

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 3060 OF 2019

Grampanchayat Waghbet and Ors. ...Petitioners

**Versus**

The State of Maharashtra and Ors. ...Respondents

**ALONG WITH**

WRIT PETITION NO. 13424 OF 2018

Grampanchayat Lamhan Tanda and Ors. ...Petitioners

**Versus**

The State of Maharashtra and Ors. ...Respondents

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Mr R. N. Dhorde, Senior Counsel i/by Mr V. R. Dhorde, for the  
Petitioners.

Mr. A.B. Girase, GP, for the Respondent No. 1 – State.

Mr. K.B. Jadhav, for Respondent Nos. 3 and 4.

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**CORAM : PRASANNA B. VARALE &  
S.M. GAVHANE, JJ.**

**DATE : MARCH 08, 2019**

**ORDER:**

1. Heard learned Counsels appearing for the respective parties.
2. It would not be out of place to state here that in all these petitions an identical/common issue is involved, as such, the petitions are tagged together and accordingly are taken up for hearing and disposal. By consent of the parties Writ Petition No. 3060 of 2019 is taken up as lead petition.

3. Petitioners are the Grampanchayats in the District Beed, are approaching this Court through their Sarpanchas challenging the action of Respondent – State appointing Respondent No. 2 – Public Works Department, Osmanabad as an implementing agency to carryout the works sanctioned under Government Resolution dated 15.02.2019. Petitioners are also seeking direction to the Respondent – State to transfer the funds of Rs. 971.39 Lacs sanctioned under the Government Resolution dated 15.02.2019 to the Zilla Parishad, Beed instead of diverting the funds to PWD, Osmanabad and further petitioners be allowed to carryout the works sanctioned.

4. Leaned Senior Counsel, Mr Dhorde referred to certain facts, namely,

a. allocation of the funds under the head of 2515 for the financial year 2016-17 to carryout the works in Grampanchayats,

b. Chief Executive Officer, Zilla Parishad (Respondent No. 3) granted administrative sanction for 206 works of various Grampanchayats including the petitioners Grampanchayats.

c. In the month of October, 2017 elections to the Grampanchayats in Taluka Parali Vaijyanath were conducted and certain Grampanchayats

went under the control of rival political party.

d. On 30.12.2017 Respondent No. 1 – State of Maharashtra issued corrigendum and transferred 101 works of Grampanchayats to PWD. These Grampanchayats were belonging to the rival political party. The action of the State Government was subjected to challenge before this Court by preferring Writ Petition No. 359 of 2018.

e. Writ Petition No. 359 of 2018 was allowed by the judgment and order dated 05<sup>th</sup> June, 2018 and order of the State Government was set aside.

f. Being aggrieved by the judgment and order, the State Government preferred special leave petition before the Hon'ble the Apex Court and the same came to be dismissed by order dated 21.01.2019.

g. Again on 15.02.2019 the State Government issued two resolutions sanctioning the amount to carry out works in the Grampanchayats for the year 2018-19 and the State Government to carryout the works and the State Government appointed PWD as implementing agency in respect of such Grampanchayats which were controlled by the rival political party, whereas, the other Grampanchayats which were controlled by the ruling political party were permitted to carryout work.

5. Learned Senior Counsel vehemently submitted that action of the State Government on face of it is arbitrary, irrational and issued only to support the ruling political party. It is also submitted by learned Senior Counsel that the very action of the State Government showing an arbitrariness was disapproved and was quashed under the judicial order of this Court which was confirmed by the Hon'ble the Apex Court and in spite of judicial orders operating in the fields, the State Government with vindictive approach again passed the similar order. Thus, the action of the State Government is not a bonafide and the State Government ought to have provided an equal treatment for the works relating to the utilities of public general. In spite of that the State Government on the basis of political rivalry adopted pick and choose policy is the submission of learned Senior Counsel.

6. Learned Senior Counsel placed heavy reliance on the judgment and order of this Court in Writ Petition No. 359 of 2019 as well as judgment in the matter of Shri Gautam Baburao Maske and Anr Vs. The State of Maharashtra and Ors<sup>1</sup>. The copy of the Government decision dated 15.02.2019 is placed on record at Exh 'C' and in clause 2

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<sup>1</sup> 2017 (6) ALL MR 639

of the said order reference is made about handing over of the works to PWD. Perusal of these documents further shows that these are the various works in villages relating to public utilities such as, construction of community hall, internal cement roads, compound wall, burial grounds, smashan bhumi, construction of vyayam shala, a shed for the travelers, compound wall of the school. Above reference to those works is made as an illustration. Needless to state that list is exhaustive and there are as many as 301 such works.

