

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

WRIT PETITION NO.7902 OF 2022

1. Ashwini W/o Dammapal Kirwale
Age: 30 years, Occ: Household,
R/o Shirsala, Tq. Parali,
Dist. Beed
 2. Balaji S/o Prabhu Munde
Age:42 years, Occ: Agri.,
R/o Tokwadi, Tq. Parali,
Dist. Beed
 3. Walmik S/o Baburao Karad
Age: 52 years, Occ: Agri., & Business,
R/o Shriganesh Niwas, Parali,
Tq. Parali Vaijnath,
Dist. Beed
- .. Petitioners**

Versus

- 1 The State of Maharashtra
Through its Principal Secretary
Administration Department,
Mantralaya, Mumbai
 2. The Collector, Beed,
Tq. & Dist. Beed
 3. The Executive Engineer,
Public Works Department,
Ambajogai, Tq. Ambajogai,
Dist. Beed
 4. The District Planning Committee,
Beed, Tq. & Dist. Beed
Through its Member Secretary
- .. Respondents**

...

Advocate for Petitioners: Mr. R. N. Dhorde, Senior
Advocate i/b. Mr. V. R. Dhorde
GP for Respondents: Mr. D. R. Kale

...

**CORAM: RAVINDRA V. GHUGE
AND
ARUN R. PEDNEKER, JJ.**

Date: 05.09.2022

JUDGMENT (*Per Arun R. Pednekar, J.*):

1. **Rule.** Rule returnable forthwith. With consent of the parties heard finally.

2. By this Petition the Petitioners are challenging the communication dated 04.07.2022, issued by Respondent No.1 / State of Maharashtra, whereby the State was pleased to exercise powers under Section 12 of the Maharashtra District Planning Committee (Constitution and Functions) Act, 1998 (hereinafter referred to as '1998 Act') and stayed the administrative approval granted from 01.04.2022 to all the development schemes / works by the District Planning Committees constituted under the 1998 Act, throughout the State of Maharashtra.

3. The Petitioners prayed that the administrative sanction granted by the Collector, Beed on 28.06.2022, for all the works approved by

the District Planning Committee constituted under the said Act of 1998 should be undertaken.

4. The Petitioner No.1 is the Ex-Member of the Zilla Parishad, Beed while Petitioner No.2 is the Ex-Sabhapati of Panchayat Samiti, Parali who is local representatives from Beed District. Petitioner No.3 was a Member of a Executive Committee constituted under Rule 6-A of the Maharashtra District Planning Committee (Conduct of Meetings) Rules, 1999. Thus, the Petitioners are the residents of Beed District and are praying for the direction to restart / start the work where tender process is already initiated for the work sanctioned by the District Planning Committee for Beed District.

5. Facts in nutshell giving rise to the Petition can be summarized as under:-

[a] On 30.05.2022, meeting of the Executive Committee of the Maharashtra District Planning Committee (Constitution and Functions) Act, 1998 was held in which it was

decided to call necessary proposals under various schemes on or before 10.06.2022 through *i PAS Pranali* for getting administrative sanction of the works.

[b] In pursuance of the same the Executive Engineer, PWD, Ambajogai forwarded list of 161 works received through *i PAS Pranali* to the District Planning Committee on 27.06.2022 and the same were recommended by the District Planning Committee on 28.06.2022 for getting administrative sanction.

[c] Pursuant to the decision taken by the District Planning Committee, Respondent No.2 / Collector, Beed issued administrative sanction to the said 161 works.

[d] After administrative sanction the same was forwarded to PWD for further steps. Accordingly the Executive Engineer, PWD, Ambajogai issued letter dated 30.06.2022 to the Assistant Director (Advertisement),

Mantralaya, Mumbai for the publication of tender notice of the said 161 works. Accordingly, tender notice was published on 05.07.2022 in various newspapers.

[e] In the political upheaval that happened in the State of Maharashtra the incumbent Chief Minister resigned on 29.06.2022 and a new Chief Minister took oath on 30.06.2022.

[f] On 04.07.2022, the Deputy Secretary, State Government, Planning Department issued the impugned Circular in which it has been stated that the work to which the administrative sanctions have been granted under various schemes after 01.04.2022 by the District Planning Committees for the year 2022-2023 are stayed. The Circular of 04.07.2022 reads as under:-

“

परिपत्रक

नियोजन विभागामार्फत प्रतिवर्षी जिल्हा वार्षिक योजना (सर्वसाधारण) अंतर्गत जिल्हानिहाय नियतव्यय काळवुन जिल्ह्यांच्या आराखड्याचे प्रारूप तयार करण्याच्या सूचना जिल्हाधिकारी तथा सदस्य सचिव, जिल्हा नियोजन

समिती याना देण्यात येतात. जिल्हाधिकारी आराखड्याचे प्रारूप तयार करून जिल्हा नियोजन समितीच्या मान्यतेसाठी सादर करतात. या आराखड्यात कोणत्या जिल्हास्तरीय योजनांसाठी किती निधी ठेवावा याबाबत जिल्हा नियोजन समित्या निर्णय घेत असतात.

