

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

WRIT PETITION NO.2139 OF 2017

Sau.Arunabai w/o.Shama Ingale,
Age: 52 years, Occ: President
of Municipal Council, Varangaon,
R/o. Varangaon, Tq.Bhusawal,
Dist. Jalgaon.

PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai – 400 032.
2. The Collector,
Jalgaon.

RESPONDENTS

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Mr.M.M.Patil [Beedkar], Advocate for the
petitioner

Mr.M.M.Nerlikar, AGP for the Respondent/State

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**CORAM: S.S.SHINDE &
MANGESH S.PATIL,JJ.**

Reserved on : 28.11.2017

Pronounced on : 11.12.2017

ORDER: (Per S.S.Shinde, J.):

1. This Petition is filed with the
following prayer:

B) The Government Resolution No.Sankirn-2016/ Pra-Kra.97 / Navi-16 dt. 12/04/2016 and Government Resolution No. Sankirn-2016/Pra-Kra.186/Navi-16 dt.03/08/2016 may kindly be set aside AND / OR those Government Resolution dt. 12/04/2016 & 03/08/2016 may kindly be declared as not applicable to the Municipal Council at Varangaon, Tq. Bhusawal, Dist. Jalgaon.

2. Brief facts for filing this Petition as disclosed in the memo of the Petition are as under:

3. The petitioner is the President of the Municipal Council at Varangaon. The Municipal Council, Varangaon is established by the State Government vide Notification No.MUM2012/PK-62/Navi-17 dated 12.09.2014. After establishment of the aforesaid Municipal Council, initially, respondent no.1 had given additional charge of Administrator of Varangaon Municipal Council to the Chief

Officer of Municipal Council Savda, namely, Shri Prashant Vasant Sarode, vide order dated 10.02.2015. On 22.02.2015, the general elections of Municipal Council, Varangaon were conducted. Thereafter, on 06.06.2015, the President of the said Municipal Council was elected.

4. Thereafter, respondent no.2 had appointed Chief Officer of Municipal Council Savda as Incharge Chief Officer of the Municipal Council, Varangaon, vide order dated 16.06.2015. On 29.07.2015, the Chief Officer of Savda Municipal Council was transferred to the Municipal Council, Varangaon as Chief Officer. Since then Mr. Prashant Sarode is working as regular Chief Officer at Varangaon. On 11.08.2015, respondent no.2 has transferred the administrative service of Junior Engineer [Civil] namely Shri Digambar Sudam Wagh to the Municipal Council, Varangaon. At present,

he is looking after the civil engineering works carried by the Municipal Council, Varangaon. On 18.09.2015 vide Resolution No. 23, the Municipal Council Varangaon had appointed an Architect for the said Municipal Council. After establishment, the Municipal Council Varangaon has carried out and completed various works for which funds are received for various schemes of the State Government, such as, '*Nagari Dalitetar Vasti Sudharana Yojana*', '*Dalit Vasti Sudharana Yojana*', '*Maharashtra Nagarotthan Abhiyan [District Level] Yojana*', '*14th Finance Commission*' and '*Road Grants*', etc. The Municipal Council, Varangaon has sufficient infrastructure available including required manpower to execute the different work of Civil project. Already, more than 2 financial years have completed and 3rd financial year would be completed within 2 to 3 months i.e. on 31st March, 2017.

5. Respondent no.1 has granted permission in respect of disbursement of funds to the schemes of public utility, vide Government Resolution dated 05.03.2016. Surprisingly, vide Government Resolution dated 12.04.2016, the Government has given authority to the Public Works Department to execute the works under '*Nagari Suvidha Purvinyasathi Sahayya Yojna*' for the newly established Municipal Councils / Nagar Panchayats in the State of Maharashtra. Thereafter, vide Government Resolution dated 03.08.2016, respondent no.1 has directed that for newly established Municipal Councils / Nagar Pachayats, the Public Works Department would be the executing agency in respect of the works to be carried out under '*Vaishishtyapurna Yojna*' as well as under '*Vishesh Rasta Anudan*'. It is specifically mentioned that the Public Works Department would be executing agency for a period of

three financial years from the date of establishment of the said Municipal Councils / Nagar Panchayats. The various representations dated 06.05.2016, 14.08.2016 and 19.08.2016 have been made by the present petitioner as well as the members of Municipal Council, Varangaon and the M.L.A. of Bhusawal Constituency to the Hon'ble Minister as well as to the Secretary of Urban Development Department. The amount of Rs.3 crores towards '*Vishesh Rasta Anudan*', Rs.3 crores towards '*Vaishishtyapurna Yojna*' and Rs.4.90 crores towards '*Nagari Suvidha Purvinyasathi Sahayya Yojana*' has been received by the Municipal Council, Varangaon, till this date. In view of Section 90 of the Maharashtra Municipal councils Act, it is nothing but the Municipal Fund and therefore, Municipal Council should be able to decide as to how it is to be disbursed. However, in view of the aforesaid Government Resolutions

dated 12.04.2016 and 03.08.2016, the State Government wants to get its absolute control over the schemes which can be executed through the machinery of Municipal Council. Merely, under the pretext that, it is newly established it cannot deprive such Municipal Council from executing the works through its own agencies. Particularly, in case the Municipal Council, Varangaon, three financial years from its establishment would be completed on 31st March, 2017.

