

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

WRIT PETITION NO.8996 OF 2022

Shashikant s/o Chandrakant Sangle,
Age: 30 yrs, Occ. Business,
R/o Shirur, Tq. Kaij,
Dist Beed.

Petitioner

VERSUS

1. The State of Maharashtra,
through it's Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai.
2. The Chief Executive Officer,
Zilla Parishad, Beed.
3. The Additional Chief Executive Officer,
Zilla Parishad, Beed.

Respondents

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Mr. A. R. Gaikwad, Advocate for Petitioner
Mr. P. K. Lakhotiya, AGP for Respondent No.1
Mr. S. R. Shirsath, Advocate for Respondent Nos.2 & 3

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AND

WRIT PETITION NO.9034 OF 2022

Sarika w/o Anurath Tupe,
Age: 31 years, Occ. Business,
R/o Pimpalwadi, Tq. Beed.
Dist Beed.

Petitioner

VERSUS

1. The State of Maharashtra,
through it's Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai.
2. The Chief Executive Officer,
Zilla Parishad, Beed.

3. The Additional Chief Executive Officer,
Zilla Parishad, Beed. Respondents

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Mr. S. B. Solanke, Advocate for Petitioners
Mr. P. K. Lakhotiya , AGP for Respondent 1
Mr. K.B.Jadhav, Advocate for Respondent No.2 & 3

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**CORAM : NITIN W. SAMBRE &
S. G. CHAPALGAONKAR, JJ.
DATE : March 06, 2023**

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JUDGMENT :- (PER S. G. CHAPALGAONKAR, J.)

1. Heard.
2. **RULE.** Rule made returnable forthwith. By consent of the parties, the matters are taken up for final hearing together since the challenge is common.
3. The petitioners are the contractors registered with Public Works Department, State of Maharashtra as well as Zilla Parishad, Beed and they are the residents of District Beed. The petitioners have approached this Court under Article 226 of the Constitution of India, thereby raising challenge to the impugned communications dated 22/07/2022 and 25/07/2022 issued by respondent No.1 being arbitrary and violative of Articles 14 and 21 of the Constitution of India.
4. The contention of the petitioners is that under communication dated 29/03/2022, respondent No.1 had invited proposals for the development works. Thereafter, respondent No.3/Chief Executive Officer, Zilla Parishad

forwarded the proposals dated 29/04/2022 and proposed 89 development works in Group-B and 22 development works in Group-C relating to repairs of the roads and bridges. The respondent No.1 accorded administrative sanction to the aforesaid proposals vide orders dated 12/05/2022, 27/05/2022 and 06/06/2022 subject to the certain terms and conditions specified in the orders. The respondent No.3 published E-tenders dated 30/06/2022, 14/07/2022 and 19/07/2022, thereby inviting bids from eligible contractors.

5. It is the contention of the petitioners that they being eligible and qualified contractors, submitted their bids against 16/17 development works. While the tender process was at advance stage, respondent No.1 issued a communication dated 19/07/2022 which is addressed to the Chief Executive Officers of Zilla Parishad, Maharashtra State. It is communicated that the development works for which administrative sanctions are accorded, but work orders are yet to be issued or execution of work is yet to be commenced, shall remain stayed. Similarly on 25/07/2022, respondent No.1 issued a communication which is addressed to District Collectors, Chief Executive Officers of Zilla Parishad and Superintending Engineers of Public Works Department within the State of Maharashtra and called for an information regarding the tenders floated after 01/04/2021 in which work orders are yet to be issued or execution of the work is yet to be commenced. The similar instructions are also issued under communication dated 11/08/2022 by respondent No.1.

6. The petitioners contend that in light of the aforesaid communications, further process of development works undertaken by respondent No.3/Zilla Parishad in which tenders are already issued has been installed. The petitioners made a communication dated 05/08/2022 to respondent Nos.2 & 3 and requested for completing the tender process and issuing the work orders. However, respondent No.3 issued a communication dated 12/08/2022, thereby informing the petitioners that in view of instructions received from the State Government, the process cannot go ahead.

7. In response to the notice issued by this Court, respondent Nos.2 & 3 filed an affidavit-in-reply stating that in pursuance of administrative sanction to various development works proposed by Zilla Parishad, the administrative sanctions were accorded by respondent No.1. Accordingly, E-tender notices dated 30/06/2022, 14/07/2022 and 19/07/2022 for 16/17 different works were issued. However, in light of the communications dated 19/07/2022, 25/07/2022 and 11/08/2022 issued by respondent No.1, further process has been stayed. No further explanation is given to justify the action under the impugned communications.

8. Learned Advocates Mr. A. R. Gaikwad and Mr. S. B. Solanke appearing for the petitioners in respective petitions would submit that abrupt action on the part of the Government would hamper the development works which were already approved and tenders were also floated. They would submit that the respondents have no justification for such abrupt suspension of the works under tender. They assailed the

impugned communications issued by respondent No.1 on the ground that such action is contrary to constitutional scheme as well as the rules of business framed under Article 166 (3) of the Constitution of India. It is the contention of the petitioners that once respondent No.1 had granted administrative as well as technical sanctions and budgetary allocation was made, only because of change in political scenario, the development projects could not have been stalled. According to the petitioners, the impugned action on the part of the respondents is arbitrary, unreasonable and capricious.

9. Learned Advocates appearing for the petitioners placed reliance on the judgments delivered by this Court in Writ Petition No.10174 of 2022 (Jayaji s/o Kisan Deshmukh and others Vs. State of Maharashtra and others) dated 27/01/2023, Writ Petition No.9421 of 2022 with connected petitions (Pooja w/o Kalyan Sapate Vs. State of Maharashtra and others) dated 03/03/2023 and Writ Petition No.9438 of 2022 (Chandrakant @ Raju s/o Ramakant Navghare Vs. State of Maharashtra and others) dated 03/03/2023. They would also place their reliance on a reported judgment of this Court in the matter of Charan Sovinda Waghmare Vs. State of Maharashtra and others dated 13/04/2012 in Writ Petition No.1698 of 2011.

