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Court : Mumbai Nagpur

Decided On : Oct-18-2016

Judge : B.R. Gavai & V.M. Deshpande

Appeal No. : Writ Petition Nos. 1501 of 2016, 1448 of 2016, 1395 of 2016 & 5056 of 2016

Appellant : Ramdas and Others

Respondent : The State of Maharashtra, through the Secretary, Urban Development Department and Others

Judgement :

B.R. Gavai, J.

1. All these four petitions challenge the notification issued by the State of Maharashtra/respondent no.1 herein dated 12th November, 2014 under the provisions of sub-section 2 of Section 37 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as **the said Act**) thereby sanctioning modifications with certain conditions in the Development Plan for the City of Nagpur and for that purpose, amending notification dated 4th November, 2008.

2. The facts and the grounds raised in all these petitions are almost identical with one additional factual challenge insofar as Writ Petition No.5056 of 2016 is concerned. As such, all these four petitions are heard together and decided by this common Judgment and Order.

3. The facts, in brief, giving rise to the present petitions are as under:

In the year 2000-2001, the Planning Authority for the City of Nagpur had proposed to increase width of one road known as Kelibag Road from 15 meters to 24 meters. In the Development Plan, which was notified by the State Government on 7th January, 2000, the width of road was retained at 15 meters. However, in the Development Plan, the words 24 meters were not scored out. Some of the present petitioners and others, therefore, approached this Court by filing Writ Petition Nos. 6255 of 2005, 5931 of 2005 and 6467 of 2005. The said petitions were decided by this Court vide Common Judgment and Order dt.17.1.2007. In the said petitions, a statement made on behalf of respondent no.1 that, in the Development Plan, the width of road was shown as '24 meters' came to be recorded in the said Judgment. As such, the petitioners and other aggrieved persons filed Misc. Civil Application Nos. 203 of 2007, 451 of 2007 and 1344 of 2007. This Court vide order dated 16th November, 2005 allowed the Misc. Civil Applications and reviewed the order dated 17th January, 2007 recording therein that, as per the Development Plan, the width of said road was 15 meters and not 24 meters.

4. It appears that the General Body of respondent no.2/Nagpur Municipal Corporation in its meeting dt.29.3.2008 vide resolution dt.179 resolved that the width of said road should be increased to 24 meters from 15 meters and for that, further resolved to take action for minor modification of Development Plan as provided under Section 37 of the said Act. Accordingly, a notice was published by respondent no.2 in the local Newspapers on 2nd November, 2008 inviting objections to the proposed minor modification of the Development Plan. The petitioners and other citizens raised their objection to the proposal for effecting minor modification of Development Plan. After hearing the objections, a report was submitted by the Municipal Commissioner on 17.2.2010 to the State Government. It appears that there were certain internal communications between the different

organs of the State Government. After considering the material placed on record, the impugned notification came to be issued on 12th November, 2014. It appears that, thereafter the petitioners made certain representations to the Authorities. However, since the petitioners could not get redressal of their grievance before the respondents/Authorities, the petitioners have approached this Court by way of present petitions.

5. This Court vide Order dt.1.3.2016 observing that it was prima facie of the view, that the Subordinate Officers of the State Government have overlooked the endorsement made by the Hon'ble Chief Minister and put up a contrary note to the one put up by the Hon'ble Chief Minister, while issuing notice, directed the parties to maintain status-quo. After pleadings were complete, learned Counsel for the parties requested this Court for deciding the petitions finally at this stage. Accordingly, we have heard the learned Counsel for the parties extensively on 30th September, 2016 and 1st October, 2016.

6. The arguments on behalf of the petitioners were led by Mr.M.G,Bhangde, learned Senior Counsel appearing in Writ Petition Nos. 1501 of 2016. Mr.M.G.Bhangde, Learned Senior Counsel mainly raised the following grounds in support of the petitions:

a) That, when the Hon'ble Chief Minister had directed a report to be called from the Nagpur Municipal Corporation as to whether it was possible to increase width of the said road to 24 meters without disturbing the heritage structures namely Murlidhar temple, Kelibag temple and Gujar gateway, the subordinate authorities, without considering the note of the Hon'ble Chief Minister, with the change in the Government, have put up a totally contrary note, which has been subsequently approved by the Hon'ble Chief Minister. Learned Senior Counsel in this respect relies on the Judgment of Apex Court in the case of **State of Tamil Nadu and another .vs. P. Krishnamurthy and Others** reported in 2006 (4) SSC 517.

b) The resolution passed by the Corporation in the meeting dt.29.3.2008 is passed without the subject being on agenda. It is submitted that, in view of sub-section 4 of Section 25 of the City of Nagpur Corporation Act, 1948, the said resolution could not have been passed. The learned Senior Counsel in this respect relied on

the Judgment of the Division Bench of this Court in the case of **Smt. Seema Salve .vs. The State of Maharashtra and Others** reported in 2013 (1) ALL MR 26.

c) That the objections were heard by the Additional Deputy Municipal Commissioner and the Assistant Director of Town Planning, whereas the report was submitted by the Commissioner and no minutes of said hearing were recorded. It is, therefore, submitted that the same is not permissible in view of the Judgment of Division Bench of this Court in the case of **Nandkishore s/o. Mohanlal Lahoti .vs. State of Maharashtra and Others** reported in 2006 (6) Mh.L.J. 552. The Learned Senior Counsel further submits that though the hearing was given, no reasons are recorded as to why the contentions, as raised by the petitioners, were not found to be acceptable. In this respect, reliance is placed on the Judgment of the Apex Court in the case of **Union of India and Others .vs. Shiv Raj and Others** reported in (2014) 6 SCC 564.

d) That the report of hearing ought to have been first placed before the General Body before forwarding the same to the State Government.

e) That the Authorities have failed to take into consideration that there was no material in support of the report of Corporation and that the Corporation has failed to evaluate the facts. Reliance in this respect is placed on the Judgments of the Apex Court in the cases of **Bhikhubhai Vithlabhai Patel and others .vs. State of Gujarat and another** reported in (2008) 4 SCC 144U and **State of Uttar Pradesh and another .vs. Johri Mal** reported in (2004) 4 SCC 714.

f) That there has been no effective consultation with the Director of Town Planning as required under sub-section 2 of Section 37 of the said Act. The report of Director ought to have been taken into consideration by the State Government which has not been taken into consideration. That the letter of Commissioner of Nagpur Municipal Corporation sent in response of query of Government ought to have been placed before the Director for soliciting his views thereon. It is submitted that failure to do so makes consultation empty formality, which is not permissible under the Scheme of the said Act.

(g) Lastly, it is submitted that the Authorities ought to have taken into consideration, that between the proposal to have width of the said road to 15 meters and 24 meters, the proposal to have width of 15 meters causes lesser hardship to the citizens and as such, while exercising discretion, the proposal which causes lesser hardship to the citizens ought to have been accepted. Reliance in this respect is placed on the Judgment of the Apex Court in the case of **Indian Railway Construction Co. Ltd. vs. Ajay Kumar** reported in (2003) 4 SCC 579.

7. Mr.R.R.Deshpande, learned Counsel for the petitioners in Writ Petition No. 1395 of 2016 has adopted the submissions advanced by Mr.M.G.Bhangde, learned Senior Counsel. Mr.Deshpande, learned Counsel has placed before the Court the comparative maps to show that if width of the road is maintained at 15 meters, it will cause lesser injury than if the width is maintained at 24 meters.

