(2016) 08 BOM CK 0187

In the Bombay High Court

Case No : Writ Petition No. 2608 of 2016

Sudhir Daulatchand Kothari APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 26-08-2016

Acts Referred:

Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965 — Section 49-A, Section 90

Citation : (2017) 1 MhLJ 508

Hon'ble Judges : B.R. Gavai and V.M. Deshpande, JJ.

Bench : Division Bench

Advocate : Mr. M.G. Bhangde, Senior Counsel with Mr. R.M. Bhangde, Advocate, for the Petitioner; Mrs. Bharti Dangre, Government Pleader with Mr. M.K. Pathan, Assistant Government Pleader, for the Respondent Nos. 1 to 3; Mr. Anjan De, Advocate, for the Respondent No.

Final Decision : Dismissed

Judgement

1. The petitioner challenges the Government Resolution dated 23.3.2016 and the order of the Collector, Wardha dated 11.4.2016.

2. The petitioner is a President of the Municipal Council, Hinganghat. From the material placed on record, it appears that with the persuasion of the local Member of Legislative Assembly as well as the Guardian Minister, the State Government has decided to sanction an amount of Rs. 10/- (Ten) Crores as special grants for carrying out various developmental works in the municipal area, Hinganghat. Accordingly, a letter was addressed by the State Government to the Collector, Wardha informing him that an amount of Rs. 10/- Crores has been made available for carrying out primary infrastructural works in the undeveloped area of Hinganghat Municipal Council. The Collector was informed vide the said communication that since he was the authority to grant administrative approval, he should grant administrative approval and submit a proposal to the State Government for disbursement of funds. Accordingly, a

letter was addressed by the Collector to the Municipal Council on 30.1.2016. The Municipal Council passed a Resolution in its meeting dated 24.2.2016 deciding to carry out 49 works in the different areas. The Municipal Council also applied to the Maharashtra Jeevan Pradhikaran for grant of technical approval. Accordingly, vide order dated 14.3.2016 the Maharashtra Jeevan Pradhikaran had granted technical approval. The Collector, Wardha vide his order dated 16.3.2016 granted administrative approval to the various works which were listed in the resolution of the Municipal Council. It is pertinent to note that till this point of time, there was no dispute.

3. On 23.3.2016 the State Government issued a Resolution (hereinafter referred to as the said "Government Resolution") thereby resolving to disburse an amount of Rs. 10/- Crores for the various special works to be undertaken in the Hinganghat Municipal Council area. Vide the said Government Resolution, vide clause 10 the Collector was appointed as a Controlling Authority, whereas the District Administrative Officer was appointed as Drawing and Disbursing Authority. The clause with which the petitioner is most aggrieved is Clause 3, which provides that the implementing agency for execution of the said works, would be decided by the Collector being the Controlling Authority. In pursuance of the said clause, the Collector vide the order dated 11.4.2016 has appointed the Public Works Division, Wardha (hereinafter referred to as "the PWD, Wardha" to be the implementing agency. Being aggrieved by Clause 3 of the said Government Resolution and the communication dated 11.4.2016 appointing the PWD, Wardha as the implementing agency, the petitioner has approved this Court.

4. Shri M.G. Bhangde, the learned Senior Counsel appearing on behalf of the petitioner, submits that in view of Section 90 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as "the Act"), all the amounts coming to the Municipal Council including gifts or transfer from Government or private individuals shall constitute the municipal fund. The learned Senior Counsel submits that once the amount forms a part of the Municipal fund, then it is only the Municipal Council which has the jurisdiction to decide as to how the said amount is to be spent. The learned Senior Counsel submits that various duties are cast under Section 49 of the Act upon the Municipal Council, one of which is construction of roads, etc. It is, therefore, the contention of the learned Senior Counsel that once a fund forms a part of the Municipal fund, the fund is for the purpose of the duties which are required to be carried out by the Municipal Council; then it is only the Municipal Council which has jurisdiction to decide as to who shall be the implementing agency. The learned Senior Counsel, therefore, submits that the clause in the Government Resolution which permits the Collector to appoint an implementing agency and the subsequent order passed by the Collector appointing the PWD, Wardha as implementing agency are not sustainable in law.

