

(2023) 10 BOM CK 0022
In the Bombay High Court
Case No : Writ Petition (L) No.4223 Of 2023

Ravindra Dattaram Waikar

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 13-10-2023

Acts Referred:

Citation : (2023) 10 BOM CK 0022

Hon'ble Judges : Sunil B. Shukre, J;Rajesh S. Patil, J

Bench : Division Bench

Advocate : Satish Borulkar, S.S. Borulkar, Dr. Birendra Saraf, Milind More

Final Decision : Dismissed

Judgement

Sunil B. Shukre, J

1. Heard.

2. RULE. Rule is made returnable forthwith, by consent of learned counsel for the respective parties.

3. The Petitioner is a Member of Legislative Assembly (hereinafter referred to as the "MLA"). He states that he belongs to a party i.e. Shiv Sena (UBT), a Political Party in the State Legislature and represents Jogeshwari (E) Legislative Assembly Constituency No.158. He was so elected in the elections held in the year 2019. His grievance is about the discriminatory attitude adopted by the State of Maharashtra in allocation of Government funds to different constituencies for development of infrastructure and basic civic amenities in the Slums situated in those constituencies.

4. The Petitioner submits that there is a fund called Maharashtra Local Development Fund the objective of which is to ensure development of infrastructural facilities in local areas. He submits that funds are made available to the members of Legislative Assembly in the State of Maharashtra from Maharashtra Local Development Funds and the funds are allocated equally to

every elected representative, who is a Member of Legislative Assembly or State Legislative Council (hereinafter referred to as the "MLC"). The Petitioner further submits that the Respondents allocated Rs.11,420.44 Lakhs under Slum-dwellers Re-allocation and Rehabilitation Plan 2022-23 in various Constituencies of MLA and MLC. He further submits that a sum of Rs.26,687.2 Lakhs was allocated under the head of "Development of Slums in Other than Backward Class". He submits that the funds allocated under the head of Development of Slums for developmental works in the slums situated in constituencies represented by Bhartiya Janta Party is much more than the funds allocated for such developmental works in the constituencies represented by the Petitioner.

5. The Petitioner submits that in his constituency, there are number of slums which are in need of civic amenities, but he and other members of opposite party have been denied these funds and thus there is arbitrariness and discrimination, not based on any intelligible differentia.

6. The Petitioner, therefore, seeks a direction to the State Government for allocation of fund in equal proportion for carrying out Slum-dwellers Re-allocation and Re-habilitation Plan 2022-23 and for providing basic infrastructure facilities with a view to develop slums in other than backward class areas.

7. The petition is opposed by the State Government. It is the stand of the Government that the scheme of development of infrastructural facilities in areas of Corporation under which the funds have been allocated is a State level scheme and it is implemented under the overall control of Respondent No.2 i.e. The Additional Chief Secretary, Urban Development Department, Mantralaya, Mumbai as per the guidelines and financial framework outlined in the Government Resolution dated 12th September, 2017, as modified by the Government Resolution dated 30th September, 2020. It is stated that under this scheme, the State Government distributes aid/subsidy for the development of basic amenities by the Municipal Corporations in the State every financial year and all existing Municipal Corporations in the State are eligible for such grants/subsidy under the scheme. It is further submitted that the contribution of the State Government differs depending on the category of the Municipal Corporation. It is also stated that while distributing funds under the scheme, due consideration is accorded to various public representatives and local bodies and keeping in view the criteria specified in the Government Resolutions dated 12th September, 2017 and 30th September, 2020 and other factors, the allocation of funds is made.

8. It is further stated on behalf of the State Government that in-principle sanction is accorded by the State Government keeping in view the above referred factors and then, the matter is placed before a specially constituted Committee existing at the District level in this behalf, which then scrutinizes the approved works, for which in-principle sanction has to be granted and then the Committee accords its sanction to the various works as indicated in the in-principle sanction for their implementation. It is, therefore, submitted that there is neither arbitrariness, nor any discriminatory attitude on the part of the Government in

sanctioning and allocating of funds for the development of infrastructural facilities and basic amenities in slums and also the areas falling in other than backward class areas.

9. Shri. Borulkar, learned counsel for the Petitioner submits that the Petitioner had sent his representation to the Government for allocation of funds for various works as indicated in the correspondence entered into by him with the authorities and three communications dated 14th January, 2023. He submits that by the communication dated 15th January, 2023, the Petitioner had demanded funds of Rs.500 Lakhs for 39 works in Jogeshwari (E) as indicated therein. He further points out that by another representation dated 14th January, 2023, the Petitioner had demanded a sum of Rs.500 Lakhs for 21 works in his Jogeshwari (E) constituency as indicated therein. He further submits that by the third communication dated 14th January, 2023, the Petitioner had demanded a sum of Rs.764.50 Lakhs for completion of 34 works in his Jogeshwari (E) constituency as indicated therein. He further submits that by the fourth communication dated 14th January, 2023, the Petitioner had demanded a sum of Rs.600 Lakhs for 5 works as indicated therein. He invites our attention to the documents like Exh.B-1, C & C-1, which are regarding allocation of funds for carrying out different works relating to providing of basic civic amenities and infrastructural facilities in different constituencies and submits that they were not considered by the Government, and lesser funds were allocated by the State Government, which is arbitrary and discriminatory. He relies upon the case of Indian Oil Corporation Limited & Ors. Vs. Shashi Prabha Shukla & Anr., reported in (2018) 12 SCC 85.