8. Mr.M.V.Samarth, learned Counsel appearing on behalf of the petitioners in Writ Petition No.5056 of 2016 submitted that, if the road is widened to 24 meters, it will adversely affect Alifuddin Masjid and Gujar gateway which are built in the year 1972 and which are notified as 'heritage structures'. It is submitted that, in view of the regulations notified by State Government called 'Regulations for Conservation of buildings, artefacts, structures, areas and precincts of historic and/or aesthetic and/or cultural significance (heritage buildings and heritage precincts) and/or natural features of environmental significance for the city of Nagpur.' (hereinafter referred to as the heritage regulations), the development which will adversely affect the said heritage structure would not be permissible.

9. Mr.M.V.Samarth, learned Counsel relying on various documents placed on record submits that the mosque has historic relevance as could be found in various books with regard to history of Nagpur and as such, the development adversely affecting the structure having historical significance could not be permitted.

10. Mr.Rohit Deo, learned Acting Advocate General appearing on behalf of the State Government made the following submissions:

I) That the notings recorded in the Official files by the Officers of the Government at different levels and even the Ministers do not become decisions of the Government unless the same is sanctified and acted upon by issuing an order in the name of the President or Governor, as the case may be, authenticated in the manner as provided in Articles 77(2) and 166(2) and is communicated to the affected person, the learned Acting Advocate General relied on the Judgments of the Apex Court in the cases of **Shanti Sports Club .vs. Union of India** reported in 2009 (15) SCC 705 and **State of Uttaranchal .vs. Sunil Kumar Vaish** reported in 2011 (8) SCC 670.

II) Insofar as the contention regarding hearing by the Subordinate Officer and the report by the Commissioner is concerned, the learned Acting Advocate General submits that the issue is put to rest by the Judgment of the Division Bench of this Court in the case of **Mihir Yadunath Thatte .vs. State of Maharashtra** reported in 2007 (1) ALL MR 537.

III) Learned Acting Advocate General submits that the powers exercised by the State Government under Section 37(2) of the said Act are legislative in nature and therefore, the present case will have to be examined on the touchstone of parameters that are available to this Court, while exercising powers of judicial review of legislative functions of a delegatee of the legislature. It is submitted that, if the case is examined on those parameters, it would be seen that the challenge as raised in the petitions is without substance.

11. Mr.C.S.Kaptan, learned Senior Counsel for the respondent/Corporation, in addition to supporting the arguments advanced by the Acting Advocate General, submits that the provisions of consultation, as contemplated under sub-section 2 of Section 37 of the said Act cannot be stretched to such an extent that the opinion, as expressed by the Consultee, is binding on the Consultor. He submits that the limited inquiry that would be permissible to this Court, is to examine whether the opinion of the Consultee has been taken into consideration by the Consultor or not. The learned Senior Counsel relies in this respect on the Judgment of the Apex Court in the case of **Indian Administrative Service (S.C.S.) Association, U.P. and Others .vs. Union of India and Others** reported

in 1993 Supp (1) SC 730.

12. Insofar as Writ Petition No.5056 of 2016 is concerned, Mr.C.S.Kaptan, learned Senior Counsel submits that, perusal of the heritage regulations would reveal that what is protected monument is 'the gate' and 'the tomb'. The learned Senior Counsel further submits that the report of Heritage Committee would further reveal that the Heritage Committee itself, after considering the entire material, in its meeting dt.8.4.2011, has accorded its approval to the Nagpur Municipal Council for widening of Kelibagh road to 24 meters subject to the condition that Grade I structure of Murlidhar temple, Kelibag temple and Gujar gateway shall be retained. Learned Senior Counsel further submits that the structure which will be affected by widening is not the heritage structure which is constructed in the ancient times. But, at the most, the shops and the buildings which were reconstructed in the year 1982 and that too, not as per the original design, will be affected. The learned Senior Counsel for the Corporation makes a categorical statement that the grave and Gujar gateway would not be affected by expansion.

13. Mr.M.G.Bhangde, learned Senior Counsel, in reply, submits, that the Authorities have failed to take into consideration various things which are required to be taken into consideration like consultation with the public, consultation with the Director, Town Planning and as such, the impugned notification will not be sustainable in law.

14. Learned Senior Counsel submits that though various objections have been taken by the petitioners and others as to why the said road should not be widened to 24 meters, reasons are not recorded as to why the grounds raised by the petitioners are not acceptable and as such, in view of the Judgment of Apex Court in the case of **Cellular Operators Association of India and Others .vs. Telecom Regulatory Authority of India and Others** reported in (2016) 7 SCC 703, the impugned notification would not be sustainable in law. The learned Senior Counsel further submits that the Judgment of the Division Bench of this Court in the case of **Mihir Yadunath Thatte** (cited supra) would be distinguishable on the following grounds.

That, in the said case, a direction was issued by the State Government; whereas in the present case, the Corporation has suo-motu initiated the proposal. And that, in the said case, a resolution was already passed authorising the Commissioner to do everything. However, in the present case, the report of hearing was required to be placed before the General Body, which has not been done.

15. With the assistance of the learned Counsel for the parties, we have scrutinized the entire material on record and also gone through various authorities cited at the bar.

16. For appreciating the rival submissions, it will be necessary to consider the provisions of sub-sections (1) and (2) of Section 37 of the said Act, which read thus :

37. [Modification] of final Development plan.

(1) Where a modification of any part of or any proposal made in a final Development plan is of such a nature that it will not change the character of such Development plan, the Planning Authority may, or when so directed by the State Government [shall, within ninety days from the date of such direction, publish a notice] in the Official Gazette 3[and in such other manner as may be determined by it] inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any), to the State Government for sanction.

[(1A)

(1AA)

(b)

(c)

(2) The State Government may, [make such enquiry as it may consider necessary] and after consulting the Director of Town Planning by notification in the Official

Gazette, sanction the modification with or without such changes, and subject to such conditions as it may deem fit, or refuse to accord sanction. If a modification is sanctioned, the final Development plans shall be deemed to have been modified accordingly.

17. We will first deal with the contention of Mr.M.G.Bhangde, learned Senior Counsel, with regard to the noting of the Hon'ble Chief Minister on the file and the contrary proposal being put before the Hon'ble Chief Minister by the Subordinate Officers. In this respect, it will be appropriate to refer to the Judgment of Their Lordships of Apex Court in the case of **Shanti Sports Club and another** (cited supra). Their Lordships of the Apex Court in the case of **Shanti Sports Club and another**, after considering its earlier Judgments in the cases of State of Punjab vs. Sodhi Sukhdev Singh reported in AIR 1961 SC 493; Bachhittar Singh .vs. State of Punjab reported in AIR 1963 SC 395; State of Bihar vs. Kripalu Shankar reported in (1987) 3 SCC 34; Rajasthan Housing Board .vs. Shri Kishan reported in (1993) 2 SCC 84; Sethi Auto Service Station .vs. DDA reported in (2009) 1 SCC 180 and the Judgment of the Full Bench of Delhi High Court in the case of Roshanara Begum .vs. Union of India reported in AIR 1996 Del 206, have held as under:

As a result of the above discussion, we hold that the notings recorded in the official files by the officers of the Government at different levels and even the Ministers do not become decisions of the Government unless the same is sanctified and acted upon by issuing an order in the name of the President or Governor, as the case may be, authenticated in the manner provided in Articles 77(2) and 166 (2) and is communicated to the affected persons. The notings and/or decisions recorded in the file do not confer any rights or adversely affect the right of any person and the same can neither be challenged in a court nor made basis for seeking relief. Even if the competent authority records a noting in the file, which indicates that some decision has been taken by the authority concerned, the same can always be reviewed by the same authority or reversed or overturned or overruled by higher functionary/ authority in the Government.

(emphasis supplied).

