, apartments, hotels, beer bars, permit rooms etc.
- (iii) Illegal construction taken place in Yavatmal City at the places like Datta Chowk, Bus Stand, Bori-Tuljapur, Nagpur Highway with the help of officers of Corporation etc.
- (iv) Illegal construction in city created huge traffic problem and the school, college students, pedestrians and other persons face number of problems while passing through these areas.
- (v) The construction work taken and completed contrary to existing rules, laws and regulations and that too without sanction or completion certificate, and under the protection of such officers.
- (vi) Number of plots and lands belonging to Yavatmal – Nagar Parishad were illegally grabbed by the builders for illegal construction.
- (vii) Government Officer V H Ghare illegally granted permission for construction, without there being valid title and made huge corruption.
- (viii) One Shankar Kawaduji Gaikwad who raised voice against corruption, was murdered on 25.10.2000. When complainant made complaint against corruption, that on 05.12.2000 he was given threat by Subhash Roy to kill him with life.
- (ix) Buildings illegally constructed in Thane and Mumbra, collapsed, resulting several casualties.
- (x) V H Ghare worked in this Department of Nagar Parishad for last four years and got control over the said Department. He being an officer of 'B' Grade,



should not have been appointed on 'A' Grade Post in Nagar Parishad of Yavatmal. He is responsible for corruption and illegalities etc.

Therefore, we have to view the case on this background.

3. The Respondents Collector, Yavatmal and Commissioner, Amravati Respondent Urban Development and Chief Executive Officer Yavatmal denied and disputed all the allegations made against them in the complaint on number of grounds.

4. Therefore, it is necessary to view the case in the light of facts and circumstances brought on record and also in the light of legal position.

(i) The complainant made grievance about parking problem, traffic problem etc which arise only because of illegal construction made particularly in Datta Chowk and near Hotel Mai. The Inquiry Report mentions that local Police made sufficient arrangements by making roads one way and by marking areas for the parking cars etc. The Commissioner discussed this problem with Chief Officer and Collector, Yavatmal and the Commissioner came to know that there was not any traffic problem or parking problem because recent arrangements made by Police. There is no reason to disagree with this aspect mentioned in the report.

(ii) There cannot be any difference of opinion on the point that the complainant already filed writ petition No. 1864/1999 in High Court and the Court did pass certain orders in this matter. Thus, this matter is subjudice before Court. The complainant made complaints to the Government in respect of constructions (Dava bazaar) made in Datta Chowk and about Hotel Mai situated on Arni Road. According to the complainant, these builders, did make more construction, than granted in permission or sanction order. The Chief Officer, Nagar Parishad, Yavatmal accordingly registered offences against these persons under Sec. 52, 53 of Maharashtra Regional Town Planning Act, 1966. The Nagar Parishad could not take further action, because of stay order, passed by the Court, and as both these matters are subjudice before Hon'ble Court.

(iii) The reply of Urban Development Department shows that the Commissioner (Amravati Division), Amravati already issued orders for doing inquiry into the allegations of corruption made by the then Chief Officer V H Ghore and for inquiry about all the permissions granted by him, for illegal construction etc. Irregularities were noticed in some matters. Similarly, action



R/R,HRG - RECOMM

was taken in respect of such 499 illegal constructions, taken place during year 1996 to year 2003. Even offences in 89 matters were registered under the provisions of the M.R.T.P. Act, 1966.

(iv) It was alleged that Government lands or plots of Nagar Parishad were illegally grabbed by the builders, and officers were party to such illegal transactions. The report of Collector shows that after partition in year 1949-50 52 Sindhi families were settled on Nazul Sheet No. 49, Plot No. 33 and such lands were given to them on temporary lease basis. The Public Works Department, Yavatmal needed this land for the road widening. Therefore, on 01.01.1996 it was decided to shift all these families to Nazul Sheet No. 49, Plot no. 32/1 and Nazul Sheet No. 37 D Plot no.8. The Government accordingly taken decision and these families were settled on those plots on permanent basis. In the given circumstances, the Government was justified in taking such decision.

