



HIGH COURT OF CHHATTISGARH, BILASPUR

WPPIL No. 2 of 2021

Order Reserved on: 05.05.2023

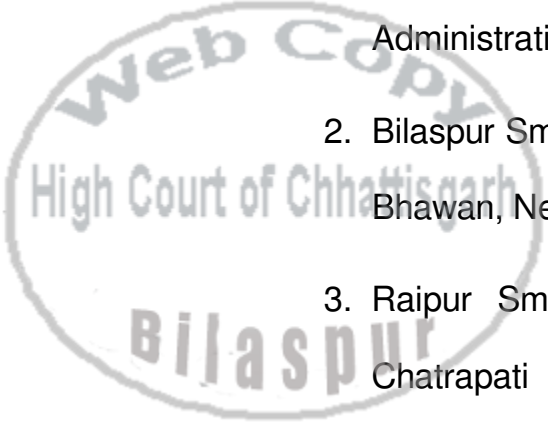
Order Delivered on: 12.05.2023

Vinay Dubey S/o Shri Late A.L. Dubey Aged About 52 Years Advocate,
R/o Ware House Road Near Shaffered School, Bilaspur, District
Bilaspur Chhattisgarh.

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Secretary , Department of Urban Administration And Development, Naya Raipur, Chhattisgarh.
2. Bilaspur Smart City Ltd. Through Its Managing Director / CEO Vikash Bhawan, Nehru Chowk , Bilaspur , Chhattisgarh 495001.
3. Raipur Smart City Ltd. Through Its Managing Director / CEO Chatrapati Shivajee Maharaj Outdoor Stadium , Budhapara, Near Vivekanand Sarovar, Raipur Chhattisgarh 492001
4. Saamanya Sabha Nagar Palik Nigam Bilaspur Through Speaker Sheikh Nazeeruddin, Nagar Nigam Town Hall Bilaspur Chhattisgarh
5. Mayor In Council Nagar Palik Nigam Bilaspur Through Mayor Ramsharan Yadav, Town Hall, Nagar Nigam, Bilaspur Chhattisgarh
6. Saamanya Sabha Nagar Palik Nigam Raipur Through Speaker Pramod Dubey, Nagar Nigam Office Kali Bari, Raipur Chhattisgarh
7. Mayor In Council Nagar Palik Nigam Raipur Through Mayor Ezaz Dhebhar, Nagar Nigam, Nagar Nigam Office Kali Bari, Raipur Chhattisgarh





8. Union of India Through Secretary, Ministry of Housing And Urban
Affairs, Govt. of India New Delhi

---- Respondents

(Cause Title taken from Case Information System)

For Petitioner	: Mr. Sudeep Shrivastava, Advocate.
For Respondents No. 1	: Mr. Raghavendra Pradhan Additional Advocate General
For Respondents No. 2 and 3	Mr. Sumesh Bajaj, Mr. Rishabh Bajaj and Ms. Saloni Verma, Advocates.
For Respondent No. 4	Mr. Harshwardhan, Advocate
For Respondent No. 5	Mr. Ashok Kumar Verma alongwith Mr. Gajendra Kumar Sahu, Advocates
For Respondents No. 6 and 7	Dr. Sudeep Agrawal, Advocate
For Respondent No. 8	: Mr. Ramakant Mishra, Deputy Solicitor General

Hon'ble Mr. Ramesh Sinha, Chief Justice
Hon'ble Mr. Deepak Kumar Tiwari Judge

C A V Order

Per Ramesh Sinha, Chief Justice

1. The petitioner, who is a practicing Advocate, claims himself to be a known social worker. He has filed the present petition in the representative capacity of the citizens of Bilaspur and Raipur Municipal Corporation seeking for the following reliefs:

“1. That, this Hon'ble Court may kindly be pleased to call for the entire records pertaining to the formation and operation of the Bilaspur Smart City Limited and Raipur Smart City Limited.

2. That, this Hon'ble Court may kindly be pleased to issue an appropriate Writ/Order/Direction to quash the order dated 17.08.2016 F-528/2-16/18, (Annexure P-4) passed by respondent No. 1 constituting Bilaspur Smart City Co. Ltd. And Raipur Smart City Ltd. and in consequence thereof declare all the actions taken in furtherance of the order dated 17.08.2016 as null and void.



3. That, this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction to reconstitute the Board of Directors of the Bilaspur Smart City Limited and Raipur Smart City Limited in manner so that at least 50% of the members would come from elected members of the Nagar Palik Nigam Bilaspur and Raipur respectively.

4. That, this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction to make Mayor and Speaker as member of the Board of Directors of the Bilaspur Smart City Limited and Raipur Smart City Limited.

5. That, this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction to the effect to take post facto approval of all the development works completed by the Bilaspur Smart City Limited and Raipur Smart City Limited since their inception from the concerned elected bodies of the Nagar Palik Nigam as per the prescribed procedure.

6. That, this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction to the effect to constitute Ward Committee and Mohalla Samiti in Nagar Nigam of the State.

7. That, this Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction to the effect to frame rules for constitution, functions, powers and procedures for conduct of business of the Wards Committee.

8. That, this Hon'ble Court may be pleased to pass any other order/relief that this Hon'ble Court may please deem fit and proper in the facts and circumstances of the case including grant of cost of the instant litigation.”

2. Challenge in this petition is to the alleged usurpation of powers and authorities of Municipal Corporation Bilaspur and Raipur by the Smart Cities Limited i.e. the Bilaspur Smart City Limited (*for short, the BSCL*) and the Raipur Smart City Limited (*for short, the RSCL*) in contravention of the Chhattisgarh Municipal Corporation Act, 1956 as well as Article 243 of the Constitution of India as by the 74th amendment, Constitutional democracy was extended beyond the Parliament and Assembly to Panchayats and Municipalities. By introduction of Smart City Limited, the Special Purpose Vehicle Companies (*for short, the SPV*) has undermined the elected local bodies and have also usurped their powers and functions.





3. The facts, in brief, as projected by the petitioner are that the Government of India, Department of Housing and Urban Affairs, launched a Smart City Mission (*for short, the SCM*) to fund different selected cities for standard development. The said mission was to be implemented through SPVs. The respondent No. 1 incorporated BSCL and RSCL as SPVs in September, 2016 to carry out the development and maintenance work in the particular assigned areas of Bilaspur and Raipur Municipal Corporation. Some typical features of comprehensive development in Smart Cities are described as under:

(i) Promoting mixed land use in area- based development— planning for ‘unplanned areas’ containing a range of compatible activities and land uses close to one another in order to make land use more efficient. The States will enable some flexibility in land use and building bye-laws to adapt to change;

(ii) Housing and inclusiveness-expand housing opportunities for all;

(iii) Creating walkable localities-reduce congestion, air pollution and resource depletion, boost local economy, promote interactions and ensure security. The road network is created or refurbished not only for vehicles and public transport, but also for pedestrians and cyclists, and necessary administrative services are offered within walking or cycling distance;

(iv) Preserving and developing open spaces— parks, playgrounds, and recreational spaces in order to enhance the quality of life of citizens, reduce the urban heat effects in Areas and generally promote eco-balance;

(v) Promoting a variety of transport options— Transit Oriented Development (TOD), public transport and last mile para-transport connectivity;

(vi) Making governance citizen-friendly and cost effective — increasingly rely on online services to bring about accountability and transparency, especially using mobiles to reduce cost of services and providing services without having to go to municipal offices; form e-groups to listen to people and obtain feedback and use online monitoring of programs and activities with the aid of cyber tour of worksites;

(vii) Giving an identity to the city. — based on its main economic activity, such as local cuisine, health, education, arts and craft, culture, sports goods, furniture, hosiery, textile, dairy, etc;

(viii) Applying Smart Solutions to infrastructure and services in area-based developmentviii. in order to make them better.





For example, making Areas less vulnerable to disasters, using fewer resources, and providing cheaper services.”

4. According to the Union of India, the strategy to create Smart Cities are as under:

“(i) The strategic components of Area-based development in the Smart Cities Mission are city improvement (retrofitting), city renewal (redevelopment) and city extension (greenfield development) plus a Pan-city initiative in which Smart Solutions are applied covering larger parts of the city. Below are given the descriptions of the three models of Area-based Smart City Development:

- Retrofitting will introduce planning in an existing built-up area to achieve Smart City objectives, along with other objectives, to make the existing area more efficient and liveable. In retrofitting, an area consisting of more than 500 acres will be identified by the city in consultation with citizens. Depending on the existing level of infrastructure services in the identified area and the vision of the residents, the cities will prepare a strategy to become smart. Since existing structures are largely to remain intact in this model, it is expected that more intensive infrastructure service levels and a large number of smart applications will be packed into the retrofitted Smart City. This strategy may also be completed in a shorter time frame, leading to its replication in another part of the city.
- Redevelopment will effect a replacement of the existing built-up environment and enable co-creation of a new layout with enhanced infrastructure using mixed land use and increased density. Redevelopment envisages an area of more than 50 acres, identified by Urban Local Bodies (ULBs) in consultation with citizens. For instance, a new layout plan of the identified area will be prepared with mixed land-use, higher FSI and high ground coverage. Two examples of the redevelopment model are the Saifee Burhani Upliftment Project in Mumbai (also called the Bhendi Bazaar Project) and the redevelopment of East Kidwai Nagar in New Delhi being undertaken by the National Building Construction Corporation.
- Greenfield development will introduce most of the Smart Solutions in a previously vacant area (more than 250 acres) using innovative planning, plan financing and plan implementation tools (e.g. land pooling/ land reconstitution) with provision for affordable housing, especially for the poor. Greenfield developments are required around cities in order to address the needs of the expanding population. One well known example is the GIFT City in Gujarat. Unlike retrofitting and redevelopment, greenfield developments could be located either within the limits of the ULB or within the limits of the local Urban Development Authority (UDA).





- Pan-city development envisages application of selected Smart Solutions to the existing city-wide infrastructure. Application of Smart Solutions will involve the use of technology, information and data to make infrastructure and services better. For example, applying Smart Solutions in the transport sector (intelligent traffic management system) and reducing average commute time or cost to citizens will have positive effects on productivity and quality of life of citizens. Another example can be waste water recycling and smart metering which can make a substantial contribution to better water management in the city.
- The Smart City proposal of each shortlisted city is expected to encapsulate either a retrofitting or redevelopment or greenfield development model, or a mix thereof and a Pan-city feature with Smart Solution(s). It is important to note that pan-city is an additional feature to be provided. Since Smart City is taking a compact area approach, it is necessary that all the city residents feel there is something in it for them also. Therefore, the additional requirement of some (at least one) city-wide smart solution has been put in the scheme to make it inclusive.
- For North Eastern and Himalayan States, the area proposed to be developed will be one-half of what is prescribed for any of the alternative models – retrofitting, redevelopment or greenfield development.”



5. The scheme further provides that each Smart City will have a SPV which will be headed by a full time CEO and have nominees of Central Government, State Government and ULB on its Board. The States/ULBs shall ensure that a dedicated and substantial revenue stream is made available to the SPV so as to make it self-sustainable and could evolve its own credit worthiness for raising additional resources from the market and Government contribution for Smart City is used only to create infrastructure that has public benefit outcomes. The execution of projects may be done through joint ventures, subsidiaries, public-private partnership (PPP), turnkey contracts, etc. suitably dovetailed with revenue streams. The SPV will be a limited company incorporated under the Companies Act, 2013 at the city-level, in which the State/UT and the ULB will be the promoters having 50:50 equity shareholding. The private sector or financial institutions could be



considered for taking equity stake in the SPV, provided the shareholding pattern of 50:50 of the State/UT and the ULB is maintained and the State/UT and the ULB together have majority shareholding and control of the SPV.

