

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

WRIT PETITION NO.359 OF 2018

- 1 Gram Panchayat, Waghbet,
Tq. Parli-Vaijnath, Dist. Beed
Through its Sarpanch,
Amarnath S/o Radhakrushna Gitte,
Age: 34 years, occ: service,
R/o Waghbet, Tq. Parli-Vaijnath
Dist. Beed
- 2 Gram Panchayat, Lamhan Tanda
Tq. Parli-Vaijnath, Dist. Beed
Through its Sarpanch,
Datta S/o Sakharam Rathod,
Age: 42 years, occ: Agril,
R/o Lamhan Tanda, Tq. Parli-Vaijnath
Dist. Beed
- 3 Gram Panchayat, Nagpimpri,
Tq. Parli-Vaijnath, Dist. Beed
Through its Sarpanch,
Rekha Yashwant Bhosale,
Age: 40 years, occ: Agril
R/o Nagpimpri, Tq. Parli-Vaijnath
Dist. Beed
- 4 Gram Panchayat, Landewadi,
Tq. Parli-Vaijnath, Dist. Beed
Through its Sarpanch,
Sunitabai w/o Ramesh Chavan,
Age: 42 years, occ: Agril
R/o Landewadi, Tq. Parli-Vaijnath
Dist. Beed
- 5 Gram Panchayat, Kasarwadi,
Tq. Parli-Vaijnath, Dist. Beed
Through its Sarpanch,
Munjaji S/o Sopan Khandekar,
Age: 30 years, occ: Agril
R/o Kasarwadi, Tq. Parli-Vaijnath
Dist. Beed

6 Gram Panchayat, Saradgaon,
Tq. Parli-Vaijnath, Dist. Beed
Through its Sarpanch,
Gitabai w/o Vasant Aghav,
Age: 38 years, occ: Agril
R/o Saradgaon, Tq. Parli-Vaijnath
Dist. Beed

7 Gram Panchayat, Davnapur,
Tq. Parli-Vaijnath, Dist. Beed
Through its Sarpanch,
Rambhabai w/o Baliram Aghav,
Age: 42 years, occ: Agril
R/o Davnapur, Tq. Parli-Vaijnath
Dist. Beed

Petitioners

Versus

1 The State of Maharashtra,
Through its Principal Secretary,
Rural Development & Water Conservation
Department, Mantralaya, Mumbai 32

2 The Chief Executive Officer,
Zilla Parishad, Beed
Tq. and Dist. Beed

3 The Panchayat Samiti,
Parli-vaijnath, Tq. Parli-vaijnath
Dist. Beed
through its Sabhapati

4 The Block Development Officer,
Panchayat Samiti, Parli-vaijnath,
Tq. Parli-vaijnath, Dist. Beed.

5 Smt. Pankaja d/o Gopinath Munde
age: years occu: Minister for
Rural Development, Maharashtra State

Mumbai

Respondents

Mr.R.N.Dhorde, Sr. counsel h/f
Mr. V.R.Dhorde, Adv. for petitioners
Mr. S.B. Yawalkar, Assistant Govt. Pleader for respondent No.1
Mr. V.M. Chate advocate for respondent Nos.2 and 4.
Mr. S.G. Kawade advocate for respondent No.3

**CORAM : R.M.BORDE &
K.K.SONAWANE, JJ.**

Reserved on : 4.5.2018

Pronounced on : 5.6.2018

**JUDGMENT
(Per: R.M Borde, J)**

1 Heard.

2 Rule. With the consent of the parties, petition is taken up for final disposal at admission stage.

3 The petitioners are Grampanchayats within Parlivaijnath taluka, district: Beed, constituted under the provisions of The Maharashtra Village Panchayats Act, 1959. The petitioners are objecting to the corrigendum dated 30.12.2017 issued by respondent No.1-State, directing transfer of 101 works together with the funds to the Public works Division, Osmanabad for execution.

