

Daily Order

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	WP 42927/2015	31/07/2019	<p>ORDER</p> <p>This writ petition in the nature of public interest litigation raises very important issues. The grievance which is canvassed by filing this public interest litigation is regarding the failure of the second respondent-Bruhat Bengaluru Mahanagara Palike [for short "the BBMP"] to maintain the streets in proper condition and its failure to repair large stretches of roads which are constantly affected by potholes. Various issues have been raised in this petition regarding the manner in which maintenance work should be undertaken by the BBMP and the techniques to be used for filling the potholes. It is also pointed out in the petition that a mechanism needs to be adopted with regard to the disbursement of compensation to the victims of road accidents which are caused due to poor condition of the roads. Several orders are passed from time to time in this writ petition.</p> <p>2. Considering the fact that notwithstanding the pendency of this writ petition for the last four years, the grievances still subsist, the petition will have to be kept pending and interim directions will have to be issued. This Court will have to monitor the implementation of the directions issued from time to time. Hence, rule nisi is issued. The respondents waive service.</p> <p>3. Interim directions have been issued on various aspects in the light of the law as it stands. They are dealing with the issues of technique to be used for filling the potholes in general and the construction of roads.</p> <p>4. Before dealing with the issues, we must note here that yesterday, a memo has been filed by the learned counsel appearing for the BBMP placing on record the status of the roads within the limits of the BBMP. According to the BBMP, the total length of 470 roads is 1344.84 kms out of which, 108 roads having total length of 401.10 kms are affected by potholes. It is pointed out that on stretch of the roads having length of 106.68</p>

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			<p>kms, the entities like BWSSB, KPTCL, BESCO, GAIL etc., have been permitted to cut/dug up the roads for laying of cables, pipelines etc. The claim made by the BBMP is that total 362 roads having the length of 943.74 are pothole free roads.</p> <p>5. Though the learned counsel appearing for the petitioner has much to say about the figures, even accepting the said figures as correct, the length of 401.10 kms. out of total length of 1344.84 kms. is affected by the presence of potholes. Digging work by various entities is in progress on 119 roads having the length of 104.68 kms. Therefore, going by the chart, out of total number of 470 roads, 108 roads appear to be affected by the potholes and 119 roads are affected by digging work by various authorities. Another chart indicates that as on 5th July, 2019, the area of the damaged surface identified was 78,961.05 kms. out of which, an area of 55,969.14 kms. is yet to be attended by carrying out repair works. Hence, the condition of the streets in the city is very unsatisfactory. Thus, the citizens are facing hardships due to such poor condition of the roads.</p> <p>6. The BBMP is established under the Karnataka Municipal Corporation Act, 1976 [for short "the said Act of 1976"]. "Public street" as defined under Clause (31) of Section 2 of the said Act of 1976 reads as under:</p> <p>"Public Street" means any street, road, square, Court, alley, passage or riding path over which the public have a right of way whether a thoroughfare or not and includes.-</p> <p>(a) the roadway over any public bridge or causeway;</p> <p>(b) the footway attached to any such street, public bridge or causeway; and</p> <p>(c) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement verandah or other structure which lies on either side of the roadway upto the boundaries of the adjacent property, whether that property is private property or property belonging to the Government or the Corporation."</p>