6. So far as financing of the Smart City Project is concerned, the same is described in the mission Statement and Guidelines (Annexure P/1) which reads as follows:

◆ The Smart City Mission will be operated as a Centrally Sponsored Scheme (CSS) and the Central Government proposes to give financial support to the Mission to the extent of Rs. 48,000 crores over five years i.e. on an average Rs. 100 crore per city per year. An equal amount, on a matching basis, will have to be contributed by the State/ULB; therefore, nearly Rupees one lakh crore of Government/ULB funds will be available for Smart Cities development.

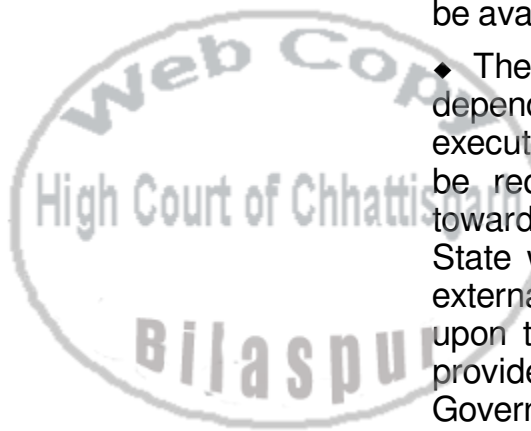
◆ The project cost of each Smart City proposal will vary depending upon the level of ambition, model and capacity to execute and repay. It is anticipated that substantial funds will be required to implement the Smart City proposal and towards this end, Government grants of both the Centre and State will be leveraged to attract funding from internal and external sources. The success of this endeavour will depend upon the robustness of SPV's revenue model and comfort provided to lenders and investors. A number of State Governments have successfully set up financial intermediaries (such as Tamil Nadu, Gujarat, Orissa, Punjab, Maharashtra, Karnataka, Madhya Pradesh and Bihar) which can be tapped for support and other States may consider some similar set up in their respective States. Some form of guarantee by the State or such a financial intermediary could also be considered as instrument of comfort referred to above. It is expected that a number of schemes in the Smart City will be taken up on PPP basis and the SPVs have to accomplish this.

◆ The GOI funds and the matching contribution by the States/ULB will meet only a part of the project cost. Balance funds are expected to be mobilized from:

i. States/ ULBs own resources from collection of user fees, beneficiary charges and impact fees, land monetization, debt, loans, etc.

ii. Additional resources transferred due to acceptance of the recommendations of the Fourteenth Finance Commission (FFC).

iii. Innovative finance mechanisms such as municipal bonds with credit rating of ULBs, Pooled Finance Mechanism, Tax Increment Financing (TIF).





iv. Other Central Government schemes like Swachh Bharat Mission, AMRUT, National Heritage City Development and Augmentation Yojana (HRIDAY).

v. Leverage borrowings from financial institutions, including bilateral and multilateral institutions, both domestic and external sources.

vi. States/UTs may also access the National Investment and Infrastructure Fund (NIIF), which was announced by the Finance Minister in his 2015 Budget Speech, and is likely to be set up this year.

- ◆ Private sector through PPPs.
- ◆ The distribution of funds under the Scheme will be as follows:

i. 93% project funds.

ii. 5% Administrative and Office Expenses (A&OE) funds for state/ULB (towards preparation of SCPs and for PMCs, Pilot studies connected to area-based developments and deployment and generation of Smart Solutions, capacity building as approved in the Challenge and online services).

iii. 2% A&OE funds for MoUD (Mission Directorate and connected activities/structures, Research, Pilot studies, Capacity Building, and concurrent evaluation).

7. On 17.08.2016 (Annexure P/4), the Urban Administration and Development Department, Government of Chhattisgarh, issued an order for constituting the Board of Directors for BSCL and RSCL. The same reads as under:

रायपुर स्मार्ट सिटी लिमिटेड (RSCL) का संचालक मंडल निम्नानुसार होगा:-

क्रं.	पदनाम	कंपनी के बोर्ड में पद
1.	प्रमुख सचिव / सचिव / विशेष सचिव, नगरीय प्रशासन एवं विकास विभाग	अध्यक्ष
2.	संचालक, नगरीय प्रशासन सह मुख्य कार्यपालन अधिकारी, सूडा	उपाध्यक्ष
3.	प्रबंध संचालक, छत्तीसगढ़ राज्य विद्युत वितरण कंपनी मर्या. (CDPDCL)	संचालक
4.	मुख्य कार्यपालन अधिकारी, छ.ग. इंफोटेक एवं बायोटिक प्रमोशन सोसायटी (CHIPS)	संचालक
5.	मुख्य कार्यपालन अधिकारी, रायपुर विकास प्राधिकरण (RDA)	संचालक
6.	कलेक्टर, जिला- रायपुर	संचालक
7.	पुलिस अधीक्षक, जिला रायपुर	संचालक
8.	आयुक्त, नगर पालिक निगम	प्रबंध संचालक, सह मुख्य कार्यपालन अधिकारी



9.	भारत सरकार/शहरी विकास मंत्रालय के प्रतिनिधि	संचालक
10.	कार्पोरेट कार्य मंत्रालय एवं भारतीय प्रतिभूति एवं विनियम बोर्ड (SEBI) द्वारा जारी सूची में से चयनित स्वतंत्र संचालक	स्वतंत्र संचालक

बिलासपुर स्मार्ट सिटी लिमिटेड (BSCL) का संचालक मंडल निम्नानुसार होगा:-

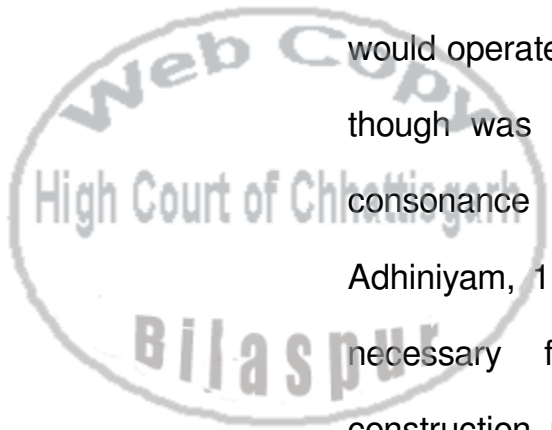
क्रं.	पदनाम	कंपनी के बोर्ड में पद
1.	प्रमुख सचिव /सचिव/विशेष सचिव, नगरीय प्रशासन एवं विकास विभाग	अध्यक्ष
2.	संचालक, नगरिय प्रशासन सह मुख्य कार्यपालन अधिकारी ,सूडा	उपाध्यक्ष
3.	प्रबंध संचालक, छत्तीसगढ़ राज्य विद्युत वितरण कंपनी मर्या. (CDPDCL)	संचालक
4.	मुख्य कार्यपालन अधिकारी, छ.ग. इंफोटेक एवं बायेटिक प्रमोशन सोसायटी (CHIPS)	संचालक
5.	मुख्य कार्यपालिका अधिकारी, अरपा विकास क्षेत्र विकास प्राधिकरण (ASADA)	संचालक
6.	कलेक्टर ,जिला बिलासपुर	संचालक
7.	पुलिस अधीक्षक,जिला बिलासपुर	संचालक
8.	आयुक्त, नगर निगम पालिक निगम, बिलासपुर	प्रबंध संचालक ,सह मुख्य कार्यपालन अधिकारी
9.	भारत सरकार/शहरी विकास मंत्रालय के प्रतिनिधि	संचालक
10.	कार्पोरेट कार्य मंत्रालय एवं भारतीय प्रतिभूति एवं विनियम बोर्ड (SEBI) द्वारा जारी सूची में से चयनित स्वतंत्र संचालक	स्वतंत्र संचालक

8. According to the learned counsel for the petitioner, during 2016 to 2020, several development works were carried out by the BSCL and RSCL without any monitoring or supervision of the elected body of the Municipal Corporation, Bilaspur or Raipur. The BSCL and RSCL have issued number of tenders for various works which are within the domain of the Municipal Corporations viz. Shifting of high mast lights, LED lighting works, selection of agency for design and planning, BT road construction, land scaping work, upgradation of schools, water supply system, water meter fitting, parking construction, footpath construction, traffic management consultant, preparation of local area plan, canopy



structures in schools, firefighting infrastructure etc. which would be evident from the documents annexed as Annexure P/6 and P/7.

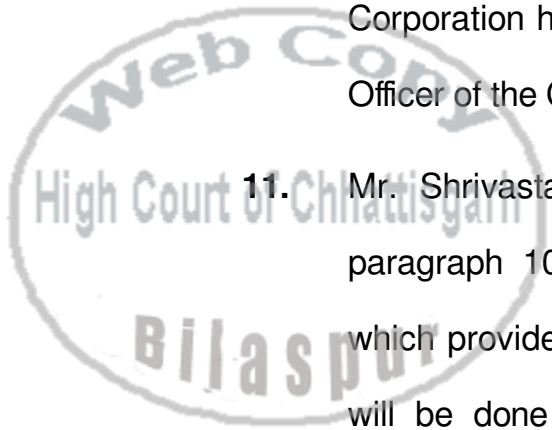
9. The grievance, which the petitioner appears to have, is that the functions and activities which ought to be performed by the Municipal Corporation of Bilaspur and Raipur, are being performed by the BSCL and RSCL which amounts to usurpation of the powers of the Municipal Corporations by a Company.
10. Mr. Sudeep Shrivastava, learned counsel for the petitioner would submit that the 74th Amendment of the Constitution has given a constitutional status to the Municipal Corporations and added Article 243W read with Schedule 12 which provides the areas where a Municipal Corporation would operate. The Chhattisgarh Nagar Palika Nigam Adhiniyam, 1956 though was enacted prior to 74th Amendment, but the same is in consonance with 74th Amendment and Section 66 and 67 of the Adhiniyam, 1956 provides for all possible areas of power which are necessary for urban development which includes planning, construction, maintenance of all public spaces and buildings etc. A SPV Company cannot act independently in the areas falling within the Municipal Corporation as would be clear from Section 2 of the Adhiniyam, 1956. When the said Act was enacted, it has repealed all other previous arrangements and while doing so, it provides in Section 2 that on the application of the Act to any city under sub-section (3) of Section 1, the authority or any institution, if performing the Municipal functions shall cease to perform such function and all assets and liabilities of such authority or institution shall vest in the Municipal Corporation constituted under this Act. Meaning thereby that no authority can perform functions entrusted to a Municipal Corporation in Municipal Areas. Thus, by the said logic, the BSCL or the RSCL cannot





perform any functions which has been entrusted to the Municipal Corporations under the Act of 1956. As per Section 82 of the Act of 1956, all the property of the nature specified thereunder vests in and under the control of the Corporation. Despite there being provision of members of the ULB being taken as members in the Board of Directors of the SPV, no member of the Municipal Corporation Bilaspur or Raipur has been appointed as Director of the Company. A bare perusal of the order dated 17.08.2016 (Annexure P/4) would reveal that in a 10 member Board, none of the elected member of the Municipal Corporation or even the Mayor or Speaker has been appointed as Director of the Company. Only the Commissioner of the Municipal Corporation has been appointed as Managing Director/Chief Executive Officer of the Company in independent capacity.

