



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

WRIT PETITION NO.11855 OF 2023

**JANARDHAN EKNATH SONAWANE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**WITH
CIVIL APPLICATION NO.13787 OF 2023
IN
WRIT PETITION NO.11855 OF 2023**

**GRAMPANCHAYAT, KHARABA, TQ.MANWAT
VERSUS
JANARDHAN EKNATH SONAWANE AND OTHERS**

**WITH
CIVIL APPLICATION NO.14363 OF 2023
IN
WRIT PETITION NO.11855 OF 2023**

**KAMLAKAR VINAYAK AWATE
VERSUS
JANARDHAN EKNATH SONAWANE AND OTHERS**

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Shri Sachin Deshmukh, Advocate for the Petitioners.
Shri A.B. Girase, Government Pleader for Respondent Nos.1, 3
and 4/State.

Ms.Pradnya S. Talekar i/by Talekar and Associates for
Respondent No.5.

Shri S.S. Thombre, Advocate for the Intervenor/ Applicant in
CA/13787/2023.

Shri Satyajit S. Bora, Advocate for the Intervenor/ Applicant in
CA/14363/2023.

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**CORAM : RAVINDRA V. GHUGE
&
Y.G. KHOBRAGADE, JJ.**

**Reserved on : 15th January, 2024
Pronounced on : 20th March, 2024**

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

1. The Petitioners have put forth prayer clauses A and B as under:-

- “A) To hold and declare that, the impugned list of works introduced by virtue of communication dtd.9/7/2023, 31/8/2023 & 1/9/2023 (Exhibit-"C" Colly) prepared and issued by the respondent no.2 as illegal, unsustainable, therefore, quash and set aside the same forthwith; and for that purpose issue necessary directions.
- B) Pending hearing and final disposal of the present Writ Petition forbear the respondents from implementing and executing the impugned list of works introduced by virtue of communication dtd.9/7/2023, 31/8/2023 & 1/9/2023 (Exhibit-"C" Colly) prepared and issued by the respondent no.2 as forthwith; and for that purpose issue necessary directions.”

2. On 29.09.2023, this Court passed the following order:-

- “1. The learned Govt. Pleader submits that the matter may be taken up on 09.10.2023 in the "Fresh Admissions Category" so that the Govt.Pleader can file an affidavit in reply.
- 2. Since the Regular Bench is not available today, we are listing this matter on 09.10.2023 in the "Fresh

Admissions Category" as it requires a hearing. However, let the situation as existing today, not be altered till 09.10.2023.

3. *Issue notice to Respondent Nos.1,3,4 and 5, returnable on 09.10.2023. The learned Govt.Pleader waives service of notice on behalf of Respondent Nos.1, 3 and 4 and Mr.Nikam waives service of notice on behalf of Respondent No.5.*
4. *This petition be listed on 09.10.2023 in the "Fresh Admissions Category".*

3. On 22.12.2023, a further order was passed as under:-

- “1. *The learned Advocate for the Zilla Parishad submits that there are instructions for the State of Maharashtra that the Health Department should immediately gear up to meet any possibility in connection with the JN-1 virus / Covid and deal even with the lumpy disease which is affecting cattle of a large scale in this region.*
2. *Considering the grave urgency and as the learned Advocate for the Petitioners is not available, we observed as follows :-*
 - (a) *The Ad-interim order passed on 29.09.2023 would be restricted to the issues involved in this Petition.*
 - (b) *As the learned Advocate for the Zilla Parishad has tendered a ready reference chart (4 pages) while expressing grave urgency, the same is marked as “X-1” for identification and in connection therewith, we observe that the Zilla Parishad would be at liberty to proceed with regard to Serial No.1 – Health Department – purchase of medicines, machinery and equipments for primary health centres/sub-centers, Serial No.4 – Animal Husbandry Department – supply of medicines to the veterinary institutions and Serial No.5 – Animal Husbandry Department – Fodder and feed development – grants to Zilla Parishads.*
3. *The learned Government Pleader submits that in the event of grave urgency involving risk to life of humans as well as cattle, on account of unforeseen circumstances / Covid JN-1 virus, the District*

Administration be granted the liberty to initiate appropriate steps to combat the situation. For such reasons or in such circumstances only, the ad-interim order with regard to planning, development and erection of infrastructure would not be an impediment.

