

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2254 OF 2019

Shubhagi Ashok Bannewar and Ors. ... Petitioners

Vs

State of Maharashtra, through
Secretary and Anr. ... Respondents

Mr.Amitkumar Damodar Sale a/w
Tukaram Shendge for the Petitioners.

Mrs.M.P.Thakur, AGP for State-
Respondent Nos.1 and 2.

CORAM :- S. C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.

DATE :- MARCH 27, 2019

P.C. :-

1. By this petition under Article 226 of the Constitution of India, the elected Municipal Councillors of the Jath Municipal Council are questioning the Government Resolution. That is issued by the Department of Urban Development, Mantralaya, Mumbai assigning the powers and the complaint is that these powers vest in the elected body. However, the Collector is now empowered to get the development works executed through the Public Works Department. This is contrary to the 73rd amendment to the Constitution of India brought into effect on 24th April, 1993.

2. When this writ petition was listed before us, we invited the attention of Mr.Sale appearing for the petitioners to the prayers in this writ petition.

3. Prayer clause (a) of the writ petition reads as under:-

“(a) That this Hon’ble Court be pleased to issue appropriate, writ, order and/or direction and thereby hold and declare that the impugned Government Resolution dated 31.12.2018 issued by the Respondent No.1-State of Maharashtra is ultra vires and unconstitutional to 73rd Constitutional Amendment and further be pleased to quash and set aside the same.”

4. We inquired from Mr.Sale as to how the Municipal Councillors are filing such a petition when the Municipal Council has no objection to it. It is ultimately the duties and functions of the Municipal Council which, *inter alia*, include planning for Social and Economical Development which are allegedly affected. The Councillors cannot complain about such alleged assigning of duties.

5. That apart, the duties imposed by sub-section (1) and sub-section (2) of Section 49 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (For short, “the Act”) on the Municipal Council enable it to undertake and make reasonable provisions for the matters within the limits of the municipal area and when effective measures cannot otherwise be made, then, even outside the said limits and

such matters are enumerated in various clauses of sub-section (2) of Section 49 of the Act.

6. The petitioners cannot complain that the Chief Executive Officer has been hitherto carrying out all these functions, but now it would be the Collector.

7. That apart, the reasons for the shift in the policy are set out in the writ petition itself. It was found that the development works suffered though funds were sanctioned and financial aid was given by the Government. The civic amenities were not being provided on account of lack of adequate staff etc. The funds were, therefore, not fully utilised. The financial aid sanctioned having not been fully utilised, the residents within the jurisdiction and area of Municipal Council suffered the consequences. It is, therefore, a policy decision which has been taken and to ensure that every single rupee which is sanctioned and granted is fully utilised so as to carry out the development works. Once the petitioners have, in the petition itself, pointed out this background and the reasons for the same, we do not think that in writ jurisdiction, we should interfere.

8. The judgment and order which has been relied upon by Mr.Sale would not assist the petitioners. The Division Bench of

this Court sitting at Nagpur was deciding a writ petition (Writ Petition No.1698 of 2011) by a petitioner who was a Chairman, Finance and Works Committee of Zilla Parishad who sought setting aside of the list of works substituted on 25th March, 2011 for completion under Account Head 3054 in the year 2010-11. These works were under Rural Roads Development Project and earlier list was approved on 10th March, 2011. However, a communication of 28th March, 2011 of the Collector has also been questioned and it was argued that as per the orders of the Guardian Minister for Bhandara District, this change occurred. The administrative approval was given to the works and the Collector was expected to release the funds. However, 39 works approved by the Additional Chief Executive Officer of Zilla Parishad, Bhandara and 21 works approved by the Executive Engineer by their orders of 6th January, 2011 and 18th January, 2011 suffered immensely as the complaint was that the Collector, Bhandara District usurped the powers and authority vesting in the Zilla Parishad, Bhandara in that respect. Thus, the challenge was that by oblique and indirect method, the State Government is interfering with the powers of the Zilla Parishad and particularly, to implement and carry out the development works.

9. It is in that context that the Division Bench heard both sides extensively and considered the rival contentions. The Division Bench, therefore, kept aside the issue of locus and discussed the merits. On merits, it came to the conclusion that the autonomy and independence of the Zilla Parishad cannot be interfered with and that is how the constitutional scheme was analysed in details. This is a dilution of the role of the Zilla Parishad in matters of local planning and development. It is in these circumstances that the writ petition was allowed. The writ petition was treated as in public interest and that is how the discussion proceeded. It is in these circumstances, the Division Bench allowed the writ petition. We do not think that the petitioners can take any assistance of this judgment.

10. In the above circumstances, not only on the ground of locus of the petitioners, but even on merits, we do not find that this is a fit case for interference in our writ jurisdiction, particularly, in policy matters. The policy is not demonstrated to be arbitrary or vitiated by such legal infirmities as would enable us to exercise our powers of judicial review. The writ petition fails and it is dismissed.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)