4 According to the petitioners, the Chief Executive Officer, Zilha Parishad, Osmanabad accorded administrative sanction for carrying out 206 works of different characters within the jurisdiction of various Grampanchayats in Parlivaijnath taluka on 28.12.2016. The Zilha Parishad released funds amounting to Rs.6,52,88,600/- to the Panchayat Samiti Parlivaijnath for carrying out 206 works on 31.3.2017. According to the petitioners, out of 206 works to be undertaken within the jurisdiction of various Grampanchayats in Parlivaijnath taluka, about 43 work-orders have been issued to Grampanchayat and out of 43 works, 18 works are completed and remaining are in progress. It is further contended that so far as remaining 163 works are concerned, the respective Grampanchayats have completed the process in respect of execution of the works and submitted proposals to the Panchayat samiti for issuance of work orders. It is the allegation of the petitioners that general elections to the Grampanchayats in Parlivaijnath Taluka were held and most of the Grampanchayats which were under the control of ruling party at the State level have come under the control of elected bodies, having allegiance to the rival political party. In the month of December, 2017, almost after one year of the allotment of the funds by the State Government and after about 9 months of release of funds by the Zilha parishad to the

Panchayat samiti for carrying out the works, at the instance of Honourable Minister for Rural Development, with a malafide intention, the respondent State has issued a corrigendum to the Government Resolution dated 24.10.2016, where-under, 101 works which were being undertaken by the concerned Village Panchayats, were withdrawn and those were allotted to the Public Works Department (PWD). It is the contention of the petitioners that there is absolutely no ground for transfer of the part of the works out of total 206 works to the PWD. It is alleged by the petitioners that since the concerned village panchayats are under the control of rival political group, only works which are being undertaken at the village panchayats controlled by the opposition parties, numbering 101 works out of 206 total works have been withdrawn. It is the contention of the petitioners that the act of the State Government shall have to be tested on the touch stone of fairness and since it is alleged that the village panchayats under the control of opposition party are being extended discriminatory treatment, the impugned corrigendum dated 30.12.2017 deserves to be quashed and set aside.

5 On the contrary, it is the contention of the respondent State that the funds have been allotted by the State Government for carrying out the developmental works within the jurisdiction

of various village panchayats in Parlivaijnath Taluka. Such developmental schemes are undertaken through out the district. The respondent contends that it is the prerogative of the State Government to prescribe the implementing agency for carrying out the developmental works. The Government Resolution dated 27.3.2015 prescribes modalities for carrying out developmental works suggested by the representatives of the people. Our attention is invited to clause 'D' of the Govt. resolution dated 27.3.2015 to contended that the State Govt. is expected to take final decision in respect of implementing agency for carrying out the developmental works suggested by the representatives of people. The respondent also contends that the funds released by the State Government were never deposited in the accounts of village panchayats and the amount sanctioned by the State Government does not form a part of the village fund as contemplated under section 57 of the Maharashtra Village Panchayat Act. It is the contention of the State that since the funds released by the State Government has not become the part of the village fund, the concerned village panahayat does not have any control over utilization of the funds and also in respect of implementation of the project works, as suggested by the representative of people. It is contended that the provisions contained in Chapter IX of the Constitution enables the State

Government to enact law, consistent with the constitutional provisions. It is contended that though certain works have been enlisted/serialized in XIth schedule of the Constitution, it does not necessarily mean that it is only the concerned village panahayat which shall be responsible for carrying out the developmental works. It is thus contended that the administrative decision taken by the State Government of appointing an implementing agency in accordance with the Govt. resolution dated 27.3.2015 and issuance of subsequent corrigendum dated 30.12.2017 is not liable to be interfered with.

