

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

WRIT PETITION NO.6421 OF 2021

Dr. Bharatbhushan S/o Sonajirao Kshirsagar
Age: 58 years, Occu. Social Work and
President, Municipal Council, Beed
R/o. Kshirsagar Niwas, Nagar Road, Beed.

..Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32.
2. The Collector,
Beed.
3. The Municipal Council, Beed,
District Beed.
4. The Executive Engineer,
Public Works Division,
Beed.
5. Shri. Dhananjay Munde,
Hon'ble Minister for Social Justice
and Special Assistance and Guardian
Minister for District Beed,
Mantralaya, Mumbai-32. ..Respondents

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Ms. P. S. Talekar i/b M/s. Talekar and Associates,
Advocate for the Petitioner.

Mr. A. R. Kale, AGP for Respondent Nos.1, 2 and 4.

Mr. N. E. Deshmukh, Advocate for Respondent No.3.

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**CORAM : S. V. GANGAPURWALA &
R. N. LADDHA, JJ.**

Closed for Orders on : 07.10.2021.

Order Pronounced on : 26.11.2021

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The present writ petition is filed with the following reliefs:

- A. To hold and declare clause 5 of the Government Resolution dated 17.11.2017 issued by the Urban and Development Department (Exhibit "A") is ultra-vires Article 14 and 243W of the Constitution of India;
- B. To hold and declare that clause 10(f) of the Government Resolution dated 05.03.2002 (Exhibit "B") as inserted by Government Corrigendum dated 12.08.2015 (Exhibit "C") is ultra-vires Article 14 and 243W of the Constitution of India;
- C. To quash the impugned order dated 23.02.2021 appointing Public Works Division, Beed in the place of Municipal Council, Beed as the implementing agency for executing the works under "Vaishishthyapurn Yojana" issued by the Under Secretary, urban Development Department by issuing a writ of certiorari or any other appropriate writ, order or direction, as the case may be;
- D. To quash the decision of the District Level Committee under the chairmanship of the Guardian Minister appointing the Public

Works Division, Beed in place of Municipal Council, Beed as an implementing agency for execution of the works under "Nagari Dalit Wasti Sudhar Yojana 2020-2021" taken in the meeting held on 02.02.2021 as communicated vide letter dated 02.02.2021 issued by the Collector, Beed (Exhibit "O") by issuing writ of certiorari or any other writ, order or direction as the case may be;

2. The Government as a welfare measure for the special class persons in the urban area introduced the Nagari Dalit Wasti Sudhar Yojana under Government Resolution dated 24.01.1996. The scheme was effectuated from the financial year 1995-1996. The methodology of implementing the scheme was provided under the Government Resolution dated 05.02.1998. Under Government Resolution dated 05.03.2002, all earlier Government Resolutions dealing with the Nagari Dalit Wasti Sudhar Yojana were superseded and for effective supervision were handed over to the Collector. By Corrigendum dated 12.08.2015, the Government introduced Clause 10(f) to the Government Resolution dated 05.03.2002 thereby, giving powers to the District Level Committee to determine the implementing agency for the work to be undertaken under the Nagari Dalit Wasti Sudhar Yojana. The same is subject matter of challenge in the present writ petition. Another subject matter of challenge is to clause 5 of the

Government Resolution dated 17.11.2017, wherein the Government has retained the discretion to appoint the implementing agency to undertake the work under Vaishishthyapurna Yojana.