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			<p data-bbox="584 315 1505 555">7. The definition of "public street" is a very wide definition which includes any street, road, square, Court, alley, passage or riding path over which the public have a right of way whether a thoroughfare or not. More importantly, it includes footways (popularly called as footpaths) attached to any such street, public bridge or causeway.</p> <p data-bbox="584 685 1505 1576">8. Chapter V of the said Act of 1976 lays down the powers and functions of a Corporation and other authorities. Section 58 of the said Act of 1976 incorporates the obligatory functions of a Corporation. Under Clause (19) of Section 58 of the said Act of 1976, the obligatory functions of the Corporation are construction, maintenance, alteration and improvement of public streets, bridges, subways, culverts, causeways and the like. Even under Clause (20) of Section 58 of the said Act of 1976, the obligation of a Corporation in relation to public streets has been incorporated. It provides that it is the obligation of a Corporation to remove the obstructions and projections in or upon streets, bridges and other public places. By Karnataka Act No.55 of 2013, Section 58 was amended by incorporating Clause (20-A). A provision was made that it is the obligatory function of the Corporation to remove the unauthorized cables, including Optical Fibre Cables laid under, over, along, across, in or upon any streets or property vested in it. These mandatory obligations will have to be read with the provisions contained in Chapter XIV of the said Act of 1976. Section 265 of the said Act of 1976 provides for vesting of public streets and their appurtenances in a Corporation. Section 266 and Section 277 of the said Act of 1976 read as under:</p> <p data-bbox="584 1630 1505 1787">"266. Maintenance and repair of streets.- The Corporation shall cause the public streets to be maintained and repaired and may make all improvements thereto which are necessary or expedient for the public safety or convenience."</p> <p data-bbox="584 1917 1505 2074">"277. Temporary closure of streets.- The Commissioner may by an order temporarily close any street to traffic for repair or in order to carry out any works connected with drainage, water supply or lighting or any of the purposes of this Act:</p> <p data-bbox="584 2123 1505 2157">Provided that such work shall be completed and such street re-</p>

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			<p>opened to traffic with all reasonable speed.□</p> <p>9. Section 288-B of the said Act of 1976 provides that no person shall, except with the written permission of the Commissioner, place or deposit upon any public street or upon any open channel, drain or well in any street or in any public place, any stall, chair, bench, box, ladder, bale or other things so as to form an obstruction thereto or encroachment thereto.</p> <p>10. Section 291 of the said Act of 1976 mandates that no person shall make a hole or cause any obstruction in any street unless he previously obtains the permission of the Commissioner and complies with such conditions as he may impose.</p> <p>11. Section 289 of the said Act of 1976 is also relevant for our consideration, which reads as under:</p> <p>□Precautions during repair of streets.- (1) The Commissioner shall, so far as is practicable, during the construction or repair of any street, drain, or premises vested in the Corporation.-</p> <p>(a) cause the same to be fenced and guarded;</p> <p>(b) take proper precautions against accident by shoring up and protecting adjoining building; and</p> <p>(c) cause such bars, chains or posts to be fixed across or in any street in which any such work is under execution as are necessary in order to prevent the passage of vehicles or animals and avert danger.</p> <p>(2) The Commissioner shall cause such drain, street or premises to be sufficiently lighted or guarded during the night while under construction or repair.</p>

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			<p>(3) The Commissioner shall, with all reasonable speed, cause the said work to be completed, the ground to be filled in the said drain, street or premises to be repaired and the rubbish occasioned thereby to be removed.□</p> <p>12. On a conjoint reading of Section 57 of the said Act of 1976 and the aforesaid provisions which are part of Chapter XIV, there is no manner of doubt that it is a statutory obligation of the BBMP to maintain public streets by carrying out repairs and improvement thereto and that is why there is a legal fiction created under Section 265 of vesting of public streets and their appurtenances in the Corporation.</p> <p>13. Section 266 of the said Act of 1976 gives enough indication that these mandatory provisions concerning public streets have been incorporated for the sake of public safety or convenience. We repeat here that the definition □public street□ also includes a □footway□ which is popularly known as a □footpath□. So the statutory obligations of the BBMP are not confined only to the public streets, but the same extend to footways or footpaths which are also integral parts of public streets. The aforesaid statutory obligations of the BBMP, established under the said Act of 1976 create a corresponding right in favour of the citizens to enforce the said legal obligations of the BBMP.</p> <p>14. During the last three or four decades, the Apex Court has considerably extended the scope of the right to life guaranteed by Article 21 of the Constitution of India. The Apex Court has held that the right to life as guaranteed under Article 21 of the Constitution of India includes a right to live a meaningful and dignified life. After all, the footways or footpaths are provided so that the citizens can comfortably walk from one place to another. The streets are provided for the citizens so that they can travel comfortably by using vehicles. If there are potholes on the footpaths or on the streets, or if the same are not in good condition, the life of the citizens is exposed to danger. There are number of cases wherein, due to bad condition of the roads, accidents have happened resulting in either loss of human life or causing injuries to the citizens more so, in case of persons</p>

