

Bombay High Court

High Court On Its Own Motion vs State Of Maharashtra And Ors on 20 May, 2015

Bench: A.S. Oka

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pil-71

pmw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUO MOTU PUBLIC INTEREST LITIGATION NO.71 OF 2013

The High Court on its own Motion,
High Court of Judicature at Bombay
Versus

... Petitioner

The State of Maharashtra and Others

... Respondents

Ms. Geeta Shastri, Additional Government Pleader, for the Respondent -

State.

Mr. A.Y. Sakhare, Senior Counsel a/w Mr. Ram Apte, Senior Counsel

a/w Mr. Vinod Mahadik, for the original Respondent - the Mumbai
Municipal Corporation.

Mr. A.A. Garge, for Respondent No.5 - the Navi Mumbai Municipal
Corporation.

Mr. N.R. Bubna, for the Respondent No.6 - the Mira Bhayander
Municipal Corporation.

Mr. Sandip Awale i/by M/s. Vidhi Partners, for Respondent No.7.

Mr. P.P. Chavan i/by Ms. Reshmarani J. Nathani, for Respondent No.13.

Mr. Kamal Khatta i/by Mr. Sutapa Saha, for the Respondent Nos.10 and

11.
Mr. Gurudas V. Takke i/by Mr. Vijay Chavan, for Respondent No.15.
Ms. Ruju Thakkar, party-in-person/ Intervenor.
Mr. Dhanesh R. Shah a/w Mr. Adwait Sethna, for Union of India.

CORAM : A.S. OKA & C.V. BHADANG , JJ.

ORDER RESERVED ON : 7th MAY, 2015

ORDER PRONOUNCED ON : 20th MAY, 2015

ORAL ORDER (PER A.S. OKA, J.): -

. On the basis of the letter dated 24th July, 2013 addressed by

a learned Judge of this Court (Hon'ble Shri Justice G.S. Patel), this Suo Motu Public Interest Litigation has been initiated under the order dated 1 of 33 2 pil-71.13 29th July, 2013 passed by the First Court. Considering the importance of the issues raised in this PIL, the same requires final hearing. Hence, we issue Rule. The concerned Counsel who are representing various Respondents today waive service of the Rule. We have heard Ms.Geeta Shastri, the learned AGP for the State Government. We have heard Shri A.Y. Sakhare, Senior Counsel along with Mr. R.S. Apte, Senior Counsel on behalf of the Mumbai Municipal Corporation. Mr.Kamal Khatta, the learned counsel representing the tenth and eleventh Respondents (who are the members of the Bar) has made several suggestions in writing. We have heard him in some detail. We have also heard Ms. Thakkar, a party in person and Intervenor. We have heard Shri Prashant Chavan for the thirteenth Respondent and Shri Sethna for the Union of India. We have heard the learned counsel for the parties on the issue of passing interim directions. The issue involved in this Petition has been already dealt with to some extent by this Court in (PIL) Suo Motu Writ Petition No.8 of 2005 and (PIL) WP No.259 of 2005. Notwithstanding the orders dated 16th August, 2006, 31st August 2006 and 17th October, 2007 passed in the aforesaid Petitions, the issue still survives for consideration.

2. In the City of Mumbai as well as in all major Cities in the State there exists an issue which is causing a lot of concern. The issue is 2 of 33 3 pil-71.13 of poor condition of roads in the Cities. In the City of Mumbai as well as the cities having Municipal Corporations in Thane Districts, there is an additional problem. In these cities, heavy monsoon is always set out as an excuse for poor condition of roads and the potholes on the roads. A judicial notice will have to be taken of the fact

that the general condition of roads in all major cities in the State is far from being satisfactory. There are potholes on the roads. The roads are not properly levelled and surfaced. In some of the cities, proper zebra crossings are not provided for the benefit of the pedestrians. The footpaths or footways do not exist on the side of many roads. If the same exist, they are either in poor condition or the same are encroached upon by illegal structures or hawkers. In those cities where there is a heavy rainfall, the condition of roads worsens in the monsoon. The reason may be the failure to use proper techniques in making or repairing the roads. The problem is compounded by ever increasing vehicles coming on the roads.

3. A judicial notice will have to be taken of the fact that the poor condition of roads, the existence of potholes on the roads, the poor surfacing of the roads, the failure to level the roads properly and the lack of proper amenities to the pedestrians are the major factors which cause a large number of road accidents which result into either loss of lives or serious injuries to the members of the public. Moreover, the 3 of 33 4 pil-71.13 poor condition of roads adversely affects free movement of the traffic thereby causing delays. In the bigger cities, apart from those who can afford to have their own four wheelers, common people travel by public sector or other transport buses and also use relatively cheaper means of public conveyance like auto-rickshaws. Large number of common people have their own two wheelers. Poor condition of roads causes considerable damage to the vehicles. The poor condition of roads considerably slows down the movement of traffic. Poor condition of roads apart from causing danger to the members of public, results into huge waste of fuel and valuable man hours. Travelling by public transport vehicles like buses and auto rickshaws on poorly maintained roads is a nightmare for all citizens especially for senior citizens, women, pregnant women, children etc. Due to poor condition of roads, the common man is the real victim. We must note here that neither the Mumbai Municipal Corporation nor any other Corporations which are before the Court have attempted to come out with a case that the conditions of the roads is very good. There are various causes of poor condition of roads. One cause may be poor technique or inferior quality of material used for construction of roads. May be that while repairing the roads and while filling the potholes, proper scientific methods are not used. Therefore, the repairs carried out to the roads survive only for a short time. Apart from these vital causes, elements such as heavy rains 4 of 33 5 pil-71.13 or heat also contribute to poor condition of roads. Moreover, large number of agencies such as telephone companies, Internet service providers, gas companies indulge in indiscriminate digging of roads.

