ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 24940 of 2021

In the matter of an application under Article 226 of the Constitution of India.

AFR

Rama Chandra Mohapatra ..... Petitioner

-Versus-

State of Odisha and others ..... Opp. Parties

For Petitioner : M/s. Basudev Pujari and P.K. Sahoo, Advocates.

For Opp. Parties : Mr. A.K. Mishra, Addl. Government Advocate (Opp Parties 1 to 4, 6 & 8)

Mr. O. P. Sahu, Advocate (Opp Parties 9 & 10)

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI

AND

THE HON'BLE MR. JUSTICE V. NARASINGH

Date of hearing and judgment: 15.02.2022

DR. B.R. SARANGI, J. The petitioner, who is the Ex-Chairman of Notified Area Council (NAC), Pipili and also a local inhabitant, has filed this writ petition to quash the order dated 31.05.2021 passed by opposite party no.4-

Collector-cum-District Magistrate, Puri in Annexure-5, by which the Executive Officer, Pipili NAC was instructed not to execute the projects sanctioned earlier in favour of him and to refund Rs.237.50 lakh to the Project Director, District Rural Development Agency (DRDA), Puri for re-release of funds to B.D.O., Pipili for execution of the projects. He further seeks to quash Annexure-10 series, the work orders dated 02.07.2021 issued by opposite party no.8-Block Development Officer, Pipili for execution of various projects. He also seeks direction to opposite party no.4 to pass an order to execute the works under the list of Annexure-5 through line department, i.e. Housing and Urban Development Department by e-tendering process as per the Special Problem Funds (SPF) guidelines under Annexure-2. The further prayer of the petitioner is to direct opposite party nos. 4 and 5 to execute the 94 numbers of projects through tender process basing on the letters of the learned Advocate General and opposite party no.1, based on the judgment of this Court vide Annexure-9 series.

2. The background facts leading to filing of the present writ petition, succinctly put, are as follows:-

2.1 For development of the inhabitants of NAC, Pipili in the district of Puri, 94 numbers of development works had been sanctioned by opposite party no.4 under the Special Problem Funds (SPF) scheme. But due to the by-election for the Pipili Assembly Constituency, model code of conduct was imposed. As a consequence thereof, execution of the works was stopped. Due to the death of a candidate of a National Political Party, the election process was deferred for indefinite period and the model code of conduct was also withdrawn. For taking up small and essential projects of local importance involving special nature of problems, in the absence of which the development process would remain incomplete, the Government of Odisha had introduced a scheme styled as Special Problem Funds in the year 1997-98.

2.2 The scheme aimed at taking up small and essential projects of local importance involving special nature of problems. The works were of the nature of providing missing links to the existing development infrastructure as well as repair, modernization and expansion works, particularly for the purposes of improvement of existing educational institutions- both Government as well as Private-, roads, culverts, bridges, embankments, public religious places, cultural organizations as well as construction of new projects which would contribute to the overall development of community and well being of the general public for which funds are not available. The funds for the Scheme “Special Problem Funds” were to be provided in the State Plan Budget of the Planning and Coordination Department in the form of grant-in-aid each year. The rules and procedures laid down thereunder would be applicable to sanction and utilization of funds under the scheme provided in the State Budget from 2003-04 and onwards.

2.3 After due approval and sanction from the department of Planning and Convergence, Government of Odisha for implementation of various approved projects under Special Problem Funds (SPF)-11th Phase during the year 2020-21, the works were going to be executed within NAC, Pipili. For approval from the Accountant General (A&E) Odisha, Bhubaneswar, the department of Planning and Convergence had issued a letter on 13.02.2021 with some specific terms and conditions for execution of works. Serial No. 1 of the specific terms and conditions indicates that the approved projects should be implemented through executing agencies as per the approved rules. The Executive Officer, NAC, Pipili-opposite party no.7, due to dearth of manpower, issued a letter on 24.05.2021 to the Project Director, DRDA-opposite party no.5 with a request to withdraw and place the sanctioned funds under SPF 2020-21 with some other agency for smooth implementation of work.

