

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3666 OF 2023**

Shri Taufikahmad Akbar Mullani ... Petitioner
vs.
The State of Maharashtra and Ors. ... Respondents

Mr. S. R. Ganbavale i/b. Mr. Kush M. Lahankar for the
Petitioner

Ms. M. S. Bane, AGP for the Respondent – State.

**CORAM : R. D. DHANUKA &
GAURI GODSE, JJ.
DATED : 23 MARCH, 2023**

P.C. :-

1. Rule. Learned AGP waives service for the Respondents.
Rule is made returnable forthwith. By consent of parties this
Petition is taken up for final disposal.

2. By this petition filed under Article 226 of the
Constitution of India, the Petitioner seeks Writ of Certiorari for
quashing and setting aside the impugned orders issued by
Respondent No.1, thereby suspending all the development
activities initiated by its predecessors-officers.

Digitally
signed by
RAJESHWARI
RAMESH
PILLAI
Date:
2023.03.28
11:31:24
+0530

RAJESHWARI
RAMESH
PILLAI

3. It is the case of the Petitioner that the Respondent No. 1 had floated various schemes and projects for the development in the State of Maharashtra and accordingly the yearly budget was sanctioned to that effect. It is contended by the Petitioners that for the year 2022-23 budget was declared by Respondent No. 1 and various projects in respect of development of roads was declared and provision for the budget for the same was made. In view of the said budget declared by Respondent No. 1, a project for improvement of road widening was declared in district Kolhapur more particularly described in paragraph 3 of the Petition.

4. It is contended by the Petitioner that he was instrumental in submitting the said works of improvement of road widening for administrative and financial sanctions of the Respondents which have finally culminated into the sanction of the said work under the budget memorandum.

5. The Petitioner contended that it was legitimately expected from Respondent Nos. 1 and 2 to carry out works of which estimates were sanctioned by the Maharashtra Legislative Assembly by its Appropriation Act for the Financial Year 2022-23. The Petitioner further submitted that on 23rd

July 2022, Respondent No. 1 had issued a corrigendum and under the said corrigendum several works including the work as described in the petition is suspended. Thus it is contended by the Petitioner that because of the direction issued by Respondent No. 1 on 23rd July, 2022 the work of development have been canceled. Thus the learned counsel for the Petitioner submitted that the work orders which were included in the budget memorandum for the year 2022-23 would lapse on 31st March, 2023 in view of the said corrigendum, which is impugned in the Writ Petition.

6. Mr. Ganbavale, learned counsel for the Petitioner relied upon an ad-interim order passed by this Court on 28.11.2022 in Writ Petition No. 9744 of 2022 in the case of ***Belewadi Village Panchayat v/s. State of Maharashtra and Ors.***, and order dated 09.11.2022 passed by the Division Bench of Aurangabad Bench in Writ Petition No. 9421 of 2022 in the case of ***Pooja Kalyan Sapate v/s. State of Maharashtra*** and also judgment of the Supreme Court in ***State of Haryana v/s State of Punjab, 2002 AIR(SC) 685***. He also placed reliance on the judgment delivered by Aurangabad Bench on 23.01.2023 in Writ Petition No. 10141 of 2022 in case of ***Jayashree Nilesh***

Pawde and Ors. v/s. The State of Maharashtra and ors. and submitted that in similar circumstances and after considering the stand taken by the State Government in the Affidavit-in-Reply that in certain cases, the suspension was withdrawn, this Court has quashed and set aside the impugned communication dated 20.07.2022.

7. Ms. Bane, learned AGP for the State on the other hand contended that, wherever it was found necessary and considering the requirement and necessity of work, in respect of certain works, the order suspending the contracts has been withdrawn. Similar arguments were made before Aurangabad Bench, which are rejected. In our view, the view taken by Aurangabad Bench in case of *Jayashree Nilesch Pawde* would apply to the facts of this case also.

8. The Authority cannot be allowed to pick and choose the contracts for withdrawal of stay and to maintain stay in respect of the other projects though all the projects are part of the same budget issued by the Government which would lapse on 31.03.2023. We are not inclined to accept the stand taken by the State Government.

9. We accordingly pass the following order :

(i) Writ Petition is allowed in terms of prayer clause (B), which reads as under:

B) That this Hon'ble Court be pleased to issue writ of mandamus and/or any other appropriate writ, order or direction in the nature of writ of mandamus thereby quashing and setting aside the corrigendum order dated 23/7/2022, issued by the Respondent No. 1 State, Exhibit D hereto;

(ii) Rule is made absolute in aforesaid terms.

(iii) No Order as to the costs.

(GAURI GODSE, J.)

(R. D. DHANUKA, J.)