The roads are rarely restored to its original condition immediately after the work is over. The restoration work is very rarely done satisfactorily.

4. The City of Mumbai has further complications. In most of the other Cities in the State, the local authorities such as Municipal Corporations or Municipal Councils are solely responsible for maintenance of the roads. In the City of Mumbai, apart from the Municipal Corporation of City of Mumbai, various other agencies are involved in construction, maintenance and repairs of the roads in the City. The Eastern Express Highway as well as Western Express Highway pass through the City of Mumbai. Apart from these highways, there are major roads which connect the Bombay Pune National Highway. There are elevated roads and large number of road overbridges in the City of Mumbai. Apart from the Mumbai Municipal Corporation, various other agencies are involved in the

maintenance of different stretches of roads. The said agencies are the Mumbai Metropolitan Region Development Authority (MMRDA) established under the Mumbai Metropolitan Region Development Authority Act, 1974 (for short "the said Act of 1974"), the Public Works Department of the State Government, the 5 of 33 6 pil-71.13 Mumbai Port Trust which is established under the Major Port Trusts Act, 1963 and the Maharashtra State Road Development Corporation Limited (for short "MSRDC") which is a Government Company incorporated under the Companies Act, 1956. MSRDC mainly deals with the properties and assets comprising movables and immovables including land, road projects, flyover projects, toll collection rights and works under construction which earlier vested with the State Government and were under the control of its Public Works Department. Certain works have been subsequently transferred to MSRDC.

5. Before we deal with the obligations of various statutory authorities and the State Government, it is necessary to make a reference to what is held by this Court under the Judgment and Order dated 31st August, 2006 in PIL Suo Moto Writ Petition No.8 of 2005 and PIL WP No.3 of 2005. A Division Bench of this Court presided over by His Lordship Justice R.M. Lodha (as he then was) laid down that the existence of roads in a reasonable condition is included in the right to life conferred on a citizen under Article 21 of the Constitution of India. It will be necessary to note the principles laid down by this Court in paragraph 9 of the said order which reads thus :-

"9. It is the obligation of the Civic Authorities and the other agencies of the State to secure to the public the means of 6 of 33 7 pil-71.13 communication in good and proper condition. There cannot be any justification for the bad roads in the financial capital of the country. The people of Mumbai contribute hugely to the revenue of the Centre, the State and the Civic Body. Are they not entitled to the good civic amenities including roads in good condition? How long the citizenry would continue to suffer bad roads? In the context of the constitutional provisions, the existence of roads in reasonable conditions is embraced in the citizens' right to life. Every person is entitled to 'life' as enjoined under Article 21 of the Constitution of India. The directive principles have been read into Article 21 to make life more meaningful and not mere its existence. Good roads are the necessity to the life. There has to be roads for communication in reasonable condition in view of the constitutional imperatives. This is well settled. It needs no emphasis. It is thus imperative for the MCGM to make available proper roads to the people in the city of Mumbai through out the year. The Corporation has to discharge its constitutional and legal obligations unfailingly. What we have said above is applicable equally to all the other authorities like Mumbai Metropolitan Region Development Authority, Mumbai Port Trust, Maharashtra State Road Development Corporation, the Public Works Department and the Thane Municipal Corporation. It is their duty, responsibility and obligation to provide proper roads within their jurisdiction to the commuters through out the year. By serious consequences by infringing the valuable rights of the people. Lest it must be forgotten, bad road mean physical damage, huge economic loss and more accidents."

(emphasis added)

6. We must note here that in the said two Petitions, this Court was dealing with the roads in the Cities of Mumbai and Thane. While disposing of the said Petitions, by order dated 17 th October, 2007 this Court dealt with the stand taken by the Municipal Corporation of 7 of 33 8 pil-71.13 Mumbai. In paragraph 4 of the said order, the Division Bench observed thus :-

"4. Lack of basic civic amenities and bad road conditions have become order of the day. This is never ending story and common to all local statutory bodies and public works department who are responsible and accountable for construction, upkeep and maintenance of roads and with the on set of monsoon every year, the problem gets multiplied. There are incidences quoted before us where the roads do not exist and toll is collected, which comes under the jurisdiction of M.M.R.D.A., M.S.R.D.C. and P.W.D. We therefore, dispose of these petitions as this Court is of the view that it will not be able to continuously monitor constructions and maintenance of the roads within or beyond the Municipal limits of Greater Mumbai indefinitely. This Court is having atleast half a dozen public interest litigations filed by the citizens on the issue of bad road conditions in other Municipal Corporations like Thane, Pune and so on and those petitions are being pursued in accordance with law."