3. Ms. Talekar, learned counsel for the petitioner strenuously contends that, the Corrigendum dated 12.08.2015 and clause 5 of the Government Resolution dated 17.11.2017 are not in consonance with the Constitutional scheme. Article 243W of the Constitution of India empowers the Municipalities such powers and responsibilities as are necessary to enable them to function as institution of the self Government. Schedule XII of the Constitution of India enumerated the developmental activities in the urban area. Article 243X of the Constitution of India empowers the Municipalities to impose taxes and also provide for the funds of the Municipalities including provisions for making such grant-in-aid to Municipalities from the consolidated fund of the State. The Municipal Council receives grants and funds from the Government under various schemes and for different purposes. The Vaishishthyapurna Yojana and Nagari Dalit Wasti Sudhar Yojana are two such schemes. Clause 5 of the Government Resolution dated 17.11.2017 gives discretion to the Government to appoint Municipal Council, the Public Works Department, Maharashtra Jeevan Pradhikaran etc. as implementing agency, however,

the criteria nor guidelines are prescribed for determination of the implementing agency at the State level. The unguided and unbridled powers with the Government to decide the implementing agency without proper guidelines cannot stand to reason and is ultra-vires. The Municipal Council knows better the needs and problems of the people residing within the Municipal limits. Under Government Resolution dated 05.03.2002, the District Level Committee is constituted under the Chairmanship of the Collector of each district. The corrigendum dated 12.08.2015 replacing the Chairman of the Committee and also conferring the powers to decide the implementing agency is illegal. The Guardian Minister is made the Chairman and the Collector the Member Secretary alongwith other members. The Guardian Minister of the respective districts belongs to the political party in power and therefore, should not have role to play in appointing implementing agency to execute the work either under the Vaishishthyapurna Yojana or under Nagari Dalit Wasti Sudhar Yojana. He would tend to favour his party-man.

4. The Government Corrigendum dated 12.08.2015 undermines the independence of the Municipal Councils in appointing implementing agencies, as the Committee appointed under the Chairmanship of the Guardian Minister is bound to favour his party-man.

5. The learned counsel submits that, Clause 10(f) of the Government Resolution dated 05.03.2002 inserted by the Government Corrigendum dated 12.08.2015 as well as clause 5 of the Government Resolution dated 17.11.2017 both issued by the Urban Development Department confer unbridled, unguided and uncanalized powers either on the Government or the District Level Committee to determine the implementing agencies to execute the works under the special schemes and, therefore, are arbitrary, discriminatory, unjust and violative of Articles 14 and 243W of the Constitution of India.

6. The learned counsel further submits that, in the absence of a criteria, standards, yardsticks, principles or guidelines so as to determine as to which should be the implementing agency to execute the works under the Vaishishthyapurna Yojana, the power becomes susceptible to its misuse. In the present case, the power to appoint Public Works Divisions, Beed as an implementing agency in place of Municipal Council, Beed to execute works under both the schemes is for political reasons.

7. The learned counsel submits that, District Administration Officer, Collector Office informed the Assistant Commissioner, Social Welfare, Beed that, the Collector had accorded

administrative sanction to the works under Nagari Dalit Wasti Sudhar Yojana and requested to disburse an amount of Rs.22,49,22,000/- (Twenty Two Crores Forty Nine Lakhs Twenty Two Thousand Only) under letter dated 27.01.2021. The Government sanctioned an amount of Rs.5 crores under Vaishishthyapurna Yojana and appointed the Municipal Council, Beed as an implementing agency. Accordingly, the District Collector was directed to call for the proposals from the Municipal Council and verify the works assigned to the Municipal Council under the scheme and ensure that, the Municipal Council obtains the technical as well as administrative sanction to those works. Under letter dated 23.02.2021 of the Under Secretary, Urban Development Department changed the implementing agency from Municipal Council, Beed to Public Works Division, Beed without assigning any reasons. The Municipal Council had also sought and obtained technical sanction to 17 works from Maharashtra Jeevan Pradhikaran, Division Beed. The estimates were submitted by the Chief Officer, Municipal Council, Beed of 17 works alongwith Resolution passed by the General Body of Municipal Council. No meeting was convened by the Collector, Beed and the Member Secretary of the District Level Committee. No separate agenda was prepared and served on the members of the meeting of the District Level Committee scheduled to be held on 02.02.2021. The subject matter regarding change

of the implementing agency for executing 17 works under Nagari Dalit Wasti Sudhar Yojana was not discussed in the meeting of the District Planning Committee held on 02.02.2021. Illegally the implementing agency was abruptly changed flouting the procedure and norms.