4. *List this matter on 08.01.2024 at 2.30 p.m.”*

4. Since the Respondents insisted upon dealing with the issue of locus standi of the Petitioners and whether, there is any cause of action to be looked into in this Writ Petition, that we have heard the learned Advocates for the respective sides on the said issue.

SUBMISSIONS OF THE PETITIONER

5. The learned Advocate for the Petitioner has canvassed as under:-

(a) Petitioner No.1 is an ex-member of the Gram Panchayat and the Zilla Parishad.

(b) Petitioner No.2 is an ex-Chairman of the Social Welfare Committee, Zilla Parishad, Parbhani.

(c) Respondent Nos.1, 2 and 4 are abdicating their statutory functions and the Minister of Public Health and Family Welfare, who is the Guardian Minister of Parbhani District, is preparing the list of public works, which is being followed by the

Zilla Parishad.

(d) The power and authority flowing from Article 243-G of the Constitution of India enables the Institution of self governance, to prepare plans for economic development and social justice.

(e) It further casts obligation for implementation of the schemes for economic development and social justice including matters enlisted in the 11th Schedule of the Constitution of India.

(f) The Zilla Parishad, Parbhani, has exclusive powers to undertake all development works as ordained by Article 243-G and as per the 11th Schedule thereunder.

(g) The Collector functions as the Secretary of the District Planning Committee and the Guardian Minister is the Chairman.

(h) The State of Maharashtra funds such public projects and while allocating the funds, the Guardian Minister is himself deciding the draft development plan, the State Government is breaching and contravening various Government Resolutions and there is rampant departure by the Respondent Authorities in relation to the functions of the District Planning Committee (DPC).

(i) DPC is not the planning authority and the Gram Panchayat has to prepare the plans.

(j) Reliance is placed on the following judgments:-

(A) **Charan Sovinda Waghmare vs. State of Maharashtra and others, AIR Online 2012 Bom. 2** more specifically paragraphs 41 and 42, which read thus:-

“41. This brings us to consideration of the preliminary objection raised by the learned Government Pleader about the status and locus of the petitioner. It is not in dispute that the petitioner is a citizen of India and a resident of Bhandara. He is therefore a beneficiary of the proposed developments in that area. He is also a Councilor elected to Zilla Parishad, Bhandara. He is also elected as Chairman of the Finance and Works Committee of that Zilla Parishad. Chapter -IV of 1961 Act deals with Committees under Section 78(1) clause [a] provides for Finance Committee, while clause [b] provides for Works Committee. The Chairman of such Committee is empowered under Section 91 to convene and preside over and conduct meetings of that Committee, to have access to records of that Committee, call for any information and return, statements, account or report from any officer of the Zilla Parishad and enter and inspect any immovable property or any work or development scheme. Facts noted by us above clearly show that initially the Zilla Parishad though its Chief Executive Officer who is respondent no.5 before us and also through respondent nos.6 and 7 attempted to point out that the DPC was not concerned and its intervention was without jurisdiction. However, later on it has withdrawn that stand and accepted the say of the District Planning Committee, through respondent no.2 and respondent no.4. Records also show that arrangements were made earlier and Advocate

H.N. Verma, had filed vakalatnama for respondent nos. 5,6 and 7. However, later on he was asked to withdraw and job of defending Zilla Parishad was entrusted to Government Pleader who already was appearing for other respondents including the guardian minister. This conflict of interest within the Zilla Parishad forms part of resolution no.12 passed in Special General Body meeting of the Zilla Parishad on 22.07.2011. The resolution on additional subject no.3 passed by the General Body on 29.09.2011 shows decision of General Body of Zilla Parishad to sanction funds for prosecuting present Writ Petition. Similar decision is taken by the Construction Committee of Zilla Parishad on 18.08.2011. On 22.07.2011 vide subject no.12 similar resolution was passed and it appears that respondent no.3 Divisional Commissioner suspended it in exercise of powers under section 267[c] of 1961 Act. This was also protested by the President of the Zilla Parishad who on 17.09.2011 sought its vacation. The papers produced before us therefore, show that officers entrusted with the task of protecting the interest of Zilla Parishad gave up their responsibility and accepted to be guided by respondent no.2. This abdication is clear from reply affidavit of the Zilla Parishad dated 09.05.2011 and 12.08.2011. These officers have not taken pains to explain reason behind it. In this situation, and in the light of the discussions on merits above, we find no substance in the objection raised by the learned Government Pleader. Petitioner as a citizen, as an elected Councilor of Zilla Parishad, as a Chairman of Committee for finance and works is competent to maintain present petition. In any case, general body of Zilla Parishad Councilors has supported him and his act of approaching this Court. The executive available in Zilla Parishad is even to-day supporting the cause of Guardian Minister. Hence, Petition as filed can not be thrown away at threshold.

