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**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI  
&  
HON'BLE SHRI JUSTICE PRANAY VERMA  
ON THE 1<sup>st</sup> OF NOVEMBER, 2023  
WRIT PETITION No. 5043 of 2020**

**BETWEEN:-**

**DR. DINESH KUMAR JOSHI**

**.....PETITIONER**

*(SHRI NITIN PHADKE, LEARNED COUNSEL FOR THE PETITIONER )*

**AND**

1. THE STATE OF MADHYA PRADESH THROUGH THE PRINCIPAL SECRETARY, DEPARTMENT OF URBAN ADMINISTRATION AND DEVELOPMENT, VALLABH BHAWAN BHOPAL (MADHYA PRADESH)
2. THE COLLECTOR MANDSAUR, DISTRICT MANDSAUR (MADHYA PRADESH)
3. THE ADDITIONAL COMMISSIONER, UJJAIN, DIVISION UJJAIN, KOTHI PALACE , UJJAIN (MADHYA PRADESH)
4. THE JOINT DIRECTOR, FISHERMAN WELFARE AND FISHERS DEVELOPMENT DEPARTMENT, GOVERNMENT OF MADHAYA PRADESH, MANDSAUR (MADHYA PRADESH)
5. THE MUNICIPAL COUNCIL , MANDSAUR THROUGH CHIEF MUNICIPAL OFFICER MUNICIPAL COUNCIL, MANDSAUR (MADHYA PRADESH)

**.....RESPONDENTS**

*(SHRI VEER KUMAR JAIN , LEARNED SENIOR COUNSEL WITH SHRI  
DIVYANSH LUNIYA, LEARNED COUNSEL FOR THE RESPONDENT NO.5.)*

**(SHRI ANAND SONI, LEARNED ADDITIONAL ADVOCATE GENERAL FOR THE RESPONDENT/STATE)**

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*This petition coming on for admission this day, Justice Sushrut Arvind Dharmadhikari passed the following:*

**ORDER**

Heard finally, with the consent of both the parties.

This writ petition under Article 226 of the Constitution of India has been filed by the petitioner as a Public Interest Litigation(PIL) praying for the following reliefs :-

**11. Reliefs :-**

*(a) A writ in the nature of certiorari/mandamus or any other appropriate order, writ or direction be issued for quashment of the order dated 27.08.2018(Annexure-P/12) and order dated 28.01.2020(Annexure-P/13) passed by the respondents 2 and 3.*

*(b) This Hon'ble Court be pleased to issue appropriate directions to the respondent no.1 for prohibiting fishing activities in the Teliya Talab as also for ensuring the proper preservation of the aforesaid Talab.*

*(c) Costs of the petition be awarded to the petitioner from the respondents.*

*(d) Any other relief which this Hon'ble Court may deem fit in the facts of the present case be granted in favour of the petitioner.*

02. Brief facts of the case are that the petitioner is a doctor by profession and is public spirited person, therefore, the present Public Interest Litigation has been filed.

03. The issue involved in the present petition pertains to the grant of fishing rights in Teliya Talab, situated at Mandsaur, which is a prominent place of religious importance as also a prominent tourist attraction located within the municipal limits of Mandsaur Town.

04. On the Banks of the aforesaid Teliya Talab, various temples and Ashrams such as Hanuman Temples, Maa Karma Devi, Maa Ganga Mata, Rishi

Anand Ashram etc. are located which are visited by lakhs of devotees in a year. Similarly, the aforesaid Teliya Talab is also visited by thousands of tourists, which comprise of families and small children of Mandsaur and nearby region.

05. Keeping in view the religious sentiments and tourist importance of the aforesaid pond, various communities of Mandsaur have submitted representations before the Municipal Council, Mandsaur for prohibiting fishing activities in the aforesaid pond. The Municipal Council, Mandsaur vide Resolution dated 08.11.2012(Annexure-P/5) took a decision to prohibit grant of fishing rights in respect of the aforesaid pond, which was duly implemented. Thereafter, the Collector, District Mandsaur vide letter dated 10.10.2017 after a lapse of five years i.e. after implementation of the Resolution dated 08.11.2012 vide letter dated 10.10.2017 citing fishing policy of the State Government directed the Municipal Council to review its decision and grant the *Pattas* for fishing to the eligible persons. As a consequence, the Municipal Council passed a fresh resolution dated 30.07.2018 and reiterated the decision taken in the year 2012.

