

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

WRIT PETITION NO.13632 OF 2021

1. Shri Arvind s/o Kautikrao Badak,
Age : 28 years, Occupation : Agri,
Sarpanch, Grampanchayat Palshi,
At Post Palshi, Tq.Sillod,
Dist. Aurangabad.
2. Sau. Yogita w/o Santosh Kale,
Age ; 27 years, Occupation : Agri,
Sarpanch, Group Grampanchayat Pirola-
Doiphoda, At Post Pirola Doiphoda,
Tq. Sillod, Dist. Aurangabad.
3. Sau. Lankabai w/o Dnyaneshwar Wahute,
Age : 40 years, Occupation : Agri,
Sarpanch, Takali- Jivrag,
At Post Takali Jivrag, Tq. Sillod,
Dist. Aurangabad.
4. Sau. Kokilabai w/o Shantabai More,
age : 55 years, Occupation : Agri,
Sarpanch, Grampanchayat Aamthana,
At Post Aamthana Tq.Sillod,
Dist. Aurangabad.
5. Shri Ganesh s/o Pandurang Bankar,
Age : 45 years, Occupation : Agri,
Sarpanch, Grampanchayat Golegaon (kh)/
Panas, At Post Golegaon (kh)/ Panas,
Tq. Sillod, Dist. Aurangabad.
6. Sau. Rekha w/o Vishnu Dhanvat,
Age : 35 years, Occupation : Agri,
Sarpanch, Grampanchayat Golegaon (Bk),
At Post Golegaon (Bk), Tq.Sillod,
Dist. Aurangabad.

7. Sau. Sunita w/o Ashok Mirge,
Age : 55 years, Occupation : Agri,
Sarpanch, Grampanchayat Aasadi,
At Post Aasadi, Tq.Sillod,
Dist. Aurangabad.
8. Sau. Sanjeevani w/o Madhavrao Kalam,
Age : 45 years, Occupation : Agri,
Sarpanch, Grampanchayat Bhavan,
At Bhavan, Post Maniknagar,
Dist. Aurangabad.

...PETITIONERS

-VERSUS-

1. The State of Maharashtra.
Through it's Additional Chief Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. Abdul Sattar Abdul Nabi,
Age : 51 years, Occupation : Minister,
R/o Sneha Nagar, Sillod,
Tq.Sillod, Dist. Aurangabad.
The Minister of State,
Rural Development Department,
Maharashtra State, Mantralaya,
Mumbai-32.
3. The Deputy Secretary,
Rural Development Department,
Maharashtra State, Mantralaya,
Mumbai-32.
4. The Zilha Parishad,
Aurangabad.
Through its Chief Executive Officer,
Aurangabad.
5. The Executive Engineer,
Department of Works,

Zilha Parishad, Aurangabad.

6. Shri D.R. More,
Age : Major, Occupation : Business,
R/o Plot No.36, Survey No.25/2,
Chatrapatinagar, Harsul,
Pisadevi Road, Aurangabad.

...RESPONDENTS

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Shri V.D. Sapkal, Senior Advocate a/w Shri S.R. Sapkal,
Advocate for the petitioners.

Shri D.R. Kale, Government Pleader, for respondent Nos.1 and 3.

Shri V.D. Salunke, Advocate for respondent No.2.

Shri G.K. Naik Thigale and Shri S.M. Ganachari, Advocates for
respondent Nos.4 and 5.

None for respondent No.6.

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**CORAM : RAVINDRA V. GHUGE
&
S.G. DIGE, JJ.**

Reserved on :- 29th April, 2022

Pronounced on :- 06th May, 2022

JUDGMENT (Per Ravindra V. Ghuge, J.):-

1. By this petition, the eight petitioners have put forth
prayer clauses B to F, H-1, H-2 and H-3 as under :-

*“B) To quash and set aside the letter dated
22.06.2021 (Exhibit F) issued by Deputy
Secretary, Rural Development and Panchayat
Raj Department, Government of Maharashtra,
by issuing appropriate writ, order or direction
as the case may be.*

