

(2005) 11 BOM CK 0002
In the Bombay High Court
Case No : Writ Petition No. 2829 of 2004

Citizens Forum

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 21-11-2005

Acts Referred:

City of Nagpur Corporation Act, 1948 — Section 123, 57

Citation : (2006) 3 MhLj 133

Hon'ble Judges : S.A. Bobde, J;P.S. Brahme, J

Bench : Division Bench

Advocate : V.G. Wankhede, for the Appellant; B.H. Dangre, A.G.P. for respondent No. 1, M.V. Samarth, for respondent No. 2, S.K. Mishra, for respondent No. 3, R.K. Deshpande and Chavan, for the Respondent

Judgement

S.A. Bobde, J.—Rule, returnable forthwith.

The learned Counsel for the respective respondents waive service of rule. Heard by consent of parties finally.

2. The issue involved in this petition concerns the safety and convenience of the citizens of Nagpur.

3. In short, the issue pertains to existence of open manholes, electrical poles and transformers which are located either on the carriage-way of the widened roads or on some pavements. These have been referred to as "public utilities" in the affidavits. This situation has arisen from an excellent program which was successfully implemented by the respondent-authorities as a part of an Integrated Road Development Project, hereinafter referred to as "IRDP".

4. It does not take much to realize the gravity of the problem of open manholes, electrical poles and transformers on the road and even pavements. These are potentially hazardous obstacles and it appears that the Municipal authorities have remained apathetic to the situation. Hence, this petition has been entertained by this Court in public interest and various orders have been passed from time to

time. The most recent application which has been moved by the Municipal Corporation is C. A. No. 6655 of 2004 for direction to the M.S.R.D.C. to release an amount of Rs. 20 crores and to pay it to the respondent No. 2 -Municipal Corporation and also to direct the M.S.E.B. and M.S.R.D.C. to pay the cost of shifting of electric poles/transformers to the respondent Municipal Corporation as per Government Resolution dated 23-2-2001.

5. As far as the order to shift the poles is concerned, this Court has already, on 30th March, 2005 noted the willingness of the Municipal Corporation to implement the proposal of shifting or replacement of manholes either by changing the nature of their covers or by shifting electric poles.

6. The entire situation is admittedly governed by the Government Resolution dated 23-2-2001. Paragraph 5 of the Government Resolution reads:

5. For the work of proposed roads and bridges falling within the purview of Development Project of Nagpur City, it will be primary responsibility of the Nagpur Municipal Corporation and Nagpur Improvement Trust to take up the work and complete the same. However, this project also includes the roads of P.W.D. In order to complete the said project by fixing a time bound programme as mentioned in the proposal, the following funds would be made available to the Nagpur Municipal Corporation, Nagpur Improvement Trust, Vidarbha Statutory Development Board, District Planning Committee, Nagpur and Urban Development Department, Nagpur from the members of Vidhan Sabha and Vidhan Parishad.

(a) The Nagpur Municipal Corporation shall make available the fund of Rs. 10 Crs. in first year, Rs. 12 Crs. in 2nd year, Rs. 14 Crs. in 3rd year in this proportion by increasing fund by Rs. 2 Crs. every year i.e. Rs. 190 Crs. in 10 years directly to the Corporation.

(b) The Nagpur Improvement Trust shall make, available total fund of Rs. 15 crs. in the form of instalment of Rs. 3 crs. every year to the Corporation.

(c) From the fund available to the Urban Development Department for basic development in the limits of Nagpur Corporation Rs. 150 crs. (for the first five years Rs. 15 crs. per year i.e. total 75 crs. for further period of five years Rs. 10 crs. per year i.e. total 50 crs. and thereafter for the further period of five years Rs. 5 crs. i.e. total 25 crs.) should be made available to Maharashtra State Road Development Corporation. For this period Urban Development Department would make necessary budgetary provisions.

(d) Nagpur District Planning Committee shall make available Rs. 45 crs. (per year Rs. 5 crs. for first four years i.e. Rs. 20 crs., for a further eight years Rs. 3 crs. per year i.e. total 24 crs. and in the last year Rs. 1 cr. i.e. Rs. 45 crs.). For this purpose Nagpur District Planning Committee would make Annual budgetary provision in the District Annual Scheme fall within the scope of Road Development. The fund approved by the District Planning Committee would be

budgeted by the P.W.D. and it shall be made available M.S.R.D.C.

(e) As agreed by the Vidharbha Statutory Board an amount of Rs. 25 crs. (Rs. 5 crs. per year) shall be made available. The responsibility of passing resolution of the Vidharbha Statutory Development Board and for making provision shall be undertaken by Public Works Department.