11. Mr. Shrivastava would further draw the attention of the Court to paragraph 10 of the Smart City Mission Statement and Guidelines which provides that the implementation of the Mission at the City level will be done by a Special Purpose Vehicle (SPV) created for the purpose. The SPV will plan, appraise, approve, release funds, implement, manage, operate, monitor and evaluate the Smart City development projects. Each Smart City will have a SPV which will be headed by a full time CEO and have nominees of Central Government, State Government and ULB on its Board. The States/ULBs shall ensure that, (a) a dedicated and substantial revenue stream is made available to the SPV so as to make it self- sustainable and could evolve its own credit worthiness for raising additional resources from the market and (b) Government contribution for Smart City is used only to create infrastructure that has public benefit outcomes. The execution of projects may be done through joint ventures, subsidiaries, public-private partnership (PPP), turnkey contracts, etc. suitably dovetailed with





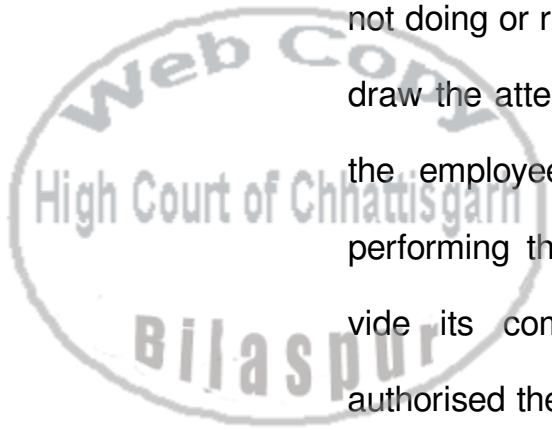
revenue streams. The same would mean that the SPVs, having nominees of the Central and the State Government in the Board of Directors would completely usurp the powers of the Municipal Corporation.

12. The Government of India has not prescribed any particular model to be adopted for the Smart Cities as it was mindful that urban development is a State subject and different State Acts have different provisions to suit their local needs. The State and the Urban Local Bodies (*for short, the ULBs*) are joint 50% - 50% promoters, thus have the right to nominate persons in the Board of Directors of the SPVs. Project, planning and implementation are completely out of the Government of India's role and they were left to the SPVs and their share holders namely the ULBs and the State Government which would mean that no project in the Municipal Area could be undertaken by the SPVs without due approval of the Municipal Corporation. The SPVs cannot act beyond the authority which were given by the State Government and the ULBs and in the instant case, the SPVs are planning, executing many projects from public funds without the authority given to them as contemplated in law. Both RSCL and BSCL have been executing several projects spending hundreds of crores of rupees with no supervision or monitoring by the elected body of the Municipal Corporation of Raipur and Bilaspur.

13. Mr. Shrivastava would next submit that the Board of Directors of the BSCL and RSCL have not been appointed following the principle of the 'promotional representation' as prevailed in Company Law. The Municipal Corporation, being the 50% owner of the BSCL and RSCL, deserve to have all its major functionary in the Board of Directors. In absence of any elected person's representation in the Board of Directors of the Company and in absence of approval for any work from



the respective Municipal Corporation, all the projects which are being executed, are without due approval as contemplated in law and also without any accountability. The BSCL and the RSCL should be under the command and control of the respective Municipal Corporations and should also have the right to appoint the members of the Board of Directors. At no stage of planning, approval, execution or payment, the file of any tender issued by the SPVs is brought before the Mayor/ Mayor-in-Council/Samanya Sabha where the work is being done in the notified areas of these Municipal Corporations. The SPVs do not have any separate source of income and its employees are getting paid by the respective Municipal Corporations from their own funds and they are not doing or reporting any work to the Municipal Corporation. He would draw the attention of the Court to the list (Annexure P-9) to show that the employees of the Bilaspur Municipal Corporation have been performing their duties in the BSCL. Further, the Collector, Bilaspur, vide its communication dated 27.07.2010 (Annexure P/10) has authorised the Managing Director of the BSCL as the executing agency for the establishment and development work of three English Medium School by the Corporate Social Responsibility (CSR) fund provided by the South Eastern Coalfields Ltd. In the past, such works were assigned to the Municipal Corporations or the Public Works Department whereas the same is now being handed over to the SPVs. Mr. Shrivastava would lastly submit that the BSCL or the RSCL could work as subordinate to the Municipal Corporation and not as an independent body. In the present situation, not a single file relating to any kind of activities is placed either before the Municipal Corporation or before the elected representatives of the Municipal Corporation and the SPVs i.e. the BSCL and the RSCL are acting as per their own sweet will.





14. In support of his contentions, he would draw attention of the Court to Section 25 of the Act of 1956 which defines the powers and functions of the Mayor, Section 27 which provides for meeting of the Corporation and Committee, Section 29 with regard to convening of meeting, Section 30 which provides for power of Speaker and Mayor to call special meeting, Section 66 which deals with matters to be provided for by Corporation, Section 67 which provides for matters which may be provided for by Corporation at its discretion, Section 69 which deals with functions of several municipal authorities, Section 73 which deals with contracts by or on behalf of the Corporation, Section 82 which deals with the properties which vests in Corporation.

15. For proper adjudication of the *lis*, it would be proper to take not of some of the provisions of the Constitution of India, the Act of 1956 as well as the Smart Cities Mission Statement and Guidelines. The same reads as under:

243W. Powers, authority and responsibilities of Municipalities, etc. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow

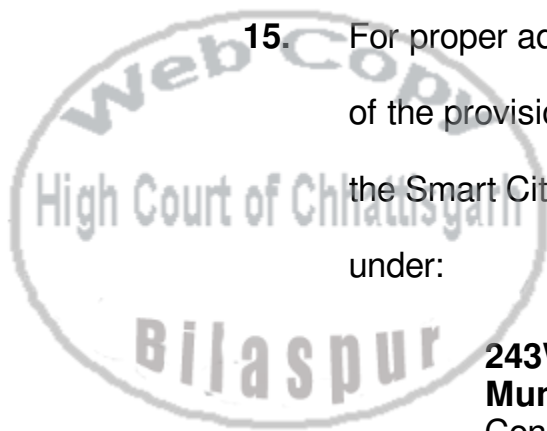
(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

The Twelfth Schedule reads as under:

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and, commercial purposes.





6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry protection of the environment. and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, play-grounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle ponds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.”

16. Section 82 of the Act of 1956 reads as under:

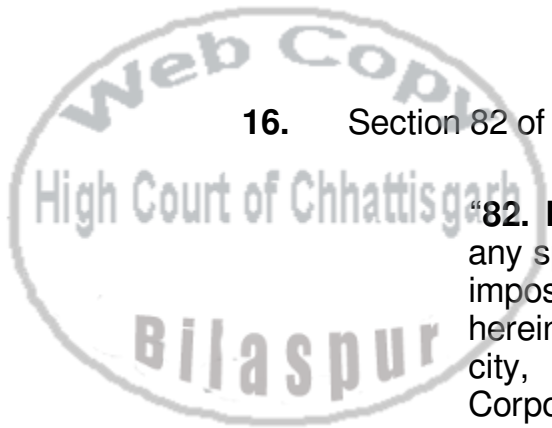
82. Property vested in Corporation. - (1) Subject to any special reservation made or to any special conditions imposed by the Government, all property of the nature hereinafter in this section specified and situated within the city, shall vest in and be under the control of the Corporation, and with all other property which has already vested, or may hereinafter vest in the Corporation shall be held and applied by it for the purposes of this Act, namely :

(a) all public gates, markets, slaughter-houses, manure and night-soil deposits and public buildings of every description which have been constructed or maintained out of the municipal fund;

(b) all public streams, rivers, springs, and works for the supply, storage and distribution of water for public purposes and all bridges, buildings, engines, materials and things connected therewith or appertaining thereto, and also any adjacent land (not being private property) appertaining to any public tank or well;

(c) all public sewers and drains, and all sewers, drains, culverts and watercourses in or under any public street or constructed by or for the Corporation along side any public street, and all works, materials and things appertaining thereto;

(d) all dust, dirt, dungs, ashes, refuse, animal matter, or filth or rubbish of any kind, or dead bodies, of animals, collected by the Corporation from the streets, houses, privies, sewers, cesspools or elsewhere or deposited in places fixed by the Corporation;





(e) all public lands, lamp-posts and apparatus connected therewith or appertaining thereof;

(f) all land or other property transferred to the Corporation by the Government or acquired by gift, purchase or otherwise for local public purposes;

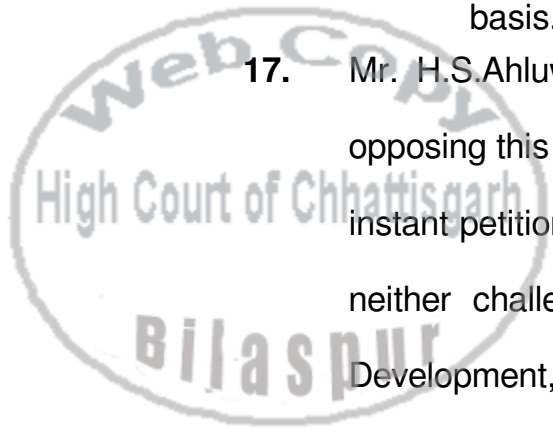
(g) all public streets, not being land owned by the Government and the pavements, stone and other material thereof and also trees growing on, and erections, materials, implements and things provided for such streets;

(h) all open lands which are neither the property of any person nor of the Government.

(2) All property such as tank, playground, park, garden and other places meant for public utility vested in the Corporation shall neither be used for any other purpose nor be permitted to use for any other purpose by the Corporation.

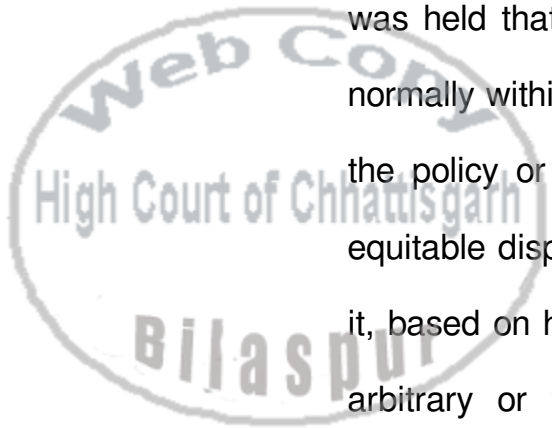
82A. No property of the Corporation such as school, tank, play ground or park meant for public use shall not be allowed to be used for any other purpose on a permanent basis.”