18. It could thus clearly be seen that Their Lordships have in unequivocal terms held that the notings recorded in the Official files by the Officers of the Government at different levels and even the Ministers do not become decisions of the Government unless the same is sanctified and acted upon by issuing an order in the name of President or Governor, as the case may be, authenticated in the manner provided in Articles 77(2) and 166(2) and is communicated to the affected persons. It has further been held by Their Lordships that such notings can neither be challenged in a court nor made a basis for seeking relief. It has further been held that even if the Competent Authority records a noting in the file, which indicates that some decision has been taken by the Authority concerned, the same can always be reviewed by the same Authority or reversed or overturned or overruled by higher functionary/Authority in the Government.

19. Learned Senior Counsel for the petitioners heavily relied on the following observations of Their Lordships in the case of **State of T.N. And another .vs. P. Krishnamurthy and Others** reported in (2006) 4 SCC 517.

35. Thus, it is clear from the above, that unless it is found that act done by the authority earlier in existence is either contrary to statutory provisions, is unreasonable, or is against public interest, the State should not challenge its stand merely because the other political party has come into power. Political agenda of an individual or a political party should not be subversive of the rule of law.

20. To a pertinent query as to whether the petitioners were resting their case on the grounds of mala fides, learned Senior Counsel fairly conceded that the petitioners have not pressed into service any such allegations. It was, however, submitted that, only on account of change in the Office of Chief Minister, earlier note by the Hon'ble Chief Minister, should not be thrown to wind.

21. We are aware about the limitation of this Court while examining correctness or otherwise of exercise of legislative functions of the delegatee. We are equally aware that we cannot sit in an appeal over the legislative functions of the delegatee. However, in order to test correctness of submissions made by the learned Counsel for the petitioners and only with a view to find out as to whether any arbitrariness or unreasonableness has crept in, in the decision making

process of the State, we have perused the notings in the file, a copy of which has been placed on record by the petitioners themselves.

It appears that the Hon'ble Chief Minister somewhere between 12.8.2014 to 1.10.2014 has put up an endorsement on the file, which can be seen at page no.107 of Writ Petition No.1501 of 2016. True translation of the same reads thus:

CMC 5246/2014, UDD

Subject : Revised

Development Plan Nagpur.

Widening of road up to 24 Mtr. from Central Avenue Road to Badkas Chowk to Kotwali Police Station Chowk up to C. P. and Berar College.

In the present case, Nagpur Heritage Conservation Committee has prescribed the condition of keeping unaffected the ancient buildings i.e. Murlidhar Mandir , Kelibag Mandir and Gujar Gate . Hence, resubmit the proposal with the remarks of the Commissioner, Nagpur Municipal Corporation as to whether it is feasible to widen the road up to 24 Mtr. at a stretch by keeping the said buildings unaffected.

Chief Minister

Principal Secretary (Urban Development-1)

It could be seen from the said noting that the Hon'ble Chief Minister had directed to get the report from the Municipal Commissioner, Nagpur Municipal Corporation as to whether it is possible to maintain width of the road to 24 meters without disturbing heritage structure of Murlidhar temple, Kelibagh temple and Gujar gateway. It appears that the Officers in the Urban Development Department, noticing that such an information was already sought from the Commissioner, Nagpur Municipal Corporation at earlier point of time and that the Commissioner had given his opinion, that it was possible to maintain width of the road with slight modification at Murlidhar temple and Kelibag temple and that, after receipt of the report dt.3.10.2013, the file was processed further, resubmitted the file with the fresh noting. A true translated version reads thus:

The proposal under Section 37 of the Maharashtra Regional and Town Planning Act, 1966 to widen the road up to 24 Mtr. from Central Avenue Road to Badkas Chowk to Kotwali Police Station Chowk up to C. P. and Berar College in Nagpur city, is under consideration on the present file. The present case was submitted at Page No. 1113/TV. In the said case, Nagpur Heritage Conservation Committee has prescribed the condition of keeping unaffected the ancient buildings i.e. Murlidhar Mandir , Kelibag Mandir and Gujar Gate . Hence, the then Hon ble Chief Minister has issued directions to resubmit the proposal along with the remarks of the Commissioner, Nagpur Municipal Corporation as to whether it is feasible to widen the road up to 24 Mtr. by keeping the said buildings unaffected.

02. In the present case, it is submitted that the Department has submitted the present case at Page No. 1113/TV. Accordingly, as made clear in the letter, dated 3rd October, 2013 by the Commissioner, Nagpur Municipal Corporation, the aforesaid road should be widened up to 2400 Mtr. The Heritage Conservation Committee in its meeting, dated 8th April, 2011 has also expressed its consent to widen the said road up to 2400 Mtr. and laid down the condition of keeping unaffected the ancient buildings i.e. Murlidhar Mandir , Kelibag Mandir and Gujar Gate . It will be compulsory to take in to consideration the said condition while developing the aforesaid road by widening it up to 2400 Mtr. Similarly, as mentioned by the Commissioner, Nagpur Municipal Corporation, it is possible to widen the said road up to 24 Mtr. From both the sides without causing any damage to the heritage buildings, but by making minor changes in the road between Murlidhar Mandir and Kelibag Mandir . Similarly, as per the plan of the road mentioned in the letter, dated 3rd October, 2013 by the Commissioner, Nagpur Municipal Corporation, it is hereby proposed to grant approval under Section 37 (2) of the Maharashtra Regional and Town Planning Act, 1966 for widening the road up to 2400 Mtr. from Central Avenue Road to Badkas Chowk to Kotwali Police Station Chowk up to C. P. and Berar College in Nagpur city, subject to the decision in Misc. Civil Application No. 203/2007 and 451/2007.

Section Officer

Joint Secretary (Town Planning)

Principal Secretary-1 (UD)

The Hon ble Chief Minister A approved.

22. The said proposal was approved at various stages by the Joint Secretary, the Principal Secretary and finally by the Hon'ble Chief Minister. It could thus be seen that the information which was sought as per noting of the Hon'ble Chief Minister from the Commissioner, was very much available on record and as such, the file which was subsequently resubmitted with a fresh noting brought this factual position to the notice of the authorities including the Hon'ble Chief Minister. In that view of the matter, we do not find that there would be any substance in the arguments advanced by the learned Counsel for the petitioners, in that regard.

23. The next ground is that the resolution of Corporation dt.29.3.2008 is passed when the said subject was not on the agenda. In this respect, a reliance is sought to be placed on the Judgment of Division Bench of this Court in the case of Smt. Seema Salve (cited supra). In the said case, though in the agenda of meeting, the subject to be considered was regarding alignment of 18 meters road passing through Survey Nos. 344, 345 and 346 and shifting of garden, cultural centre and library in the concerned DP Plan, the General Body in the meeting passed a resolution not limited to that topic, but transcended beyond that subject including the policy matters regarding further modification of the D.C. Rules (No.2.5) under Section 37(1) and for reduction of premium to be charged for development proposals for use of TDR under BRTS Corridor. It could thus be seen that, in the said case, resolution which was passed by General Body was with regard to the subject which was totally foreign to the subject on agenda. However, perusal of the resolution passed in the present case would reveal that the same was pertaining to the proposal of administration, with regard to keeping width of road to 15 meters instead of 24 meters. However, the General Body passed the resolution resolving to maintain width of the road to 24 meters. It could thus be seen that the resolution passed by the General Body was with respect to the same road. It is not as if that the subject on the agenda was with regard to 'A' road; whereas the resolution passed was with regard to 'B' road. A General Body has passed resolution with regard to the same road albeit not approving the width of 15 meters

as suggested by administration, but reiterating to have the width of 24 meters.

24. It will be appropriate to refer to sub-section 4 of Section 25 of the City of Nagpur Corporation Act, 1948, which reads thus:

25. Convening of meetings.

(1) A meeting of the Corporation shall be either ordinary or special.

(2) The date of every meeting, except the meeting referred to in section 24, shall be fixed by the Mayor, or in the event of his being incapable of acting then by the Deputy Mayor, and in the like event in his case then by the Commissioner.