(v) My Predecessor (**Coram – M R Patil, Member, SHRC**) that on 22.05.2003 did pass following order.

"The Commission therefore, directs that the investigation into the complaint may be conducted by you and report thereof may be submitted to the Commission with a period of one month from the date of this order.

Thus, in view of the provisions of Sec. 14 of the Protection of Human Rights Act, 1993, the Commission directed the Divisional Commissioner Amravati to hold inquiry in this matter."

The Divisional Commissioner, Amravati accordingly held inquiry and submitted his report to the Commission vide letter dated 30.06.2003 making grievance that the complainant did not co-operate them in said inquiry. The Bench (Coram – M R Patil, Member) did not accept this report, because the said inquiry was conducted by Additional Commissioner, Amravati and not by the Commissioner, Amravati as per the directions given by the Commission. The Bench (Coram – M R Patil) again did pass order on 29.07.2003 and thereby directed the Divisional Commissioner, Amravati to hold and complete the inquiry afresh, personally and to submit the report at early date. In obedience to the said



direction the then Divisional Commissioner, Amravati (N Aramugam) taken and completed inquiry and submitted his report vide letter dated 29.08.2003. All these event occurred earlier.

(vi) The Report dated 29.08.2003 submitted by Commissioner, Amravati mentions that despite of notices the complainant neither appeared before him nor did produce any evidence in order to substantiate the allegations made in the complaint. Therefore, the Commission accordingly closed the inquiry and submitted the report which is not admittedly on merits. Thus, there was no proper inquiry in this matter and the report therefore, cannot be said to be a perfect one in legal sense. The inquiry was taken and completed behind the back of the complainant. In other words the complainant did not take part in inquiry proceeding for the reasons best known to him. But the result was that there was not any proper inquiry in this matter.

(vii) The reports submitted by Additional Commissioner and Commissioner, Amravati show that though sufficient chances were given to the complainant, the complainant did not co-operate and failed to adduce evidence in order to substantiate his case. There is no scope for doubt that, it was incumbent upon the complainant to do all things. He remained absent without sufficient reason and failed to establish his case. The Commission expresses great displeasure for such indifferent attitude of the complainant. Had it been the fact that the complainant did co-operate the Inquiry Officer, there would have proper inquiry in this matter. I am of the opinion that, one another chance needs to be given to the complainant, to substantiate his case, with the help of evidence in his possession. Therefore, in the interest of justice, inquiry afresh is necessary in this matter.

I therefore, make following recommendations in this matter.

(A) Divisional Commissioner (Amravati Division), Amravati to do inquiry afresh in this matter in view of the observations made above in this order.

(B) Divisional Commissioner, Amravati to give sufficient opportunity to the complainant to appear before the Authority and to adduce evidence if any and to substantiate his case.



(C) It is necessary to make it clear that, this is last opportunity given to the complainant to take part in the inquiry and to co-operate in said inquiry. If, despite of notice / notices, the complainant does not appear before the said Authority and fails to take part in inquiry or to adduce evidence, the Authority is at liberty to take proper decision for the closer of the said inquiry.

(D) It is incumbent upon the Divisional Commissioner, Amravati, to hold and complete in the inquiry on the subjects, which are not the subject matter of writ petitions.

(E) Copy of this order be sent to the Divisional Commissioner, Amravati for information and necessary action in view of the observations made above in the said order and compliance may be reported.

(F) The Divisional Commissioner, Amravati after completion of said inquiry, report be sent to Secretary – Urban Development Department, Mantralaya for their action if any, in this matter.

With these observations and recommendations Case No. 34/2002 is disposed of accordingly.

The Secretary to communicate this order to the parties concerned.



Sd/-
(Justice V G Munshi)
Member, SHRC