7. Ultimately in paragraph 6, the Division Bench observed thus :-

"6. As we have already observed that this problem is never ending, citizens are at liberty to approach this Court in case deficiency is noticed of a particular road in question and the concerned officials, incharge of the area and the Municipal Commissioner can be issued a show cause notice to explain as to why appropriate action should not be taken against him for his failure to keep the roads in good working conditions that would keep the authorities in check."

8. The learned Judge of this Court along with his letter dated 24th July, 2013 addressed to the Hon'ble the Chief Justice has submitted 8 of 33 9 pil-71.13 a detailed note in which he has observed that the issues which were before this Court in the earlier two PILs have not been satisfactorily addressed as is shown by several subsequent events. To his note, he has annexed several press cuttings and media reports. The media reports are regarding riders of two wheelers suffering casualties such as death or spinal injuries which can be attributed to potholes on the roads. Even the copies of the aforesaid orders passed in aforesaid PILs were submitted along with the said Note.

9. As pointed out earlier, by the judgment and order dated 31st August, 2006 this Court has already held that the right to have roads in reasonable condition is a part of the fundamental right guaranteed under Article 21 of the Constitution of India. Thus, the Division Bench has placed the right of citizens to have pothole free roads in reasonable condition on the highest pedestal of fundamental rights under Article 21 of the Constitution of India. Existence of such fundamental right creates corresponding obligation in all the authorities which are "State" within the meaning of

Article 12 of the Constitution of India. For the infringement of the fundamental right guaranteed under Article 21 of the Constitution of India, a citizen can demand compensation apart from seeking the enforcement of the right. Moreover, a citizen has a right to make grievances regarding the violation of such right and get the grievances redressed.

10. There are statutory obligations vesting in various authorities mentioned in paragraph 4 above. All the authorities are the "State" within the meaning of Article 12 of the Constitution. Initially we are dealing with the Municipal Corporation of Greater Mumbai established under the Mumbai Municipal Corporation Act, 1888 (for short "the said Act of 1888") and the Municipal Corporations constituted under the Maharashtra Municipal Corporations Act, 1949 (for short "the said Act of 1949"). The four Municipal Corporations constituted under the said Act of 1949 in Thane District are also parties to the Petition. As far as the Municipal Corporation of Greater Mumbai is concerned, Chapter III of the said Act of 1888 provides for the obligatory and discretionary duties of the Corporation. Clause (m) of Section 61 of the said Act 1888 which forms a part of Chapter III reads thus :-

"61. Matters to be provided for by the Corporation.

It shall be incumbent on the corporation to make adequate provision, by any means or measures which it is lawfully competent to them to use or to take, for each of the following matters, namely:--

(a)

(m) the construction, maintenance, alteration and improvement of public streets, bridges, culverts, causeways and the like [and also other measures for ensuring the safe and orderly passage of vehicular and pedestrians traffic on streets]."

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11. The said clause (m) incorporates a mandatory duty of the Mumbai Municipal Corporation of maintaining and improving public streets, bridges, canal, cause ways, etc. More importantly, there is a mandatory duty to take measures for ensuring safe and orderly passage of vehicular and pedestrian traffic on streets. Unless the streets are properly levelled and maintained in good condition, orderly passage of vehicular and pedestrian traffic on streets cannot be ensured. A "street"

is defined in Clause (w) of Section 3 of the said Act of 1888 which reads thus :-

"(w) "street" includes any highway and any causeway, bridge, viaduct, arch, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not, over which the public have a right of passage or access or have passed and had access uninterrupted for a period of twenty years; and when there is a footway as well as carriageway in any street, the said term includes, both."

12. Thus, the definition of "street" is very wide which also includes a foot-way or a footpath which is used by the pedestrians. Thus, the obligation under Clause (m) of Section 61 which relates to the streets will include the obligations in relation to foot-ways which are meant for the use of pedestrians.

13. As far as the other four Municipal Corporations are concerned, the same have been constituted under the said Act of 1949. Chapter VI contains the obligatory and discretionary duties of the 11 of 33 12 pil-71.13 Municipal Corporation. Clauses 18 and 19 of Section 63 of the said Act of 1949 read thus :-

"63. Matters to be provided for by the Corporation 1[(1)] It shall be incumbent on the Corporation to make reasonable and adequate provision, by any means or measures which it is lawfully competent to it to use or to take, for each of the following matters, namely:--

"(18) the construction, maintenance, alteration and improvement of public streets, bridges, sub-ways, culverts, cause-ways and the like;

(19) the removal of obstructions and projections in or upon streets, bridges, and other public places."

