SUPREME COURT OF INDIA

Lok Prahari Thr. Its Gnrl. Secy, S.N.Shukla

Vs.

State of U P & Ors.

C.A.No.11004 of 2016

(T.S.Thakur,CJI., A.M.Khanwilkar and Dr.D.Y.Chandrachud.,JJ.,)

21.11.2016

JUDGMENT

Dr D.Y.Chandrachud,J.,

SLP (C) No.33119 of 2013

1. Leave granted.

2 The appellant has failed in a challenge to the legality of the Vidhayak Nidhi Scheme in the State of Uttar Pradesh which provides for annual budgetary grants to Members of the Legislative Assembly and Legislative Council for facilitating development work in their constituencies. The Allahabad High Court by a judgment and order dated 13 May 2013 dismissed the writ petition under Article 226 of the Constitution. This has given rise to the institution of these proceedings.

3. In 1993, the Prime Minister of India announced a scheme, popularly known by the acronym MPLADS (an abbreviation for Members of Parliament Local Area Development Scheme). The Scheme provides for annual budgetary grants by the Union Government to enable Members of Parliament to recommend work of a developmental nature with an emphasis on creating durable community assets based on local necessities in their constituencies. The constitutional validity of the Scheme was adjudicated upon and upheld in a judgment of a Constitution Bench of this Court rendered on 6 May 2010 in *Bhim Singh v. Union of India*[1].

4. In the State of Uttar Pradesh, a scheme known as the Vidhayak Nidhi Scheme was introduced in the State Budget in 1998-1999 with an allocation of Rupees fifty lakhs for every Member of the Legislative Assembly and Legislative Council. In the Budget of 2000-2001, the allocation under the Scheme was enhanced to Rupees seventy five lakhs. The appellant moved the High Court in its writ jurisdiction in 2004 seeking to challenge the constitutionality of the Vidhayak Nidhi Scheme and for obtaining an order restraining the state from enhancing the budgetary outlay from Rupees seventy five lakhs to one crore per

MLA/MLC, as was proposed. The appellant submitted that if the challenge to the validity of the Scheme is not accepted, then in the alternative, the moneys allocated under the Scheme should be permitted to be utilized only for meeting the expenditure on schemes which have been sanctioned under the district plan pursuant to the provisions of Article 243ZD and the U P District Planning Committee Act, 1999.

5. The primary submission of the appellant before the High Court (and in these proceedings under Article 136 of the Constitution as well) is that the field of development plans for districts is occupied by virtue of the provisions contained in Article 243ZD and the enactment of the state legislature noted above. According to the appellant, it is only the District Planning Committee which can identify or approve of a development plan. Hence, it was urged that elected representatives of the state legislature cannot be permitted to select a scheme other than what is within the purview of an approved development plan prepared by the District Planning Committees under the state legislation of 1999. The judgment of the Constitution Bench of this Court in Bhim Singh (Supra) had been rendered during the pendency of the writ petition in the High Court. The appellant sought to make a distinction between crucial aspects of MPLADS which distinguish from the Vidhayak Nidhi Scheme in Uttar Pradesh. Moreover, it was urged that the judgment of the Constitution Bench would not conclude the issue since Article 243ZD and the provisions of the state legislation of 1999 would apply to the state scheme (and not MPLADS).

6. The Division Bench of the High Court held that there is no distinction between MPLADS and the Vidhayak Nidhi Scheme since under both the central and the state schemes, the recommended work has to relate to one district or the other within the country. The High Court adopted the view that the power of identifying and recommending work of a developmental nature conferred upon the elected representatives - be they Members of Parliament under MPLADS or MLAs/MLCs under the state scheme is supplemental to the power vested in the District Planning Committee constituted under the state legislation. Hence, while dismissing the writ petition, the High Court held that the judgment of the Constitution Bench in Bhim Singh was dispositive of the controversy.

7. In the concluding part of its judgment and order, the High Court dwelt on the grievance which was urged by the appellant on the lack of accountability in respect of moneys disbursed under the scheme and certain allegations of the misuse of funds which the appellant had addressed, primarily based on certain newspaper reports. The High Court granted liberty to the appellant to formulate its suggestions for consideration by the Principal Secretaries in the Department of Planning and Development and the Legislative Department of the State Government. Dealing with that aspect, the High Court observed as follows :

> "Since the main prayer in this writ petition has already been discussed above and not found acceptable, the writ petition is dismissed but liberty is granted to the appellant to formulate its suggestion for consideration by the Principal Secretary, Planning and Development, U.P. Government as well as Principal Secretary, Legislative Department, U.P. Government. We are also of the view that suggestion should receive serious consideration of all the concerned authorities for the simple reason that public

money should always be accountable and State has a duty to take all possible steps to prevent misuse of public money particularly when murmur against perceived misuse of Vidhayak Nidhi is becoming more audible. We expect the authorities to act in the matter with due sincerity and promptitude so that there is no occasion for any further public interest litigation in the matter."