- C) *To quash and set aside the tender process of tenders ID No.2021_AURAN_739650_1 and 2021_AURAN_735599_1 issued by Works Department, Zilha Parishad, Aurangabad, by issuing appropriate writ, order or direction as the case may be.*
- D) *To direct the respondents to allot the work of basic amenities development in villages to respective Grampanchayats as development agency as per the guidelines issued by the Government Resolution dated 25.03.2015 of Rural Development Department, Government of Maharashtra.*
- E) *To grant interim stay to the effect and operation of the letter dated 22.06.2021 (Exhibit-F) issued by Deputy Secretary, Rural Development and Panchayat Raj Department, Government of Maharashtra, pending hearing and final disposal of this Writ Petition.*
- F) *To grant interim stay to the tender process of tender ID No.2021_AURAN_739650_1 and 2021_AURAN_735599_1 issued by Works Department, Zilha Parishad, Aurangabad, pending hearing and final disposal of this Writ Petition.”*
- “H-1) *To quash and set aside the letter dated 07.12.2021 issued by Deputy Secretary, Rural Development, Panchayat Raj Department, Government of Maharashtra by issuing appropriate writ, order or direction as the case may be.*
- H-2) *To quash and set aside the work order dated 10.12.2021 issued in favour of Mr.D.R. More in impugned tender ID No.2021_AURAN_735599_1 by issuing appropriate writ, order or direction as the case may be.”*
- “H-3) *To grant interim stay to the effect of operation of the letter dated 07.12.2021 issued by Deputy Secretary, Rural Development, Panchayat Raj Department, Government of*

Maharashtra by issuing appropriate writ, order or direction as the case may be.”

2. This Court (Coram : A.S. Gadkari & S.G. Mehare, JJ) had passed an order on 06.01.2022 as under :-

“1. *Leave to amend to add successful bidders / contractors, in whose favour tenders have been allotted by respondents No. 4 and 5 as they are necessary party to the petition.*

Leave to amend prayer clause and necessary pleadings in the the body of petition along with necessary and relevant documents, is granted. Amendment be carried on or before 11.01.2022 in the record of Court and simultaneously in the copies served upon learned Advocate for the respondents. After the amendment is carried out, learned Advocate for the petitioners is directed to serve the added respondents on or before 14.01.2022.

2. *Learned AGP so also learned Advocate appearing for respondents No. 4 and 5 seek time to file brief reply to the petition.*

3. *Learned counsel for the petitioner submitted that, the impugned communication / direction dated 22.06.2021 is in contravention of Government Resolution No. ZPA-2015/Pra.No.10/Finance-9 dated 25.03.2015 (page No. 28) and against the provisions of Article 243 G of Constitution of India.*

4. *Learned Advocate appearing for respondents No. 4 and 5, on instructions, submitted that as a matter of fact the said respondents have already issued work orders to the concerned contractors in furtherance of tender quoted by them.*

5. *Learned Senior Advocate for the petitioner raised the contention of favouritism to bidders / Contractors in whose favour these work orders*

- have been issued by respondents No. 4 and 5.*
6. *Prima facie, we find substance in the contention of learned Advocate for the petitioners. Prima facie, it appears that, there is a breach of constitutional mandate.*
- We therefore hereby direct the respondents No. 4 and 5 not to proceed with the work allotted to the concerned Contractors till the next date of hearing.*
7. *In view thereof, ad interim relief in terms of prayer clause (E).*
8. *List the petition for admission on 19.01.2021.”*

3. We have considered the extensive submissions of the learned Senior Advocate on behalf of the petitioners, the learned Government Pleader on behalf of respondent Nos.1 and 3 and the learned advocates on behalf of respondent Nos.2, 4 and 5.

4. The submissions of the learned Senior Advocate on behalf of the petitioners are as under:-

(a) For empowering the Panchayat Raj Institutions, the 73rd Constitutional Amendment was introduced.

(b) The statement of objects and reasons indicates that Article 40 of the Constitution, which enshrines one of the directive principles of State Policy, lays down that the State shall take effective steps to organize Village Panchayats and endow them with such powers and authority as may be necessary to

enable them to function as units of self government.

(c) It is proposed to add a new part relating to panchayats in the Constitution to provide for economic development and social justice and the State Legislatures shall provide grants in aid to the panchayats from the consolidated fund of the State.