(e-1) As agreed by the Hon"ble Members of Vidhan Sabha/Vidhan Parishad of Nagpur City individually Rs. 20 lacs and Rs. 50 lacs from Member of Parliament i.e. total Rs. 190 lacs per year and in this manner an amount of Rs. 760 lacs in four years shall be made available from the local development fund. The Collector after contacting the concerned members of Vidhan Sabha/Vidhan Parishad/Member of Parliament should make available the required fund every year to the Maharashtra State Road Development Corporation.

(f) The income accruing by imposing excess surcharge in terms of road tax " 1 percent on petrol and 3 percent on diesel shall be made available to the Maharashtra State Road Development Corporation by the Finance Department.

The Government Resolution which is issued in the course of implementation of I.R.D.P. thus places the primary responsibility of implementation of I.R.D.P. on the Nagpur Municipal Corporation. The other relevant paragraph of the Government Resolution is paragraph 10 which reads as under:

10. For implementation of the project, costs incurred in shifting of electric lines and electric poles etc. shall be borne by the Maharashtra State Electricity Board and Maharashtra State Road Development Corporation to the extent of 50% respectively.

7. The expenditure for the shifting of electric poles, lines and transformers is directed to be borne in equal proportion of 50% by the M.S.E.B. and M.S.R.D.C. We appreciate the fact that the M.S.E.B. has, on earlier occasion agreed to give up the supervision charges involved in the shifting of the poles. However, the situation has, in fact, remained unchanged and the manholes continued to be uncovered and electrical poles continued to pose hazards to vehicular traffic and pedestrians.

8. The City of Nagpur Corporation Act, 1948 deals with the subject-matter of this petition. It casts an obligatory duty on the Corporation in terms of Section 57, the relevant extracts of which read as follows:

57. (1) The Corporation shall make adequate provision, by any means or measures which it may lawfully use or take, for each of the following matters, namely:

(a)...

(aa)...

(ab)...

(b) cleaning public streets, places and sewers and all spaces not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the Corporation or not; removing noxious vegetation; and abating all public nuisances;

(f) removing obstructions and projections in public streets or place, and in spaces not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the Corporation or in Government;

9. It is well-settled that authorities entrusted with the discharge of public duties of this nature are not entitled to plead want of funds as a defence for dereliction of such duties.

10. The authorities have pleaded the want of release of funds, at the appropriate time by the M.S.R.D.C. and M.S.E.B. In fact, it appears that at one stage, in a meeting, the Municipal Corporation proposed that they would not shift these public utilities such as poles, at least for the moment, but would divert Rs. 20 crores which were allocated for this purpose, to the construction of vital link-roads which were not included in the original I.R.D.P. This proposal appears to have been accepted by M.S.R.D.C. and according to the learned Counsel for the M.S.R.D.C, by the Government also. The fact that the Municipal Corporation wanted to divert their fund for this purpose of shifting utilities is apparent from the minutes of review meeting held on 8-12-2002 in respect of the Nagpur City Integrated Road Development Programme. It, however, appears that diversion of the funds for the purpose of shifting public utilities, to the development of vital link-roads is now being set up as a reason by the Municipal Corporation for not shifting the electrical poles, transformers and for replacing the lost or stolen manhole covers.

11. Now, indisputably the I.R.D.P. which has been implemented successfully, has gone a long way in making the city beautiful and has provided for excellent carriage ways for the movement of the citizens but has nevertheless resulted in some problems. The roads have been widened and since obviously while widening the roads, electric poles and other telephone poles could not have been removed without causing great inconvenience in terms of electricity supply and communication, they have remained where they were. They are now on the carriage way of the road or on the newly developed foot-paths where they should not be. They have, thus become hazardous to the safety and well being of the citizens.

12. The respondent-Municipal Corporation has submitted that there is lack of funds and is seeking a direction from this Court to the respondent -M.S.R.D.C. to release additional sum of Rs. 20 crores. The contention on behalf of the M.S.R.D.C. is that the funds to the extent of rupees twenty crores which were diverted to the Municipal Corporation were for development of road links, instead of shifting of public utilities. The stand of the M.S.R.D.C. is that the Municipal Corporation has already diverted the funds, for the purpose for which they were

meant i.e. shifting of public utilities, to the development of vital road links and, therefore, the Municipal Corporation is not entitled to ask for further funds. These submissions are not acceptable.

13. In *Municipal Council, Ratlam Vs. Vardichan and Others*, , the Supreme Court while enforcing the statutory obligations imposed on Ratlam Municipality, rejected a similar argument in these terms:

Its plea is not that the facts are wrong but that the law is not right because the municipal funds being insufficient it cannot carry out the duties u/s 123 of the Act. This "alibi" made us issue notice to the State which is now represented by counsel, Shri Gambhir, before us. The plea of the municipality that notwithstanding the public nuisance financial inability validly exonerates it from statutory liability has no juridical basis. The Criminal Procedure Code operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under Part III of the Constitution have to be respected by the State regardless of budgetary provision. Likewise Section 123 of the Act has no saving clause when the municipal council is penniless. Otherwise, a profligate statutory body or pachydermic governmental agency may legally defy duties under the law by urging in self-defence a self-created bankruptcy or perverted expenditure budget. That cannot be.