(emphasis supplied)

Aggrieved by the inaction of the State Government in dealing with the representation submitted by it, the appellant moved a contempt petition before the High Court. Eventually, an order was passed by the Principal Secretary in the Rural Development Department of the State Government on 21 May 2014 and by the Principal Secretary in the Planning Department on 17 June 2014.

8. Article 243ZD is in Part IXA of the Constitution which deals with Municipalities. Parts IX (which deals with Panchayats) and IXA were introduced by the seventy third and seventy fourth constitutional amendments. Article 243ZD provides for the constitution of District Planning Committees for every district in each state for the preparation of a draft developmental plan for the district as a whole. The provision also enables the legislature of each state to enact legislation setting down the composition of the District Planning Committees, the manner in which seats on the Committees shall be filled up and the functions of the Committees, relating to district planning among other things Article 243ZD is as follows :

"243ZD. Committee for district planning
(1) There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole;

(2) The Legislature of a State may, by law, make provision, with respect to-

(a) the composition of the District Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that no less than four-fifths of the total number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district;

(c) the functions relating to district planning which may be assigned to such Committees;

(d) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every District Planning Committee shall, in preparing the draft development plan-
(a) have regard to-

(i) matters of common interest between the • Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(ii) the extent and type of available resources whether financial and otherwise;

(b) consult such institutions and organizations as the Governor may, by order, specify.

(4) The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State."

9. In preparing the draft development plans, the District Planning Committee is to have regard to the matters of common interest between panchayats and municipalities including spatial planning, sharing of water and other physical or natural resources and the integrated development of infrastructure and environmental conservation. Moreover, each committee must have due regard to the available resources, financial and otherwise.

10. In exercise of the power conferred by clause (2) of Article 243ZD, the state legislature of Uttar Pradesh enacted the U P District Planning Act, 1999 to effectuate the constitutional provisions for the setting up of District Committees and for the preparation of development plans for the districts. The importance of the provisions of Article 243ZD has been noticed in a judgment of a Bench of two learned Judges of this Court in *Rajendra Shankar Shukla v. State of Chhattisgarh*[2] :

"17. After the insertion of Part IXA in the Constitution, development plan for a district can only be drawn by the democratically elected representative body i.e. DPC, by taking into account the factors mentioned in clauses (3)(a)(i) and (ii)of Article 243ZD. As per clause (4) of Article 243ZD, the Chairman of other DPC shall forward the development plan as recommended by the Committee to the Government of the State."

Emphasising the importance of the role of the District Planning Committee, this Court held that it is not open to a development authority to unilaterally prepare a development scheme resulting in a re-constitution of land without taking into consideration the opinion and suggestions of a democratically elected body such as the District Planning Committee.

11. Basing its submissions on the provisions of Article 243ZD and the state legislation of 1999, the appellant contends that the entire field stands occupied by the law made by the state legislature pursuant to the Constitution. Hence, it has been urged that it is not open to the State Government by means of executive action, as manifested in the formulation of the Vidhayak Nidhi Scheme to permit elected members of the state legislature to select

development work in their constituencies which may not accord with the development plans formulated by the District Planning Committees. To the extent that the scheme allows a departure, it has been urged that it would be ultra-vires. Alternatively, it has been suggested that the scheme may be confined to allowing elected members of the state legislature to recommend only such work as is duly sanctioned under the development plans prepared by the District Planning Committees. In this context, it has been submitted that the above issue, which was sought to be canvassed before the High Court in the present case, was not considered in the judgment of the Constitution Bench in Bhim Singh, since it would not arise in relation to MPLADS which was in question in that case.