(d) The Government Resolution dated 25.03.2015 prescribed the modalities and financial limits and the type of works to be carried out by the Gram Panchayats.

(e) The works of basic amenities upto Rs.10 lacs or Rs.15 lacs depending upon the revenue collection of the Gram Panchayat, are to be given to the Gram Panchayat as an implementing agency.

(f) Respondent No.2 is the Honourable Minister of State for Rural Development. He is a sitting Member of the State Legislative Assembly from Sillod-Soyagaon legislative assembly constituency.

(g) Respondent No.2 was the influencing factor for grouping various works of basic amenities in village areas to form a single tender only for these two talukas.

(h) In doing the above, the implementing agency has

been changed from the Gram Panchayat to the Zilla Parishad.

(i) Three Government Resolutions, all dated 31.03.2021, were issued by the Rural Development Department of the State of Maharashtra thereby, sanctioning works of Rs.25 crores and Rs.10 crores each for the basic amenities in the rural areas. Actually, most of the works are less than Rs.10 lacs, but for the fact that the State Government grouped several villages under a single tender to eliminate the Gram Panchayat.

(j) The letters issued by the Deputy Secretary on 22.06.2021 and 07.12.2021, by which, the works less than Rs.10 lacs were subjected to consolidation and the tenders were called, are impugned in this petition.

(k) The works, which were normally carried out by the Gram Panchayat, have been consolidated. All these works are now to be carried out by the Department of Works, Zilla Parishad.

(l) On 31.10.2021, these petitioner Gram Panchayats have passed the resolutions expressing their willingness to carryout the works sanctioned under the Government Resolutions.

(m) The Government has not taken a conscious decision

to designate the Zilla Parishad as an implementing agency.

(n) Indirectly, due to the influence of respondent No.2, the implementing agency has been changed from the Gram Panchayat to the Zilla Parishad.

(o) The Deputy Secretary had no authority to violate the prescription of the Government Resolution dated 25.03.2015.

(p) Pursuant to the letter of the Deputy Secretary dated 22.06.2021, two e-tender notices were published for works valued at Rs.18,06,42,649/- and Rs.01,75,65,828/-, for the purpose of extending basic amenities in villages in the Aurangabad district.

(q) Such tender process for allowing the Zilla Parishad to get the public works done, defeats the 73rd Constitutional amendment meant for strengthening the Gram Panchayats.

(r) In the last year, most of the works from the consolidated tenders have been allotted in favour of Manik Infra Projects. This year also, the works to the extent of Rs.18,06,42,649/- are likely to be issued in favour of Manik Infra Projects, which is headed by Mr.Santosh Manikrao Balande, who is the brother of Kishor Manikrao Balande, the existing Chairman of the Standing Committee for Works Department of

the Zilla Parishad, Aurangabad.

(s) The whole exercise of consolidation of works is carried out to favour Manik Infra Projects in which, Mr.Kishor Balande has vested interest through his biological brother Mr.Santosh Balande, who heads the said company.

(t) Both these brothers are closely associated with respondent No.2/ Hon'ble State Minister.

(u) The Hon'ble Minister as well as the Chairman of the Standing Committee belong to the ruling Shivsena Party and are elected.

(v) Vide Government Resolution dated 27.03.2015, the authority for deciding the implementing agency, vests with the Government.

(w) As most of the works are designed with a budget of less than Rs.10 lacs for extending basic amenities in villages, the Gram Panchayat is the implementing agency.

(x) The State Government has not introduced any Government Resolution to supersede the earlier Government Resolution dated 25.03.2015 for changing the implementing agency from the Gram Panchayat to the Zilla Parishad and for consolidating all works of the tender.

(y) The consolidation of works under one tender is based on the letter of the Deputy Secretary dated 22.06.2021, which is in violation of the judgment of the Bombay High Court, Nagpur Bench, delivered in PIL Nos.86/2016 and 102/2016.

(z) One Government Resolution dated 31.03.2021 issued by the Rural Development Department has sanctioned the works amounting to Rs.5 crores for extending basic amenities in the rural areas of Aurangabad, in Paithan taluka. These works are allotted to the respective Gram Panchayats.

