

SHAIKH ANSAR AHMAD MD. HUSAIN

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v.

THE STATE OF MAHARASHTRA & ORS.

(Civil Appeal No. 695 of 2021)

OCTOBER 05, 2021

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[L. NAGESWARA RAO AND S. RAVINDRA BHAT, JJ.]

Judgment/Order: Reasoned judgment – Requirement to give reasons in the judgment/order – Grievance of the appellants is that the reasoning for the impugned judgment was given and published long after its operative portion was pronounced – The operative portion of the judgment was pronounced on 27.06.2019 – The reasons were published on 05.10.2020 – Held: High Court's conduct in not furnishing reasons, either at the time of pronouncement of the operative part of the judgment, or before the commencement of the next working day (of the court) strongly deprecated – Judicial depreciation.

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Public interest litigation: Impugned judgment passed in writ petition filed as Public interest litigation (PIL) challenged by the appellants on the ground that the PIL was motivated – Held: There is no doubt, that PIL is meant to be entertained, for bona fide causes, and not to aid either misguided individuals in their quest for publicity, or for wreaking vendetta on public officials or institutions – The cause espoused by the writ petitioners was undoubtedly one of public interest, because it concerned housing for the economically disadvantaged sections of society, in such great numbers – The scheme was meant to benefit thousands of persons, and over a thousand housing units were to be constructed and allotted to the beneficiaries – In view of the inquiries and the reports, conducted and prepared during the proceedings, the initiation of public interest proceedings, were justified, having regard to the contents of such reports – Even if the public interest litigants' motives were ambiguous, or not immediately bona fide, that could not have led to dismissal of the writ petition, before the High Court – The objection as to lack of standing of the public interest litigants, therefore, is without merit – Housing.

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- A *Public interest litigation: Housing scheme – Allegations of failure and neglect on the part of the municipal authorities in regard to completion of the scheme – In the criminal public interest litigation, the respondents (PIL petitioners) sought directions to the Union of India, the State of Maharashtra, the Maharashtra Housing and Urban Development Authority (MHADA) and state officials to initiate criminal proceedings against the responsible officers and office bearers of Municipal Council, Naldurg and concerned contractors for misappropriation of government funds in implementation of the housing scheme in the municipality – The PIL petitioners had alleged the utter mismanagement in terms of which*
- B *as many as 1.05 lakh dwelling units were to be constructed and handed over to the eligible individuals – The scheme contemplated a substantial funding by the central government and the rest of the funding to be borne by the allottees – As against the targeted 1206 housing units to be constructed, 737 beneficiaries belonged to the reserved category and the rest to the general category – Inspection reports and affidavits of MHADA as well as the Divisional Commissioner revealed that only 302 housing units were constructed in different localities in Naldurg, of which 202 could be used and 100 were in an unusable and dilapidated condition – The affidavits filed on behalf of authorities revealed that excess payments of*
- C *₹1,52,81,846/- and ₹90,97,771/- were made – After taking note of affidavit of the Commissioner, High Court disposed of PILs directing the respondents to take steps in light of the reports, and action outlined in the affidavit, “to its logical end” as expeditiously as possible – In the instant appeal, the main argument of the appellant was that criminal proceedings were initiated against them even though they were not heard in the public interest proceedings, and that being adverse to them the judgment was vitiated on account of their non-participation – Held: High Court had not by itself directed initiation of investigation nor did it direct registration of an FIR – High Court had directed respondents to take steps in light of their*
- D *reports, and action outlined in the affidavit, “to its logical end” – The material on record before the High Court in the form of inspection report and further materials including the Divisional Commissioner’s affidavit, showed irregularities of a severe nature – The constructions, according to the reports, were sub-standard in respect of 100 such houses, so severe that the units were unusable*
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– *The main objective of providing housing to 1206 eligible and deserving families remained unfulfilled despite expenditure of substantial amounts – In the circumstances, the argument of the appellants that they ought to have been heard even before action was initiated, does not commend to this Court; it is not sound – There were materials suggesting serious irregularities – The government allowed the Divisional Commissioner to affirm in the affidavit filed by him that criminal proceedings would be initiated – In such circumstances, the observations of the High Court to take the matter to the logical end have to be, therefore, construed in that context – Whether the allegations are true or whether the submissions on behalf of the petitioners justified their conduct or omission is something upon which the High Court could not and correctly did not comment – As far as the FIR itself was concerned, the police had no choice given the imperative nature of the law declared in Lalita Kumari where a preliminary enquiry ordinarily is to be eschewed whenever cognizable offences are reported – Thus, the impugned order not interfered with.*

Dismissing the appeals, the Court

HELD: 1. The first grievance of the appellants is that the reasoning for the impugned judgment was given and published long after its operative portion was pronounced. The operative portion of the judgment was pronounced on 27.06.2019. The reasons were published on 05.10.2020. It is clear that the High Court's order, against which an aggrieved litigant has a right to approach this court, under special leave jurisdiction, should contain reasons, without which it would be well-nigh impossible to exercise that right of seeking special leave, and in many cases, urged *ad-interim* and, possibly, *ex-parte* relief. In this case, the High Court should have furnished the reasons for the operative portion of its order. To that extent, the appellants' grievance is justified. This court is however reluctant to hold – having regard to the circumstances and the facts on the record - that the absence of reasons struck at the legitimacy of the impugned judgment. It caused prejudice no doubt, to the extent that the appellants were unable to furnish grounds on which their special leave petitions were based. However, that prejudice stood off-set with the interim orders of this court, which recognized the piquancy of the situation,