6 The State has enacted The Maharashtra Village Panchayats Act, 1959 with an object of amending and consolidating the law relating to the constitution and administration of village Panchayat in the State of Bombay with a view to establishing a village Panchayat for every village and investing with such powers and authority as may be necessary to enable them to function as unit of local self Government and for carrying out all developmental activities in the rural areas. The Act provides for constitution of village Panchayat and administration of local bodies. The establishment of village panahayat in the State is in consonance with the constitutional mandate prescribed under Chapter IX of the Constitution of India. The composition of village

Panchayat is provided under article 243-C. The power, authority and responsibilities of Panchayats have been prescribed in article 243-G. It is provided that subject to the provisions of the constitution, the legislature of a State may, by law, endow the panchayat with such power and authority, as may be necessary to enable them to function as institutions of self Government and such law may contain provisions for devolution of powers and responsibilities upon all Panchayats at appropriate level subject to such conditions as may be specified thereunder with respect to :

- a) the preparation of plans for economic development and social justice;
- b) the implementation of the schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in eleventh schedule.

7 Article 243-N provides that notwithstanding anything contained in this part, any provision of law relating to the Panchayats in a State immediately before the commencement of the constitution (73rd amendment) Act, 1992, which is inconsistent with the provisions of this Part shall continue to be in force until amended or repealed by the competent legislature or

other competent authority or until the expiration of one year from such commencement, whichever is earlier.

8 The petitioners contend that the works those are being undertaken by the village-panchayats are of the nature specified in entries Nos.13 and 23 of eleventh schedule of the Constitution of India. It is further contended that it is within the exclusive competence of the local authority to carry out the works as specified in eleventh schedule and it would not be permissible for the State Government to encroach upon the autonomy of the units of local self Government such as village panchayats.

9 Section 45 of The Maharashtra Village Panchayats Act, 1959 prescribes administrative powers and duties of the Panchayats. It is provided that subject to the general control of the Zilha Parishad and Panchyat Samiti, it shall be the duty of a Panchayat, so far as the village fund at its disposal will allow to make reasonable provision within the village with respect to all or any of the subjects mentioned in Schedule-I as amended from time to time under subsection 2. The works sanctioned by the State Government and undertaken by the village Panchayats are as specified in entry No.40 of Schedule I of The Maharashtra Village Panchayats Act, 1959.

Section 57 of The Maharashtra Village Panchayats Act, 1959 provides that there shall be, in each village, a fund, which shall be called the village fund. There are various entries enlisted in section 57 specifying the amount collected with reference to such of those entries which would constitute village fund.

10 The petitioners contend that since the amount has been credited to the account of Panchayat Samiti for being utilized for developmental works, sanctioned by the State Government, it shall be presumed that the amount so released to the Panchayat Samiti for carrying out the works in village Panchayat, forms a part and parcel of village fund. Inviting our attention to section 135 of The Maharashtra Village Panchayats Act, 1959, it is contended that it shall be duty of the Zilha Parishad and Panchayat Samiti to

- (a) encourage the establishment and foster the development of Panchayat in the area for which they are established
- (b) supervise and control the administration of panchayat in the area for which they are established
- (c) perform such other functions as are imposed by the Act, and as the State Government may from time to time prescribe

11 It is thus contended that in the supervisory capacity, the funds have been allotted to the account of Panchayat Samiti by the State Government for carrying out developmental works in the village Panchayats and as such, it shall be the responsibility of the Panchayat Samiti to supervise the work and it shall have to be presumed that the funds are required to be utilized in the manner as specified in The Maharashtra Village Panchayats Act, 1959. It is the contention of the petitioners that it is, however, exclusive domain of the village Panchayat to carry out the works specified in Schedule-I of the Act.

12 There is no dispute that the State Government sanctioned an amount to the tune of Rs.3231.39 lakhs for carrying out various works specified in Schedule-I, in Beed district. The State Government also decided to transfer 20% of the amount of the total sanctioned funds i.e., Rs.646.28 lakhs to the Chief Executive Officer of Zilha Parishad, Beed. It is also directed under the said Govt. resolution to the Chief Executive Officer to hand over the aforesaid funds to the Block Development Officer (BDO) of the concerned Panchayat Samiti for carrying out works. The Govt. resolution provides that it shall be the responsibility of the Chief Executive Officer to grant administrative and technical sanction, float tenders, finalize the same and issue work orders.