(za) The letter of the Deputy Secretary dated 22.06.2021 is addressed to the CEO, Zilla Parishad, Aurangabad. The permissible duration of 14 days for publication of the tender and the submission of the bids, was reduced to 7 days. Consolidation of all works for inviting tenders, is also under his communication. This is not the decision of the State Government and apparently, this is on account of the influence of respondent No.2.

(zb) The above stated letter is not by way of a universal policy. It is restricted only to two talukas viz. Sillod and Soyagaon, which is the State assembly constituency of respondent No.2. For the rest of the State, the Government

Resolution dated 25.03.2015 is followed.

(zc) The letter of the Deputy Secretary cannot run counter to the Government Resolutions dated 25.03.2015 and 27.03.2015.

(zd) A similar letter has been issued by the Deputy Secretary on 07.12.2021 again for the same purpose for the same two talukas, which is impugned.

(ze) The State Government is unable to show a decision taken by the Government superseding the Government Resolutions dated 25.03.2015 and 27.03.2015.

(zf) Reliance is placed upon the following judgments:-

(i) ***PIL No.86/2016 (Nagpur Bench), Devendra Sureshrao Wankhede vs. State of Maharashtra and others***, [Coram : B.R. Gavai (as His Lordship then was) & V.M. Deshpande, JJ] dated 26.08.2016.

(ii) ***Gram Panchayat and others vs. State of Maharashtra and others, 2018 (6) Mh.L.J. 407***, (Coram : R.M. Borde & K.K. Sonawane, JJ.).

5. The learned Government Pleader has canvassed on behalf of the State as under :-

(a) The present petition has been filed by eight Sarpanch of eight villages in their personal capacity.

(b) This petition is not maintainable as it is politically motivated.

(c) The petitioner Gram Panchayats are not affected due to the tender process and the letter issued by the Deputy Secretary dated 22.06.2021.

(d) Special fund on the recommendation of respondent No.2 has been provided by the State Government for the legislative assembly constituency of Sillod-Soyagaon by the Government Resolution dated 31.03.2021.

(e) This is not a fund which is provided to the Gram Panchayats.

(f) There is no loss caused to these petitioner Gram Panchayats.

(g) The letter of the Deputy Secretary dated 22.06.2021 is a decision of the Government permitting the Zilla Parishad to consolidate the works.

(h) The Government Resolution dated 25.03.2015 allows the Gram Panchayat to work as an agency as per the annual funding.

(i) Clause 6.1 of the Government Resolution dated 25.03.2015 permits different schemes to be implemented in the Gram Panchayat limits through any other agency.

(j) Clause 6.1 reads as under :-

“६.१) वेगवेगळ्या योजनांमधून ग्रामपंचायत क्षेत्रात कार्यान्वयीत करण्यात यावयाची अन्य सर्व कामे संबंधित प्रशासकीय विभाग ज्या कार्यान्वयीन एजन्सी / यंत्रणेमार्फत करून घेऊ इच्छितो त्या कार्यान्वयीन एजन्सी / यंत्रणेमार्फत करू शकतील.”

(k) The Government has issued the guidelines regarding the schemes under the major heads, by the Government Resolution dated 27.03.2015.

(l) Clause 3.1 of the Government Resolution dated 27.03.2015 enables the Government to decide the agency and allot the work to the Zilla Parishad.

(m) Clause 3.1 reads as under :-

"३.१) सदर योजनेअंतर्गत मंजूर झालेली कामे ग्रामपंचायती मार्फत करावयाचा शासनाने निर्णय घेतल्यास सदर कामे शासन निर्णय, ग्राम विकास विभाग क्रमांक - झेडपीए - २०१५/ प्र.क्र.१०/ वित्त-९, दि. २५ मार्च, २०१५ मध्ये नमूद केल्यानुसार त्यातील सूचना व कार्यपद्धतीनुसार तसेच ग्रामपंचायतीची कामे करण्याची आर्थिक मर्यादा ज्या ज्या वेळी सुधारित करण्यात येईल त्या सुधारित मर्यादेनुसार ग्रामपंचायतीमार्फत

करण्यात येतील.”