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- A and directed stay of further action against the appellants. In view of these special circumstances, the impugned order should not be set aside. However, the High Court's conduct in not furnishing reasons, either at the time of pronouncement of the operative part of the judgment, or before the commencement of the next working day (of the court) is strongly deprecated.
B [Para 25][827-E-H; 828-A-B]
 - 2.1 The appellant's next challenge to the impugned judgment is the ground that the public interest litigation was motivated, and that they were not parties. There is no doubt, that public interest litigation is meant to be entertained, for *bona fide* causes, and not to aid either misguided individuals in their quest for publicity, or for wreaking vendetta on public officials or institutions. It was urged that the said writ petitioners were councillors, and politically motivated. That fact is insufficient to allow the appeals. The cause espoused by the said individuals
- C was undoubtedly one of public interest, because it concerned housing for the economically disadvantaged sections of society, in such great numbers. The scheme was meant to benefit thousands of persons, and over a thousand housing units were to be constructed and allotted to the beneficiaries. In view of the inquiries and the reports, conducted and prepared during the proceedings, there could have been no manner of doubt that the initiation of public interest proceedings, were justified, having regard to the contents of such reports. In the present case, even if the public interest litigants' motives were ambiguous, or not immediately *bona fide*, that could not have led to dismissal of the
- D writ petition, before the High Court. The objection as to lack of standing of the public interest litigants, therefore, is without merit.
F [Paras 26, 27, 29][828-C, D-E; 830-G-H; 831-A-C]

Jasbhai Desai v. Roshan Kumar [1976] 3 SCR 58;
Environment and Consumer Protection Foundation v
Union of India & Ors. (2017) 16 SCC 780 – relied on.

2.2 The record thus discloses that two PILs had been filed containing somewhat similar allegations, i.e. the failure and neglect on the part of the municipal authorities of Naldurg in

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regard to completion of the scheme. The public interest litigants had alleged the utter mismanagement of IHSDP in terms of which as many as 1.05 lakh dwelling units were to be constructed and handed over to the eligible individuals. The scheme contemplated a substantial funding by the central government and the rest of the funding to be borne by the allottees. As against the targeted 1206 housing units to be constructed, 737 beneficiaries belonged to the reserved category and the rest to the general category. The cost of construction was estimated to be ₹16,08,91,396/-. The total cost was ₹20,69,04,514/-. Eventually, the material in the form of inspection reports and affidavits of MHADA as well as the Divisional Commissioner revealed that only 302 housing units were constructed in different localities in Naldurg, of which 202 could be used and 100 were in an unusable and dilapidated condition. The proceedings before the High Court led to the inspection as well as the verification of accounts as a consequence of which the affidavits filed on behalf of the authorities revealed that excess payments of ₹1,52,81,846/- and ₹90,97,771/- were made. [Para 30][831-C-G]

3. The main arguments of the appellants are that criminal proceedings have been initiated against them even though they were not heard in the public interest proceedings, and that being adverse to them the judgment is vitiated on account of their non-participation. A grievance is also made out that of the dwelling units constructed by the contractors, no deficiency was pointed out by the public agency, i.e. the municipality and that even civil action stood precluded because the contractual liability period had lapsed. The impugned judgment disposed of both the PILs. Essentially, the first direction issued by the High Court, i.e. to the Divisional Commissioner to take steps referred to in affidavit in reply in general and para 8 in particular "*to its logical end as expeditiously as possible*" appears to be the rub in this case inasmuch as the appellants grouse is that it has led to lodging of an FIR. The affidavit recounted the objections of the IHSDP scheme and indicated the state of affairs with respect to the completed dwelling units, i.e. 302 houses. The affidavit cited the report dated 20.04.2019 and the steps recommended in the meeting of the Committee on 22.04.2019. [Paras 31, 32] [831-G-H; 832-A-D]

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- A 4.1 It is quite evident that the High Court did not by itself direct initiation of investigation nor did it direct registration of an FIR. The Divisional Commissioner had deposed those instructions had been given to take such steps. The High Court, therefore, ordered that those steps be taken to their logical end.
- B Whilst the reasoning for the impugned judgment was undoubtedly published after a long and unexplained delay, the effect of its operative directions were not to *per se* prosecute. It merely required the Divisional Commissioner to take the necessary steps, which were not limited to the launching of criminal prosecution but also taking steps towards reconstruction of the flats for the intended beneficiaries. It is further a matter of record that when the FIR was lodged in December 2019, all the present appellants – all of whom were not before the High Court – were named as accused. Another important fact which requires to be noticed is that several of these appellants had approached this Court on the ground that their applications for anticipatory bail had been rejected; they filed special leave petitions along with applications to file for special leave since they were not parties in the High Court. Those proceedings were entertained and this court had granted interim orders protecting them from coercive action. [Paras 33, 34][833-C-G]
- E 4.2 The material on record before the High Court in the form of inspection report dated 20.04.2019 and further materials including the Divisional Commissioner's affidavit, showed irregularities of a severe nature. The constructions, according to the reports, were sub-standard – in respect of 100 such houses, so severe that the units were unusable. The main objective of providing housing to 1206 eligible and deserving families remains unfulfilled despite expenditure of substantial amounts. In the circumstances, the argument of the appellants that they ought to have been heard even before action was initiated, does not commend to this Court; it is not sound. [Para 35][833-G-H; 834-A-B]
- H 5. In the present case, there were materials suggesting serious irregularities. The government allowed the Divisional Commissioner to affirm in the affidavit filed by him on 12.06.2019 that criminal proceedings would be initiated. In such circumstances, the observations of the High Court to take the

matter to the logical end have to be, therefore, construed in that context. Whether the allegations are true or whether the submissions on behalf of the petitioners justified their conduct or omission is something upon which the High Court could not, and in the opinion of this court correctly, did not comment. As far as the FIR itself was concerned, the police had no choice given the imperative nature of the law declared in *Lalita Kumari* where a preliminary enquiry ordinarily is to be eschewed whenever cognizable offences are reported. [Para 36]834-G-H; 835-A-B]

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*Lalita Kumari v. Govt. of UP (2014) 2 SCC 1 : [2013]
14 SCR 713 – followed.*

Balaji Baliram Mupade & Anr v. The State of Maharashtra & Ors. AIR 2020 SC 5758 Oriental Insurance Co. Ltd. v. Zaixhu Xie & Ors. (2020) SCC Online SC 1145; Sudipta Chakrobarty & Anr. v. Ranaghat S.D. Hospital & Ors. AIR 2021 SC 3344; State of U.P. & Anr. v. Satya Narain Kapoor (dead) by Lrs. & Ors (2004) 8 SCC 630; State of Uttaranchal v. Balwant Singh Chaufal & Ors (2010) 3 SCC 402 : [2010] 1 SCR 678 – referred to.

