
(2013) 05 BOM CK 0022
In the Bombay High Court
Case No : Writ Petition No. 5154 of 2012

Sau. Banotai

APPELLANT

Vs

The Divisional Commissioner, Amravati and Others

RESPONDENT

Date of Decision : 19-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 4 ALLMR 585 : (2013) 4 MhLj 211

Hon'ble Judges : B.P. Dharmadhikari, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : F.T. Mirza, for the Appellant; B.H. Dangre, Addl. Govt. Pleader for Respondent Nos. 1 and 6, Mr. P.C. Madkholkar and Mr. A.P. Tathod, for the Respondent

Judgement

A.B. Chaudhari, J.—Rule. Rule heard forthwith. This Writ Petition under Article 226 of the Constitution of India at the instance of a woman Member of Zilla Parishad, Washim, depicts the blatant violation of the constitutional provisions despite insertion of Seventy-Third Amendment to the Constitution conferring necessary status, namely constitutional status, on the Panchayat Raj Institutions in the extant political system, though more than two decades have passed. Eventually, this Court and rather this Bench had an occasion to deal with a similar situation and a decision was rendered by both of us with concurring judgments written separately in the case of Charan Waghmare Vs. State of Maharashtra and Others, . We find no material difference in the facts of the present case, so also the violations of constitutional provisions as to Panchayati Raj on the part of the respondents.

2. It is the case of the petitioner that for beautification and development of garden near Rest House at Adan Project, Karanja, a provision of Rs. 50,00,000/- was made for 2009-10, and administrative sanction for various sub-works in total was granted to the extent of Rs. 34.97 lakhs under the Account Head 3452276-Basic amenities for development of Tourist Places. It is not in dispute that the

said allotment of funds was made over to the Zilla Parishad, Washim, and further to Panchayat Samitee, Karanja, in turn and as such the same was required to be spent by the Panchayat Samitee, Karanja, for getting the works done. The Chief Executive Officer, Zilla Parishad, Washim, issued an order on 25th January, 2011 granting administrative sanction in exercise of power under Rule 4 Schedule-II of the Maharashtra Zilla Parishads & Panchayat Samitees Audit Code, 1968, marking copies to Block Development Officer, Panchayat Samitee, Karanja, and Executive Engineer [Construction], Zilla Parishad, Washim. The work for strengthening of approach road to Adan Project and tarring thereof was also to be undertaken and accordingly orders were issued on 29th March, 2012 and 21st August, 2012 and obviously thereafter the work was to be completed under the supervision of the concerned Karanja Panchayat Samitee. According to the petitioner, the respondent no. 5 M.L.A., wrote a letter dated 14th May, 2012 to the Chief Executive Officer, Zilla Parishad, Washim, requesting him to transfer the entire allotted amount to the Executive Engineer, Minor Irrigation Division No. 2, Karanja [Lad], for carrying out the works in question, and acting on the instructions from the concerned MLA, the Chief Executive Officer issued an order on 30th May, 2012, directing the Block Development Officer, Panchayat Samitee, Karanja, to transfer the entire funds to State Department of Minor Irrigation, as ordered by respondent no. 5 MLA. The petitioner states that she made a representation to the Divisional Commissioner, Amravati Division, on 4th October, 2012, but he did not grant any stay and preferred to keep quiet.

Arguments:

3. Referring to the affidavits filed by the respondent nos. 2 to 4 and respondent no. 6, the learned counsel for the petitioner argued that all the respondents have chosen to condemn the petitioner in unison, in order to please their political master, in this case, the respondent no. 5-MLA. According to the learned counsel for the petitioner, an attempt on the part of respondents to do so shows the manner in which the political and bureaucratic establishments are functioning in violation of the Seventy-Third Amendment to the Constitution. The counsel then argued that even the Divisional Commissioner did not bother to protect the constitutional rights involved in the subject-matter of the present petition, namely Panchayati Raj institutions, when he being the Divisional Head, ought to have interdicted. The counsel, therefore, prayed for setting aside the action of the Zilla Parishad impugned.

