

(2021) 09 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No.8502 Of 2018

Model Action For Rural Change Through Its Secretary Pravin
Ajinath Mungse

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 07-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 09 BOM CK 0006

Hon'ble Judges : Ujjal Bhuyan, J;Madhav J. Jamdar, J

Bench : Division Bench

Advocate : Nitin P. Deshpande, Dr. Kirti Kulkarni

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J

1. Heard Mr. Nitin Deshpande, learned counsel for the petitioner and Dr. Kirti Kulkarni, learned AGP for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of letter dated 02.07.2018 issued by the Commissioner of Agriculture, Maharashtra State and Chief Executive Officer, Vasundhara Panlot Vikas Yantrana i.e., respondent No.2.

3. Be it stated that by the impugned letter dated 02.07.2018, respondent No.2 instructed the Chairman, District Watershed Cell cum Data Centre who is also the Collector of Nasik District i.e., respondent No.3 to cancel the agreement entered into with the petitioner for implementation of the project bearing Project No.IWMP-36/2014-15 (area 5011.28 hectares).

4. Before dealing with the impugnement, it would be apposite to advert to the relevant facts.

5. Petitioner i.e., Model Action for Rural Change is a society as well as public trust

registered under the provisions of Societies Registration Act, 1860 and Maharashtra Public Trusts Act, 1950. Objective of the petitioner is to reach out to all sections of the society for management of human and natural resources for sustainable development though the focus is primarily on agriculture which is the backbone of Indian economy. One of the objectives is watershed development for the benefit of farmers.

6. It is stated that in the year 1994, a technical committee under the chairmanship of Professor C. H. Hanumantha Rao was appointed by the Government of India to assess the Drought Prone Areas Programme (DPAP) and the Desert Development Programme (DDP) with the purpose of identifying weaknesses and suggesting improvements. The committee made a number of recommendations and formulated a set of guidelines that brought DPAP, DDP and Integrated Wastelands Development Programme (IWDP) under a single umbrella. Watershed projects taken up by the Ministry of Rural Development, Government of India followed these guidelines. These guidelines were revised for application by the Ministry of Agriculture for its programme, the National Watershed Development Project for Rainfed Areas (NWDPA). Subsequently, emerging issues of ground water recharging and convergence were also taken up. Accordingly, National Rainfed Area Authority (NRDA) was set up in November, 2006. The watershed approach has been accepted as a major theme for development of rainfed areas with a view to conserving natural resources of water, soil and vegetation. After assessing the performance of various projects and programmes of watershed development, common guidelines for watershed development projects were framed in the year 2008, called the Common Guidelines for Watershed Development Projects, 2008 (briefly referred to as "the guidelines" hereafter). These guidelines broadly indicate a fresh framework for the next generation of watershed programmes.

7. In terms of the guidelines, Government of Maharashtra in the Rural Development and Water Conservation Department had issued resolution on 21.05.2008 constituting a State Level Nodal Agency and District Watershed Development Unit under the Chairmanship of Secretary to the Government of Maharashtra, Water Conservation Department. Commissioner of Agriculture, Maharashtra is the Chief Executive Officer of the said Agency. The Nodal Agency was subsequently registered under the Maharashtra Public Trusts Act, 1950 as a public trust named and styled as Vasundhara Panlot Vikas Yantrana.

8. In terms of the guidelines, petitioner had applied for empanelment as voluntary organization for implementation of the projects and programmes of the respondents. By letter dated 20.09.2011, petitioner was informed by respondent No.3 that it had been empaneled.

9. It may be mentioned that vide letter dated 04.01.2013 Vasundhara Panlot Vikas Yantrana allotted the work of watershed cluster No.Nashik/ IWMP-24 WF3/2013-2014 covering an area of 4989 hectares to the petitioner. After allotment of the work Memorandum of Understanding (MoU) was executed

between Vasundhara Panlot Vikas Yantrana and the petitioner on 11.01.2013. The said MoU was for a period of two years subject to extension on the basis of performance.