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Case Law Reference

(2004) 8 SCC 630	referred to	Para 14	E
[2010] 1 SCR 678	referred to	Para 15	
[1976] 3 SCR 58	relied on	Para 27	
(2017) 16 SCC 780	relied on	Para 28	
[2013] 14 SCR 713	followed	Para 35	F

CIVIL APPELLATE JURISDICTION: Civil Appeal No.695 of 2021.

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From the Judgment and Order dated 27.06.2019 of the High Court of Judicature at Bombay Bench at Aurangabad in Public Interest Litigation No.70 of 2014.

With

Civil appeal nos. 696, 1157, 700, 699, 698, 1158, 697, 1156, 604, 605 and 603 of 2021.

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- A Shyam Divan, Chander Uday Singh, Sr. Advs., Nishant Ramakantrao Katneshwarkar, Shivaji M. Jadhav, Anish R. Shah, Samir Patel, Brij Kishor Sah, Ms. Qurratulain, Aditya S. Jadhav, Nicholas Choudhury, Shiv Ram Pandey, Ms. Amandeep Kaur, Dr. R. R. Deshpande, Abhay Anil Anturkar, M/s Dr. R. R. Deshpande And Associates, Pai Amit, Rahul Chitnis, Sachin Patil, Aaditya A. Pande, B Geo Joseph, Sanjay Upadhyay, Mrs. Mayuri Raghuvanshi, Vyom Raghuvanshi, Salik Shafique, Shrikishan Shinde, Kazi Sangay Thupden, Viddusshi Shandilya, Chirag M. Shroff, Ms. Abhilasha Bharti, Sushant Dogra, Rahat Bansal, Ms. Pankhuri Bhardwaj, Advs. for the Appearing Parties.
- C The Judgment of the Court was delivered by
S. RAVINDRA BHAT, J.
- D 1. Special leave granted in all the petitions. The appeals were heard with consent of counsel appearing for the parties to these proceedings.
- E 2. The grievance of the appellants in these batch of appeals is with respect to a common judgment of the Aurangabad Bench of the Bombay High Court.¹ In the criminal public interest litigation, the respondents (original writ petitioners, hereafter “PIL petitioners”) sought directions to the Union of India, the State of Maharashtra, the Maharashtra Housing and Urban Development Authority (MHADA) and state officials to initiate criminal proceedings against the responsible officers and office bearers of Municipal Council, Naldurg (hereafter “municipality”) and concerned contractors for misappropriation of government funds in implementation of the housing scheme in the municipality. Some appellants had filed criminal petitions, opposing the criminal proceedings, which were disposed of.
- F 3. The PIL petitioners claimed to be social activists and former Councillors of the municipality who were involved in social activities, reforms and reconstruction of the society which included running a library (Lokmanya Book Library at Naldurg). They had also organized various camps like literacy camp for illiterate people, chalice (Panpoi) at public places during summer season, etc.

H ¹ dated 27.06.2019 in Criminal Public Interest Litigation No. 6/ 2018, with Public Interest Litigation No. 70/2014 and Criminal Application Nos. 2075, 2091 and 2107/ 2019.

4. The Union of India implemented the Integrated Housing and Slum Development Programme (IHSDP), through the State Government, under the “Jawaharlal Nehru National Urban Renewal Mission” (hereafter “the Mission”) for providing basic services to the urban poor including security of tenure of affordable prices, improved housing, water supply, sanitation and ensuring delivery through convergence of other existing universal services of the government for education, health and social security. The Mission also aimed to ensure that the urban poor were provided housing. The scheme applies to all cities/towns under the Mission. The guidelines for Basic Services to the Urban Poor (BSUP) and IHSDP were issued in December 2005; pursuant to which, the state government appointed urban local bodies as nodal agencies. In this case, MHADA is the nodal agency.

5. In terms of a government resolution dated 03.02.2009, the construction cost for each dwelling house unit was ₹80,000/- . The minimum floor area of such dwelling house was to be 25 sq. metres at a minimum, with two rooms, a kitchen and a toilet bathroom. The funds for implementing the said scheme were in the ratio of 80:20 (between the Central Government and the State Government-Urban Local Bodies). Further, beneficiaries under the scheme had to contribute a minimum 12%, and in case of reserved category the contribution was to be 10%. The nodal agency designated for implementation of the said scheme was responsible for inviting proposals from urban local bodies and thus, Respondent Nos. 3 and 6 – which are the nodal agencies - were responsible for and had control over implementation of the scheme within the state government. Naldurg in Osmanabad district was included under the scheme of IHSDP for providing houses to the poor people.

6. Pursuant to the scheme, a detailed project report was prepared, in terms of which 1206 houses for the poor were to be constructed. 737 beneficiaries belonging to reserved category and 469 from general category were identified as beneficiaries of the project. The cost of each house was fixed at ₹1,00,551/-; the total cost of the project was fixed at ₹20,69,04,514/-, of which cost for construction was ₹16,08,91,396/- and ₹4,11,17,000/- was the cost towards infrastructure. The municipality published a tender notice². The estimated cost of the work in the tender was ₹15,08,91,396/- and the time stipulated for completion of construction

² In the “Daily Sakal”, in its issue dated 26.08.2008.