42. The petitioner is citizen of India and in any case a person acting in the Society. A statutorily and

constitutionally empowered local authority like Zilla Parishad was within its right and has decided to execute 62 works. Necessary approval to those works was also granted and funds therefor were also released by the State Government. It is only because of the undue intervention by respondent no.2, that this situation has arisen. During arguments, Shri Sambre, learned Government Pleader has pointed out to us that on 03.03.2012 the administrative approval granted on 06.01.2011 and 18.01.2011 has been canceled by the competent authority. This fact has not been brought on record by filing appropriate affidavit. In any case, in above situation, when approval was already granted and grants were also received by the office of Collector, for those 62 works, it is apparent that the respondent nos. 6 and 7 had become functus officio and could not have recalled or canceled those approvals. But then the pendency of present petition has induced them to take such a decision which is of no consequence at all. The petitioner has pointed out in this petition that after the said administrative approvals, tenders were already finalized and only work orders were left to be issued. This fact is not in dispute before us.”

[Emphasis Supplied]

(B) *Adi Saiva Sivachariyargal Nala Sangam and others vs. Government of Tamil Nadu and another, (2016) 2 SCC 725.* Relevant paragraphs 11 and 12, relied upon by the Petitioners, read thus:-

“11. Preliminary Objections have been raised to the maintainability of the writ petitions by Shri P.P. Rao and Shri Colin Gonsalves, learned senior counsels appearing for respondents . It has been urged that the present writ petitions have not been

filed as public interest litigations and in the absence of any specific orders in implementation of the impugned G.O. dated 23.05.2006 the writ petitions are premature. It is further contended that even if the writ petitions are to be considered as PILs the same raise questions with regard to appointment in public office i.e. Archakas in public temples and therefore the writ petitions will also not be maintainable as public interest litigations. It is further urged that as and when the G.O. is given effect to by actual appointment of an Archaka or Archakas, as may be, it will be open for the petitioners to raise the issue and establish that there is a usage or custom or customary practice governing the temple in question which require the appointment of the Archaka to be made from a particular denomination.

12. *It is difficult for us to accept the contentions advanced on behalf of the respondents with regard to the maintainability of writ petitions on two counts. Firstly, it is difficult to appreciate as to why the petitioners should be non-suited at the threshold merely because the G.O. dated 23.05.2006 has not been given effect to by actual orders of the State Government. The institution of a writ proceeding need not await actual prejudice and adverse effect and consequence. An apprehension of such harm, if the same is well founded, can furnish a cause of action for moving the Court. The argument that the present writ petition is founded on a cause relating to appointment in a public office and hence not entertainable as a public interest litigation would be too simplistic a solution to adopt to answer the issues that have been highlighted which concerns the religious faith and practice of a large number of citizens of the country and raises claims of century old traditions and usage having the force of law. The above is the second ground, namely, the gravity of the issues that arise, that impel us to make an attempt to answer the issues raised and arising in the writ petitions for determination on the merits thereof.”*

(C) ***St.Mary's Education Society and another vs. Rajendra Prasad Bhargava and others, (2023) 4 SCC 498.***

Relevant paragraphs 40 and 41, relied upon by the Petitioners, read thus:-

“40. Paragraph 11 of the judgment in *Binny Ltd. vs. V. Sadasivan, (2005(6) SCC 657) (supra)* is reproduced below:-

"11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the government to run industries and to carry on trading activities. These have come to be known as Public Sector Undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between the public functions and private functions when it is being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in

social or economic affairs in the public interest.”

41. This Court considered various of its other decisions to examine the question of public law remedy under Article 226 of the Constitution. This Court observed in *Binny Ltd. (supra)* as under:-

“29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies.””