06. The Collector *suo motu* registered a case No.462/B-121/2017-18 at the instance of Deputy Director, Fisheries, District Mandsaur. The Collector exercising power under Section 323 of M.P. Municipalities Act, 1961(hereinafter referred to as "the Act of 1961") suspended both the resolutions i.e. dated 08.11.2012 and 30.07.2018 and at the same time, directed the Chief Executive Officer, Municipal Council, Mandsaur and Assistant Director, Fisheries, Mandsaur to allot *Pattas* for fishing as per the Policy. Being aggrieved, the present writ petition has been filed by way of Public Interest Litigation.

07. Learned counsel for the petitioner submitted that the resolution passed by the Municipal Council, Mandsaur is in consonance of the public sentiments after duly considering the representations filed by different sects of the Society. The Collector exceeded the powers under Section 323 of the Act of 1961 by directing the concerned officers to allot the *Pattas* for fishing to the eligible persons/candidates. In fact, the Collector has jurisdiction to only suspend an action/order which is yet to be completed/executed/implemented. In the present case, the Resolution dated 08.11.2012 was already executed and was in existence for more than five years, inspite of that Collector directed to review the resolution and ultimately passed the impugned order. The order passed by the Collector in staying and directing allotment of *Patta* was clearly in excess of his jurisdiction vested under Section 323(1) of the Act of 1961.

08. On the other hand, learned counsel for the respondent/State vehemently opposed the prayer and made the following submissions:-

*(i) The petitioner has not disclosed his social antecedents. It is settled principle of Public Interest Litigation jurisprudence that to demonstrate bonafide, social antecedents are required to be specifically disclosed and that mere statement that the petitioner is a social worker is not sufficient, therefore, the present PIL deserves to be dismissed on this ground alone.*

*(i) The petitioner has no locus to file the present Public Interest Litigation since he is an elected Corporator in the Municipal Council, Mandsaur and is having a personal and political interest in the matter. Notably, the petitioner being a corporator was part of the decision making process of the respondent No.5 for imposing ban on fishing activities at Teliya Talab which was later on stayed by the Collector.*

*(iii) Section 323 of the Act of 1961 specifically empower the Collector to suspend the execution of an order or resolution of a Municipal Council within his jurisdiction if the same is not in conformity with law or with the rules or bye-laws made thereunder and is detrimental to the interests of the Council or the public or is causing or is likely to cause injury or annoyance to public or any class or body of persons*

*or is likely to lead to a breach of the peace.*

09. In the present case, banning the fishing activities at Teliya Talab is in utter violation of Madhya Pradesh Matsya Palan Ki Niti dated 08.10.2008 framed by the State Government wherein the mandate is to compulsorily adopt the uniform policy for the purpose of fishing activities. Further, the fishing activities at Teliya Talab was a source of employment to thousands of poor fishermen and their families for a span of six months each year. The ban has resulted in loss of revenue to the public exchequer and is a significant financial set back.

10. The petitioner has not challenged the Madhya Pradesh Matsya Palan Ki Niti Policy, therefore, he is estopped from challenging the resolution as well as the order passed by the Collector in the present PIL and the same deserves to be dismissed.

11. Learned Senior Counsel appearing for the respondent No.5 in fact supported the cause of the petitioner and submitted that the legislature has introduced Article 243 in the Constitution of India with a view to protect the public welfare and the local sentiments of the public at large and it is for the public to decide as per the local sentiments. The ownership of Teliya Talab rests with the municipality. The Collector exceeded its jurisdiction in staying the resolutions and directing the authorities to allot *Pattas* for fishing activities which is beyond the scope of Section 323 of the Act of 1961. The order of the Collector is absolutely without jurisdiction. Learned counsel further contended that the Collector also could not have directed to review the resolutions passed by the Municipal Council since there is no provision under the Act. He further contended that the respondent/State could not point out as to which clause of the policy is being violated. The Collector has not recorded any reasons in the

impugned order to show as to how the policy is being violated. In such circumstances, he prays for dismissal of the writ petition.