- A of 1206 dwelling units was 18 calendar months, including the monsoon season. Though the last date for opening of tender bids was 22.09.2008, the municipality did not wait till that date and the offers were placed before its special general meeting held on 20.09.2008. Respondent No. 8's tender- being the lowest- was to be accepted and work order was to be issued in its favour after accepting their security deposit. On 22.09.2008
 - B formalities for execution of lease agreement between the state and the municipality, leasing lands at Survey Nos. 29 and 236 (measuring 20 hectares and 20 ares) for implementation of the scheme, were completed. The municipality issued the work order on 07.10.2008 and the same day an agreement was entered into between the municipality and the private
 - C respondent; the municipality released 12% of the total cost, i.e., ₹1,44,00,000/- as mobilization advance to Respondent No. 9 on 20.12. 2008.
7. The PIL petitioners alleged that though in terms of the contract, Respondent No. 9 had to construct 1206 house units within 18 months, as on the date of filing of the litigation it had constructed only 30 units.
- D They alleged that the quality of work carried out by Respondent No. 9 was very poor and the officials (i.e. MHADA, municipality, etc.) did not inspect or supervise the work, and did not submit the quarterly reports as required under the scheme. While MHADA had issued notices to the municipality from time to time directing it to submit quarterly progress report, the latter had not complied. Contrary to the directions of the central and state governments, the municipality diverted the funds meant for the said development project, for other works. It was submitted that despite the requirement that the work of infrastructure be carried out only after completion of 50% of construction of dwelling house units, Respondent No. 7 straightaway allotted the work of infrastructure in
 - E favour of Respondent No. 10 prior to achieving such a stage of construction and without inviting any intenders from the contractors authorized by MHADA. Various irregularities, such as higher fixation of price of dwelling house, i.e., ₹1,00,551/- instead of ₹80,000/-, failure to complete the project, and various other omissions were alleged. The
 - F PIL petitioners also relied on reports dated 04.11.2018 and 15.03.2012, respectively.

8. After considering the pleadings of the PIL petitioners, and the official respondents, the court, on 02.04.2019 issued the following directions:

- H *"The Divisional Commissioner, Aurangabad Division, Aurangabad, shall convene a meeting of Collector,*

Osmanabad and other officers including technical persons from MHADA, who is acting as a Nodal agency, the Chief Officer of the Municipal Council, Naldurg, within a period of four weeks from today and shall appraise this Court by filing an affidavit as regards the steps he propose to take in the matter of implementing the scheme and in question; in addition to looking into the irregularities and action to be initiated against the defaulters. Let this exercise be completed by June 17, 2019, by filing an affidavit by the Divisional Commissioner, Aurangabad Division, Aurangabad.”.

9. Pursuant to the above order, the Divisional Commissioner filed his affidavit *inter alia* stating that for proper action, by order dated 05.04.2019, he had constituted a committee under the chairmanship of the Chief Officer of the MHADA, along with the other four members³ for spot inspection and to submit a status report regarding implementation of the scheme and other related information. He deposed also that the said committee submitted its report on 20.04.2019 listing several illegalities and irregularities connected with the implementation of the scheme, and proposed remedial action. It was stated that the committee suggested that since both the schemes i.e., IHSDP and Basic Services to Urban Poor had ended on 31.03.2017, the unallotted houses constructed under the said scheme may be made available under the Pradhan Mantri Awas Yojna (PMAY) in view of the G.R. dated 25.09.2019. It was further suggested that-

- a) 155 houses constructed by the municipality required minor repairs, after such repairs they could be allotted to the original eligible beneficiaries under the provisions of G.R. dated 25.09.2018.
- b) 45 houses needing major repairs to be allotted to eligible beneficiaries under the said G.R. as per the scheme.
- c) 100 houses constructed at Vasant Nagar that could not be repaired were to be demolished. After preparing the new report under the PMAY, houses were to be constructed and allotted to the eligible beneficiaries under the scheme.

³ a) Regional Deputy Director Municipal Administration, Officer of Divisional Commissioner, Aurangabad, b)Executive Engineer, MHADA Aurangabad, c) Assistant Director, Reconciliation, Office of Divisional Commissioner, Aurangabad, d) Accounts Officer, Municipal Administration, Office of Divisional Commissioner, Aurangabad

- A 10. The affidavit also referred to a meeting of officials on 22.04.2019 conducted pursuant to directions of the court, wherein the committee's report was considered, after which the Divisional Commissioner issued the following directions:
- B i) The Collector, Osmanabad to conduct the technical valuation of the work done under her supervision and submit a report regarding work construction of houses and basic amenities along with quality. For this purpose, the Commissioner constituted a committee chaired by the Executive Engineer, MHADA under the overall supervision of the Collector, Osmanabad.
- C ii) If financial irregularities had occurred, amounts were to be recovered from the person(s) responsible for it.
- iii) After receipt of the technical committee's report, action against those responsible for irregularities was to be taken as per law.
- D 11. The Collector, Osmanabad submitted her report dated 03.06.2019, which stated that directions were issued to the Chief Officer of the municipality to recover the excess amount paid to the contractors, to black list them for Government work, and also to initiate criminal prosecution against those who committed irregularities. The Chief Officer of the municipality was also directed to allot houses that could be repaired, in terms of prescribed procedure, under the PMAY and report compliance.
- E 12. After taking note of another affidavit of the Commissioner's dated 12.06.2019, the High Court disposed of the public interest litigations on 27.06.2019 directing the respondents to take steps in light of the reports, and action outlined in paragraph 8 of the affidavit, "*to its logical end*" as expeditiously as possible. The Divisional Commissioner of Aurangabad was also to decide whether the scheme could be completed "*by taking recourse to any other housing scheme*" floated by the central or state government. The court held that there was no reason for it to entertain G any criminal applications, and accordingly rejected them.
- F *Contentions of parties*
- G 13. Mr. Shyam Divan, senior counsel for one of the appellants, argued that the operative part of the impugned judgment was pronounced on 27.06.2019; however, the reasons were uploaded on 05.10.2020 after H