14. A public street is defined under Clause 52 of Section 2 of the said Act of 1949 and a street is defined under Clause 63 of Section

2. Clauses 52 and 63 of Section 2 of the said Act of 1949 read thus :-

"2(52) 'public street' means any street, -

(a) heretofore levelled, paved, metalled, channelled, sewerred or repaired out of municipal or other public fund, or

(b) which under the provisions of section 224 is declared to be, or under any other provision of this Act becomes, a public street."

"(63) "Street" includes any highway, and any causeway, bridge, viaduct, arch, road, lane, footway, sub-way, court, alley or riding path or passage, whether a thoroughfare or not, over which the public have a right of passage or access or have passed and had access uninterrupted for a period of twenty years and, then there is a footway as well

as a carriage way in any street, the said term includes both."

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15. Hence, as in the case of the said Act of 1888, the definition of a street or a public street under the said Act of 1949 is very wide which not only includes roads, causeways, bridges, lane, etc. but also foot-ways. Thus, in case of the Municipal Corporations which are parties to the Petition, it is the mandatory duty of the Municipal Corporations to maintain and improve the public streets, etc. and to remove obstructions upon such public streets. Thus, it is the legal obligation of the Municipal Corporation under the said Act of 1888 and the Municipal Corporations under the said Act of 1949 to maintain public streets in a good condition. It necessarily follows that the obligation is to maintain public streets free of potholes, properly levelled and properly surfaced. Both the enactments contemplate that foot-ways which are popularly known as footpaths are part of the streets and therefore, the same are also required to be maintained and improved by the Municipal Corporations. Thus, the obligation of the Municipal Corporations is to maintain roads and footpaths which are public streets in a proper condition. Therefore, even the foot-ways or footpaths should be properly levelled and should not have any potholes/ditches. The same should be free from obstructions. Moreover, it is the obligation of the Municipal Corporations to provide facilities such as zebra crossings, speed breakers, traffic signals, etc. for the benefit of the pedestrians. This is an essential part of the "maintenance 13 of 33 14 pil-71.13 and improvement of public streets" which is a legal and constitutional obligation of the Municipal Corporations. The public streets are essentially provided for people to walk and ply vehicles. They are provided to facilitate transport. The footpaths or foot-ways are meant for people to walk. The members of the public have a right to use footpaths or foot-ways free of any obstruction. Therefore, both the aforesaid enactments provide that it is the mandatory duty of the Municipal Corporations to construct, maintain and improve public streets.

16. As far as MSRDC is concerned, on its official website, it is mentioned that "Roads are arteries of a nation. Roads and bridges obliterate distance and connect people while they spur economic progress". On the website, it is stated that the main object of MSRDC is to promote and operate, to plan, construct and manage the projects of roads. The Hon'ble Minister of Public Works Department (Public Undertakings) is the ex-officio Chairman of MSRDC. Citizen's Charter of MSRDC is available on the website. Clause 3(3) thereof states that the duty of MSRDC is to maintain roads and bridges and to repair the same effectively. There is an assurance incorporated therein that the grievances submitted by the citizens shall be redressed within 15 days. The MSRDC is also a "State" within the meaning of Article 12 being a 14 of 33 15 pil-71.13 Government Company established to do the work of a public nature. Thus, it is the obligation of MSRDC also to maintain the roads properly, to carry out repairs thereto and to ensure that there are no potholes on the same. The legal obligation of MSRDC is to maintain the roads and bridges in proper condition and to repair the same effectively. It is its obligation to address to the grievances of the citizens and to ensure that the

same are redressed if not within 15 days, but at least within a reasonable time. As far as the Mumbai Port Trust is concerned, it is a Major Port Trust established under the said Act of 1963 which is also a "State" within the meaning of Article 12 of the Constitution of India.

The obligation of the State to maintain and repair streets meant for public use needs no elaboration. From the written submissions of the Mumbai Port Trust it is very clear that it is not denying the existence of such an obligation.

17. As far as MMRDA is concerned, under Section 17 of the said Act of 1974, a power has been conferred on the MMRDA to provide amenities within Greater Mumbai. Under the said Section, MMRDA is empowered to prepare a project or scheme with a view to provide an infrastructure within the territorial limits of the Mumbai Municipal Corporation and execute the same. Explanation to Section 17 clarifies that the term "infrastructure" shall also mean and include the streets, 15 of 33 16 pil-71.13 roads, bridges and other means of transport. Sub-sections (1) and (2) of Section 17 of the said Act of 1974 read thus :-

"17(1) Notwithstanding anything contained in this Act or the Mumbai Municipal Corporation Act or any other law for the time being in force, the Authority may, in consultation with the Municipal Commissioner of the Brihan Mumbai Municipal Corporation, prepare any project or scheme with a view to provide an infrastructure within the territorial limits of the Brihan Mumbai Municipal Corporation and execute the same.

