

BDPPS

**IN THE COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO.71 OF 2013
ALONGWITH
CHAMBER SUMMONS NO.107 OF 2014
IN
PIL NO.71 OF 2013**

High Court on its own Motion Petitioners.

V/s

State of Maharashtra & Others Respondents.

**NAMES OF ADVOCATES & PARTIES IN PERSON WHO
REMAINED PRESENT DURING THE HEARING:**

Mr. A.Y. Sakhare, Senior Counsel with Advocates Mr. Joel Carlos, Shri Kisan Gaikwad, Jt. Law Officer, Mrs Priti Purandare, Dy. Law Officer, Mrs Komal Punjabi, Dy Law Officer, Mrs Trupti Puranik, Assistant Law Officer, Mr. Sagar Patil, Assistant Law Officer, Mr. Sowmya R. Koare, Mr. Rohan Mirphury, for the MCGM.

Mr. G.W. Mattos, Advocate for MMRDA.

Mr. G.D. Shetty, Advocate a/w Mr. Rakesh Singh, Mr. P. Mishra i/b M.V. Kini & Company for NHAI.

Mr. Kashyap Bhaurao, Advocate for Respondent No.5.

Mr. Ram Apte, Senior Counsel with Mr. Mandar Limaye for Respondent No.4/TMC.

Mr. N.R. Bubna for MBMC.

Mr. Prashant Chawan i/b Ms. Reshmarani Nathani for

Respondent No.13

Mr. Sandip L. Babar (AGP) for State of Maharashtra.
Mr. Subit Chakrabarti i/b Vidhi Partners for Respondent No.7.

Mr. Ajai Fernandes a/w Ms. Sneha B. Pandey i/b Motiwala & Co. for Respondent No.8 (BPT)

Mr. L. Ansari i/b Motiwala & Co. for Mumbai Port Trust.

Mr. Jamshed K. Mistry, *amicus curiae* with Advocate Mr. Dipesh Siroia.

Mr. Kamal R. Khata with Rachji Thakker i/b Rustamji Ginwala for Respondent Nos. 10 and 11.

Ms. Ruju R. Thakker, Advocate, Intervenor/party in person.

Mr. Advait M. Sethna i/b Mr. Dhanesh Shah for Union of India/Respondent No.16.

Mr. Vasant Patil, Intervenor/party in person.

Mr. Kamlakar Shenoy, Intervenor/party in person.

NAMES OF OFFICERS WHO REMAINED PRESENT DURING THE HEARING:

Mr. Sanjay Deshmukh, (IAS), Additonal Commissioner of MCGM, present.

Mr. Ashish Kumar Singh, Principal Secretary, PWD.

Mr. C.P. Joshi, Secretary PWD (Roads)

Mr. Milind Bharambe, Jt. CP Traffic Mumbai.

Mr S.D. Landge, Joint Secretary, UDD.

Mr. S.S. Gokhale, Dy. Secretary, UDD.

Mr. S.O. Kori, Chief Engineer (Bridges) MCGM.

Mr. M.S. Raikar, Executive Engineer, MMRDA.

Mr. A.P. Nagargge, Superintending Engineer, MMRDA

Mr. Sindhu Sarath, Legal Officer, MMRDA

Mr. M.V. Jaitpal, Executive Engineer.

Mr. S.R. Bhandane, Deputy Engineer, MMRDA

Mr. Prashant Fesade, GMCT & PD, PIU, Panvel NHAI.

Mr. Abhishek Agarwal, Manager (T) NHAI.

Mr. Manoj S. Shah, Sectional Engineer.

Mr. Sanket Jadhav, ADV Office.

Mr. Ganesh Rao, LOCA.

Mr. Darade S.P. Chief Engineer (Roads) MCGM.

Mr. Jadhav, Assistant Engineer, Roads and Traffic.

Ms. Shubhangi Prasad Dode, Executive Engineer, NMMC.

Mr. R.B. Parmar, Deputy Engineer.

