

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

PUBLIC INTEREST LITIGATION NO.139 OF 2016

1. Shri. Gautam Baburao Maske,
Age:59 years, Occu: Retd.,
R/o. vidyanagar (W),
House No. 1-3-325, Beed,
District Beed
PAN No.: AJDPM0251B
Aadhar No.689030260498
Email: Adv.gautammaske@gmail.com
2. Shri. Vishnu Shamrao Waghmare,
Age: 55 years, Occu.:Social Work,
R/o. Sahyog Nagar (E)
S. Indira Niwas, D.P. Road,
Beed – 431 122
PAN: AAZP4973D

- PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Chief Secretary,
And
Under Secretary
Urban Development Department,
Mantralaya, Mumbai – 32,
2. The Collector, Beed
At Collector Office, Beed,
3. Beed Municipal Council
Through its President
And
Chief Executive Officer,
Municipal Council, Beed,
District Beed

- RESPONDENTS

Mr. Tejesh Dande with Mr. Prasanna Dande i/b. Tejesh Dande & Associates, Advocates for Petitioners.
Mrs. A.V. Gondalekar, AGP for Respondent Nos.1 & 2;
Mr. G.K. Thigale (Naik), Advocate for Respondent No.3

CORAM : R.M.BORDE &
P.R.BORA, JJ.

DATE OF RESERVING ORDER: 16th MARCH, 2017
DATE OF PRONOUNCING ORDER: 20th MARCH, 2017

COURT'S ORDER (PER:-P.R.BORA, J.)

1) Two citizens from Beed have filed the present Public Interest Litigation impugning the communication dated 11th April, 2016, whereby the Under Secretary to the State of Maharashtra has directed the Collector, Beed to transfer the funds allocated to Municipal Council, Beed for implementing the construction work of roads and drainages in the extended areas of Municipal Council, Beed, under the Scheme sponsored in that regard by the State Government, to the Public Works Department and to get the said works executed from the said Department.

2) This court on 26th October, 2016 has passed an order restraining the Collector, Beed from parting with the funds, which he has received. That order continues to operate even today.

3) The State Government, vide its Resolution dated 27th June, 2012 had resolved to provide

financial assistance to the Municipal Corporations and Municipal Councils, of which the territorial limits are extended, to enable them to carry out the public utility works like construction of road, drainages etc. in the said extended areas. As provided in the said Government Resolution, for carrying out such works, the Municipal Councils are required to make provision to the extent of 10% of the estimated cost of the works to be carried out, by way of their own contribution and the remaining 90% amount of the estimated cost is to be shared by the State Government by making the grants available to that extent to the concerned Municipal Councils.

4) In order to avail the benefit of the aforesaid scheme, Municipal Council, Beed (Respondent no.3) prepared a proposal for construction of roads and drainages in its extended areas. As per the said proposal, at 12 different places in the extended areas, hot mix and cement concrete roads so also drainages were proposed to be constructed. The estimated cost of the works so proposed was Rs.30,09,08,666/-. Respondent no.3 in its General Body meeting held on 6th May, 2013 vide Resolution

No.940 resolved to deposit with the Government 10% own contribution for the aforesaid works. The Collector, Beed, (Respondent no.2) vide his order dated 22nd October, 2013 granted administrative sanction/approval to the proposal so prepared and submitted by respondent no.3. The said proposal was, then forwarded to the State Government seeking financial assistance to the extent of 90% of the estimated cost of the proposed works in view of the Government Resolution dated 27th June, 2012. The proposal was favourably considered by the State Government and vide Resolution dated 18th March, 2016, the State Government released the first installment amounting to Rs.13,54,08,900/- in favour of the Municipal Council, Beed.

5) As has been submitted by the learned Counsel appearing for the petitioners and the learned counsel appearing for Respondent No.3, after the administrative sanction/approval was granted to the proposed works, the Municipal Council Beed carried out the tender process for allotment of the said works and in turn accepted the tender of the lowest bidder and accordingly the work order was issued to

the said contractor on 14th August, 2014. As has been further submitted on behalf of respondent no.3 the project works have been completed to the extent of 60-70%. In the circumstances, request was made by respondent no.3 to respondent no.2 to release the grants of Rs.13,54,08,900/- received towards first installment from the State Government. However, in the meanwhile the impugned communication came to be issued.