(n) Major heads covered by the Government Resolution dated 27.03.2015 are 2515 and 1238, which are the State funds and the Government Resolution dated 25.03.2015 is not applicable to the heads 2515 and 1238.

(o) On the recommendation of the peoples' representatives, the State is allotting more funds and there is no sufficient manpower and infrastructure available with the petitioner Gram Panchayats for completing the works.

(p) Only eight petitioners are before the Court, when there are 149 village panchayats. Thus, 149 village panchayats have accepted the impugned decision and this petition cannot be entertained for these eight petitioners.

(q) In Writ Petition No.5589/2020 (Aurangabad Bench), ***Gram Panchayat, Ekurka and others, vs. the State of Maharashtra and others***, this Court (Coram : S.V. Gangapurwala & S.D. Kulkarni, JJ) has delivered the judgment on 28.01.2021. The allotment of works and appointment of a different agency by changing the earlier agency (Gram Panchayat) and allotting the work to the PWD, was not interfered with, concluding that the

State Government has a right to appoint an agency for completing development work.

(r) This case involves a special fund, which is provided only for two talukas.

(s) The Zilla Parishad has the expertise for getting such large projects implemented.

(t) Reliance is placed upon the judgment delivered by the Honourable Supreme Court in *M/s N.G. Projects Limited vs. M/s Vinod Kumar Jain and others, AIR 2022 SC 1531 (Civil Appeal No.1846/2022 decided on 21.03.2022)*.

6. Respondent No.2, the Honourable Minister, has preferred written notes of submissions in which, it is contended as under :-

(a) This petition has been filed by the eight petitioners in their individual capacity.

(b) There are 149 villages in Sillod- Soyagaon talukas.

(c) This petition is not filed by any Gram Panchayat.

(d) This petition is not a PIL.

(e) The Government Resolution dated 27.03.2015 was intentionally suppressed by the petitioners, from this Court.

(f) The petitioners have no right to seek work to be got done through the Gram Panchayat.

(g) Clause C of the Government Resolution dated 27.03.2015 enables the Government to select the type of works suggested by the people's representatives.

(h) Clause D is as regards selecting the implementing agencies and the Government is empowered to take a final decision to select the agencies.

(i) In identical set of facts, the implementing agency was the Zilla Parishad, Osmanabad and such agency was changed and the work was allotted to the PWD. Several Gram Panchayats challenged the said action in ***Gram Panchayat, Ekurka vs. the State of Maharashtra (supra)***. By judgment dated 28.01.2021, the petition was dismissed observing in paragraph 36 as under :-

“36. *No prejudices is caused to the petitioners even though implementing agency is changed. The petitioners/Gram Panchayats are concerned about the development works in their respective villages. They cannot insist that works should be implemented through Zilla Parishad and not from another agency like Public Works Department. It is for the State Government to take final decision about the implementing agency. The Government resolution dated 27.03.2015 is very much clear*

and accordingly the Government has taken policy decision to withdraw the works from Zilla Parishad Osmanabad and handover it to P.W.D. Osmanabad. There is nothing on record to show that Government has transferred funds of Rs. 400 lakhs in the Account of Zilla Parishad Osmanabad while issuing Government Resolution dated 17.03.2020. The affidavit filed on behalf of respondent No.3/Zilla Parishad, Osmanabad, nowhere speaks that the Government has transferred the funds of Rs.4 crores and the same is credited to the account of the Zilla Parishad, Osmanabad. The reply affidavit sworn on behalf of respondent No.3 nowhere throws light on the important aspect regarding actual transfer of funds of Rs.4 crores to Zilla Parishad, Osmanabad.”

(j) Even in ***Devendra Wankhede (supra)***, the Nagpur Bench has taken the same view.

(k) Due to the interim relief, public projects have been brought to a standstill.

(l) The Honourable Supreme Court has held in ***NG Projects (supra)*** that the public projects should not be stalled.

7. The learned advocate representing respondent Nos.4 and 5/ Zilla Parishad has relied upon the affidavit in reply and it is contended as under :-

(a) The petitioners have no locus to file this petition.