Mr. Denis, LT Expert, MCGM.

Mrs. Gadkar, Law Officer for Respondent No.13

Mr. R.B. Gadge, CE, MSRDC/Respondent No.13

Mr. D.A. Salunkhe, CE, MSRDC/Respondent No.13

Mr. Nagendra Govindrao Mirajkar, Dy. Chief Engineer MBPT.

Shri Shekhar Balwant Lagwankar, S.E. - MBPT

Mr. B.N. Ohol, Chief Engineer, MSRDC.

**CORAM: V.M. KANADE &
P.R. BORA, JJ.**

DATE : 10TH MARCH 2017

P.C. :-

1] This special hearing was fixed in the Judges' Conference Room so that high ranking officers from all concerned Departments could point out the steps taken by them in the matter and secondly to ensure that there is proper coordination between various agencies which are expected to control conditions of the roads and thirdly to find out the solutions to the problems of occurrence of potholes during every monsoon which has become a common phenomenon for about last ten years.

2] Mr. Sanjay Deshmukh, Additional Municipal Commissioner, MCGM has made presentation and pointed out, firstly, the stakeholders who are responsible for maintenance of roads within the MCGM limits. The said presentation points out that almost 1941 Kms of roads are

maintained by MCGM, out of which 650 Kms (35%) are concretised. It also points out that MMRDA has control over 15 Kms of Bandra-Kurla Complex's internal roads, PWD has control over 63 Kms of roads viz. Western Express, Eastern Express Highway and road between Mankhurd to Vashi Creek Highway. The presentation further points out that MSRDC has control over 24 Bridges/flyover/skywalk in the City area etc and MBPT has control over 26.63 Kms of roads in Port Trust area. The measures and steps taken for improvement of the roads have also been mentioned in the said presentation.

3] The presentation firstly speaks about the Project Works which are presently undertaken and, secondly, the preventive measures to be taken prior to monsoon. Thirdly, measures which are to be taken for improvement of roads and the priorities also have been addressed by the Additional Municipal Commissioner. The presentation also speaks about measures to be taken during monsoon. Further, the challenges in road construction, constraints faced by the Corporation, constitution of Standing Technical Advisory Committee and the suggestions given by the said Committee have also been discussed in the said presentation. Lastly, the mechanism to address the complaints has also been mentioned in the said presentation.

4] The said presentation discloses problems faced by the Corporation and the steps which are being taken by the Corporation to solve these problems. We are informed by the Principal Secretary, PWD that work of concretisation of roads under their control is being undertaken and in the next ten years, there should be no problem with respect to maintenance of the said roads. He has also informed us that, so far, no complaints have been received regarding fly overs which are maintained by MSRDC which does its work under the supervision of PWD.

5] Ms Thakker, the learned Advocate, who is the Intervenor appearing in person has explained the difficulties faced by citizens when complaints are made on the web portal of the Corporation. These difficulties have been pointed out to the technical expert of the Corporation during the hearing.

6] The learned *amicus curiae* Mr. Mistry also gave various suggestions of what can be done in future for improvement and maintenance of the said roads.

7] Mr. Sakhare, the learned Senior Counsel appearing on behalf of the Corporation submitted that the main problem faced by the Corporation is regarding the time which is taken for repairing the said roads. He pointed out that due to

continuous traffic, particularly during monsoon, the Corporation does not get sufficient time to repair the roads and there are restrictions in carrying out repairs of roads during night time. Mr. Milind Bharambe, Jt. CP, representing the Traffic Department pointed out the problems faced by the Traffic Department, which unfortunately has to bear the brunt and has to answer the complaints made by the citizens.

8] After having heard all the parties at length, we are of the view that suggestions given by the learned *amicus curiae* Mr. Mistry may be taken into consideration by the Corporation. Secondly, we are also of the view that Traffic Department can give notice in advance to the public at large that repairs would be undertaken at a particular stretch of road on a particular day by giving sufficient advertisements either in news papers or on television, so that people can avoid using that particular road and the Corporation would get sufficient time to do the repair or reconstruction work of the entire stretch of the road.