4. Per contra, learned Asstt. Govt. Pleader for respondent nos. 1 and 6 supported the impugned action, on the ground that the Karanja Panchayat Samitee does not have any infrastructure to execute the work and that is why no fault can be found out if the respondent no. 6 is asked to do the work in question, which has the necessary infrastructure available with it. The respondent no. 4 Block Development Officer of Panchayat Samitee and Zilla Parishad, Washim, have filed their Affidavit-in-Reply and they are also singing in the same tune.

5. Learned Adv. Mr. P.C. Madkholkar for respondent no. 5 MLA clarified that his

client did not issue any the Chief Executive Officer, Zilla Parishad, and it is the mistake of the Chief Executive Officer, Zilla Parishad, Washim, to treat his clients request as an order. He further argued that the petition is politically motivated and exemplary cost should be saddled on the petitioner. According to him, it was the respondent no. 5, who is a Member of DPDC, was instrumental in bringing the funds for developmental works, though for Karanja Panchayat Samitee of Zilla Parishad, but the petitioner did nothing to get the same. He, therefore, prayed for dismissal of the Writ Petition.

6. We have perused the entire record of the Writ Petition. We have heard the learned counsel for the rival parties.

7. It is not in dispute and, therefore, we do not propose to dilate on the fact that the allotted amount in this case admittedly belongs to Zilla Parishad/Panchayat Samitee, and it does not belong to any of the Departments of the State Govt., much less the respondent no. 6, and further that the authority to spend the said amount and to supervise the work to be undertaken exclusively vested in respondent nos. 3 and 4 only and none else. That being so, the question then arises as to how all the respondents and more particularly the respondent no. 3 Chief Executive Officer of Zilla Parishad, who is the highest ranking bureaucrat in Zilla Parishad administration, has understood the spirit of the Seventy-third Panchayat Raj Amendment existing since two decades. We have perused the letter that was issued on 14th May, 2012 by respondent no. 5-MLA to the Chief Executive Officer, Zilla Parishad, Washim. It is stated in the said letter that since it is convenient to get the works in question done from respondent no. 6, the respondent no. 3 should transfer the entire amount received by it, for carrying out the works. The Respondent No. 3-Chief Executive Officer in obedience to the instructions given to him by Respondent No. 5-MLA acted promptly and issued the following order to the Block Development Officer, Panchayat Samitee, Karanja, which we quote verbatim:-

Outward No. ZP/GAD/PS/ Tourism/1514/12, Office of the Zilla Parishad, Washim, Dated 30-3-12.

Block Development Officer, Panchayat Samitee, Karanja.

Sub: Regarding diversion of funds allotted for developing Adan Project as a Tourist Place.

Ref: Letter No. 695/Tasha/PR/2012 dated 17th March, 2012 of Minor Irrigation Division No. 2, Karanja.

With reference to above subject, it is to inform you that Hon''ble MLA Prakashji Uttamraoji Dahake of Karanja Assembly Constituency has ordered transfer of the entire work of development of tourism spot at Adan Project Dam and the Rest House to Minor Irrigation Division No. 2, Karanja [Lad], Distt. Wahim.

Accordingly, you are directed to transfer the amount of Rs. 35.00 lakhs which was given to you for the development of Adan Project as a tourist place to the

Executive Engineer, Minor Irrigation Division No. 2, Karanja [Lad], immediately, and to inform the action taken to this Office.

Sd/- Chief Executive Officer, Zilla Parishad, Washim

Copy to:

The Executive Engineer, Minor Irrigation Division No. 2, Karanja [Lad], for information and further action.

8. The Chief Executive Officer had absolutely no business to order transfer of Panchayats funds to State Department Respondent No. 6 by acting as per the desire of Respondent No. 5-MLA. A great faith is reposed in the Chief Executive Officer to protect the interest of Zilla Parishad/Panchayat Samiti. But, On perusal of the above letter, the mindset of the highest ranking bureaucrat in Zilla Parishad, Washim, is clearly amplified, in that the said Chief Executive Officer wanted to meekly fulfill the desire/wish/request of Respondent No. 5-MLA, rather than the constitutional obligation which he is required to discharge. For him, the request made by Respondent No. 5 means order. We have no manner of doubt that the Chief Executive Officer and the concerned MLA [respondent no. 5] are deemed to have full knowledge of the constitutional provisions and a great responsibility rests on them not to defy the constitutional provisions.