(b) The Government Resolution dated 25.03.2015 is wrongly interpreted.

(c) The petition is politically motivated.

(d) The petition is filed at a belated stage when the tender is finally allotted and the work orders are issued to successful bidders, who participated in the e-tender process.

(e) The Government is empowered to decide the implementing agency as per its policy considering the capability to perform the project.

(f) Because of this petition, all 149 Gram Panchayats are deprived of the benefits of the project.

(g) There is no infringement of Article 243-C in contractual and commercial matters, viability of implementation, competency and ability to perform the task.

(h) Considering the above factors, the Government Resolution dated 27.03.2015 designates the Zilla Parishad, Aurangabad, as the implementing agency.

(i) Two work orders are already issued in pursuance to the resolution dated 22.11.2021 passed by the General Body of the Aurangabad Zilla Parishad.

(j) The work on the project has reached an irreversible

stage as half or more than half work has been completed.

(k) The Government Resolution dated 25.03.2015 itself provides that specific schemes are to be implemented through the Gram Panchayat which is designated as the implementing agency. None of these petitioners/ Gram Panchayats are designated as the implementing agency.

(l) Only four categories of work as stated in clause 2 of the Government Resolution dated 25.03.2015 render the Gram Panchayat eligible as the implementing agency.

(m) The Government Resolution dated 27.03.2015 expressly refers to and clarifies the ambiguity created by the Government Resolution dated 25.03.2015.

(n) It is made clear by this Government Resolution that the decision of the Government about identifying the implementing agency, is final.

(o) In the present case, the project funds are allocated under Specific Project Funds as per the Government Resolution dated 27.03.2015, in tune with which the Government Resolution dated 21.03.2021 has been issued whereby the Zilla Parishad, Aurangabad has been designated as the implementing agency.

(p) The requisite compliance has been done and the

communication dated 22.06.2021, is issued.

(q) This petition suffers from laches as the petitioners allowed the projects to take off and reach an irreversible stage.

(r) This petition is a tool for obstructing the public projects.

(s) This petition is filed, not with bonafide intentions and to obstruct the projects so as to discredit respondent No.2, is the actual intention.

IMPUGNED COMMUNICATIONS DATED 22.06.2021 AND
07.12.2021

8. It is well settled that a communication by an officer of the State cannot overbear a Government Resolution. In short, any such order or communication issued by the Secretary on behalf of the State, without a policy decision being arrived at by the State, would not nullify a Government Resolution. It has been canvassed before us on behalf of the State that the Government Resolutions dated 25.03.2015 and 27.03.2015 permit the change in the executing/ implementing agency. We do not find any specific provision in any of the two Government Resolutions, which would enable such a change in the

implementing agency. So also, we do not find any provision which would empower the State to club several works together and treat them as a single project, inasmuch as, reduce the statutory period of calling for tenders from 14 days to 07 days. We have referred to all the clauses of the Government Resolutions dated 25.03.2015 and 27.03.2015. In fact, as per clause 6.1 of the Government Resolution dated 25.03.2015, all small works within the limit prescribed in the said Government Resolution, are to be got done by the Gram Panchayat, as the actual implementing agency. This Government Resolution recognizes the Gram Panchayat as an implementing agency which will actually get the work done. Clubbing of all small works upto the limit of Rs.15 lacs, so as to bring the small works under a single project and raise the project value beyond the limit prescribed in clause 1 with regard to the Gram Panchayat, seems to be the intention of the State in order to eliminate the Gram Panchayats from getting such small works executed.

9. The State has issued the Government Resolution dated 31.03.2021 by which, projects which have been sanctioned in the light of the recommendations of the people's representatives, can be got done through the Zilla Parishad as

being the agency to get the project executed. It is canvassed that the budget available for the works covered under the main account head-2515 and provided under the “Gramin Bhagatil Vikas Kamasathi Zilla Parishadana Sahayyak Anudan (Yojana Antargat) Datmat (2515-1238)” (Under grant in aid scheme to Zilla Parishads for development works in rural areas), should be utilized from the funds available for the 27 small construction projects.