10. Petitioner has stated that its performance was found to be upto the mark whereafter by letter dated 05.03.2014 the period of work was further extended by three years which necessitated signing of the second MoU on 05.02.2015. It is stated that the area covered by the first MoU was 4989.00 hectares but the area covered by the second MoU is 5513.80 hectares. It is stated that the area covered by the first MoU was as per the preliminary project report but the area covered by the second MoU was as per the detailed project report. Be that as it may, the area covered by this project is entirely in tribal area. Petitioner has completed more than 50% of the work in terms of the project.

11. Buoyed by the success of the first project, petitioner submitted preliminary project report for the second project having similar nature of work in the adjoining villages before respondent No.4 who thereafter forwarded the same to respondent No.2. Ultimately, the project report for the second project was approved by the Government of India vide letter dated 24.07.2014. Thereafter by order dated 21.01.2015 issued by respondent No.2 the second project was allotted to the petitioner. This was followed by signing of MoU between the petitioner and respondent No.3 on 05.02.2015. From this MoU dated 05.02.2015, it is clear that the area covered by the second project is 5011.28 hectares as per preliminary project report.

12. Petitioner has described the first project as Nasik IWMP 24 and the second project as Nasik IWMP 36.

13. According to the petitioner concerned Gramsabha had approved allotment of both the projects to the petitioner. Petitioner has also executed MoUs with village-wise watershed committees and with Watershed Cell cum Data Centre (WCDC). Expected outcome of the MoUs is to increase the cropping intensity and agricultural productivity resulting in overall increase in agricultural production leading to increase in income of farmers and landless labourers in the project areas. The related outcome is also an increase in ground water due to enhanced recharge by watershed intervention.

14. In respect of the second project, petitioner submitted detailed project report on 07.04.2016 which was approved by the authorities.

15. While the petitioner was successfully implementing both the projects, respondent No.2 issued the impugned letter dated 02.07.2018 stating that by way of the second project given to the petitioner the area of land has been increased. Total land area under the petitioner's two projects exceeds 10,000 hectares. This has invited audit objection.

Therefore, respondent No.3 was requested to cancel the second project given to the petitioner.

16. According to the petitioner, the total land area covered by the two projects is 11,199 hectares. As per guideline No.35.2 of the Common Guidelines for Watershed Development Projects, 2008 (already referred to as "the guidelines" hereinbefore), a voluntary organization cannot be assigned more than 10,000 hectares area in a district at any point of time. However, contention of the petitioner is that the said guideline is to be broadly followed. It is not mandatory. That apart, in the first project 2196 hectares of forest land is also included. There is a clear bar for working in forest area. Respondents committed a mistake in including forest area in the first project. Likewise in the second project also is included 907 hectares of forest land. If the forest area is excluded, the total area covered by the two projects of the petitioner would be less than 10,000 hectares.

17. It is in the above context that the impugned challenge has been made by the petitioner on the ground of the impugned communication being arbitrary and unreasonable.

18. Respondent Nos.1 to 4 have filed a common affidavit in reply through Rakesh Rasiklal Wani, Additional Project Manager, District Watershed Cell cum Data Centre, Nasik. At the outset, it is stated that the Integrated Watershed Management Programme was launched by the central government with participation of the state governments. It was launched during the financial year 2009-2010. Integrated Watershed Management Programme is being implemented as per the Government of India Common Guidelines for Watershed Development Projects, 2008 which were revised in the year 2011 (already referred to as "the guidelines").

18.1. It is stated that the petitioner was allotted two projects i.e., IWMP-24/2012-13 having treatment area of 5513.80 hectares and IWMP-36/2014-15, the treatment area being 5011.28 hectares. Thus the total treatment area covered by the two projects stood at 10,525.08 hectares.

18.2. Referring to the guidelines, more particularly to paragraph 35.2(i), it is stated that no voluntary organization can be assigned more than 10,000 hectares area in a district. However, in case of the petitioner, the total allotted treatment area covered by the two projects was 10,525.08 hectares.