5. Shri M.G. Bhangde, the learned Senior Counsel further submits that the

perusal of the various clauses of the Government Resolution would itself reveal that the intention of the Government was to provide the funds to the Municipal Council, which were to be part of the Municipal Council, inasmuch as various requirements regarding auditing of the previous works, etc. are provided in the Government Resolution itself. The learned Senior Counsel further submits that the reasoning given by the Collector for appointing PWD as an implementing agency, that there is only one Engineer working in the Municipal Council, Hinganghat is erroneous. He submits that in the petition it is specifically stated that there are about half a dozen Engineers working with Municipal Council, Hinganghat. He submits that not only that, the Government itself has sanctioned another scheme to the tune of Rs. 61 Crores and, therefore, a stamp of incompetency recorded by the Collector is not sustainable.

6. Shri M.G. Bhangde, the learned Senior Counsel relies on the judgment of the Division Bench of this Court in the case of Nandkishor s/o Rangraoji Warhade & others v. The State of Maharashtra and others, reported in 2015(1) ALL MR 711.

7. Smt. Bharati Dangre, the learned Government Pleader appearing for respondent nos. 1 to 3, on the contrary, submits that in so far as the duties which are cast upon the Municipal Council are concerned, there is no doubt that the duty is cast upon the Municipal Council to carry out various works including construction of roads, etc. She, however, submits that the said duties are required to be carried out by the Municipal Council out of its municipal funds. The learned Government Pleader submits that in view of the judgment of the Division Bench of this Court in the case of Chandrkant Subhash Thakre v. State of Maharashtra and others, (Writ Petition No. 3514/14 decided on 23rd November, 2015), (2015) Mh.L.J. Online 21, there is no prohibition on the State in carrying out the works which may ultimately benefit the Municipal Council in addition to the works which are being carried out by the Municipal Council. The learned Government Pleader submits that the Division Bench has taken a view that in such of works which are exclusively carried out by the State Government out of its own funds, the Municipal Council would have no role to play.

8. The learned Government Pleader further submits that under Section 49A of the Act itself, a power is given to the State Government to determine certain terms and conditions including an appointment of the agency for implementation of the work. The learned Government Pleader, therefore, submits that there is no merit in the petition and petition deserves to be dismissed.

9. Shri M.G. Bhangde, the learned Senior Counsel appearing on behalf of the petitioner, has rightly contended that once a fund is received by the Municipal Council by whatever nomenclature it may be, it shall constitute the Municipal fund in view of provisions of Section 90 of the Act. It cannot be doubted that, in view of provisions of Section 88 of the Act, once such fund is received by the Municipal Council, it will be the exclusive jurisdiction of the Municipal Council as to how to deal with such a fund.

10. However, the question that will have to be first determined in the present case is as to whether the amount which is sanctioned by the Government vide the Government Resolution dated 23.3.2016 is a municipal fund or not. No doubt that the heading of the Government Resolution would give an impression that the said fund is for distribution to the Municipal Council under a scheme of special grants for special works undertaken by the Municipal Council. However, it is a settled principle of law that a particular sentence cannot be read in isolation. For considering as to what is the intention of the State Government, the entire provisions contained in the said Government Resolution will have to be taken into consideration.

11. The Government Resolution itself begins with the words that an amount of Rs. Ten Crores has been sanctioned by the State Government for the "special grants for the specialised works to be undertaken by Nagar Parishad for Hinganghat Municipal Council subject to various terms and conditions as specified in the said Government Resolution." Clause 2 of the said Resolution specifically provides that the entire (100%) share of the works to be undertaken would be by the State Government. Clause 10 of the said Government Resolution specifically provides that the Collector, Wardha is appointed as the Controlling Authority for disbursing the said funds to the Municipal Council. The District Administrative Officer, Wardha is appointed as a Drawing and Disbursing Authority. The most important sentence in the said clause would be as under :

"The sanctioned amount is being credited to the Collector, Wardha being a Controlling Authority".

The further sentence would also be relevant, i.e.

"The Drawing & Disbursing Authority shall draw the said amount and disburse the same to the implementing agency".

Clause 8 of the said Government Resolution would provide that the entire responsibility of getting the works executed, utilization certificate, etc. of obtaining of the Municipal Council and submitting the same to the Accountant General shall be with the Collector. Clause 15 would also be relevant :

Under said clause the duty is cast upon the Drawing & Disbursing Authority to ensure that the grants are spent prior to 31.3.2017. It further provides that amount unspent upto 31.3.2017 shall stand reverted back to the State Exchequer. It is thus clear from the combined reading of the said Government Resolution, that there is no intention of the State Government to allot the said amount directly in the coffers of the Municipal Council. Had the said amount been directly credited to the account of Municipal Council, the things would have been different.