10. In *Gram Panchayat and others (supra)*, this Court concluded that the transfer of 101 works out of 206 allotted to the Village Panchayats to the PWD along with funds, was without reason for causing a change in the implementing agency. No object would be achieved by changing implementing agency as the decision taken was in an arbitrary manner without observing transparency. In the case in hands, the Government has tried to explain that the Gram Panchayat did not have the expertise and infrastructure to get the work done considering its magnitude and project cost.

11. However, it appears that the Government has clubbed various small works in order to place them under a single major work so as to allot the same to the Zilla Parishad. So

also, there is no denial of the allegation that the firm, namely, Manik Infra Projects is likely to get the contract as the head of the firm is Mr.Santosh Manikrao Balande, who is the brother of Mr.Kishor Manikrao Balande, the existing Chairman of the Standing Committee of the Works Department, Zilla Parishad, Aurangabad. So also, there is no denial of the fact that the clubbing of small works so as to make it appear as a major work, which is beyond the budgetary limits of the Gram Panchayat, has been done by the impugned communication by the Deputy Secretary. It has been concluded in *Devendra Sureshrao Wankhede (supra)*, that the communication of the Deputy Secretary cannot annul the provisions made in the Government Resolution. A perusal of the original file shown to us by the learned Government Pleader does not indicate any specific decision taken by the State Government, either for clubbing small works or for changing the implementing agency. The impugned communications by the Deputy Secretary are, therefore, baseless.

12. No specific clause from either of the two Government Resolutions dated 25.03.2015 and 27.03.2015, has been pointed out by the respondents, which would indicate that a

Deputy Secretary could permit a change in the implementing agency. So also, no clause is pointed out that several small works, within the budgetary limits of the Gram Panchayat, could be clubbed to make it look as a single major project, which resultantly raises the project cost, beyond the financial limit/reach of the Gram Panchayat, thereby eliminating them. So also, no provision is pointed out which enables the Deputy Secretary to reduce the tender/ bidding period from 14 days to 07 days.

WHETHER, THIS PETITION CAN BE ENTERTAINED?

13. Notwithstanding the irregularities noticed by us in the impugned communications of the Deputy Secretary, in the light of the above, which could neutralize the purpose and intent of the Government Resolutions dated 25.03.2015 and 27.03.2015, we cannot ignore the fact that the petitioners have approached this Court in their individual capacity on 02.12.2021. Their eight Gram Panchayats have not passed any resolution permitting the petitioners to initiate litigation on behalf of the Gram Panchayats. Moreover, out of 149 Gram Panchayats, who would eventually benefit from the projects, not a single Gram Panchayat has passed a resolution to challenge the two impugned

communications issued by the Deputy Secretary. These eight Sarpanch have approached this Court after the tender was finally allotted and many work orders are issued to the successful bidders, who participated in the e-tender process. Two work orders are already issued in pursuance to the resolutions dated 22.11.2021 and the work to the extent of almost 50% has been completed.

14. The respondents have relied upon the judgment delivered by the Honourable Supreme Court in ***M/s NG Projects (supra)*** wherein, several judgments were referred to and conclusions were drawn in paragraphs 13, 14 and 15 as under :-

“13. *This Court sounded a word of caution in another judgment reported as Silppi Constructions Contractors v. Union of India and others, 2019 SCC Online SC 1133, wherein it was held that the Courts must realize their limitations and the havoc which needless interference in commercial matters could cause. In contracts involving technical issues, the Courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above, the Courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference would cause unnecessary loss to the public exchequer. It was held as under:-*

“19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts, but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realize their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit

like a court of appeal over the appropriate authority; the court must realize that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind, we shall deal with the present case.”

