

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2350 OF 2020

Gowardhan s/o Mangilal Sharma,
aged about 71 years,
occupation : presently MLA,
Akola (West), r/o Aalshi Plot,
Goraksharan Road, Akola,
Maharashtra,
Mobile No.9403113504

... Petitioner

- Versus -

- 1) State of Maharashtra, through
its Secretary, Department of
Urban Development, Mantralaya,
Mumbai – 440 032.
- 2) The District Collector, Akola.
- 3) The Superintending Engineer,
Public Works Department,
Akola.
- 4) Akola Municipal Corporation,
through its Commissioner,
Akola.
- 5) Devanand Dashrath Gawande,
aged about 22 years,
occupation : business,
r/o Akkalkot, Bhaipura,
Hariharpeth, Akola,
Tahsil and District Akola.

... Respondents

Shri B.G. Kulkarni, Advocate, Shri T.D. Mandlekar, Advocate and Shri R.V. Malviya, Advocate for Petitioner.

Shri S.M. Ukey, Additional Government Pleader for Respondent Nos.1 to 3.

Shri S.V. Sohoni, Advocate for Respondent No.4.

Shri K.C. Deogade, Advocate for Respondent No.5.

**CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.**

DATE : 21 MARCH 2022

JUDGMENT (Per Nitin Jamdar, J.) :

Rule. Rule made returnable forthwith. Respondents waive service. Taken for disposal.

2. The Petitioner, member of the Maharashtra Legislative Assembly from Akola-West Constituency, has filed this writ petition challenging the Government Resolution dated 16 July 2020, cancelling the list of public works to be carried out in Akola city and replacing them with other works listed in the Government Resolution.

3. The main ground of challenge is that the earlier Government Resolution for development works in the city of Akola has been substituted by the impugned Government

Resolution only because of change of Government after the general elections and that requisite procedure has not been followed. The Respondent State Government contends that the Petitioner has no personal right to question the impugned decision nor suffered any injury; the impugned decision is in the public interest, having proposed more development works in the City in the same funds; and the challenge of the Petitioner is politically motivated.

4. The State of Maharashtra issued a Government Resolution on 12 December 2017 laying down a policy of providing basic amenities in the area of Municipal Corporations. A scheme was formulated, and Municipal Corporation Basic Amenities and Facilities Development Fund was constituted. This policy postulated that the contribution of the State Government to this fund would be 50%, and the respective Municipal Corporation would contribute the remaining 50%. As per this policy, grants are distributed based on the categorisation of the Municipal Corporation. To develop basic amenities in the A+ class Municipal Corporation, contribution between State Government and Municipal Corporation was fifty per cent each in ratio. For special grants to Municipal Corporation for distinctive works, the State Government's share was one hundred per cent. As per the policy of 12 December

2017, after the proposals are received, the same are forwarded to the District Level Committee under the chairmanship of the Divisional Commissioner. After the scrutiny by the Committee, the same are forwarded to the State Government for administrative approval and allocation of funds. After approval of the sanctioning authority, funds are released for the works.

5. For the financial year 2019-20, by Government Resolution dated 9 September 2019, an amount of Rs.15 crores for 91 works in total was given to Akola Municipal Corporation under the head “special grants to Municipal Corporation for distinctive works”. By Government Resolution dated 8 August 2019, the Department of Urban Development had sanctioned the development works proposed by the Petitioner. On 7 September 2019, the District Level Committee had approved the list of works proposed by the Petitioner, and on 9 September 2020, the amount of Rs.15 crores for the development works was sanctioned. It is contended that on 9 September 2019, District Level Committee had proposed the specific list of works to be carried out, and on 30 September 2019, the State Government permitted Collector Akola to execute the works and exhaust the funds of Rs.15 crores before 31 March 2021. The works, however, could not be carried out as elections to Maharashtra Legislative Assembly were announced on 22 September 2019, and the Code

of Conduct came into force. Thereafter, on 5 December 2019, a stay was granted to the development works in the State of Maharashtra till 31 March 2020. This stay was vacated by the State Government on 31 March 2020. On 16 July 2020, the State Government cancelled the 91 works decided as per Government Resolution dated 9 September 2019 and issued a new Government Resolution providing for 176 works for Akola city out of Rs.15 crores. Till impugned Government Resolution dated 16 July 2020 was issued, no work order was issued, and the works had not commenced. Challenging this substitution, the Petitioner is before us.