(3) Notice of every meeting specifying the time and place thereof and the business to be transacted thereat shall be despatched to every Councillor and exhibited at the municipal office seven clear days before an ordinary meeting and three clear days before a special meeting :

Provided that if the notice is exhibited at the municipal office, failure to serve it on any Councillor shall not affect the validity of a meeting.

(4) No business other than that specified in the notice relating thereto shall be transacted at a meeting.

It could clearly be seen that the provisions of sub-section 4 of Section 25 of the City of Nagpur Corporation Act, 1948 requires that no business other than specified in the notice relating thereto shall be transacted automatically. A perusal of the agenda so also the minutes of the meeting which are reproduced hereinbelow would clearly show that the agenda of the meeting was with regard to Kelibag road and the topic discussed is also with regard to the same road. Merely because the proposal of administration was for increasing the width of road of 15 meters and the resolution of the General Body is of 24 meters cannot be said to be a ground to come to a conclusion that the subject discussed in the meeting was not the one which was specified in the agenda.

25. Insofar as the contention of the learned Counsel for the petitioners that the Judgment of the Division Bench of this Court in the case of Mihir Tatthe (cited

supra) would not be applicable to the present case, since, in the case of Mihir Tatthe, the General Body itself had passed a resolution authorising the Municipal Commissioner to take all further steps in the matter; whereas no such resolution was passed in the present case is concerned, in our view, in view of the following discussion, the said contention is also without any substance.

26. It will be appropriate to refer to the following part of the resolution of the General Body of Nagpur Municipal Corporation in its meeting dated 29th March, 2008. A true translated version reads thus :

Resolution No. 179

Under City Road Development Programme, there is proposal of making road from Central Avenue to Kelibag up to C. P. and Berar College 15.00 mt.wide. The width of Kelibag road in sanctioned Development Plan was shown to be 24.00 mt. But marking of widening of 24.00 mt.has been cancelled by blue colour under section 29 and the demarcation of road is shown by blue colour less than the width shown by red line. It means widening of road up to 24.00 mt. has been cancelled. But word 24.00 mt. has not been cancelled. Thus, it is necessary to rectify the mistake in Development Plan. The House has taken into consideration the question of conferring powers upon Municipal Commissioner for taking action u/sec. 37 of Maharashtra Regional and Town Planning Act, 1966, for effecting said modifications in Development Plan, publication of Notification of said modifications, taking necessary decision on the objections received thereon and submission of proposal to the Government for approval.

In this way, under City Road Development Programme, there is proposal of making road from Central Avenue to Kelibag up to C. P. and Berar College 15.00 mt. Wide. The width of Kelibag road in sanctioned Development Plan was shown to be 24.00 mt. But marking of widening of 24.00 mt. has been cancelled by blue colour under section 29 and the demarcation of road is shown by blue colour less than the width shown by red line. It means widening of road up to 24.00 mt. has been cancelled. But word 24.00 mt. has not been cancelled. Thus, it is necessary to rectify the mistake in Development Plan.

The House after taking into consideration the question of conferring powers upon Municipal Commissioner for taking action u/sec. 37 of Maharashtra Regional and Town Planning Act, 1966, for effecting said modifications in Development Plan, publication of Notification of said modifications, taking necessary decision on the objections received thereon and submission of proposal to the Government for approval, rejected the said subject and the House unanimously approved the suggestion of widening the proposed road up to 24.00 mt. made by Leader of Ruling Party Shri Anilji Sole and members Shri Pravin Datke and Bandu Raut, by raising voice as Pass Pass .

27. It could thus be seen that the subject which was for consideration before the General Body was with regard to taking necessary steps for minor modification u/s.37 of the said Act for publication of notice with regard to proposed modification, inviting objections and for authorising the Municipal Commissioner to take appropriate decision on the said objection and submit proposal to the State Government. It could thus be seen that the subject before the Committee was for authorizing the Commissioner to take necessary steps in respect of said road with regard to keeping width of road to 15 meters. However, the House rejected the said proposal and passed the resolution to keep width of the road to 24 meters. It is pertinent to note that the said resolution is passed unanimously. We, therefore, find that the contention of the petitioners that the Judgment of the Division Bench in the case of Mihir Yadunath Tatthe (cited supra) will not be applicable to the facts of the present case, would not be sustainable in law. At the cost of repetition, it is to be noted that, the entire subject was before the House. However, the only change in the resolution is with regard to width of the road from 15 to 24 meters.

28. The next ground pressed into service is with regard to objection being heard by the Additional Deputy Municipal Commissioner and the Assistant Director of Town Planning and not the Commissioner. A reliance in this respect is sought to be placed on the Judgment of the Division Bench of this Court in the case of S.Nandkishore Lahoti (cited supra). However, we find that, in view of the direct Judgment by Division Bench of this Court, considering the very same provision which falls for consideration before us, it is not necessary to refer to the Judgment of the Division Bench in the case of S.Nandkishore Lahoti (supra) which deals with

the question of sub-delegation under the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1966.

29. The Division Bench of this Court in the case of Mihir Yadunath Tatthe (cited supra) has considered the very issue which falls for consideration before us, wherein a challenge was raised that hearing was not given by the Municipal Commissioner but by the City Engineer and as such, the report submitted by the Corporation was not in accordance with law. It will be relevant to refer to paragraph nos. 65 and 68 of the said Judgment. They are as under:

65. Applying the tests laid down by the Supreme Court in the case of Jaswant Sugar Mill, the fact that the Planning Authority, pursuant to the direction given by the State Government under Section 37(1), is required to publish a notice inviting objections/suggestions within 60 days from the said direction and to prepare a report after hearing the objections of the person affected by the proposed modification and forward the same to the State Government for action under Section 37(2), it cannot be said that the acts done by the Planning Authority are judicial/quasi judicial act. Rather, such acts of the Planning Authority are administrative. Once the sanction has been accorded by the General Body of the PMC, after the receipt of the direction from the State Government for including the said land in residential zone deleting it from HTHS Zone and make changes as per Section 37 (1), to issue public notice calling objections/suggestions from the public and to prepare a report under Section 37(1) of the Town Planning Act and send the proposal to the State Government for final approval, such decision has to be carried out by the executive functionary i.e., the Municipal Commissioner either by himself or through his subordinate officials. In the matter such as this with which we are concerned, the act of the Municipal Commissioner in issuing public notice calling objections/suggestions from the public, the authorisation to the City Engineer to collect objections and hear objectors and prepare the report and the act of forwarding the report to the State Government alongwith complete record are not the act of agency or delegation but implicit in the discharge of executive functions and all these acts shall be deemed to have been done by the Planning Authority.

68. We are afraid, the judgment in the case of C.V. Shah has no application in the facts of the present case. As already noticed, in the present case, the Pune Municipal Corporation in its meeting held on 26th December, 2000 accorded sanction for including the subject land in the residential zone deleting it from HTHS Zone and make changes as per Section 37(1), to issue public notice calling for objections/suggestions from the public and to prepare a report and send the proposal to the State Government for final approval. The resolution having been passed by the General Body, obviously, its implementation has to be done by the Municipal Commissioner and his subordinate officials and that is what has been done in the present case. It is not necessary that the resolution passed by the general body has to be implemented by the Municipal Commissioner himself who is the Chief Executive Officer. In the very functioning of the Corporation in executive matters, the Municipal Commissioner can always take assistance of his subordinates and, accordingly, he cannot be said to have committed any illegality in directing that persons affected due to the modification shall be heard by the City Engineer and consequently, the City Engineer heard the objectors who were present for the hearing.

(emphasis supplied).

