
(2024) 03 BOM CK 0072

In the Bombay High Court

Case No : Public Interest Litigation No. 7 Of 2024

Ravindra Hemraj Dhangekar

APPELLANT

Vs

District Collector And Others

RESPONDENT

Date of Decision : 22-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226, 243X(c)

Citation : (2024) 03 BOM CK 0072

Hon'ble Judges : Devendra Kumar Upadhyaya, CJ; Arif S. Doctor, J.

Bench : Division Bench

Advocate : Dr. Milind, SatheGaurav Srivastav, Aditya Mhase, P. P. Kakade, O. A. Chandurkar G. R. Raghuwanshi, Abhijit Kulkarni, Gourav Shahane, Krushna Jaybhay

Final Decision : Dismissed

Judgement

Devendra Kumar Upadhyaya, CJ

1. Rule.

Rule made returnable forthwith. With the consent of the learned counsel for the parties, the petition has been taken up for final hearing.

2. Heard Dr. Sathe, learned senior counsel (Amicus Curiae) appointed by this Court for its assistance, Mr. Chandurkar, learned Additional Government Pleader representing the State respondents and Mr. Kulkarni, learned counsel representing Pune Municipal Corporation (hereafter referred to as "the Corporation").

3. As far back as in 1974 in the case of E. P. Royappa vs. State of Tamil Nadu(1974) 4 SCC 3, the Apex Court found that in our constitutional scheme, "equality is antithetic to arbitrariness and equality and arbitrariness are sworn enemies; one belongs to rule of law in a republic while the other to the whim and caprice to an absolute monarch". This legal principle, which, in our opinion,

should govern all State actions, finds its expression in para 85 of the report; relevant extract of which is quoted hereinbelow: -

"The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose.

J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14".

4. This PIL petition invokes our jurisdiction under Article 226 of the Constitution of India impeaching two Government Resolutions dated 27th July 2023 and 22nd August 2023 issued by the Urban Development Department of the State Government in the form of corrigendum, whereby the earlier Government Resolutions dated 20th December 2022 and 4th October 2022 have been amended.

5. By the Government Resolution dated 4th October 2022, the State Government had sanctioned funds of Rs. 5 crores for execution of 24 works with 100% funds to be provided by the State Government. All these 24 works were to be executed in Kasba Legislative Constituency, Pune. By another Government Resolution dated 20th October 2022, a corrigendum to the Government Resolution dated 4th October 2022 has been issued, whereby the executing agency for the work sanctioned under the Government Resolution dated 4th October 2022 was substituted by the Public Works Department in place of the Corporation.

6. By the Government Resolution dated 20th December 2022, sanction was accorded to certain works within the territories of the Corporation and amongst these, several works were to be executed within Kasba Constituency. By a corrigendum dated 21 st December 2022, the executing agency for the works under the Government Resolution dated 20th December 2022 was substituted by Public Works Department (South).

7. The impugned Government Resolution dated 27th July 2023 provides that if work orders in respect of the works sanctioned under the Government Resolution dated 20th December 2022 have not been issued, the sanction accorded to such works shall stand cancelled and instead of these works, the works attached with the said Government Resolution shall be executed. From a perusal of Government Resolution dated 27th July 2023, we notice that the list of works attached with the impugned Government Resolution dated 27th July 2023 does

not contain any work within Kasba Legislative Constituency and all works sanctioned are to be executed in Assembly Constituency of Parvati.

8. Similarly, by the other impugned Government Resolution dated 22nd August 2023, the Government Resolution dated 4th October 2022 has been superseded. This Government Resolution provides that if the works sanctioned under the Government Resolution dated 4th October 2022 had not commenced by issuing work order, they shall stand cancelled, instead, new works, which are 50 in number mentioned in the list attached to the Government Resolution dated 22nd August 2023 shall be executed. As already noticed above, under the Government Resolution dated 4th October 2022, the number of works sanctioned to be executed in Kasba Legislative Constituency was 24, however, by the impugned Government Resolution dated 22nd August 2023 all 24 works in Kasba Legislative Constituency have been substituted by 50 works in Shivajinagar Legislative Constituency.