17. Mr. H.S.Ahluwalia, learned counsel for the respondent No. 1, while opposing this petition and praying for its dismissal would submit that the instant petition is not maintainable for the reason that the petitioner has neither challenged the guidelines issued by the Ministry of Urban Development, Government of India, nor has pointed out any specific provision as to how the guidelines framed by the Government of India, which in fact is a policy decision taken by the Government of India, is per se illegal or against any provision of law. Smart City is a benevolent project to meet out the challenges of urbanization. The RSCL has been formed after due approval from the Samanya Sabha on 29.03.2016 (Annexure R-1/1). It is amply clear that unanimous decision was taken by the representatives of the people of the said Municipal Corporation to form RSCL. The petitioner has not pointed out any specific provision of law as to how the formation of RSCL is against the basic mandate of the Act of 1956. Rather, the objectives of the Smart City Mission is in consonance with the provisions of the Act of 1956 and is in harmony with the constitutional provisions. In concurrence of the letter dated



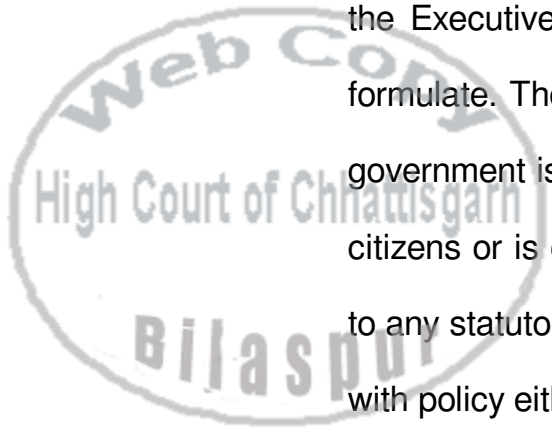


02.12.2019 issued by the Department of Housing and Urban Development, New Delhi, Government of India, the Smart City Advisory Forum has been constituted by the State Government on 19.03.2020 (Annexure R-1/2) which constitutes several elected representatives who impart necessary advise for the better implementation and execution of the Smart City Mission. The mission statement and guidelines, issued by the Government of India, Ministry of Urban Development, is a policy decision arrived upon by a conscious and prudent decision which calls for no interference by this Hon'ble Court. He would rely on the decision of Hon'ble Supreme Court in ***State of Punjab & Others v. Ram Lubhaya Bagga & Others***, reported in (1998) 4 SCC 117, wherein it was held that questioning the validity of a governmental policy is not normally within the domain of any Court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if the Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix, that it is to be seen whether the new policy violates Article 21 of the Constitution of India which it restricts reimbursement on account of its financial constraints. He would further rely on the decision of the Hon'ble Supreme Court in ***Vincent v. Union of India***, reported in (1987) 2 SCC 165, wherein it has been held that it is the obligation of the State to ensure the creation and the sustaining of conditions





congenial to good health. It was further observed that in a series of pronouncements during the recent years, the Hon'ble Supreme Court has culled out from the provisions of Part IV of the Constitution these several obligations of the State and called upon it to effectuate them in order that the resultant pictured by the Constitution Fathers may become a reality. Relying on ***Directorate of Film Festivals & Others v. Gaurav Ashwin Jain & Others***, reported in (2007) 4 SCC 737, in paragraph 16, the Hon'ble Supreme Court as held that the scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy. Nor are Courts Advisors to the Executive on matters of policy which the Executive is entitled to formulate. The scope of judicial review when examining a policy of the government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review. Further, in ***Manohar Lal Sharma v. Union of India & Another***, reported in (2013) 6 SCC 616, it was observed by the Hon'ble Supreme Court that the Executive function comprises both the determination of policy as well as carrying it into execution. The Court does not interfere unless the policy is unconstitutional or contrary to the statutory provisions or arbitrary, irrational or in abuse of power. Mr. Ahluwalia, learned counsel for the State would further rely on the decisions of the Hon'ble Supreme Court in ***Parisons Agrotech Pvt. Ltd. & Another v. Union of India & Others***, reported in (2015) 9 SCC 657, ***Ramsharan Autyanuprasi v. Union of India & Others***, reported





in (1989) Supp 1 SCC 251, ***Dattaraj Nathuji Thaware v. State of Maharashtra & Others***, reported in (2005) 1 SCC 590, ***State of Uttaranchal v. Balwant Singh Chauhal & Others***, reported in (2010) 3 SCC 402. In light of the observations made in these decisions rendered by the Hon'ble Supreme Court, he would pray for dismissal of this petition.

18. Mr. Sumesh Bajaj, learned counsel appearing for the respondents No. 2 and 3 i.e. BSCL and RSCL would submit that the petitioner has filed the instant petition mainly challenging the constitution of the SPVs of the two Smart Cities namely BSCL and RSCL and the crux and thrust of the petition is the constitution of the Board of Directors and alleged usurping of functions of the Municipal Corporations by these two Smart Cities. At the outset, he would submit that the Smart City Mission Scheme is not under challenge and the petitioner has chosen to let the Scheme remain intact. In this situation, the scope of the instant petition would be confined to test that whether the Scheme guidelines have been followed or not and arguments advanced by the petitioner painting the Scheme black would be of no help to the petitioner. As far as the constitution of the Board of Directors is concerned, he would refer to clause 3 of the Mission Statement and Guidelines (Annexure P/1), which reads as under:

“3. Board of Directors

The Board of Directors will have representatives of Central Government, State Government, ULB and Independent Directors, in addition to the CEO and Functional Directors. Additional Directors (such as representative of parastatal) may be taken on the Board, as considered necessary. The Company and shareholders will voluntarily comply with the provision of the Companies Act 2013 with respect to induction of independent directors. Below, are given the broad terms of appointment and role of the SPV Board:-

3.1 The Chairperson of the SPV will be the Divisional Commissioner/Collector/Municipal Commissioner/ Chief



Executive of the Urban Development Authority as decided by the State Government.

3.2 The representative of the Central Government will be a Director on the Board of the SPV and will be appointed by the MoUD.

3.3 The CEO of the SPV will be appointed with the approval of the MoUD. The CEO will be appointed for a fixed term of three years and will be removed only with the prior approval of MoUD. The functions of the CEO include:

a. Overseeing and managing the general conduct of the day-to-day operations of the SPV subject to the supervision and control of the Board.

b. Entering into contracts or arrangements for and on behalf of the Company in all matters within the ordinary course of the Company's business.

c. To formulate and submit to the Board of Directors for approval a Human Resource Policy that will lay down procedures for creation of staff positions, qualifications of staff, recruitment procedures, compensation and termination procedures.

d. Recruitment and removal of the senior management of the Company and the creation of new positions in accordance with the Company's approved budget and the recruitment or increase of employees in accordance with the Human Resource Policy laid down by the Board.

e. Supervising the work of all employees and managers of the Company and the determination of their duties, responsibilities and authority;

3.4 The Independent Directors will be selected from the data bank(s) maintained by the Ministry of Corporate Affairs and preference will be given to those who have served as independent directors in the Board of Companies fulfilling Clause 49 of the listing agreement of Securities and Exchange Board of India (SEBI)."

19. Further, the representation of the elected public representatives is mandated in Clauses 13.2 and 13.3 of the Mission Statement and Guidelines, in the State Level and the City Level Committees. The same reads as under:

13. Mission Monitoring

13.1 National Level

An Apex Committee (AC), headed by the Secretary, MoUD and comprising representatives of related Ministries and organisations will approve the Proposals for Smart Cities Mission, monitor their progress and release funds. This Committee will meet periodically, as considered necessary. The AC will consist of the following indicative members:

- i. Secretary, Housing and Poverty Alleviation Member



- ii. Secretary (Expenditure) Member
- iii. Joint Secretary, Finance, MoUD Member
- iv. Director, NIUA Member
- v. Chief Planner, Town and Country Planning Member
- vi. Select Principal Secretaries of States Member
- vii. Select CEOs of SPVs Member
- viii. Mission Director Member Secretary

13.1.1 The Representatives of stakeholders like UN Habitat, World Bank, TERI, Centre for Development of Advanced Computing (C-DAC), Centre for Smart Cities (CSC), Bangalore or other bilateral and multilateral agencies and urban planning experts may be invited with the approval of the Chair.

13.1.2 The AC will provide overall guidance and play an advisory role to the Mission and its key responsibilities are given below.

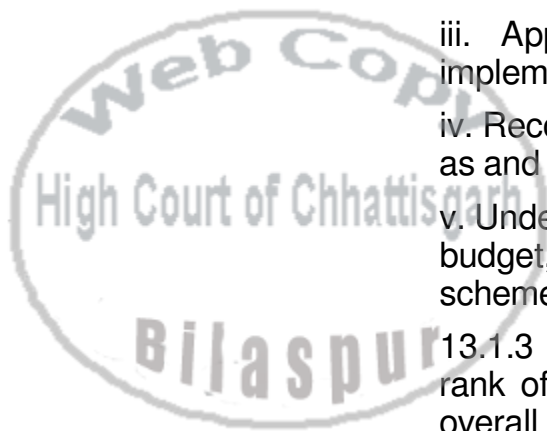
- i. Review the list of the names of Cities sent by the State Governments after Stage 1.
- ii. Review the proposals evaluated by panel of experts after Stage 2.
- iii. Approve the release of funds based on progress in implementation.
- iv. Recommend mid-course correction in the implementation tools as and when required.
- v. Undertake quarterly review of activities of the scheme including budget, implementation and co-ordination with other missions/schemes and activities of various ministries.

13.1.3 There will be a National Mission Director, not below the rank of Joint Secretary to Government of India who will be the overall in-charge of all activities related to the Mission. A Mission Directorate will take support from subject matter experts and such staff as considered necessary. The key responsibilities of the Mission Directorate are given below:

- i. Develop strategic blueprint and detailed implementation road map of the Smart Cities Mission, including the detailed design of the City Challenge.
- ii. Coordinate across Centre, States, ULBs and external stakeholders in order to ensure that external agencies are efficiently used for preparation of SCP, DPRs, sharing of best practices, developing Smart Solution, etc.
- iii. Oversee Capacity building and assisting in handholding of SPVs, State and ULBs. This includes developing and retaining a best practice repository (Model RFP documents, Draft DPRs, Financial models, land monetization ideas, best practices in SPV formation, use of financial instruments and risk mitigation techniques) and mechanism for knowledge sharing across States and ULBs (through publications, workshops, seminars).

13.2 State Level

There shall be a State level High Powered Steering Committee (HPSC) chaired by the Chief Secretary, which would steer the Mission Programme in its entirety. The HPSC will have representatives of State Government departments. The Mayor





and Municipal Commissioner of the ULB relating to the Smart City would be represented in the HPSC. There would also be a State Mission Director who will be an officer not below the rank of Secretary to the State Government, nominated by the State Government. The State Mission Director will function as the Member-Secretary of the State HPSC. The indicative composition of HPSC is given below:

- i. Principal Secretary, Finance,
- ii. Principal Secretary, Planning,
- iii. Principal Secretary/Director, Town & Country Planning Department, State/UT Governments,
- iv. Representative of MoUD,
- v. Select CEO of SPV in the State,*
- vi. Select Mayors and Municipal Commissioners /Chief Executive of the ULBs, and Heads of the concerned State Line Departments,
- vii. Secretary/Engineer-in-Chief or equivalent, Public Health Engineering Department,
- viii. Principal Secretary, Urban Development – Member Secretary.

The key responsibilities of the HPSC are given below.

- i. Provide guidance to the Mission and provide State level platform for exchange of ideas pertaining to development of Smart Cities.
- ii. Oversee the process of first stage intra-State competition on the basis of Stage 1 criteria.
- iii. Review the SCPs and send to the MoUD for participation in the Challenge.

13.3 City Level

A Smart City Advisory Forum will be established at the city level for all 100 Smart Cities to advise and enable collaboration among various stakeholders and will include the District Collector, MP, MLA, Mayor, CEO of SPV, local youths, technical experts, and at least one member from the area who is a,

- i. President / secretary representing registered Residents Welfare Association,
- ii. Member of registered Tax Payers Association / Rate Payers Association,
- iii. President / Secretary of slum level federation, and
- iv. Members of a Non-Governmental Organization (NGO) or Mahila Mandali / Chamber of Commerce / Youth Associations.

The CEO of the SPV will be the convener of the Smart City Advisory Forum.”