30. It could thus be seen that the contention as raised by the learned Counsel for the petitioners, that since the hearing was given by the Additional Deputy Municipal Commissioner and the Assistant Director of Town Planning and not by the Commissioner, there was non-compliance of the Statutory provision, stands specifically rejected in view of the Judgment of the Division Bench in the case of Mihir Yadunath Tatthe (cited supra).

31. Learned Counsel for the petitioners has further submitted that the material placed before the Authorities by the petitioners, ought to have been taken into consideration by the Authorities, same ought to have been evaluated and thereafter decision ought to have been taken after considering the same. In this respect, the learned Counsel for the petitioners has relied on the three judgments of the Hon'ble Supreme Court (cited supra). However, we are of the considered view that none of the Judgments would be applicable to the facts of the present

case.

32. In the case of Union of India and Others .vs. Shiv Raj and Others (cited supra), Their Lordships were considering the provisions of Section 5A of the Land Acquisition Act, wherein a specific right was given to the persons, whose land is sought to be acquired, to satisfy the Authority that the land is not required for public purpose or that there are valid reasons for not acquiring the same. It could thus be seen that the powers exercised by the Authorities under the provisions of Section 5A of the said Act are not legislative in nature, whereas the impugned notification is issued by the State Government in exercise of its quasi-legislative powers.

33. Similarly, in the case of Bhikubhai Vithlabhai Patel and Others (cited supra), Their Lordships, while interpreting the words is of opinion and are necessary as could be found in Section 17(1) (a)(ii) of the Gujarat Town Planning and Urban Development Act, 1976, observed that the Court was entitled to examine whether there has been any material available with the State Government and the reasons recorded, if any, in the formation of opinion and whether they have any rational connection with or relevant bearing on the formation of the opinion or not. It could be seen that no such expressions are found in the provisions of Section 37 of the said Act. As has been held, powers are found to be legislative in nature. As such, the said Judgment would also not be applicable in the facts of the present case.

34. Again in the case of State of U.P. and another .vs. Johri Mal (supra), Their Lordships were considering the case with regard to appointment of Public Prosecutor. As such, it could be seen that Their Lordships were considering the exercise of powers by the State of an administrative action and not a legislative action and as such, the said Judgment would also not be applicable to the facts of the present case.

35. Insofar as the contention raised by the learned Counsel for the petitioners that, if the width of the road is kept at 15 meters than 24 meters, it will cause a lesser hardship to the citizens is concerned, in our considered opinion, a scrutiny in that regard would amount to exceeding our jurisdiction while examining the legislative function of a delegatee. As such, it will not be possible for us to consider the

submission made by the learned Counsel for the parties in that regard.

36. That leaves us with the next ground as raised on behalf of the petitioners, with regard to consultation. Again, in the case of **Ram Tawakya Singh .vs. State of Bihar** reported in (2013) 16 SCC 206, Their Lordships of the Apex Court were considering the powers of the Chancellor to make appointment of Vice Chancellor. It could thus be seen that the observations made by Their Lordships of the Apex Court in the said case, were, while considering the requirement of consultation, while exercising the executive powers of an Authority and not while exercising legislative powers. It will be relevant to refer to the observations made by Their Lordships of the Apex Court in the case of **Indian Administrative Service (S.C.S.) Association, U.P. and Others .vs. Union of India and Others** reported in 1993 Supp (1) SCC 730 while considering the scope of consultation, when the Central Government exercises the rule making powers to amend the rules, regulating the service conditions of Officers of All India Services. They are as under:

26. The result of the above discussion leads to the following conclusions:

(1) Consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points involved to evolve a correct or at least satisfactory solution. There should be meeting of minds between the proposer and the persons to be consulted on the subject of consultation. There must be definite facts which constitute the foundation and source for final decision. The object of the consultation is to render consultation meaningful to serve the intended purpose. Prior consultation in that behalf is mandatory.

(2) When the offending action affects fundamental rights or to effectuate built-in insulation, as fair procedure, consultation is mandatory and non-consultation renders the action ultra vires or invalid or void.

(3) When the opinion or advice binds the proposer, consultation is mandatory and its infraction renders the action or order illegal.

(4) When the opinion or advice or view does not bind the person or authority, any action or decision taken contrary to the advice is not illegal, nor becomes void.

(5) When the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or person and is not bound to be accepted, the prior consultation is only directory. The authority proposing to take action should make known the general scheme or outlines of the actions proposed to be taken be put to notice of the authority or the persons to be consulted; have the views or objections, taken them into consideration, and thereafter, the authority or person would be entitled or has/have authority to pass appropriate orders or take decision thereon. In such circumstance it amounts to an action "after consultation".

(6) No hard and fast rules could be laid, no useful purpose would be served by formulating words or definitions nor would it be appropriate to lay down the manner in which consultation must take place. It is for the Court to determine in each case in the light of its facts and circumstances whether the action is "after consultation"; "was in fact consulted" or was it a "sufficient consultation".

(7) Where any action is legislative in character, the consultation envisages like one under Sec. 3(1) of the Act, that the Central Government is to intimate to the State Governments concerned of the proposed action in general outlines and on receiving the objections or suggestions, the Central Government or Legislature is free to evolve its policy decision, make appropriate legislation with necessary additions or modification or omit the proposed one in draft bill or rules. The revised draft bill or rules, amendments or additions in the altered or modified form need not again be communicated to all the concerned State Governments nor have prior fresh consultation Rules or Regulations being legislative in character, would tacitly receive the approval of the State Government through the people's representative when laid on the floor of each House of Parliament. The Act or the Rule made at the final shape is not rendered void or ultra vires or invalid for non-consultation.

37. It could thus be seen that Their Lordships have in subparagraph 7 held that where any action is legislative in character, the consultation envisaged is that the

consultor should intimate to the consultee of the proposed action in general outline and on receiving the objections or suggestions, the Central Government or Legislature is free to evolve its policy decision by making appropriate legislation with necessary additions or modification or omit the proposed one in draft bill or rules. It has clearly been held that the revised draft bill or rules, amendments or additions in the altered or modified form need not again be communicated to all the concerned State Governments nor have prior fresh consultation.

38. In the present case, perusal of the file, a copy of which is placed on record of the petition itself, would reveal that the opinion as expressed by the Director of Town Planning was very much available on record. It will also reveal that the file has moved at various stages on number of occasions. Information was sought from the Commissioner of Nagpur Municipal Corporation as to whether width of road could be maintained at 24 meters without the heritage structures being adversely affected. Not only that, but minutes of the meeting of Heritage Committee dt.8.4.2011 approving widening of the road to 24 meters were also taken into consideration by the State Government. Perusal of the file further reveals that though the initial proposal as submitted by the Subordinate Officer of the State Government was for sanction of width of road to 18 meters, the Joint Secretary of the State Government did not agree with it and put up an endorsement that opinion of the Director does not appear to be correct taking into consideration the traffic issue. He has, therefore, recommended to accept the proposal of the Corporation to increase it to 24 meters, in order to have smooth traffic flow. Same was also approved by the Principal Secretary. Thereafter, the Chief Minister had put a note to obtain report of Commissioner, Nagpur Municipal Corporation as to whether, width of road could be maintained to 24 meters, without affecting the Heritage Structure of Murlidhar temple, Kelibag temple and Gujar gateway. Since the said report was already available, the file was resubmitted on 5.11.2014. The same was approved by the Joint Secretary, the Principal Secretary and thereafter, by the Hon'ble Chief Minister. It could thus be seen that the opinion of the Director of Town Planning was very much taken into consideration by the State Government while arriving at a final decision. However, it cannot be said that the State Government was bound to accept the opinion as expressed by the consultee i.e. the Director of Town Planning.