Explanation :- For the purposes of this section, the term "infrastructure" shall also mean and include streets, roads, bridges and any other means of transport and communication, and activities related or incidental for the execution of such infrastructure project or scheme and shall not include other items specified in sections 61 and 63 of the Mumbai Municipal Corporation Act, 1888 (Bom.III of 1888).

(2) For the purposes of preparation and execution of a project or scheme under sub-section (1), the Metropolitan Commissioner and the Authority shall be deemed to be the Municipal Commissioner and the Corporation, respectively, under the Mumbai Municipal Corporation Act, 1888 (III of 1888) and the Maharashtra Regional and Town Planning Act, 1966, and shall, respectively, exercise the powers of the Municipal Commissioner and the Corporation under the said Acts."

18. Hence, when MMRDA is implementing any scheme of providing an infrastructure which includes streets, roads, bridges etc in the city of Mumbai, by virtue of the applicability of Chapter III of the said Act of 1888, it becomes a legal obligation of the MMRDA to repair and properly maintain streets, roads and bridges forming part of the infrastructure project undertaken by it.

19. Thus, all the aforesaid Respondents are under an obligation not only to maintain the streets but to ensure that streets are properly levelled, properly surfaced and free of potholes. It is in the context of the legal obligations of all the authorities concerned that the suggestions made across the Bar for passing effective interim directions will have to be considered.

20. Before we deal with the said suggestions, it will be necessary to make a reference to orders passed by this Court from time to time in the present PIL. Apart from the first order dated 29 th July, 2013 to which we have already made a reference, under the order dated 13th August, 2013, various directions were issued by this Court. The order dated 13th August, 2013 records a statement of the learned Advocate General that a Government Resolution dated 28 th September, 2012 has been issued appointing a Committee for maintenance of roads within the limits of the Municipal Corporation. There are orders passed by the First Court on 5th September, 2013 and 4th October, 2013. In paragraph 2 of the order dated 4 th October, 2013, the First Court has observed thus :-

"2. Learned Advocate General states that a Committee has been set up under Chairmanship of the Commissioner, Municipal Corporation by Government Resolution dated 28th September 2012, to oversee and coordinate the work of construction, repairs and maintenance of public roads. However, he would take instructions from the State 17 of 33 18 pil-71.13 Government about the constitution of an Unified Transport Metropolitan Authority with statutory powers which could supervise the functioning of all the authorities responsible for the construction and upkeep of roads in the Metropolitan Region including Mumbai (Suburban and Greater Mumbai area), Navi Mumbai and Thane for coordinating, development of transport system. This would result in providing uniform standards and procedures for construction and upkeep of roads besides having an extensive data of the contractors resulting in an unified system of checks."

21. As far as the public streets, foot-ways or footpaths and bridges within the limits of the Municipal Corporations which are parties to the Petition are concerned, the same will have to be maintained in proper condition. Roads and footpaths are required to be properly levelled, surfaced and maintained free of potholes or ditches. A street should be maintained in such a manner that it facilitates orderly and safe flow of traffic. The foot-ways should be maintained in such a way that the same can be conveniently and safely used by the pedestrians.

22. Broadly, there are three aspects on which interim directions are necessary. The first is of the legal obligation of all the authorities to maintain streets in proper and potholes free condition. The second aspect is the right of citizens to complain about the poor condition of streets and especially the existence of potholes and their right to ensure that the complaints are acted upon and their grievances are effectively 18 of 33 19 pil-71.13 redressed. The third aspect is of the use of proper technology for the construction of the roads, for maintenance thereof and for filling in the potholes.

23. As far as the roads falling in the limits of the Mumbai Municipal Corporation are concerned, the situation is complicated as several agencies are involved in the maintenance of different stretches of roads. The Mumbai Port Trust maintains approximately 66.9 kilometers of roads in the City. In the City of Mumbai, there are three Express Highways. Different portions of the Express Highways are managed by different agencies. It is necessary to make a reference to the affidavit of Mr. Dilip Akaramji Salunke, Superintending Engineer, Public Works Department, Mumbai Construction Circle, Chembur, Mumbai. Paragraphs 2 to 4 of the said affidavit read thus :-

"2. I say that there are 3 Express Highways which comes under the control of this Circle as stated below.

(i) Western Express Highway (Express way no.6) starting from Dahisar at chainage Km. 502/350 to Mahim Jn. At chainage Km.527/680 having length of 25.33 Kilometer.

(ii) Eastern Express Highway (Express way no.5) starting from Golden Dyes Junction, Thane at chainage Km. 561/200 to Sion Junction at chainage Km.584/750 having length of 23.55 Kilometer.

(iii) Sion - Panvel Highway (Express way no.1) starting from Kalamboli Junction at chainage Km.114/800 to B.A.R.C. Junction at chainage Km.140/690 having length of 24.89 Kilometer.

3. I say that the road of Western Express Highway starts from Dahisar at chainage Km.502/350 and ends at 19 of 33 20 pil-71.13 Mahim Junction at chainage Km.527/680 having a total length of 25.33 Kilometer with 5+5 lane main carriageway and 2+2 lane service road in most of the length. The major length is mostly Black Topped, except certain stretches which are either concretized or with paver block surface.

