

(2024) 02 OHC CK 0044

In the Orissa High Court

Case No : Writ Petition (C) Nos. 28027, 28895, 29196, 29736, 29766, 29933, 30099, 30713, 30853, 30970, 31005, 31010, 31013, 31015, 31605, 32607, 32785, 32952, 33495, 34246, 34588, 35027, 35412, 35684, 36296, 36298, 36745, 36746, 37494, 37495, 37496, 37681, 37700, 3

Nagendra Kumar Singha And Others Vs State Of Odisha And Others ?

Date of Decision : 07-02-2024

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 243B, 243D, 243G
Orissa Grama Panchayats Act, 1964 — Section 3, 4, 5, 6, 15, 16, 20(1), 28, 29(1), 44, 44(1), 45, 46, 70, 93

Citation : (2024) 02 OHC CK 0044

Hon'ble Judges : B.P. Routray, J

Bench : Single Bench

Advocate : P. Acharya, A.R. Panda, K. Rath, S.K. Dalai, G.K. Rath, C.R. Pattnaik,, J.K. Majhi, A. Pattnaik, M.R. Nayak, J.K. Mohapatra, A. Mishra, D.R. Mohapatra, S.P. Panda

Final Decision : Disposed Of

Judgement

B.P. Routray, J

1. Several Petitioners have joined together in the present batch of writ petitions seeking direction that the projects under the intervention "Ama Odisha Nabin Odisha" (?? ????? ???? ?????) should be selected and executed by the local elected body of the Gram Panchayat. All the writ petitions having common prayer are heard together and disposed of by this common judgment.

2. The Petitioners are mostly the Sarapanch / Ward Members of different Gram Panchayats in the State of Odisha.

3. The intervention (Scheme) "Ama Odisha Nabin Odisha" has been introduced vide Resolution No.14574/PR&DW dated 11.07.2023 by Government of Odisha aiming implementation of various social, cultural and developmental projects in the Gram Panchayats by augmenting rural infrastructure in order to achieve accelerated growth as well as to preserve the rich cultural heritage of Odisha.

The intervention aims at creation of amenities for protection and preservation of Jagannath culture and places of worship. The Scheme further aims at empowering the villagers with internet facilities, sports infrastructure, smart schools, training hubs for SHG and youth, banking and digital connectivity. The basic features of the Scheme includes taking up construction of new projects which are contribute to the overall development of the community and well-being of the general public for which funds are not available otherwise. The admissibility, selection of projects, approving authority, sanction and release of funds, executing agency and transparency in the Scheme are as follows:

"Admissibility:-

- The project should be of developmental nature.
- It does not invite recurring expenditure.
- It creates useful community assets for benefit of the community at large.
- It preserves and renovates ancient monuments and other infrastructure belonging to the community.

Selection of Projects:-

- The projects under the intervention can be suggested / recommended by local people / community organizations / public representatives and other stake holders.
- The project list (G.P. wise) of the Block are to be consolidated at district level and submitted to PR & DW Department with signatures of Collector and President, Zilla Parishad of the district for due examination and approval of Government.
- The approved projects may be presented in the Panchayat Samiti meeting by the BDO for information of the members.

Approving Authority:-

- The projects shall be approved by the Government.
- Administrative approval and technical sanction shall be accorded as per Panchayat Samiti Accounting Procedure Rules, 2002 and subsequent amendment made therein from time to time.

Sanction and Release of Funds:-

- Funds will be released from PR & DW Department to the PL Accounts of the CDO-cum-EO, Zilla Parishad out of which, the CDO-cum-EO, Zilla Parishad shall draw the funds in Grants-in-Aid bill and release the funds to the Blocks in two instalments i.e.52% and 48% calculating the project cost sanctioned to the Block under the intervention.

Executing Agency:-

- The Panchayat Samiti shall execute the work departmentally following due procedure.
- The Collectors are also authorised to select any other executing agency / agencies for departmental execution of works under the intervention "Ama Odisha Nabin Odisha" (?? ????? ????? ?????).
- No pro rata charges are applicable in case of departmental execution of work.

Transparency:-

- The PR & DW Department shall develop a web based MIS for monitoring of the Intervention. A dedicated app shall be developed for photographs sharing before, during and after for each project with GIS tagging.
- Social Audit shall be encouraged for proper monitoring and supervision of each project under "Ama Odisha Nabin Odisha" (?? ????? ????? ?????)."

4. The State Government have resolved to allocate a fund amounting up-to Rs.50,00,000/- to each Gram Panchayat, out of which up-to Rs.10,00,000/- shall be spent for the purpose of promotion, preservation and protection of Jagannath culture and tradition, places of worship and pilgrim amenities in places with high congregation; and the funds shall be utilized in the concerned Gram Panchayat to achieve such objective as sought for in the Scheme.

5. The grievance of the Petitioners is that, despite them being the local elected representatives, their participations in implementation of the projects have been limited in the schemes. Though proposals have been submitted by them in due compliance to the guidelines of the Scheme, but they are kept in dark about implementation of the projects. Further, the implementation of the projects are being carried out by Executive Departments and as per the Scheme, either the works shall be executed by the Panchayat Samiti departmentally or by other agencies to be chosen by the Collector for departmental execution of the work.

6. The Petitioners contend that, such provisions in the Scheme that authorizes the Government Departments or agencies to implement various development projects in the Gram Panchayats without inclusive participation of the local elected body of Gram Panchayats are in clear derogation of the principles of self-governance envisaged under Article 243-G of the Constitution of India and the provisions of the Gram Panchayat Act, 1964 (hereinafter referred as 'the OGP Act') and the Rules framed there-under. It is further contended that the actions mentioned in the Scheme to execute the developmental work in the Gram Panchayat through various Government Departments and other agencies excluding the involvement of the Gram Panchayat will defeat whole objective of the OGP Act and the Rules, which speak in clear and unequivocal terms that the Gram Panchayat shall be the executing authority in respect of every Gram Sasan. In the light of provisions contained in the OGP Act and Rules, it is obligatory that the programmes and works in the Gram Panchayat are to be undertaken by the

Gram Panchayat and Section 44 of the Act enumerates various provisions regarding the list of obligatory functions which Gram Panchayat shall undertake, control and administer. The State authorities by severing the participation of Gram Panchayat from the developmental works at village level have violated the provisions of the Act and the principles of local self-governance and as such, the same are unsustainable in the eye of law.

7. The State have filed the counter taking their common stand that, by implementing different projects under "Ama Odisha Nabin Odisha" Intervention, the Government have never violated the principles of local self-governance nor has it acted contrary to the provisions of the OGP Act and Rules. It is true that Government has not entrusted the implementation part to the Gram Panchayat, but it has formulated the guidelines for executing agency to implement the projects under the Intervention. Further, the funds provided under the intervention is not from own source of revenue of the Gram Panchayat nor it is a grant nor a loan nor from own source of revenue and therefore, it is not Gram Panchayat fund as per Section 93 of the Act. Hence all such allegations leveled by the Petitioners are untrue and not tenable and implementation of the projects under the Intervention is not violative of the provisions of the OGP Act and Rules. Further, in order to ensure transparency and effective monitoring of the projects, a citizen centric dedicated web-based MIS system and a mobile app for real-time monitoring with Geo tagging has already been developed and a Citizen Information Board containing all details regarding the project has been constructed uniformly at every project site throughout the State.

8. It is contended by the Opposite Parties that, the funds under the Intervention are not the funds of the Gram Panchayat as defined under Section 44 (1) of the Act and now it is at an advanced stage of implementation and as on 07.12.2023, a total 90650 projects have already been approved under the Intervention throughout the State. The Intervention is a policy decision of the State Government and is in conformity with the provisions of the Constitution of India as well as the Act and Rules.

9. The primary allegation of the Petitioners is that, the exclusion of participation of the elected representatives of the Gram Panchayats or their limited interference in the Intervention is violative of the provisions of the Constitution of India, the Odisha Grama Panchayat Act and the Odisha Panchayat Samiti Act (OPS Act) and Rules framed there-under. It is their further case that by virtue of different provisions of the OGP Act, particularly Section 5, 6, 44 and 45, the selection and execution of projects under the Intervention should have been done by the Gram Panchayats. In this context, first Article 243G of the Constitution of India is reproduced hereunder;

"243-G. Powers, authority and responsibilities of Panchayats.-Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain

provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to-

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.”

10. Undoubtedly, Article 243-G is an enabling provision empowering the State Legislature to make laws in order to endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-Government. The Hon’ble Supreme Court in the case of State of Uttar Pradesh and another vrs. Zila Parishad, Ghaziabad and another, (2013) 11 SCC 783, where the issue was relating to withdrawal of the power of Public Distribution System from the Panchayat by the Government, have held as follows:-

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23. The High Court has considered the nature of the aforesaid constitutional provision and held as under : (Zila Panchayat case v. State of U.P.,(2003) 5 AWC 3978 , AWC pp.3981-82, para 16)

“16. In our opinion, this provision is only an enabling provision. It enables the Legislature of a State to endow the Panchayats with certain powers. ... Hence, the Legislature of a State is not bound to endow the Panchayats with the powers referred to Article 243-G, and it is in its discretion to do so or not. At any event there is no mention of the public distribution system in Article 243-G of the Constitution.”

Thus, it is evident that the High Court has taken a view that the provision of Article 243-G is merely an enabling provision, and it is not a source of legislation. This view seems to be in consonance with the law laid down by this Court in U.P. Gram Panchayat Adhikari Sangh v. Daya Ram Saroj (2007) 2 SCC 138 : (2007) 1 SCC (L&S) 773 wherein an observation has been made that Article 243-G is an enabling provision as it enables the Panchayats to function as institutions of self-government. Further, this Court noted that such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, subject to such conditions as may be specified therein, with respect to the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relations to the matters listed in the Eleventh Schedule. The enabling provisions are further subject to the conditions as may be specified. Therefore, it is for the State Legislature to consider conditions and to make laws accordingly. It is also open to the State to eliminate or modify the same.

24. Therefore, it is apparent that Article 243-G read with the Eleventh Schedule is not a source of legislative power, and it is only an enabling provision that empowers a State to endow functions and devolve powers and responsibilities to

local bodies by enacting relevant laws. The local bodies can only implement the schemes entrusted to them by the State.”

11. It is thus clear from the aforesaid decision, and a comprehensive reading of Article 243-B, 243-D, 243-G and Eleventh Schedule, that, such provisions are only enabling provisions empowering the State Legislature to grant powers and functions in respect of three tiers of Panchayat system. The Odisha State Legislature in exercise of such powers has enacted the Odisha Gram Panchayat Act, 1964, Odisha Panchayat Samiti Act, 1959 and Odisha Zila Parishad Act, 1991. It is true that the entries at Item No.17, 20 and 29 of the Eleventh Schedule have enlisted the subjects of education (including primary and secondary schools), libraries and maintenance of community assets in respect of Panchayats giving their entitlement to exercise powers. But, the same are only enabling provisions and not a source of legislative power. Therefore, it would be incorrect to allege that the provisions of the Scheme are violative of Article 243-G of the Constitution of India.

12. Next, Section 5 & 6 of the OGP Act speaks about Grama Sabha and Palli Sabha and their functions. Section 44 and 45 speaks about the obligatory and discretionary functions of the Grama Panchayats respectively. Chapter-VI of the OGP Act contains Section 44 to 70 and Section 46 prescribes delegation of duties to Grama Panchayat by a local authority and Government. Extracts of Section 44, 45 & 46 are reproduced below:

“44. Obligatory functions – (1) Subject to the provisions of this Act and the rules made thereunder, it shall be the duty of a Grama Panchayat, within the limits of its funds to undertake, control and administer and be responsible for the following matters in respect of the Grama, namely :

(a) construction, repair maintenance, alteration and improvements of Public Streets;

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(k) the protection, maintenance and development of all properties vested in or entrusted to the management of the Grama Panchayat;

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(q) rendering all reasonable assistance to the Samiti in matter of establishment and maintenance of schools for primary education;

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(u) the implementation of schemes for economic development and social justice in relation to agriculture, including agricultural extension;

(v) fulfillment of any other obligation imposed by or under this Act or any other law for the time being in force;

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(z-4) maintenance of community assets.

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(2) Notwithstanding anything contained in any other law, in the Scheduled Areas, subject to the control and supervision of the Grama Sasan, the Grama Panchayat shall exercise within its local limits, such power and perform such functions in such manner and to such extent as may be prescribed in respect of the following matters, namely :

(a) enforcement of prohibition or regulation or restriction of the sale and consumption of any intoxicant;

(b) the ownership of minor forest produce;

(c) prevention of alienation of land and restoration of any unlawful alienated land of a Scheduled Tribe; and

(d) control over money-lending to the Scheduled Tribes.

(3) Subject to the provisions of the Act and the rules made thereunder, it shall be the duty of a Grama Panchayat, within the limits of its funds to—

(a) prepare plans for economic development and social justice; and

(b) implement schemes for economic development and social justice and undertake execution of any other scheme, performance of any act or management of any institution, or organisation as the Government may, by order, entrust to it including those in relation to the matters listed in the Eleventh Schedule to the Constitution of India, subject to such terms and conditions as may be specified in the order."

45. Discretionary functions – The Grama Panchayat may, if a majority of its members so decide by a resolution, with the previous approval of the State Government and shall, if the state Government so direct, undertake within the Grama the control and administration of and be responsible for the following matters, namely :

(a) planting and care of trees on the sides of public streets or in other public places vested in it;

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(h) establishment and maintenance of libraries and reading rooms and providing

for music and other entertainments in public places;

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(k) establishment and maintenance of Akharas and clubs and places for sports, games and other recreations;

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(x) the doing of anything the expenditure on which is declared by the State Government to be an appropriate charge on the Grama Fund; and

(y) any measure not hereinbefore specifically mentioned which is likely to promote public safety, health, convenience or general welfare.

46. Delegation of duties to Grama Panchayat by a local authority, by a Central or State Government – Nothing in this Chapter shall be deemed to impose any duty or confer any power on the Grama Panchayat with respect to any matter which is under the direct administrative control of any other local authority or of any department of the Central or State Government unless such duty or power has been transferred or delegated to the Grama Panchayat by order of the local authority of the Central or State Government, as the case may be.”

13. Funds of Grama Panchayat as referred to in Section 44 are defined under Section 93 of the said OGP Act. Section 93 prescribes Grama Fund. It details about the sums which are to be considered as the Grama Fund.

14. The Grama Fund includes all moneys assigned to the Grama Sasan by Government or Samiti for the establishment or maintenance of institutions, and all other sums assigned to the Grama Fund by special or general orders of the State Government from out of Government revenues, or otherwise. But such sums prescribed under Section 93 does not mention inclusion of funds made available by the State Government directly for expenditure for implementation of any special Scheme formulated by the State. Section 93 reads as follows:

“93. Grama Fund – (1) There shall be constituted a Grama Fund for every Grama Sasan and to the credit of the said fund shall be placed–

(a) all proceeds of any tax, toll, fee or rate imposed under the provisions of this Act;

(b) all fines imposed and realised under this Act in respect of offences committed within the jurisdiction of the Grama Sasan in proceedings instituted under this Act, or under any other Act or rules in which provision is made for the credit of such fines to Grama Fund;

(c) all sums ordered by a Court to be placed at the credit of the Grama Fund;

(d) all proceeds of the disposal of property by or on behalf of the Grama Sasan;

- (e) all income accruing from any property or institution or undertaking or work belonging to or vested in or under the direction, management and control of the Grama Sasan;
 - (f) all moneys received by way of penalty, compensation or for compounding offences under the provisions of the Act, or the rules made thereunder;
 - (g) all income from any scheme undertaken by the Grama Panchayat on its own account or on behalf of Government or any local authority;
 - (h) all moneys assigned to the Grama Sasan by Government or Samitis for the establishment or maintenance of institutions;
 - (i) such portion of the rent or other proceeds of Government property as the State Government may direct to be placed to the credit of the Grama Fund;
 - (j) all other sums assigned to the Grama Fund by special or general order of State Government from out of Government revenues, or otherwise;
 - (k) all sums received by way of loan, gift or contributions or other grants from any source whatsoever by or on behalf of the Grama Sasan;
 - (l) all sums received on account of cesses under the Orissa Cess Act, 1962 (Orissa Act 11 of 1962);
 - (m) all interest and profits arising from any investment of or from any transaction in connection with, any money belonging to the Grama Sasan;
 - (n) the balance, if any, standing at the commencement of this Act at the credit of the Grama Fund.
- (2) Nothing in this Section or in this Act shall affect any obligation of a Grama Sasan arising from a trust legally imposed upon or accepted by it."

From a bare reading of Section 93, it is understood that the money kept under a special Scheme made by the State Government shall not form part of the Grama Fund unless it is assigned to the Grama Fund by special or general orders of the State Government. As per the narration made in the Intervention, the funds mentioned therein have not been assigned to Grama Fund and in terms of Section 46, nothing mentioned in Section 44 and 45 i.e., Obligatory and Discretionary functions of Grama Panchayat, does confer any power on the Grama Panchayat without such power is transferred or delegated by order of the State Government. It is pertinent to state here that the functions of Grama Panchayat is subjected to such functions mentioned in Chapter-VI, particularly, Section 44 and 45 of the OGP Act. In other words, no duty or power is deemed to be conferred on the Grama Panchayat with respect to any matter under the control of the State Government, unless such duty or power has been delegated to them by order of the State Government. In the present impugned Scheme, the project approving authority is the State Government and the funds are of the State Government. According to the Scheme, funds will be utilized from PR & DW

Department of Government of Odisha to the PL Accounts of the CDO-cum-EO, Zilla Parishad and the projects shall be approved by the Government. So far as execution is concerned, the Panchayat Samiti shall execute the work departmentally and the Collectors are authorized to select any other executing agency for departmentally execution of the works. Therefore, nothing is found in the Intervention which is violative of the provisions of the OGP Act.

15. In respect of the submissions regarding violation of provisions of the OPS Act, it is contended by the Petitioners that the funds under the Scheme having been placed with the Panchayat Samiti, it comes under the purview of Panchayat Samiti funds as defined in Section 28 of the OPS Act and therefore, the execution of the projects should only be done by the Panchayat Samities.

16. Section 28 of the OPS Act reads as under:-

"28. Panchayat Samiti Fund – (1) All moneys received by a Samiti shall constitute a fund called the 'Panchayat Samiti Fund'. The fund shall vest in the Samiti and shall be applied for the purposes specified in this Act and for such other purposes and in such manner as may be prescribed.

(2) The Block Development Officer shall, subject to the control of the Government remain in charge of the Panchayat Samiti Fund and shall subject to such rules as may be prescribed administer the same in accordance with the decision of the Samiti.

(3) All moneys received by the Samiti shall be lodged in the nearest Government Treasury or with the sanction of the Government in any Bank approved by them."

Further, Section 29 speaks of the income and expenditure of the Samiti, which reads as under:-

"29. Income and expenditure of the Samiti - (1) The sources of income of a Panchayat Samiti shall consist of-

(i) funds relating to institutions and schemes transferred by the Government or Heads of Departments of the Government of the Panchayat Samiti;

(ii) funds relating to the Community Development programme ;

(iii) Central and State aid and aid received from the All-India Bodies and Institutions for the development of cottage and village industries, khadi, silk, coir handicrafts and the like ;

(iv) donations and contributions received by the Samiti from Panchayats, or from the public in any form ;

(v) such share of the land revenue, State taxes or fees as may be prescribed ;

(vi) proceeds from taxes, surcharges or fees which the Samiti is empowered to levy under this Act or any other law ;

- (vii) such contributions as the Samiti may levy from Grama Panchayats;
- (viii) income from endowments, trusts or other institutions administered by the Samiti ;
- (ix) grants from any authorities, organizations or statutory bodies.

(2) The expenses of the Samiti shall include the salaries and allowances of its employees the travelling expenses incurred by the members of the Samiti for attending the meetings of the Samiti, any item of the expenditure directed by the Government for carrying out the purposes of this Act and such other expenses as may be necessary for such purposes.

(3) All amounts levied and realised on account of fees by the Samiti shall be separately accounted for and utilised solely for the purposes for which such fees had been respectively levied.”

17. In the instant Scheme, the funds flow from PR & DW Department of Government of Odisha to the PL Accounts of the CDO-cum-EO, Zilla Parishad and thereafter, it is released to the Blocks. Therefore, the funds will go to the Blocks and is meant for the Blocks. It is the fund released by the Government for the Blocks. In other words, the funds will go to the Blocks through the Panchayat Samiti and so it cannot be construed in strict sense as the fund of Panchayat Samiti as provided under Section 28 of the OPS Act and the Panchayat Samities have limited powers and functions provided for under the Scheme. The Panchayat Samiti Fund under Section 28 of the OPS Act is constituted from the sources of the income as provided under Section 29(1). It needs to be mentioned here that Block has been defined under Section 15 of the OPS Act and Panchayat Samiti has been defined under Section 16. As per said provisions, each district shall be divided to such number of local areas to be known as a Block and each such Block shall have a Samiti. Therefore, it would be incorrect to say that the funds released from the Government under the Intervention would constitute the fund of Panchayat Samiti and as such the powers, functions and duties of the Panchayat Samiti as provided under the OPS Act shall not come into play in respect of the funds released under the Intervention.

18. As provided under the Scheme, the Panchayat Samiti shall execute the work departmentally following due procedure and the Collectors are authorized to select any other executing agency for departmental execution of the works. This part of the Scheme is mostly objected by the Petitioners and as per their contention the local elected representatives of the Panchayat should be involved for execution of the works. As stated above, since the funds are not funds of the Panchayat Samiti, the elected members cannot claim their participation in execution of the works under the Scheme as a matter of right. Apart from that as per Section 20(1) of the OPS Act, a Samiti subject to such terms and conditions as the Government may specify by order from time to time shall exercise the powers and perform the functions in respect of planning, execution and supervision of development programmes. It goes without saying that the projects

under the Scheme are all developmental programmes. Further, Rule 75 of the Panchayat Samiti Accounting Procedure Rules, 2002 provides that in respect of execution of the work, when fund is received from Government or any other authority authorized by the Government for execution of specified works, Panchayat Samiti shall execute the works in accordance with the terms and conditions imposed by the Government or the authority. So, by application of Section 20 of the OPS Act and Rule 75 of the 2002 Rules, the State Government have powers to impose conditions on the Panchayat Samiti with respect to execution and selection of projects. Therefore, it is not illegal on the part of the Government to impose restrictions about execution of the works under the Scheme. The Petitioners therefore do not have any right to claim their involvement and participation in execution of the works.

19. Apart from everything, the impugned Scheme involves policy decision of the State and the law is well settled regarding judicial interference in such matters. In the State of Maharashtra and another vrs. Bhagwan and others, (2022) 4 SCC 193, it is held that;

"28. As per the settled proposition of law, the Court should refrain from interfering with the policy decision, which might have a cascading effect and having financial implications"

Similarly, in the case of Centre for Public Interest Litigation vrs. Union of India, (2016) 6 SCC 408, it is held :

"22. Minimal interference is called for by the courts, in exercise of judicial review of a government policy when the said policy is the outcome of deliberations of the technical experts in the fields inasmuch as courts are not well equipped to fathom into such domain which is left to the discretion of the execution."

20. In the instant case, the Government has introduced the Scheme with such objectives for development and improvement of people at village level. As per the discussions made above, the Scheme which is found in conformity with the provisions of the Constitution as well as the OGP Act and Rules framed there-under, very little scope remains there for interference in the same. Accordingly, upon careful consideration of the entire Scheme and its provisions relating to selection of projects, sanction and release of funds and execution of the works, this Court declines to interfere in it. At the same time, further considering the fact that the Petitioners are the elected representatives of local Grama Panchayats, the State Government may consider their more inclusiveness and participation in the Intervention, which is ultimately meant for development at the local level.

21. Accordingly, all the writ petitions are disposed of.

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