39. Having considered other contentions as raised on behalf of the petitioners, we propose to consider the submissions of the petitioners that the State Government has failed to take into consideration the objections raised by the petitioners and that the inquiry contemplated under the provisions of Section 37 of the said Act, required, that the State Government ought to have taken into consideration each and every objection raised by the petitioners objecting to the modifications as proposed by the Corporation and no proper opportunity of hearing was given to the petitioners by the State Government.

40. To appreciate the submissions made by the petitioners in this behalf, it will be necessary to refer to the Judgment of Their Lordships of Apex Court in the case of **Pune Municipal Corporation and another .vs. Promoters and Builders Association and another** reported in (2004) 10 SCC 796, wherein the very same provision, which falls for consideration before us, has been considered by Their Lordships. In the said case, it was contended that the sanction granted by the State Government under sub-section 2 of Section 37 of the said Act was beyond the powers of the State Government u/s. 37(2). This Court had held that the language of Section 37(2) did not allow the State Government to add conditions on its own or to amend on its own in the modifications submitted by the Planning Authority. Reversing the Judgment of this Court, Their Lordships of the Apex Court observed thus:

4.....Deliberation with the public before making the amendment is over at this stage. The Government, thereafter, under clause (2) is given absolute liberty to make or not to make necessary inquiry before granting sanction. Again, while according sanction, the Government may do so with or without modifications. The Government could impose such conditions as it deems fit. It is also permissible for the Government to refuse the sanction. This is the true meaning of the clause (2). It is difficult to uphold the contrary interpretation given by the High Court. The main limitation for the Government is made under clause (1) that no authority can propose an amendment so as to change the basic character of the development plan. The proposed amendment could only be minor within the limits of the development plan. And for such minor changes it is only normal for the Government to exercise a wide discretion, by keeping various relevant factors in

mind. Again, if it is arbitrary or unreasonable the same could be challenged. It is not the case of the respondents herein that the proposed change is arbitrary or unreasonable. They challenged the same citing the reason that the Government is not empowered under the Act to make such changes to the modification.

5.....As we have already pointed out, the true interpretation of section 37(2) permits the State government to make necessary modifications or put conditions while granting sanction. In section 37(2), the legislature has not intended to provide for a public hearing before according sanction. The procedure for making such amendment is provided in section 37. Delegated legislation cannot be questioned for violating the principles of natural justice in its making except when the statute itself provides for that requirement. Where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity. Moreover, a provision for 'such inquiry as it may consider necessary' by a subordinate legislating body is generally an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in anybody. (Union of India and Anr. v. Cynamide India Ltd and Anr. (1987) 2 SCC 720 paragraphs 5 and 27. See generally H.S.S.K. Niyami and Anr. v. Union of India and Anr. (1990) 4 SCC 516 and Canara Bank v. Debasis Das (2003) 4 SCC 557). While exercising legislative functions, unless unreasonableness or arbitrariness is pointed out, it is not open for the Court to interfere. (See generally ONGC v. Assn. of Natural Gas Consuming Industries of Gujarat 1990 (Supp) SCC 397) Therefore, the view adopted by the High Court does not appear to be correct.

41. It could thus be seen that Their Lordships have held that deliberation with the public, before making the amendment is over at the stage the Planning Authority submits proposal with modification to the Government. The Government thereafter, is given absolute liberty to make or not to make necessary inquiry before granting sanction. It has further been held that while according sanction, Government may do so with or without modifications. It has further been held that the Government could impose such conditions as it deem fit. Their Lordships have further held that the only limitation of the Government is that no authority can

propose an amendment so as to change the basic character of the development plan. The proposed amendment could only be minor within the limits of the Development Plan. Nodoubt that Their Lordships have held that the same can be challenged on the ground that it is arbitrary or unreasonable. It can further be seen that Their Lordships have held that making of Development Control Rules or amendment thereof are legislative functions. It is further held that the State Government may, make such inquiry as it may consider necessary and after consulting the Director of Town Planning by notification in the Official Gazette, sanction the modification with or without such changes and subject to such conditions as it may deem fit, or refuse to accord sanction. If a modification is sanctioned, the final Development Plans shall be deemed to have been modified accordingly. It has further been held that delegated legislation cannot be questioned for violating principles of natural justice in its making, except when the Statute itself provides for that requirement. It has further been held that a provision for 'such inquiry as it may consider necessary' by a subordinate legislating body is generally an enabling provision, to facilitate the subordinate legislating body to obtain relevant information, from any source and it is not intended to vest any right in anybody.

42. It is further pertinent to note that the Constitution Bench of Their Lordships of Supreme Court in the case of **K.T.Plantation Pvt. Ltd. and another .vs. State of Karnataka** reported in AIR 2011 SC 3430 has approved the view taken in the case of Pune Municipal Corporation (cited supra). It will be appropriate to refer to the following observations of Their Lordships in the case of K.T. Plantation Pvt. Ltd. (cited supra) :

We also find no force in the contention that opportunity of hearing is a pre-condition for exercising powers under Section 110 of the Act. No such requirement has been provided under Section 107 or Section 110. When the exemption was granted to Roerichs' no hearing was afforded so also when the exemption was withdrawn by the delegate. It is trite law that exemption cannot be claimed as a matter of right so also its withdrawal, especially when the same is done through a legislative action.

Delegated legislation which is a legislation in character, cannot be questioned on the ground of violation of the principles of natural justice, especially in the absence of any statutory requirement. Legislature or its delegate is also not legally obliged to give any reasons for its action while discharging its legislative function.

See State of Punjab v. Tehal Singh and Ors. (2002) 2 SCC 7 : (AIR 2002 SC 533 : 2002 AIR SCW 105); West Bengal Electricity Regulatory Commission v. CESC Ltd. etc. (2002) 8 SCC 715 (AIR 2002 SC 3588 : 2002 AIR SCW 4212); **Pune Municipal Corporation and Anr. v. Promoters and Builders Association and Anr. (2004) 10 SCC 796 : (AIR 2004 SC 3502 : 2004 AIR SCW 3352)**; Bihar State Electricity Board v. Pulak Enterprises and Ors. (2009) 5 SCC 641 : (AIR 2009 SC (Supp) 1462 : 2009 AIR SCW 3505).

(emphasis supplied).

43. The Constitution Bench of Hon'ble Supreme Court consisting of Hon'ble Seven Judges, in the case of **M/s. Prag Ice and Oil Mills and another .vs. Union of India** reported in (1978) 3 SCC 459 was considering a challenge to the Mustard Oil (Price Control) Order, 1977 a subordinate legislation enacted by the Central Government in exercise of powers vested in it under Section 3 of the Essential Commodities Act. It will be appropriate to refer to the following observations of Their Lordships :

71. To sum up, it seems to us impossible to accept the contention of the petitioners that the impugned Price Control Order is an act of hostile discrimination against them or that it violates their right to property or their right to do trade or business. The petitioners have taken us into the minutest details of the mechanism of their trade operations and they have attempted to demonstrate in relation thereto that a factor here or a factor there which ought to have been taken into account while fixing the price of mustard oil has been ignored. Dealing with a similar argument it was observed in *Metropolis Theater Company v. City of Chicago*(1) that to be able to find fault with a law is not to demonstrate its invalidity.

"It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void....

"The Parliament having entrusted the fixation of prices to the expert judgment of the Government, it would be wrong for this Court, as was done by common consent in Premier Automobiles to examine each and every minute detail pertaining to the Governmental decision. The Government, as was said in Permian Basin Area Rate Cases, is entitled to make pragmatic adjustments which may be called for by particular circumstances and the price control can be declared unconstitutional only if it is patently arbitrary, discriminatory or demonstrably irrelevant to the policy which the legislature is free to adopt. The interest of the producer and the investor is only one of the variables in the 'constitutional calculus of reasonableness' and Courts ought not to interfere so long as the exercise of Governmental power to fix fair prices is broadly within a 'zone of reasonableness'. If we were to embark upon an examination of the desperate contentions raised before us on behalf of the contending parties we have no doubt that we shall have exceeded our narrow and circumscribed authority.