8. The learned counsel further submits that, Guardian Minister is also a Member of the Cabinet and the member of the District Level Committee has prevailed upon the Government as well as the District Level Committee to change the implementing agency from the Municipal Council, Beed to the Public Works Division, Beed for the purpose of executing the works under Vaishishthyapurn Yojana as well as Nagari Dalit Wasti Sudhar Yojana.

9. The learned counsel submits that, there is no provision in the Government Resolutions dated 05.03.2002 r/w Government Corrigendum dated 12.08.2015 empowering the District Level Committee to determine the implementing agency. The Government Resolution dated 17.11.2017 empowers the Government to appoint implementing agency to execute special schemes and to review their earlier decisions dated 30.07.2020 and 08.12.2020 taken by the Urban Development Department and the District Level Committee respectively.

10. It is settled position of law that, the power to review of even administrative decision unless conferred under a statute cannot be exercised by the authorities. Admittedly, the decision taken by the Urban Development Department appointing Municipal Council, Beed as implementing agency to execute works under Vaishishthyapurn Yojana on 30.07.2020 came to be reviewed on 23.02.2021. Similarly, the decision taken by the District Level Committee to appoint the Municipal Council, Beed as implementing agency to execute works under Nagari Dalit Wasti Sudhar Yojana came to be renewed on 02.02.2021. The review and change of earlier decisions either by the Urban Development Department on 23.02.2021 or by the District Level Committee on 02.02.2021 was without authority of law and, therefore, both the decisions are non-est.

11. The decisions of the Urban Development Department dated 23.02.2021 appointing Public Works Division, Beed as implementing agency in respect of Municipal Council, Beed, Georai and Dharur is neither fair nor reasonable nor transparent and on the contrary, is capricious, biased and suffers from malafies since the change in implementing agency was made or done under the influence of the Guardian Minister.

12. The Urban Development Department and/or the District Level Committee has used the power

to determine the implementing agency in a pick and choose or arbitrary manner. No reasons are assigned for changing the earlier decisions by which the Municipal Council, Beed was appointed as implementing agency to execute works under the special schemes such as Vaishishthyapurn Yojana and Nagari Dalit Wasti Sudhar Yojana that too without following any criteria or adopting due procedure.

13. Classification of Municipal Councils in Beed district such as Ambajogai, Majalgaon and Parli Vaijinath Municipal Councils on one hand and Beed, Georai and Dharur Municipal Councils on the other for the purpose of appointing implementing agencies done by the Urban Development Department or the District Level Committee is without basis and in any case there is no rational and reasonable nexus between the basis of such classification and the object sought to be achieved and, therefore, such classification being artificial, is unreasonable, unjust and discriminatory.

14. There were no complaints in respect of execution of special schemes by the Municipal Council, Beed any time in the past so as to deny the Municipal Council, Beed to act as an implementing agency till execution of special schemes.

15. The power either of the Government or the District Level Committee, Beed to appoint implementing agency to execute special scheme should not be uncanalised and unregulated and there should be some fetter on it.

16. The exercise of power and change of implementing agencies in exercise thereof, either by Urban Development Department or by the District Level Committee, Beed was neither in public interest nor for public purpose nor for public good and on the contrary, the same was for purely political reasons.

17. The decision dated 23.02.2021 changing the implementing agency from Municipal Council, Beed to Public Works Division, Beed at the behest of the Guardian Minister was arbitrary, discriminatory, unjust and in any case suffers from malafides. Similarly, the decision of the District Level Committee changing the implementing agency from Municipal Council, Beed to Public Works Division, Beed so as to execute the works under Nagari Dalit Wasti Sudhar Yojana too was taken at the behest of the Guardian Minister and therefore, politically motivated and at the same time irrational, arbitrary, discriminatory, unjust and violative of Articles 14 and 243W of the Constitution of India.