12. In the judgment of Bhim Singh, the Constitution Bench upheld the validity of MPLADS. The conclusions in the judgment are summarised below :

> "(i) MPLADS is intra-vires Article 282 as it falls within the meaning of the expression "public purpose" by aiming towards the fulfillment of developmental needs;
>
> (ii) a mere allegation of the misuse of funds would not justify invalidating the scheme especially since the scheme provides for several layers of accountability;
>
> (iii) there is no violation of the doctrine of separation of powers inasmuch as MPLADS is effectively controlled and implemented by the district authorities with adequate safeguards under the applicable guidelines; and
>
> (iv) the role of Members of Parliament under MPLADS is limited to the initial choice of developmental work in the area, whereas the verification of eligibility and feasibility of the recommended work and its sanctioning and execution is carried out by local authorities or administrative bodies. It is the district authorities which identify the agency through which a particular kind of work should be executed and Panchayati Raj Institutions and Urban Local Bodies are preferred agencies for implementation of work under MPLAD. In Bhim Singh, the Constitution Bench while upholding the validity of MPLADS held that the scheme supp-lements the efforts of the states and local authorities. Moreover, the scheme was held not to be an interference in the functional or financial domain of the local planning authorities. In that context, the Constitution Bench observed thus:
>
> "76. Further, the Scheme only supplements the efforts of the State and other local authorities and does not seek to interfere in the functional as well as financial domain of the local planning authorities of the State. On the other hand, it only strengthens the welfare measures taken by them. The Scheme in its present form, does not override any powers vested in the State Government or the local authority. The implementing authorities can sanction a scheme subject to compliance with the local laws."

13. The impact of the provisions of the Seventy third and Seventy fourth amendments to the Constitution by which Parts IX and IXA were introduced also came up for deliberation in the course of the judgment. The grievance of the appellants was that MPLADS introduced a decision making authority which is extraneous to Parts IX and IXA. The submission was noted in the following terms :

> "91. It is also the grievance of the appellants that with the passing of the Seventy third and Seventy fourth Amendments to the Constitution introducing Part IX in relation to the panchayat and Part IXA in relation to the municipalities, the entire area of local self-government has been entrusted to the panchayats under Article 243-G read with Schedule 11 and the municipalities under Articles 243-W, 243-ZD and 243-ZE read with Schedule 12 of the Constitution. According to them the MPLAD Scheme is inconsistent with Parts IX and IX-A insofar as the entire decision-making process in regard to community infrastructure of works of development nature for creation of durable community assets including drinking water, primary education, public health, sanitation and roads, etc is given to the Members of Parliament even though the decision-making process in regard to these very same matters is conferred to the panchayats and municipalities. The MPLAD Scheme, according to them, is in direct conflict with Parts IX and IX-A of the Constitution. It was argued that the Scheme introduces a foreign element which takes over part of the functions of the panchayats and municipalities."

14. However, in response to the submission, the Constitution Bench held that the function of a Member of Parliament under the applicable guidelines is merely to recommend a piece of work. The district authority is entrusted with the absolute authority to decide upon the feasibility of the work recommended, assess to the funds required for execution, engage an implementing agency, supervise the work and ensure financial transparency by providing audit and utilization certificates. The Constitution Bench observed that a major role is assigned under MPLADS to panchayats, municipalities and corporations. Rejecting the argument of invalidity, this Court observed as follows :

> "93...The extracts of the Guidelines we have produced above make it clear that even though the district authority is given the power to identify the agency through which a particular work recommended by the MP should be executed, the Panchayati Raj institutions (PRIs) will be the preferred implementing agency in the rural areas, through the Chief Executive of the respective PRI, and the implementing agencies in the urban areas would be urban local bodies, through the Commissioners/Chief Executive Officers of Municipal Corporations, municipalities".

The submission that the scheme violated the constitutional principle of separation of powers was accordingly repelled.

15. In the present case, relying upon the judgment in Bhim Singh, the High Court held that the Vidhayak Nidhi Scheme only supplements the efforts of the states and local authorities. In the view of the High Court, the power of identifying and recommending work of a

developmental nature given to elected representatives, be they Members of Parliament or of the Legislative Assembly or Legislative Council is supplemental to the power conferred upon District Planning Committees and cannot be invalidated on the ground that it cannot co-exist with the Act of 1999. The decision of the High Court on this aspect is in consonance with the judgment of the Constitution Bench. The Vidhayak Nidhi Scheme does not (in its true scope and purpose) supplant or substitute the role of the District Planning Committees constituted under the provisions of the state legislation of 1999. The guidelines which were formulated by the State Government while announcing the scheme in 1998 are material and have been adverted to in the order passed by the Secretary, Rural Development on 21 May 2014. Para 1.1 of the guidelines states that the Chief Minister had declared the constitution of a fund of Rupees two hundred and sixty crores to provide an outlay of Rupees fifty lakhs per year to elected representatives of the state legislature to facilitate development work within their areas to meet local requirements and in the interest of balanced development. Para 2.2 provides that the construction work would be developmental in nature for the creation of local assets and funds shall not be utilized for meeting revenue expenditure. Para 4.2 envisages that audit of the amount to be spent from the MLA fund would be conducted by the Rural Development Department. The technical audit of construction works carried out every year would be made by the technical audits cell. In order to ensure transparency, every citizen would be entitled to have information in regard to the particulars of work being carried out through the service provider agency/Rural Development Department. Under para 5.1, the Chief Developmental Officer is appointed as Nodal Officer to maintain coordination between the State Government and the Rural Development Department. There are provisions for the inspection of the development work by the Chief Development Officer and by the officers at the sub-regional and divisional levels. The Chief Development Officer who is appointed as a Nodal Officer is also associated with the District Planning Monitoring Committee. Consequently, the Chief Development Officer is entrusted with the work of ensuring that there is no duplication of work. The examination of the work recommended by the elected representatives is made by the Chief Development Officer. The fund is maintained through the District Rural Development Agency which together with the technical committee is required to inspect the work carried out under the scheme. A further government order has been issued on 29 November 2012 for clarifying certain ambiguities in the scheme.