(D) ***Ram and Shyam Company vs. State of Haryana***

and others, (1985) 3 SCC 267. Relevant paragraph No.9 referred

to by the Petitioners, reads thus:-

- “9. Before we deal with the larger issue, let me put out of the way the contention that found favour with

the High Court in rejecting the writ petition. The learned Single Judge as well as the Division Bench recalling the observations of this Court in Assistant Collector of Central Excise v. Jainson Hosiery Industries (1979) 4 SCC 22 rejected the writ petition observing that 'the petitioner who invokes the extraordinary jurisdiction of the court under Article 226 of the Constitution must have exhausted the normal statutory remedies available to him'. We remain unimpressed. Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in The State of Uttar Pradesh v. Mohammad Nooh it is observed that "there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy". It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister ? The clutch of appeal from Caesar to Caesar's wife can only be bettered by appeal from one's own order to oneself. Therefore this is a case

in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister. There was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court.”

SUBMISSIONS OF THE RESPONDENTS

6. The learned Advocate representing Respondent No.5

Zilla Parishad, submits as under:-

(a) Both the Petitioners have a strong political background and this petition is motivated.

(b) The petition is filed at a premature stage. There is no cause of action as on date.

(c) No proposal has taken shape.

(d) The Petitioners have not approached any statutory authority to express their grievance and seek indulgence in the matter.

(e) This petition cannot be entertained as a Writ Petition as there is no personal cause and none of the Petitioners

have suffered any personal legal injury.

(f) In paragraph Nos.2, 3 and 5 of the affidavit in reply, it is specifically stated that no approval has yet been granted to any suggestion of the Guardian Minister and the Zilla Parishad has merely received three communications suggesting list of works, through several people's representatives, which cannot be faulted.

(g) The Petitioners have the remedy of raising their objections before the local authorities or before the DPC after the matter would reach the DPC.

(h) There is no proposal prepared as yet.

(i) Several citizens approached the Guardian Minister requesting for undertaking works concerning basic civic amenities.

(j) A scrutiny of the said proposals, has even not been started.

(k) The Zilla Parishad is yet to complete scrutiny of the works.

(l) It is assured that no provision of law or any GR applicable would be violated.

(m) The Zilla Parishad would scrutinize each

recommendation strictly in terms of the applicable Government Resolutions.

(n) The Minister against whom the allegations are made, is no longer holding any portfolio and is not a Minister.

7. The learned Government Pleader submits as under:-

(a) This petition is filed in the form of a Writ Petition. It is not a Public Interest Litigation. There is no personal legal injury to either of them and this Petition is not maintainable.

(b) In the judgment cited by the Petitioners in ***Charan Waghmare (supra)***, the Petitioner therein was the Chairman of the Finance and Works Committee of the Zilla Parishad and he had sought quashing of the list of works substituted highhandedly on 25.03.2011 for completion under account head 3054 in the year 2010-2011. Such substitution was under the orders of the Guardian Minister and the District Collector had issued a communication dated 28.03.2011 in his capacity as Secretary, DPC for implementing the said substitution, which was held to be impermissible.

(c) In the instant case, there is neither any concrete proposal, much less, any list of works approved by any authority,

nor was any substitution ordered.

(d) The impugned communication by the Minister dated 09.07.2023 is clearly based upon various citizens and people's representatives who had sought civic amenities. Based on such demands for civic amenities, that the Guardian Minister had forwarded a list of works for consideration to the District Collector of Parbhani.

(e) A Writ of Mandamus cannot be issued without the Petitioners having exhausted all available remedies.

(f) The Petitioners have not voiced their concern or put forth specific objections through a complaint to any authority.

(g) No project has yet been taken up for consideration.

(h) The petition is filed prematurely.

(i) Paragraph Nos.5, 6 and 7 of the affidavit in reply filed by the District Collector dated 06.10.2023, reads as under:-

“5. I say and submit that, the Hon'ble Guardian Minister is the Chairman/President of the District Planning Committee as per Maharashtra District Planning Committee (Constitution and Functions) Act, 1998 and once decision is taken by the District Planning Committee would be implemented by all these local bodies or concerned authorities. That, number of works were recommended / proposed by the representative from the district, some office bearers and some other persons mentioning the name of works, nature of respective places/region.

6. *I say and submit that, the communication at page no 84 onwards along with the list which is forwarded to this deponent from the Hon'ble Guardian Minister is to verify whether all these works can be taken and whether it is as per the rules and procedure. Now the District Collector who is Member Secretary of the District Planning Committee would forward the list to the concerned authority/local bodies for verification of proposed work then the local body would verify the nature of work which is proposed, whether it is feasible, technically required, would be submitted by all these local bodies i.e. zilla parishad, Municipal Corporation, Municipal Council and Nagar Panchayat etc.. after receipt of report and details from the local bodies, all these proposed works, then it will be placed before the District Planning Committee in its meeting.*
7. *I say and submit that, District Planning Committee would take a decision on all these proposed works, after verification by the local bodies, District Planning Committee would take decision, whether to approve all these works or not, if District Planning Committee take decision, thereafter the works proposed through different agency which is as per Government Resolution and rules. Thereafter the process of starting of actual work would be commenced.”*

SUBMISSIONS BY THE INTERVENORS

8. The learned Advocate appearing on behalf of the Intervention Applicant in Civil Application No.13787/2023 submits as under:-

- (a) The Applicant is the Gram Panchayat of Kharaba,

Taluka Manwat, District Parbhani, appearing through it's Sarpanch.

(b) Petitioner No.1 is a politician and belongs to the Shiv Sena.

(c) Petitioner No.2 is also a politician and belongs to the Nationalist Congress Party. Both are motivated in filing this Petition, though prematurely.

(d) No proposal has yet been scrutinized and there is no cause of action at this stage.

(e) Some proposals for providing civic amenities, have been recommended by the Gram Panchayat itself which is in tune with law and the Petitioners cannot oppose even recommendation of the works for civic amenities.

CONCLUSIONS

9. In ***Charan Waghmare (supra)***, this Court entertained the Writ Petition, since 62 proposals were cleared by following the due process of law, the funds were legally allocated and released and before the works could begin, the Guardian Minister directed the Collector to cancel the approvals to the 62 works to be replaced by a list of works suggested as suggested by

him. In the case before us, besides the list of works suggested by the Minister, nothing has progressed. No proposal has taken any shape.

10. The intervention Applicant is the Village Gram Panchayat through the Sarpanch, who do not support the Petitioners for the reasons that the Gram Panchayat has itself suggested some projects for providing civic amenities to the villagers and that the Petitioners are politicians who desire to scuttle the public works since they are out of power and desire to establish their clout in politics in the Gram Panchayat. No fault can be found if the proposals are suggested by the Village Panchayat and the elected representatives of the villagers.

11. The Zilla Parishad has taken a specific stand that the list of works received by it from the Guardian Minister have not been cleared. The DPC would act strictly in accordance with law. The Zilla Parishad would ensure that the procedure applicable to clear public projects would be strictly followed. No proposal has been formalised. Even the Petitioners are at liberty to make suggestions if they are peoples' representative.

12. It is apparent that the Petitioners have not suffered any personal legal injury. Both are politicians. Both have rushed to this Court seeking issuance of a Writ of Mandamus, without even assessing as to whether the proposal has been cleared at the behest of the Minister. They have not expressed any grievance before any authority. Be that as it may, we find that many villagers and peoples' representatives approached the Guardian Minister with the hope of getting some basic civic amenities. Now, this cannot be faulted. Nevertheless, there seems to be no development on any proposal. The G P has stated in the affidavit in reply on behalf of the State, that the DPC would ensure that any proposal coming from the Gram Panchayat or the villagers or the Peoples' representative, would be scrutinised strictly in accordance with the rules, provisions of law and the Government Resolutions as are applicable.

13. In the light of the above, we are of the view that this Petition has been filed untimely. There is no cause at this stage, as like in the case of ***Charan Waghmare (supra)***, wherein this Court intervened since the proposals were sanctioned by strictly

following the law/procedure and funds were also released, when the Minister intervened and got the proposals cancelled only to be replaced by his list of works. So also, the Petitioners have not even made any attempt with any authority by voicing their grievance, if any. In these peculiar circumstances, we conclude that the Petitioners have no legal injury warranting the filing of a Writ Petition. Insofar as their locus to file a Writ Petition, we are leaving this issue open to be dealt with in an appropriate case, since, if they can point out a legal injury or if they file a PIL, the fact situation would be different.

14. In the result, **this Writ Petition is dismissed.** No order as to costs.

15. The pending Civil Applications do not survive and stand disposed off.

16. After pronouncement of this order, the learned Advocate for the Petitioners submits that the ad-interim order passed earlier, be maintained for four weeks.

17. The learned Government Pleader opposes the said request.

18. Since we have concluded that there is not a single proposal which is proceeded with or cleared, much less sanctioned, there is no reason to continue the said order.

kps (Y.G. KHOBRADE, J.) (RAVINDRA V. GHUGE, J.)