9. There is another aspect and which must be said to be unfortunate. In reply to the petition, an Affidavit has been filed by respondent no. 6 acting as a representative of State. No Affidavit-in-Reply has been filed by the respondent no. 1 despite service. The petitioner approached the Divisional Commissioner respondent no. 1 with the representation dated 4th December, 2012, and also prayed for stay of the order of Chief Executive Officer, Zilla Parishad, Washim. But from 4th December, 2012, till this date, the Divisional Commissioner has also chosen to keep quiet and no reasons are forthcoming in this petition as to why the Divisional Commissioner respondent no. 1 has not taken any cognizance of the serious violations of the constitutional provisions, or is it because the respondent no. 1 also wants to toe in line with Chief Executive Officer, Zilla Parishad in order to please the respondent no. 5-MLA. Perusal of the Affidavits of respondent nos. 2 to 4, i.e., Officers of Zilla Parishad, and respondent no. 6 show that they have in their respective affidavits condemned the petitioner, as much as they can, for filing this Writ Petition and not only they have gone on record to praise individually the respondent no. 5 MLA by saying that it was due to respondent no. 5 persuasion alone that there was allotment of funds from DPDC for the works in question. We are again shocked to see that even Chief Executive Officer and Block Development Officer have indulged in a similar flattery to please the Respondent No. 5. Added to all this, respondent no. 5 has filed his Preliminary Submissions condemning the petitioner, stating that the petition is politically motivated and that the petition should be dismissed with exemplary cost payable for beautification of Adan Project and that the respondent no. 5 is fully innocent. Thus, there is a competition, nay the respondents take pride as

well, to support the action of violation of constitutional mandate in relation to the Seventy-third Amendment in respect of Panchayati Raj Institutions. The respondents have gone on record to say that the petitioner is not a member of DPDC, whilst the respondent no. 5 is. This is to show that the petitioner is a petty politician. Fact remains that she is an elected Member of the Zilla Parishad, and the respondents ought to give her appropriate respect, particularly after Panchayati Raj amendment. The affidavits filed by the officers show that as if they have been under trepidation.

10. It is sad to note that bureaucracy, despite the Judgment in Charan Waghmare's case, does not want to mend. While making a note of the facts in case of Charan Waghmare [cited supra], one of us [B.P. Dharmadhikari, J.] stated thus:-

38.....However, we note that the respondent No. 2 has entered the area not available to him and the responsible officers like respondent No. 3 Divisional Commissioner or respondent No. 4 Collector or then respondent No. 5 Chief Executive Officer of Zilla Parishad have conveniently avoided to honour their duty to democracy. Adoption of inconsistent stand by the respondent Nos. 5 and 6 before this Court also speaks volumes in this respect. Other respondents ought not to have submitted to pressure of respondent No. 2. Law does not give respondent No. 2 any such authority over respondent Nos. 3 to 6.

In Paragraphs 49 and 50 of the said Judgment, this Court also made the observations thus:-

49.....
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The mindset that the role of a Government is to rule over its subjects, has persisted even after half a century of freedom. This mindset has survived despite democracy and decentralization and has subverted the very system that was created to destroy it.

The report suggested what should be done to remove such a behaviour like a King and the Subjects thus:

we intend to make an effective endeavour to get rid of this ruler subject relationship syndrome between the Government and the citizens. The change has to be wrecked at the fundamental conceptual level.

50. In an article published by National Institute of Rural Development, namely Devolution of Functions and Powers in India Panchayati Raj Report, 2001, the learned author Shri K.R. Venugopal has mentioned some of the points which are worthy of note:

1. In some states, the PRIs have been looked upon as agencies of the Government, especially at lower levels, diluting their conception as units of self-

Government.

2.....