16. The aspect which merits careful attention is the grievance of the appellant that the High Court failed to notice critical differences between MPLADS and the Vidhayak Nidhi Scheme though these were pleaded specifically in the affidavits filed. These differences have a bearing on the role which is assigned to the elected representatives in the decision making process.

17. In Bhim Singh, this Court had upon a careful analysis of the guidelines framed under MPLADS noted that the function of a Member of Parliament under clause 3.1 is merely to "recommend a work". On the other hand, the district authorities are assigned with the authority to decide upon the feasibility of the work recommended, assess the requirement of funds, engage the implementation agency, supervise the work and to ensure financial transparency in the form of audit and utilization certificates. Moreover, though the district

authority is given the power to identify the implementing agency which would execute the work recommended by the elected representatives, panchayati raj institutions are the preferred implementing agencies in the rural areas while in urban areas it would be urban local bodies who would have a preferred position for implementation under MPLADS. It was having due regard to these facets of the scheme that this Court in Bhim Singh rejected the submission that the scheme had taken over the functions of panchayats and municipalities under Parts IX and IXA of the Constitution.

18. In the present case, the State Government filed a counter affidavit through its Special Secretary in the Rural Development Department before the High Court. Dealing with the grievance in the writ petition, the Special Secretary set out the role which is assigned to the elected representatives in the context of the Vidhayak Nidhi Scheme, thus :

> " The role of Members of Legislative Assembly and Members of Legislative Council is to identify the priorities of developmental works for their constituencies and recommend the same to Chief Development Officer of the concerned district, who implement the work in accordance with the guidelines and Government Orders relating to the Vidhayak Nidhi."
>
> The appellant filed an affidavit on 10 October 2011 specifically in the context of the judgment of this Court in Bhim Singh. The affidavit makes a grievance of the fact that unlike MPLADS, where urban local bodies for urban areas and panchayati raj institutions in rural areas are to be the preferred implementing agencies, in the case of the Vidhayak Nidhi Scheme not only the implementing agency but the contractor is also usually of the choice of the MLA/MLC. The grievance of the appellant is as follows :
>
> "Again, unlike the MPLAD Scheme, (Para 97(7) of the judgment) under Vidhayak Nidhi Scheme the Municipal and Panchayati Raj institutions have been denuded of their role and jurisdiction. Under Para 2.11 of the MPLAD Scheme urban local bodies in the urban area and panchayati raj institutions in the rural areas have to be the preferred implementing agency. This caveat is missing in the case of Vidhayak Nidhi. Moreover, Not only the implementing agency but also the contractor is usually the choice of the MLA/MLC leading to scope for wide spread corruption in the execution of the works under the scheme."
>
> (emphasis supplied)
>
> Again, this was reiterated in the following extracts in the same affidavit :
>
> "The checks and balances stipulated in the case of MPLAD are not available in the case of Vidhayak Nidhi. While under MPLAD Scheme the role of MP is theoretically limited to recommending a work, under para 3.1 of the Vidhayak Nidhi scheme, consent of the MLA/MLC is required not only for selection of the work but also for its sanction which includes the location and cost thereof, and the selection of

implementing agency. This makes them the de facto sanctioning authority for the work. Thus, the function of sanctioning these works is performed by them as it is subject to their veto."

(emphasis supplied)

19. The grievance of the appellant is also that unlike MPLADS, the Vidhayak Nidhi Scheme has been used to finance buildings belonging to private organizations, which explains why there was a clamour to give money to schools controlled by the MLA/MLC or by the members of his or her family. This, it was submitted was resulting in a misappropriation of public funds since the construction of school buildings can be implemented through the principal/manager. Hence, it was asserted that the accountability mechanism which this Court found to be existing in MPLADS is absent under the Vidhayak Nidhi Scheme.

