

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

MISC. CIVIL APPLICATION NO. 723/2014  
IN  
PUBLIC INTEREST LITIGATION NO. 67/2013.

Narayan Bajirao Parvatkar,  
aged 67 years, Retired Government  
Servant, resident of Shivaji Nagar,  
Paratwada, Tahsil Achalpur,  
District Amravati.

....APPLICANT.

VERSUS

1. State of Maharashtra,  
through its Secretary,  
General Administration Department,  
Mantralaya, Mumbai – 32.
2. Director, Municipal Administration,  
Maharashtra State, Mumbai.
3. Regional Director of Municipal  
Administration, Additional Commissioner,  
Amravati Division, Amravati.
4. Collector, Amravati.
5. Municipal Council, Achalpur,

through its Chief Executive Officer,  
Tah. Achalpur, District Amravati.

....**RESPONDENTS.**

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Mr. N.B. Parvatkar, Applicant - Inperson.  
Mr. A.S. Fulzele, Asstt. Govt. Pleader for Respondent Nos. 1 to 4.  
Mr. S.Y. Deopujari, Advocate for Respondent No.5  
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**CORAM : B.P. DHARMADHIKARI &  
A.S. CHANDURKAR, JJ.**

Date of Reserving the Order : 09.01.2015.

Date of Pronouncement : 16.01.2015.

**ORDER (Per B.P. Dharmadhikari, J)**

1. The review application is preferred in person by petitioner after PIL filed by him was disposed of on 11/12/2013, holding that there was no substance in the challenge. Prayer in PIL was to direct respondent no.5 Municipal Council to remove elevated service reservoir constructed in ward no.9 of Achalpur town in Amravati district. This court at that juncture did not find any merit in submission of petitioner that the

construction is not on land as per standards prescribed and the strata of soil in which or over which the water tank came to be constructed is not hard enough to support its weight. Objection to other technical details were also then looked into.

2. Petitioner thereafter has filed this review petition with some delay. He submitted that certain information which he got later on under provisions of Right to Information Act and a report dated 10/10/2009 having bearing on weight bearing capacity of the place where reservoir has been constructed, was suppressed from this Court. In this situation on 13<sup>th</sup> June 2013, after hearing respective counsel, we have condoned the delay and matter was taken up for consideration on merits. On 1<sup>st</sup> August 2014, this court found it proper to direct the Collector at Amravati to go into disputed questions and to verify original records about the correlation between test reports shown to this Court and the actual site. Accordingly Collector, Amravati submitted his report dated 29/9/2014 to the office of this High Court.

3. We have heard parties in the backdrop of said report. Petitioner has attempted to demonstrate inconsistency in the material placed on the record. He submits that even the report prepared as per directions of this court in earlier PIL shows manipulation. Advocate Deopujari appearing on behalf of respondent no.5 Municipal Council has relied upon reply affidavit filed before this Court in this MCA and also in earlier PIL. He contends that there is no merit in present review petition. The water tank is in use since December 2013, and there is no problem faced by anybody. Learned AGP appearing for other respondents adopts arguments of Advocate Deopujari. He points out that Collector along with other responsible technical officers has gone through all relevant papers and found that there is no merit in contention that a report dated 10/10/2009 was suppressed or then that report dated 2/5/2009 is in relation to some other site. He submits that various agencies and independent persons were involved in said exercise and as such, review application must be dismissed.

4. Before proceeding to consider controversy on merits, we may

mention that cardinal question is - Whether the report dated 10/10/2009 can be associated with the site at which the water tank has been constructed i.e. site at town Paratwada and its impact ?

Report dated 2/5/2009 on the record expressly nowhere mentions any specific location. In paragraph [c], ESR at Paratwada is mentioned with finding that soil strata consists of yellow soil mixed with lime and may be classified as CL. It mentions that said strata can support allowable bearing capacity for permissible settlement of 25 mm and for maximum 3.4 m width of foundation at ESR may be taken as 150 KN/m<sup>2</sup>. It records that amount of Rs. 7200/- as testing fees and amount of Rs. 7200/- towards consultation fees were received by the receipt number 268596 dated 13/4/2009.