6. We have heard Shri Kulkarni, learned Counsel for the Petitioner, Shri Ukey, learned Additional Government Pleader for Respondent Nos.1 to 3, Shri Sohoni, learned Counsel for the Respondent No.4 and Shri Deogade, learned Counsel for the Respondent No.5. The Respondents have filed Reply-affidavits, and the Petitioner has also filed rejoinder.

7. The First question is, what is the status of the Petitioner as Petitioner has not filed this Petition as a Public Interest petition. What is his legal right, and what is the legal injury suffered by him.

8. Mr Kulkarni, the learned Counsel for the Petitioner, submits that the Petitioner was instrumental in getting approval from the erstwhile Government for a grant of Rs.15 crores for the development. The Petitioner emphasises that it was his efforts and, upon his request to the Finance Minister, the State Government had allotted Rs.15 crores for the development works in the City. Shri Ukey, learned Additional Government Pleader for the Respondent Nos.1 to 3 submitted that the Petitioner has no locus and the amount of Rs.15 crores is not Petitioner's bounty and it is not that the Petitioner will decide how these Government funds are to be spent and on which works.

9. We have considered the rival contentions on this issue.

10. While the Petitioner's efforts, as contended, could be termed as laudable, they are nothing more than that. These efforts do not translate into a personal right in favour of the Petitioner. The public funds are meant for development works, and, Petitioner cannot claim any personal right in respect of the same. These funds were disbursed as per Government Resolution dated 12 December 2017, which State Government under the policy would disburse not only to the city of Akola but to various other Municipal Councils and Municipal Corporations in the State of

Maharashtra. The petition proceeds on a misconception that the Petitioner has a legal right or has a special locus to demand the utilisation of Rs.15 crores in a particular manner alone. These funds are out of the public exchequer to be utilised through Governmental Agencies.

11. According to the Petitioner, the impugned Government Resolution is arbitrary and politically motivated. It is stated that there is absolutely no reason given for cancelling the works under the Government Resolution dated 9 September 2019. It is stated that the entire process for issuance of work order was completed and funds of Rs.15 crores were sanctioned and disbursed and only because after the elections, when the present ruling dispensation came in power on 20 November 2019, upon a letter issued by the member of Legislative Assembly from Balapur Constituency belonging to the ruling party that the Government Resolution dated 9 September 2019 was cancelled. The Petitioner contends that unless it was demonstrated that the earlier Resolution was either contrary to any statutory provisions or against the public interest, the Respondent State could not change the stand merely because another political party has come into power. It is contended that this Court must examine the change in policy and thus the legality of the impugned Resolution. The Petitioner has heavily relied upon the

observations of the Supreme Court in the case of *State of Tamil Nadu and others vs. K. Shyam Sunder and others*¹ where the Supreme Court has dealt with the change of policy with the change of Government. The Petitioner has relied on the following observations of the Supreme Court in the case of *K. Shyam Sunder* :

“I. Change of policy with the change of Government

31. The Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing.

“36. ... the principles of governance have to be tested on the touchstone of justice, equity and fair play and if a decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate.”

(Vide Onkar Lal Bajaj v. Union of India [(2003) 2 SCC 673 : AIR 2003 SC 2562] , SCC p. 691, para 36.)

32. In State of Karnataka v. All India Manufacturers Organisation [(2006) 4 SCC 683 : AIR 2006 SC 1846] , this Court examined under what circumstances the Government should revoke a decision taken by an earlier Government. The Court held that an instrumentality of the State cannot have a case to plead contrary from that of the State, and the policy in respect of a particular project adopted by the State Government should not be changed with the change of the Government. The Court further held as under: (SCC p. 706, para 59)

¹ (2011) 8 SCC 737

“59. ... It is trite law that when one of the contracting parties is ‘State’ within the meaning of Article 12 of the Constitution, it does not cease to enjoy the character of ‘State’ and, therefore, it is subjected to all the obligations that ‘State’ has under the Constitution. When the State's acts of omission or commission are tainted with extreme arbitrariness and with mala fides, it is certainly subject to interference by the constitutional courts....”