18. The directions given in the Government Corrigendum dated 12.08.2015 as well as the Government Resolution dated 17.11.2017 for the purpose of determining the implementing agency are contrary to Section 90 r/w Section 49A of the Act as well as Articles 14 and 243W of the Constitution of India.

19. The learned counsel to substantiate the contention that the power in fact should vest with the Municipal Council relies on the judgment of the Apex Court in a case of **Lok Prahari Vs. State of Uttar Pradesh** reported in (2017) 1 SCC 244 where urban local bodies for urban areas and Panchayati Raj Institutions in rural areas are to be preferred implementing agencies. Though district authority is given the power to identify the implementing agency which would execute the work recommended by the elected representatives, Panchayati Raj Institutions are the preferred implementing agencies in rural areas while in urban areas it would be urban local bodies. The learned counsel relying upon the judgment of the Apex Court in a case of **Naresh Kumar and Others Vs. Government (NCT of Delhi)** reported in (2019) 9 SCC 416 submits that, review is not permissible after the decision was taken of appointing Municipal Council as implementing agency. The learned counsel also relies on the judgment of the Division Bench of this Court in a case of **Nandkishor S/o. Rangraoji Warhade and Ors. Vs.**

State of Maharashtra and Ors. reported in **2014 (4) Mh.L.J. 857** and submits that, the power of the State Government to order execution of work through the special grants does not enable it to exercise it arbitrarily. It is a local authority that would realize the work to be undertaken.

20. The learned A.G.P. submits that, the petitioner had initially filed Writ Petition bearing No.5075/2021 for identical reliefs. The same was withdrawn by the petitioner without obtaining leave of the Court for filing fresh petition. The second petition without obtaining leave of the Court is not maintainable. The learned A.G.P. relies upon the judgment of the Allahabad High Court in a case of **Pawan Kumar Singh and Others Vs. State of U.P. and Others** reported in **2019 SCC OnLine All 1777** and another judgment of the Apex Court in a case of **Sarguja Transport Service Vs. State Transport Appellate Tribunal, M. P., Gwalior, and ors.** reported in **(1987) 1 SCC 5**.

21. It is submitted by the learned A.G.P. that, work under Vaishishthyapurn Yojana is governed and administered under the State independent policy. The work under the Nagari Dalit Wasti Sudhar Yojana is administered and funded under the State separate policy. The implementing agency has been engaged viz Public

Works Department at the hands of the two different authorities. It is incorrect on the part of the petitioner to state that, no meeting of District Level Committee has been convened on 02.02.2021. The meeting was convened under the Presidency of the Hon'ble Guardian Minister. All other members including Chief Officers of respective Municipal Councils were present. In the said meeting it was decided that, work would be executed under the Nagari Dalit Wasti Sudhar Yojana by Public Works Department as an implementing agency for Beed Municipal Council. The change in implementing agency was made exercising powers conferred in paragraph 4 (f) of the corrigendum dated 12.08.2015. The decision has been taken consciously. The State Government under communication dated 23.02.2021 directed that, for Vaishishthyapurn Yojana, Public Works Department will be the implementing agency for Beed Municipal Council and District Level Committee decided to appoint Public Works Department as an implementing agency under the Nagari Dalit Wasti Sudhar Yojana. The decisions are well within their powers. The scheme under the Vaishishthyapurn Yojana is introduced by Government Resolution dated 17.11.2017. Clause 5 gives power to the State Government to appoint the implementing agency. The tender notice is also issued by the respondents for the performance of the works. No amount was transferred to the Municipal Council so as to

term it as Municipal funds. The tender notice has been issued. In response to the tender notice, four bids have been received. The technical bids are opened. Under the Nagari Dalit Wasti Sudhar Yojana funds are with the Collector and after work order is issued, the funds will be transferred to the implementing agency. The learned A.G.P. further submits that, this Court in a case of **Amalner Municipal Council, Amalner Vs. The State of Maharashtra and Ors.** in Writ Petition No.3682 of 2019 under judgment dated 15.05.2020 has held that, it is within the competence of the State to appoint the implementing agency. The powers have been legitimately exercised. The corrigendum does not suffer from any illegality and the same is legal and valid.

