

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

**WRIT PETITION NO.13089 OF 2022
WITH
CIVIL APPLICATION NO.3001 OF 2023**

1. Saraswati Bhagvanbaba Ghodake,
age 46 years, Occ. Social Work,
R/o Bhausahab Nagar, Mirajgaon,
Tq. Karjat, Dist. Ahmednagar.
2. Kalyan Rajaram Barkade,
age 33 years, Occ. Agri,
R/o Taju, JSSK, Tq. Karjat,
Dist. Ahmednagar.
3. Puja Prakash Suryavanshi,
age 30 years, Occ. Teacher,
R/o Patil Vasti, Chande (BK),
Tq. Karjat, Dist. Ahmednagar.
4. Vishal Ramdas Mehetre,
age 36 years, Occ. Agri,
R/o Bhandewadi, Mehetre Mala,
Tq. Karjat, Dist. Ahmednagar.
5. Ashwini Ramesh Ajabe,
age 32 years, Occ. Household,
R/o Katkar Wasti, Nagar Road,
Sawaleshwar colony, Tq. Jamkhed,
Dist. Ahmednagar.
6. Ashvini Nikhil Ghaytadak,
age 26 years, Occ. Household,
R/o Arole Wasti, Jamkhed City,
Tq. Jamkhed, Dist. Ahmednagar.
7. Vishwanath Shankar Raut,
age 64 years, Occ. Agri,
R/o Fakrabad, Tq. Jamkhed,
Dist. Ahmednagar.

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8. Anil Babu Bhise,
age 41 years, Occ. Agri,
R/o Bavi, Tq. Jamkhed,
Dist. Ahmednagar. Petitioners

VERSUS

1. The State of Maharashtra,
2. The Chief Secretary of State
of Maharashtra, Mantralaya,
Mumbai-32.
3. The Secretary,
Urban Development Department,
Maharashtra State, Mantralaya,
Mumbai-32.
4. The Secretary,
Rural Development Department,
Maharashtra State, Mantralaya,
Mumbai-32.
5. The Secretary,
Public Works Department,
Maharashtra State, Mantralaya,
Mumbai-32.
6. The Secretary,
Tourism Department,
Maharashtra State, Mantralaya,
Mumbai-32.
7. The Secretary,
Soil and Water Conservation Department,
Maharashtra State,
Mantralaya, Mumbai-32. .Respondents.

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Advocate for Petitioners : Mr. N V Gaware
GP for Respondents: Mr. D R Kale

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CORAM : NITIN W. SAMBRE & S. G. CHAPALGAONKAR, JJ.
Dated : March 14, 2023

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JUDGMENT :- (Per S.G.Chapalgaonkar, J.)

1. Heard.
2. Rule. Rule made returnable forthwith. By consent of the parties, matter is taken up for final hearing.
3. The petitioners are the residents of the villages within Karjat and Jamkhed Talukas of Ahmednagar District. The geographical location of the said Talukas rendered them draught prone area receiving scanty rainfall and having meager resources of irrigation. Even, the network of roads and means of communications are minimal. The majority of the population is engaged in agricultural and labour activities, dependent upon the seasonal cropping pattern.
4. The petitioners have approached this court under Art 226 of constitution of India raising challenge to the impugned Government Resolutions dated 8.7.2022, 23.7.2022, 20.7.2022, 12.10.2022 so also communications dated 11.8.2022 and 30.8.2022 being arbitrary and violative of Article 14 and 21 of the Constitution of India. The contention
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of the petitioners is that on 29.6.2022 the Secretary of the Rural Development Department/respondent no.4 has issued a resolution to sanction as many as 937 Panand (village road) roads in Karjat and Jamkhed Talukas. The decision under resolution was taken after considering the acute need of about Two Lakh residents of the Karjat and Jamkhed Taluka. The decision was preceded by the surveys conducted by the Government with requisite of estimates. The necessary budgetary provisions are made considering the volume of the work involved.