3. The stronghold of bureaucracy over these bodies continues.

4. Higher level political authorities are not willing to give up control over the allocated finances and the implementation of development schemes.

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11. Mr. B.S. Raghavan, a revered bureaucrat, in his article in Business Line has suggested the following advisory for the bureaucrats which is apt in the situation:-

First, they should regain self-pride, sense of honour and dedication to the public service. They have had the best education, come from highly respectable background, and are second to none in ability and talents. They should stop demeaning themselves by becoming virtual accomplices and abettors of those who look upon their portfolios as avenues for outright plunder of public funds and abuse of power. They are public servants and not servants of individual Ministers. They should remember that evil flourishes not because of evil doers, but because good people remain silent.

We hope and trust that the State of Maharashtra at least now would take a call and do all that is required for real implementation of the Panchayati Raj Amendment and formulate a suitable protocol.

12. Again turning to the Affidavits-in-Reply filed by respondent nos. 2 to 4 and respondent no. 6, it is stated that the respondent no. 4 Panchayat Samitee is unable to do the work in question, because there is no sufficient technical staff to execute the work so as to complete the same within time. This aspect about non-availability of infrastructure with the Panchayat Samitee has also been highlighted by the respondent no. 5 in his submissions. However, we find from para 8 of the Affidavit filed by the respondent no. 6 that the alleged non-availability of infrastructure with Panchayat Samitee and availability of the same with respondent no. 6 appears to be a ruse. It clearly appears from reading of para 8 that all the works have been split into three agreements and tender was floated for executing the works and after acceptance of tender, the agency, namely Vishwakarma Majoor Kamgar Sahakari Sanstha Ltd., Karanja (Lad) and Bairinath Majoor Kamgar Sahakari Sanstha Ltd., Karanja (Lad) have been given the works and those are being done. These Societies have also been paid Rs. 1,17,209/-, Rs. 2,29,639-00 and Rs. 1,58,484/-. We are unable to understand what infrastructure, availability of technical staff is being talked about when the

entire work is being done through the contractor-Societies. In so far as the supervision is concerned, admittedly, Zilla Parishad and Panchayat Samitee have qualified engineers in their various departments and not only that, as admitted in the reply by respondent nos. 2 to 4, the respondent no. 2 has one Sectional Engineer and one Junior Engineer. However, the fact remains that Zilla Parishad, Washim, has Engineering Departments, namely Executive Engineer, Works Department and Executive Engineer, Minor Irrigation Department, whose services could easily be utilized. We, therefore, do not find any substance in the said stand taken by the respondents.

13. The next question is whether the work should be stopped and should be allowed to be completed in the light of the fact that a total amount of about Rs. 5,00,000/- out of Rs. 34,97,000/- has already been paid. According to us, the balance of convenience in the present fact situation is in favour of allowing completion of work given to the agencies/Societies, to whom the works were allotted, but under the control and supervision of Panchayat Samitee, Karanja/Zilla Parishad and not Respondent No. 6.

14. To sum up, we find that the respondent nos. 3 and 4 have failed to perform their duty and are, therefore, liable to be saddled with costs. In the result, we make the following order:-

ORDER

[a] Writ Petition No. 5154 of 2012 is partly allowed.

[b] The impugned orders dated 26th September, 2012 and 30th March, 2012 are quashed and set aside. The balance funds shall be re-transferred by Respondent No. 6 to the account of Respondent No. 4 forthwith. The works, in question, shall be completed by the same contractors expeditiously, but under the supervision and control of the Panchayat Samitee, Karanja/Zilla Parishad, Washim.

[c] The Chief Executive Officer, Zilla Parishad, Washim, and Block Development Officer, Panchayat Samitee, Karanja, shall personally pay cost of Rs. 5,000-00 [rupees five thousand only], and cost of Rs. 3,000-00 [rupees three thousand only] respectively to the petitioner within a period of four weeks from today and report compliance.

[d] Copy of this Judgment be sent to the Chief Secretary, Govt. of Maharashtra, Mantralaya, Mumbai, for information and necessary action.