9. Dr. Sathe, learned senior counsel, referring to the impugned Government Resolutions dated 27th July 2023 and 22nd August 2023 has submitted that the works earlier sanctioned vide Government Resolutions dated 4th October 2022 and 20th December 2022 were sanctioned in tune with the policy of the State Government as embodied in the Government Resolution dated 12th December 2017 and further that the works sanctioned under the earlier Government Resolutions dated 4th October 2022 and 20th December 2022 have been cancelled by issuing the impugned Government Resolutions without any reason whatsoever worth the name. Dr. Sathe has, thus, stated that this would surely qualify as arbitrariness on the part of the State Government while issuing the impugned Government Resolutions dated 27th July 2023 and 22nd August 2023 and the same is writ large in this case. It has also been submitted by Dr. Sathe that the only reason indicated by the State Government, while filing affidavit in reply, that since the work orders in respect of the works sanctioned under the Government Resolutions dated 4th October 2022 and 20th December 2022 could not be issued, hence, the works sanctioned in the said Government Resolutions have been cancelled, is untenable and such a ground cannot, in any manner, justify the impugned Government Resolutions dated 27th July 2023 and 22nd August 2023.

10. Dr. Sathe has drawn our attention to various provisions of Part IX-A of the Constitution of India, which was introduced by seventy-fourth constitutional amendment w.e.f. 1st June 1993 and has submitted that the said provisions of the Constitution of India were introduced by the Parliament with the aim of endowing the municipalities with such power and authority so as to enable them to function as institutions of self-government in respect of preparation of plan of economic development and social justice. He has stated that Article 243-X(c) mandates that legislature of the State, by law, will provide for making grants-in-aid to the municipalities from Consolidated Funds of the State. It is, thus, the assertion of Dr. Sathe that in tune with the constitutional scheme, as can be

found in Part IX-A of the Constitution of India, in the matters relating to development plan etc., the municipalities have to be given primacy. The submission further is that facts of the present case reveal that except for seeking no-objection certificate, the Corporation was not required to have any say while issuing the impugned Resolutions dated 27th July 2023 and 22nd August 2023, which undermines the significance and importance of the Corporation to which it is entitled to in terms of Part IX-A of the Constitution of India.

11. Dr. Sathe has also submitted with emphasis that the impugned Government Resolutions dated 27th July 2023 and 22 nd August 2023 suffer from vice of manifest arbitrariness and hence, the same are illegal being violative of Article 14 of the Constitution of India for the reason that while issuing the impugned Government Resolutions, no reasons have been assigned by the State Government as to why and on what count the works sanctioned to be executed in Kasba Legislative Constituency under the earlier Government Resolutions dated 4th October 2022 and 20th December 2022, have been cancelled. It has also been averred by Dr. Sathe that the earlier Government Resolutions dated 4th October 2022 and 20th December 2022 sanctioning certain works were issued strictly in terms of the provisions of the policy decision of the State Government contained in Government Resolution dated 12th December 2017 and as such, without there being any compelling reason of public interest or for any other lawful reason, cancelling these Government Resolutions by the impugned Government Resolutions is not sustainable. In his submission, he has, thus, urged that the impugned Government Resolutions are liable to be struck down on the ground of arbitrariness alone.

12. Mr. Chandurkar, learned Additional Government Pleader representing the State-respondents has drawn our attention to the averments made in the affidavits in reply filed by the State authorities and has submitted that since certain works sanctioned under the earlier Government Resolutions dated 4th October 2022 and 20th December 2022 were not commenced, as such, the works in respect of which execution could not be started, have been cancelled by the impugned Government Resolutions, which, thus, do not suffer from any illegality. He has also stated that the Corporation, which was entrusted for the execution of the work, did not commence the work sanctioned under the earlier Government Resolutions and therefore, it was thought proper by the State Government to cancel the works where the execution could not start. He has also argued that the impugned Government Resolutions dated 27th July 2023 and 22nd August 2023 reflect the Government policy and scope of judicial review by this Court in policy decisions is a rarity and that the facts of the case do not warrant interference in the policy decision of the State Government as expressed in the impugned Government Resolutions dated 27th July 2023 and 22nd August 2023. It has, thus, been argued on behalf of the State-respondents that the PIL petition is liable to be dismissed at its threshold.