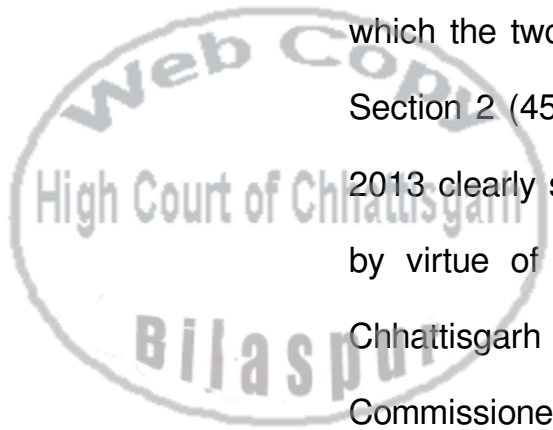
20. Mr. Bajaj would next submit that the mandate contained in the aforesaid clauses have been strictly and piously followed and therefore the constitution of the Board cannot be found fault with. Further the



representation and control of an Urban Local Body (ULB) is not only restricted up to the State Level / City Level Committees but is germane in the ownership of the Company itself as is evident from clause 10.2 of the Mission Statement and Guidelines. The said clause reads as under:

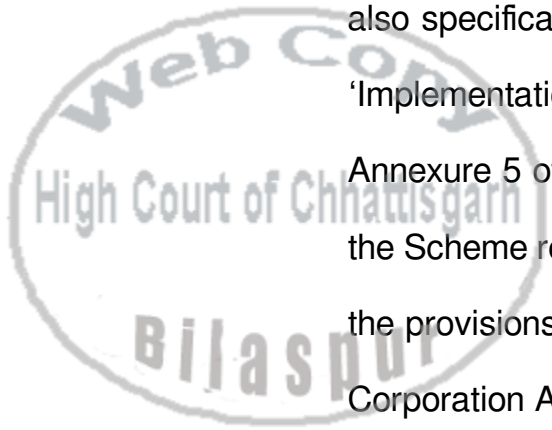
“10.2 The SPV will be a limited Company incorporated under the Companies Act, 2013 at the city-level, in which the State/UT and the ULB will be the promoters having 50:50 equity shareholding. The private sector or financial institutions could be considered for taking equity stake in the SPV, provided the shareholding pattern of 50:50 of the State/UT and the ULB is maintained and the State/UT and the ULB together have majority shareholding and control of the SPV.”

21. Mr. Bajaj would also submit that it is trite law that the shareholders are the owners of the Company under the Companies Act, 2013, under which the two companies are a ‘Government Company’ as defined in Section 2 (45) of the Act of 2013. Further Section 2(27) of the Act of 2013 clearly stipulates that ‘control’ would be directly or indirectly and by virtue of shareholding. Further Sections 55 and 69 (3) of the Chhattisgarh Municipal Corporation Act, 1956 clearly stipulates that a Commissioner would be the Principal Executive Officer of the Corporation and entire executive powers of the Corporation would vest in the Commissioner. Thus also it cannot be said that the mandate of the Scheme is not satisfied merely by taking the Commissioner on the Board of Directors. The Scheme clearly mandates that if any City wants to participate in the Scheme and avail the benefits of hundreds of crores of Union of India funds then the condition precedent would be the ULB delegating its powers and functions in favour of the SPV which is provided in clause 4 of Annexure 5 of the Mission Statement and Guidelines. This delegation, in the instant case, has been duly done by both the ULBs and the petitioner is now trying to find fault with this delegation itself and which is not permissible. This is so because firstly it is not a delegation under any statute and for which it can be said that it



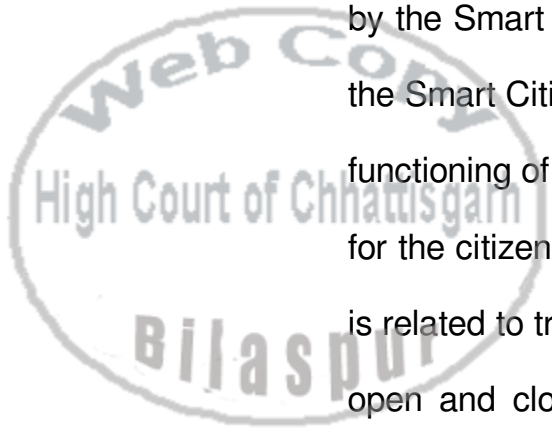


is illegal or contrary to the provisions. The instant delegation is more of a promissory in nature in order to avail the benefits of the Scheme. It is a delegation by choice and not compulsory. The ULBs in question could have very well chosen not to opt for this delegation and could have remained out of the Scheme. Secondly, even today, neither the delegator nor the delegatee has any problem with the delegation and the petitioner would absolutely not have any locus to enter into this arena. Lastly, if this contention of the petitioner is to be accepted then the two ULBs have to be ousted from the Scheme which contemplates this delegation as the Scheme itself is not under challenge. So far as the functions and responsibilities of the SPVs are concerned, the same are also specifically mentioned in Clause 10.1 and 10.6 under the heading 'Implementation by Special Purpose Vehicle (SPV) and Clause 5 of Annexure 5 of the Mission Statement and Guidelines. Thus, as long as the Scheme remains intact, the petitioner cannot be permitted to refer to the provisions of the Constitution of India or the Chhattisgarh Municipal Corporation Act, 1956 alleging that the functions and powers of an ULB cannot be usurped by an SPV, as for this, a litigation would be required challenging the Scheme itself branding it to be in contravention, if at all, of the statutory provisions. Further, even otherwise, the functions of the SPVs are to provide smart solutions and not only the routine and regular functions assigned to an ULB under the Act of 1956. The Scheme mandates that the entire infrastructural development is to be done by the cost borne in equal shares by the Union of India and the State Governments / ULBs. In the instant case, admittedly, 50% of the cost is being borne by the Union of India and the entire balance of 50% is being borne by the State Government. The petitioner's farfetched justification that the ULBs are also contributing is not acceptable in the teeth of the Scheme document. It would be pertinent to mention here that example





of City of Thane was given to demonstrate that the elected members are on the Board in Thane. In this regard, Mr. Bajaj would submit that the State of Maharashtra has issued instructions that the ULBs have to contribute 25% towards total cost (50% of 50%) and therefore the structure of representation probably is in that manner. Another important aspect of the matter is that ultimately it would be the ULB itself which would be the beneficiary of the entire infrastructural developments and smart solutions as after the term of the Scheme expires, all the developments and solutions would fall in the pool of the ULB, benefiting the same manifolds. A small example to this is the revenue and tax collection has already skyrocketed in view of the GIS survey conducted by the Smart Cities as a part of its working. He would also submit that the Smart Cities Mission is not to be equated to the normal and general functioning of an ULB as it is majorly meant for applying smart solutions for the citizenry. One more example in this regard can be quoted which is related to traffic signals which would become smart and automatically open and close windows for traffic reading the density of the traffic, instead of the present type which opens and closes for pre-programmed specific period. Another issue raised by the petitioner was with regard to the employees of the ULBs being used by the SPVs. In this regard it is respectfully submitted that the SPVs do have a separate and dedicated staff structure and additionally if the staff of the ULB, if sitting idly, is used for the services of the SPV, then there should be no complaint about the same. It is absolutely incorrect on part of the petitioner to read out abstracts from the reply filed by the Union of India and infer that the Union of India accepts and supports the claim of the petitioner. If the entire reply is read in whole then this inference being drawn by the petitioner would go down the drain. Lastly, he would submit that the instant petition is liable to be dismissed not only on the merits of the





case, as discussed supra, but also holding the same to be not maintainable in view of the objections being taken infra: -

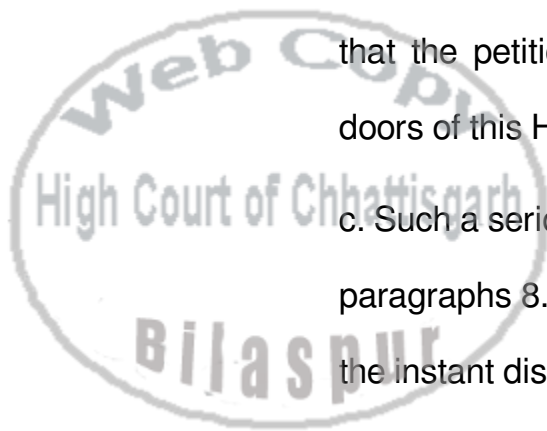
a. The petition is hit by the principles of unexplained delay and laches as it is incorrect to say that the petition has been filed in the year 2021 only when the works started maturing. The petition is inherently against the order dated 17.08.2016 (Annexure P-4) relating to the constitution of the Board and which has nothing to do with the maturing of the works being executed.

b. The petition is also pre-mature as it is settled principle that a cause of action would arise only if there is a legal right, an assertion of such legal right and a denial of the same. The petition itself admits in para 3 (C) (V) that the petitioner has not represented anywhere before knocking the doors of this Hon'ble Court.

c. Such a serious issue ought not to be entertained in a casual petition as paragraphs 8.24, 8.25 and relief clauses 6 and 7 have nothing to do with the instant dispute and are absolutely alien to the dispute.

d. Though the locus of the petitioner, in a PIL, is not to be very strictly tested but in the instant case it cannot be lost sight that the beneficiaries for whom the instant petition is being 3 triggered are all learned public elected persons and cannot be said to be not capable of approaching this Hon'ble Court directly and therefore the petition is liable to dismissed on this count also.

e. It has been laid down in a catena of judgments that the veil is required to be lifted to get a clear picture of the bonafides behind any PIL. If this is done then it would be clear that initially the ULBs participate in the Scheme and voluntarily delegate their powers in favour of the SPVs. Thereafter the instant PIL comes to be filed by individual and in which the main grievance appears to be usurping the powers of the elected



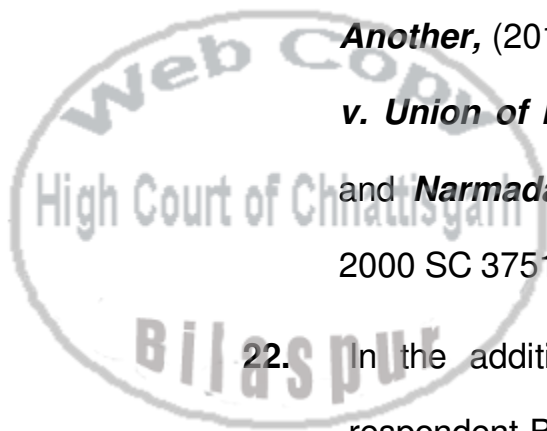


members. The elected members, arrayed as respondents in the petition, support the petition. Furthermore, this fact cannot also be lost sight of that the petitioner had made all efforts to get the Union of India funds lapsed and wasted in the month of March 2022 and which bout of litigation is already on record in the instant petition.

In support of his contentions, he would rely on the decisions of the Hon'ble Supreme Court in ***Esteem Properties Private Ltd. v. Chetan Kamble & Others***, 2022 SCC Online SC 246 (paras 26 to 29,) ***Dr. B. Singh v. Union of India & Others***, AIR 2004 SC 1923 (paras 5, 12, 13, 15 and 17), ***Arun Kumar Agrawal v. Union of India & Others***, (2014) 2 SCC 609 (paras 95 and 98), ***B.P.Singhal v. Union of India & Another***, (2010) 6 SCC 331 (paras 12 to 15), ***Tehseen S. Poonawalla v. Union of India & Another***, AIR 2018 SC 5538 (paras 72 and 73) and ***Narmada Bachao Andolan v. Union of India & Others***, AIR 2000 SC 3751 (paras 78, 255, 256, 257 and 259).

22. In the additional return filed on behalf of respondent No. 2, the respondent-BSCL has attempted to highlight various sections of the Companies Act, 2013 namely, Section 2(27) which defines the term 'control', Section 2(47) which defines the term 'Independent Director', Section 2(55) which defines the term 'member', Section 152(1) of the Act. 2013, to contend that only share holders have the power and discretion to appoint an eligible person as a Director of the Company and interference with such power provided by the Act of 2013 would be unjust. Clause 3.4 of Annexure 5 of the Smart City Mission Guidelines provides for appointment of independent Director.