2.4 Coming to know about the incapacity, inability and inefficiency and also inadequate staff of opposite party no.7, i.e., Executive Officer, NAC, Pipili to execute the work under the scheme of SPF, the Collector, Puri passed an order on 31.05.2021 that 94 numbers of projects worth Rs. 185.00 lakhs and Rs. 52.50 lakhs respectively are to be executed through BDO, Pipili, instead of Executive Officer, NAC, Pipili, for smooth execution of projects. The projects were going to be executed under the scheme of SPF. Therefore, the Collector, Puri-opposite party no.4 also instructed the Executive Officer, NAC, Pipili-opposite party no.7 not to execute the projects sanctioned earlier in favour of him and refund the sanctioned fund to the tune of Rs.237.50 lakhs to the Project Director, DRDA-cum,-DUDA, Puri, opposite party no.5 for re-release of the funds to Block Development Officer, Pipili-opposite party no.8. It was further stated that the projects need to be executed adhering to the guidelines of SPF and the Financial Procedures of the State Government and all the terms and conditions to remain unaltered. As per the direction of the Director, Municipal Administration- opposite party no.3 in its letter dated 03.01.2018, the works under all the Municipalities and NACs will have to be executed by following the procedure of e-tendering, if the project amount is Rs.1.00 lakh to Rs.2.00 lakhs, which shall also come into force with immediate effect by modifying the earlier instructions issued to the above extent. A guideline was issued by opposite party no.1-the Housing and Urban Development Department, vide letter dated 10.10.2017 addressed to all the Collectors and District Magistrates of the State of Odisha, for release and utilization of grants under UNNATI programme by urban local bodies of the State, clause-3 whereof was meant for selection of executing agencies. The scheme of SPF indicates that the urban area works can be entrusted on their recommendation. Therefore, there is no distinction between the process of selection of executing agencies under both UNNATI Scheme and Scheme of SPF. But without adhering to the same, the works have been allotted by Block Development Officer, Pipili-opposite party no.8 by issuing work orders in Annexure-10 series. Hence this writ petition.

3. Mr. Basudev Pujari, learned counsel appearing for the petitioner contended that since projects had been

sanctioned under the SPF scheme of Housing and Urban Development Department, the Collector, Puri is not the competent authority to pass an order in Annexure-5 dated 31.05.2021. Rather as per the conditions stipulated under the Scheme of SPF, it is the NAC, who is the competent authority to pass an order. As the NAC has been superseded and the Sub-Collector has remained in its charge as Administrator, as such he is the competent authority. Thereby, the Collector, Puri has no jurisdiction to issue such an order dated 31.05.2021 to stop the projects sanctioned under the scheme of SPF 2020-21. It is further contended that since the projects, which were sanctioned, come under the jurisdiction of the NAC, Pipili, which is an urban area, it should be routed through the Line Department, namely, Housing and Urban Development Department by following due procedure of law, and for transparency, it should be through a process of tender. The same having not been done, the order impugned cannot be sustained in the eye of law. It is further contended that the stand taken by the State authorities in their counter affidavit that it should be done by the Panchayat Samiti or Gram Panchayat, cannot also be sustained, as the projects come under the jurisdiction of the NAC Pipili. Thereby, reliance placed on the resolution dated 13.07.2018 of the PR & DW Department for execution of developmental works of Panchayat Samiti or Gram Panchayat, has no application to the present context. Hence, he seeks for quashing of the office order dated 31.05.2021 under Annexure-5 and also the consequential work orders dated 02.07.2021 issued under Annexure-10 series.

4. Mr. A.K. Mishra, learned Additional Government Advocate for the State raised a preliminary objection with regard to the *locus standi* of the petitioner and emphatically submitted that pursuant to the resolution dated 13.07.2018 of PR & DW Department on the subject- revised guidelines on "*execution of developmental works at Panchayat Samiti and Gram Panchayat level*", the work orders were issued in favour of the Junior Engineer of Pipili Block for departmental

execution of works as the cost of each of the projects was less than Rs.10.00 lakhs. Thereby, justifying the order under Annexure-5 issued by the Collector, Puri and the consequential work orders issued by the Block Development Officer, Pipili under Annexure-10 series, he contended that the Collector, Puri has got the authority to pass order impugned, which does not warrant interference by this Court at this stage.