5. Perusal of report dated 10/10/2009 shows the recommendation that allowable bearing capacity for ESR at old ESR Paratwada may be taken as 50 KN/m<sup>2</sup>. This ESR is referred to therein as ESR 3. Soil strata is only black cotton soil with high swelling nature. It recommends that proper precaution should be taken to arrest swelling

and shrinking of the soil during the moisture changes. It is advised that foundation be placed after removal of black cotton soil completely and at the minimum depth of 3 meters from ground level. Plate load test was advised to be carried out at foundation level after completion of excavation.

6. After PIL was filed, this court on 24/4/2012, called for the report on suitability of the spot. Before undertaking that exercise, a panchanama was conducted on 20/5/2012, in presence of the review applicant and others. It mentions that a pit of size 3.00, 3.00 and 3.00 i.e. 3 X 3 X 3 was dug and S.P.T. test was performed at a depth of 3 meters. Obviously, though no unit of measurement is mentioned here, it is a pit 3 meters long, 3 m. wide and 3 m. deep. It mentions that spot is at ward no.9 Shivajinagar. It nowhere mentions ESR 3 and everywhere word ESR at Shivajinagar is used. In test report dated 24/5/2012, under the head at serial no. G- "the safe bearing capacity" size of pit mentioned is 1.5 m X 1.5 m. up to foundation level of 3.1 m near existing ESR at Shivajinagar at Paratwada. Under head E and G, strata of black soil is seen available up

to 0.8 m, thereafter yellow soil up to 1.9 m, thereafter yellow soil with little lime kankar up to depth of 2.3 m and lastly yellow soil with more lime kankar from depth of 2.3 m to 3.1 meters is shown. It mentions that the safe bearing capacity at depth of foundation level investigated near ESR at Shivajinagar Paratwada may be taken as as 150 KN/m<sup>2</sup>.

7. The safe bearing capacity in report dated 24/5/2012 and and 2/5/2009 is same. However the analysis on soil strata level is slightly different. In a report dated 24/5/2012, size of pit given is different and does not match with size recorded in panchanama drawn at the spot in presence of all concerned on 20.5.2012. Report dated 2/5/2009 nowhere mentions either ward number or then name of area and only mentions that it pertains to ESR at Paratwada. Report dated 10/10/2009 mentions ESR 3 as elevated service reservoir at old ESR, Paratwada. Thus, this report also does not show its exact location, but, refers to its old location or area. This report speaks of 4 ESR. ESR 1 and 2 are located at Achalpur and not at Paratwada. ESR 4, though located at Paratwada, it is at waste depot and not relevant here. Collector, Amravati has looked into

resolution of general body of Municipal Council dated 7<sup>th</sup> June, 2010. General body has resolved to accord sanction to shifting of said ESR 3 from its old proposed location to ward no.9 i.e. Shivajinagar. General Body mentions a representation dated 20/2/2009 submitted by residents of ward no.9 and also takes note of the fact that earlier proposed placement of this ESR near existing old water tank was not viable and that site was not suitable. The Collector has also looked into the said representation which forms part of his record and report.

8. We have carefully gone through the report of Collector and its accompaniments. We do not find any thing on record to connect report dated 10/10/2009 with site at ward no.9. Later report dated 24/5/2012, though contains some inconsistent statement about size of pit when compared with spot panchanama, that by itself is not sufficient to discredit the officers of government who completed that exercise. Said report is not repugnant to report dated 2/5/2009. We find that Collector has after going through all relevant papers and after hearing the responsible officers and experts like Assistant Professor of Government

Engineering College, Amravati, Sub-Divisional Engineer of Municipal Council, Deputy Collector, Amravati, District Project Officer attached to office of Collector at Amravati and his law officer, properly appreciated the issue.

9. As the review applicant had earlier appeared through an Advocate and later, approached in person and considering that he is a senior citizen, we had found it appropriate to direct the high-ranking and responsible officer i.e. Collector to hear him and peruse records in his presence. The learned Collector has rightly conducted the proceedings with assistance of others and drawn proper report.

10. We therefore, find no case made out warranting intervention in the review jurisdiction. Misc. Civil Application is, accordingly rejected. No costs.

**JUDGE**

**JUDGE**

Rgd.