33. While deciding the said case, reliance had been placed by the Court on its earlier judgments in State of U.P. v. Johri Mal [(2004) 4 SCC 714 : AIR 2004 SC 3800] and State of Haryana v. State of Punjab [(2002) 2 SCC 507 : AIR 2002 SC 685]. In the former, this Court held that the panel of District Government Counsel should not be changed only on the ground that the panel had been prepared by the earlier Government. In the latter case, while dealing with the river water-sharing dispute between two States, the Court observed thus: (SCC p. 538, para 16)

“16. ... in the matter of governance of a State or in the matter of execution of a decision taken by a previous Government, on the basis of a consensus arrived at, which does not involve any political philosophy, the succeeding Government must be held duty-bound to continue and carry on the unfinished job rather than putting a stop to the same.”

34. In M.I. Builders (P) Ltd. v. Radhey Shyam Sahu [(1999) 6 SCC 464 : AIR 1999 SC 2468] , while dealing with a similar issue, this Court held that Mahapalika being a continuing body can be estopped from changing its stand in a given case, but where, after holding enquiry, it came to the conclusion that action was not in conformity with law, there cannot be estoppel against the Mahapalika.

35. Thus, it is clear from the above, that unless it is found that act done by the authority earlier in existence is either contrary to statutory provisions, is unreasonable, or is against public interest, the State should not change its stand merely because the other political party has come into power. Political agenda of an individual or a political party should not be subversive of the rule of law.

The Petitioner contends that the Court should call upon the State to justify the change in the stand. The Court should scrutinise the record and find out the reasons behind the change and, if they are found to be not bona fide, to quash the decision.

12. The State has filed an Affidavit in Reply. The State contends that there is no arbitrariness in the action of the Respondent State. Reply-affidavit filed will show that the Municipal Corporation failed to issue work orders even after three and half months. Under the policy, where the State Government contributes entire funds, it is for the State Government to decide which development works should be carried out in the public interest, which are necessary and unnecessary. The Government Resolution dated 16 July 2020 has proposed 176 works against 91 under the Government Resolution dated 9 September 2019 in the same amount, which is not a disputed position. It is submitted that no person has come before the Court making any personal grievance that he is affected by the change of policy. The public interest is subserved more by the Government Resolution dated

16 July 2020 and not by Government Resolution dated 9 September 2019. There is nothing shown that the State Government has no power to issue Government Resolution dated 16 July 2020 and, therefore, the Court ought not to interfere in this policy decision of the State, more particularly when no legal injury to the Petitioner is pointed out, and the petition is not moved in the public interest.

13. On behalf of Municipal Corporation-Respondent No.4, Shri Sohoni, learned Counsel contended that entire contribution to the scheme is by the State of Maharashtra, location and areas are also to be decided by the State of Maharashtra, implementing agency is the Public Works Department and the only role of Respondent No.4 is to give no objections, which no objections were given. It is stated that tenders were not finalised by any Authority and, therefore, there is no question of failure by the Municipal Corporation to carry out the works. Respondent No.5 has supported the stand of the State Government.

14. Before, based on the observations of the Supreme Court in the case of *K. Shyam Sunder and others* (supra), the matter is taken forward, the observations of the Supreme Court must be understood in the backdrop of the facts of the case. In the decision in the case of *K. Shyam Sunder and others* (supra),

the decisions in the cases of *State of Karnataka vs. All India Manufacturers Organisation*², *State of U.P. vs. Johri Ma³*, *State of Haryana vs. State of Punjab*⁴ and *M.I. Builders (P) Ltd. vs. Radhey Shyam Sahu*⁵ were considered.

14.1 The case of *K. Shyam Sunder* (supra) arose from the field of education in the state of Tamil Nadu. Tamil Nadu had different Boards imparting basic education to students. Committees were appointed to remove disparity in the standard of education. After the Right to Education Act was enacted, the cabinet of the State Government decided to implement the uniform school education system. An Ordinance was issued, which was published in the Official Gazette on 30-11-2009. The Ordinance was subsequently converted into the 2010 Act. Many writ petitions were filed in the High Court, challenging the validity of various provisions of the 2010 Act. Division Bench of the High Court held that the provisions of Section 11, 12 and 14 were unconstitutional and struck down the same. Further directions were issued by the Court to the State Government to bring the provisions of the 2010 Act in consonance with the 2009 Act and notify the Academic Authority and the State Advisory Council under the 2009 Act. The Supreme Court dismissed the Special Leave Petitions. The State Authorities referred the matter