a report was called from the Registrar (Judicial) of the High Court at its Aurangabad Bench. The time gap between the pronouncement and the operative part of the reasons is a year and over three months. In view of the recent judgments of this Hon'ble Court in *Balaji Baliram Mupade & Anr v. The State of Maharashtra & Ors.*⁴, *Oriental Insurance Co. Ltd. v. Zaixhu Xie & Ors.*⁵ and *Sudipta Chakrobarty & Anr. v. Ranaghat S.D. Hospital & Ors.*⁶, the impugned order requires to be set aside and the matter be remanded back to the High Court for fresh consideration, by further direction for addition of the appellants as respondents.

14. It was argued by counsel for the appellants, that the High Court fell into error in failing to notice that neither were the appellants party respondents in the Public Interest Litigations, nor were they heard. That fact *ipso facto* is sufficient to set aside the impugned order since it is in violation of the principles of natural justice. Had the appellants been heard, they would have showed the High Court that they were in no way concerned with the alleged offence. In this regard, reliance is placed on *State of U.P. & Anr. v. Satya Narain Kapoor (dead) by Lrs. & Ors*⁷. Counsel emphasized that the lack of opportunity to be heard, has resulted in grave prejudice to the appellants as the respondents have construed the impugned judgment as directions, requiring them to initiate criminal proceedings, which have in fact been acted upon. It was urged that some of the appellants were constrained to seek anticipatory bail, which was refused, leading them to approach this court. In this regard, learned counsel were at pains to argue that the first information report (FIR) was filed on 02.12.2019 as a direct consequence of orders of the court made on 16.11.2019 and 21.11.2019.

15. It was argued that the petitions which led to the impugned judgment are an instance of misuse of public interest litigation. It was highlighted that the petitioners before the High Court were politically motivated individuals. In fact, not a single beneficiary from the housing scheme came forward to allege illegalities in the scheme. Therefore, filing of a criminal public interest litigation, contempt petition etc. clearly showed that such legal action was motivated by *mala-fides* and were

⁴ AIR 2020 SC 5758

⁵ (2020) SCC Online SC 1145

⁶ AIR 2021 SC 3344

⁷ (2004) 8 SCC 630

A politically malicious. Therefore, it was incumbent upon the High Court to follow the guidelines laid down by this court in the case of *State of Uttarakhand v. Balwant Singh Chauhan & Ors*⁸.

16. It is urged that the appellants cannot be accused of committing any illegality, since clause 20 of the tender document stipulates the defect liability period to be 60 months, for civil work. The public interest litigations were filed after the defect liability period, which clearly pointed to ulterior motive of the PIL petitioners. Counsel underlined the fact that neither the municipality, nor the government had initiated any legal or civil action for recovery of any amounts, from the appellants. In these circumstances,
- C the impugned judgment, inasmuch as it gave undue credence to a report furnished to the Commissioner, is in error of law.

17. The state and MHADA argue that an Audit Committee was formed to audit the funds released for BSUP/IHSDP scheme pursuant to its inspection under the Mission. The Report of the committee was submitted on 19.11.2014. It stated that funds were released by MHADA/ state government to the municipality for the said scheme on 17.09.2014 and 18.09.2014. A total of ₹9,29,17,000/- was made available to the municipality through Aurangabad Board by MHADA for the IHSDP Program. Of this fund, a payment of ₹1,44,00,000/- was given to the Respondent No.11 towards mobilisation advance and the entire amount E was later recovered from the RA Bills.

18. It was highlighted that out of the fund of ₹9,29,17,000/- received from the central government, recovery from beneficiaries and interest accrued aggregated to ₹10,25,62,318/-. The municipal council spent ₹9,43,33,553/- and the balance left was ₹82,28,765/-. In terms of the F standards set by the central government, expenditures were to be made as per the share of beneficiaries and share of the council. However, the entire amount was spent from the funds received from the central and state government. It was found that for the construction of 302 tenements, ₹3,03,51,000/- (₹1,00,500 each) was to be spent in total but actually ₹5,75,47,141/- was spent. The recovery from beneficiaries was to be G made; yet recoveries were made only from 40 beneficiaries.

19. It was submitted that during spot visits (on 17 and 18 September 2014) of the tenements, it was found that construction had long since stopped. It was also found that the municipality had undertaken the

H ⁸(2010) 3 SCC 402

construction of 302 tenements in five slum areas. The implementation period ended on 31.03.2015 and it was not possible to meet the deadlines. The external works were complete. The committee advised the municipality to allot the tenements immediately because of loss due to lack of security and non-allotment damage.

20. The respondents submitted that though work had stopped for over many years, yet amounts were withdrawn from these accounts throughout the years, leading to the inference that funds were utilized elsewhere. Further, submitted counsel, it was found in the spot inspection and joint measurement from a period of 02.05.2019 to 04.05.2019, that out of 1206 tenements, 302 were complete houses and 26 were incomplete houses (in Vasant Nagar external plaster for 8 tenements was not done). The DPR consisted of cement concrete road, gutters, water supply, electrification and was inspected in terms of the provisions and actual work done. The inspection was done using core cutters, digging, etc. at various places. It was found that thickness of roads was less than quoted in the estimates and bill books. In Shivkarwadi, excess work was done beyond the DPR map, the payment for which was already made. The layer of seal coat was not found. Essential connections were not made to external electrification. Water pipelines laid down in Vasant Nagar, Filter and Shivkarwadi colonies were not connected with the OHR, and became useless. The thickness of slabs was uneven at some places. It was found that a compliance report was also not made available for the recommendations made from time to time by M/s. SGS India Private Ltd, Hyderabad, a third party, for inspection.