6) The petitioners have alleged that under the political pressure of M.L.A. Shri Vinayak Mete, the State Government has issued the impugned communication. It is the grievance of the petitioners that the decision taken by the State Government is against the interest of the Municipal Council Beed and consequently against the interest of the residents of Beed. According to the petitioners, transfer of the project works in the mid-way from respondent no.3 to Public Works Department, would be extremely non-practicable and difficult. It is further contended that respondent no.3 has already allotted the work by carrying out the tender process and the same is in progress. In the circumstances,

change in implementing agency may badly hamper the said work. It is also contended that the impugned decision may result in creating serious problems for respondent no.3 which may ultimately result in delaying completion of the project works. It is further contended that the extended area of respondent no. 3 is lacking the basic infrastructure i.e. roads and drainages. Delay in completing the said works would ultimately cause great hardship to the residents of the respective areas. Impugned communication is, therefore, sought to be quashed.

7) One Shri Satish Krishnarao Shivane working as District Administrative Officer, Urban Development branch, Collector office, Beed filed affidavit in reply on behalf of Respondent No.2, i.e. Collector, Beed, contending therein that the Collector, Beed, has not yet transferred the funds to Public Works Department in view of the interim order passed by this court. Except providing the aforesaid information, Collector, Beed, has not given any reply on merits, to the contentions raised in the petition.

8) Smt. Rita Prabhakar Metrewar, working as

Regional Deputy Director, Municipal Administration, Aurangabad, has filed an affidavit in reply on behalf of Respondent no.1, opposing the petition. It is contended therein that it is well within the competence of the State Government to decide the agency for carrying out the work from the State funds. It has also been contended that the funds were never transferred to Beed Municipal Council and were never part of the Municipal funds. It is further contended that vide letter dated 11th April, 2016, the State Government has waived the condition of 10% share of Beed Municipal Council and as such, no additional financial burden is cast on Beed Municipal Council. It is further contended that the State Government has issued the letter dated 11.4.2016 to transfer the funds to the Public Works Department in public interest. It is further contended that since the condition of 10% contribution by Municipal Council, Beed is waived, 100% funding is now from the State Government and the Government has inherent right to decide the implementing agency for carrying out the works fully funded by it. For the aforesaid reason, the petition is sought to be dismissed.

9) From the contents of the Affidavits in reply tendered on behalf of respondent Nos. 1 and 2, it is quite clear that the said respondents have not denied or disputed the fact that the proposal submitted by the Beed Municipal Council for carrying out the work of constructing hot mix and cement roads as well as drainages in the extended Municipal area, was under the scheme introduced by the State Government in that regard vide Government Resolution dated 27th June, 2012 and that the said proposal has received the administrative approval. It has also not been disputed that the Municipal Council has deposited the amount of its own contribution to the extent of 10% of the estimated cost of the project works. It has also not been disputed that vide Government Resolution dated 18th March, 2016 the State Government has released the first installment of Rs.13,54,08,900/- to the Municipal Council Beed in pursuance of the proposal so forwarded by the Municipal Council having estimated cost of Rs.30,09,08,666/-. The averment in the petition to the effect that 60-70% of the project work has already been completed, has also not been controverted.

10) The legality and the validity of the communication dated 11th April, 2016 needs to be examined in the background of the facts as aforesaid.

11) From the material on record, it is undisputed that the funds which are directed to be transferred to Public Works Department vide the impugned communication dated 11.4.2016, are received to Beed Municipal Council vide Government Resolution dated 18th March, 2016 under the Scheme introduced by the State Government vide Government Resolution dated 27th June, 2012. Clause 2(ii)(b) of the Government Resolution dated 27.6.2012 provides that for receiving financial assistance from the State Government under the said Government Resolution, it is mandatory for the Municipal Council to share 10% of the estimated cost of the works to be carried out under the said Scheme, by way of 'own contribution' of the said Municipal Council. Government Resolution dated 18.3.2016, whereby the State Government has sanctioned the first installment to Respondent No.3, casts the responsibility upon the District Collector, Beed to verify that the amount of own contribution is paid by the Beed Municipal Council before

disbursement of the said amount to the said Municipal Council. The record shows that Respondent No.3 has deposited the amount of own contribution and Collector, Beed has confirmed the said fact in his letter dated 10.5.2016 addressed to the Deputy Secretary, Urban Development Department .