This position was reiterated by the Supreme Court in *Dr. B.L. Wadehra Vs. Union of India and others*, .

14. The learned Counsel for the M.S.R.D.C. has brought to our notice an order dated 13-4-2005 of this Court by which a Committee had been constituted for the purpose of inspection of the quality of the work. We are informed that the Committee has not been able to carry out the work entrusted to it. We direct the said Committee to carry out the functions entrusted to it under the orders of this Court and submit an action-taken report within a period of six months from today.

15. We see no merit in the dispute between the authorities. Funds were diverted by the Municipal Corporation, according to the joint decision in a meeting between the authorities, which was attended by the Commissioner of the Municipal Corporation and a responsible officer for the M.S.R.D.C. The decision taken in the meeting was forwarded to the State Government. We are informed that the Cabinet of Government of Maharashtra has also given approval to this diversion. We are, therefore, of view that if there was some lacuna in the original plan and there has been a diversion of funds, this cannot be a defence for failure to perform a public duty, imposed by a statute because the primary responsibility was on the respondent-Nagpur Municipal Corporation and the other authorities. The I.R.D.P. funds have already been sanctioned and if there is any lacuna and if any additional work was required to be done and, in fact, was done by all concerned, it is necessary for the respondents, in particular the respondents 1 to 4 and 8 to make such funds available to the Municipal Corporation for the purpose of carrying out the work. In *Alm ITR a H. Patel and Anr. v. Union of India*

and Ors., AIR 2000 SC 2017 , the Supreme Court observed, albeit in a different context, as follows:

We believe it is not for this Court to direct as to how the municipal authorities should carry out their functions and resolve difficulties in regard to the management of solid waste. The Court, in fact, is ill-equipped to do so. Without doubt the governmental agencies including the local authorities have all the powers of the State to take action and ensure that the city remains clean. They have only to wake up and act. The Court should, however, direct that the local authorities, Government and all statutory authorities must discharge their statutory duties and obligations in keeping the city at least reasonably clean.

Having regard to the seriousness of the problem, we consider it appropriate to direct the Municipal Corporation to carry out the work of replacing the manhole covers as may be advised by their experts. If necessary they may redesign the manholes to prevent theft or damage. We also direct them to shift the manholes, electric poles and lines to safe places which do not pose any hazards for the smooth flow of traffic, vehicular or pedestals.

16. We note with appreciation the fact the B.S.N.L. has already shifted their poles and, therefore, the learned Counsel for the petitioner makes no grievance in this regard.

17. Having regard to nature of the work involved, we consider it appropriate to direct the M.S.E.B. to co-operate and supervise for the purpose of shifting of electric poles and to render such assistance to the Municipal Corporation, as may be necessary, for doing this work.

18. At this juncture, we would like to take note of the submission made by the respondent - Municipal Corporation that one of the reasons is that the complaints and F.I.Rs. have been lodged by the Municipal Corporation to the Police Authorities regarding stealing the manhole covers, but have received no response from the Police Authorities. This indeed is an unfortunate situation and it is necessary to observe that the Police are bound to protect the public property, particularly where public safety is involved. Therefore, at the outset, we hereby direct the Police Authorities either to set up a Special Cell or adopt any other measure as they may consider appropriate to deal with such complaints and in any case to follow up such complaints when made by the Municipal Officers, as expeditiously as possible.

19. In the situation, we pass following directions:

(a) The respondent-Nagpur Municipal Corporation shall ensure that within a period of three months from today, all uncovered manholes are properly covered in such a manner as to minimize the chances of their theft.

(b) We direct the Nagpur Municipal Corporation to remove the electric poles and wires which are on the carriage way and on the footpath to safe places in co-operation with the M.S.E.B. The M.S.E.B. is directed to comply with any such

request as may be made by the Nagpur Municipal Corporation. The respondents Nos. 1 to 4 and 6 are directed to provide necessary funds to enable the respondent No. 2 - Nagpur Municipal Corporation to complete the aforesaid work within the time bound programme referred to above. The M.S.R.D.C. would be entitled to either, recover any amount which, according to them, may be in excess of the sum promised, from the Municipal Corporation or apply to the Government for reimbursement as may be advised. The work shall be carried out in accordance with the letter and spirit of the Government Resolution dated 23-2-2001.

(c) We direct the Police authorities to take cognizance and initiate investigation upon the complaints received and take action forthwith and in any case not later than 15 days of receiving such complaints.

(d) The Police-respondent No. 7 which is joined through its Commissioner of Police, Nagpur, is directed to consider preventive measures which may be taken in consultation with the Municipal Commissioner for preventing the theft of such manhole covers.

20. We trust that the respondent authorities will carry out these direction with utmost dispatch.

21. The rule is made absolute in the aforesaid terms.