21. It was urged that valuation of work was made in the Inquiry Report after necessary inspection and joint measurements. There was a discrepancy between the amount paid to the contractor, tenement and external amenities wise as per the Measurement Book, and the amount calculated as per actual site condition during the joint measurement on 02.05.2019 to 04.05.2019. The observations made by the technical team, showed that the municipal council made an excess payment of ₹2,43,79,017/- to the contractors as compared to the work done. Out of this, an excess amount of ₹1,52,81,246/- was allegedly paid to M/s. Minar Constructions, Latur and ₹90,97,771/-, allegedly to Shri Sanjay Sudhakar Rajhans, Latur.

22. It was argued that the report stated that in terms of the government resolution dated 25.06.2007 for IHSDP, the municipality

- A implements the project, and is tasked with the responsibility to prepare project reports, execute the tripartite MOA with DPR and to select the beneficiary. The municipality also hands over possession and discharges all responsibilities. M/s. Saya Engineers, Latur was appointed as the Project Management Consultant (PMC) and entrusted with recording works done in Measurement Book, verification of the day-to-day work and giving technical advice. There was dereliction of duties by public officials and the PMC, by not paying the contractors for the actual work done. The City Engineer too was responsible for verifying the measurements made by the PMC and had to attest it, but failed to do so in this case. The Chief Officer of the municipality, was also responsible
- B as he failed to record his opinion before clearing the bills. The accountant's signature was not found on the bills in the Measurement Books along with the necessary endorsement. The committee suggested that completed houses be allotted to the original eligible beneficiaries under the PMAY scheme, houses which cannot be repaired be demolished, and a new DPR under the PMAY scheme be prepared for construction of houses.

23. It is urged that in the meeting held on 22.04.2019 (comprising of the Collector Osmanabad, Chief Officer MHADA, Chief Officer Municipal Council Naldurg and others) several actions were proposed, such as technical valuation of the work done to ascertain if there were any financial irregularities; determining amount to be recovered from the responsible person(s) and action to be taken against the person(s) found responsible for irregularities; among others. In light of the report dated 03.06.2019 from the technical team, the Collector Osmanabad directed the Chief Officer, Municipal Council, Naldurg, to recover the excess amount paid to the contractors, and blacklist them from Government work, to initiate criminal prosecution against the person(s) who had committed the irregularities, and lastly allot the repairable houses as per PMAY. A compliance report was to be submitted. The Divisional Commissioner, Aurangabad by his letter dated 11.06.2019 directed the Collector to take steps for repairing houses which were in repairable condition to be allotted to the eligible beneficiaries under PMAY and to demolish houses which are not in repairable condition. A new DPR plan was to be prepared under PMAY scheme for construction of houses and their allotment to eligible persons. Counsel submitted that these facts are a matter of record, and cannot be disputed. In light of these materials, H the authorities lodged the FIR, which led to initiation of criminal

proceedings. No doubt, it would appear that those proceedings were prompted by the judgment, and the initiation of contempt proceedings. Yet, the question of quashing the FIR does not arise, because it is based on allegations of serious illegalities, that cannot be overlooked.

Analysis and conclusions

24. The appellants who have approached this court, were all involved as persons or authorized individuals, acting on behalf of entities that were awarded the contract of construction and completion of the housing units, pursuant to the scheme, which was to be implemented within 60 months. The spot inspection report dated 24.05.2019, alleges that the appellants had not performed their task. In the case of the project consultant - who is one of the appellants - it was of not recording the works done in the Measurement Book properly, and causing excess payment to the contractors. PIL No. 70/2014 was filed against the project contractor, officers and office bearers of Municipal Council. During the pendency of that petition, criminal PIL No. 6/2018 was filed by the two Municipal Councillors against the contractor, officers and office bearers. The High Court disposed of the two public interest litigations and directed the Divisional Commissioner, Aurangabad to take steps in the backdrop of various reports submitted to him, as referred to in the Affidavit-in-Reply dated 12.06.2019 filed by him.

25. The first grievance of the appellants is that the reasoning for the impugned judgment was given and published long after its operative portion was pronounced. The operative portion of the judgment was pronounced on 27.06.2019. The reasons were published on 05.10.2020. It is clear that the High Court's order, against which an aggrieved litigant has a right to approach this court, under special leave jurisdiction, should contain reasons, without which it would be well-nigh impossible to exercise that right of seeking special leave, and in many cases, urged *ad-interim* and, possibly, *ex-parte* relief. The appellants' reliance on *Balaji Baliram Mupade & Anr* (supra), *Oriental Insurance Co. Ltd.* (supra) and *Sudipta Chakrobarty* (supra) and the other two judgments, cited earlier, is warranted. In this case, the High Court incontestably should have furnished the reasons for the operative portion of its order. To that extent, the appellants' grievance is justified. This court is however reluctant to hold – having regard to the circumstances and the facts on the record - that the absence of reasons struck at the legitimacy of the impugned judgment. It caused prejudice no doubt, to the extent that the

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- A appellants were unable to furnish grounds on which their special leave petitions were based. However, that prejudice stood off-set with the interim orders of this court, which recognized the piquancy of the situation, and directed stay of further action against the appellants. In view of these special circumstances, the court is of the opinion that the impugned order should not be set aside. However, the High Court's conduct in not furnishing reasons, either at the time of pronouncement of the operative part of the judgment, or before the commencement of the next working day (of the court) is strongly deprecated.

26. The appellant's next challenge to the impugned judgment is

- C the ground that the public interest litigation was motivated, and that they were not parties. It is urged that consequently the High Court should not have issued the impugned directions. Reliance is placed on decisions of this court, to the effect that so called public interest litigations, motivated by malice and personal ill will, should not be entertained.