23. Mr. Harshwardhan, learned counsel appearing for the respondent No. 4-Samanya Sabha, Nagar Palik Nigam, Bilaspur, would support the petitioner and contend that representation of Urban Local Body as





mandated and contemplated by the Smart City Mission Scheme means the elected representatives of the Urban Local Body which would include Mayor, Speaker, nominated members of the Samanya Sabha and Mayor-in-Council etc. and the same cannot be interpreted in any other manner. However, acting contrary in flagrant violation of the basic principles of law, the constitution of BSCL has been illegally done by the State Government. It goes against the basic idea that the SPV is run by a handful number of bureaucrats appointed by the State Government. He would draw the attention of the Court towards the examples of other Smart City SPVs constituted and established in other parts of the country like Pune, Thane, Nagpur, Warangal and Trivandrun for implementation of Smart City Projects where the Government has included Mayor, Speaker and other members/Ward Councillors in the Board of Directors befitting the legal requirements under the guidelines of Smart City Mission. In the present scenario, the respondent No. 4 is helpless to provide any feedback or redressal of grievances of the public of Bilaspur Municipal Corporation when all the activities of the Corporation have been usurped by the BSCL. Exclusion of the elected representatives of the Municipal Corporation has frustrated the fundamentals of the scheme itself. The respondent No. 4, being the democratically elected body representing the will of each and every resident/voter of Bilaspur Municipal area are seriously affected and prejudiced by such illegal constitution and illegal functioning, actions of the BSCL as the powers of the members of the answering respondent are seriously curtailed by such functioning of BSCL.

- 24.** Mr. Ashok Kumar Verma, learned counsel appearing for the respondent No. 5-Mayor-in-Council, Nagar Palik Niagam, Bilaspur would also support the petitioner and make similar submissions. Apart from that, he would submit that Mayor-in-Council is elected by democratic way of



election whose powers have been described in Section 25, 37 and 45 of the Act of 1956 and the powers and duties of the Municipal Corporation is described in Section 66 of the Act. An elected representative has a better say in respect of any developmental works. He would further contend that the respondent No. 5 is not against the existence of BSCL but only wishes that all the works authorised under the Act may be done by the BSCL but under the direction and scrutiny of respondent No. 5. Further, all the payments for the works done should be done only after prior sanction of the respondent No. 5 and the Board of Directors should be reconstituted by nominating Mayor-in-Council as Director of the BSCL. He would lastly submit that as mandated under the Smart City Mission, there should be a full time Chief Executive Officer of the BSCL but the Municipal Commissioner, Bilaspur is working as CEO of the BSCL. After election of respondent No. 5, there had been only one meeting of the Advisory Committee and there is no clear provision as to who will call and convene the meeting of the Advisory Committee because of which the public works are suffering and the BSCL is functioning according to its whims and fancies.

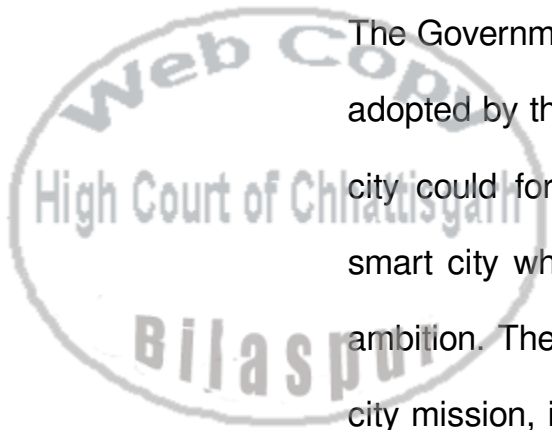
- 25.** Dr. Sudeep Agrawal, learned counsel appearing for the respondents No. 6 and 7 i.e. Samanya Sabha, Nagar Palik Nigam, Raipur and the Mayor-in-Council, Nagar Palik Nigam, Raipur, respectively, would also support the petitioner and submit that adequate representation has not been given to the elected members of the Raipur Municipal Corporation in the Board of Directors of RSCL. He would submit that the Mayor, Speaker, two elected members from amongst the Samanya Sabha of Municipal Corporation, etc. should have been included as the members of the Board of Directors. Dr. Agrawal would draw the attention of the Court to clause 13.3 of the Mission Statement and Guidelines issued by



the Ministry of Urban Development, Government of India, which provides for constitution of Smart City Advisory Forum.

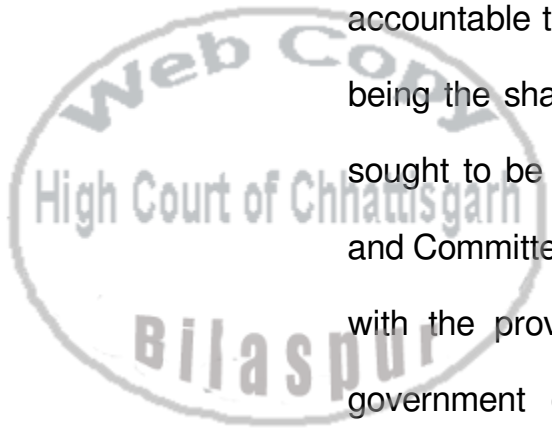
- 26.** Mr. Ramakant Mishra, learned Deputy Solicitor General, appearing for the respondent No. 8/Union of India would submit that the Smart City Mission is an initiative of Government of India to meet the challenges of urbanization by comprehensive development of physical, institutional, social and economic infrastructure. The instant petition is based on ill founded facts and baseless grounds which are wholly devoid of merits and substance. There is no illegality whatsoever in any act of the Union of India as alleged in the writ petition and they have acted in accordance with law. The present petition is liable to be dismissed at the threshold.

The Government of India has not prescribed any particular model to be adopted by the smart cities. The approach is not 'one size fits all' each city could formulate its own concept, vision, mission and plan for a smart city which is feasible to its local needs, resources and level of ambition. They could chose their model of smart city. Under the smart city mission, it has been prescribed that the implementation at the city level will be done by a SPV. The SPV will be a limited company incorporated under the Act of 2013 in which the State/UT and the ULB will be the promoters having 50:50 equity share holding. The smart city mission will be operated as a Centrally Sponsored Scheme. Each selected smart city will be entitled to receive approximately Rs. 1000 Crore (Rs. 500 Crores from the Government of India and equal matching share of Rs. 500 Crores from the respective State Government/ULB. The SPVs are responsible for only those projects that have been entrusted to them by the ULBs under the Smart City Mission and not for any other functions/ responsibilities of the ULBs. The Smart City Guidelines provide that the SPVs are owned by the ULBs and the State Government and thus become the entities under their control and





according to the Act of 2013, 'control' shall include the right to appoint majority of the Directors or to control the management or policy decision exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreement or voting agreement or in any other manner. The Boards of SPV should be normally constituted based on the principle of proportional representation i.e. constitution based on share ownership. However, in practice, this was not the case in several SPVs. In some SPVs, the ULB had majority while in others, the State Government had the majority representation. But this never hindered the functioning of the SPV. The Board of Directors of SPVs are accountable to the shareholders, and in this case, the ULBs and SPVs being the shareholders, the SPVs are accountable to ULBs. This was sought to be achieved through the representation of ULBs on Boards and Committees of the SPVs. Thus, creation of SPVs in no way interfere with the provisions of the Constitution of India regarding local self government or the powers of the ULBs. The SPVs are merely companies established under the Act of 2013 created jointly by the State Government and the ULBs with equal ownership to implement projects under the SCM for the benefits of the citizens and are not responsible for other functions of the ULBs. The SPVs do not have responsibilities or authority beyond those that are given by the owners (State Government and the ULBs). SPVs have been created only to enhance the operational efficiencies of the ULBs for implementation of SCM projects for the benefits of the citizens. The SCM was launched in the year 2015 for a period of 5 years which was to end in the month of June 2020. However, the same was extended for a period upto June, 2023 as all the smart cities were not selected in one go. The Smart City project is being implemented under a nationally sponsored scheme





framed by the Government of India in order to ensure speedy development of identified cities as Smart City and its implementation and execution is totally a policy decision based on the administrative function of the State which is not open to challenge under the writ petition. Therefore, the present petition is liable to be dismissed.

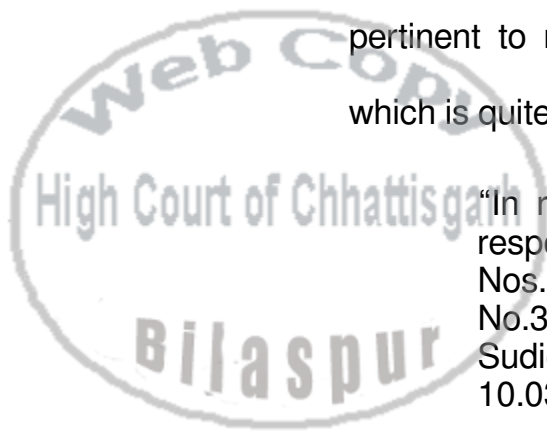
27. From perusal of the return, it is evident that the respondents No. 4, 5, 6 and 7 are supporting the petitioner while the respondents No. 1, 2, 3 and 8 are opposing the petition. The main contesting party in this petition are the respondents No. 2 and 3 i.e. the BSCL and RSCL. Apart from other grounds, the respondents No. 1, 2, 3 and 8 have also raised the question of maintainability of this petition. In this regard, it would be pertinent to refer the order dated 14.03.2022 passed by this Court, which is quite elaborate wherein this Court has observed as under:

“In respect of IA Nos. 04 of 2021 and 05 of 2021 filed by respondent No.2, namely, Bilaspur Smart City Limited and IA Nos.06 of 2021, 08 of 2022 and 10 of 2022 filed by respondent No.3,namely, Raipur Smart City Limited, we have heard Mr. Sudiep Shrivastava, learned counsel for the petitioner on 10.03.2022, 11.03.2022 and today also.

We had heard Mr. Mukul Rohatgi, learned Senior Counsel, appearing for respondent Nos. 2 and 3 assisted by Mr. Sumesh Bajaj and Mr. Rishabh Bajaj on 10.03.2022, and Mr. Sumesh Bajaj and Ms. Misha Rohatgi Mohta, on 11.03.2022.

We have also heard Mr. H.S. Ahluwalia, learned Deputy Advocate General, appearing for respondent No.1, Mr. Harsh Wardhan, learned counsel, appearing for respondent No.4, Mr. Ashok Kumar Verma with Mr. Gajendra Kumar Sahu, learned counsel, appearing for respondent No.5, Dr. Sudeep Agrawal, learned counsel, appearing for respondent Nos. 6 & 7, and Mr. Ramakant Mishra, learned Assistant Solicitor General for Union of India, appearing for respondent No.8.

The Union of India launched a mission called ‘Smart Cities Mission’, the objective being to promote cities that provide core infrastructure and give a decent quality of life to its citizens, a clean and sustainable environment and application of ‘Smart Solutions’. The focus is on sustainable and inclusive development and the idea is to look at compact areas, create a replicable model which will act like a light-house to other aspiring cities. The core infrastructure elements in a Smart City includes: (i) adequate water supply, (ii) assured electricity supply, (iii) sanitation, including solid waste management, (iv) efficient urban mobility and public transport, (v) affordable





housing, especially for the poor, (vi) robust IT connectivity and digitalization, (vii) good governance, especially e-Governance and citizen participation, (viii) sustainable environment, (ix) safety and security of citizens, particularly women, children and the elderly, and (x) health and education.

The purpose of Smart Cities Mission is to drive economic growth and improve the quality of life of people by enabling local area development and harnessing technology. The mission is to cover 100 cities and its duration was to be for a period of five years beginning from the Financial Year 2015 - 16 to the Financial Year 2019-20. However, it is common ground that the mission is extended till June, 2023, the same having been continued in light of the evaluation done by the Ministry of Urban Development. A total number of 100 Smart Cities have been distributed amongst the States and Union Territories on the basis of equitable criteria, which is not necessary to go into for the purpose of disposal of these IAs.