5. The petitioners further contend that on 9.5.2022 and 11.5.2022 the Government Resolutions were issued by the Soil and Water Conservation Department thereby sanctioning 29 barrages/K.T. weirs/Gabion Water reservoirs in order to increase the water table and irrigation facilities. The said works were also preceded by detail survey with regard to the viability and necessity. The petitioners further contend that on 16.6.2022 Rural Development Department issued the resolution to undertake various works providing amenities at various Devsthans, public places in the villages. A DPR was prepared with estimates for works proposed at Ahilyadevi
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Holar birth place at village Chondi, Tq. Jamkhed, Jagdamba Devsthan Trust, Rashin, Sant Gitebaba Devsthan Trust, Kharda, Sitaram Baba Devsthan Trust, Kharda and at various other places where large foot fall of pilgrims is experienced.

6. The petitioners further contend that on 31.3.2022 Rural Development Department issued a Government Resolution for construction and strengthening of the village roads in Karjat and Jamkhed Talukas since the need of major repairs of existing road and construction of the road was surveyed and approved by the Government. The petitioners further contend that vide Government Resolution dated 19.4.2022 and 28.6.2022 Urban Development Department and Tourism Department, State of Maharashtra had surveyed for construction of public toilets, beautification of gardens, play grounds, construction of administrative buildings, etc. The petitioners contend that most of the development works undertaken as per the aforesaid Government Resolutions had received administrative and technical sanctions from the competent authorities. The tender process was initiated and after evaluation of the tenders, the work orders were issued.

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7. The petitioners contend that political scenario in the State of Maharashtra changed since Mahavikas Aghadi (MVA) collapsed owing to split in the ruling party. The Chief Minister resigned on 29th June, 2022. The new Chief Minister and Deputy Chief Minister assumed charge of their respective offices on 30.6.2022. However, appointment of Minister was delayed. The contention of the petitioners is that, due to political reasons, the high-handed arbitrary decisions are taken by new incumbents thereby annulling and suspending various development works sanctioned and undertaken by erstwhile Government. Such action sans reasonableness or rational.

8. On 8.7.2022 two Government Resolutions are issued canceling various works undertaken by the Soil and Water Conservation Department of the State. Apparently, the decisions smack political consideration owing to the change in the Government. Similarly, Public Works Department issued similar Government Resolution dated 23.07.2022 thereby stayed the works which were approved by erstwhile Government without assigning reasons. Pertinently, Government Resolution is preceded by a note/communication dated 20.7.2022 issued by the Secretary of Public Works
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Department under instructions of the Chief Minister to suspend the works which were already sanctioned. The communication is addressed to Chief Engineers of the PWD.

9. The Government Resolution dated 12.10.2022 issued by Rural Development Department also canceled/suspended the works those have been sanctioned by erstwhile Government. The petitioners, therefore, contend that, the impugned Government Resolutions dated 8.7.2022, 23.7.2022, 20.7.2022 and 12.10.2022 along with communications dated 11.8.2022 and 30.8.2022 are illegal and arbitrary and violative of Article 14 and 21 of the Constitution of India.

10. In response to the notice issued by this Court, the affidavit-in-reply is filed on behalf of respondent no.5 i.e. The Secretary, Public Works Department. It is contended that the Government has taken a conscious decision under impugned Government resolutions with a view to consider and review all these works and re-adjust budgetary provisions in consonance with the policy of new Government. After review further directions are issued as per office note dated 12.10.2022 to vacate the stay in respect of suitable works. It is further

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clarified that the stay is restricted to the works which are in the process of finalization of tender or the work orders are not acted upon. The ongoing works are not stayed

11. Mr. N.V.Gaware, learned counsel for the petitioners would submit that abrupt action on the part of the Government would hamper the development works which are already approved and sanctioned for Jamkhed and Karjat Taluka, the drought prone and undeveloped areas. He would submit that respondents have no explanation that would justify abrupt cancellation/suspension of the development works. He would invite attention of this Court to Article 162 of the Constitution of India regarding executive powers of the State and other relevant provisions to buttress his arguments. He would submit that the impugned action is contrary to constitutional scheme as well as the rules of business framed under Article 166 (3) of the Constitution of India.