2 (2006) 4 SCC 683

3 (2004) 4 SCC 714

4 (2002) 2 SCC 507

5 (1999) 6 SCC 464

to an expert committee. However, there was a change of State Government following the general elections of the State Assembly. The Government amended the 2010 Act, substituting Section 3 with a new section providing that the schools would follow the common syllabus as may be specified by the Board for each subject in Standards I to X from such academic year as may be notified by the Government in the Official Gazette. The new academic session was to commence on 1-6-2011, and the 2011 Amendment Act came into force on 7-6-2011. This change in the decision aggrieved the students, and many writ petitions were filed challenging the amendment. The Division Bench of the High Court on 10-6-2011 stayed the operation of the 2011 Amendment Act but gave liberty to the State Government to conduct a detailed study and to modify the paragraph or portion of the textbooks etc. This interim order passed by the High Court on 10-6-2011 was challenged in the Supreme Court, and the Supreme Court modified the said interim order. Pursuant to the order of the Supreme Court, an expert committee was constituted, and a joint report was submitted to the High Court. After considering the said report, the High Court struck down Section 3 of the 2011 Amendment Act, and the matter reached the Supreme Court, and the decision was rendered. It is not necessary to further detail the facts of this case as it is clear that the changed educational policy of the Government had affected a large

number of students and colleges, and it was found to be not valid and proper by the Court.

14.2 In the case of *M.I. Builders Pvt. Ltd.*, the facts were that the Lucknow Municipal Corporation constituted a High Powered Committee regarding disposal, allotment, transfer, etc., of its properties. The High Powered Committee had decided on the construction of a shopping complex. It was decided to get the project executed through the appellant before the Supreme Court. A specific draft of the contract to be entered into was approved. The developer was also given the right to sign the contract on behalf of the Municipal Corporation. All formalities were complete, and the decision of the High Powered Committee was placed before the General Body, which approved the agreement. The High Court set aside the decision of the Municipal Corporation permitting the construction and the agreement. In the context of this background, the aggrieved party – the developer had approached the Supreme Court wherein the Supreme Court observed that actions of the State are open to judicial review if they are unreasonable, irrational and mala fide.

14.3 In the case of *the State of Haryana*, it was an original suit filed in the Supreme Court by the State of Haryana against the State of Punjab regarding the construction of a portion of

Sutlej-Yamuna Link Canal. The Supreme Court considered this inter se water dispute under its original jurisdiction. In this context, the issue arose before the Supreme Court regarding the decision of one Government binding the successor Government.

14.4 The facts in the case of *Onkar Lal Bajaj and others* were that the issue of retail outlets of petroleum products – LPG distribution was raised in the media and in the Parliament. In light thereof, a review was done, and steps were initiated to cancel all allotments. Several writ petitions were filed in various High Courts, challenging the cancellation orders. In the backdrop of this challenge, the Supreme Court considered the duty of the State Government, which was in the context of the distribution of State largesse and emphasised on fairness in the procedure of the State.

14.5 The case of *Johri Mal* came up before the Supreme Court in respect of appointments of public prosecutors. In this case, the respondent's term as a public prosecutor was renewed in the year 1996 for one year. His term thereafter was not renewed, and he was relieved, and the Respondent filed a writ petition before the High Court. The High Court directed the State Government to renew the Respondent's term, and the State of Uttar Pradesh had approached the Supreme Court.

14.6 In the case of *All India Manufacturers Organization and others*, public interest petitions were filed challenging the decision regarding the Bangalore-Mysore Infrastructure Corridor Project. Being aggrieved by the decision of the High Court, the State of Karnataka had approached the Supreme Court.

15. The above analysis of the facts in the decisions relied upon by the Petitioner would show that in these cases, the affected parties had approached the Court. The affected parties had contended that merely because there had been a change of ruling party, the policy, which had benefited them, ought not to be arbitrarily changed. Also, in some cases, the changed policy was questioned in the public interest. In this context, the Supreme Court analysed the reasons for the change in policy and disapproved change of policy merely on the ground of change of Government. It was also demonstrated that the change in the decision was detrimental to the public interest. From these decisions, therefore, the Petitioner cannot carve out an absolute proposition that the High Court must scrutinise and set aside the decision of the subsequent Government even though the Petitioner before it has not suffered any legal injury and even though it is not demonstrated that the subsequent decision is against the public interest.

16. Reverting to the facts of the present case, the most important aspect of the case is that the impugned Government Resolution has brought in more development work for the City from the same fund. This position is not controverted. The Petitioner has filed a rejoinder to the State Government's reply asserting that the impugned Government Resolution has, in fact, served the public interest better by introducing more works than the earlier public works. The learned Counsel for the Petitioner has taken us through the rejoinder. The assertion of the State is neither controverted, nor it is orally argued that the works now proposed are not necessary. Therefore, what we have before us is only a policy decision where the State Government has decided that utilisation of its funds would be better achieved by executing 176 works instead of 91 works.

17. It is the beneficial policy of the State Government to allocate funds for the development works to be carried out in the Municipal Corporations and Municipal Councils, which are to be implemented through the State machinery. By the impugned Government Resolution, the ambit of work has been enhanced. No doubt, there could be cases where such change in policy would either lead to a reduction of funds already allocated or withdrawal of works, which may affect the larger interest, but in

the present case, in the same amount, the State Government is proposing to have substantially more works. Therefore, this decision of the State Government cannot be said to be mala fide or detrimental to the public interest.

18. It is not demonstrated before us that any resident of the city of Akola is affected. No work orders were issued, and no legal rights were created in favour of any bidder. The entire amount is of the State Government, and the scheme is to be implemented by the State Government through the Public Works Department. Going by the Petitioner's argument, if the same ruling dispensation had replaced the Government Resolution changing the works from 91 to 176, there would have been no arbitrariness. There is, therefore, a fallacy in the Petitioner's argument. It is not demonstrated before us that 176 works in the same funds do not achieve the public purpose, nor it is shown that these works are unnecessary or that more essential works have been deliberately omitted.

19. In the context of these facts, the decisions of the Supreme Court relied upon by the State on the ambit of interference by the Court in the policy matters of the Government assume importance. These are in the cases *Bharat Singh and others vs State of Haryana and others*⁶, *Balco Employees' Union*

6 (1988) 4 SCC 534

*(Regd.) vs. Union of India and others*⁷, *Directorate of Film Festivals and others vs. Gaurav Ashwin Jain and others*⁸, *Kusumam Hotels Private Limited vs. Kerala State Electricity Board and others*⁹ and *Mallesham Anjaiyya Yerola vs. State of Maharashtra*¹⁰. The gist of the law laid by the Hon'ble Supreme Court in these cases is that the Court does not act as an appellate authority while exercising the power of judicial review of administrative action. The scope of judicial enquiry is confined to the question of whether the decision taken by the government is against any statutory provisions or it violates the fundamental rights of the citizens, or is opposed to the provisions of the Constitution of India. The correctness of the reasons which prompted the Government in decision-making, taking one course of action instead of another, is not a matter of concern in judicial review, and the Court is not the appropriate forum for such investigation. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. The Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In matters of policy, Courts will not interfere with policy either because it is erroneous or on the ground that a better, fairer or wiser alternative is available. The

7 (2002) 2 SCC 333

8 (2007) 4 SCC 737

9 (2008) 13 SCC 213

10 2012 SCC OnLine Bom 1580

legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.

20. The inquiry into why the works were increased from 91 to 176 is academic when the Petitioner does not controvert the assertion that the 176 works in the same funds will be beneficial. The Petitioner has not spelt out the precise objection to the additional works being carried out in the city, which he seeks to represent, within the same funds allocated with no demonstrable prejudice. We have not been shown any impact on the primary object of the scheme of the development works for the city of Akola. The impugned Government Resolution would bring about more infrastructural works and basic amenities.

21. For these reasons, the writ petition is dismissed. Rule is discharged. No costs.

(ANIL L. PANSARE, J.)

(NITIN JAMDAR, J.)

At this stage, Shri Kulkarni, learned Counsel for the Petitioner, seeks the continuation of the interim order. In the light of our finding that the Petitioner has no personal right and the

impugned Government Resolution has not affected larger public interest, the request to continue interim order is rejected.

(ANIL L. PANSARE, J.)

(NITIN JAMDAR, J.)

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