13. Mr. Kulkarni, learned counsel representing the Corporation has only stated

that on receipt of the proposal in respect of the works relating to Kasba Constituency sanctioned vide Government Resolutions dated 4th October 2022 and 20th December 2022, the Corporation had given its no-objection certificate, however, subsequently, by a letter, the Corporation was asked to provide no-objection certificate for other works forming part of the Government Resolution dated 27th July 2023 and accordingly, the Corporation communicated its no-objection.

14. The affidavit in reply filed by the Corporation, however, does not disclose that there was any discrepancy while sanctioning the works under the earlier Government Resolutions dated 4th October 2022 and 20th December 2022. It has also to be noticed that the proposal of works, which are included in the impugned Government Resolutions dated 27th July 2023 and 22 nd August 2023 was not initiated by the Corporation; rather, as per the averments made in the affidavit in reply filed by the corporation, it was asked to give no-objection certificate to the works included under the impugned Government Resolutions and accordingly, the no-objection certificate was given by the Corporation.

15. Submission of learned counsel representing the Corporation is also that the Corporation was not the executing agency in respect of the works sanctioned under the earlier Government Resolution dated 4th October 2022 for the reason that by issuing a corrigendum to the said Government Resolution on 20th October 2022, the executing agency was changed from Corporation to Public Works Department. He has also stated that by issuing the corrigendum dated 21st December 2022, the executing agency for the works sanctioned under the Government Resolution dated 20th December 2022 was changed to Public Works Department (South).

16. We have carefully considered the submissions made by learned Amicus Curiae and the learned counsel representing the parties and have also perused the records available before us on this writ petition.

17. Regarding fixing of financial framework and guidelines under the scheme of development of basic amenities in municipal areas, the State Government in the Department of Urban Development issued a policy decision, which is contained in the Government Resolution dated 12th December 2017. As per the said policy decision, the Municipal Corporations in the State are given subsidy under the scheme known as "Development of Basic Amenities in Municipal Areas" for the works relating to development of basic amenities. Under the scheme, nature of works to be undertaken is to be prioritized in such a way that the citizens will notice them prominently or the citizens will have a clear understanding of those works and such works generally include the works relating to water supply and sewerage, urban roads and their adjacent drains, street lights, footpaths, social hall, community temple, etc., construction of easy toilets/urinals, general works such as lighting for public use in slums, conversion of open spaces into parks, protection of historical buildings, garden arrangement, development of cemeteries and green belts and other like works. These works to be undertaken

under the scheme have clearly been spelt out in clause (3) of the Government Resolution dated 12th December 2017 and they relate to certain basic amenities to be provided to the residents of a municipal area.

18. As per the financial structure of the scheme in terms of the Government Resolution dated 12th December 2017, different categories of Municipal Corporations are to be provided funds by the State Government in different shares. Some of the Municipal Corporations are to be provided 50% share of the funds to be used in execution of the scheme by the State Government and 50% of the funds is to be shared by the Municipal Corporation. In certain other cases, the State Government has to bear the burden of 75% of the funds, whereas the Municipal Corporation has to bear the burden of 25% of the funds. The scheme further gives details as to implementation mechanism for works to be executed. It provides that a district level Committee shall be constituted which shall comprise of Divisional Commissioner, Municipal Commissioner, Superintending Engineer of Implementation System and Collector, who shall function as a Member Secretary of the district level Committee.

19. The policy contained in the Government Resolution dated 12th December 2017 further provides that the implementation mechanism shall make a detailed proposal and provide technical approval and shall submit the said proposal to the district level Committee, which shall, thereafter, be submitted to the State Government and accordingly, funds will be sanctioned by the Municipal Corporation for the works permissible under the said scheme and grant to the Municipal Corporation as per requirement shall be approved. The scheme further provides that the works under the scheme should be carried out in publicly owned places and further that the nature of works should be public and hence, it has to be inclusive of primary citizens.