12. Mr. N.V.Gaware, learned counsel for the petitioners invited attention of this court to 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)

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dated 27.1.2023, Writ Petition No.9421 of 2022 with connected petitions (**Pooja w/o Kalyan Sapate Vs. State of Maharashtra and others**) dated 3.3.2023 and WP 9438 of 2022 (**Chandrakant @ Raju s/o Ramakant Navghare Vs. State of Maharashtra and others**) dated 3.3.2023. He would also place his reliance on a reported judgment of this Court in the matter of Charan Sovinda Waghmare Vs. State of Maharashtra and others dated 13.4.2012 in Writ Petition No.1698 of 2011.

13. Mr. D.R.Kale, learned in-charge Government Pleader appearing for respondents would justify the action of the Government stating that a conscious decision has been taken to review the development works. 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 review of the budgetary provisions as well as priorities of various works, the Government has already continued the works relating to construction of buildings and bridges. He would submit that the petitioners have no legal or constitutional right to invoke the jurisdiction of this Court. The
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present writ petition is not filed as public interest litigation. The grievance sought to be address by the petitioner cannot be entrained in the writ petition filed by an individual.

14. 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 writ petition as well as affidavit-in-reply. It is evident that under the Government Resolution dated 29.6.2022 various development works regarding construction of village roads were sanctioned and budgetary provisions were proposed. Similarly, under the Government Resolution dated 9.5.2022 and 11.5.2022 issued by the Soil and Water Conservation Department, works for 29 barrages/K.T.weirs/Gabion water reservoirs were granted administrative sanctions. Similarly, vide Government Resolution dated 16.6.2022 issued by the Rural Development Department a DPR was prepared for providing amenities at various places of worship. Further Government Resolution dated 31.3.2022 was issued by the Rural Development Department for construction and strengthening of the village roads in Karjat and Jamkhed Taluka. The Government
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Resolutions dated 19.4.2022 and 28.6.2022 were issued by Urban Development and Tourism Department respectively for works regarding construction of Toilet, Play Ground, administrative buildings, etc under various schemes within limits of Nagar Panchayat / Municipal Council.

15. On 29.6.2022 the then Chief Minister of Maharashtra State resigned. On next evening new Chief Minister assumed his office. The Chief Secretary issued a communication dated 20.7.2022 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 1.4.2021 under various Government schemes shall be stayed. It stipulates that tenders issued after 1.4.2021 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 and the Government Resolutions under various departments of the State of Maharashtra are issued to stay the works. The impugned Government Resolutions in present Writ Petition are also **sequel** to the aforesaid decisions.

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16. The writ petitions challenging similar Government Resolutions and communications issued post assuming the charge by the new Chief Minister on 30.6.2022 were subject matter before this Court in Writ Petitions No.9438 of 2022, 9421 of 2022, 9422 of 2022 and 10174 of 2022, as well as WP 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.

17. We have considered the affidavit-in-reply filed on behalf of the respondent/State in the present case. We find that the justification to 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 judgements referred (supra) rejected such defense/ justification offered by respondents. If the
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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.

18. 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 8.7.2022, 23.7.2022, 20.7.2022 and 12.10.2022 issued by the respondents as well as the communications dated 11.8.2022 and 30.8.2022. Resultantly we proceed to pass following order.

ORDER

- A. Writ petition is partly allowed.
- B. The impugned Government Resolutions dated 8.7.2022, 23.7.2022, 20.7.2022 and 12.10.2022 along with communications dated 11.8.2022 and 30.8.2022 are hereby quashed and seaside.
- C. The Respondents are directed to undertake the development works or activities in pursuance of the Government Resolutions dated 29.6.2022, 9.5.2022,

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16.6.2022, 31.3.2022, 24.6.2022 and 28.6.2022 which are already bestowed with administrative and technical sanctions with budgetary allocation.

D. Rule is made absolute in above terms.

E. In view of disposal of the writ petition, nothing survives for consideration in pending civil application. Civil application stands disposed off.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

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