44. It could thus be seen that, before Their Lordships, an argument was sought to be advanced that various factors which ought to have been taken into consideration while fixing the price of mustard oil were ignored. It could further be seen that Their Lordships have held that legislative action can be declared unconstitutional only if it is patently arbitrary, discriminatory or demonstrably irrelevant to the policy which the legislature is free to adopt. It has further been held that, in such matters, Court ought not to interfere so long as the exercise of Governmental power is broadly within a zone of reasonableness . It has further been held that if the Courts were to embark upon an examination of the minute details as raised before Their Lordships on behalf of contending parties, the Court will be exceeding its powers.

45. It will also be appropriate to refer to the observations of Their Lordships of the Apex Court in the case of **Union of India and another .vs. Cynamide India Ltd. and another** reported in (1987) 2 SCC 720.

6. Occasionally the legislature directs the subordinate legislating body to make 'such enquiry as it think fit' before making the subordinate legislation. **In such a situation, while such enquiry by the subordinate legislating body as it deems fit is a condition precedent to the subordinate legislation, the nature and the extent of the enquiry is in the discretion of the subordinate legislating body and the subordinate egislation is not open to question on the ground that the enquiry was not as full as it might have been.** The provision for 'such enquiry as it thinks fit' is generally an enabling provision, intended to facilitate the subordinate legislating body to obtain relevant information from all and whatever source and **not intended to vest any right in anyone other than the subordinate legislating body.** It is the sort of enquiry which the legislature itself may cause to be made before legislating, an enquiry which will not confer any right an anyone.

(emphasis supplied).

46. It could be seen that the words which fall for consideration before us i.e. such inquiry as it may consider necessary are almost similar to the words which had fallen for consideration before Their Lordships such inquiry as it thinks fit . While interpreting the said words, Their Lordships held that while such enquiry by the subordinate legislating body as it deems fit is a condition precedent to the subordinate legislation, the nature and the extent of the enquiry is in the discretion of the subordinate legislating body and the subordinate legislation is not open to question on the ground that the enquiry was not as full as it might have been. It has further been held that such provision for 'such enquiry as it thinks fit' is generally an enabling provision, intended to facilitate the subordinate legislating body to obtain relevant information from all and whatever source considered necessary. It is the sort of enquiry which the legislature itself may cause to be made before legislating, an enquiry which will not confer any right on anyone other than the enquiring body.

47. It could thus be seen that it will not be open for this Court to question the inquiry conducted by the Authority, while exercising its legislative powers to find out as to whether the enquiry was not as full as it might have been. The only permissible inquiry would be, as to whether the inquiry as contemplated under the provisions was in fact conducted by it or not. In view of paragraph 4 in the said Judgment, the only inquiry that would be permissible for this Court, would be as to whether the policy and factors are present in the mind of the authorities exercising powers or not, as to whether relevant considerations have gone in and irrelevant considerations are kept out of determination while exercising powers or not.

48. In our considered view it will, therefore, not be possible to accept the contention of the petitioners, that the State Government ought to have taken into consideration, the detailed objections as raised by the petitioners and recorded reasons for not accepting the said objections prior to issuing the impugned notification. As already discussed by us hereinabove, perusal of the file would reveal that the State Government has taken into consideration, all the relevant factors. Perusal of the file would reveal that the objection raised by the parties and comments thereto by the Planning Authority were very much available, in the nature of report submitted by the Commissioner. The views of various Authorities including the Director of Town Planning were also very much available before the State Government. The minutes of meeting of Heritage Committee were taken into consideration by the State Government. Not only that, but specific query was made to the Commissioner of Nagpur Municipal Corporation, as to whether it was feasible to maintain width of road to 24 meters, without affecting the Heritage structure of Murlidhar temple, Kelibag temple and Gujar gateway. The Commissioner of Nagpur Municipal Corporation has accordingly replied vide his communication dt.3.10.2013 stating therein that it was possible to maintain width of said road to 24 meters after making certain changes. The said have also been considered by the State Government while taking final decision. Not only that, but the impugned notification itself imposes a condition that the heritage structure of Murlidhar temple, Kelibag temple and Gujar gateway shall be kept intact, while widening the said road as per the plan width.

49. It will be appropriate to refer to the following observations of Their Lordships in the case of State of T.N. and another vs. P. Krishnamurthy and Others (cited supra). They are as under:

15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be challenged under any of the following grounds :

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).

16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.

50. It could thus be seen that Their Lordships have held that there is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. Applying parameters laid down by the Apex Court, it cannot be held and it is not even the

case of the petitioners, that the State Government is lacking legislative competence to issue impugned notification. It is also not the case of violation of any of the fundamental rights guaranteed under the Constitution of India. No case is made out of violation of any provisions of the Constitution of India. As already discussed by us hereinabove, perusal of the material would reveal that the power is exercised in conformity of the provisions u/s.37 (1) and (2) of the said Act and within limits as provided under the said provision and as such, the case would not fall under clause (d). It is also not the case of the petitioners that the impugned notification is repugnant to any of the laws. Insofar as clause (f) is concerned, though the petitioners have sought to bring their case under the ambit of arbitrariness or unreasonableness; however, for bringing the case under the said clause, in view of the Judgment of the case of **Supreme Court Employees' Welfare Association .vs. Union of India** reported in (1989) 4 SCC 187, the petitioners will have to establish that the impugned notification is patently arbitrary or unreasonable. As has been discussed hereinabove, upon perusal of the copy of noting in the file, we find that it cannot be said that the petitioners have been in a position to make out a case of palpable arbitrariness or unreasonableness.

51. That leaves us with one additional ground in Writ Petition No.5056 of 2016. Perusal of the material placed on record by the petitioners themselves would reveal that status of Heritage structure is granted to Gujar gateway and tomb (Samadhi).

52. Perusal of the accompaniment to the Heritage Building Notification dt.15.10.2003 would reveal that Column No.11 of the said Schedule shows Serial No.73 to be a gateway. Not only that, but clause (B) itself shows that the mosque has been altered. Perusal of various items in the said Schedule would reveal that as to what structure is to be recognized as 'Heritage Structure' has been shown in Column No.11. That Column No.3 of Serial No.73 shows Gujar Gateway and Mosque. Column No.11 shows only gateway. Similarly, at Sr. No.78 and 79, Column No.11 shows gateway. Whereas at Serial No.82 in Column No.3, the structure shown is Fattepur Masjid and Column No.11 shows mosque. Similarly, Serial No.91 shows Column No.3 to be group of temples and Chattris. Column No.11 shows temple and Chattris. Similarly, at Serial Nos. 94 and 97, Column

No.3 shows St. Francis De sales. Cathedral and 1840's Church respectively. Column No.11 also shows Church. It could thus be seen that the Structures which are to be recognized as Heritage Structures are shown in Column No.11. In any case, it is even admission of the petitioners that the mosque and shops are reconstructed in the year 1982 and that too, not as per original design. It will be relevant to refer to the following part of the minutes of meeting of the Heritage Conservation Committee dt.8.4.2011. A true translated version reads thus:

2) Point No.2 on the agenda was taken up for discussion. The site inspection report of the Kelibag Road was read out before the committee. At the end of the inspection, it had been decided that it was not very clear as to which heritage structure would be affected by the proposed widening of the Kelibag Road to 24 mtrs. The N.M.C. had been requested to prepare a map showing which heritage structures would be affected and also to present photographs of these structures. After this information was submitted to the committee, further decision would be taken. The N.M.C. has now prepared a map showing in detail as to which heritage structure would be affected by the road widening. This map was considered by the committee. Relevant photographs were also shown to the committee by Shri A.B.Mogarkar, Dy. Engineer, N.M.C., Nagpur.