On this road there are about 11 flyovers and Elevated Sahara Road. The details are as under :

| Sr. No. | Name of Flyover | Chainage | Maintained By |
|---------|----------------------------|--------------------|---------------|
| 1 | Kalanagar (Bandra) | 520/900 | P.W.D. |
| 2 | Vakola (Santacruz) | 524/800 to 523/400 | MSRDC |
| 3 | Airport (Vile Parle) ig | 521/250 to 522/050 | MMRDA |
| 4 | Andheri | 520/190 to 518/700 | PWD |
| 5 | JVLR (Jogeshwari) | 516/690 to 515/450 | MSRDC |

7(a) Film City (Dindoshi) East 512/680 to 515/340 MSRDC Side 7(b) Film City (Dindoshi) West 512/680 to 515/340 MMRDA Side 8(a) Times of India (Malad) East 510/900 to 510/400 MSRDC Side 8(b) Time of India (Malad) West 510/900 to 510/400 MMRDA Side 9 Thakur Complex (Kandivali) 509/100 to 508/500 MMRDA 10 Dattapada (Borivali) 507/400 to 506/600 MSRDC 11 National Park (Borivali) 506/200 to 505/400 MSRDC 12 Sahara Elevated Highway 520/500 to 520/900 MMRDA

4. I say that the road, Eastern Express Highway (Express Highway no.5) starts from Golden Dyes Jn., Thane at chainage Km. 561/200 and ends at Sion Jn. at chainage Km.584/750 having length of 23.55 Kilometer with 5+5 lanes main carriageway and 2+2 lane service road in most with of the length. The total road is black topped except certain stretches which are either concretized or with paver block surface.

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On this road there are about 13 Flyovers which are maintained by various authorities as stated below Sr. Name of Flyover Chainage Maintained No. By 1 Sion Jn. flyover 584/310 to 584/750 MSRDC 2 Everard Nagar 583/250 MSRDC 3 C.S.T.N Jn. (Kurla) 581/790 to 582/420 MSRDC 4 Amarmahal Jn. (Chembur) 580/180 to 580/680 MSRDC 5 Chhedanagar (Chembur) 579/210 to 579/810 MSRDC 6 A.G.L.R. Jn. (Ghatkopar) 577/080 to 577/750 MSRDC 7 Vikhroli Jn. (Vikhroli) 574/080 to 574/750 MSRDC J.V.L.R. (Vikhroli) G.M.L.R. (Mulund) 572/280 to 572/980 MSRDC 569/080 to 568/320 MSRDC 10 Navghar Jn. (Mulund) 566/900 to 567/550 PWD 11 Teen Hath Naka (Thane) 564/550 PWD 12 Nitin Casting Cadbury Jn. 562/090 to 563/420 MSRDC (Thane) 13 Golden Dyes Jn. (Thane) 561/200 to 561/700 MSRDC

24. Thus, different portions of the three Express Highways are looked after and maintained by different agencies. Hence, it can be said that the stretches of roads which are not required to be maintained by Mumbai Port Trust, MSRDC, Public Works Department of the State Government and MMRDA are required to be maintained by the Mumbai Municipal Corporation.

25. As per the order of the First Court, a Committee has been constituted under the Government Resolution dated 28th September, 21 of 33 22 pil-71.13 2012 to co-ordinate the activity of construction of roads, maintenance and repairs thereof in the City of Mumbai. The Committee has been constituted to suggest uniform criteria for construction of roads, maintenance and repairs in the City of Mumbai. The object of the Committee is to collect the data, to take a policy decision on

the aforesaid aspects and to place it before the Government. The Committee was supposed to submit a report within a period of three months.

However, we find that the report of the Committee is not on record.

Appropriate directions will have to be issued as regards the technical aspects of construction and/or repairs of the streets only after the recommendations of the Committee are submitted to the State Government and the State Government takes appropriate decision thereon.

26. Suffice it to say that it is the obligation of all the agencies involved in construction, maintenance and repairs of the roads in Mumbai to ensure that roads are kept potholes free. It is not only important to keep the roads potholes free but it is necessary to ensure that all the roads are properly levelled and surfaced. The work of filling in the potholes cannot be carried out in ad hoc and haphazard manner. The same has to be carried out in such a manner that a proper level of the entire stretch of road is maintained. If the work of filling in the potholes is done in such a manner that road level is not maintained, 22 of 33 23 pil-71.13 there is every possibility of causing accidents especially of two wheelers.

27. There is an absence of a well organised mechanism to enable the citizens to file complaints about the poor conditions of streets. The Mumbai Municipal Corporation has placed on record that there is a facility on the website of the Mumbai Municipal Corporation which is operational only for a period of four months from 7 th June to 7th October every year on which citizens can upload photographs of the potholes and after attending to the problem, the photographs of the repaired roads are uploaded on the same website by the Corporation.