27. There is no doubt, that public interest litigation is meant to be

- D entertained, for *bona fide* causes, and not to aid either misguided individuals in their quest for publicity, or for wreaking vendetta on public officials or institutions. This court had (undoubtedly before the era of public interest litigation) emphasized the need to keep out "*busybodies*" who "*have no interest in matters of public interest*" in *Jasbhai Desai v. Roshan Kumar*⁹ and stated, about such individuals, that

"They masquerade as crusaders for justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spooking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold."

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G 28. In *Environment and Consumer Protection Foundation v Union of India & Ors.*¹⁰ this court had underlined the purpose of public interest proceedings, and observed as follows:

H ⁹ (1976) 3 SCR 58
¹⁰ (2017) 16 SCC 780.

“29. *Why are the Action Plan and these directions necessary?* A
We seem to be forgetting the power of Public Interest Litigation
and therefore need to remind ourselves, from time to time, of
its efficacy in providing social justice. Many years ago, this
Court noted in People’s Union for Democratic Rights v Union
of India (1982) 3 SCC 235 that :(SCC p. 240, para 2):

“2...*Public interest litigation is brought before the court not*
for the purpose of enforcing the right of one individual against
another as happens in the case of ordinary litigation, but it is
intended to promote and vindicate public interest which
demands that violations of constitutional or legal rights of
large numbers of people who are poor, ignorant or in a
socially or economically disadvantaged position should not
go unnoticed and unredressed. That would be destructive of
the rule of law which forms one of the essential elements of
public interest in any democratic form of Government.”

A little later in the judgment, it was said: (SCC pp.242-43, D
para 3)

“3....*Millions of persons belonging to the deprived and*
vulnerable sections of humanity are looking to the courts for
improving their life conditions and making basic human rights
meaningful for them. They have been crying for justice but
their cries have so far been in the wilderness. They have been
suffering injustice silently with the patience of a rock, without
the strength even to shed any tears.”

30. *The advantage of public interest litigation is not only to*
empower the economically weaker sections of society but also
to empower those suffering from social disabilities that may
not necessarily of their making. The widows of Vrindavan
(and indeed in other ashrams) quite clearly fall in this category
of a socially disadvantaged class of our society.

31. *Placing empowerment in perspective, this Court noted in*
State of Uttaranchal v Balwant Singh Chaufal (2010) 3 SCC
402 that (at SCC p. 427, para 43) the first phase of public
interest litigation concerned itself with primarily with the
protection of the fundamental rights under Article 21 of the
Constitution of “the marginalized groups and sections of the

- A *society who because of extreme poverty, illiteracy and ignorance cannot approach this Court or the High Courts.” We may add - the socially underprivileged groups. These are the people who have no real access to justice and in that sense are voiceless, and these are the people who need to be empowered and whose cause needs to be championed by those who advocate social justice for the disadvantaged.*
- B *32. This recognition formed the basis of the decision of this Court in Delhi Jal Board v National Campaign for Dignity & Rights of Sewerage & Allied Workers (2011) 8 SCC 568 wherein providing succour to the deprived sections of society was recognized as a “constitutional duty” of this Court. Referring to several judgments delivered by this Court, it was observed: (SCC p. 590, para 31)*
- C *“31. These judgments are a complete answer to the appellant’s objection to the maintainability of the writ petition filed by Respondent 1. What the High Court has done by entertaining the writ petition and issuing directions for protection of the persons employed to do work relating to sewage operations is part of its obligation to do justice to the disadvantaged and poor sections of the society. We may add that the superior courts will be failing in their constitutional duty if they decline to entertain petitions filed by genuine social groups, NGOs and social workers for espousing the cause of those who are deprived of the basic rights available to every human being, what to say of fundamental rights guaranteed under the Constitution. It is the duty of the judicial constituent of the State like its political and executive constituents to protect the rights of every citizen and every individual and ensure that everyone is able to live with dignity.”*
- D *29. In the present case, the appellants urge this court to interfere with the impugned judgment on the ground that the writ petitioners who approached the High Court/at whose behest the public interest proceedings were initiated, and the impugned directions issued, had personal motive. It was urged that the said writ petitioners were councillors, and politically motivated. In the opinion of this court, that fact is insufficient to allow the appeals. The cause espoused by the said individuals was undoubtedly one of public interest, because it concerned housing for the*
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economically disadvantaged sections of society, in such great numbers. The scheme was meant to benefit thousands of persons, and over a thousand housing units were to be constructed and allotted to the beneficiaries. In view of the inquiries and the reports, conducted and prepared during the proceedings, there could have been no manner of doubt that the initiation of public interest proceedings, were justified, having regard to the contents of such reports. In the present case, even if the public interest litigants' motives were ambiguous, or not immediately *bona fide*, that could not have led to dismissal of the writ petition, before the High Court. The objection as to lack of standing of the public interest litigants, therefore, is without merit.

30. The record thus discloses that two PILs had been filed containing somewhat similar allegations, i.e. the failure and neglect on the part of the municipal authorities of Naldurg in regard to completion of the scheme. The public interest litigants had alleged the utter mismanagement of IHSDP in terms of which as many as 1.05 lakh dwelling units were to be constructed and handed over to the eligible individuals. As noted previously, the scheme contemplated a substantial funding by the central government and the rest of the funding to be borne by the allottees. As against the targeted 1206 housing units to be constructed, 737 beneficiaries belonged to the reserved category and the rest to the general category. The cost of construction was estimated to be ₹16,08,91,396/- (Rupees Sixteen Crores Eight Lakhs Ninety One Thousand Three Hundred Ninety Six only). The total cost was ₹20,69,04,514/- (Rupees Twenty Crores Sixty Nine Lakhs Four Thousand Five Hundred Fourteen only). Eventually, the material in the form of inspection reports and affidavits of MHADA as well as the Divisional Commissioner revealed that only 302 housing units were constructed in different localities in Naldurg, of which 202 could be used and 100 were in an unusable and dilapidated condition. The proceedings before the High Court led to the inspection as well as the verification of accounts as a consequence of which the affidavits filed on behalf of the authorities revealed that excess payments of ₹1,52,81,846/- (Rupees One Crore Fifty Two Lakhs Eighty One Thousand Eight Hundred Forty Six only) and ₹90,97,771/- (Rupees Ninety Lakhs Ninety Seven Thousand Seven Hundred Seventy One only) were made.