There is a process of selection of Smart Cities and for the State of Chhattisgarh, Raipur, Bilaspur and Atal Nagar have been identified as Smart Cities. The implementation of Smart Cities Mission at the city level is done by a Special Purpose Vehicle (SPV) created for the purpose. The SPV, according to the Mission Guidelines, will be headed by a full-time Chief Executive Officer (CEO) and would have nominees from the Central Government, the State Government and the Urban Local Bodies (ULB) on the Board of Directors. The SPV will be a limited company incorporated under the Companies Act, 2013 at the city-level, in which the State/UTs and the ULB will be the promoters having 50:50 equity shareholding. Funds provided by the Government of India in the Smart Cities Mission to the SPV will be in the form of tied grant and kept in a separate Grant Fund, which is to be utilized only for the purposes for which the grants have been given. The Smart Cities Mission will be operated as a Centrally Sponsored Scheme (CSS) and the Central Government proposes to give financial support to the mission to the extent of Rs.48,000 crores over five years, i.e., on an average of Rs.100 crores per city per year. An equal amount, on a matching basis, is to be contributed by the State/ULB and thus, about Rs. One Lakh crore of Government/ULB funds are to be made available for smart cities development.

The Public Interest Litigation was filed on 14.12.2020 alleging that in the garb of SPV, the State Government had actually usurped the powers and functions of the elected bodies of Bilaspur Nagar Nigam and Raipur Nagar Nigam as during the period from 2016 to 2020, several development works have been carried out by Bilaspur and Raipur SPV without any monitoring and supervision of the elected bodies of Bilaspur and Raipur. At no stage of planning, approval, execution or payment, the file of any tender issued by the SPV is brought before the Mayor / Mayor-In-Council / Samanya Sabha despite the work being done in the notified areas of the Nagar Nigams.

At this juncture, it will be relevant to take note of the order dated 14.09.2021 as all the IAs under consideration had been





filed in view of the aforesaid order dated 14.09.2021. The said order reads as follows:

“Mr. Sudeep Shrivastava, Advocate for the petitioner. Mr. Vikram Sharma, Deputy Govt. Advocate for the State/respondent No.1.

Mr. Mateen Siddique, Advocate for respondent Nos. 2 & 3. None for respondent Nos. 4 to 7.

Mr. Ramakant Mishra, ASG for Union of India/respondent No.8.

Heard on prayer for interim relief (I.A. No. 01/2020).

Learned counsel for the petitioner would argue that the development of the urban area by and under the executive control of Smart City Limited, constituted for the development of Raipur and Bilaspur, does not denude the local body namely Corporation of two cities and their authorities as provided under the Chhattisgarh Corporation Act, but the government's company has been carrying out development work without taking approval of various projects by the local body, which is statutorily mandated under the Municipal laws. He further submits that in a matter of development under the smart city project, the provisions of Municipal Corporation Act had to be complied with. Therefore, the projects which are being implemented by the Smart Cities of Raipur and Bilaspur are illegal and without the authority of law. He would pray would pray that the projects in future be not allowed to function without due approval/procedure as required under the Constitution of India and Chhattisgarh Municipal Corporation Act.

Mr. Siddique, learned counsel appearing for respondent Nos. 2 & 3 would submit that the projects of Smart City is being implemented under a nationally sponsored scheme framed by the Central Government in order to ensure speedy development of identified cities and the modality of execution of plan for development of identified cities as Smart City and execution is in the realm of administrative function and is not open to challenge.

Learned ASG would submit that in the present case, the reply has not been filed by the Union of India so far, therefore, he may be granted time to file the reply.

Learned State counsel would submit that this case is required to be argued at length.

Learned counsel for respondent Nos. 2 & 3 would submit that if any interim order is granted, it may affect the ongoing projects and very purpose for development of the cities under the Smart City Project.

Having heard learned counsel for the parties and various submissions which have been made before us, we are of the opinion that looking to the very nature of the dispute raised before us and that under the Smart City Project, developments work of two cities have already been undertaken by the agency, we are not inclined to pass any interim order in the ongoing projects. In case respondent Nos. 2 & 3 formulate future projects, it should be brought to the notice of this Court before its implementation.





Learned ASG is granted one last opportunity to file reply, if any, within four weeks. Rejoinder, if any, may also be filed within two weeks thereafter.

List this matter after 6 week.”

Mr. Mukul Rohatgi, learned senior counsel for respondent Nos. 2 and 3 has submitted that the averments made in this Public Interest Litigation would go to show that the present is a proxy petition on behalf of the Urban Local Bodies and therefore, the Public Interest Litigation, at any rate, ought not to have been entertained as the elected representatives of the Urban Local Bodies would have approached this Court if there was any encroachment on their powers and functions, as the petitioner would like to contend. The Public Interest Litigation was filed most belatedly after original period of the Smart Cities Mission had expired and it is another matter that the mission is continued for the period up to June 2023. He relies on a decision of the Hon'ble Supreme Court in Esteem Properties Pvt. Ltd. Vs. Chetan Kamble and others, reported in 2022 SCC Online SC 246, to contend that, by no stretch of imagination, can it be said that the elected representatives in the Urban Local Bodies are handicapped by ignorance, indigence and illiteracy so as to enable the petitioner to maintain the application.

Placing reliance on a letter dated 28.10.2021 issued by the Joint Secretary, Ministry of Housing and Urban Affairs, Mr. Mukul Rohatgi, learned senior counsel submits that the CEOs of the SPVs have been impressed upon to see to it that all work orders are issued before March, 2022 and that when extension of Smart Cities Mission was granted, a written commitment was given by the Smart Cities Mission that no project funded by Smart Cities Mission funds (Center/State), will be left to be work ordered post March 2022. It is also submitted that there is every possibility of funds being lapsed if the work orders are not issued, as indicated.

It is submitted that implementation of the projects as indicated in the IAs in question would enure to the benefit of the citizens and public interest lies in allowing such projects to be completed without any hindrance. Mr. Rohatgi has drawn our attention to the Smart Cities Mission Statement & Guidelines, with special reference to mission monitoring at National Level, State Level and City Level to highlight that there is larger public participation in the implementation of the projects under the Smart Cities Mission.

During the course of proceedings today, in view of the order dated 11.03.2022, two IAs being IA No. 13/2022, pertaining to respondent No. 2 and IA No. 14/2022, pertaining to respondent No. 3 have been filed bringing on record the projects in which the work orders can be issued immediately.

Mr. Bajaj has drawn our attention to a letter dated 07.01.2022 issued by the Minister of Housing and Urban Affairs to the Chief Minister of the State of Chhattisgarh, to submit that beyond 31.03.2022, no fund will be released by the Center in respect of projects in which work orders have not been issued.





Mr. H.S. Ahluwalia, learned Deputy Advocate General and Mr. Ramakant Mishra, learned Assistant Solicitor General endorsed the submissions of Mr. Mukul Rohatgi and submitted that the projects for which permission is sought for should be allowed to be continued for the benefit of the local public.

Mr. Sudiep Shrivastava, learned counsel for the petitioner submits that none of the elected members of the Nagar Nigam and not even a Mayor had been made Director of the SPV and only the Commissioner of the Municipal Corporation has been appointed as CEO. He submits that Article 243W of the Constitution of India provides, amongst others, that the Urban Municipalities are to implement schemes in relation to matters listed in Twelfth Schedule, which includes urban planning including town planning, regulation of land-use and construction of buildings, planning for economic and social development, roads and bridges, water supply for domestic, industrial and commercial purposes, public health, sanitation conservancy and solid waste management etc., which are now sought to be undertaken by the SPV. In substance, he submits that the scheme of Smart City as implemented in the State of Chhattisgarh is in violation of the Nagar Palik Nigam Adhiniyam, 1956 and is violative of three tier democratic system of governance, as envisaged in Article 243P to 243ZC of the Constitution of India.

Refuting the submission of Mr. Rohatgi, Mr. Shrivastava submits that if the elected representatives, for whatever reasons, do not challenge an arbitrary and illegal action of the Smart Cities Mission in encroaching upon the field reserved for Municipalities, a conscious citizen has a right to espouse such cause in a public interest litigation and in that context, he has referred to a decision in the case of Manohar Joshi v. State of Maharashtra and Others, reported in (2012) 3 SCC 619, with particular reference to paragraph 185 to impress upon the Court that when the cause or issue relates to matters of good governance in the constitutional sense, a person is entitled to canvass the issue in a public interest litigation. He has also placed reliance on a decision in the case of S.R. Bommai v. Union of India, reported in (1994) 3 SCC 1, which is essentially a case under Article 356 of the Constitution of India, to impress upon the Court the significance of the three-tier democratic system. He submits that if permission is granted, as sought for in the IAs, the petition will become infructuous.

Mr. Ashok Kumar Varma, learned counsel, appearing for respondent No.5 endorsed the submissions of Mr. Sudiep Shrivastava. However, Mr. Varma submits that he is not supporting the petitioner so far as the prayer for quashing of formation of Bilaspur Smart City Company Limited and Raipur Smart City Company Limited is concerned, but would contend that the Board of Directors of the same should be reconstituted with the elected members of the Nagar Palik Nigam. Mr. Harsh Wardhan, learned counsel, appearing for respondent No. 4 as well as Dr. Sudeep Agrawal, learned counsel, appearing for respondents No. 6 and 7 also endorse the submissions of Mr. Varma.





We have considered the submissions of learned counsel for the parties and have also perused the materials on record for the purpose of disposal of IAs.

At this juncture, this Court would not adjudicate on the issue as to whether the Public Interest Litigation is maintainable or whether it should not have been entertained.

It is seen that at the State Level, there is a High Powered Steering Committee (HPSC) where select Mayors and Municipal Commissioners/Chief Executive of the ULBs and Heads of the concerned State Line Departments are Members and that there is public participation. A perusal of the responsibilities of the HPSC as indicated in the guidelines would go to show that it is tasked to provide guidance to the Mission and provide State level platform for exchange of ideas pertaining to development of smart cities. At the city level, a Smart City Advisory Forum is to be established to advise and enable collaboration among various stakeholders, which includes the District Collector, MP, MLA, Mayor, CEO of SPV, local youths, technical experts, and at least one member from the area, who is a (i) President/Secretary representing registered Residents Welfare Association, (ii) Member of registered Tax Payers Association / Rate Payers Association, (iii) President/Secretary of slum level federation and (iv) Members of a Non-government Organisation (NGO) or 14 Mahila Mandali/Chamber of Commerce/Youth Associations.

Raipur Smart City Limited and Bilaspur Smart City Limited were incorporated on 16.09.2016 as Government Companies under the Companies Act, 2013. The petitioner has himself averred that on 17.08.2016, the Board of Directors of Bilaspur Smart City Limited and Raipur Smart City Limited had been constituted. Bilaspur Smart City Limited and Raipur Smart City Limited have continued to undertake projects. However, till the expiry of the original period after the Financial Year 2019-2020, no issue was raised that the SPV usurped the powers and responsibilities and had encroached the domain of the ULBs. As late as in the year 2020, this Public Interest Litigation came to be filed and by order dated 14.09.2021, this Court rejected the prayer for stay of the ongoing projects. At the same time, this Court observed in the order dated 14.09.2021 that in case the respondent Nos. 2 and 3 formulate future projects, it should be brought to the notice of this Court before its implementation. It is in view of the above observation of this Court in the order dated 14.09.2021, the present IAs No. 4/2021, 5/2021, 6/2021, 8/2022 and 10/2022 had been filed.

A perusal of the aforesaid IAs would go to show that projects were at various stages. In respect of some of the projects, they are yet to be sanctioned.

In IA No. 13/2022, vide Annexure R-2/E, the respondent No. 2 has given a list of 14 projects in which work orders can be issued immediately. Similarly, in IA No. 14/2022, vide Annexure R-3/F, the respondent No. 3 has given a list of 42 projects in which work orders can be issued. The value of 14 projects as listed in Annexure R-2/E of IA No. 13/2022 is Rs. 46.89 Crores and the value of 42 projects as listed in Annexure R-3/F of IA No. 14/2022, is Rs. 25.12 Crores.