The Municipal Corporation has proceeded on an erroneous assumption that the condition of the roads is bad only in monsoon. It is stated that there is a telephone No.1916 available for receiving public grievances. As far as the State Government is concerned, there is an affidavit filed by Shri Dilip Salunke in which he has stated that a telephone number of the control room is available on which complaints are received. In the City of Mumbai, a citizen is not aware as to which agency is responsible for maintenance of which portion of the streets. Though it is contended by the Mumbai Municipal Corporation that complaints received by it in respect of streets maintained by different agencies are routinely forwarded to the concerned agencies, it is necessary for the State to create a centralized facility of receiving complaints on its dedicated 23 of 33 24 pil-71.13 website, on a toll free number and also by way of message sent through a cell phone. Arrangements will have to be made by the State Government to ensure that complaints are immediately transferred to the concerned agency which is looking after the relevant stretch of road. Action taken report should be uploaded on the dedicated website provided by the State Government within a specific time along with photographs of the portion of the road about which a complaint is received. A tracking facility of the complaints received by all the modes needs to be provided on the website. Moreover, all the agencies i.e. the Mumbai Municipal Corporation, MMRDA, MSRDC, and Mumbai Port Trust will have to separately provide the said facilities throughout the year.

28. There is one more major cause of the poor condition of the roads and foot-ways. Various agencies like Telephone companies, Internet service providers, gas companies etc are granted permissions to do digging work on the streets. But there is no control on completion of their work. There is no time limit to restore the streets to its original condition. The citizens do not know as to which agency is doing the digging work and whether the concerned Competent Authority has permitted the work. Even in case of major road repair work undertaken by the Municipal Corporations and the other Authorities, the citizens 24 of 33 25 pil-71.13 have right to know when the work will be completed. We propose to issue appropriate directions on these aspects.

29. As far as the Municipal Corporations of Thane, Navi Mumbai, Mira Bhayander and Vasai Virar are concerned, it is not clear whether only the said Corporations are responsible for the maintenance of the roads in their respective jurisdictions or whether some other agencies such as State Government, MMRDA, MSRDC are involved. For the time being, we propose to direct the Municipal Corporations to provide a similar mechanism to enable the citizens to file complaints.

The Municipal Corporations will have to file reply setting out the names of the other agencies, if any, which are responsible for maintenance of the roads within their respective jurisdictions. After the affidavits are filed on record, further directions can be issued.

30. We must make it clear that streets also include foot-ways/ footpaths and therefore, it is the obligation of all concerned authorities to maintain the footpaths properly levelled and in such condition that it can be conveniently used by pedestrians. This aspect cannot be taken lightly by any Authority. If proper foot-ways/ footpaths are not made available, the pedestrians are forced to walk on roads which results in large number of accidents.

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31. Unless there is an effective mechanism provided to the citizens to file complaints, they will not be in a position to enforce their constitutional as well as legal right to have well maintained streets.

32. Very heavy rains during monsoon is one of the excuses given by the authorities in Mumbai and Thane Districts. Such excuse is not available as there is a heavy downpour every year and all the authorities are under an obligation to deal with the situation created by heavy downpour in these two Districts. The Committee constituted under the Government Resolution dated 28th September, 2012 is required to submit recommendations regarding uniform criteria to be applied for construction of roads, its maintenance and repairs. Ninth Respondent before the Court is the Central Road Research Institute (CRRI). Till a common criteria is finalised, the Municipal Corporations and other agencies may consider of taking assistance of CRRI for adopting proper

techniques to fill in the potholes and to maintain the streets. Certain directions have been already issued by this Court regarding the manner in which contracts should be entered into with the contractors. At this stage, we are not issuing any further directions on this aspect as the report of the Committee is not placed on record.

33. It is high time that all concerned clearly understand that a right to have properly maintained roads is a part of fundamental right 26 of 33 27 pil-71.13 guaranteed by Article 21 of the Constitution of India and in the event any loss is caused due to its violation, the citizens have a right to seek compensation.

34. Hence, we issue further interim directions which are as under :-

(i) The earlier directions issued by this Court in the present Petition from time to time which are not inconsistent or contrary to the directions issued under this order shall continue to operate;

(ii) All the Municipal Corporations which are parties to the PIL shall maintain all the streets/roads including foot-ways/ footpaths within its jurisdiction in good and proper condition. It shall be the responsibility of the Municipal Corporations to keep the roads and footpaths properly levelled and surfaced. It shall be their responsibility to ensure that potholes and ditches thereon are properly filled in. The work of filling in the potholes shall be carried out scientifically as an ongoing project;

(iii) While granting permissions to various authorities to do digging work on the streets, a condition shall be incorporated by all the Municipal Corporations/other 27 of 33 28 pil-71.13 Authorities of prominently displaying at the site of the work the following details :- (a) the name of the agency which is doing the digging work and (b) the extent of the digging work permitted and the period within which the work shall be completed. The display boards shall also contain the outer limit within which the road shall be restored to its original condition;

(iv) Similar Boards shall be displayed at the sites where major repair work of streets is undertaken. The name of the agency undertaking the work and the outer limit for the completion of the work shall be also prominently displayed;

(v) The State Government, MMRDA, MSRDC and Mumbai Port Trust shall be also bound by all the aforesaid directions contained in Clauses (ii) to (iv) above;

(vi) All the Municipal Corporations as well as MMRDA, MSRDC and Mumbai Port Trust shall provide a mechanism to enable the citizens to file complaints about the poor conditions of streets. The complaints shall be received by following four methods:

(a) Complaints in writing received at designated centers;

(b) Complaints received through dedicated toll free number/s;

(c) Complaints received through dedicated website; and

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(d) Complaints received by text message via cell phones.