20. The State Government has not dealt with this grievance of the appellant either in the pleadings filed in the course of the proceedings before the High Court or in the counter affidavit which has been filed before this Court. The grievance that unlike MPLADS, the role of the elected representatives of the state legislature goes beyond merely recommending the work has remained uncontroverted. The judgment of this Court in Bhim Singh emphasised that MPLADS merely supplements the welfare schemes of the states and other local authorities and does not interfere in the functional or financial domain of the local planning authorities. In that context, it was noted on the basis of the guidelines that the role of the elected representatives is confined merely to recommending the work which is to be carried out. Thereafter, the decision making process commencing from the assessment of the feasibility of the work, estimation of the funds required and selection of the implementing agency as well as the work of supervision is entrusted to the competent authorities in the district levels. The provisions of Parts IX and IXA of the Constitution are duly observed since panchayati raj institutions in the rural areas and urban local bodies in the urban areas are to be the preferred implementing agencies under MPLADS. The State Government ought to have applied its mind to these crucial aspects which distinguish MPLADS from the Vidhayak Nidhi Scheme. When the Division Bench of the High Court delivered its judgment on 30 May 2013, it emphasised the need for ensuring accountability in regard to public moneys and to the duty of the state to take all possible steps to prevent their misuse. The Division Bench noted that the "murmur against perceived misuse of Vidhayak Nidhi is becoming more audible". It was in this view, that a direction was issued to the Principal Secretaries in the Planning and Development Department and in the Legislative Department to take heed of the suggestions of the appellants with "sincerity and promptitude". The State Government in the two orders which have been passed by its Principal Secretaries on 21 May 2014 and 17 June 2014 paid only lip service to the grievance of the appellant. The principles which have been formulated in the judgment of the Constitution Bench in Bhim Singh have not even been noticed nor has any attempt been made on the part of the State Government to ensure that the guidelines which govern the Vidhayak Nidhi Scheme are brought in consonance with the provisions of Parts IX and IXA of the Constitution and the observations contained in the judgment of this Court in Bhim Singh. Hence, while we are of the view that there can be no objection to the state implementing a scheme of the nature that was upheld

by the Constitution Bench in Bhim Singh, the safeguards which form a part of the MPLAD Scheme should be duly considered so as to ensure that the role which is ascribed to the district planning authorities and institutions of local self-governance is not denuded. The safeguards which must be introduced shall include the following :

> "(i) the role of the elected representatives would be to recommend the work of a developmental nature in their constituencies within the budget allotted under the Scheme;
>
> (ii) the feasibility of the work, estimate of funds, selection of the implementing agency and supervision of work must be independently determined by a nominated authority or body of the State government;
>
> (iii) panchayati raj institutions in rural areas and municipal bodies in urban areas may be considered as preferred implementing agencies having regard to the entrustment of responsibilities under Parts IX and
>
> IXA of the Constitution;
>
> (iv) the plans prepared by the District Planning Committees under Article 243ZD read with the U P District Planning Committee Act, 1999 may be made available by every district Collector to elected representatives to enable them to decide whether any developmental work which has already been identified in the above plan should be executed in pursuance of the funds made available under the Vidhayak Nidhi Scheme; and
>
> (v) sufficient safeguards should be provided to ensure against conflicts of interest such as the allocation of funds to institutions controlled by an elected representative or a member of his or her family; and
>
> (vi) The scheme must include sufficient safeguards to ensure financial transparency, such as proper supervision of work, monitoring quality and timely completion besides procedures to ensure proper audit and utilization of funds.

21. We are in agreement with the view of the High Court that the Vidhayak Nidhi Scheme does not per se violate Article 243ZD or the U P Planning and Developmental Act, 1999. Elected representatives have a vital role in democracy. They have an intrinsic connection with their constituencies and have a legitimate role to discharge in meeting the development needs of their constituencies. Article 243ZD does not exclude their role. On the contrary, they perform a supplemental role by enhancing and supporting the work of the institutions of local self-governance. However, it is in our view necessary that the guidelines which have been formulated by the State Government are revisited and the directions set out above are complied with so as to ensure that the guidelines are in conformity with the spirit and underlying purpose of Parts IX and IXA of the Constitution in terms as held by the

Constitution Bench of this Court in Bhim Singh. The revised guidelines shall apply to all projects to be undertaken hereafter under the Vidhayak Nidhi Scheme. This exercise shall be completed by the State Government not later than a period of two months from the receipt of the present judgment. The appeal shall accordingly stand disposed of in the above terms. There shall be no order as to costs.

[1]*(2010) 5 SCC 0538*
[2]*(2015) 10 SCC 0400*