18.3. Accountant General pointed out to the above aspect and raised an objection in the audit memorandum dated 13.03.2018. In view of such objection, State Level Nodal Agency in its 28th meeting held on 17.03.2018 decided to cancel the second project of the petitioner i.e., IWMP-36/2014-15. This was followed by letter dated 02.07.2018 issued by the Commissioner of Agriculture, Maharashtra addressed to the Chairman, Watershed Cell cum Data Centre, Nasik which has been impugned in the present writ proceeding. Answering respondents have justified the objection of the Accountant General which it is stated is in accordance with the guidelines as revised in the year 2011.

18.4. Respondents have also stated that the two projects fall within tribal area. In so far the first project is concerned, work upto 40% has been completed while

detailed project report of the second project has not yet been sanctioned at the state level.

18.5. It is also stated that farmers of the respective villages as a user group are required to contribute a minimum of 10% (5% for scheduled caste, scheduled tribes and small and marginal farmers) of the cost of Natural Resource Management (NRM) Works to the watershed development fund as per the guidelines whereafter NRM Works are executed in the private lands on the basis of detailed project report.

18.6. Regarding contention of the petitioner that the allotted areas covered by the two projects include forest area where petitioner could not carry out non-forest activities, it is stated that out of the total area of 11,199.57 hectares if the forest area of 3103 hectares is subtracted then the total land area would be 8096.57 hectares which would be less than 10000 hectares. The submission is that the above contention cannot be accepted as it is not in accordance with the guidelines. Referring to paragraph 35.2 of the guidelines it is stated that at any point of time one voluntary organization cannot be assigned more than 10000 hectares area in a district. It is contended that forest area cannot be omitted from the project area as the Integrated Watershed Management Programme is being implemented in the State of Maharashtra as per guidelines issued by the central government.

18.7. It is further stated that following objections raised by the Accountant General and the decision taken by the State Level Nodal Agency in its 28th meeting, allotment of project IWMP-36/2014-15 to the petitioners has been cancelled and request has been made to respondent No.3 to allot the project to another Project Implementing Agency (PIA) vide letter dated 02.07.2018.

18.8. Finally respondents have contended that the writ petition is devoid of any merit and therefore, the same is liable to be dismissed.

19. Mr. Deshpande, learned counsel for the petitioner has referred to the guidelines more particularly to paragraph 35.2 thereof and submits that the stipulation that at any point of time one voluntary organization should not be assigned 10000 hectares area in a district do not have binding effect; after all these are guidelines and should not be read like a statute. Basic objective of the guidelines is to ensure that the projects are successful and that the authorities do not act in an unguided manner.

19.1. His second submission is that total land area covered by the two projects of the petitioner is 11,199 hectares. First project includes 2196 hectares of forest land and 907 hectares of forest land is included in the second project. No non-forest activities can be carried out in forest area. Therefore, if the two forest areas are excluded from the two projects of the petitioner, the total land area covered by the two projects of the petitioner would be less than 10000 hectares. In such a situation the requirement of paragraph 35.2 of the guidelines would be maintained. Referring to the guidelines more particularly to paragraph 35.2

thereof, Mr. Deshpande submits that the guidelines speak of one district. Though the land area of the two projects of the petitioner are adjacent nonetheless a substantial portion thereof is in the neighbouring district.

20. On the other hand Dr. Kulkarni, learned AGP has relied upon the reply affidavit filed by the respondents. Relying upon the said affidavit, she submits that the impugned letter is in accordance with the guidelines and does not suffer from any infirmity. Accountant General had pointed out the anomaly in petitioner having more than 10000 hectares of land at the same time and rightly objected to the same. She submits that the impugned decision, therefore, does not call for any interference. She further submits that the impugned letter is an internal communication between the authorities. Before final decision could be taken on the basis of the impugned communication, petitioner has approached the Court. Impugned letter dated 02.07.2018 does not give rise to a cause of action for instituting a legal proceeding. Therefore, the writ petition is premature.

21. In his reply submissions Mr. Deshpande, learned counsel for the petitioner has reiterated his initial submissions. However, on a query by the Court he submits that no notice was issued to the petitioner and no opportunity of hearing was granted to the petitioner either prior to or after issuance of the impugned letter dated 02.07.2018.

