

(2023) 01 BOM CK 0118
In the Bombay High Court
Case No : Writ Petition No.10174 Of 2022

Jayaji And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 27-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 243ZD
Maharashtra District Planning Committees (Constitution And Functions) Act, 1998 —
Section 10, 10(e), 12

Citation : (2023) 01 BOM CK 0118

Hon'ble Judges : Mangesh S. Patil, J;S.G. Chapalgaonkar, J

Bench : Division Bench

Advocate : M.V. Ghatge, Vaibhav U. Pawar, D.R. Kale, D.P. Palodkar, V.P. Deshmukh

Final Decision : Partly Allowed.

Judgement

1. Heard. Rule. Rule is made returnable forthwith. Learned Government Pleader waives service for respondents Nos.1 to 3, learned advocate Mr. D.P. Palodkar waives service for respondents No.6 and learned advocate Mr. V.P. Deshmukh waives service for respondents Nos.4 and 5. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. By invoking the powers of this Court under Article 226 of the Constitution of India the petitioners who are the members of the District Planning Committee, Jalna constituted under Article 243 ZD of the Constitution of India read with the provisions of the Maharashtra District Planning Committees (Constitution and Functions) Act, 1998 (herein after the DPC Act) initially impugned the circular dated 04.07.2022 issued by the Principal Secretary of the Planning Department - respondent No.2 and the office note dated 18.07.2022 put up by the Chief Secretary of the Administration Department of the State - respondent No.1 whereby under the purported exercise of the powers under Section 12 of the DPC Act the administrative approvals granted by all the DPCs across the State for the

District Development Plan (General) 2022-23 approved from 01.04.2022 have been stayed. The office note dated 18.07.2022 put up by the Chief Secretary of the State Government on the instruction of the Chief Minister inter alia directs the concerned department of the Government to stay the projects under various schemes including the District Development Plans wherever tenders were not floated, to put up appropriate proposal before the competent authorities.

3. During pendency of the writ petition, in view of the supervening event the Hon'ble Guardian Minister of Jalna by his communication dated 7. 11.2022 addressed to the respondent No.4 Chief Executive Officer of Zilla Parishad, Jalna issued a direction to take appropriate steps for modification/change in the works to be done as per the approved District Development Plan of the year 2021-22 in respect of the works to be undertaken by the Zilla Parishad wherever the works have not started and tenders have not been issued, according to the list enclosed thereto. By way of amendment the petitioners have even impugned this communication dated 07.11.2022.

4. The learned advocate Mr. Ghatge for the petitioners would submit that the works which were decided to be undertaken under the District Development Plan after due deliberation and after receiving approval and some of which had already proceeded and were at different stages were stalled by the blanket, unreasoned and unilateral act of the State Government by its communication dated 04.07.2022 and the directions under the signature of the Chief Secretary dated 18.07.2022. The decision was prompted basically because of the change in the Government. The decision of the DPC which has its origin in Article 243 ZD has been undermined by such blanket decisions. The decisions grossly ignore the constitutional and statutory scheme and are arbitrary and capricious. The error could only be rectified by this Court by invoking Article 226 of the Constitution.

5. Mr. Ghatge would submit that the initial decision dated 4. 07.2022 at least had stayed the projects sanctioned by the DPC only from 1. 04.2022. However, the impugned office note of the Chief Secretary dated 18.07.2022 proposes to stall all the projects approved under different schemes including the District Development Plans right from 01.04.2021. He would submit that the then Chief Minister had resigned on 29.06.2022 and the present successor took oath on 30.06.2022 and the impugned communication was issued on 04.07.2022. There could have hardly any time for the new government to objectively assess the situation. Barely within four to five days, without there being any assessment the impugned communication giving a blanket stay to the work was issued which is clearly indicative of the hasty manner in which the decision was taken without apparently addressing the fact situation in respect of the works to be undertaken under various schemes and even in respect of the District Development Plan recommended by the DPC constituted under Article 243 ZD and the DPC Act.

6. He would submit that perhaps realizing the difficulties to be faced in view of such blanket stay, the good sense prevailed over the government which later on as is pointed out by the respondents in their affidavits-in-replies has superseded

the impugned communication dated 04.07.2022 by another communication dated 27.09.2022 whereby the State has now directed all the District Collectors who are ex officio Secretaries of the DPCs across the State to submit the list of works having administrative approval under different schemes of the Government for undertaking a review in consultation with the guardian minister who were duly appointed by the Hon'ble Chief Minister on 24.09.2022. He would submit that even the guardian minister by the impugned communication dated 07.11.2022 has directed the respondent No.4 CEO Zilla Parishad, Jalna to substitute the works undertaken under the District Development Plan of the year 2021-22. He would submit that the impugned communications are clearly contrary even to the Government Resolutions dated 16.02.2008 and 17.12.2014.