It is also the responsibility of the Chief Executive Officer to ensure that the sanctioned works are completed within the period specified. It is thus clear that the administrative supervision is entrusted to the Chief Executive Officer and the funds are required to be disbursed for carrying out the works through the BDO of the concerned Panchayat Samiti. the implementing agency thus, in the instant matter, as prescribed by the Govt. resolution dated 24.10.2016 is the Zilha Parishad and the Panchayat Samiti. It is not a matter of dispute that the funds amounting to Rs.6,52,88,600/- were actually disbursed in the account of the B.D.O., Panchayat Samiti, Parlivaijnath on 31.3.2017. It also thus appears that during the intervening period, general elections to the village Panchayat were conducted in Beed district and the composition of the elected body of village Panchayat has undergone change. There is no denial on behalf of the respondents that the composition of the village panchayats from the point of view of political control has undergone change after the general elections. The contentions by the petitioners that the respondents have decided to allot only 101 works in Parlivaijnath taluka out of 206 works, those were sanctioned by the State Government for the reason that the village Panchayats which are covered by the corrigendum relating to transfer of works to public works department are

being controlled by the rival political party, appears to bear substance. It has not been explained as to why the respondents have chosen only 101 works out of total 206 works undertaken in Parlivaijnath taluka for change in implementing agency.

13 The affidavit in reply presented on behalf of the State Government is totally silent in this regard. The impugned corrigendum issued by the State Government prescribing change in the implementing agency, also does not record any reason as to why in the midst of the process and after lapse of more than one year of the sanction of the works, the implementing agency is being changed. It must be noted that on consideration of sequence of events, the contention of the petitioners, prima facie, appears to bear substance. The State Government accorded administrative sanction in respect of the works on 21.12.2016. Funds were actually allotted to Zilha parishad and were transferred to the account of respective Panchayat Samitis on 31.3.2017 and it is only after the elections to the village panchayats, the impugned corrigendum dated 30.12.2017 directing change in the implementing agency in respect of 50% of the village panchayats, has been issued.

14 As has been recorded above, there is absolutely no reason as to why the specific 101 village panchayats have been chosen

as against total 206 panchayats for change in the implementing agency for carrying out the works. If the list of works being undertaken is perused, it does appear that almost all the developmental works are within the financial limit of about Rs.3 lakhs. It would be clear that the works those are undertaken are of petty nature like concreting of road or providing for certain village specific facilities like construction of hall or providing for a burial ground for respective categories, construction of drains etc. It is not clear as to why there should be generation of interest in carrying out petty works which are village specific and of the value not more than three lakhs rupees, through the State agency PWD. The PWD as is expected to implement the State Level Projects. It is not clear as to what is the wisdom in entrusting village specific petty works amounting to Rs.3 lakhs to a State Level Agency.

15 The dates and the events and the circumstances as narrated above, lead us to believe that the decision in handing over part of the works to the state level agency under the impugned corrigendum is not sustainable on the touch stone of reasonableness and transparency.

16 It is vehemently contended on behalf of the State that the State Government has not contributed to the village fund and as

such concerned village panchayat will not have any control over the funds and shall not have freedom to decide as regards the implementing agency. It is vehemently contended that it is the prerogative of the State to take decision and to prescribe the implementing agency since the funds are provided by the State. It is contended that though the works relate to Schedule-I of the Maharashtra Village Panchayats Act, the State Government is not precluded from appointing an agency for carrying out those works. So far as provision contained in Chapter IX of the Constitution is concerned, it is contended that it is merely an enabling provision and provides for a mandate to the State to enact law as regards governance of Panchayats consistent with the constitutional provisions.