10. Learned Assistant Government Pleader Mr. P. K. Lakhotiya appearing for respondent No.1 in both petitions, submitted that a conscious decision has been taken by the Government to review the development works. According to him, it was necessary to bring correction in the budgetary

allocation as well as priorities as regards to the development works. The Government has every right to take a policy decision and also endorse political ideology in execution of government business. He would submit that after taking the necessary review, the Government has continued the development works in relation to construction/repairs of bridges and further decision would be taken depending upon the policy of State. He would further submit that the petitioners have no legal or constitutional right to invoke the writ jurisdiction of this Court. The petitioners cannot claim vested right in the tender matters though they may be participant in the tender process.

11. Learned Advocates Mr. S. R. Shirsat and Mr. K. B. Jadhavar appearing for respondent Nos.2 & 3 would submit that the Zilla Parishad has followed instructions received from respondent No.1. They would submit that various development works were sanctioned by respondent No.1. Accordingly, tender notices were also issued. However, after receiving impugned communications, tender process has been stayed.

12. We have appreciated the submissions advanced by the learned Advocates appearing for respective parties and considered the documents filed on record along with the pleadings in the writ petitions as well as affidavit-in-reply. It can be observed that on 29/03/2022, upon instructions issued by respondent No.1, respondent Nos.2 & 3 had submitted the proposals for the development works relating to construction/repair of the roads and bridges. In response to

the said communications, a detailed proposal was forwarded by respondent Nos.2 & 3 and the same was accorded administrative and technical sanction by the State Authorities. It appears that the budgetary provisions were made for execution of the development works. The Government Resolution dated 12/05/2022 came to be issued by Rural Development Department, State of Maharashtra, thereby granting administrative sanction and making budgetary provisions. A similar Government Resolution dated 06/06/2022 has been issued and the proposal dated 24/05/2022 made by respondent No.2 has been granted the administrative sanction.

Thereafter, respondent Nos. 2 & 3 issued E-tender notices during the period from 27/07/2022 to 17/08/2022 thereby inviting bids. The petitioners submitted their bids in pursuance of such tender notices.

13. On 29/06/2022 the then Chief Minister of Maharashtra State resigned. On next evening, new Chief Minister assumed his office. The Chief Secretary issued a communication dated 20/07/2022 under instruction of the Chief Minister. It has been marked to Additional Secretary/Principal Secretary of all ministries. It stipulates that the development projects sanctioned w.e.f 01/04/2021 under various Government schemes shall be stayed. It also stipulates that tenders issued after 01/04/2021 in which work orders are not issued or where work orders are not given effect, shall remain stayed. The information regarding all such works was called by the Government through various communications. The Government Resolutions under various departments of the

State of Maharashtra are issued to stay the development works. The impugned action/communication in the present Writ Petitions are also sequel to the aforesaid decisions.

14. The writ petitions challenging similar Government Resolutions and communications issued post change of the Government on 30/06/2022 were subject matter before this Court in Writ Petitions Nos.9438 of 2022, 9421 of 2022, 9422 of 2022 and 10174 of 2022, as well as Writ Petition No.430 of 2023 (Ramesh Annaso Todkar Vs. State of Maharashtra others) (at Principal Seat at Bombay). This Court after considering the constitutional scheme flowing from Article 154, 160 and the rules of business framed for convenient transaction of the business of the Government, allocation of business amongst the ministers, quashed similar government decisions by which the development works were either stayed or suspended.

15. We have considered the affidavit-in-reply filed on behalf of the respondent/State in the present case. We find that the justification to the impugned action that has been sought to be offered in the present matters is similar to that was put forth in the writ petitions referred above. This Court for detailed reasons recorded in the judgments referred (*supra*) rejected such defense/justification offered respondents. If the impugned decisions were mapped by the exigencies of the State, those could have been well explained in the affidavit-in-reply tendered before us. However, except general reason regarding intention of new government to review of development works and rearrange budgetary allocation in tune of ideology, no particulars are stated in reply affidavit. We are of the

considered view that State is under obligation to undertake beneficent of schemes and development projects for achieving public good. Political consideration always to be kept at bay by political executives and welfare schemes/development projects undertaken by the erstwhile Government must be continued even on change ruling party. Unfortunately, no sooner there was change in the Government on 30th June, 2022 various development works which were having administrative and technical sanctions along with requisite budgetary provisions are halted by issuing impugned Government Resolutions and communications. This Court finds that impugned Government Resolutions sans justifiable reasons for withholding of the development works. The inference deducible is that the impugned decisions are arbitrary, capricious and fails to pass test of reasonableness under Article 14 of constitution of India.

16. For the reasons recorded above, we are of the considered view that development works which were having administrative and technical sanctions along with requisite budgetary provisions need to be protected and directions are required to be issued to respondents to execute the works, thereby quashing and setting aside the impugned Government Resolutions dated 22/07/2022 and 25/07/2022 issued by the respondents. Resultantly, we proceed to pass following order:

ORDER

(A) Writ Petitions are partly allowed.

(B) The impugned Government Resolutions dated 22/07/2022 and 25/07/2022 are hereby quashed and set aside.

(C) The Respondents are directed to undertake the development works or activities in pursuance of the Government Resolutions dated 12/05/2022, 27/05/2022 and 06/06/2022 which are already bestowed with administrative and technical sanctions with budgetary allocation.

(D) Rule is made absolute accordingly.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

Sameer