A list of the heritage structure affected by proposed road widening is as follows:

1. Kalyaneshwar quadrangle Grade I Open Space.
2. Kelibag Temple Complex Grade I Temple.
3. Gujar Gateway and Mosque Grade I Gateway.
4. Municipal Corporation Grade II Institution.
5. Murlidhar Temple Grade II Temple.

It was noted that going from South to North, The Grade I Structures are the Kalyaneshwar Quadrangle, the rear portion of the Murlidhar Temple and east part of the Kelibag Temple Mosque Structure (Altered). It is noted that this road is a major artery of the city and connects Central Avenue to The Great Nag Road

which leads upto Umred Road. Considering the great increase in the volume of traffic on this road the widening of the road has become a necessity. The committee therefore decided to accord its approval to the proposal of the Nagpur Municipal Corporation for widening of the Kelibag Road to 24 mtrs., subject to the condition that the Grade I structures of Murlidhar Temple, Kelibag Temple and Gujar Gateway shall be retained.

53. It could thus be seen that the Heritage Committee itself has granted its approval to the proposal of Nagpur Municipal Corporation for widening of Kelibag road to 24 meters subject to condition that the structures are retained. In the said list, Gujar gateway is also included. It is further to be noted that the impugned notification itself provides that the minor modification is granted subject to the condition that the Heritage structures of Murlidhar temple, Kelibag temple and Gujar gateway shall be kept intact while widening the said road as per the plan width. Mr.C.S.Kaptan, learned Senior Counsel appearing on behalf of the Corporation has made a categorical statement on instructions of the Officers present in the Court that the grave (Samadhi) and Gujar gateway which are Heritage structures, would not be affected in the expansion of the road as proposed. In that view of the matter, we find that the contention of the petitioners that the Heritage structure is being affected by expansion is without substance.

54. Mr.M.G.Bhangde, learned Senior Counsel appearing on behalf of the petitioners has strongly relied on the following observations of Their Lordships of Apex Court in the case of **Cellular Operators Association of India and Others .vs. Telecom Regulatory Authority of India and Others** reported in (2016) 7 SCC 703.

No doubt in the facts of the present case, the Authority did hold due consultations with all stakeholders and did allow all stakeholders to make their submissions to the Authority. However, we find no discussion or reasoning dealing with the arguments put forward by the service providers, that call drops take place for a variety of reasons, some of which are beyond the control of the service provider and are because of the consumer himself. Consequently, we find that the conclusion that service providers are alone to blame and are consequently

deficient in service when it comes to call drops is not a conclusion which a reasonable person can reasonably arrive at.

55. No doubt, that Mr. Bhangde, learned Senior Counsel is justified in contending that, since in the said case Their Lordships observed that they do not find any discussion or reasoning dealing with arguments put forward by service providers that call drop takes place for valid reasons and some of them beyond the control of service providers and as such, the subordinate legislation was not found to be sustainable in the said case; by applying same analogy, since no reasons are available for rejecting the valuable objections of the petitioners, the impugned notification should also be quashed and set aside.

56. However, it is to be noted that the aforesaid observations are made by Their Lordships while considering Sub-section (4) of Section 11 of the Telecom Regulatory Authority of India Act, 1997 :

4. The Authority shall ensure transparency while exercising its powers and discharging its functions.

57. Their Lordships finding that there was no definition of word 'transparency' in the Telecom Regulatory Authority of India Act, 1997, considering the definition of word 'transparency' as provided under the Airports Economic Regulatory Authority of India Act, 2008, have made the aforesaid observations. Apart from that, in the said case, Their Lordships further found that the regulations impugned in the said case did not carry out the purpose of the Act and therefore, were liable to be held to be ultra vires the parent Act. It was further found by Their Lordships that the service provider was made to pay for call dropping for the reasons that may not be attributed to its fault and as such, that made regulation impugned therein framed without intelligent care and deliberation. Their Lordships further found that the regulation impugned in the said case and quality of service regulations were required to be read together as part of single Scheme in order to test reasonableness thereof. It was further held that, ignoring quality of Service Regulations, 2009, while framing regulation impugned in the said case would render the impugned regulation arbitrary or unreasonable.

58. In our considered view, the aforesaid observations relied on by Mr.M.G.Bhangde, learned Senior Counsel cannot be made universally applicable. The said observations were in view of the word transparency as found in Section 11 (4) of the Telecom Regulatory Authority of India Act, 1997 r/w. definition of word 'transparency' in the Airports Economic Regulatory Authority of India Act, 2008. However, it is to be noted that, alive to the ground situation, that such provisions are not to be found in most of the legislations, Their Lordships have observed thus:

92. We find that, subject to certain well defined exceptions, it would be a healthy functioning of our democracy if all subordinate legislation were to be transparent" in the manner pointed out above.

Since it is beyond the scope of this judgment to deal with subordinate legislation generally, and in particular with statutes which provide for rule making and regulation making without any added requirement of transparency, we would exhort Parliament to take up this issue and frame a legislation along the lines of the US Administrative Procedure Act (with certain well-defined exceptions) by which all subordinate legislation is subject to a transparent process by which due consultations with all stakeholders are held, and the rule or regulation making power is exercised after due consideration of all stakeholders submissions, together with an explanatory memorandum which broadly takes into account what they have said and the reasons for agreeing or disagreeing with them. Not only would such legislation reduce arbitrariness in subordinate legislation-making, but it would also conduce to openness in governance. It would also ensure the redressal, partial or otherwise, of grievances of the stakeholders concerned prior to the making of subordinate legislation. This would obviate, in many cases, the need for persons to approach courts to strike down subordinate legislation on the ground of such legislation being manifestly arbitrary or unreasonable.

(emphasis supplied).

59. It could thus be seen that Their Lordships have strongly advised the Parliament to take up the issue and frame a legislation along the lines of US Administrative Procedure Act, by which all subordinate legislations are made

subject to transparent process by which due consultations with all stakeholders are held, and the rule or regulation-making power is exercised after due consideration of all stakeholders' submissions, together with an explanatory memorandum which broadly takes into account what they have said and the reasons for agreeing or disagreeing with them.

60. However, in the facts of the present case, in absence of a provision which is analogous to provisions of Section 11 (4) of the Telecom Regulatory Authority of India Act, 1997 and until the Parliament enacts a legislation as advised by Their Lordships of the Apex Court, we will have to examine the present case as per the law laid down by the Constitution Bench of Apex Court consisting of seven Hon'ble Judges in the case of M/s. Prag Ice and Oil Mills and another (cited supra), in the cases of State of Tamil Nadu vs. P.Krishnamurthy and Others cited supra), Union of India and another .vs. Cynamide India Ltd. and another (cited supra) and Pune Municipal Corporation and another (cited supra) as approved by the Constitution Bench of the Apex Court in the case of K. T. Plantation Pvt. Ltd. (cited supra). Hereinabove, we have in extenso considered the aforesaid Judgments of the Hon'ble Apex Court. We are of the considered view that the petitioners have failed to bring the case within any of the parameters on which the challenge to legislative functions of the delegatee would be permissible.

61. In the result, the petitions fail and are dismissed.

However, in the facts and circumstances, no order as to costs.

62. At this stage, the learned Counsel for the petitioners pray for extension of interim protection, which was granted by this Court, for a further period of six weeks. Mr.C.S.Kaptan, learned Senior Counsel appearing on behalf of the Nagpur Municipal Corporation makes a statement that the Corporation would not take any steps for demolition of the structures which would be affected by the proposed road for a period of six weeks from today. In that view of the matter, no orders are necessary.

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