22. We have considered the submissions canvassed by the learned counsel for respective parties.

23. The Government under its Resolution dated 05.03.2002 after superseding the earlier Resolutions provided the guidelines for the effective implementation of the works under the Nagari Dalit Wasti Sudhar Yojana. It came out with the corrigendum on 12.08.2005, thereby, incorporating Clause 10(f). Under the said Clause powers were conferred upon the District Committee to appoint the implementing agency and

under the Government Resolution dated 17.11.2017 guidelines were provided for the implementation of the work under the Vaishishthyapurn Yojana. Under the said scheme, Clause 5 of the Government Resolution dated 17.11.2017 gave discretion to the Government to appoint an implementing agency. The petitioner predominantly assailed the powers of the Government and/or the District Committee to appoint and select an implementing agency.

24. The *prima donna* contention of the petitioner it appears to be that, under the Constitution of India, more particularly, Article 243W the powers vest with the Municipalities for preparation of the plans for economic development, the performance of functions and implementation of the schemes as may be entrusted to them including those in relation to the matters listed in XII Schedule. The works to be undertaken under the schemes are the works which are enlisted under the XXII Schedule of the Constitution of India. These works are to be performed by the Municipal Councils.

25. It would be relevant to refer to Section 49A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as 'Act, 1965'). Section 49-A of the Act, 1965 reads thus:

49-A. Performance of functions by agencies- Where any duty has been imposed on, or any function has

been assigned to a Council under this Act or any other law for the time being in force, or the Council has been entrusted with the implementation of a scheme,—

(i) the Council may either discharge such duties or perform such functions or implement such schemes by itself; or

(ii) subject to such directions as may be issued and the terms and conditions as may be determined by the State Government, cause them to be discharged, performed, or implemented by any agency.

Provided that the Council may also specify terms and conditions not inconsistent with the terms and conditions determined by the State Government for such agency arrangement.

26. Perusal of Section 49-A of the Act, 1965 it is manifest that, when the Council is entrusted with the implementation of the scheme, the Council may either discharge such duties or perform such functions or implement such scheme by itself or subject to such direction as may be issued and terms and conditions as may be determined by the State Government, cause them to be discharged, performed, or implemented by any agency. Section 49-A of the Act, 1965 further contains a Proviso that the Council may also specify terms and conditions not inconsistent with the terms and conditions determined by the State Government for such agency arrangement.

27. The works under the Vaishishthyapurn Yojana and Nagari Dalit Wasti Sudhar Yojana are

to be performed in consonance with the guidelines issued under the Government Resolutions. These works are not the works enlisted under the statute viz. the Act, 1965, but are the welfare schemes to be implemented under the executive instructions.

28. Framing a policy is within the competence of the State in its executive authority. In a case of **Amalner Municipal Council, Amalner Vs. The State of Maharashtra and Ors.** (supra) to which one of us (S. V. Gangapurwala, J.) is a party/member has observed thus:

24. Framing a policy is within the competence of State in its executive authority. The policy decision is in the domain of the executive authority of the State. The efficacy or otherwise may not be questioned so long the same does not offend any provision of the Statute or the Constitution of India. It is not for the Courts to consider the relative merit of the different policies. The Court can not sit in judgment of the policy of the Legislature or the Executive. The Court can not strike down a policy decision taken by the Government, merely, because it feels that another decision would have been more logical or wiser. It is not the domain of the Courts to embark upon an inquiry as to whether a particular policy is acceptable or whether a better policy could be evolved. The Court can only interfere if the policy framed is irrational, arbitrary, unreasonable and thereby offend Article 14 of the Constitution of India.