31. The main arguments of the appellants are that criminal proceedings have been initiated against them even though they were not

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- A heard in the public interest proceedings, and that being adverse to them the judgment is vitiated on account of their non-participation. A grievance is also made out that of the dwelling units constructed by the contractors, no deficiency was pointed out by the public agency, i.e. the municipality and that even civil action stood precluded because the contractual liability period had lapsed.
- B 32. The impugned judgment disposed of both the PILs. Essentially, the first direction issued by the High Court, i.e. to the Divisional Commissioner to take steps referred to in affidavit in reply in general and para 8 in particular "*to its logical end as expeditiously as possible*"
- C appears to be the rub in this case inasmuch as the appellants grouse is that it has led to lodging of an FIR. The affidavit recounted the objections of the IHSDP scheme and indicated the state of affairs with respect to the completed dwelling units, i.e. 302 houses. The affidavit cited the report dated 20.04.2019 and the steps recommended in the meeting of the Committee on 22.04.2019. The Divisional Commissioner further stated
- D as follows:
- "7. I say and submit that after the receipt of the report from the technical committee constituted by the deponent, the Collector Osmanabad has submitted her report dated 03/06/2019, wherein she stated that direction has been issued to the Chief Officer of the Municipal Council Naldurg by her letter dated 03/06/2019.*
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- I) To recover the excess amount paid to the contractors from the concern contractors and further directed to black list that contractors for Govt. work.*
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- II) Further directions has been issued to the Chief Officer Municipal Council Naldurg, to initiate action of criminal prosecution against the persons who have committed the irregularities.*
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- III) Further direction has been issued to the effect that the houses which are in repairable condition shall be allotted as per the procedure laid down under the PMAY and the report of the compliance shall be submitted. The copy of the report dated 03/06/2019 submitted by the Collector Osmanabad is annexed herewith and marked as EXHIBIT "R-5".*
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8. I say and submit that in the light of above facts and circumstances the deponent vide its letter dated 11/06/2019 directed the Collector Osmanabad to take steps for repairing the houses which are in repairable condition and same should be allotted to the eligible persons under PMAY scheme. That houses which are not in repairable condition, by demolishing the same new DPR plan should be prepared under the PMAY scheme and the said houses should be allotted to the eligible person under the said scheme. Further directions has also been issued for lodging criminal prosecution against the persons responsible for the irregularities in implementation of the scheme. The copy of the letter dated 11/06/2019 is annexed herewith and marked as EXHIBIT "R-6". Hence this affidavit." A B C

33. It is quite evident that the High Court did not by itself direct initiation of investigation nor did it direct registration of an FIR. The Divisional Commissioner had deposed those instructions had been given to take such steps. The High Court, therefore, ordered that those steps be taken to their logical end. D

34. In the opinion of the court, whilst the reasoning for the impugned judgment was undoubtedly published after a long and unexplained delay, the effect of its operative directions were not to *per se* prosecute. It merely required the Divisional Commissioner to take the necessary steps, which were not limited to the launching of criminal prosecution but also taking steps towards reconstruction of the flats for the intended beneficiaries. It is further a matter of record that when the FIR was lodged in December 2019, all the present appellants – all of whom were not before the High Court - were named as accused. Another important fact which requires to be noticed is that several of these appellants had approached this Court on the ground that their applications for anticipatory bail had been rejected; they filed special leave petitions along with applications to file for special leave since they were not parties in the High Court. Those proceedings were entertained and this court had granted interim orders protecting them from coercive action. E F G

35. The material on record before the High Court in the form of inspection report dated 20.04.2019 and further materials including the Divisional Commissioner's affidavit, showed irregularities of a severe nature. The constructions, according to the reports, were sub-standard H

- A – in respect of 100 such houses, so severe that the units were unusable. The main objective of providing housing to 1206 eligible and deserving families remains unfulfilled despite expenditure of substantial amounts. In the circumstances, the argument of the appellants that they ought to have been heard even before action was initiated, does not commend to this Court; it is not sound. The five Judge Bench decision of this court in *B* *Lalita Kumari v. Govt. of UP*¹¹ is clear in that if there are allegations with respect to commission of cognizable offences, brought to the notice of the police authorities, ordinarily an FIR has to be lodged. The Court held that:
- C “*119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.*”
- G 36. In the present case, there were materials suggesting serious irregularities. The government allowed the Divisional Commissioner to affirm in the affidavit filed by him on 12.06.2019 that criminal proceedings would be initiated. In such circumstances, the observations of the High Court to take the matter to the logical end have to be, therefore, construed

H ¹¹ (2014) 2 SCC 1

in that context. Whether the allegations are true or whether the submissions on behalf of the petitioners justified their conduct or omission is something upon which the High Court could not, and in the opinion of this court correctly, did not comment. As far as the FIR itself was concerned, the police had no choice given the imperative nature of the law declared in *Lalita Kumari (supra)* where a preliminary enquiry ordinarily is to be eschewed whenever cognizable offences are reported.

37. In light of the above findings, this court is of the opinion that the appeals have to fail. However, it is made clear that the observations made by the High Court or the observations of this court, in the course of this judgment shall not be construed as precluding any argument or defences, the merits of any argument or defence that may be taken by the appellants in the course of the criminal proceedings. The appeals are accordingly dismissed but without any order on costs.

Devika Gujral

Appeals dismissed.