14. *In National High Speed Rail Corpn. Ltd. v. Montecarlo Ltd., 2022 SCC Online SC 111, this Court sounded a word of caution while entertaining the writ petition and/or granting stay which ultimately may delay the execution of the Mega projects. It was held as under:*

“95. Even while entertaining the writ petition and/or granting the stay which ultimately may delay the execution of the Mega projects, it must be remembered that it may seriously impede the execution of the projects of public importance and disables the State and/or its agencies/instrumentalities from discharging the constitutional and legal obligation towards the citizens. Therefore, the High Courts should be extremely careful and circumspect in exercise of its discretion while entertaining such petitions and/or while granting stay in such matters. Even in a case where the High Court is of the prima facie opinion that the decision is as such perverse and/or arbitrary and/or suffers from mala fides and/or favouritism, while entertaining such writ petition and/or pass any appropriate interim order, High Court may put to the writ petitioner's notice that in case the petitioner loses and there is a delay in execution of the project due to such proceedings initiated by him/it, he/they may be saddled with the damages caused for delay in execution of such projects, which may be due to such frivolous litigations initiated by him/it. With these words of

caution and advise, we rest the matter there and leave it to the wisdom of the concerned Court(s), which ultimately may look to the larger public interest and the national interest involved.”

15. *In Uflex Ltd. v. Government of T.N., (2022) 1 SCC 165, this Court stated that the enlarged role of the Government in economic activity and its corresponding ability to give economic “largesse” was the bedrock of creating what is commonly called the “tender jurisdiction”. The objective was to have greater transparency and the consequent right of an aggrieved party to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India beyond the issue of strict enforcement of contractual rights under the civil jurisdiction. However, the ground reality today is that almost no tender remains unchallenged. Unsuccessful parties or parties not even participating in the tender seek to invoke the jurisdiction of the High Court under Article 226 of the Constitution. The Court held as under:-*

“2. The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that it is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance. [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517].

3. We cannot lose sight of the fact that a tenderer or contractor with a grievance can always seek damages in a civil court and thus, “attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising

power of judicial review, should be resisted”.
[Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517]. XX XX XX

42. We must begin by noticing that we are examining the case, as already stated above, on the parameters discussed at the inception. In commercial tender matters there is obviously an aspect of commercial competitiveness. For every succeeding party who gets a tender there may be a couple or more parties who are not awarded the tender as there can be only one L-1. The question is should the judicial process be resorted to for downplaying the freedom which a tendering party has, merely because it is a State or a public authority, making the said process even more cumbersome. We have already noted that element of transparency is always required in such tenders because of the nature of economic activity carried on by the State, but the contours under which they are to be examined are restricted as set out in Tata Cellular (Tata Cellular v. Union of India) (1994) 6 SCC 651] and other cases. The objective is not to make the Court an appellate authority for scrutinising as to whom the tender should be awarded. Economics must be permitted to play its role for which the tendering authority knows best as to what is suited in terms of technology and price for them.”

15. The Honourable Supreme Court then concluded in paragraphs 21, 23 and 26 as under :-

“21. Since the construction of road is an infrastructure project and keeping in view the intent of the legislature that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the Writ Court while exercising its jurisdiction under Article 226 of the Constitution of India.”

“23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its

decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present-day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work.”

“26. *A word of caution ought to be mentioned herein that any contract of public service should not be interfered with lightly and in any case, there should not be any interim order derailing the entire process of the services meant for larger public good. The grant of interim injunction by the learned Single Bench of the High Court has helped no-one except a contractor who lost a contract bid and has only caused loss to the State with no corresponding gain to anyone.”*

16. It is thus, apparent that eight Sarpanch have approached this Court and that too belatedly. Their challenge in their individual capacity needs to be negated as it does not indicate the will of the Gram Panchayats. Though we have

noticed that the act of the Deputy Secretary of having issued the impugned communications, was an attempt to overbear the provisions of the two Government Resolutions, the work allotted has progressed. No deficiency in the allotment of tenders has been pointed out. If a tender would have been allotted to Manik Infra Projects, considering the blood relation between the head of the firm and the Chairman of the Standing Committee for Works Department, Zilla Parishad, Aurangabad, it would have indicated the involvement of the Chairman of the Standing Committee, Works, Zilla Parishad. Any interference in the project at this stage would truncate the projects aimed at extending various amenities to the residents of 149 village panchayats. An order of interfering with the project at this stage, would do more harm in terms of loss of money as well as amenities, to the State as well as the public at large. It is for such reasons and in the light of the view of the Honourable Supreme Court in *NG Projects (supra)*, that we are not causing any interference. This Writ Petition is, therefore, dismissed.