9] The main problem appears to be that as long as main stretch of the road and main arteries connecting the Cities are not replaced by new roads, problem of occurrence of potholes would continue and temporary measures which are taken would not solve the problem permanently. We have

also suggested the Corporation to examine the kind of material which is used in foreign countries for the purpose of repairing potholes. Certain videos which are shown on U-Tube disclose that new techniques have been evolved for completely fixing the potholes within a very short period of time as the material which is used solidifies within a short time. Mr. Sakhare, the learned Senior Counsel for the Corporation submitted that talks are going on between these Companies and the Corporation to find out whether tenders could be invited from such Companies who have solutions or patents for such products.

10] The presentation made by Mr. Deshmukh, Additional Municipal Commissioner, discloses that repair and construction work has been undertaken practically on majority of the roads and from the assurance given by the Corporation, including PWD and Traffic Department and the other allied Agencies, at least there is a ray of hope that in the coming monsoon citizens will have pothole free roads. We, however, would like to monitor the situation every month to see whether the time schedule mentioned in the presentation is adhered to.

11] Mr. Deshmukh, the Additional Municipal Commissioner also submitted that 24 whatsapp numbers would be provided so that the complaints of residents of Mumbai can

be received on these whatsapp numbers by the Ward Officers alongwith videos and photos in respect of the condition of the roads and potholes thereon. Similarly, Traffic Police and Corporation can also take help of citizens to monitor the potholes throughout the City of Mumbai. The Traffic Department also shall consider granting permission to the vehicles of the contractors which carry out repairs during working hours, so that potholes are repaired within 24 hours. These whatsapp numbers would be advertised in addition to the facilities which are already provided by the Corporation.

12] We also direct the State Government to coordinate with the Corporation and other Agencies to ensure that wherever entire stretches of the roads are required to be replaced after giving advance notice to the citizens, these stretches of roads should be repaired by using the best material and technology.

13] Some of the parties appearing in person have also made various suggestions regarding pavements and improvements in the quality of roads which are constructed. They have suggested that the Contractors may be made accountable for the roads which are constructed by them. They have also suggested that the Officers who give certificate in respect of the roads also should be made accountable.

14] We are informed by Ms Shubhangi Dode, Executive Engineer, representing Navi Mumbai Municipal Corporation that they have not faced any problem of potholes on account of constant monitoring of the roads by their Officers and Engineers. She has also submitted that Navi Mumbai Municipal Corporation puts the responsibility of repairing of roads and the maintenance of the roads on the Contractor to whom the contracts are awarded. Mr. Apte, the learned Senior Counsel appearing on behalf of Thane Municipal Corporation, however, submitted that there are no problems of potholes in Thane City and its adjoining areas.

15] We are also informed that certain powers have now been given to each Ward Officer alongwith budgetary provision which would enable the Ward Officers to solve the problem of potholes in their Wards as soon as they are brought to their Notice. *मेव जयते*

16] Mr. Sakhare, the learned Senior Counsel for the Corporation also pointed out that the Corporation has asked the State Government to make available the CCTV footages maintained by the Police so that from these photographs, Corporation can immediately come to know about the occurrence of potholes within 24 hours and would attend to the said problem immediately.

17] We hope and trust that the suggestions which are given by the learned Advocate Ms. Thakker, who is an Intervenor appearing in person and by the learned *amicus curiae* Mr Mistry will be considered and a fresh mechanism is evolved for the purpose of redressal of complaints on the web portal of the MCGM.

18] We would like to thank the Officers who have attended this hearing and express our sincere appreciation for the efforts taken by all of them for improving the conditions of roads falling within their respective jurisdictions.

19] We make it clear that on the next date the Officers of the concerned Department need not remain present in Court.

20] Stand over to 7th April, 2017 in Court.

(P.R. BORA, J.)

(V.M. KANADE, J.)