20. Thus, the scheme is to be implemented on the strength of the funds to be provided both by the State Government and the municipality concerned. The scheme also provides that in exceptional cases, considering the financial position of the Corporation and the necessity of development works, the Government will have the final authority to provide 100% grant from the Government.

21. A corrigendum was issued on 30th September 2020 to the Government Resolution dated 12th December 2017, whereby the proposals to be submitted by the district level Committee is required to be approved by the district Collector. We also find that the scheme aims at funding certain works to be undertaken within the municipal limits of a municipality for the benefit of general public as the works to be undertaken under the scheme has been outlined under the Government Resolution dated 12th December 2017 which all relate to public amenities.

22. Thus, having regard to the very object for which the scheme, as embodied in the Government Resolution dated 12th December 2017, operates, we are of the opinion that in case certain works for providing public amenities have been

sanctioned by the State Government on the proposal of the district level Committee, unless there are some pressing reasons such as any overwhelming public interest or any flaw in the earlier proposal, cancelling the works sanctioned earlier by any subsequent act on the part of the State authorities, will not be tenable. There may be situations which may warrant cancellation of the earlier sanctioned works such as need of execution of more pressing work in any area or some irregularities or illegalities found in sanctioning the earlier works or some other overriding public interest, however, in absence of any such reason, cancellation of the works sanctioned earlier, which are to be undertaken for strengthening the public amenities, will be absolutely arbitrary.

23. From the averments made in the affidavit in reply filed by the State-respondents, the only visible reason for cancellation of the earlier works by issuing the impugned Government Resolutions is non-commencement of the works sanctioned under the earlier Government Resolutions. If a work is duly and appropriately sanctioned and on account of any slackness or indifferent approach of the executing agency, the work could not be started or commenced, cancellation of such work leads to depriving the residents of a particular municipality of the public amenities. For such a lackadaisical approach in commencement of the work by the executing agency, the residents of the municipalities cannot be penalised. Thus, in our considered opinion, the reasons indicated by the State authorities for cancelling the earlier works by issuing the Government Resolutions dated 27th July 2023 and 22nd August 2023 are not tenable on any count. It has also to be noticed that even the Corporation cannot be saddled with the responsibility of not starting execution of the works sanctioned under the earlier Government Resolutions for the reason that the executing agency was altered from the Corporation to the Public Works Department/Public Works Department (South). The Scheme, as noticed above, has been chalked out by the State Government, as reflected from a perusal of the Government Resolution dated 12th December 2017, for strengthening the municipalities and making them more robust in discharge of their duties, specially relating to its duties towards providing basic civic amenities to the population within the municipal limits.

24. In the instant case, what we find is that the earlier Government Resolutions dated 4th October 2022 and 20th December 2022 were issued sanctioning certain works to be executed for providing public amenities to the residents of Kasba Legislative Constituency falling within the municipal area with the no-objection certificate issued by the Corporation, however, while issuing the impugned Government Resolutions dated 27th July 2023 and 22nd August 2023, the Corporation was rather asked by the State Government to give no-objection certificate to the works which are included in the impugned Government Resolutions dated 27th July 2023 and 22nd August 2023, as a result of which, the residents of a particular area falling within the same Corporation will be deprived of basic amenities without any rhyme or reason.

25. The submission of learned Additional Government Pleader representing the State Government that the impugned Government Resolutions are policy decisions, hence, no interference will be permissible by this Court in this matter, is absolutely misconceived for the reason that the policy decision is embodied in the Government Resolution dated 12th December 2017, which is not under challenge herein; rather, what is challenged in this PIL petition is the simple executive decision taken by the State Government, whereby the earlier works sanctioned under the Government Resolutions dated 4th October 2022 and 20th December 2022 have been cancelled without any reasonable cause for the same.