7. Per contra, petitions are opposed by the learned Counsel appearing for the Respondent – State . On the written submissions filed on behalf of the Respondent No. 1, the stand of the Respondent – State is that the funds being State funds and State has authority and control over the said funds and it is the fundamental duty of the State to see that the said funds be utilized in proper manner. It is also submitted that the said funds never formed part of village funds as contemplated under Section 57 of the Maharashtra Village Panchayat Act. It is also submitted that on receiving the representations/proposals from the elected representatives the decision was taken in respect of the works at local level and further it was decided that the work shall be done through

proper implementing agency. An attempt was also made to seek a support from the judgment of the Division bench delivered at Nagpur bench.

An affidavit in reply was also filed on behalf of the Respondent Nos. 3 and 4 through the Additional Chief Executive Officer, Dhanraj Vaijinath Nila. The affidavit filed on behalf of the Respondent Nos. 3 and 4 reiterates the grounds/oppositions raised in the written submission filed on behalf of the Respondent – State. In counter to the written submission filed on behalf of the Respondents, the petitioners have also filed a written submission and certain judgments which are annexed to the written submissions.

8. We make it clear that though there cannot be any dispute on the submission that the funds to be allowed to the Grampanchayats for carrying out various works is a State's funds, there also cannot be dispute on submission that the State Government has authority and control over the State's funds and its fundamental duty to see that funds should be utilized in proper manner but it is reflected from the material placed on record and more particularly, the judgment of Division bench of this Court that the action of the State Government is a arbitrary action. On one hand State Government is permitting certain Grampanchayats to

carryout the work and funds are allotted to those Grampanchayats which are controlled by rival party, whereas on the other hand, similar treatment is not given to those Grampanchayats which are controlled by the opposition/rival political party. Thus, there is considerable merit in the submission of learned Senior Counsel that the action of the State Government is not a bonafide action and the State Government had adopted the policy of pick and choose.

Considering the facts emerged from the perusal of the record, we are also of the opinion that the judgment of the Division bench at Nagpur relied on by the learned GP is of no help to the State as the same is distinguishable on the facts of the matter.

9. It may not be out of place to state here that issue involved was dealt in thoroughly and in detail in the Division bench judgment of this Court in Writ Petition No. 359/2018 as well as in public interest litigation. In spite of these facts, the State Government initiated similar action and committed the same mistake. It will not be out of place to refer to certain observations of the Division bench in Writ Petition No. 359/2018.

4.....

*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, whereunder, 101 works which were being undertaken by the concerned Village Panchayts, 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.

12.....

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.

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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.....*

*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.*

It will not be out of place to state that the ground of opposition raised by the State in the present petitions are also elaborately dealt with in the judgment and order in Writ Petition No. 359/2019.

*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.*

10. We may add and state that the judgment delivered by the Division bench at Nagpur was also considered in the judgment of Division bench of this Court in Writ Petition No. 359/2018. Then there is a reference made to the judgment of Division bench in public interest litigation.

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.*

It is not in dispute that the judgment of the Division bench was subject matter in special leave petition and the Hon'ble Apex Court dismissed the said special leave petition by order dated 21.01.2019 which reads thus:

*Delay condoned.*

*We are not inclined to interfere in the matter. The special leave petition is, accordingly, dismissed.*

*Pending application(s), if any, shall stand disposed of.*

11. Learned Senior Counsel was also justified in placing heavy reliance on the judgment of the Hon'ble the Apex Court to submit that State Government committed serious error in violation of Article 14 of the Constitution of India. Learned Senior Counsel placed heavy reliance on the judgment of Hon'ble Apex Court in the matter of State of Punjab and Anr Vs. Brijeshwar Singh Chahal and Anr<sup>2</sup>. It would not be out of place to quote head note of the said judgment which reads thus:

***C. Constitution of India – Arts. 162 & 73, 310 and 14 – Government and so also all public bodies are trustees of the power vested in them – discharge of the trust reposed***

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<sup>2</sup> (2016) 6 SCC 1

*in them in the best possible manner in their primary duty – Power to engage, employ or recruit servants, agents, advisors and representatives must like any other power be exercised in a fair, reasonable, non-discriminatory and objective manner – Duty to act in a fair, reasonable, non-discriminatory and objective manner is a facet of the Rule of Law in a constitutional democracy like ours – 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 Art. 14 of Constitution – Engagement of servants, agents, advisors and representatives by Government – Mandate of Art. 14 fully applicable – Scope of Judicial review.*

12. On hearing the learned Counsel appearing for the respective parties and on going through the material placed on record as well as the judgments relied on by the parties and for the reasons stated above, we are of the opinion that the learned Senior Counsel appearing for the Petitioners made out a case for allowing the petitions. Accordingly, both Writ Petitions are allowed in terms of prayer clause 'B'.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)