Mr. Bajaj has submitted that efforts are being made to issue before 31.03.2022 as many work orders as possible, subject to permission granted by this Court, so that funds do not lapse.

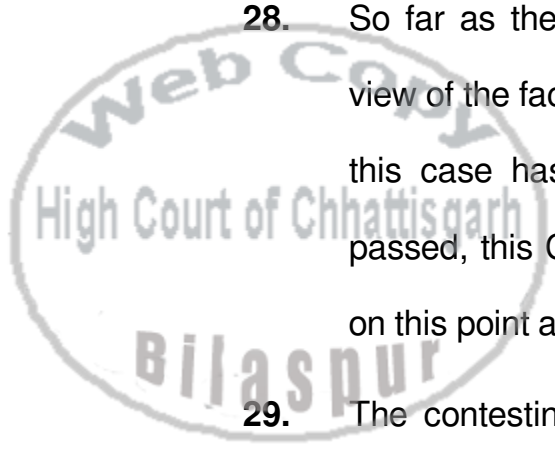
Where the projects are ready for implementation by way of issuing work orders, and as almost six years have gone by since the incorporation of Bilaspur Smart City Limited and Raipur Smart City Limited and when the Smart Cities Mission itself is coming to an end in about a year and three months as it stands today, taking note of the belated approach to this Court, we are of the opinion that refusing to grant permission for implementation of the projects would not be in public interest, notwithstanding the contention raised by Mr. Shrivastava that the SPVs have encroached into the territory of the ULBs, which contention will have to be considered in a full-scale hearing.

Accordingly, IAs No. 4/2021, 5/2021, 6/2021, 8/2022, 10/2022, 13/2022 and 14/2022 are disposed of providing that the respondents No. 2 and 3 may go ahead with regard to the projects mentioned in the two annexures i.e. Annexure R-2/E of IA No. 13/2022 and Annexure R-3/F of IA No. 14/2022.

28. So far as the question with regard to maintainability is concerned, in view of the fact that the writ petition was filed 11.12.2020 and since then this case has been pending and various interim orders have been passed, this Court does not consider it proper to adjudicate the matter on this point and proceeds to decide the case on merits.

29. The contesting respondents have also raised the ground of delay in filing the petition as the Smart City Mission was launched by the Government of India in 2015 and the Joint Secretary, Urban Development Department, Government of Chhattisgarh issued an order on 17.08.2016 constituting Board of Directors for RSCL and BSCL, and this petition came to be filed in the year 2020 for which there is no explanation.

30. Mr. Shrivastava, learned counsel for the petitioner, in response to the averments made by the RSCL and BSCL, would submit that the PIL jurisdiction has much evolved and the Constitutional Courts even register letters as PIL and even suo moto cases on the basis of newspaper publications. On the question of delay, it is submitted that this PIL raises an important constitutional question and delay could not





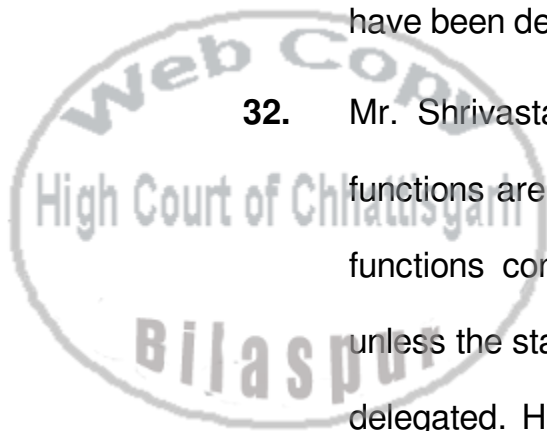
be taken as ground to oppose the PIL. The Smart City Project was initially for a period of five years. The first four projects in BSCL were commenced in 2019 and the public at large came to know about the general functioning of the SPVs only after that and in the year 2020, bulk of projects started coming in and that became the reason to file the instant PIL in December, 2020. The Government of India has extended the project period from 2016-2021 to 2016-2023 and further upto 2024. So far as locus of the petitioner is concerned, when the cause or issue relates to matters of good governance in the Constitutional sense, and there are no particular individuals or class of persons who can be said to be injured persons, groups of persons who may be drawn from different walks of life. In support of this contention, he would rely on ***Bangalore Medical Trust v. B.S. Muddappa & Others***, reported in (1991) 4 SCC 54.

31. Mr. Shrivastava would also contend that the 'advisory role' is not within the meaning of control as per clause 10.2 of the Smart City Mission. He would rely on Section 2(27) of the Act of 2013 which defines the term 'control' as—control shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner. Clause 3.3.a of Annexure 5 of the Mission Document says that overseeing and managing the general conduct of the day-to-day operations of the SPV subject to the supervision and control of the Board. Hence, the advice is not binding and the power of decision making rests with the Board of Directors of the SPVs and advisory role is not control. Even there is no representation of the elected members of Municipal Corporation in the Board of Directors. With regard to the



contention of the respondents that the Commissioner, Municipal Corporation, is also one of the member of the Board of Directors, he would submit that the Board of Directors of the SPV act independently and not under the directions of the Corporation's Samanya Sabha or the Mayor-in-Council. Further, the definition of the term 'Commissioner' as per the Act of 1956, is the Municipal Commissioner for the city appointed under Section 54 and includes an acting Commissioner appointed under sub-section (2) of Section 57 and any municipal officer empowered under this Act to exercise, perform or discharge any of the powers, duties or functions of the Commissioner to the extent to which such officer is so empowered; and the functions of municipal authorities have been defined in Section 69 and 70 of the Act of 1956.

32. Mr. Shrivastava would also submit that so-called delegation of the functions are void ab initio as it is settled position of law that essential functions conferred under the Constitution cannot be delegated and unless the statute provides for delegation of power, the same cannot be delegated. He would rely on para 6, 7 and 8 of the judgment of the Supreme Court in ***Sidhartha Sarawgi v. Board of Trustees For Port of Kolkata & Others***, reported in (2014) 16 SCC 248. Mr. Shrivastava would further submit that continuation of the SPVs are in violation of the basic structure of the Constitution, and in this regard, he would rely on paragraph 316 of the decision of the Hon'ble Supreme Court in ***Kesavananda Bharati & Ors vs State of Kerala case***, reported in (1973) 4 SCC 225. In view of the same, he would submit that continuation of the BSCL and RSCL in the present form could not be allowed as it is against the three-tier parliamentary governance model which is the basic structure of the Constitution of India. If these SPVs are to be allowed, the only way is that they should work as subordinate to the Municipal Corporation and all the projects should be initiated,



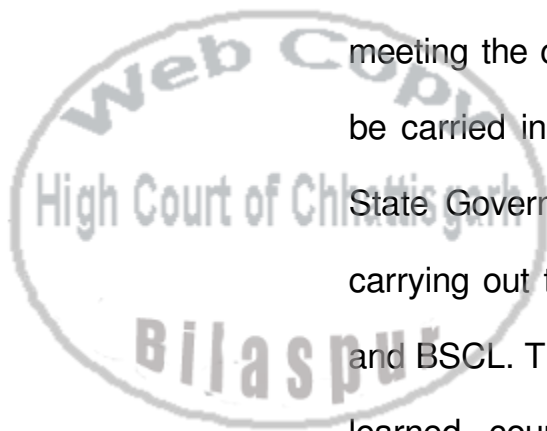


implemented only after the approval/permission from the elected bodies of the Municipal Corporation and also should be under the scrutiny of the elected bodies.

33. In the State of Chhattisgarh, three smart cities i.e. Bilaspur, Raipur and Naya Raipur have come into existence. Naya Raipur does not have any Municipal Corporation, hence there is no challenge with regard to it.

34. The entire controversy in this petition revolves around the alleged usurpation of the powers of the Municipal Corporation, Bilaspur and Raipur by the respective SPVs i.e. BSCL and RSCL. From perusal of the Smart City Mission Statement and Guidelines (Annexure P/1) it is apparent that it is a Scheme launched by the Government of India for meeting the challenges of urbanization and developmental activities to be carried in selected cities of the country. The Central Government, State Government and the Urban Local Bodies would contribute for carrying out the activities by the SPVs, in the instant case, the RSCL and BSCL. Though, as per the pleadings and submissions made by the learned counsel for the petitioner, it appears that there is no representation of the elected members in the Board of Directors of RSCL and BSCL, however, it cannot be said that the powers of the Municipal Corporation has been usurped by the said SPVs as the other normal routine works are still being performed by the authorities of the Municipal Corporation, Raipur and Bilaspur, under the command and control of the elected representatives i.e. the Mayor, Samany Sabha etc.

35. The Scheme clearly mandates that if any city wants to participate in the Scheme and avail the funds from the Union of India, then the condition precedent would be that the Urban Local Body will have to delegate its powers and functions in favour of the SPV as per Clause 4 of Annexure 5 of the Mission Statement and Guidelines. Both the SPVs were

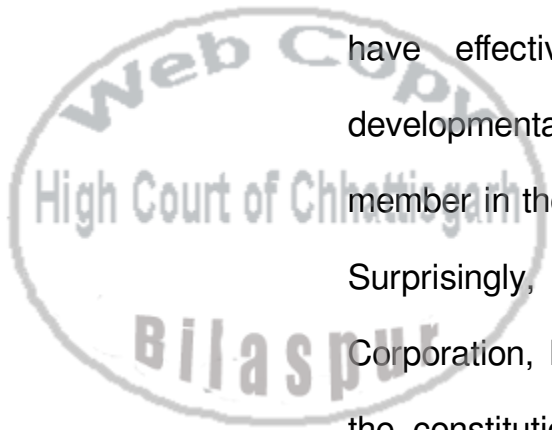




delegated the powers by the respective Municipal Corporations with an open eye and it cannot say that the powers have been usurped by the SPVs.

36. Everything comes with a price tag. The State Government/Urban Local Bodies were mindful of the fact that it will have to hand over / delegate the functions and powers under the Scheme to avail the benefit of huge amount of fund for the developmental activities. Ultimately, it is the general public of Municipal Corporation, Bilaspur and Raipur who are the beneficiaries of the developmental activities carried on by the SPVs.

37. The only grievance which appears to be hammered before this Court is that the elected members/body of the Municipal Corporation does not have effective participation or role in implementation of the developmental activities carried on by the SVPs as there is no elected member in the Board of Directors of RSCL and BSCL, as aforesaid. Surprisingly, no elected member of the local body i.e. Municipal Corporation, Bilaspur or Raipur, has challenged either the scheme or the constitution of the Board of Directors and the challenge to the alleged usurpation of powers and authorities of the Municipal Corporation has been made by an individual i.e. the petitioner. However, after filing of the petition, the respondents i.e. the respondents No. 4, 5, 6 and 7 are supporting the cause of the petitioner. What restrained them from challenging the so-called usurpation of powers till date, is beyond comprehension. If the respondents No. 4, 5, 6 and 7 or any other elected representatives were so conscious about alleged encroachment made in their field by the SPVs, they ought to have opted for not implementing the Scheme or could have challenged the same as and when the Scheme was launched in the year 2015. The Scheme, which was initially for a period of five years, was to end in the month of June,





2020 which was further extended till June, 2023, the Scheme was allowed to continue peacefully till December 2020 when this petition was filed and now when the work of the Smart City Project is about to reach its completion, such an objection is now being raised by the petitioner and the elected members of the representatives of the Municipal Corporations which appears to be collusive and with oblique motive between them which will stall the projects which are for the advancement and development of the two major cities of the State of Chhattisgarh.

- 38.** In view of the foregoing discussion, this Court is of the opinion that no interference is called for by this Court in exercise of its extraordinary powers under Article 226 of the Constitution of India, the present PIL lacks merit and is accordingly **dismissed**.

Sd/-
(Deepak Kumar Tiwari)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Order date:- 12.05.2023