22. Submissions made by learned counsel for the parties have received the due consideration of the Court.

23. Part V of the guidelines deals with institutional arrangements at project level. Paragraph 34 says that the State Level Nodal Agency would evolve appropriate mechanisms for selecting and approving the project implementing agencies who would be responsible for implementation of watershed projects in different districts. The project implementing agencies may include amongst others relevant line departments and autonomous organizations under the state governments / central government, government institutes / research bodies, panchayats and voluntary organizations. However, paragraph 34 lays down the criteria to be followed in selection of the project implementing agencies.

23.1. As per paragraph 35, voluntary organizations have an important role in the programme. As far as direct implementation of the programme is concerned, voluntary organizations with established credentials may be chosen as project implementing agencies on the basis of detailed criteria mentioned in paragraph 35.1. The criteria to be followed for selecting project implementing agencies include the following:-

- (i) it should be a registered legal entity having at least five years standing;
- (ii) it should have at least three years of field experience in the area of community based natural resource management and livelihood development;
- (iii) it should not have been blacklisted by Council for Advancement of People's Action and Rural Technology (CAPART) or any other department of the state

government or central government;

(iv) it should be equipped with a dedicated and multi-disciplinary team with gender balance;

(v) it should furnish three years' balance sheet, audited statement of accounts and income returns;

(vi) it should furnish the profile of its board of directors; and

(vii) it should have successfully implemented such projects independently.

23.2. Paragraph 35.2 is relevant and the same is extracted hereunder:-

"35.2 It will be subjected to the following conditions:

i. At any point of time, one VO cannot be assigned more than 10,000 ha area in a district.

ii. At any point of time, one VO cannot be assigned more than 30,000 ha area in a State.

iii. In any case, not more than 1/4th of the total projects at a time in a State to be implemented by VOs."

23.3. From a perusal of the contents of paragraph 35.2 as extracted above, we find that selection of voluntary organizations satisfying the above mentioned criteria is subject to the condition, amongst others, that at any point of time one voluntary organization cannot be assigned more than 10000 hectares area in a district.

24. In so far the petitioner is concerned, the area covered by the first project is 5513.80 hectares and the area covered by the second project is 5011.28 hectares. The total area covered by the two projects is 10,525.08 hectares. According to the respondents the land area covered by the two projects of the petitioner exceeds the stipulation of 10000 hectares by 525.08 hectares. When this was pointed out by the Accountant General in its audit objection, decision was taken to cancel the second project of the petitioner on 17.03.2018 whereafter the impugned letter dated 2. 07.2018 was issued by respondent No.2 to respondent No.3 for cancelling the project and for allotting the same to another project implementing agency.

25. It is the contention of the petitioner that in both the projects allotted to the petitioner are included lands which are under forest. In the first project 2196 hectares of forest land is included whereas in the second project 907 hectares of forest land is included. Petitioner has contended that no non-forest activity is permissible in forest area. Respondents have wrongly included forest area in the total land allotted to the petitioner for implementing the two projects. If the forest area is excluded then the total area of land covered by the two projects of the petitioner would be less than 10000 hectares which would be in conformity with paragraph 35.2 of the guidelines.

26. Without entering into the question as to whether provisions of the guidelines have binding effect or not, what is quite clear is that petitioner was not given notice or hearing prior to issuance of impugned letter dated 02.07.2018 or even thereafter. This despite the fact that the impugned letter / decision has the potential of causing adverse civil consequences upon the petitioner. It is trite law that any action which infracts the rights of the parties or which entails civil consequences is required to be preceded by notice and hearing. Admittedly, no notice was issued to the petitioner and no hearing was granted. The same has vitiated the decision making process.

27. In the light of the above, we set aside the impugned letter dated 2. 07.2018 and direct the respondents to give an opportunity of hearing to the petitioner before taking a decision regarding cancellation of the second project bearing Project No.IWMP-36/2014-15. Accordingly, we direct the respondents to grant opportunity of hearing to the petitioner and thereafter to take a decision one way or the other. We make it clear that we have not expressed any opinion on merit and all contentions are kept open.

28. Writ petition is accordingly allowed to the extent indicated above. However, there shall be no order as to costs.