5. This Court heard Mr. Basudev Pujari, learned counsel for the petitioner and Mr. A.K. Mishra, learned Additional Government Advocate appearing for the state opposite parties by hybrid mode, and perused the record. Pleadings having been exchanged between the parties, with their consent this writ petition is being disposed of finally at the stage of admission.

6. Before delving into the core issues involved in this case, it is worthwhile to mention here that for smooth running of the Municipal Council, NACs and Urban Local Bodies an Act had been enacted called "Orissa Municipal Act, 1950" (Orissa Act 23 of 1950). In exercise of the

powers conferred by clauses-(i) and (ii) of sub-Section (2) of Section 387 of the Orissa Municipal Act, 1950, the Governor of Orissa was pleased to frame the Orissa Municipal Rules, 1953. Chapter-VI thereof dealt with public works and Rule 338, which comes under the said chapter and has been substituted vide OGE No. 2251 dated 12.12.2008, reads as follows:-

> *"All municipal works to be executed by the Urban Local Bodies either out of their own fund or with the funds received from the Government including SRC grants and Finance Commission Grants will be only through publication of the open tender.*
>
> *Provided that the Urban Local Bodies may take up any work departmentally during an urgent and calamitous situation such as flood, drought, cyclone and fire accident for maintenance and restoration of the public safety/service in the interest of the State, with prior approval of the Collector of the District which is subject to his satisfaction that the same is in the exigency of public service to be recommended for ex-post facto Government approval without calling for tender, as provided in the Appendix-VII, Volume-II of the OPWD Code.*
>
> *Provided further that for the purpose of the Developmental Works to be undertaken by the Urban Local Bodies in such situation, the financial limit for the Municipality would be Rs. 3 lakh and for the Notified Area Council Rs. 2 lakh."*

7. In exercise of powers conferred by sub-Section (1) of Section 387 of the Orissa Municipality Act, 1950, the State Government in Housing & Urban Development

Department made further amendment to the Orissa Municipal Rules, 1953 in the year 2017, vide notification dated 22.11.2017, and formulated "The Odisha Municipal (Amendment) Rules, 2017". Clause-11 of the said notification is extracted hereunder:-

> *"11. In the said rules, in rule 352,-*
>
> *a) for sub-rule (1) including the proviso thereto, the following sub-rule shall be substituted, namely-*
>
> *(1) Any contract or the execution of the work or the supply of any materials or goods which will involve an expenditure exceeding such sum, as the Government may specify, from time to time, the Executive Officer, shall invite tender for such contract.*
>
> *Provided, that the Council shall have the power to dispense with tenders if the work is emergent in nature.*
>
> *(b) in sub-rule (2), in the proviso thereto, for the words and figure "Rs.1,500 (fifteen hundred)", the words and figure "Rs.10,000 (ten thousand)" shall be substituted."*

In terms of the aforesaid statutory provisions governing the field, the developmental works within the Municipal or NAC area are to be executed.

8. The "Rules and Procedures for sanction of funds under the Scheme of Special Problem Funds", which have been annexed to this writ petition as

Annexure-2, specifically prescribe the procedure, as per which the funds for the projects shall be sanctioned and released, and the mode, in which the executing agencies shall be selected, respectively under the headings "Sanction and Release of Funds" and "Executing Agency", which are extracted hereunder:-