29. The Government Resolutions dated 17.07.2017 provides that the work to be performed by a particular Municipal Council under the scheme is to be determined by the State Government. As per Clause 4 the work to be performed by a particular Municipal Council under the Scheme is to be determined by the State Government. The State Government has retained the power to appoint the implementing agency. The Statute does not mandate that for the work under the Vaishishtyapurna Yojna, the Municipal Council shall be the implementing agency. Clause 5 of the Government Resolution dated 17.07.2017 is not against the statutory provisions or the Rules. Section 49-A of the Act, 1965 empowers the State Government to determine the terms and conditions while discharging the work by the agency. The work to be implemented under the Scheme is not pursuant to the Statute but regulated by the Government Resolution issued by the Government under its executive power referable to Article 162 of the Constitution of India. The State Government would be within its authority and power to appoint an implementing agency.

30. The discretion has been given under the Vaishishthyapurn Yojana to the State Government and to the District Committee under the Nagari Dalit Wasti Sudhar Yojana to appoint an implementing agency. At the same time, we

observe that, no guidelines are framed for appointment of the implementing agency. The State ought to have framed some guidelines for appointing an implementing agency. The same ought to be in consonance with the work to be performed in the said schemes. The unchanneled, unbridled and unregulated discretion would give rise to the arbitrariness or at least allegations of arbitrariness. It is expected of the Government to frame guidelines for appointing implementing agency. Naturally, that must be commensurate to the works undertaken. We expect the State Government to frame guidelines in that regard.

31. Powers vested in the State or the District Level Committee should be viewed as a trust coupled with duty to be exercised in the larger public and social interest strictly adhering to the statutory provisions and fact situation of a case.

32. The Government in Urban Development Department as well as the District Level Committee are under a legal obligation to exercise the power appointing the implementing agency reasonably and in good faith to effectuate the purpose for which the power stood conferred.

33. It would further appear that, in the present case the decision was taken to appoint the Municipal Council as an implementing agency for implementing the work under the schemes and the same has been changed under the impugned communication. It appears that, funds were never transferred in the account of the Municipal Council for it to partake character of a Municipal fund.

34. Be that as it may, once a decision was taken by the authorities to appoint Municipal Council, Beed as an implementing agency, then for changing the implementing agency, the respondents ought to give reasons for it. The change of implementing agencies cannot be at the whims, fancies and pleasure of the authorities. The reasons ought to have been recorded while changing the implementing agency, otherwise the same would smack of malafides and arbitrariness. Arbitrariness has no role in the society governed by Rule of Law. Arbitrariness is antithesis to the Rule of Law, justice, equity, good conscious and fair play.

35. We do not find reasons being recorded while changing an implementing agency. The District Committee has changed the implementing agency. The same ought to have been supported by strong reasons. Reasons now are considered to be one of the pillar of principles of natural

justice. Even in administrative actions, reasons ought to be stated. Reasons depict the application of mind of the authority passing the orders or its action.

36. We can understand that, discretion being exercised for the first time appointing the implementing agency, but after having appointed an implementing agency, if the authority wants to change the implementing agency, some reasons ought to be recorded. In the present matter, we do not find any reasons being recorded for the same.

37. The works under the Vaishishthyapurn Yojana and Nagari Dalit Wasti Sudhar Yojana are welfare works for the benefits of the public at large. It is not advisable to stall the said works. It is only with that point and view we have not interefered with the impugned orders changing an implementing agency, as the tender process by the newly appointed implenting agency has proceeded further. The technical bids have also been opened. Passing orders at this stage would be delaying the public welfare works, that would not be in the interest of the persons residing within the Municipal limit. They would be deprived of the development works. It is only with this view, we have not interefered in the present matter.

38. Only because Guardian Minister is appointed as Chairman of the District Level Committee, that would not be sufficient to infer that he would not act impartially. The same may not be sufficient to hold the constitution of District Level Committee or its action to be ultra-vires or illegal.

39. Writ petition is disposed of with the aforesaid observations and directions. No costs.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

40. Ms. Talekar, learned counsel at this stage seeks continuation of interim orders for a period of four weeks.

41. As we have held that, tenders are already flouted, the technical bids are already opened and works are public welfare works, we are not inclined to extend the same.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE