
(2012) 04 BOM CK 0100
In the Bombay High Court
Case No : Writ Petition No. 1698 of 2011

Charan Waghmare

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-04-2012

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 153A, 2(19), 50
Constitution of India, 1950 — Article 243, 243B, 243G, 243N, 243P
Maharashtra District Planning Committees (Constitution and Functions) Act, 1998 —
Section 10, 12, 3
Maharashtra Land Revenue Code, 1966 — Section 6
Maharashtra Zilla Parishad (Works and Development Schemes, Technical Sanction)
Rules, 1964 — Rule 3, 3(3), 4, 5, 6
Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 10(3), 100,
100(1), 101, 101A

Citation : (2012) 4 BomCR 40

Hon'ble Judges : B.P. Dharmadhikari, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : M.V. Samarth, for the Appellant; N.W. Sambre, Government Pleader,
for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J

1. By this petition filed under Article 226 of the Constitution of India, Petitioner in his capacity as Chairman, Finance and Works Committee of Zilla Parishad has sought quashing and setting aside of the list of works substituted on 25.03.2011 for completion under Account Head 3054 in the year 2010-11. These works are under Rural Roads Development Project and earlier list was approved on 10.03.2011. The consequential communication dated 28.03.2011 sent by the Collector, Bhandara in his capacity as Secretary of District Planning Committee implementing it, has also been questioned. The substitution has been as per the orders of Guardian Minister for Bhandara District, who is joined personally as respondent no.2 in this matter. Because of this, a direction to Collector to release

funds for works which have been given administrative approval on 06.01.2011 by two separate orders respectively by the Additional Chief Executive Officer and the Executive Engineer as also for works administratively approved by the Executive Engineer on 18.01.2011, is sought. The Additional Chief Executive Officer of Zilla Parishad, Bhandara granted approval to 39 works and the Executive Engineer had granted approval to 21 works by their respective orders on the 06.01.2011. The Executive Engineer has later on granted administrative approval on 18.01.2011 to 2 works. Prayer has been also made to direct respondent no.4 to act in accordance with the Government Resolution dated 16.02.2008. The prayers disclose a contention that respondent no.4 and respondent no.2 have usurped the powers and authority vested in Zilla Parishad, Bhandara in that respect. There was an interim prayer to stay the substitution effected on 25.03.2011 and 28.03.2011, however, this Court has on 21.04.2011 subjected the work orders, if any, issued in terms thereof, to the result of the petition. The petition has been amended as per orders dated 01.08.2011 and challenge to communication dated 31.05.2011 issued by the State Government to respondent no.3 Divisional Commissioner is, also added. By it the State Government has communicated that if proposal of Zilla Parishad demanding funds is received by the District Planning Committee, the authority to select works out of the works mentioned in that proposal vested with the District Planning Committee. Thereafter, Zilla Parishad has to grant technical and administrative approval to such works which are selected by the District Planning Committee (D.P.C.). In this background, with the consent of Shri M.V. Samarth, learned Counsel appearing on behalf of the petitioner and Shri N.W. Sambre, learned Government Pleader representing all the respondents, the matter is heard finally by issuing Rule making it returnable forthwith. It needs to be pointed out that earlier Shri H.N. Verma, Advocate was appearing for respondent nos. 5 to 7. These respondents are officers of Zilla Parishad, Bhandara. However, later on learned Government Pleader filed appearance also for these respondents and hence, by orders dated 15.02.2012, Shri Verma, Advocate has been discharged.

3. Shri Sambre, learned Government Pleader has raised a preliminary objection about the locus or status of the petitioner to maintain this petition. He has stated that it is not filed in public interest. Hence, during hearing the matter was required to be adjourned and on 23.02.2012, Shri Samarth, learned Counsel appearing on behalf of petitioner made a statement that the petition is being prosecuted for and on behalf of the Zilla Parishad, Bhandara.

4. Shri Samarth, learned Counsel has pointed out that the petitioner, a citizen of India is duly elected as Chairman of Finance and Works Committee of the Zilla Parishad, Bhandara. Zilla Parishad, Bhandara constituted under Maharashtra Zilla Parishad and Panchayat Samities Act, 1961 (hereinafter referred to as "the 1961 Act" for short) has got exclusive powers to undertake all development works as per the Eleventh Schedule of the Constitution of India and thus the works are also part of project and budget of Zilla Parishad. Copy of the Government Resolution dated 12.01.2001 has been relied upon for said purpose. Our

attention has also been drawn to the provisions of Article 243G of the Constitution of India read with Article 243ZD of the Constitution of India.

5. Government resolutions dated 12.01.2001 and 16.02.2008 form basis of steps undertaken and on 30.08.2010 draft of District Annual Plan for the year 2011-12 and modified proposals for 2010-11 along with list of works was submitted by the Executive Engineer of Zilla Parishad to respondent no.4 in his capacity as Secretary of District Planning Committee. In due course, these works were approved by the competent Authority/Officer of the Zilla Parishad by three separate orders mentioned supra ie. dated 06.01.2011, 06.01.2011 and 18.01.2011. The Zilla Parishad after noticing the government resolution dated 16.02.2008 found that it was not necessary to forward those works to DPC. The funds received by the office of the Collector needed to be released after the grant of administrative approval by the Zilla Parishad Authority, but then respondent no.2 Guardian Minister raised an objection, called certain officers from Bhandara District on 28.01.2011 and from note dated 29.01.2011 prepared by the office of Zilla Parishad, it appears that the Guardian Minister interfered with that process. This lead to a direction by the Guardian Minister to undertake the development after taking the local M.L.A. and Guardian Minister into confidence. Therefore the funds could not be released. According to the petitioner this interference was without any written order by respondent no.2 or by respondent no.4.

6. Though the office of the Zilla Parishad through its Additional Chief Executive Officer sought clarification and guidance in the matter as funds needed to be appropriated before 31.03.2011, there was no reply by respondent no.4. The Executive Engineer on 21.02.2011 sought necessary approval from respondent no.4 in relation to these 62 works. In the light of the administrative approval already granted by the Zilla Parishad authorities, the tenders were already floated and finalized for these 62 works. The works were already started and it is in this background the petitioner made a complaint to the Divisional Commissioner about non release of the funds by the office of the Collector. As no action was taken, a petition vide Writ Petition No. 1063/2011 came to be filed and on 01.03.2011 it was disposed of by directing the Divisional Commissioner to expeditiously decide that representation.

7. It appears that in the meanwhile on 28.02.2011 the Collector Bhandara, granted approval to only 22 works worth Rs.206.76 lacs out of the list of works sanctioned by the Zilla Parishad. Shri Samarth, learned Counsel for petitioner has contended that the Collector, Bhandara does not possess any such authority to select and to release funds only in part.

8. On 25.03.2011, respondent no.2 Guardian Minister prepared list of 30 works and forwarded it to the Collector, Bhandara. 21 works out of these works are new and only 9 works are out of the list of 62 works sanctioned by the Zilla Parishad. The Collector who functions as Secretary of District Planning Committee (D.P.C.) of which the Guardian Minister is Chairman, under pressure of the Guardian Minister replaced works with works already approved by him on 28.02.2011. He

disbursed funds on 31.03.2011, but imposed a condition that the said amount be spent on works only sanctioned as per orders dated 28.03.2011. Shri Samarth, learned Counsel points out that such a condition have been imposed only in relation to work of P.W. Department of Zilla Parishad, Bhandara and in relation to no other department, because of personal interest taken by respondent no.2 in the matter. He argues that this interference by respondent no.2 and blind obedience by respondent no.4 overlooks the constitutional scheme and supremacy of Zilla Parishad and gives go-bye to various administrative decisions and government resolutions.

9. Reply given by the State Government to the Divisional Commissioner on 31.05.2011 is also questioned by pointing out that it overlooks the government resolution dated 16.02.2008 and the law on the point.

10. Learned Counsel contends that the D.P.C. is not empowered by the Maharashtra District Planning Committees (Constitution and Function) Act, 1998 (hereinafter referred to as "the 1998 Act" for short), to substitute Zilla Parishad or any local planning authority in such matters, and hence the entire exercise by respondents, of substitution of works already approved by the Zilla Parishad, by new works is arbitrary. He invites attention to the reply filed by respondent no.2 to demonstrate that the exercise of authority by the Guardian Minister or by the DPC, as evident therein, is not in consonance with law. The objection to maintainability of petition is stated to be erroneous. He points out that respondent no.4 Collector has along with his affidavit dated 07.02.2012 filed proceedings of meeting of DPC dated 19.09.2011 in which it is claimed that the DPC has approved substituted works. He contends that petitioner has by filing a counter affidavit on 14.02.2012 challenged such authority with the District Planning Committee and has specifically asserted that there was no such agenda for the meeting dated 19.09.2011. He further contends that none of these new works approved by the DPC allegedly on 19.09.2011 were proposed or approved by the Zilla Parishad at any point of time and thus there is an encroachment on constitutional powers and role of the Zilla Parishad by respondent no.2 and respondent no.4.

11. He has relied upon the provisions of Section 2[1] and Section 187 of the 1961 Act to demonstrate the entitlement of Zilla Parishad to receive grants and to urge that respondent no.2 or respondent no.4 cannot interfere with it. Our attention is also invited to the definition of Development Plan, as used in the 1998 Act to submit that said plan is distinct and has got no bearing in so far as Section 187 of the 1961 Act, is concerned. Various clauses contained in government resolution dated 16.02.2008 are also relied upon. Government resolution dated 25.08.2010 is also pointed out to show time schedule for 2011-12 Annual Plan to be prepared by the DPC. The minutes of DPC proceedings /meeting conducted 03.01.2011 are also pressed into service to show that accordingly the works were duly approved by the DPC, and on 19.11.2010 the DPC had already granted orders of disbursement of funds under

account head 3054 for said works. The said order itself enabled the Zilla Parishad to finalize the plans and to start work. Because of malafides on the part of respondent no.2 (Hon''ble Minister), the said work could not be completed and inconvenience is being caused to public at large. He also points out the stand of government that government resolutions dated 25.06.2008 and 15.07.2008 issued by the Rural Development Department are not applicable to the DPC. He has also explained the mode and manner in which any development proposal emanates from Zilla Parishad, goes to DPC and thereafter to the State Government. The State Government thereafter allots funds. This entire process was already complied with in relation to 62 works. In this situation, these 62 works need not have been placed before the DPC on 19.09.2011 and infact were not placed. The correspondence between the authorities in this respect, after the oral directions by the Guardian Minister, is also pointed out to show how the undue influence of Minister has acted to the prejudice of general public. He contends that all 62 works in dispute are restricted to the area of Zilla Parishad only and hence no exercise of consolidation at the hands of DPC is required. Section 100 of the 1961 Act is also relied upon.

12. He seeks support from the observations of this Court in paragraph nos. 16, 18, 25 and 26 of judgment reported at AIR 1968 Bombay 370 (Motisingh.vrs. Bhaiyyalal) and other judgment of this Court reported at 2005 [3] Mh. L.J. 807 (Dada Fire Works Pvt. Ltd..vrs. State of Maharashtra and others), (paragraph no.12). He also attempted to show that the constitution of DPC is not in accordance with the constitutional requirement, as it does not consist of 4/5 elected representatives and there is no representation of Zilla Parishad Councilor on it.

13. It is in this background, Shri Samarth, learned counsel states that as the Chief Executive Officer of Zilla Parishad did not agree to file petition against the Guardian Minister, after due resolution, present petition has been filed by the Chairman of the Subjects Committee for and on behalf of the Zilla Parishad. He argues that the petition is, therefore, to protect the rights of Zilla Parishad and in the interest of all residents in the area of Zilla Parishad. Petitioner as a citizen, residing in the area of that Zilla Parishad and as an elected Councilor on it, and also as an Elected Chairman of its Finance and Works Committee has substantial interest in the matter. Hence, petition as filed by him cannot be dismissed as not maintainable.

14. Shri Sambre, learned Government Pleader has contended that Zilla Parishad is an artificial person constituted u/s 8 of the 1961 Act, and it can sue and be sued in its corporate name. Present petition does not meet that requirement at all. He further states that Zilla Parishad is being benefited because of development works, and therefore, has not preferred to approach this Court raising any protest against substitution of works by the DPC. He therefore, highlights that petition filed by one person cannot be viewed as petition filed at the instance of the Zilla Parishad and it is not in public interest.

15. He also relies upon the provisions of Article 243ZD of the Constitution of India and provisions of Section 10 read with Sections 3 and 12 of 1998 Act, to demonstrate the privileged status and powers of DPC. Government resolution on which reliance has been placed by the petitioner are issued in furtherance of this statutory scheme and there is nothing in the 1961 Act which restricts said powers given to DPC. He invites attention to the government resolution dated 31.07.2010 which constitutes smaller group for scrutiny of development schemes prepared by the Zilla Parishads, Municipal Councils, Corporations and Panchayats. Time schedule prescribed for said purpose vide government resolution dated 25.08.2010 is also relied upon. He points out that this time schedule has got bearing on preparation of budget as required funds need to be allocated and adjusted. For the said purpose, he is relying upon government resolution dated 16.02.2008. Various clauses in this government resolution are read out to show how administrative approval needs to be granted, how re-appropriation or revision is permitted. According to him important work of preparation of plan for District Development is entrusted constitutionally to DPC and hence, DPC has definitely a superior role to play in the matter. Powers of DPC are independent, distinct and separate, and cannot be controlled by Zilla Parishad or 1961 Act. DPC can even override decision of Zilla Parishad. After draft district plan is received from DPC by the State Government, it is for the State Government to finalize it.

16. He has also relied upon various provisions of the 1961 Act to drive home his contention. He argues that as per the government resolution dated 22.01.2001, issued by the Rural Development Department, the administrative approval can be accorded by various officers working with the Zilla Parishad and such matters need not be placed before the General Body at all. The purpose of constitution of DPC and its powers are also explained by pressing into service the government resolution dated 16.02.2008. Note prepared by the Zilla Parishad after directions by the Guardian Minister is relied upon to show that the Guardian Minister had received objections and protest from local M.L. As. and even Guardian Minister was not taken into confidence. It is in this background that the State Government has correctly clarified the position through letter issued to the Divisional Commissioner on 31.05.2011. The Zilla Parishad, Bhandara had not followed said procedure and intervention by DPC is in accordance with law. The communication sent by the Divisional Commissioner calling clarification on 16.03.2011 is also read out with emphasis on 4 doubts or questions, raised by the Divisional Commissioner. The communication sent by the State Government to the Chief Executive Officer of Zilla Parishad, Bhandara on 20.07.2011 is also shown to point out the specific stand of the government in this respect. He has also taken us through the statement in reply filed by the Hon"ble Minister that these 62 works were never placed before the DPC. The DPC has considered the entire controversy on 19.09.2011 and has approved 30 works, which were already communicated to respondent no.4 Collector. There is no challenge to the proceedings dated 19.09.2011 by the petitioner. He also contends that there is

no argument of violation of either Article 243ZD or then of provisions contained in Section 10 of the 1998 Act.

17. He clarifies that the DPC does not maintain any regular proceeding books to record its minutes of its meetings or even any attendance book or note book to show the dates on which notices for respective meetings were issued. He has made available the files containing loose papers as said proceedings to this Court. He further asserted that same system of maintaining records of DPC is prevalent in the entire State and steps are already initiated to streamline it by issuing appropriate guidelines. Upon instructions from respondent no.7, he states that the administrative approvals granted to 62 works in dispute have been canceled on 03.03.2012 by the competent authorities and that cancellation has also not been challenged. However, he fairly states that this cancellation has not been brought on record of this Court by filing any affidavit of competent person.

18. It is in this background, that he challenges the locus and status of the petitioner. According to him as petition is being prosecuted on behalf of the Zilla Parishad, it ought to have been as per 1961 Act. Appropriate resolution of Zilla Parishad in support thereof and protest against the alleged undue interference by respondent no.2 or respondent no.4 also needed to be filed. The petition itself needed to be filed by the Zilla Parishad through its Chief Executive Officer and as that has not been done, the challenge of present nature at the instance of the Chairman of committee, is not maintainable. He has for that purpose relied upon the title of the petition as filed and its paragraph no.1. To point out the status of sub-committee of which Petitioner is Chairman, he has invited attention to Section 8 of 1961 Act, read with its Sections 2[7], 2[18], 2[33], 80, 91, 94 and 95. Affidavit filed by respondent no.4 on 07.02.2012 is also relied upon to show various schemes which can be implemented in the Zilla Parishad area. He has therefore prayed for dismissal of the petition at its threshold without embarking upon the merits of the controversy.

19. Shri Samarth, learned Counsel appearing on behalf of the petitioner in his reply arguments has reiterated briefly the contentions already noted above. He has invited attention to the counter affidavit filed by the petitioner on 14.02.2012 to show that on 18.08.2011 the Public Works Committee of Zilla Parishad, Bhandara passed a resolution and thereafter only present writ petition has been filed. Copy of that resolution filed along with the affidavit by the petitioner is relied upon by him. Letter dated 17.09.2011 sent by the President of Zilla Parishad to the Divisional Commissioner in this respect is, also pointed out. He contends that earlier on 22.08.2011 vide subject no.12 the issue was discussed and Zilla Parishad had decided to bear the expenditure for prosecuting this petition. However, the Chief Executive Officer of Zilla Parishad has without any discussion with even the President and without any reason sought its suspension u/s 267[c] of 1961 Act from the Divisional Commissioner. This document and developments, according to him, sufficiently shows the entitlement of petitioner to maintain present writ petition. Learned Counsel states that perusal of

resolution dated 22.07.2011 also reveals rift between the Chief Executive Officer of Zilla Parishad and Elected Members in the matter. He points out that the Chief Executive Officer changed earlier Advocate representing Zilla Parishad and has entrusted the matter to the Government Pleader to help respondent no.2. Even resolution of General Body dated 29.09.2011 to support the petition is also read out for this purpose.

20. Shri Sambre, learned Government Pleader relies upon the order dated 15.09.2011 of Divisional Commissioner suspending the said resolution dated 22.07.2011. According to him as there is no challenge to this order, the petition as filed is not maintainable at the instance of Zilla Parishad or even at the instance of petitioner.

21. Before proceeding to consider the preliminary objection raised by the learned Government Pleader, we find it appropriate to consider the challenge on merits. For that purpose, relevant provision of Constitution of India, Maharashtra Zilla Parishad and Panchayat Samiti Act 1961 i.e., 1961 Act, Bombay Village Panchayat Act, 1958 i.e., 1958 Act and Maharashtra Regional and Town Planning Act, 1966 i.e., 1966 Act need to be briefly perused. Panchayat Samiti is constituted under 1961 Act and is distinct from Panchayat i.e. Village Panchayat or Gram Panchayat constituted under the Bombay Village Panchayat Act, 1958.

22. Article 243 of the Constitution of India defines - District, Gram Sabha, Panchayat, Panchayat Area and Village. Article 243G requires legislature of State to make Law to bestow upon Panchayat powers and authority to enable them to function, as institutions of self- government. It may inter-alia provide for preparation of plans for economic development and social justice, for implementation of schemes for economic development and social justice, as may be entrusted to Panchayats, including those in relation to matters listed in Eleventh Schedule to the Constitution. Panchayat has been defined as an institution [by whatever name called], of self- government, constituted under Article 243B for Rural Areas. Article 243ZD provides for constitution at District level in every State a Committee, known as District Planning Committee. It's purpose is to consolidate the plans prepared by the Panchayats and the Municipalities in Districts and to prepare a draft development plan for district as a whole. Article 243P defines Municipalities. Definition of District in Articles 243P and 243, as also definition of Panchayat in both the Articles is, identical. The purpose of Article 243ZD therefore, appears to have a committee to effectively amalgamate together separate plans prepared by the Panchayats and Municipalities, and on its basis to prepare a draft development plan for District as a whole. That Article may also mean that DPC can consolidate these plans and also in addition, independently prepare a draft development plan for district as a whole. As per Article 243-ZD[2], the State Legislature has to provide for composition of DPC and filling in of the seats. 4/5th of the total number of members of such committee need to be elected by and from amongst the elected members of the Panchayat at district level and of the municipalities in districts. The law made by

the State Legislature may assign to such committees function relating to district planning. Article 243-ZD [3] obliges the DPC to prepare a draft development plan having regard to the matters of common interest between the Panchayats and Municipalities, including spatial planning, sharing of water and other physical and natural resources, integrated development of infrastructure and environment conservation. For that purpose, extent and type of resources needs to be looked into and such resources may include finance or other resources. The Legislature of State has been empowered to make law requiring the DPC to discharge functions relating to district planning as may be assigned to it. Under Sub-Article [4] the Chairperson of every District Planning Committee has to forward the development plan recommended by such committee to Government of State. Obviously, it is the draft development plan referred to in earlier part. Perusal of Eleventh Schedule shows 29 entries, which include Agriculture, Land improvement, Animal Husbandry, Social Forestry, Rural housing, Drinking water, Poverty alleviation, Education, Libraries, Market and fairs, Health and Sanitation, Family welfare, Women and Child Development etc. Entry no.13 therein deals with Roads, Culverts, Bridges, Ferries, Waterways and other means of communication. Article 243W casts similar power and obligation upon the Municipalities. Schedule relevant therein is Twelfth Schedule and Roads and Bridges is entry no.4 in it. Article 243N specifies that any law relating to Panchayat in force, immediately before the commencement of the Constitution [73rd Amendment] Act, 1992 which is inconsistent with the provision of this part IX of the Constitution, shall continue to be in force until amended or repealed by a competent legislature or until the expiration of one year from its commencement, whichever ever is earlier. Thus, these new provision added to Constitution for strengthening the Panchayat Raj must operate after 1 year, if State Legislature had any inconsistent law with provision in said part and if that Legislature does not bring it in consonance with said part within said period of one year.

23. These Constitutional provision nowhere show the intention of Parliament to deprive the Panchayats or Municipalities of their powers or to dilute their function as institutions of self-government. On the contrary, subject to provision of Constitution, the Legislature of State has been permitted to confer necessary powers and authority upon these bodies to enable them to function effectively. Article 243ZD which makes a provision for DPC, is one such provision. It requires the Legislature to make a law and stipulates that purpose of DPC is to consolidate the plan prepared by the Panchayats and Municipalities in Districts and to prepare a draft development plan for District as a whole. The provision noted by us above show relevance of matters of common interest, as specified in Article 243 ZD [3][a] for said purpose. A Panchayat or Municipality can function only in area over which it has jurisdiction. Schemes prepared by it, therefore may not have any extra territorial application though possibility of its such impact or extending its benefit to outsiders can not be ruled out. The water reservoir or other physical/natural resources, in jurisdiction of such institution of

local self government can be conveniently exploited for larger area of two or more Panchayats or then Panchayats and municipalities at same cost or by saving public revenue. To facilitate such exploitation, the Parliament has thought it fit to create a District Planning Committee [DPC] which can consolidate the otherwise separate plans prepared by the Panchayats and Municipalities and prepare a draft development plan for entire District as a whole. It is, therefore, obvious that when such consolidation of development plans which are otherwise separate, becomes necessary or is found essential in larger public interest, DPC has been constituted to undertake that exercise. It has been given power to prepare a draft development plan for district as a whole also. Thus idea seems to be maximum utilization of resources at minimum costs by larger number of people spread over under different local bodies in a district. Article 243ZD does not confer any executable status on such plans and the same need to be sent to Government of the State. Thus, if development is restricted to area of only one authority and has no extraterritorial potential, the right of concerned local authority to proceed with it, is normally not prejudiced in any way.

24. The scrutiny of provisions of Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 therefore, becomes necessary. Section 2 of the said Act, defines various phrases/words and it begins with the usual qualification "unless the context requires otherwise". It defines "Block" in section 2[3] to mean such local area in District as State Government may constitute to be a Block u/s 5. Sub-section [4] states that grants given by the State Government to a Panchayat Samiti under Sections 188, 100 and 155 constitute Block grant. Clause 10 defines Development Scheme, to include all works, schemes, project, function, development activity or plan of works, schemes, projects functions and development activities. Clause 11 defines District and Clause 12 defines District List. District List, is the list of subjects enumerated in First Schedule. Chapter -VI is the next important chapter for present purpose. Heading of Chapter is "Powers and Duties of Zilla Parishad, Panchayat Samitis and Committees". Section 100 deals with administrative powers of Zilla Parishad. Zilla Parishad has to make reasonable provision within District with respect to or on any of the subjects enumerated in first schedule. First Schedule contains subjects of activities for development under various heads and there are about 129 such subjects stipulated therein. Under heading "Building and Communications" there are entries Sr. No.50 to 55. Entry No.50 is about construction, maintenance and repairs of village roads, other district roads, major district roads and bridges on above mentioned roads. Section 101 makes Panchayat Samiti primarily responsible in respect of certain subjects. Those subjects are in Second Schedule and in relation to those subjects, the Panchayat Samiti has to make reasonable provision within block, out of the funds at its disposal. Second Schedule is on lines with first schedule and entry nos. 31 to 34 therein contemplate construction, maintenance and repairs of village roads, as also of bridges and culverts on village roads. Thus under 1961 Act, there are two authorities, first is Zilla Parishad as established u/s 6 and incorporated u/s 8. The other is Panchayat

Samiti, established u/s 56 for every block and its constitution is provided for u/s 57.

25. Section 101A of the 1961 Act authorizes the Panchayat Samiti to incur expenditure out of the block grants. Section 104 provides that District fund is ordinarily liable for all costs and expenses incurred by the Zilla Parishad. Section 106 which specifies powers and function of Zilla Parishad, in its sub-clause [7] enables it to sanction works or development schemes within the district, but then such works or schemes cannot be on subjects under domain of Panchayat Samiti. Section 108 speaks of powers and functions of Panchayat Samiti. Its clause [a][i] requires it to prepare an over all plan of works and development schemes to be undertaken in the block for enabling the Zilla Parishad to prepare its development plans. Under Clause [ii] it has to prepare a plan of works and development scheme to be undertaken from Block grants with a view to utilize local resources in block to the maximum possible extent. It has to exercise general supervision and control over such works. It can also recommend to Zilla Parishad any works or schemes which can be undertaken by the Zilla Parishad in that block. It has to execute, maintain, supervise and administer the works and development schemes of Zilla Parishad. Section 110 contemplates Joint Committee of two or more Zilla Parishads for any purpose in which they are jointly interested. The said Section also makes an arrangement for agreement between the two Zilla Parishads or Zilla Parishad and Municipality for levy of taxes for such works. Under sub-section [4], in case of the difference or dispute between such local bodies, decision of the State Government upon it is made final.

26. Chapter-IX deals with Zilla Parishad, its property, fund and expenditure. Section 130 provides for constitution of a local fund by name "District Fund", for its custody and investment. Section 131 speaks of creation of special fund for meeting the expenditure relating to any specified object. As per Section 132, District Fund is spent within the area of Zilla Parishad and in certain contingencies, it can be spent outside the area also. Section 133 lists general charges to be defrayed from district fund and Section 134 prescribes how it can be drawn against. Section 137 is preparation of annual budget, estimates of income and expenditure by Zilla Parishad as also by the Panchayat Samiti. Budget estimates of Panchayat Samiti are to be forwarded to the Zilla Parishad for its inclusion in budget estimate of Zilla Parishad. Section 138 contemplates, revised or supplementary budget estimates and re-appropriation. Section 139 stipulates when budget estimates can be approved and when re-appropriations can be accepted. Section 142 requires Zilla Parishad and Panchayat Samiti to prepare its administrative reports which has to include audit notes with compliances. Section 142A authorizes Accountant General to check accounts of Zilla Parishad and Panchayat Samiti.

27. Chapter VIII is about execution and maintenance of works and development schemes and State Government is competent to entrust it to any Zilla Parishad

or Panchayat Samiti or to both. Such works or development schemes may be within or beyond the district and may not relate to any subject in District list. The Zilla Parishad or Panchayat Samiti in that event acts as an agent of State Government. Section 124 enables the Zilla Parishad to execute or maintain its schemes through the agency of Panchayat Samiti within the District. Sub-section (2) stipulates that notwithstanding anything contained in Bombay Village Panchayat Act, 1958, such works or developments can be executed or maintained through the agency of a Panchayat (Gram Panchayat) within a District. Sub-section [3] contemplates payments therefore by Zilla Parishad or Panchayat Samiti to such body. Section 125[1] contemplates previous sanction of prescribed authorities before starting execution of works or development schemes. Section 126 enables it to enter into contracts, again with previous sanction of prescribed Authorities. Section 127 empowers the State Government or its officer to inspect and to give technical guidance.

28. Chapter XII is on Financial Assistance to Zilla Parishads. Section 187 speaks of grants to Zilla Parishad by State Government for works and development schemes relating to any subject enumerated in District List as are included in the Development Plan of the State. Section 188 enables the State Government to release to Panchayat Samiti through Zilla Parishad grant or grants for carrying out such works and development schemes of such types as State Government may specify on subject enumerated in second schedule. This is known as Block grant. Section 261 enables the State Government to give directions to any Zilla Parishad, as regards to matters of policy to be followed by the Zilla Parishad and also in the interest of National or State Development Plans in respect of execution and maintenance of works and development schemes. The Zilla Parishad is obliged to give effect to the same. Explanation to Section 261 clarifies that for it, Zilla Parishad includes a Panchayat Samiti or any Committee of Parishad. Section 282 envisages joint meeting of two or more local authorities i.e. Zilla Parishad, Municipal Corporation or Municipality etc.

29. The Maharashtra Zilla Parishad (Works and Development Schemes, Technical Sanction) Rules, 1964 vide its Rule 3 enables head of the department to give previous technical sanction in respect of any work or development scheme. Rule 4 contemplates previous technical sanction of the Executive Engineer in certain circumstances and Rule 5 contemplates the said sanction by a stipulated/ designated officer when such works or schemes are transferred to Zilla Parishad u/s 100[1]. The Maharashtra Zilla Parishad and Panchayat Samiti (Execution and Maintenance of Works and Development Schemes through Agency of Panchayat Samiti and Village Panchayat) Rules, 1964 show that the Zilla Parishad has to entrust all works or development schemes other than those undertaken from block grants situate or operating entirely within the block to Panchayat Samiti for execution and maintenance. Sub-rule [3] stipulates that if such works and development scheme fall within the schedule appended to these Rules, Panchayat Samiti has to entrust the same to Panchayat i.e. Village Panchayat constituted under the Bombay Village Panchayat Act, 1958. Perusal of the

schedule shows that village roads are included in it. Rule 3[3] does not permit such entrusting, if the work or development scheme is of common interest to residents of two or more areas within the jurisdiction of Panchayat. Rule 5 obliges Zilla Parishad to make available necessary funds and staff to Panchayat Samiti and Village Panchayat. Rules 6 and 7 then contemplate execution of work departmentally or by appointing a contractor. The Maharashtra Zilla Parishad and Panchayat Samiti (Contingency Expenditure) Rules 1968 show the authorities competent to incur expenditure from within and out of provisions made by the Zilla Parishads and Panchayat Samitis. The Maharashtra Zilla Parishad and Panchayat Samitis (Re- appropriation of Funds) Rules, 1971 specify the terms and conditions of re-appropriation by the Zilla Parishad from savings out of funds from grants from one scheme to another. Re-appropriation from plain grants and block grants is also permitted with prior concurrence of the head of the department concerned.

30. Provisions of Maharashtra Zilla Parishad and Panchayat Samiti Act, define Panchayat in its section 2[19] to mean a Village Panchayat under Bombay Village Panchayat Act, 1958. Provisions noted above show that certain development works within the area of a Village Panchayat can be executed by that Panchayat, therefore, a brief look into the scheme of Bombay Village Panchayat Act, 1958 also becomes necessary. It's Section 3(4A) defines "Commissioner" to mean Revenue Commissioner appointed u/s 6 of the Maharashtra Land Revenue Code. "Zilla Parishad" mean a Zilla Parishad under 1961 Act above. Section 3[27] stipulates that the expression "Standing Committee", "Panchayat Samiti", "Chief Executive Officer", "Block Development Officer" and "Block Grant" have the meaning respectively assigned to them in 1961 Act. By Maharashtra Amendment Act No.23/2003, w.e.f. 02.07.2003, Beneficiary Level Sub-Committee u/s 49A and Village Development Committee u/s 49 are added. Section 9 speaks of incorporation of Village Panchayat with perpetual succession and common seal. Section 45 deals with administrative powers and duties of Panchayats i.e. Village Panchayat. It begins with "subject to general control of Zilla Panchayat and Panchayat Samiti". Thus, subject to above, it is the duty of the Panchayat to make reasonable provision within village with respect to all or any of the subject enumerated in Schedule-I. Schedule-I has a heading "Village List" and entries therein are not much different then entries in First Schedule and Second Schedule of 1961 Act. Entry no.40 speaks of construction, maintenance and repairs of public roads, bridges, if the same do not vest in any other public authority. If it so vests, consent of that Authority is required. Sub-section (2A) permits Panchayat to carry out works even outside the Village with previous sanction of President of the Zilla Parishad. Section 46 enables the Zilla Parishad and Panchayat Samiti to transfer to the Village Panchayat the management of any institution or execution or maintenance of any work. Section 47 speaks of similar powers with the State Government. Section 48 speaks of other duties of Panchayat. Section 49 contemplates a Village Development Committee which is to be constituted by the Gram Sabha in consultation with Panchayat and it is

deemed to be a Committee of Panchayat and is subject to general supervision and control of the Panchayat. Section 49A enables the Village Development Committee to constitute a Beneficiary Level Sub-committee from amongst voter beneficiaries in certain circumstances and contingencies. Section 50 enables the constitution of joint committee of two or more local bodies. Sub-section [4] makes decision of State Government final, if any difference or dispute arise between such local bodies. Section 57 speaks of Village fund with Village Panchayat i.e. Gram Panchayat and Section 58 points out how it can be used. Section 62 speaks of budget and accounts. Panchayat has to determine annually and submit to Panchayat Samiti the expenditure proposed on establishment and on discharge of its duties u/s 45. In sub-section [3] it has to contribute in every financial year to a fund known as "District Village Development Fund". Section 135 which appears in Chapter XI (Control), lays down duties of Zilla Parishad and Panchayat Samiti. They have to encourage the establishment and foster the development of Panchayat. They have to supervise and control their administrations. Section 139A enables the authorized officers or persons to inspect the Panchayat, its works and to give its technical guidance. Section 139B enables the Chief Executive Officer or any officer to inspect the office of Panchayat. Section 142 and 143 are the powers of the Standing Committee of Zilla Parishad either to suspend execution or order or resolution of Panchayat or to take steps in case of emergency. Section 152 obliges Village Panchayat to obey the instructions given by the Zilla Parishad or Panchayat Samiti. Section 153A enables the State Government to issue directions in the interest of National and State Development Plan, in respect of execution of development schemes.

31. Perusal of relevant provisions of the Maharashtra Regional and Town Planning Act, 1966 shows that it defines "Development Plan" in section 2[9] to mean - a Plan for development or development of area within the jurisdiction of the Planning Authority. Section 2[19] defines Planning Authority to mean a Local Authority. Section 2[15] defines Local Authority to mean a Municipal Corporation, Municipal Council, a Zilla Parishad. Thus neither Panchayat Samiti constituted under 1961 Act or Panchayat constituted under 1958 Act is recognized either as local authority or planning authority.

32. In the wake of the Panchayat Raj Scheme as introduced in Constitution of India, in 1998 the State Legislature enacted Maharashtra Act No. XXIV of 1998 known as Maharashtra District Planning Committees (Constitution and Functions) Act, 1998. It has received assent of the Governor on 07.10.1998 and has been published on 09.10.1998. The Act is aimed at providing constitution at District Level of a District Planning Committee by consolidating the plans prepared by the Panchayats and Municipalities in Districts and to prepare a draft development plan for primary, secondary and tertiary sectors of economic development as outlined in 5 year plan and the annual plan of the Country in general and State in particular. Words "Municipality" "Panchayat" " Zilla Parishad" and "Panchayat Samiti" retain their same meaning. Section 3 constitutes said DPC and its purpose is to consolidate the plans and to prepare a draft development plan for

district as whole. Its composition is also provided for in this section. Minister in-charge of the District is the Ex-officio member. Though some grievance in relation to its composition was made by Shri Samarth, learned Counsel, there is no corresponding prayer made in the petition. His grievance was, elected members of the Zilla Parishad did not have sufficient representation in DPC. Section 3[3][iii][a] specifies that 4/5th of its elected members have to be from Panchayat at District level and Municipalities in District. There is no reference to elected councilors of Zilla Parishad. We have noted above, that basically the development works/schemes are implemented at block level by the Panchayat Samiti and at village level by Panchayat i.e. Village Panchayat. The recurrence of relevant entries in various Schedules appended to 1961 Act or 1958 Act are also noted by us. We, therefore, do not find it necessary to look into said challenge of Shri Samarth, learned Counsel. The Minister in-charge of District is the Chairperson of DPC and Collector of the District has been made Member-Secretary. There is also a provision for inviting members of Parliament, M.L. As., ordinary residents and they have been treated as special permanent invitees at the meeting of the DPC and have been given right to take part in the deliberations of the meeting of the committee. Section 10 which speaks of functions of the DPC reads as under :

"10. The State Government shall, by order, from the date specified in such order entrust to the District Planning Committee all or any of the functions mentioned below -

(a) to consider & consolidate the District Annual Plans prepared by the Panchayats and Municipalities in the district and to prepare draft Development plan for the district as a whole;

(b) to consider the Five-year plan and perspective plans prepared by the Panchayats and the Municipalities and co-ordinate and prepare draft Five Year plan and perspective development plan for the entire district;

(c) to review and monitor the progress of District Annual Plan and suggest re-appropriation of approved provision of the District Annual Plan in accordance with the guidelines issued by the State Government;

(d) to recommend through the Chairperson the approved draft development plan to the State Government; and

(e) to ensure compliance of the provisions of clause [3] of article 243ZD of the Constitution."

33. Section 11 enables the State Government to constitute an Executive Committee and Subject Committee as may be necessary for carrying out the purposes of this 1998 Act. Section 12 enables the State Government to give directions to DPC from time to time and DPC has to comply with said directives. Section 13 is rule making power and Section 14 is power of the State Government to remove difficulties.

34. The purpose of the Constitutional amendment and introduction of Panchayat Raj Scheme nowhere shows an intention to dilute the role played by the local authorities or planning authorities in the matter of development in so far as the respective lists and their respective statutory jurisdiction is concerned. Effort made earlier by the State Legislature to achieve consistency in such matters where common interest are involved, are also apparent when State Legislature made provision for joint meetings of two or more local authorities and for joint execution. Design of State Legislature to harmonize growth with need foreseen in National Plan or State Plan can be gathered because of powers given to State to issue suitable directions to Panchayats and Zilla Parishad. The 1998 Act makes a very comprehensive and positive effort in that direction, not only in relation to entries specified in schedule, but to further the development in all respect or aspects i.e. tangible or intangible. The definition of Development Plan in it itself shows that it does not confine itself only to Physical (Spatial) Development, but may also encompass cultural, socio-economic development. The developments envisaged are not only primary, but of a consequential nature or higher stage and categories like secondary and tertiary sectors of economy as outlined in the Five Year plan and the Annual plan of the country in general and State in particular. Thus, a more wide perspective of development which the Zilla Parishad and Panchayat Samiti or the Village Panchayat may not be in a position to adapt, has been anticipated and a DPC with democratic representation on it has been constituted to prepare a draft plan on said lines and for that purposes. However, none of the Sections in 1998 Act give finality to such consolidated plans prepared by the DPC. When Section 3 and Section 10 are read with Article 243ZD of the Constitution of India, it becomes apparent that role of DPC is to achieve harmony in otherwise separate development plans prepared by the Panchayats and Municipalities in districts and to prepare a draft development plan for district as a whole. This consolidated plan prepared by it, becomes a draft development plan for district as a whole and the Chairman of every District Planning Committee has to forward it to the State Government after its due recommendation by the DPC. In absence of such recommendation, Chairman does not get power to forward it. If such recommendations are approved by the State Government, in exercise of its powers noted by us above, like Sections 110, 187, 261 of 1961 Act; Sections 50 and 153A of the Bombay Village Panchayat Act, the State Government can issue necessary directions to executing / implementing authorities i.e. either the Zilla Parishad or Panchayat Samiti or Village Panchayat on those lines. Under relevant Acts giving birth to Zilla Parishad and Panchayat Samities or to Village Panchayat, State has ample power to issue binding directions in the interest of National or State development plan. These powers are not made over to DPC and DPC can not direct either Zilla Parishad or Panchayat Samiti or Village Panchayat to implement or act upon its draft development plan. It is obvious that this plan and development is different than one envisaged under the 1966 Act, which mostly deals with the physical development of various areas in jurisdiction of planning authority in a scientific manner. That development restricted to a particular area is attempted to be

harmonized with need of the development of larger area or all-around multifaceted development catering to the common interest of other areas which may be conveniently accommodated. Constitution in Article 243ZD(3)(a) and (b) recognized certain matters of common interest and has attempted to avoid compartmentalization of common resources by removing geographical limitations like "Panchayat" or "Municipal Council" and to introduce "District" as a unit administratively to achieve all-round development at least possible cost. A draft development plan for entire district is therefore to be prepared by the DPC. The role of DPC is, therefore, not to supervise the preparation of the plan or its execution by planing / local authorities. It's role is only to attempt to harmonize such different plans prepared by different planning authorities keeping in mind Section 10 (e) of 1998 Act for optimum exploitation of natural resources or resulting activities in the interest of residents of adjacent areas also. Therefore, only Clause (b) of Section 10 of the 1998 Act authorizes it to consider five year plan and prospective plans prepared by the Panchayat and Municipalities and to prepare a draft 5 year plan and prospective development plan for entire district by coordinating them. It has been authorized to review, monitor the progress of district annual plan, but then it can only suggest re-appropriation of approved provision of the district annual plan in accordance with the guidelines issued by the State Government. In other words, it may advise implementing agency like the Zilla Parishad or Panchayat Samiti or Village Panchayat in the matter after its review. The re-appropriation is permissible only in accordance with the guidelines issued by the State Government. DPC can review and monitor the progress of the district annual plan because of its duty to care for common or larger interest whose benefit is to be secured by such development. The District Planning Committee by its action can not assume the role of implementing agency or planning authority.

35. Various government resolutions issued either by the planning department or the rural development department in this respect clearly make distinction between the district plan and plans of Zilla Parishad or Panchayat Samiti or Village Panchayat. Government resolution dated 16.02.2008 issued by the Government speaks of preparation of draft development plan by the District Planning Committee and factors to be looked into. It also stipulates that funds sanctioned for expenditure on such development work suggested by the DPC cannot be used for any other development. It further states that the district annual plan is to be finalized at State Level meeting. We are not concerned with these details in the present matter. This resolution also states that if the Legislative Assembly sanctions the budged demand, planning department shall release the proportionate funds to the concerned Collector who will be the controlling authority in district for its disbursement. Clause 3 is very relevant, it states that except for works falling under Clause 3.2, the power to grant administrative approval and other powers in relation to works in district annual plan will be with the Collector. Clause 3.2 clarifies that in so far as such works and claims with local bodies are concerned, prevailing position of granting

approval shall continue. That procedure in so far as local authorities like Zilla Parishad is concerned, is laid down in government resolution dated 12.01.2001, issued by the Rural Development Department and Water Conservation Department and dated 25.06.2008 and 15.07.2008 issued by the very same department. The fact that approval to 62 works in question was accordingly granted on 06.01.2011 and 18.01.2011 by the competent authority of Zilla Parishad, Bhandara, is not in dispute. Perusal of these 62 works of which details are given in Annexure-F with the petition, show that it pertains to roads which are only in one Taluka-Tahsil and block. While hearing the respective counsel, the Court had specifically made inquiry in this respect and it is not in dispute that the works are not spread in area of more than one Panchayat Samiti or Village Panchayat. It is apparent that none of these works have got any effect or impact on other works needed to be carried in adjacent Panchayat Samiti or Village Panchayat.

36. The petitioner has specifically stated that these 62 proposals were erroneously forwarded to the DPC and after realizing the error have been called back. The same have been accordingly sent back by the DPC on 01.11.2010. In view of the above discussions, we find that the DPC had no role to play in relation to those works as there is no necessity of their consolidation or coordination in common interest.

37. The respondent no.2 the Guardian Minister found direct implementation of these 62 works by the Zilla Parishad contrary to the 1998 Act, hence orally he issued certain directions and this is seen from the note prepared by an officer of the Zilla Parishad on 29.01.2011. The officer preparing the note has justified the action of Zilla Parishad in calling back the proposals from DPC. The Chief Executive Officer of Zilla Parishad has on 01.02.2011 placed his remark that there was some confusion about the planning authority and not about the administrative approval authority. Because of objection raised by respondent no.2, the works could not proceed and Collector did not release the grants though received by him from State. Hence on 05.02.2011 respondent no.6-Additional Chief Executive Officer wrote to DPC pointing out that if, funds were not spent by the end of March, 2011, Zilla Parishad should not be held responsible. On 21.02.2011 the Executive Engineer again wrote to the Collector for releasing the grants. Petitioner complained on 29.01.2011 to the Divisional Commissioner in this respect. On 22.02.2011 the office of the Divisional Commissioner directed the Collector, Bhandara to release the funds in accordance with the government guidelines, however, without any effect. We have noted above all these developments. On 28.02.2011, the Collector Bhandara, in his capacity as Secretary of DPC granted approval to 22 works worth Rs. 206.76 lacs. Infact under account head 3054 for the year 2010-11 total amount of Rs. 546.58 lacs was sanctioned for 62 works and could have been spent. On 25.03.2011 the respondent no.2 on his letter head as State Minister has reviewed the order dated 10.03.2011 and substituted 30 new works in place of these 22 works. He has given demand made by the representatives of

peoples, as reason therefore. 9 works out of the above list of 62 works are included in this list of 30 works and those are at Sr. Nos. 6,8,9,10,11,13, 15,16 and 17. It is obvious that entire exercise by respondent no.4 Collector in his capacity as Secretary and by respondent no.2 in his capacity as Chairman of DPC is, without jurisdiction and un-sustainable.

38. In view of the arguments of learned Counsel for the petitioner and an affidavit that there was no agenda in the meeting dated 19.09.2011 of DPC, we had called for the original proceedings. The original proceedings are not maintained in accordance with law and consists of loose papers which can be substituted or removed at any time. Respondent no.4 has not maintained the records of DPC as expected of him, and respondent no.2 has also not attempted to do so. The maintenance of record do not meet the test of transparency at all. However, in view of our observations about role and powers of DPC, it is not necessary for us to comment more in this respect. The 62 works called back by the Zilla Parishad from DPC do not require any clearance of DPC and were therefore, rightly called back. The respondent no.4 Collector and respondent no.2 Guardian Minister have not demonstrated that previous approval of DPC was necessary for these 62 works. Respondent 2 or 4 proceeded to substitute works in said list, as if they were the elected members of the Zilla Parishad or Panchayat Samiti. As we find their act of substituting 22 works or 30 works in place of 62 works to which appropriate administrative approval was already granted by the competent authority of Zilla Parishad, bad, it is not necessary to comment more in this respect. However, we note that the respondent no.2 has entered the area not available to him and the responsible officers like respondent no.3 Divisional Commissioner or respondent no.4 Collector or then respondent no.5 Chief Executive Officer of Zilla Parishad have conveniently avoided to honour their duty to democracy. Adoption of inconsistent stand by respondent nos.5 and 6 before this Court also speaks volumes in this respect. Other respondents ought not to have submitted to pressure of respondent no.2. Law does not give respondent no.2 any such authority over respondent nos. 3 to 6.

39. Respondent no.3 Divisional Commissioner on 16.03.2011 had written to the Member Secretary (Planning) of respondent no.1 and placed every thing for consideration of the Member-Secretary. He has sought clarification on 4 important counts as mentioned in that communication. The said Member-Secretary has avoided to give any clarification or explanation on 4 counts on which it was sought. The office of the Divisional Commissioner sought clarification on following 4 counts :

- (1) Which development works can be undertaken through previous sanction by the DPC and who is competent to submit the proposal therefore ?
- (2) Who is authorized to select the works to be executed from list of works submitted and on what basis this selection can be made ?
- (3) Who has the authority to accord technical and administrative sanction to such

selected works ? And

(4) Whether funds payable for such development works should be disbursed after work-wise and administrative approval by DPC, or not ?

40. These queries overlook the basic facts. The reply dated 31.05.2011 sent thereto by the State Government only invites attention to the resolution dated 16.02.2008 issued by the planning authority and mentioned by us above. It states that Zilla Parishad has to demand funds from DPC by submitting a proposal, and DPC is authorized to select the works for execution, out of the list. Zilla Parishad can grant administrative and technical sanction to such selected works. The Collector has to disburse the funds for works finalized thereafter by the DPC. Reply therefore, overlooks the provisions of 1961 Act, 1998 Act and also the above mentioned constitutional requirement. We, therefore, find that it is this undue interest taken by respondent no.2 in the matter which has eclipsed the entire consideration by all the respondents, including respondent no.1. The fact that clause 3 of the government resolution dated 16.02.2008 clearly makes a distinction between the works and development schemes of Zilla Parishad in Schedule-I and the work and development in district annual plan finalized by the State Government as per clause 1.12, has been lost sight of by all these authorities.

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 u/s 78[1] clause [a] provides for Finance Committee, while clause [b] provides for Works Committee. The Chairman of such Committee is empowered u/s 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 u/s 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 thresh-hold.

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 it's right and has decided to execute 62 works. Necessary approval to those works was also granted and funds therefore 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 functuous 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.

43. Though at one stage, petitioner had contended that list of 62 works called back from DPC was not received back by the Zilla Parishad and DPC did not take any action upon it, we find the stand of petitioner that the said works/lists was called back and 35 proposals were sent back by the Collector (as Secretary) on 01.11.2010 to the Executive Engineer. More over in the backdrop of finding that for said works, approval of DPC is not necessary, we do not propose to go into this controversy in more details.

44. This Court has on 21.04.2011 directed that if work orders were issued for substituted works, the same shall be subject to result of the petition. The District Planning Authority is not the implementing agency. Zilla Parishad lastly on 29.09.2011 has resolved not to issue work orders. Respondents have not pointed out that after respondent no.2 directed execution of 30 works, any advertisement was issued or then any work orders have been issued. In this situation, the general public in whose interest Zilla Parishad validly decided to execute 62 works cannot be made to suffer. We, therefore, proceed to allow the petition. We direct the respondent no.4 Collector to release the grants for 62 works administratively approved by respondent nos. 6 and 7 on 06.01.2011 and 18.01.2011. We also direct other respondents to see that funds for said purpose are maintained and made available to the office of respondent no.4. All other orders and directions of respondents to the contrary, are quashed and set aside. Accordingly the order dated 25.03.2011 at Annexure-Q, dated 28.03.2011 at Annexure- R and letter dated 31.05.2011 at Annexure-X are also set aside. Government resolution dated 16.02.2008 does not in any way run counter to 1961 Act or 1998 Act and it is binding on respondent no.4 as also respondent no.3.

45. I have also gone through the additional reasons recorded separately by my learned brother. I also find that respondent no.2 and high ranking officers have not lived up to the faith, democracy in this Country, expected of them.

A.B. Chaudhari, J.

I have studied the judgment prepared by brother B.P. Dharmadhikari, J.. I fully agree with the view and the conclusions drawn by him. However, I would like to give additional reasons in support of the judgment. Hence, I proceed accordingly.

46. Panchayati Raj Institutions in India have been in existence for a long time. However, the same could find place only as one of the directive principles of State policy in the form of Article 40 in the Constitution of India. Article 40 reads thus :

"Organization of Village Panchayats - The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government."

47. After putting Panchayats in Article 40 as above, it remained in a nebulous state for about four decades. Finally, the Panchayati Raj, the 73rd constitutional amendment which was the dream became true and came into effect from 24.4.1993. The main purpose to strengthen Panchayati Raj Institutions was to ensure democratic decentralization with Gandhian philosophy of participatory democracy and not only that it was viewed as a body or institution of governance. By 73rd amendment necessary status and functions with dignity was conferred on the Panchayati Raj Institutions. As a matter of fact, after introduction of 73rd amendment, constitutional status has been given to Panchayati Raj Institutions as a result of which it has become a permanent

feature in the Indian political system, nay a third Government. Unfortunately, however, recognition of Panchayati Raj Institutions on the constitutional platter has still not been understood to be a political system in addition to the existing Indian political system with an independent status, though more than two decades have passed after the said 73rd constitutional amendment.

48. In March 2002 in the report of the Working Group on Decentralization, Department of Rural Development and Panchayat Raj, Government of Karnataka, following observations have been made which are demonstrably true in the case at hand.

"The mindset that the role of a Government is to rule over its subjects, has persisted even after half a century of freedom. This mindset has survived despite democracy and decentralization and has subverted the very system that was created to destroy it.

The report suggested what should be done to remove such a behaviour like a "King" and the "Subjects" thus;

"we intend to make an effective endeavor to get rid of this ruler-subject relationship syndrome between the Government and citizens. The change has to be wrecked at the fundamental conceptual level."

49. In an article published by National Institute of Rural Development, namely "Devolution of Functions and Powers" in India Panchayati Raj Report, 2001, the learned author Shri K.R. Venugopal has mentioned some of the points which are worthy of note :

1. In some states, the PRIs have been looked upon as agencies of the Government, especially at lower levels, diluting their conception as units of self-government.
2. Functional and Financial autonomy is not granted to the PRIs in a specific manner.
3. The stronghold of bureaucracy over these bodies continues.
4. Higher level political authorities are not willing to give up control over the allocated finances and the implementation of development schemes.
5. Absence of a national consensus cutting across party lines on what the status of PRIs should be, as also in what directions they should move.
6. Very little has been done in most states in regard to the transfer of general as well as technical staff by State Governments to the PRIs which is an important indicator of genuine devolution nor has anything been done in regard to the creation of a separate Panchayati Raj cadre.
7. There is a tendency to execute only schemes sponsored by the State/Union Government. Very few instances of schemes with own revenues have been found. In programmes and schemes of Union/Centre, consultation with PRIs

continues to be minimal.

8. In most states, no serious exercise has been carried out to devolve powers and functions to the three tiers in a balanced way, keeping in view the principle of subsidiary.

50. Zilla Panchayat provides a necessary link for funding, policy- making, guiding, monitoring and evaluating the entire process. The finance and planning committee of the ZP is vested with overall powers for deciding the sectoral outlays of the annual plan, compiling the micro-level plans originating from the G.Ps., coordinating and monitoring its implementation at various levels.

51. Keeping in mind the scheme of the various provisions and the noted shortcomings as above and after hearing Counsel for the parties on both sides, following question arises for consideration.

"Have the respondent no.2 - Guardian Minister who represents the Government of Maharashtra; and the Senior Officers of the Government only in order to be obedient to respondent no.2's perception; acted in violation of the spirit of 73rd amendment about "Panchayati Raj" even after two decades !"

52. Facts of the Present Case : On 8.10.1993 Rural Development Department of the Government of Maharashtra had issued circular, in which it is observed that Public Works Department of the Government releases grants for construction of roads, maintenance and repairs under the control of Zilla Parishads. However, Public Works Department of the Government was found to have carried out those works which was not correct and therefore, no such interference should be made with the works under the Zilla Parishads. The 73rd constitutional amendment was brought into effect from 24.4.1993. On 16.2.2008 the State Government issued resolution defining the role of District Planning Committee and specifically stating therein in Clause no.3.2 that the works under the control of Zilla Parishad shall be continued to be carried on at the level of Zilla Parishad insofar as implementation, approvals etc. are concerned. On 25.6.2008 and 15.7.2008, the Government issued two resolutions, enhancing the powers of Zilla Parishad and its officers in respect of the works required to be done by the Zilla Parishads. That was in recognition of the conferment of additional powers of Zilla Parishad.