> ***"Sanction and Release of Funds****: Once the priority list of projects is approved by the Government, the projects in order of their priority shall be sanctioned keeping in view the provision of funds available under the scheme in the State budget. Requisite funds relating to such of the projects pertaining to a district shall be released to the District Rural Development Agency (DRDA) of that district / other Government Departments / Govt. Agencies. However, release of funds in respect of projects costing more than RS. 10.00 lakhs shall be made in instalments from the State level keeping in view the resource position of the State. The Project director, DRDA shall draw the amount in grant-in-aid bill with the counter-signature of the District Collector and keep the same necessarily in PL account of the DRDA.*
>
> ***Executing Agency****: As soon as the sanction order is received from Government, the District Planning Officer shall follow the established procedures of the State Government, process the proposals, select the executing agencies and issue work orders in their favour with the approval of the Collector. For projects located in rural areas, the procedure followed by DRDAs shall be followed which lays down that executants shall be selected by the Pallisabha. However, Pallisabha has to keep these guidelines in view in selecting an executant Established procedures of the Government shall be followed when execution of a project is entrusted to an organisation under a line Department. However, for projects / works covering more than one*

> *district, their execution shall be entrusted to an appropriate agency / Department to which the property belong by the Planning and Coordination Department.*
>
> *As regards work / Projects relating to urban areas priority would be given to urban local bodies. On their recommendations, such works can be entrusted to Government line Departments or to a registered non-Governmental agency having adequate professional expertise, proven track record."*

9. Adhering to the above mentioned scheme and with the concurrence of the Planning and Convergence Department, sanction of funds, for implementation of various approved projects under the Special Problem Fund (SPF)-11th Phase during the year 2020-21, was accorded on 13.02.2021, which includes the approved projects sanctioned under SPF 2020-21 to NAC Pipili, vide letter dated 24.05.2021 issued by the Executive Officer, NAC, Pipili in Annexure-4. But due to dearth of manpower to implement the work, by observing financial procedure of the NAC, the Executive Officer, NAC, Pipili, vide letter dated 24.05.2021, intimated to the Project Director, DRDA-cum-DUDA, Puri for withdrawal of sanctioned funds and to place the same with some other agency for smooth implementation of the work. As such,

the said letter has also been communicated to the Administrator-cum-Sub-Collector, Puri, as the elected body of the NAC has completed its tenure and the Sub-Collector, Puri being the Administrator has remained in charge. As a consequence thereof, the Collector, Puri, vide letter dated 31.05.2021, instructed the Executive Officer, NAC Pipili not to execute any projects which were sanctioned earlier in favour of him and to refund Rs.237.50 lakhs to P.D. DRDA Puri for re-release of funds to B.D.O., Pipili for execution of the projects. The projects need to be executed adhering to the guidelines of SPF and financial procedure of the State Government, remaining all other terms and conditions unaltered. The Scheme of SPF is only applicable to the urban areas. Therefore, the Collector, Puri could not and should not have diverted the same in favour of the B.D.O., Pipili, instead of carrying out the same through the concerned department, namely Housing and Urban Development Department. More so, as per letter dated 03.01.2018, the Government in Housing and Urban Development Department had been pleased to enhance the financial limit from Rs.1.00 lakh to Rs.2.00 lakhs for e-tendering of all works in respect of the Urban Local Bodies. Without adhering to the said letter, the Collector, Puri, by passing an order on 31.05.2021 under Annexure-5, diverted the same to the B.D.O., Pipili as an Executing Agency for utilization of Special Problem Funds 2020-21. As has already been stated, as per the Scheme of SPF 2020-2021, as regards execution of the works/ projects relating to urban areas, priority should have been given to the urban local bodies. On their recommendations, such works can be entrusted to Government Line Departments, namely, Housing and Urban Development Department or to a registered non-Governmental agency having adequate professional expertise and proven track record. The Collector, Puri, without adhering to the Scheme of Special Problem Funds 2020-21, diverted the same to the B.D.O., Pipili, who cannot be an executing agency under the said scheme Thereby, the action taken by the Collector, Puri, choosing B.D.O., Pipili as the executing agency, by passing order dated 31.05.2021 under Annexure-5, is without jurisdiction, as he is not the competent authority to do so and also the B.D.O., Pipili is not the competent executing agency to implement the work within the Pipili NAC, which comes under the jurisdiction of urban local bodies.