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			<p>plying or traveling by two-wheelers. Hence, exposing the citizens to any danger due to bad condition of streets will amount to violation of their rights under Article 21. In other words, a right to have streets including footways in a good and reasonable condition will have to be held as an essential part of the fundamental rights conferred on the citizens under Article 21 of the Constitution of India.</p> <p>15. Once we hold that the right to have roads and footways in a reasonable condition is a part of the right guaranteed under Article 21 of the Constitution of India, serious consequences may follow in the event there is a breach or violation of the said right guaranteed by the Constitution of India, by the BBMP or any other Corporation established under the said Act of 1976 which are a state within the meaning of Article 12 of the Constitution of India.</p> <p>16. In the case of SUDHIR MADAN AND OTHERS vs. MUNICIPAL CORPORATION OF DELHI AND OTHERS , the Apex Court held that the citizens have a fundamental right to use the roads, parks and other public conveniences provided by the State. If the streets or footways are in bad condition, the citizens are deprived of the effective use of the same thereby infringing their constitutional rights. If roads are not in good condition or if roads are not sufficiently lighted or if the same are full of potholes, they expose the citizens to a grave danger. As observed earlier, under Section 58 of the said Act of 1976, various obligatory functions of the Corporation are set out. One of the mandatory functions is of lighting of public streets.</p> <p>17. There have been instances where bad condition of the roads including presence of potholes has caused road accidents. As observed earlier, road accidents cause loss of life or result in injuries to the citizens, some of which may lead to permanent disability. If a citizen suffers loss due to bad condition of the road, obviously, this would result in violation of Article 21 of the Constitution of India.</p> <p>18. The Apex Court has consistently held right from the case of Nilabati Behera (smt) vs. State of Orissa that a public law remedy is available under Article 226 of the Constitution of India to seek compensation on account of violation of fundamental rights</p>

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			<p>under Article 21 of the Constitution. In paragraph 17 of the aforesaid decision, the Apex Court observed thus:</p> <p>□17. It follows that □a claim in public law for compensation□ for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is □distinct from, and in addition to, the remedy in private law for damages for the tort□ resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.□</p> <p>19. The citizens have a right to seek a reasonable compensation from the State or its agencies which are responsible for violating the fundamental rights by taking a recourse to a remedy under Article 226 of the Constitution of India. It is high time that the citizens become aware of their rights. Even the officers of BBMP should be made aware of the right available to the citizens to seek compensation on account of violation of the fundamental rights guaranteed under Article 21 of the Constitution of India. After all, the citizens are tax payers and their lives are not cheap. If only because of the failure of the Municipal Authorities to perform their elementary obligation of maintaining the streets in a proper condition, if somebody is deprived of his/her life or suffers injury, it will give a cause of action to claim compensation.</p> <p>20. Therefore, we make it very clear that in the event any citizen</p>

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			<p>suffers loss due to the failure of the BBMP and its Officers to maintain the streets in a good condition, they can always have a remedy of seeking compensation.</p> <p>21. When we have laid down that it is a fundamental right of the citizens to have streets and footpaths in a reasonably good condition, it is not sufficient that the same are pothole-free, but the streets and footpaths must be properly leveled so that the citizens can comfortably travel either by walk or by use of vehicles. Maintaining the streets free of potholes and in a reasonably good condition are the statutory and constitutional obligation of the BBMP.</p> <p>22. The learned counsel appearing for the BBMP has invited our attention to the fact that apart from 108 roads having potholes, a large number of roads are affected by the work carried out by various entities such as BWSSB, KPTCL, BESCO, GAIL and by the Telephone Companies or internet providers. He also pointed out that the construction work by the Metro Rail is in progress in various parts of the city. He submitted that in such cases, online applications are permitted to be filed and permissions are granted by executing Memorandum of Understanding incorporating stringent conditions. He submitted that there is a Standard Operating Procedure for road excavation and restoration process and conditions are always imposed while granting permission to the entities to dig/cut the road for laying cables, pipes etc. Certain amounts are taken as security deposit to ensure that the roads are restored to their original condition by the said entities as provided in the Standard Operating Procedure. He has placed on record a copy of the Standard Operating Procedure-Road Excavation and Restoration Process. According to him, the work of restoration of the roads is to be carried out by the concerned agency which is granted permission to dig/cut the road.</p> <p>23. Prima facie, it appears to us that when it is the statutory and constitutional obligation of the BBMP to maintain roads in a good and reasonable condition, though the responsibility of restoration of roads after laying down the cables, pipes etc., is put on the aforesaid entities who are allowed to do the digging work on the streets, the obligations of the BBMP remain unaffected as the obligations are statutory and constitutional</p>