6. Learned counsel appearing for the petitioner submits that, in spite of aforesaid representations, the respondents did not pay any heed to the request of the petitioner. The aforesaid Government Resolutions dated 12.04.2016 and 03.08.2016 appear to have been issued mainly in respect of the Municipal Councils, Nagar Panchayats which are newly established, since there may be scarcity of the manpower, infrastructure

including the Chief Officer, Engineers etc. to carry out the works of various projects for which the Government grants are given. It is submitted that there is nothing to indicate that which Municipal Councils / Nagar Panchayats can be said to be 'newly established' and for how much period after its establishment, the said Municipal Council / Nagar Panchayat can be said to be 'newly established'. In the present case at Varangaon, the Municipal Council is having the staff including Chief Officer and Engineer as well as it has experience to carry out civil work project. The period of three financial years would be completed within 2-3 months. Therefore, the very purpose for which the aforesaid Government Resolutions dated 12.04.2016 and 03.08.2016 are issued, need not be made applicable considering the aforesaid facts and circumstances. Therefore, the Municipal

Council, Varangaon should not be deprived of carrying out the Civil Projects under the various schemes referred supra for which even the funds are received. In case the said funds which can be said to be the Municipal Funds are directed to revert back to the Collector and the said project works are carried out through execution agency i.e. PWD in stead of through Municipal Council itself, it would be causing prejudice to the interest of the Municipal Council at Varangaon, which is completing three financial years within few months from its establishment. It is also in violation of the policy of decentralization of powers and under the garb of aforesaid Government Resolutions dated 12.04.2016 and 03.08.2016, the State Government wants to keep its entire control through P.W.D. over the projects which are usually carried out by the Municipal Councils, which are not 'newly established'.

The purpose for which the aforesaid Government Resolutions dated 12.04.2016 and 03.08.2016 are issued, does not appear to be fulfilled, in case though being competed and well equipped Municipal Council, Varangaon is being deprived from carrying out the various civil projects for which the funds are received from the State Government. Resultantly, the activities of Development within Municipal area would be hampered. It is nothing but unnecessary interference of the State Government and particularly PWD in carrying out the projects which can be carried out by the Municipal Council. This is nothing but indirect encroachment over the power of Municipal Council by the State Government. It also amounts to discrimination amongst the Municipal Councils which are newly established and which are not newly established, especially when there is no material to indicate as to which Municipal

Council can be said to be 'newly established'. Therefore, the said Government Resolutions dated 12.04.2016 and 03.08.2016 need to be set aside or it needs to be declared as not applicable to the Municipal Council at Varangaon.

7. On the other hand, learned AGP appearing for the respondent-State relying upon the averments in the affidavit-in-reply submits that, on 12.09.2014, the Municipal Council, Varangaon is newly created and established. Both the impugned Government Resolutions dated 12.04.2016 and 03.08.2016 are passed for the better and effective use of the Government grants given to such newly created Municipal Councils as these Councils are not well equipped with required manpower like skilled employees are mostly not appointed in such newly created Municipal Councils. Such Municipal Councils also lack expertise and experience in the performance

of public related works. Hence, the Government Department / agency of Public Works Department of the State, which is well equipped and well experience in such public works, is authorized to carry out the works of such newly established Municipal Councils particularly for public road constructions and such other construction of public interest works by utilizing the government grants granted to the newly established Municipal Councils. Such restrictions are created by the impugned Government Resolutions for effective implementation of the Government schemes and better utilization of the government funds. Under such circumstances, there should not be any grievance as has been expressed by the petitioner in the present petition. Therefore, the petitioner should not have any apprehension in this respect. For that matter, the petitioner has absolutely no

ground to challenge these Government Resolutions. There should not be any reason for the petitioner to doubt the competence to get the construction works done through the agency of Public Works Department of the State. Besides, there is no substantial reason for the petitioner to doubt the policy decision taken by respondent no.1.

8. It is further submitted that, the Municipal Council, Varangaon, has not completed the period of three financial years. As submitted above, what harm is there for the Council to get the work done through the agency of Public Works Department of the State of Maharashtra. The petitioner has not given particulars of the so-called sufficient infrastructure available including the required manpower to execute the different civil project works. The so-called work allegedly carried out by the petitioner are in breach of the norms and the guidelines

issued by respondent no.1. It is not known why the petitioner carried out the said works in violation of the terms and conditions laid down in the impugned Government Resolutions. The impugned Government Resolutions are for the better and effective utilization of the government money for the benefits of the citizens of the newly established Municipal Councils.

9. It is further submitted that, as to why the petitioner is afraid of the well experience and well equipped government agency like Public Works Department. As per the provisions of Section 90 of the Maharashtra Municipal Councils Act, the grant given to the Municipal Councils is municipal funds vesting in the Municipal Council yet it has to be disbursed as per the guidelines and norms envisaged in the impugned Government Resolutions dated 12.04.2016 and 03.08.2016. Deviation from these guidelines and norms

will amount to breach thereof and may entail evil consequences which the petitioner is expected to avoid. It is false to allege that the State Government wants to get its absolute control over the schemes which can be executed through the machinery of Municipal Councils. However, this is the policy decision of respondent no.1 and the Court may not interfere in it. All the same, no discretion is made against the present petitioner. The policy decision is equally applicable to all the newly established Municipal Councils in the State. For all these reasons, it cannot be said arbitrary or unjust.

10. It is submitted that, it is a matter of fact that, newly established Municipal Councils lack manpower, infrastructure including the Chief Officer, Engineer etc. to carry out the work of various projects for which the Government grants are given.

Keeping these aspects in mind the impugned Government Resolutions have been passed. The petitioner has not made out any case so as to set aside or to declare that these Government Resolutions are not applicable to Varangaon Municipal Council. The petitioner has alternate efficacious remedy available. Therefore, the present Petition is not tenable. Besides, the Petition seems to have been motivated for the consideration other than legal. Therefore, he submits that, the Petition may be rejected.

11. We have heard learned counsel appearing for the petitioner and learned APP appearing for respondent-State at length. With their able assistance, we have perused the pleadings and grounds taken in the Petition, annexures thereto, affidavit-in-reply filed by the respondents, and in particular the contents of the Government Resolutions dated 12th April, 2016 and 3rd

August, 2016, issued by the Urban Development Department, Government of Maharashtra, Mantralaya, Mumbai. Upon careful perusal of the preamble of the Government Resolution dated 12th April, 2016, it is abundantly clear that, keeping in view the difficulties faced by the newly created and established Municipal Councils/Nagar Panchayats and for proper utilization of the grants given by the Government of Maharashtra, it was decided to take some policy decision, and accordingly, the policy decision has been taken by the State Government, thereby entrusting the works to be carried out in furtherance of the disbursement of the grants, by the Public Works Department of the State of Maharashtra. Undisputably, the Public Works Department has been entrusted the function of preparation of the plans of the proposed construction of the buildings, to be constructed and built for the use of

Government Departments. Therefore, the said Department is equipped with the skilled and experienced Officers in the field of construction. Apart from it, it possesses requisite experience to monitor the construction work and to utilize the funds in accordance with the Government policy.

In the said Government Resolution dated 12th April, 2016 in clause no.4, the nature of work to be undertaken has been mentioned. In clause no.5, it is also mentioned that, unless the main work of construction of buildings for the purpose which is mentioned in para 4 is complete, the minor work should not be undertaken by the Municipal Council from the funds disbursed by the Government of Maharashtra.

12. In another Government Resolution dated 3rd August, 2016, issued by the same Department, it is mentioned that, the Public

Works Department of State of Maharashtra will look after the work/construction to be undertaken, pursuant to the disbursement of the grants / funds by the State Government. Importantly, in clause 3 of the said Government Resolution, the Municipal Council/Nagar Panchayats are given exemption from depositing 10% of the amount from their funds from such projects to be undertaken pursuant to the disbursement of the grants by the Government. It is further mentioned in the said clause that, the Government will make 100% grants / aid available for such new projects mentioned in the Government Resolution dated 12th April, 2016. Therefore, the decision taken by the Urban Development Department of the Government of Maharashtra by issuing aforesaid two Government Resolutions is with loudable object. The said Government Resolutions are made applicable to all the Municipal Councils/Nagar Panchayats,

which are newly created and established throughout the State of Maharashtra, for three years from their creation / establishment. There is no discrimination as such, which can put question mark on the policy decision so taken or there is no any arbitrary or *mala fide* exercise of powers in introducing such policies.

13. When the policy decision is taken by the State Government, a Municipal Council has no right to challenge the same by claiming that, the Municipal Council has exclusive right to spend said funds disbursed by the Government on the projects mentioned in the Government Resolution dated 12th April, 2016. In fact, when the State Government is giving 100% grants / aid, by no stretch of imagination, the policy decision taken by the State to monitor, supervise, undertake and utilize the said funds under the control of Public Works Department, for three years from

the date of newly created Municipal Council / Nagar Panchayats can be said to be arbitrary or discriminatory or *mala fide* exercise of powers by the State Government. Though the said amount can be termed as municipal fund, nevertheless the Government has taken a policy decision of giving 100% grants for the construction of buildings / projects to be undertaken, and therefore, in our considered view, the said policy decision taken by the State Government as reflected through the aforesaid two Government Resolutions needs no interference. Hence, the Writ Petition is devoid of any merit, and the same stands rejected.

[MANGESH S.PATIL]
JUDGE

[S.S.SHINDE]
JUDGE