

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 6409 OF 2016
WITH
CIVIL APPLICATION NO. 13894 OF 2016

Smt. Karimabi Shaikh Mohammad **....Petitioner.**

Versus

The State of Maharashtra and
others **....Respondents.**

Mr. S.S. Thombre, Advocate for petitioner.

Mr. A.R. Kale, AGP for respondent Nos. 1 to 5.

Mr. Talekar and Associates for applicant in C.A.

WITH
WRIT PETITION NO. 12801 OF 2016

Smt.Preeti w/o. Pramod Sable **....Petitioner.**

Versus

The State of Maharashtra and
others **....Respondents.**

Mr. J.M.Murkute, Advocate for petitioner.

Mr. A.R. Kale, A.G.P. for respondent Nos. 1 to 3.

**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**
DATED : February 16, 2017.

ORDER : [PER T.V. NALAWADE, J.]

The first proceeding is filed by the

President of Municipal Council Partur, Tahsil Partur, District Jalna and the second proceeding is filed by social worker and Member of Municipal Council, Badnapur, Tahsil Badnapur, District Jalna. Civil Application No. 13894/2016 is filed for intervention in the first proceeding by a Member of Panchayat Samiti, Jalna. In the first proceeding, the decision of the respondent/Government dated 16.5.2016 is challenged. By this decision, the Government has directed Public Works Department (P.W.D.) of Government to execute the work of construction of one road by using the special grants given by the Government under Government Resolution (G.R.) dated 16.1.2016. It is the case of petitioner that as per the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Indian Township Act, 1965 and as per the scheme also, the Local Body is entitled to get the work executed and in most of the cases, the Government has allowed the Local Bodies to execute the work and grants are released in their favour, but that is not done in the case of Partur Municipal Council as political party, which is opposite to the

ruling party in the State is in power in Partur Municipal Council. In the second proceeding, the G.R. dated 16.5.2016 is challenged by making similar contentions for Municipal Council, Badnapur. Both the sides are heard.

2. The various G.Rs. produced on the record show that the Government decided to make provision of funds for construction of roads within limits of Local Bodies under one scheme. The scheme was divided in to two parts. Under first part of the scheme, the funds were to be released under head 'General Grants' for Road and the second part provides for 'Special Grants' for such Roads. The amount under the General Grants was to be directly handed over to the Local Bodies and the work was to be executed by the Local Bodies. However, for the special grants, the Government had kept the power to take a decision on the agency, which will execute the work. The provision in the G.R. dated 16.1.2016 was specifically as follows :-

"The works which were to be executed by

using special grants for roads were to be executed by the agency fixed by the State. If the State was not appointing agency, then the works could have been executed by the concern Local Body."

3. The second part of the scheme provided that it was up to the Local Body to identify the place where the work was to be executed, and so, the decision was to be taken by the General Body in that regard. Thus, the work was to be specified by the Local Body and then the State Government was to take the decision as to which agency would execute the work. The submissions made and the procedure show that when the Government allowed the Local Body to execute the work, the grants were released in favour of Local Body and the amount was credited in the account of Local Body. However, when the Government decided to get the work executed through other agency like P.W.D. of Government, the grants were sent to the Collector and the Collector was to take the decision and supervise such work.

4. The G.R. dated 18.3.2016 shows that the Government took decision to give work under Special Grants for roads to P.W.D. in respect of 15 Local Bodies mentioned in G.R. It was expressed by the Government that it was open to the other Local Bodies to get executed the work. It appears that one more G.R. was issued subsequently on 16.5.2016 and it was informed that the work in respect of Partur Municipal Council was to be executed by P.W.D. Admittedly, the funds were not credited in the account of the Local Body, in case of Partur Municipal Council - Local Body.

5. The G.R. dated 12.4.2016 shows that in the second matter, under this G.R., the Government has decided to get the work executed through the agency - P.W.D. In this case, it is not disputed that the Government had not credited the Special Grants in the account of Badnapur Municipal Council - Local Body and the funds are handed over to the Collector.

6. It is the case of petitioners that initially

the Government had taken a decision to give this work to both the aforesaid Local Bodies by G.R. dated 28.3.2016, but, subsequently due to political influence, the letters written by the leaders of ruling party in the State, B.J.P. and their Ministers, the Government changed the decision and decided to give this work to P.W.D. Copies of such correspondence are produced on the record and even the noting made in the Government Department on the basis of such correspondence made by the leaders of B.J.P. are produced on the record. It is true that the correspondence is sufficient to create a probability that due to the request made by the political leaders of B.J.P., such change was made.

7. The learned counsel for petitioners placed reliance on the decision given by **Nagpur Bench of this Court in P.I.L. No. 86/2016 and another connected matter [Devendra s/o. Sureshrao Wankhede Vs. State of Maharashtra and Ors.] dated 26.8.2016** and submitted that in view of the observations made by Nagpur Bench and the decision given in similar

matter, the aforesaid two G.Rs. issued to change the agency need to be set aside. This Court has carefully gone through the reasoning given by Nagpur Bench. One more case was decided by the Nagpur Bench of this Court on the same day i.e. on **26.8.2016** like **Writ Petition No. 2608/2016 [Sudhir Daulatchand Kothari Vs. The State of Maharashtra and Ors.]**. In the first P.I.L., the facts were totally different. The funds were already credited in the account of Local Body, there was administrative approval to the work and the work was completed to substantial extent. In view of these circumstances and the power of Local Body to get the work executed, when funds are received, the correspondence made for Government was set aside. Further, there was no G.R. issued in that regard and there was only communication of employee of Secretariat showing that the work was to be withdrawn from the Local Body. Thus, the facts of the present matter are altogether different. On the other hand, while deciding **Writ Petition No. 2608/2016** cited supra, the same Bench considered the power of the Government given under section 49-A of the

Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 and the nature of scheme. In that case, the funds were not credited in the account of the Local Body and there was no administrative approval. In view of these circumstances, the Bench held that the Government had the power and even under the scheme prepared by the Government, it was up to the Government to take decision on the agency which was to execute the work.

8. In the present matter, this Court holds that though in the past, there was different decision taken by the Government, the Government has decided to change the agency. This Court is not expected to go in to the merits of the reasons as it is a policy decision of the Government and the Government has such power which was kept even under the scheme and which is also there under the aforesaid provision.

9. The learned counsel for petitioners placed reliance on some observations made by Nagpur Bench in the case reported as **2014(4) Mh.L.J. 857 [Nandkishor**

Rangraoji Warhade & Ors Vs. State of Maharashtra and Ors.]. In that case, this Court had observed that in a democratic set up, the desire of the General Body of Local Body in the matters involving public interest needs to be respected and needs to be given priority and the Government is not expected to intervene in such matters. There cannot be dispute over this proposition. It is already observed that the Local Body has decided the priority in respect of the work and their priority is accepted and there is question of agency, which will be executing the work. Thus, the observations made by this Court in the case cited supra are of no help to the present petitioners. In the result, both the petitions stand dismissed. Civil Application is disposed of.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]

ssc/