12) Further, as stipulated in clause (iv) of the Government Resolution dated 18th March, 2016, Municipal Council, Beed is the implementing agency for execution of the project works.

13) The State Government, in its affidavit in reply, though has taken a stand that it has waived the condition of deposit of own contribution by Municipal Council, Beed, and now, 100% project cost will be borne by the State Government, which vests it with an inherent right to decide the implementing agency to execute project works, no such evidence or document is placed on record by the respondents. The communication dated 11.4.2016 does not contain any such averment that the Government has waived the condition of 10% share of the Beed Municipal Council. As noted by us herein above, the Scheme introduced by

the State Government, vide the Resolution dated 27th June, 2012 mandatarily provides for 10% share as own contribution by the concerned Municipal Council, seeking financial assistance from the State Government under the said Government Resolution. The provision so made in the Government Resolution cannot be nullified by the communication under the signature of Under Secretary to the Government. In the Government Resolution dated 27.6.2012, we did not find any provision permitting the waiver of the 10% contribution by the Municipal Council. It is also not disclosed by the respondents as to on what basis and for what reasons, the exemption has been granted to Municipal Council, Beed from paying its own contribution, if at all the same would have been granted. Significantly, Collector, Beed has not taken any such plea in his affidavit in reply. In absence of any evidence, the plea as aforesaid, taken in affidavit in reply by the State, has to be rejected.

14) In the affidavit in reply filed on behalf of respondent No.1 it has also been contended that the funds were never transferred to the Beed Municipal

Council and were never part of the Municipal funds. The contention so raised is apparently unacceptable. As earlier noted by us, clause 3 of the Government Resolution dated 18th March, 2016 whereby the first installment was released in favour of Municipal Council, Beed specifies that the released amount shall be kept in an independent account of the Municipal Council. In view of the specific clause in the aforesaid resolution it is not open for the State Government now to say that the amount was not transferred to the Beed Municipal Council and was never part of the Municipal funds. The amount which was directed to be credited to the independent account in the name of Municipal Council becomes the part and parcel of the Municipal Fund.

15) Relying on Government Resolution dated 16.01.2016 it is further contended in the affidavit in reply of respondent - 1 that the State Government has inherent right to decide the implementing agency for the works fully funded by it and hence no fault can be found with the impugned communication dated 11.04.2016. This contention is equally fallacious. Firstly, for the reason that Government Resolution

dated 16.01.2016 relates to a different scheme and cannot be applied in the present matter. In So far as right of the State Government to determine or select implementing agency is concerned, vide Government Resolution dated 18.03.2016 and more particularly clause 4 thereof, the State Government has already exercised that power by selecting and nominating Municipal Council, Beed as the implementing agency for execution of the project works.

16) Communication dated 11.04.2016, by an Under Secretary cannot annul the provision so made in the Government Resolution dated 18.3.2016, whereby Municipal Council, Beed has been prescribed as the implementing agency for execution of the project works. Moreover, there must have been some justifiable reason for changing the earlier decision which was taken on consideration of the relevant Government Resolution's, Circulars and other related material.

17) The communication dated 11.4.2016 does not disclose any reason much less any justifiable reason

for transferring the funds to the Public works Department, which has been allocated to Municipal Council, Beed. In the affidavits in reply filed by Respondent Nos. 1 and 2 also, there is no explanation as to for what reasons the project works are directed to be executed through the Public Works Department and the funds are directed to be transferred to the said department, when vide Government Resolution dated 18th March, 2016, Municipal Council, Beed was already named as the implementing agency for execution of the said works and the first installment was also received to District Collector, Beed for allocating the same to Municipal council Beed.

18) In the impugned communication there is reference of Government Resolution dated 18-03-2016. We have carefully perused the aforesaid Government Resolution. There is no provision in the aforesaid Government Resolution which would empower the State Government to change the Implementing Agency. The learned A.G.P appearing for Respondent Nos. 1 and 2 has also not brought to our notice any other Government Resolution which empowers the State Government to change the Implementing Agency for

execution of the works undertaken under the scheme introduced vide Government Resolution dated 27th of June, 2012. The impugned communication is therefore without jurisdiction and hence clearly unsustainable.

