IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3938 OF 2018

SANTOSH KISANRAO KOLHE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
...
Advocates for Petitioner : Shri V.J.Dixit, Sr. Adv.
i/b Shri S.S.Shete
AGP for Respondents : Shri P.N.Kutti
...

CORAM : R. M. BORDE & K. K. SONAWANE, JJ.
Dated: April 25, 2018
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PER COURT :-

1. Heard Shri Dixit, learned Senior Advocate for the petitioner.

2. The petitioner is praying for issuance of a Writ of Mandamus or any other Writ or order in the nature of Writ of Mandamus, directing the respondents not to act upon and implement the order passed by the State Government dated 11.4.2018 and not to effect the change in implementing agency.

3. The petitioner is the elected Councillor of the Municipal Council, Kannad. The said Council has proposed certain works related to construction of roads to be undertaken within the

Municipal Area. The Municipal Council is entitled to receive special grants under the head "Special Road Grants".

4. The procedure in respect of implementing the work under "Special Road Grants" and "Ordinary Roads Grants" has been laid down under the Government Resolution dated 16.1.2016. "Special Road Grants" are exclusively disbursed by the State Government. A committee is constituted in view of the aforesaid Resolution, for implementing the works under the Scheme. The Collector of the District is the controlling authority for implementing the works within the Municipal area falling within the scheme framed by the State Government as referred to above.

5. It is the contention of the petitioner that the State Government has disbursed an amount of Rs.1.40 Crores under the Scheme for implementing the works under "Special Road Grants" vide Government Resolution dated 31.3.2018. The amount has been disbursed to the Collector in his capacity as the controlling authority and it is provided under the said Resolution that the implementing agency should be the Municipal Council. The Government Resolution dated 31.3.2018 has been modified on 11.4.2018 and the implementing agency has been prescribed

as the Public Works Department.

6. The petitioner contends that it would not be permissible for the State Government to change the implementing agency. The petitioner contends that in view of the Government Resolution dated 16.1.2016, it is the Municipal Council which shall be entitled to continue the work as an implementing agency. Reliance is also placed on the Government Resolution dated 31.3.2018 to contend that it shall be within the exclusive domain of the Municipal Council to carry out the works and the State Government has no authority to change the implementing agency.

7. In this context, reference can be made to the judgment of this Court (Nagpur Bench) in the matter of Devendra and Others Vs. State of Maharashtra and others - Public Interest Litigation Nos. 86 and 102 of 2016 decided on 26.8.2017. The Division Bench, dealing with this issue, has observed in paragraph Nos.12, 13 and 16 of the judgment as under:-

> "*12. It will be appropriate to refer to Section 90 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as " the Act"). Perusal of sub-section (1) of Section 90 would*

reveal that all moneys received by or on behalf of a Council by virtue of this Act or any other law for the time being in force, all taxes, fines and penalties paid to or levied by it under this Act, other than fines imposed by any Court, all proceeds of land or other property sold by the Council, and all rents accruing from its land or property, and all interest, profits and other moneys accruing by gift or transfer from Government or private individuals or otherwise, shall constitute the municipal fund. Undisputedly, the grants have been given by the State Government to the Municipal Councils. After the said grants become part of the Municipal fund, said fund shall exclusively vest with the Municipal Council to decide as to how this is to be disbursed. No doubt that, under the Government Resolution dt. 16.1.2016, the Government is empowered to finalise list of works to be undertaken under "Special Roads Grants". However, in cases where the Government has not finalised list of such works, the power is given to the General Body of the respective local Authority to determine the list of works to be undertaken. Undisputedly, in the present case, the Government has not finalised the list of works to be undertaken either by Municipal Council, Nandura or Municipal Council, Malkapur. As such, the General Body of these two Municipal Councils will be empowered to finalise the works to be undertaken. The Government, by letter addressed by Under Secretary, cannot bestow these powers upon the Hon'ble Member of the Legislative Assembly of local area.

13. As a matter of fact, today itself we have decided Writ Petition No. 2608 of 2016 in respect of Hinganghat

Municipal Council. In the said case, the State Government had specifically appointed the District Collector as a controlling Authority and the District Administrative Officer as drawing and disbursing Authority. The amount was credited to the account of the Collector, Wardha. The works were to be undertaken as recommended by the Municipal Council, but to be executed by the agency to be appointed by the Collector. Accordingly, the Collector had appointed Public Works Department, Wardha as an implementing agency. The same was challenged by the President of Municipal Council, Hinganghat. However, we had rejected the petition holding therein that the amount was not credited to the account of the Municipal Council and as such, it had not become the part and parcel of the Municipal fund. We had further held that, in view of the provisions of Section 49-A of the Act, the State Government has power to appoint the implementing agency and also issue directions and determine the conditions for appointing such an implementing agency.

14. ....

15. ....

16. A reference can also be made to the Judgment of the Division Bench of this Court in the case of Nandkishor s/o. Rangraoji Warhade and Others vs. The State of Maharashtra and Ors. reported in 2015(1) ALL MR 711, wherein this Court has taken a view that it will be for the local Authority to determine as to which works are to be *executed from the Municipal fund. In the similar facts, it has been held that it is not permissible for a local M.L.A. to encroach upon the jurisdiction of local Authority to determine as to what works are to be executed from the local fund.*"

8. In the instant matter, on perusal of the record, it becomes clear that the special grant disbursed by the State Government amounting to Rs.1.40 Crores does not become the part of the Municipal funds. If the amount disbursed by the State Government is included in the Municipal funds, it would be within the exclusive domain of the Municipal Council to take a decision in respect of the utilization of the said fund. Section 90 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 provides that all moneys received by or on behalf of a Council by virtue of this Act or any other law for the time being in force, all taxes, fines and penalties paid to or levied by it under this Act, other than fines imposed by any Court, all proceeds of land or other property sold by the Council, and all rents accruing from its land or property, and all interest, profits and other moneys accruing by gift or transfer from Government or private individuals or otherwise, shall constitute the municipal fund. It is the contention of the petitioner that the amount received by the Collector under the Government

Resolution dated 31.3.2018 has been received as a representative of the Municipal Council and in the capacity of a controlling authority. It is not a matter of dispute that the District Collector is the controlling authority under the Government Resolutions dated 16.1.2016 as well as 31.3.2018. Clause (6) in the Government Resolution dated 16.1.2016 provides that the funds received under the "Special Road Grants" shall not be disbursed to the Public Works Department. The Resolution also provides, more specifically in paragraph No. 3 Clause (c), that it would be within the domain of the State Government to prescribe the implementing agency. In the event, the State Government does not prescribe the implementing agency, in such case, the implementing agency shall be the Municipal Corporation or Nagar Parishad or Nagar Panchayat, as the case may be. In the instant matter, by virtue of Government Resolution dated 11.4.2018, the State Government has prescribed Public Works Department as the implementing agency. It is within the domain of the State Government to prescribe the implementing agency as has been recorded above. The funds disbursed by the State Government have not become part of the Municipal funds and as such the Municipal Council does not have domain over it. It is no where alleged in the petition that the act of State Government in prescribing the implementing agency, by virtue of the impugned Government Resolution dated 11.4.2018, is a colourable act or is tainted with malafides. In the circumstances, a purely executive action of the State Government need not be scrutinized in extra-ordinary jurisdiction under Article 226 of the Constitution of India by this Court.

9. The petition is devoid of merits and stands rejected.

(K. K. SONAWANE, J.) (R. M. BORDE, J.)

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