10. It is well settled principle of law that the term "jurisdiction" generally means the authority of an officer to act in the matter. In ***Anisminic Ltd. v. Foreign Compensation Commission***, (1969) 2 AC 147, it is held that the jurisdiction is a verbal coat of many colors. "Jurisdiction" originally seems to have had the meaning, i.e. the entitlement to enter upon the enquiry in question. The same view has also been taken by the apex Court in ***M.L. Sethi v. R.P. Kapur***, (1972) 2 SCC 427. In ***Anowar Hussain v. Ajay Kumar Mukherjee***, AIR 1965 SC 1651, the apex Court held that the expression "jurisdiction" does not mean the power to do or order the act impugned, but generally the authority of the Judicial Officer to act in the matter.

11. Since the Collector, Puri has no jurisdiction to nominate the B.D.O., Pipili as the executing agency to execute the projects sanctioned under the Scheme of Special Problem Funds 2020-21, and the B.D.O., Pipili has also no authority to do so, the impugned order dated 31.05.2021 under Annexure-5 cannot be sustained in the eye of law. As a consequence thereof, the work orders issued by the B.D.O., Pipili under Annexure-10 series for construction of some projects, without following due procedure, also cannot be sustained.

12. Mr. A.K. Mishra, learned Additional Government Advocate though raised the question of *locus standi* of the petitioner stating that he is the Ex-Chairman of the NAC, Pipili and also a local inhabitant and at his instance the application cannot be maintained, but the same cannot have any justification for the following reasons. "*Locus standi*" means a place of standing; a right of appearance in a Court of justice; right to bring an action and to be heard. Therefore, the meaning of word "*locus standi*" for the purpose of maintaining the writ

petition has been widened very much. In exceptional cases, a person who has been prejudicially affected by an act or an omission by an authority can file a writ petition even though he has no proprietary or fiduciary interest in the subject matter thereof. Rather a person must have a sufficiency of interest to sustain his standing to sue. In view of such proposition of law and applying such rationale to the facts of the present case, it cannot be said that the petitioner has no *locus standi* to file this writ petition.

13. The argument, which has been advanced with reference to the counter affidavit filed by the opposite parties 4, 5 and 6 relying upon the resolution dated 13.07.2018 of the P.R. & D.W. Department on the subject- revised guidelines on "execution of developmental works at Panchayat Samiti and Gram Panchayat level", is not acceptable, as the projects belonged to NAC, Pipili, which is an urban area. Therefore, the reliance placed on the resolution dated 13.07.2018 is misconceived in the

factual matrix of the case at hand and the stand so taken is liable to be rejected.

14. It is brought to the notice of this Court that, out of 94 projects, which had been sanctioned under Special Problem Funds 2020-21, 35 projects have already been completed. Since those 35 projects have been completed in all respect, at this stage, this Court does not want to dislodge the same in any manner, even though certain irregularities had been committed during the process of allotment of such work. But for execution of rest of the projects, the competent authorities should strictly adhere to the Scheme of Special Problem Funds 2020-21 and utilize the funds, for the purpose for which they were sanctioned, in conformity with the provisions of law and also within the time specified.

15. In view of the discussions made above, this Court is of the considered opinion that the order dated 31.05.2021 passed by the Collector, Puri in Annexure-5 and the consequential work orders dated 02.07.2021 issued by the B.D.O., Pipili vide Annexure-10 series

cannot be sustained in the eye of law. Accordingly, the same are liable to be quashed and hereby quashed. As a consequence thereof, this Court directs the competent authorities to execute the rest 59 projects [94 (sanctioned projects) – 35 (projects already completed)] adhering to the Scheme of Special Problem Funds 2020-21 and the government rules applicable thereto, so far as NAC, Pipili is concerned, by issuing work orders through the competent authority.

16. In the result, the writ petition is allowed. No order as to costs.

....
DR. B.R. SARANGI,
JUDGE

V. NARASINGH, J. I agree

....
V. NARASINGH,
JUDGE

Orissa High Court, Cuttack
The 15th February, 2022, Arun/GDS