२. सर्व जिल्ह्यांसाठी पालकमंत्री तथा अध्यक्ष, जिल्हा नियोजन समिती यांच्या नव्याने नियुक्त्या नजिकजच्या काळात होणे अपेक्षित असून जिल्हा नियोजन समितीच्या नवीन नामनिर्देशित व विशेष निमंत्रित सदस्यांसह जिल्हा नियोजन समित्यांचेही पुनर्गठन होणे अपेक्षित आहे. या पार्श्वभूमीवर महाराष्ट्र जिल्हा नियोजन समिती (रचना व कामे) अधिनियम, १९९८ च्या कलम १२ मधील तरतुदीनुसार राज्य शासनास प्राप्त अधिकारान्वये जिल्हा वार्षिक नियोजन (सर्वसाधारण) सन २०२२-२३ अंतर्गत दिनांक १ एप्रिल, २०२२ पासून आजतागायत विविध योजनांतर्गत कामाना देण्यात आलेल्या प्रशासकीय मान्यतांना स्थगिती देण्यात येत आहे. तसेच नवीन पालकमंत्री महोदयांच्या नियुक्त्या झाल्यानंतर सादर प्रशासकीय मान्यता प्राप्त कामांची यादी पालकमंत्री महोदयांच्या पुनर्विलोकनासाठी सादर करून ती कामे पुढे चालू ठेवावीत किंवा कसे याबाबत नवनियुक्त पालकमंत्री महोदयांच्या सहमतीने निर्णय घेण्यात यावा.

सदर शासन परिपत्रक महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आले असून त्यांचा सांकेतांक २०२२०७०४१६१९२३३११६ असा आहे. हे शासन परिपत्रक डिजिटल स्वाक्षरीने साक्षांकित करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

(स. ह. धुरी)

उप सचिव, महाराष्ट्र शासन"

The English Translation of the same reads as under:-

"

CIRCULAR

Directions are being issued to the District Collector-cum-Member Secretary, District Planning Committees by the Department of Planning every year to

prepare the draft plan of the district by providing them the district-wise budget under the District Annual Plan (General). District Collectors, accordingly, prepare the draft plan and submit the same for the approval of the District Planning Committees. District Planning Committees, thereby, fix the allotment of funds to the district level schemes under these plans.

The appointments of Guardian Minister cum Chairman of District Planning Committees for all the districts are expected to be made afresh in near future, as well as the re-organization of the DPCs with newly nominated members and special invitees. In this background, as per the powers vested in the State Government under Section 12 of the Maharashtra District Planning Committees (Constitution and Functions) Act, 1998, all the administrative approvals such have been given to works under various schemes from April 1, 2022 to till date for the year 2022-2023 under the District Annual Plan (General) are hereby stayed. The decision shall be taken with approval of the newly appointed Guardian Minister whether the works administratively approved be continued or otherwise by presenting the same before the Guardian Minister for their review upon the appointment as a new Guardian Minister.

This circular has been made available on www.maharashtra.gov.in, the website of the Government of Maharashtra with a code 202207041619233116. This government circular is digitally signed.

*By the order and in the name of
Governor of Maharashtra.*

*Sd/-
Sanjeev Harishchandra Dhuri"*

[g] Writ Petition is filed by the Petitioners challenging the aforesaid Circular dated 04.07.2022 and prayed for commencement of works approved by the District Planning Committee in Beed District.

[h] Common affidavit-in-reply is filed by Respondent Nos.1, 2 and 4 and a separate affidavit-in-reply is filed by Respondent No.3.

[i] Consequent to the Circular dated 04.07.2022 all the works approved by the District Planning Committee after 01.04.2022 throughout the State of Maharashtra were stayed including the aforesaid 161 works in Ambajogai taluka in Beed District. Aggrieved thereby, the Petitioners filed the present Petition.

[j] The Circular dated 04.07.2022 was further clarified by the Chief Secretary, State of Maharashtra, by communication dated 18.07.2022, restricting the Government Resolution of 04.07.2022 only to those cases where the tender process is not yet issued.

The same reads thus:-

"मुख्य सचिवांचे कार्यालय
मंत्रालय, मुंबई
दिनांक: १८ जुलै २०२२
ई - ५३१३८१०

मुख्य सचिव कार्यालय

मा. मुख्यमंत्री महोदयांच्या निर्देशानुसार आपणास कळविण्यात येते कि, राज्य शासनाच्या विविध विभागांतर्गत दिनांक ०१ एप्रिल २०२१ पासून आतापर्यंत जिल्हा वार्षिक योजना, राज्यस्तरीय योजना, आदिवासी उप योजना तसेच विशेष घटक योजना इत्यादी निधीतून मंजूर करण्यात आलेल्या परंतु निविदा न काढलेल्या कामांच्या अंमलबजावणीस पुढील आदेश होईपर्यंत स्थगिती देण्यासंबंधीचे रीतसर प्रस्ताव तात्काळ सक्षम प्राधिकारी यांच्यासमोर निर्णयार्थ सादर करण्यात यावेत.