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			<p>obligations.</p> <p>24. The learned counsel appearing for the BBMP, in the light of the prima facie findings recorded above, seeks time to take instructions on the question whether either by taking the entire amount required for restoration as a deposit from the concerned entity or by taking the advance amount, the BBMP should take up restoration work itself. We grant a reasonable time of six weeks to the learned counsel appearing for the BBMP to respond on this aspect in the light of the prima facie findings recorded by us.</p> <p>25. The learned counsel appearing for the BBMP has tendered across the bar the copies of the pothole reports which contain several columns such as Pothole ID, Zone and Ward Name, Road ID, Road Name, approximate size of the pothole, photographs taken before carrying out repairs and after carrying out the repairs etc.</p> <p>26. Large number of citizens have complaints about the failure of the BBMP to maintain public streets properly and its failure to fill in the potholes. Considering the fact that the citizens have a right to enforce the legal obligations of the BBMP, they have a right to make complaints about the poor condition of the roads and about the failure of the BBMP to fill in the potholes as well as to maintain roads in reasonably a good condition, the citizens have a right to know about the action taken on the basis of their complaints. Therefore, apart from accepting the complaint in the form of letters, the BBMP will have to make a provision for registering the complaints on its official website by allowing uploading the photographs of the affected portion of the streets. Similarly, the BBMP must provide a mechanism to lodge complaints by use of mobile phone applications so that the citizens can upload photographs of the poor condition of the roads. A mechanism will have to be created to maintain record of the complaints received; and to either inform the citizens about the action taken by the BBMP or to upload the action taken on the basis of the complaints on the official website of the BBMP. In addition, the BBMP can even communicate the action taken by e-mail to the citizens along with photograph of the condition of the road after carrying out necessary repairs. Therefore, adequate mechanism will have to be created by the BBMP and</p>

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			<p>wide publicity must be given to availability of such mechanism.</p> <p>27. The other issue canvassed across the Bar is about the effective supervision of the work carried out by the BBMP. In that behalf, the learned counsel appearing for the petitioner pointed out that as per Section 13-H of the Act of 1976, a Ward Committee has to be constituted in all the wards. We have examined the said submission. The Ward Committee is to be constituted under Section 13-H of the said Act of 1976. Apart from the fact that an elected Councilor of the Corporation representing the Ward is the Chairperson of the Ward Committee, it has citizens as its members. Under Clause (e) of Section 13-I of the said Act of 1976, the ward Committees have to supervise all programmers and schemes being implemented by the Corporation in the Wards. The said Act of 1976 has been amended by providing for establishment of Ward Committees on the basis of the 74th Constitutional Amendment. Therefore, there is a merit in the contention of the learned counsel appearing for the petitioner that the Ward Committees must monitor the work of maintenance and repair of the roads. The Ward Committees will have to monitor implementation of the conditions imposed on various entities while granting permission to carry out digging work and it is the responsibility of the Ward Committees to immediately take up the matter with the BBMP, if the roads are not repaired or not maintained in reasonably good condition.</p> <p>28. Considering the fact that 108 roads are affected by potholes, we, therefore, propose to direct the BBMP to state before the Court whether it is willing to appoint an Expert Agency of a considerable repute to advice the BBMP on the techniques which should be adopted for construction, maintenance and repair of the streets.</p> <p>29. Accordingly, in view of the above discussion, for the time being, we issue the following interim directions in the light of the law laid-down in the earlier part of the order:</p> <p>i) We direct the BBMP to immediately set up a grievance redress mechanism for enabling the citizens to lodge complaints about poor condition of the streets/roads by addressing letters or by using mobile app by uploading photographs or by accessing to the official website of the BBMP by uploading the photographs.</p>