7. The learned Government Pleader by referring to the affidavit-in-reply and the additional-affidavit-in-reply filed by the District Planning Officer of the Collector's Office at Jalna submitted that by issuing communication dated 04.07.2022 it was merely decided that pursuant to the appointments of the new Guardian Ministers who are ex officio Chairman of the District Planning Committees constituted under the DPC Act, would undertake a review under the enabling provisions of Section 12 of DPC Act and for the time being, a general instruction for staying the works was issued. He would submit that from time to time by various Government Resolutions the modalities for undertaking the work of the DPCs have been laid down. It is only with an attempt to harmonize different plans in tune with Section 10(e) that the decision was taken to undertake a review. It is squarely within the powers of the State Government and the Guardian Minister who is the Chairman of the DPC under the enabling provisions of Section 12.

8. The learned Government Pleader would submit that a meeting of the DPC was also conducted on 20.10.2022 and in order to bring about parity in respect of the development works across all the Talukas from the District it was resolved to undertake a review in respect of the works where work orders were not issued authorizing the Chairman and the guardian minister to take appropriate steps. Even Subsequently a decision has been taken by the government to cancel the appointments of the nominated members and the special invitees which would enable the newly constituted DPC to exercise the powers under Sections 10(e) and 12 of the DPC Act.

9. Learned Government Pleader Mr. Kale would further submit that the petitioners have no locus standi and even they are guilty of obtaining the interim order without disclosing the subsequent events and the meeting dated 28.10.2022.

10. Learned advocate Mr. Deshmukh for the respondents Nos.4 and 5 by referring to the affidavit-in-reply filed by Executive Engineer of the Public Works Department of the Zilla Parishad submitted that in view of the subsequent communication dated 27.09.2022 thereby lifting the stay granted by the impugned communication dated 04.07.2022 to the extent of the works which were started have been completed. According to the Annual District Plan for the

year 2021-22 out of 1533 works sanctioned, work orders have been issued in respect of 1190 works some of which are already completed and other works are in progress and only 200 works in respect of which the matter is being reviewed and reconsidered by the DPC for which a meeting was also held on 28.10.2022. He would submit that in respect of Annual District Plan for the year 2022-23 total 240 works were sanctioned, work orders have been issued in respect of 47 works and the remaining works are under active consideration of DPC which was also on agenda of its meeting dated 28.10.2022. He would submit that the grant of administrative approval is only a preliminary stage and the actual tendering happens after receiving sanction and funds from DPC. The administrative approvals are always subject to modification and change considering the priority and scope of work under different schemes and the public demand.

11. Subsequent to the amendment whereby the petitioners impugned the communications dated 07.11.2022, an additional affidavit has been filed by the District Planning Officer of the Collector Office and the learned Government Pleader submitted that attempt is being made now to rope in the Guardian Minister who being the Chairman of the DPC has merely taken initiative towards the progress in completing the work. The proposed changes were put up before the DPC in the meeting dated 28. 10.2022. He would submit that none of the cases where the tenders have been finalized and the work orders have been issued has been sought to be reviewed. Only in the matters where merely tender notices have been issued but it has not been finalized that the work orders have not been issued which are being reviewed. He would also submit that though the petitioners are objecting to the initiative taken by the present Guardian Minister, a similar action of his predecessor has never been questioned. It is a continuous process where, depending upon the exigencies, works which have been approved in the District Development Plan undergo change. There are no mala fides and the decisions are being taken by the DPC strictly in accordance with the Government Resolutions issued from time to time.

12. As far as the preliminary objection regarding locus standi of the petitioners is concerned, there is no dispute about the fact that they are all the members of the DPC and the resident of Jalna District on the date of filing of the petition. This very fact is eloquent enough to justify their locus in questioning the impugned communications which ex facie demonstrate that the decision of the DPC of which they were the members have been stalled initially by the communication dated 04.07.2022 and is now being sought to be modified in respect of the works where administrative approvals have been granted but the tenders have not been finalized. A similar objection was raised and turned down, in a petition wherein the fact situation was startlingly similar, in the matter of Charan Sovinda Waghmare Vs. State of Maharashtra and Ors.; 2012 (4) Bombay Cases Reporter 40 where the petitioners were the citizens of the District. Therefore, there is no substance in the objection being raised regarding the petitioners' locus standi and it is repelled.

13. We are alive to the limitations in undertaking a judicial review in exercise of the powers under Article 226 of the Constitution in the matter of administrative decisions and the Government Policies. We cannot sit in appeal over the impugned decisions taken by the State Government. However, it is trite that this Court can certainly examine the decision making process.

14. The powers and functions of the District Planning Committees constituted under Article 243 ZD of the Constitution and DPC Act have been elaborately considered and discussed by this Court in the matter of Charan Sovinda Waghmare (supra) in great detail and we respectively concur with that decision and need not delve any further except by emphasizing the fact that the District Planning Authority is not the implementing agency. Pertinently, in the facts and circumstances of that case it was inter alia concluded that the Guardian Minister with the Government Officials had scuttled the works which were approved in the District Annual Plan and had attempted to impose its decision on the Zilla Parishad in selecting 9 out of 62 works and thereby had encroached over the powers and functions of the Zilla Parishad.

15. Pertinently, pursuant to such observations of this Court regarding overreach, and specifically referring to it in the preface, the State Government took a decision on 17.12.2014 and directed that the DPCs' would function strictly in accordance with Section 10 of the DPC Act and would take decisions in accordance with the Government Resolution dated 16.02.2008. It was also directed that in respect of the proposals received from the local self government the priority of work has to be approved by the DPC and more importantly considering the exigencies if the DPC intends that a particular work or works have to be undertaken on a priority basis, it shall not directly be included by the DPC but it has to make a proposal to the local self government.

16. This decision clearly indicates that the DPCs have no power to undertake any revision or substitution of work which have already been approved in the District Development Plan to the extent the works to be executed and implemented by the local self government. As is mentioned in the preface of this decision, in spite of the Government Resolution dated 16. 02.2008 it was noticed that the administrative approvals were being granted and funds were being released on the request of individual members of the DPCs. It was also noticed that in the meeting of DPCs, powers to grant approval to the works were being assigned to the Guardian Ministers who are the ex officio Chairman of the DPCs by passing resolution. It also mentions that the decision was being taken in view of the observations of this Court in the matter of Charan Sovinda Waghmare (supra).

17. It is indeed startling to note that in spite of being alive to such a Government decision, in the DPC meeting dated 28.10.2022, as per agenda Item No.7 (iv) it has been resolved to delegate the powers to the Guardian Minister to grant administrative approval in respect of the proposed changes. Interestingly, even this topic was not on the original agenda. We need not go into the aspect as to whether the petitioners who complain about being not served with a notice

regarding holding of this meeting on 28.10.2022 in spite of being members. But the very fact that this resolution was passed by the DPC by taking up the topic without there being any agenda circulated to the members speaks in volumes about the manner in which the decision has been taken not only in respect of the works which are already forming part of the Annual District Plan of 2021-22 and 2022-23 but even conferring the powers on the Guardian Minister to grant approval to such changes.

18. The guidelines issued by the State Government on 16.02.2008 laying down the modalities as to the manner in which the works sanctioned by the DPCs can be granted administrative approvals. It does not give any power to the Guardian Minister cum Chairman of the DPC to grant administrative approval or even undertake a review which squarely falls in the domain of the District Planning Committee.

19. The impugned communications dated 04.07.2022 and 18. 07.2022 do not give any inkling in the sense that subsequently the blanket stay has been vacated by the government in respect of at least the work where work orders have been issued. Even the subsequent attempt by the District Planning Committee to delegate its power to the Guardian Minister by Resolution dated 28.10.2022 on the basis of which he issued the impugned communication addressed to the respondent No.4 Chief Executive Officer of the Zilla Parishad directing him to substitute the works to be performed by the Zilla Parishad, Jalna according to the Annual District Plan of 2021-22 where the works have not started, by new works according to the enclosures with this communication is certainly in flagrant violation of the direction of this Court in the matter of Charan Sovinda Waghmare (supra) and even the Government Resolution dated 17.12.2014.

20. The impugned communications dated 04.07.2022 and 18. 07.2022 are concerned, when admittedly the present Government has taken over with effect from 30.06.2022 when nothing has been placed before us to demonstrate objectively as to what had prompted it to issue blanket direction for stalling all the projects across the State which were already approved by the DPCs certainly suffer from the vice of being arbitrary and capricious.

21. Needless to state that the works which have been approved under the DPCs may in a given case undergo a change, however, that can happen only in tune with the provisions of the DPC Act and the Government Resolutions dated 16.02.2008 and 17.12.2014 which are purportedly issued by the State Government in exercise of the power under Sections 10 and 12 of the DPC Act. We have not been called upon to objectively examine the appropriateness of the individual works which are now sought to be changed. There could be in an appropriate case sufficient and cogent reasons wherein the works approved by the DPC and forming part of the Annual Development Plan undergo change based on various factors which justify such change. Therefore, even if we have found that the impugned communications dated 04.07.2022 and 18.07.2022 to the

extent of stalling the works forming part of the Annual Development Plan of the District approved by the DPC, it cannot be said that the DPCs have no powers to undertake a review of the works but the decision should be strictly in accordance with its powers circumscribed by the Government Resolutions dated 16.02.2008 and 17.12.2014.

22. Wherever the work orders have been already issued, by the subsequent decision, the stay has been vacated by the State Government. Therefore the petitioners are not entitled to and we cannot grant any mandamus directing the respondents to proceed to undertake even the remaining works which form part of the Annual Development Plan which would always be subject to change in the light of the above observations.

23. We allow the writ petition partly and quash and set aside the government communication dated 04.07.2022 and the office note dated 18. 07.2022 to the extent those grant absolute stay to the works to be performed under the Annual Development Plan. We also quash and set aside the communication dated 07.11.2022 issued by the Guardian Minister. The writ petition to the extent it prays for issuance of direction for completing all the works forming part of the Annual Development Plan is dismissed.

24. The Rule is made absolute in above terms.