(मनू कुमार श्रीवास्तव)
मुख्य सचिव

अपर मुख्य सचिव / प्रधान सचिव / सचिव, सर्व मंत्रालयीन विभाग "

The English translation of the same reads
as under:-

*"Office of the Chief Secretary
Mantralaya, Mumbai -
Date - 18 JUL 2022
e - 5313810*

Office of the Chief Secretary

As per the directions of the Hon'ble Chief Minister you are hereby informed that, proper proposals be presented / submitted immediately before the Competent Authority for decision regarding staying the execution of works which are sanctioned under the funds of the District Annual Plans/Projects, State Level Schemes / Projects, Tribal Sub-Plans/Projects, similarly, Special Component Schemes / Projects under various departments of the State Government from 01st April 2021 to till date but tenders are yet to be issued for such works, until further orders.

Sd/-

*(Manu Kumar Shrivastav)
Chief Secretary*

Additional Chief Secretary / Principal Secretary, All Sections at Secretariat"

CONTENTIONS OF THE PETITIONERS

6. The Petitioners primarily contend that the 1998 Act is a law enacted to provide for a District Planning Committee at the district level to consolidate the development plans prepared by the Panchayats and the Municipalities in the District and to prepare a draft development plan

for the district as a whole. The 1998 Act is passed for implementation of Article 243(Z)(d) of the Constitution of India. The Petitioners submit that it is only the Committee constituted under the 1998 Act which has Members from 30 to 50 from various constituencies are alone entitled to grant sanction to the development projects prepared by the Panchayats and the Municipalities in the District and the District Planning Committee has accordingly granted sanction to the various projects for the District Beed. The State has no power under Section 12 of the 1998 Act to stay the approval granted to the development works by the District Planning Committee.

7. The Petitioners further submit that the power under Section 12 of the said Act is confined to matters relating to the guidelines on functioning of, or resolution adopted by, the Committees, or any matter that the State Government considers fit for taking up with the Committees. But the State has no power to either grant or to stay the projects to which sanction is

granted by the District Planning Committee and in any event the Petitioners further submit that the change of Government does not necessarily give the power in the newly elected Government to stall all the projects throughout all the Districts of the State till the new Guardian Minister takes charge and decides the further course of action.

8. The learned Government Pleader appearing for the State submits that the Circular dated 04.07.2022, makes it clear that there is a temporary stay to the works sanctioned by the Committee constituted under the 1998 Act as there is possibility of the new Minister taking charge as the Guardian Minister and there is a possibility that the District Planning Committee constituted under the 1998 Act may be reconstituted in the near future and in this background the State has taken a decision under Section 12 of the 1998 Act to temporarily stay all the works sanctioned by the Committee and to reconsider the same after the new reconstituted Committee takes charge.

9. As the affidavit-in-reply filed by the Respondents had no reference to the clarificatory communication dated 18.07.2022 of the Chief Secretary, we specifically asked the learned Government Pleader, whether such a communication / clarification is issued by the Chief Secretary. The learned Government Pleader confirmed the issuance of clarificatory communication dated 18.07.2022 by the Chief Secretary. The learned Government Pleader further submits that the State is within its right to exercise powers under Section 12 and grant temporary stay to all the projects sanctioned by the Committee.

10. Having considered the rival submissions and more specifically the communication dated 18.07.2022, the Petitioners case would be covered by the said communication. The 161 works sanctioned in the Ambajogai Taluka, District Beed were already tendered and those were not covered within the Circular dated 04.07.2022 and thus the consequent order passed on 05.07.2022 by the Collector and Member Secretary, District Planning

Committee, Beed directing the Chief Executive Officer, Zilla Parishad, Beed and District Administration Officer, Collector Office, Beed not to proceed with any work sanctioned by the Committee, would not be applicable to the 161 works in which tender process has already taken place.

11. We thus partly allow the Writ Petition in terms of prayer clause "C", as under:-

"C) Issue writ of mandamus or any other writ order or directions in the nature of writ of mandamus directing the respondents authorities to proceed to undertake the works to which the administrative sanction is granted by the Collector, Beed on 28.06.2022 and for that purpose issue necessary orders;"

12. We accordingly direct that the 161 works in which the tender process has taken place to proceed further without any hindrance.

13. Rule is made absolute in terms of prayer clause "C".

14. We leave open the challenge to the Circular dated 04.07.2022 to be decided in an appropriate case as the Petitioners in the instance case is not affected by the same.

[ARUN R. PEDNEKER, J.]

[RAVINDRA V. GHUGE, J.]

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