12. There is another angle to it. It will be relevant to refer to Section 49A of the said Act, which reads as under :

"49A. Performance of functions by agencies ? Where any duty has been imposed on, or any function has been assigned to a Council under this Act or any other law for the time being in force, or the Council has been entrusted with the implementation of a scheme,?

(i) the Council may either discharge such duties or perform such functions or implement such schemes by itself; or

(ii) subject to such directions as may be issued and the terms and conditions as may be determined by the State Government, cause them to be discharged, performed, or implemented by any agency :

Provided that the Council may also specify terms and conditions, not inconsistent with the terms and conditions determined by the State Government for such agency arrangement."

The perusal of the said Section would reveal that where any duty is imposed on or the function has been assigned to a Council under the said Act or any other law for the time being in force, or the Council has been entrusted with the implementation of a scheme, two options are available to the Council. The first option is that the Council may either discharge such duties or perform such functions or implement such schemes by itself. The second option is that the Municipal Council is also empowered to get the works implemented by any agencies; however, the same shall be subject to such directions as may be issued and the terms and conditions as may be determined by the State Government. It can thus clearly be seen that the Act itself permits the works to be implemented by another agency. However, the same is required to be subject to such directions as may be issued and the terms and conditions as may be determined by the State Government. No doubt that the proviso permits the Municipal Council also to specify the terms and conditions, however with a rider that such terms should not be inconsistent with the terms and conditions determined by the State Government for such agency arrangement. It can thus be clearly seen that the said Act itself enables the agency to be appointed on the directions and terms and conditions as may be determined by the State Government.

13. In that view of the matter, we find that firstly it cannot be said that the said amount which is sanctioned by the impugned Government Resolution is municipal fund and secondly, the State Government under the provisions of Section 49A of the Act has a power to appoint an implementing agency and also issue directions and determine the terms and conditions for appointing such an implementing agency. In that view of the matter, we find that the impugned Government Resolution is within the four-corners of law as permissible under Section 49A of the said Act. Consequently, the order issued by the Collector dated 11.4.2016 would also be within the four-corners of law.

14. In so far as the reliance placed by Shri M.G. Bhangde, the learned Senior Counsel on the judgment of the Division Bench of this Court in Writ Petition No. 3973/13 ? (Nandkishor Warhade v. State) is concerned, the perusal of paragraph no. 4 itself would reveal that in the said case the fund was received by the

Municipal Corporation and had become a part and parcel of the Municipal fund. Another distinguishing factor would be that in the said case at the instance of the local M.L.A., the implementing agency was changed. Not only that, but at the instance of the local M.L.A. number of works were also sought to be changed contrary to the Resolution of the Municipal Corporation. In the present case, the Collector has not changed a single work which has been resolved by the Municipal Council to be undertaken vide Resolution dated 24.2.2016. In that view of the matter, we find that the said judgment would not be applicable to the facts of the present case.

15. As held by this Court in the case of Chandrakant Subhash Thakare (cited supra) that there was no prohibition in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 for carrying out the works in the area of Zilla Parishad, we find that even under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, there is no prohibition on the State Government to carry out the developmental works in the areas of Municipal Corporation from its own funds, in addition to the works already undertaken by the Municipal Council.

16. In the result, we find that the petition deserves to be dismissed, and is dismissed.

17. At this stage, Shri M.G. Bhangde, learned Senior Counsel appearing on behalf of the petitioner, prays for stay of the impugned order for a period of four weeks from today.

18. It is to be noted that in the present case, the grievance is not as to with regard to what works are to be carried out. The works are being carried out as per the Resolution of the General Body of the Municipal Council, however only by different implementing agency. On account of interim orders passed by this Court, a period of almost five months has already elapsed. The Government Resolution specifically provides that if the amount is not spent by 31.3.2017, the amount shall stand reverted back to the Government. We find that hardly a period of months is left. If the interim order is further continued, we find that in that event rather than sub-serving the public interest of completing the developmental works in the Municipal Council area, the continuation of the interim order would be adverse to the public interest, inasmuch as if the works are not completed within the stipulated period, the balance of the fund shall stand reverted to the State Government.

19. In any case, the works that are being carried out are being carried out as per the Resolution of the Municipal Council. The only fight is as to who shall be having control over the said funds. In that view of the matter, it will not be in the public interest to continue the interim relief. The request is rejected.