17 Our attention is invited to the decision in the matter of **Sudhir Daulatchand Kothari versus State of Maharashtra** in Writ Petition No.2608 of 2016 decided by the Division Bench of this Court at Nagpur on 26.8.2016. In identical circumstances, a challenge was raised by the President of the Municipal Council, Hinganghat of prescribing PWD, Wardha as implementing agency for carrying out the works sanctioned under 'special road grants' by the State. While dealing with the challenge, the Division Bench has considered aspect as to whether the amount

sanctioned by the State Government has become a part of the 'municipal fund' and as to whether it is the exclusive prerogative of the Municipal Council to carry out such works. It is observed in the Judgment that the fund released by the State Government does not become part of the Municipal fund. It is also noted in the Judgment that a period of almost five months has lapsed after the Court took cognizance of the order and issued interim orders. The Government resolution specifically provides that if the amount is not spent before 31.3.2017, the same shall stand reverted back to the Government and considering the aspect that hardly 6/7 months were left, the Division Bench took a view that if the interim order is further continued, rather than subserving the public interest of completing the developmental works, it would be adverse to the public interest, in as much as if the works are not completed within the stipulated period, the balance of the fund shall stand reverted to the State Government.

The Judgment cited is distinguishable and has no application to the instant matter.

The division bench of this Court has taken an identical view in the matter of **Santosh Kisanrao Kolhe versus The State of Maharashtra and others** in Writ Petition No.3938 of 2018 decided on 25.4.2018.

Placing reliance on the Judgment in the matter of **Chandrakant Subhash Thakare versus The State of Maharashtra and others** in Writ petition No.3514/2014 decided on 23.11.2015, the division Bench of this Court at Nagpur, it is contended that it is not the exclusive prerogative of the local authorities to undertake and complete the works. Paragraph Nos.10, 12, 16 and 17 of the Judgment are relevant for consideration which read thus:-

"10] It could thus be seen that the argument that in so far as the works which are covered by Entries in the Eleventh Schedule are exclusively within the jurisdiction of Zilla Parishad is not sustainable in view of the plain reading of the provisions of Article 243G. It could be seen that Article 243G is an enabling provision which enables the State Legislatures to enact law and to endow upon the Panchayats such powers and responsibilities as the Legislature deems fit for the execution of the works and schemes including the ones covered by Entries in Eleventh Schedule.

11]

12] In so far as the reliance on the provisions of Section 123 of the Act is concerned, the contention, in our view, is without any substance. The bare perusal of Section 123 would reveal that it is an enabling provision which enables the State Government to entrust the execution or maintenance of such works or development schemes to the Zilla Parishad or the Panchayat Samiti. However, there is no mandate that all the works and development

schemes which the State Government desires to implement in a district should be implemented only through the Zilla Parishad.

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16] It will be appropriate to refer to Article 162 of the Constitution of India which reads thus :

“162. Extent of executive power of State.--

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

It would thus be seen that subject to the provisions of the Constitution, the executive power of the State shall extend to the matters with respect to which the Legislature of the State has power to make laws. However, this is with a rider that when in any matter with respect to which the Legislature of the State and Parliament have powers to make laws, the executive power of the State

shall be subject to and limited by the executive power expressly conferred by this Constitution or by any law made by Parliament or Union or authorities thereof.

17] The legislative power of the State Legislature permits it to make laws pertaining to the matters in List II of Seventh Schedule. It will be relevant to refer to Item Nos. 6 & 13 of List II of Seventh Schedule which read thus :-

“6. Public health and sanitation; hospitals and dispensaries.

13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.”

It could thus be seen that the State Legislature will have a jurisdiction to make laws with regard to public health, sanitation, so also roads, bridges, etc. It could thus be seen that the executive power of the State shall extend to the matters with regard to sanitation, roads, etc. In that view of the matter, we are of the view that the roads, drainage works, etc. which would fall under the aforesaid Items in List II of Schedule VII would come within the executive province of the State and the State would be very much empowered to execute the said works.”