26. We need not reiterate that all State actions are subject to well settled principle of non-arbitrariness in State actions as enshrined in Article 14 of the Constitution of India, inasmuch as that all Government decisions will have to necessarily conform to the legal principle of State action being non-arbitrary. Any decision of the State Government sans reasons, is manifestly arbitrary and in case any such decision of the State Government is found suffering from the manifest arbitrariness, this Court, in our opinion, is vested with ample powers under Article 226 of the Constitution of India to strike down such decision of the State or its instrumentalities.

27. From the conspectus of the facts of the present case, as discussed above, we have no hesitation to conclude that while issuing the impugned Government Resolutions dated 27th July 2023 and 22nd August 2023, the State Government has not given any plausible reason and the impugned Government Resolutions have resulted in deprivation of certain basic civic amenities to the residents of a particular area falling within the municipal limits of the Corporation. The respondents have utterly failed to establish any overwhelming public interest or any other legally sustainable ground for issuing the impugned Government Resolutions dated 27th July 2023 and 22nd August 2023.

28. Since we have concluded that the impugned Government Resolutions cannot withstand the scrutiny of the Court on the touchstone of Article 14 of the Constitution of India, we need not refer to the judgments cited by Dr. Sathe in support of his submissions. However, we need to mention the judgment in the case of Gowardhan s/o. Mangilal Sharma vs. State of Maharashtra & Ors. Writ Petition No. 2350 of 2020 decided on 21st March 2022, which has been relied on by the learned Additional Government Pleader.

29. The judgment in the case of Gowardhan (supra), relied upon by the learned Additional Government Pleader is distinguishable. The writ petition in the said case was dismissed on various grounds, including the ground that the petitioner did not have any legal right or special locus to demand utilization of money sanctioned earlier in a particular manner. However, since the present writ petition has been filed as a PIL petition and having regard to the issues raised, we had appointed learned Amicus Curiae. The legal principles laid down in the case of Gowardhan (supra) cannot be disputed but the Court in the said case did not find any element of arbitrariness. The Court further concluded in the said case that

the Government Resolution impugned therein had brought in more development work. The Court further observed that there was no doubt that there could be cases where a change would either lead to reduction of funds already allocated or withdrawal of works which may affect larger public interest, but in the said case, the State was proposing to have more works. Thus, Gowardhan (supra) leaves the scope for interference in matters where the change results in either reduction of funds or withdrawal of works.

30. In the instant case, the subsequent Government Resolutions have manifestly resulted in withdrawal of certain works, that too, relating to providing civic amenities. We have already held that no reason comes-forth from the respondents/authorities justifying issuance of the subsequent Government Resolutions though they resulted in denial of civic amenities which would have been made available to a large population in terms of the earlier Government Resolutions. Thus, the judgment in Gowardhan (supra) does not help the respondents in any manner.

31. In view of the discussion made above, we have no hesitation to hold, as already observed above, that issuance of the subsequent Government Resolutions is manifestly arbitrary, violative of Article 14 of the Constitution of India and does not subserve any public interest and hence, illegal.

32. Having found the subsequent Government Resolutions not adhering to the principle of non-arbitrariness in the State action, we now need to consider as to what reliefs in the facts of the present case, at present, can be granted in this PIL petition.

33. Hence, for the reasons recorded above, we pass the following order: -

(i) That the two Corrigenda dated 27th July 2023 and 22nd August 2023 respectively, are hereby quashed and set-aside to the limited extent of those works in respect of which no work order has been issued till date i.e. 22nd March 2024.

(ii) We clarify that in respect of those works regarding which work orders have already been issued in terms of the aforesaid two Corrigenda, the said works shall remain unaffected by this order and shall be completed as contemplated in terms of the respective work orders already issued.

(iii) In so far as the Government Resolutions dated 4th October 2022 and 20th December 2022 are concerned, the said works as sanctioned therein shall be executed in the forthcoming financial year for which purpose the State shall allocate the requisite funds in terms of the said Government Resolution dated 4th October 2024.

34. Accordingly, Rule is made absolute in the above terms. However, there shall be no order as to costs.

35. Before parting, we put on record our appreciation for the able assistance

rendered by learned Amicus Curiae Dr. Milind Sathe.