10. Learned Advocate General for the State submits that there is neither any arbitrariness nor any discriminatory attitude adopted by the State Government in allocating the funds. He further submits that the allocation of funds has been done by the Government by strictly following the guidelines prescribed in G.R. dated 12.12.2017 and G.R. dated 30.09.2020. He further submits that even the documents relied upon by the learned Counsel for the Petitioner would show that the allocation of funds has been done by the Government strictly on the basis of specific requirement of a particular constituency, and therefore, according to him, there is no substance in the petition.

11. The grievance of the petitioner is about the constituency of the petitioner being singled out for allocating sparse funds as against constituencies of ruling alliance which have received larger funds, which according to the petitioner is arbitrary and an instance of impermissible discrimination on the part of the State Government.

12. In the case of Indian Oil Corporation Limited (Supra), it is held that a public authority in its dealings has to be fair, objective, non-arbitrary, transparent and non-discriminatory and while distributing funds or a largesse and the Government must discharge its obligation in the larger interest of beneficiaries for whom the distribution of the largesse has to be made. It further held that

whenever discretion is vested in the State, it comes with a duty to exercise the discretion in a reasonable and non-discriminatory manner and if it is not so, the Court would have the power to interfere and issue necessary directions for correcting the wrong that has resulted from such arbitrariness. There can be no dispute about this principle of law and therefore, the decision taken by the Government regarding allocation of funds for various public works in different constituencies of suburban areas of Mumbai would have to be tested on the anvil of this principle.

13. When we examine the documents like Exh.C or C-1 or C-3, which in the opinion of learned counsel for the Petitioner exemplify the arbitrariness and discrimination made by the State Government without there being any intelligible differentia, we find that in reality, they do not. The document at Exh.C on its superficial examination, would of course create an impression that the Government has allocated more funds to the constituencies represented by BJP candidates, but on a deeper consideration of the matter in its entirety, we would find that it is not so. We find that there are instances, as seen from other document at Exh.C-3, where substantial funds have been allocated for carrying out different works in constituencies belonging to parties other than BJP, as e.g. in Constituency No.30 represented by a Congress (MLC), funds of Rs.1025 Lakhs have been sanctioned for carrying out 34 works. This document further shows that different number of works have been sanctioned in the constituencies mentioned therein and it appears that it is because of this that the difference has appeared in sanctioning of funds for carrying out various works. The trend generally shown by this document is of more the number of works to be carried out, higher is the allocation of funds.

14. It is also seen that for equal number of works, generally equal number of funds have been allocated, as e.g. for Constituency No.158, Jogeshwari (E) of the petitioner where 11 works have been sanctioned for which, the funds allocated are of Rs.250 Lakhs. Similar is the number of works sanctioned for Constituency No.173, Chembur where similar funds are allocated. There are also instances where the number of works sanctioned in two different constituencies is same, but the allocation of funds is different. But the difference here is of only minor nature. Broadly speaking, the allocation of funds made by the State Government appears to be having a reasonable co-relation with the number of works sanctioned and the document Exh.C does not show that even though the number of works sanctioned were less, the allocation of funds was more. Similar is the picture emerging from documents at Exh.B-1 and C-1. Therefore, from these documents, we do not see any arbitrariness or any instance of impermissible discrimination on the part of the State Government in allocation of the funds.

15. Learned counsel for the Petitioner submits that the Petitioner had in fact made several representations pointing out need for sanctioning of works relating to providing of infrastructural facilities and basic civic amenities in slum areas,

but hardly a few of them received sanction and that could be the reason why the allocation of funds is less. He submits that from this view point, one can say that the discrimination made by the Government is so extensive that it resulted in even sanctioning only some of the works from out of many number of works proposed by the petitioner, and sanctioning more number of works for constituencies of ruling alliance members.

16. Dr. Birendra Saraf, learned Advocate General submits that the selection of works is carried out by the committee of experts and the criteria adopted by it as per guidelines prescribed in the GR dated 12.09.2017 and G.R dated 30.09.2020. He submits that the committee is constituted of experts in the field and it takes it's decision after taking into consideration the comparative needs of different localities, priority demanded by particular works and general state of development and status of basic facilities in those areas and unless relevant material is placed before the Court to enable it to make a comparison between the priority of works in different areas and the state and extent of development in different areas, this Court would not be able to come to any conclusion in this matter and there is no such material placed before this Court by the petitioner.

17. We are of the view that the learned Advocate General is right in his submissions. If the exercise of according of sanction to different works to be carried out in different constituencies is to be examined for its transparency and fairness, detailed material on the basis of which comparison between two different areas can be made, is required to be placed before the Court. That material is not available before us nor has it been produced before the Court by the petitioner.

18. We must state it here that after all a decision taken to accord sanction for carrying out of different works in different localities and allocating funds for execution of those works is an administrative function guided by the State policy. The judicial review of such an administrative function can only be made by applying the doctrine of Wednesbury unreasonableness and it cannot be fruitfully applied in a case like this unless sufficient material is placed before this Court to enable it to test the reasonableness and fairness of the decision of the Government through the process of comparative analysis. But that is not present here, and therefore, the argument that there has been arbitrariness and impermissible discrimination on the part of the State Government even in according sanction to different works in different localities is devoid of merit.

19. Considering absence of sufficient material, no occasion has arisen for us to examine the larger issue as to in what manner the allocation of State funds to members of legislative assembly and legislative council be made keeping in view the principle of fairness and transparency in such matters and the issue is kept open.

20. With this, we find no substance in the petition. The petition stands dismissed.