18 The petitioners have invited our attention to the Judgment decided by the Division Bench of this Court (to which one of us (R.M. Borde, J) was Member), in the matter of **Shri Gautam Baburao Maske & another versus The State of Maharashtra and others** (PIL No.139/2016 decided on 20.3.2017). In identical circumstances, the project works undertaken by the municipal council, Beed were in midway of implementation were transferred to the Public Works Department. Paragraph Nos.15 to 18 and 22 and 23 of the Judgment are relevant and those are as quoted below:

"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.

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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, nondiscriminatory and objective manner. The duty to act in a fair, reasonable, nondiscriminatory 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, mala fide, based on irrelevant considerations, without jurisdiction and for political consideration. Such decision cannot be sustained and deserves to be quashed and set aside. "

19 We have recorded in the foregoing paragraphs that in the instant matter, administrative sanction was accorded by the State Government for carrying out 206 works within the limits of Parlivaijnath taluka on 28.12.2016. Funds were sanctioned on the aforesaid date and an amount to the tune of Rs.652 lakhs has also been disbursed in favour of the Block Development Officer of Panchayat Samiti on 31.3.2017. It has not been denied that during the general elections to the various village panchayats the political composition has undergone change before issuance of the impugned corrigendum dated 30.12.2017. It has not been explained as to why respondent thought it fit to transfer only 101 works out of total 206 works undertaken by various village panchayats in Parlivaijnath taluka. The amount of fund that has been directed to be transferred to the Public Works Department is to the extent of Rs.340 lakhs out of total Rs.652 lakhs. The

works those are undertaken by the village panchayats are village specific and of petty nature, valuing not more than Rs.3 lakhs each. It has not been explained as to why respondents thought it fit to entrust village specific petty works to the state level agency like PWD. The village panchayats are constituted with a view to function as units of local self Government and for conducting developmental activities in the rural areas. It is not known as to what objective is being achieved in changing the implementing agency in respect of village specific petty works and entrusting the job to the State level agency i.e. PWD. Such interference at the instance of the respondents in the function of the units of local self Government is neither within contemplation of constitutional provision, nor is congenial to sustenance of units of local self Government.

20 It also must be noted that it has not been provided in the Govt. resolution dated 18.3.2016 which would empower the State Government to change the implementing agency. It has not been contended by respondents that any of the public representative has impressed upon the State Government to change implementing agency since the works are undertaken by utilizing the funds allotted by the State Government. Even if it is presumed that it is within competence and power of State

Government, the exercise of such power shall not be arbitrary. As has been observed by the Division bench in the matter of **State of Punjab versus 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. The Government and public bodies are free to choose the implementing agency in executing the works funded by them but any such selection or withdrawal of work must demonstrate that decision is unaffected by any extraneous consideration. Any decision taken in arbitrary and in-transparent manner, or for political consideration, will be amenable to judicial review and liable to be quashed and set aside.

21 At the costs of repetition, it must be recorded that it has not been explained as to why the respondents thought it fit to change the implementing agency in respect of petty village specific works costing not more than Rs.3 lakhs each and entrusting the job to a State level agency like PWD. It has also

not been explained as to why only 101 works out of total 206 have been withdrawn. Any decision taken in arbitrary manner without observing transparency and for extraneous consideration is amenable to judicial review and is liable to be quashed and set aside

22 For the reasons recorded above, the writ petition deserves to be allowed and the same is accordingly allowed.

23 The impugned corrigendum dated 30.12.2017 issued by the State Government is quashed and set aside. The respondents are directed to utilize the amount and ensure completion of the works sanctioned under the Government resolution dated 28.12.2016 expeditiously. The works shall be carried out in consonance with the Govt. resolution dated 24.12.2016.

24 Rule is accordingly made absolute.

25 There shall be no order as to costs.

(K.K.SONAWANE, J)

(R.M.BORDE, J)