

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.167 OF 2012

Shri Satish Bhaurao Shinde	... Petitioner
v/s	
The State of Maharashtra and others	... Respondents

Mr S.M. Oak with Mr Sagar Joshi for Petitioner.
Mrs M.P. Thakur, AGP for Respondent No.1 – State.
Mr Sanjeev J. Rairkar with Mr Nikhil R. Vidwans for Respondent No.2.
Mr Shailesh Chavan i/b Mr R.S. Jadhav for Respondent No.3.

**CORAM: MOHIT S. SHAH, C.J. &
B.P. COLABAWALLA, J.**

DATE : 10 FEBRUARY 2015

P.C.:

Zilla Parishad, District Pune had sanctioned in 2007-2008 a water supply scheme for Village Dhakale, at the cost of Rs.38,18,567/- . The implementation of the scheme was entrusted to Dhakale Gram Panchayat (hereinafter referred to as the Gram Panchayat). The Gram Panchayat entered into a contract for providing the water supply scheme to a contractor to commence work but after doing some work, did not continue execution of the contract.

2. Since the work remained incomplete and the village did not get the benefit of water supply, the present PIL came to be filed in the year

2012. In response to the notice, affidavit in reply came to be filed on behalf of the State Government and also on behalf of the Zilla Parishad, District Pune. The stand of the said authorities is that it is the primary duty and responsibility of the Gram Panchayat to get the water supply implemented and ensure appropriate legal action against the contractor concerned for not having done tender work as per the specifications and terms and conditions of tender and also to recover the amounts paid to him. After indicating that the Gram Panchayat and the Committees are required to follow the guidelines and directives in respect of water supply schemes keeping in view the relevant Government Resolutions of the State Government, the State Government has made the following averments and submissions in their affidavit in reply :-

“If there is delay in the implementation of water supply scheme, the work of water supply scheme should be completed by the Zilla Parishad. The funds which are distributed to the Committee for the implementation of Water Supply Scheme should be taken back immediately by the Zilla Parishad and the Scheme should be completed. If the Committee avoids to return the funds, then a criminal offence should be registered to the police against the Committee members and a parallel proceedings for the recovery of funds should be initiated. While implementing the Scheme, Zilla Parishad should take an initiative for the formation of Village Water Supply and Sanitation Committee in the village. After completion of the Scheme, the Scheme should be transferred to the Village Water Supply and Sanitation Committee.”

3. In view of the aforesaid affidavit on behalf of the State Government, the Zilla Parishad was called upon to indicate as to why it is

not taking over implementation of the Water Supply Scheme. At the hearing today, the learned counsel for the Zilla Parishad submits that in view of the Government Resolution dated 17 March 2010 as amended by the Government Resolution dated 2 December 2011, the primary responsibility of implementation of the Water Supply Scheme is that of the Gram Panchayat and that in exceptional circumstances, the Zilla Parishad is to take over implementation of such Scheme if there is a dispute over the constitution of the Water Supply and Sanitation Committee or a dispute arises between the Water Supply and Sanitation Committee and the Gram Panchayat. It is submitted that in the present case, it is not for the Zilla Parishad to take over the implementation of the Water Supply Scheme.

4. It is true that as per the Government Resolution dated 17 March 2010, since 'drinking water' is an item falling under the XIth Schedule of the Constitution of India, inserted by the 73rd Amendment, as per the provisions of Article 243J, the powers, authority and responsibilities regarding drinking water are conferred upon the Village Panchayat. However, the 73rd Amendment to the Constitution of India was for strengthening the Panchayati Raj to confer more powers and responsibilities to Gram Panchayats. If the Gram Panchayat fails to carry

out its duties under the aforesaid constitutional and statutory provisions, the Zilla Parishad cannot absolve itself from the responsibility of ensuring implementation of such Water Supply Scheme. If Zilla Parishad tries to implement such project without giving opportunity to the Gram Panchayat, it might be contended that the Zilla Parishad is not permitting the Gram Panchayat to function under its statutory powers, but if the Gram Panchayat fails to implement the Water Supply Scheme and the Zilla Parishad steps in and takes over implementation of the Scheme, it cannot be contended that the Zilla Parishad is acting contrary to the constitutional or statutory provisions.

5. In our view therefore, the Government Resolutions dated 17 March 2010 and 2 December 2011 are required to be read in this context. Paragraph 3(i) of the Government Resolution dated 17 March 2010 as inserted by the Government Resolution dated 2 December 2011 would therefore cover all cases where the work of Water Supply Scheme is getting delayed. The delay may be on account of failure on the part of the Gram Panchayat to implement the Scheme for whatever reason. We are of the view that the State Government is justified in taking the stand that since there is a delay in completion of Water Supply Scheme Project, the

Zilla Parishad, Pune is required to take over the implementation of the Scheme. Of course, the Zilla Parishad would also be entitled to take funds disbursed to the Gram Panchayat and /or Village Water Supply and Sanitation Committee for implementation of the Scheme. In case of delay on the part of the contractor or Committee members to return the funds, the Zilla Parishad has all the powers to file criminal cases against those who are responsible, in addition to the powers of the Zilla Parishad to recover the funds from the contractor or the Committee by adopting other proceedings as well.

6. Looking to the peculiar facts and circumstances of the present case, we direct the Zilla Parishad, Pune to take over implementation of the Water Supply Scheme in Village Dhakale and to complete the same as expeditiously as possible and preferably within eight months from today. It is made clear that the Zilla Parishad shall proceed to take all necessary steps for implementation of the Scheme without waiting for recovery of any outstanding amount from the contractor and / or Committee members. Of course, the Zilla Parishad will be at liberty to take necessary steps for recovery of the amounts from the contractor and/or the Committee, but the implementation of the Water Supply Scheme should not be contingent on

the said recovery. It is further directed that the Zilla Parishad shall also examine taking necessary steps for launching prosecution against the persons concerned who are responsible for the delay in implementing the said Water Supply Scheme.

7. The PIL is accordingly disposed of in terms of the above directions. No order as to costs.

CHIEF JUSTICE

B.P. COLABAWALLA, J.