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			<p>The BBMP shall also create a mechanism which will ensure that the citizens are informed about the action taken on their complaints by forwarding photographs either by use of mobile app on cell phone or by uploading the same on its official website. Necessary action in this behalf shall be taken as early as possible as and not later than a period of six weeks from today. A copy of this order shall be provided to the learned counsel appearing for the BBMP;</p> <p>(ii) We direct the BBMP to give a wide publicity with regard to availability of such mechanism by regularly publishing advertisements in the newspapers as well as on the social and electronic media and also by prominently displaying details in its offices in various wards;</p> <p>(iii) We direct the Ward Committees established under Section 13-H of the said Act of 1976 to ensure that regular inspection of the public streets within its jurisdiction is taken firstly, for ascertaining whether the streets require repairs due to the presence of potholes or otherwise, and also for monitoring the works of repairs to the streets which are in progress within the jurisdiction of the respective wards. It shall be the duty of the Ward Committees to also ascertain whether various entities which have been permitted by the BBMP to lay pipelines/cables comply with the condition imposed on them to restore the roads to its original condition. It shall be also the responsibility of the Ward Committees to ascertain whether all precautions as laid down under Section 289 of the said Act of 1976 are taken by the BBMP or the entities which are allowed to dug open the roads for laying cables, pipes etc;</p> <p>(iv) It shall also be the duty of the BBMP to ensure compliance of the provisions of Section 289 of the said Act of 1976. The BBMP shall also to ensure that when the streets or footpaths are opened or if repair work is going on; due care is taken to protect the rights of the visually challenged persons considering the principles laid down in Section 3 of the Rights of Persons with Disabilities Act, 2016. By taking such measures, it shall indicate to the persons with visual disability that repair work is in progress on the streets including the footpaths;</p>

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			<p data-bbox="584 237 1505 555">(v) The Ward Committees shall submit monthly reports on the conditions of public streets within its jurisdiction in the Office of the Municipal Commissioner within a period of five days from the end of each calendar month and immediate action shall be taken by the authorities of the BBMP on the basis of the said reports. Such reports shall be placed on the record of this Court along with the status report to be submitted by the BBMP from time to time;</p> <p data-bbox="584 689 1505 882">(vi) The BBMP is directed to disclose before the Court on the next date, the measures which it proposes to take to ensure that various entities which are permitted to open the road, comply with the terms and conditions on which permissions are granted;</p> <p data-bbox="584 1016 1505 1413">(vii) The BBMP shall also consider whether a condition can be imposed on such entities to deposit the amount with the BBMP being the entire estimated cost of work for restoration of the road as a conditional precedent for carrying out repairs. The BBMP shall also to consider whether in view of the statutory obligation of the BBMP of maintaining the roads, whether the work of repairing roads can be delegated to such other entities. We grant time of six weeks to the BBMP to respond after taking a policy decision. The decision of the BBMP shall be placed on record by filing an affidavit;</p> <p data-bbox="584 1547 1505 1704">(viii) We direct the BBMP to file a status report reporting compliance with the directions issued under this order within a period of two months. First of such status reports shall be filed on or before 9th September 2019;</p> <p data-bbox="584 1839 1505 1906">(ix) For considering the status report, the petition shall be listed before the Court on 9th September 2019;</p> <p data-bbox="584 2040 1505 2152">(x) If a citizen suffers loss or damage arising out of an accident caused due to poor condition of the street or footpath and if such a citizen files a representation to the BBMP, we hope and</p>

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			<p>trust that the BBMP will consider it and will award a reasonable compensation to the citizen so that the affected person is not forced to approach the Court of law. If a reasonable compensation is not paid, the affected person can always adopt proper remedies including the public law remedy; and</p> <p>(xi) A copy of this order shall be provided to the learned advocates appearing for the parties.</p>

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