19) In the instant matter, as has been alleged by the petitioners the only reason for directing change in Implementing Agency appears to be the political pressure brought on the Government by M.L.A. Shri Vinayak Mete by sending a letter dated 6th of April, 2016 to the Hon'ble Chief Minister requesting him to transfer the fund allocated to Beed Municipal Council to the Public Works Department and to get the project works executed through the said department. Even in his said letter M.L.A. Shri Mete, has nowhere alleged that the Municipal Council, Beed is incapable of carrying out the project works or has committed some such irregularities in execution of the project works or that, has violated the terms and conditions imposed on it warranting withdrawal of the execution of the project works from it.

20) When no such ground was made out, in fact, the State Government should not have acceded to the request so made by Shri Mete. Moreover, before issuing the impugned communication, the State ought to have considered that in pursuance of the administrative approval accorded to the project works, Respondent No.3 had already completed the tender process and had issued the work order to the lowest bidder on 14th August, 2014 and 60 to 70% of the project work was already completed. Neither in the impugned communication nor in the affidavits in reply filed by the respondents there is any explanation as to how the payment would be made to the contractors of the works done by them till date and whether the same contractors will be continued further or otherwise. It would also be quite difficult to determine as to what part of work was implemented by the Municipal Council and what remaining work is to be completed by the Public Works Department. We reiterate that the fact stated by the petitioners on affidavit, that the contractor to whom the work has been allotted by Respondent No.3 has completed 60 to 70% of the project work, has not been denied or disputed by the respondents. We fail to

understand as to what made the State Government to change the implementing agency when 60 to 70% work has already been completed.

21) In the affidavit in reply filed by Respondent No.2 though it is stated that the decision to change the implementing agency has been taken in public interest, there is no further explanation what public interest is being served by changing the implementing agency. On the contrary, from the facts which have come on record, we have no manner of doubt in holding that the impugned decision is totally adverse to the interest of the public at large. It is apparent that the impugned communication is being made in highly arbitrary manner without taking into account the consequence of the said decision. There is substance in the contention raised by the petitioners that if the impugned communication is sustained, the Municipal Council is likely to face number of litigations which may ultimately increase the financial burden on the said Municipal Council and in turn on the tax-payers of the said Municipal council. Moreover, because of change in the implementing agency, there is every

possibility that the project work would be delayed, which may result in increasing the project cost. The works which have been undertaken are admittedly of roads and drainages. Delay in completion of these works ultimately would result in causing hardship to the residents of the said area. Thus, viewed from any angle, it is difficult to sustain the impugned communication.

22) As noted earlier, there is no provision in the Government Resolution dated 18th March, 2016 which would empower the State Government to change the implementing agency. For a moment, even if it is assumed that the State possesses such right, the same cannot be arbitrarily exercised. As has been observed by the Hon'ble Apex court in State of Punjab Vs. Brijeshwar Singh Chahal – (2016) 6 SCC 1, the Government and the public bodies are trustees of the powers vested in them. Discharge of the trust reposed in them in the best possible manner is their primary duty. These powers are to be exercised by the State and the State instrumentalities in a fair, reasonable, non-discriminatory and objective manner. The duty to act in a fair, reasonable, non-

discriminatory and objective manner, is the facet of the rule of law in the constitutional democracy like ours. As consistently held by Hon'ble Apex court an action that is arbitrary has no place in a polity governed by Rule of law apart from being offensive to the equality clause guaranteed by Article 14 of the Constitution of India. The Government and public bodies are free to choose the implementing agency in executing the works funded by them but any such selection or cancellation must demonstrate that it was unaffected by any extraneous consideration. Any decision taken in arbitrary fashion, without any transparent method or for political considerations, will be amenable to judicial review and liable to be quashed and set aside.

23) In the instant matter, we have no hesitation in holding that the impugned communication is arbitrary, malafide, based on irrelevant considerations, without jurisdiction and for political consideration. Such decision cannot be sustained and deserves to be quashed and set aside.

24) In the foregoing circumstances and for the

reasons stated above, following order is passed, -

ORDER

i) The impugned communication dated 11.4.2016 is quashed and set aside;

ii) The Collector, Beed (Respondent No.2) is directed to forthwith release the amount of first installment received under the Government Resolution dated 18th March, 2016, to Municipal Council, Beed (Respondent No.3) in terms of the said Government Resolution;

iii) Respondent Nos. 1 and 2 shall allow the Municipal Council, Beed to complete the project works in terms of the Government Resolution dated 18th March, 2016

25) The Public Interest Litigation is allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

bdv/