53. Zilla Parishad, Bhandara prepared a plan for two financial years, namely 2010-11 and 2011-12 and submitted the same to Collector, Bhandara on 30.8.2010. Since it was realized that the plan was sent by mistake; on 1.11.2010 the same was returned by the Collectorate. Thereafter, administrative approvals were granted for 39 works by Additional Chief Executive Officer on 6.1.2011 and approvals for 23 works were granted by Executive Engineer on 18.1.2011 in accordance with the powers conferred on them. These works were for total Rs.526.56 lacs. Out of the above, the works relating to roads etc. under the Zilla Parishad were of major amount, namely 364.50 lacs. At this stage i.e. after about 10 days, respondent no.2 - Guardian Minister of Bhandara District orally stayed the further process on the ground that the Members of Legislature

Assembly and Guardian Minister were not taken into confidence for finalizing those 62 works by Zilla Parishad, Bhandara. The Executive Engineer, Zilla Parishad having found after oral stay order that everything was at standstill, on 22.1.2011 wrote a letter to the Collector that the Zilla Parishad would not be responsible for delay in respect of works since month of March was fast approaching. The Collector gave no response. At this stage, and at the stage of preparation of note, it appears that the Chief Executive Officer and Additional Chief Executive Officer were of the firm opinion that all 62 works related to Zilla Parishad and could be done only under the control of Zilla Parishad. But after the oral stay granted by respondent no.2, the things started changing inasmuch as respondent no.2 - Guardian Minister under his own signature sent a list of 30 works in substitution of all but 9 of the 62 works finalized by Zilla Parishad to the Collector, involving Rs.364.50 lacs. The Collector, Bhandara readily accepted the said list by issuing order dated 28.3.2011 and directed Zilla Parishad to proceed further as per the works selected in the said list only and not according to the list of 62 works prepared by Zilla Parishad.

54. The present petitioner then filed this writ petition in this Court on 7.4.2011 and on 9.5.2011 respondent nos.5 to 7 i.e. Chief Executive Officer, Additional Chief Executive Officer and Executive Engineer filed their detailed written submissions through their Zilla Parishad Advocate in reply to the petition and the affidavit was sworn by Additional Chief Executive Officer Shri Dilip Patil. He took a specific stand on behalf respondent nos.5 to 7 therein about the legal authority of Zilla Parishad in respect of the said list of 62 works and also highlighted the powers of Zilla Parishad vide paragraph nos.2, 3, 4 and 6 thereof. The Commissioner, Revenue Division, Nagpur as well as Collector, Bhandara appeared to have sought advice from the Government on 28.3.2011. Shockingly enough, the Planning Department issued a advise-letter dated 31.5.2011 stating that it was the District Planning Authority who has full authority to select the works and finalize the same and such works selected by D.P.D.C. only were required to be approved by Zilla Parishad technically and administratively. This piece of advice is obviously contrary to clause 3.2 of Government Resolution dated 16.2.2008.

At this stage, perhaps having not been satisfied with the stand taken in the submissions dated 9.5.2011 filed by respondent nos.5 to 7, Rural Development Department of Government entered the scene and issued a communication dated 20.7.2011 addressed to Chief Executive Officer, Zilla Parishad, Bhandara permitting engagement of the services of Government Pleader in this petition in place of Advocate for Zilla Parishad and also advised him in paragraph no.2 to incorporate the stand in the affidavit that it was the prerogative of District Planning Committee to select the works and release the funds and Zilla Parishad was to grant administrative approvals only to those works selected by District Planning Committee. Paradoxically, the said Shri Dilip Patil, Additional Chief Executive Officer filed another affidavit on behalf of Zilla Parishad, Bhandara on 12.8.2011 vide paragraph 4 to 8 and even went to the extent of objecting to the maintainability of writ petition and he jettisoned his earlier stand in the affidavit

dated 9.5.2011.

55. Thereafter, on 18.7.2011 the Collector filed his affidavit and took a clear stand in line with the stand taken by respondent no.2. Before us, the learned Government Pleader argued that respondent no.2 was entitled to change the list of works as neither respondent no.2 nor M.L. As and M.P. were taken into confidence when list of 62 works was prepared by Zilla Parishad. He has tendered a relevant file to us. In the first place u/s 3 IV of the Act of 1998, M.L. As and M.P. are only the "Special Invitees" and have only a right to take part in the deliberations of the meetings and nothing more. It does not appear that they have any superior rights to dictate any policy in respect of Zilla Parishad or local self Government's affairs, particularly after 73rd amendment. That apart; perusal of the file shows a undated, unsigned letterhead of Shri Narendra Bhondekar, MLA, 61, Bhandara at the left side of which there is endorsement and signature of respondent no.2. The value of the works mentioned in this unsigned, undated letter is 100 lacs, which is the major portion out of the total value of Rs.364.50 lacs for road works. In other words these 1 to 7 listed works were only of the choice of respondent no.2. That is why these 1 to 7 listed works in this suspicious letter have been included at the top by respondent no.2 in his signed letter dated 25.3.2011. All other three letters by ML As and one by M.P. are of 22 March, 2011 i.e. after approvals in January, 2011 by Zilla Parishad. With all these developments, on 22.7.2011 General Body of Zilla Parishad passed a resolution authorizing the present petitioner to prosecute this petition on behalf of Zilla Parishad and also discussed about engagement of lawyers for Zilla Parishad. The Chief Executive Officer on 3.9.2011 sent a proposal to the Commissioner for suspending the said resolution dated 22.7.2011 on the ground that there was no such subject. On 15.9.2011 the Commissioner suspended the said resolution. The President of Zilla Parishad clarified that there was subject which was no.12 and therefore, order of suspension should be recalled.

56. The vista as above clearly shows that the Guardian Minister - respondent no.2, the Commissioner, Nagpur, the Collector, Bhandara, Desk Officer, Planning Department of Government, Rural Development Department, Chief Executive Officer, Additional Chief Executive Officer, Bhandara all have come together with departmental aggression as against the assertion of their authority by the petitioner and office- bearers of Zilla Parishad. Respondent no.2 - Guardian Minister and the Government Officers gave Hobson's choice to Zilla Parishad by including only 9 works out of 62 of Zilla Parishad's list. They firmly denied the authority and power of Zilla Parishad in terms of clause 3.2 of the Government Resolution dated 16.2.2008. It has been categorically found by my Brother that the act of the Minister and these officials of the Government amounted to encroachment over the powers and function of Zilla Parishad and therefore, I need not further elaborate the same. The upshot of the above discussion is that respondent no.2 thrust his will with active assistance of the senior officers on the office bearers of the Zilla Parishad despite their timely and repeated protests. Respondent no.2 thought he is a "King" and elected office bearers of the Zilla

Parishad "the subjects". The senior and high ranking officers meekly obeyed the directions of respondent no.2. The observations made by Mr. K.R. Venugopal, vide paragraph no.49 of this judgment aptly apply in this case. Now, it is for the government to give effect to the letter and spirit of 73rd Constitutional Amendment in the State of Maharashtra.

57. To sum up, the answer to the question framed above must be given in the affirmative. Since all the respondents in tandem, despite repeated objections raised by the petitioner and Zilla Parishad continued their aggressive act of encroachment on the powers of Zilla Parishad regarding the works to be undertaken by Zilla Parishad, it would be appropriate to award costs.

58. We proceed to allow the petition in terms of paragraph no. 44. In addition we direct the respondents, except respondent nos. 7 to 9 to pay Rs.2000/- each to petitioner, as costs thereof. Respondent no.2 to pay costs of Rs. 5000/- to the petitioner.

59. Rule is thus made absolute in the aforesaid terms.

60. At this stage, Shri D.P. Thakre, learned A.G.P. appearing on behalf of respondents seeks stay of operation and effect of this order for a period of six weeks. No one is present on behalf of petitioner. In the interest of justice, we grant stay as prayed for by learned A.G.P. however, the same shall be subject to deposit of costs as ordered, within a period of two weeks from today. The stay order granted today, shall cease to operate on expiry of the period of six weeks.