(vii) The facility of receiving complaints by the aforesaid

methods shall be made available throughout the year. The dedicated websites shall be designed or improvised in such a way that citizens are able to upload the photographs of the potholes on the streets or poor condition of streets on the website. Arrangement shall also be made to receive such photographs through cell phones;

(viii) System of tracking shall be made available to track the action taken on the basis of the complaints received by all four methods. Tracking facility shall be made available on the dedicated websites. Final action taken report on the basis of the complaints shall be uploaded on the websites within a period of two weeks from the date of receipt of the respective complaints. Wherever the citizens have forwarded the photographs of the sites either through cell phones or by uploading the same on the dedicated websites, along with the final report, photographs showing compliance made by carrying out repairs shall be also uploaded on the dedicated websites. All the Municipal Corporations and Authorities shall ensure that the mechanism in terms of the above directions is provided 29 of 33 30 pil-71.13 latest by 30th June, 2015. We make it clear that till the mechanism as directed above is provided, the existing mechanism, if any, shall continue to function;

(ix) In addition, for the City of Mumbai, the State Government shall create a similar mechanism common for all the agencies providing for four methods of receiving complaints in relation to all the streets in the City. It shall be the obligation of the State to forthwith forward the complaints received to the concerned authorities which are responsible for the maintenance and repairs of the concerned stretches of streets. Even such mechanism shall be made available on or before 30th June, 2015;

(x) A very wide publicity shall be repeatedly given by all concerned authorities to the mechanism provided as aforesaid in all leading newspapers as well as on the electronic media on or before 30th June 2015;

(xi) If the Committee appointed under the Government Resolution dated 28th September, 2012 has not submitted its recommendations, the same shall be submitted to the State Government on or before 30th June, 2015. If the Committee has already submitted its recommendations before the

date of passing this order, the State Government 30 of 33 31 pil-71.13 shall take appropriate policy decision on the basis of the said recommendations on or before 30th June, 2015;

(xii) We direct the Municipal Corporations and other agencies involved in the maintenance of roads to ensure that modern scientific techniques are used for construction of the streets, for maintenance thereof and for carrying out repairs thereto. The authorities shall consider of taking assistance of the ninth Respondent on this aspect. The directions issued by this Court in the matter of entering into contracts shall continue till further orders;

(xiii) While filing compliance affidavits recording the compliance with the aforesaid directions, all the Municipal Corporations which are parties to this Petition, Public Works Department of the State Government, MMRDA, MSRDC and Mumbai Port Trust shall set out the details and particulars of the methods/techniques used by them for construction, maintenance and repairs of the streets. The affidavits to state the measures taken by the Authorities to maintain a strict quality control of the said works. The measures taken by the Authorities to ensure that the contractors maintain requisite standards shall be also set out in the affidavits. Compliance affidavits recording the 31 of 33 32 pil-71.13 compliance of the aforesaid directions shall be filed on or before 6th July, 2015;

(xiv) We direct the Municipal Corporations and the other agencies involved to issue circulars to its officers and members of the staff dealing with the work of maintenance of streets for putting them to notice that the failure to maintain the public roads, footpaths and bridges in proper condition may lead to loss of human lives, loss of valuable working hours and waste of valuable fuel apart from the inconvenience caused to the citizens. They shall be made aware that the right to have properly maintained streets is a fundamental right of citizens. The circulars shall state that a disciplinary action will be initiated against the erring officials;

(xv) The State Government shall consider of issuing directions to all the other Municipal Corporations which are not the parties to the Petition to implement these directions of this Court;

(xvi) For considering the compliance affidavits and for issuing further interim directions, the Petition shall be listed on 10th July, 2015 under the caption of "Directions";

32 of 33 33 pil-71.13 (xvii) In the meanwhile, we expect the the tenth and eleventh Respondents and the Intervenor to bring to the notice of all concerned authorities the deficiencies and defects in the streets. If they find that their complaints are not acted upon by the concerned authorities, we grant liberty to them to move this Court for seeking further interim directions;

(xviii) We make it clear that these directions will apply to the public streets as defined under the said Act of 1888 as well as the said Act of 1949. Thus, the same shall apply to foot- ways/footpaths as well;

(xix) All concerned to act upon an authenticated copy of this order.

(C.V. BHADANG, J)

(A.S. OKA, J)