12. Heard the learned counsel for the parties and perused the record.

13. For the purpose of convenience, Section 323 of the M.P. Municipalities Act, 1961 is reproduced as under :-

**323. Power to suspend execution of orders, etc., of Council-**

*(1) If, in the opinion of the Divisional Commissioner, the Collector, or any other officer authorised by the State Government, in this behalf, the execution of any order or resolution of a Council, or of any of its Committee or any other authority or officer subordinate thereto, or the doing of any act which is about to be done or is being done by or on behalf of the Council, is not in conformity with law or with the rules or bye-laws made thereunder and is detrimental to the interests of the Council or the public or is causing or likely to cause injury or annoyance to the public or any class or body of persons or is likely to lead to a breach of the peace, he may, by order in writing under his signature, suspend the execution of such resolution or order or prohibit the doing of any such act.*

*(2) When any order under sub-section (1) is passed, the authority making the order, shall forthwith forward to the State Government and to the Council affected thereby a copy of the order with a statement of reasons for making it; and it shall be in the direction of the State Government to rescind the order, or to direct that it shall continue in force with or without modification, permanently or for such period as it thinks fit.*

14. On perusal of the aforesaid provision, it is clear that the resolution of the Council can be stayed only if it is detrimental to the interests of Council or the public or is causing or likely to cause injury or annoyance to the public or any class or body of persons or is likely to lead to a breach of the peace and not otherwise. The Collector while passing the order Exhibit-P/12 dated 27.08.2018 had not recorded any such findings so as to exercise power under Section 323 of the Act of 1961. The only reason assigned by the Collector is that hundreds of fishermen are deprived of their livelihood. Certainly, this

cannot be a reason to suspend the resolutions.

15. This Court in the case of **Devendra Kumar Paliwal Vs. State of M.P. & Others** reported in **2008(2) M.P.L.J. 463** had held in Para - 9 as under :-

*9. At this stage, it may be noticed that under the provisions of section 323(1) of the Act, the Collector of a District, besides the other officers mentioned in the said provision, has only been vested with the power to suspend the execution of any order or resolution of a Council or its committee, of any act, which is about to be done or is being done or on behalf of the Council, and is not in conformity with the law or is otherwise detrimental to the interests of the Council or is likely to cause injury or annoyance to the public etc. It is thus, clear that jurisdiction vested in the Collector, and the other officers mentioned in the section, is only to suspend an action/order which is yet to be completed/executed/implemented. There is no power at all with the District Collector to suspend/nullify an act/resolution which stands already executed/implemented. Thus, apparently, the order dated October 9, 2000 passed by the Collector in cancelling the sale in favour of the petitioner was clearly in excess of his jurisdiction vested in him under section 323(1) of the Act, since the transaction of sale had already been completed. Even if, it be taken that the Municipal Council had violated the mandatory provisions of section 109(2) of the Act in disposing of its property, still the District Collector under section 323(1) had no power to nullify the said action of the Municipal Council. Essentially, the said power vested in the State Government, in its all pervasive supervisory control of the Municipal Council.*

16. From the aforesaid conclusion, it can be seen that the Collector could have passed the order of suspension only if the action/order/resolution is yet to be completed/executed/implemented. In the present case, the resolution dated 08.11.2012 was already executed and was in force for atleast five years. The Collector had no authority to call for a review or to stay the resolution and further direct grant of *patta*. It is also not known as to how the Collector has formed an opinion that the resolution of the Municipal Council is not in conformity with law or with the rules or bye-laws made thereunder. Admittedly, the fishing policy is not a statutory policy, but is merely a

guideline. The local authorities are the best person to impose ban at the behest of the public sentiments. The Collector has definitely acted beyond the powers and jurisdiction. Accordingly, the impugned order dated 27.08.2018(Annexure-P/12), passed by the Collector, Mandsaur in Case No.462/B-121/2017-18 as also Appellate order dated 28.01.2020(Annexure-P/13), passed by the Additional Commissioner, Ujjain in Case No.1457/Appeal/2017-2018 are hereby quashed.

17. It is seen from the reply Annexure-R/1 dated 18.12.2020, the State Government has affirmed the impugned order passed by the Collector and the Divisional Commissioner as per the mandate of Section 323 of the Act of 1961. This Court had stayed the operation of the orders dated 27.08.2018 and 28.01.2020 vide order dated 03.03.2020, therefore, the State Government could not have affirmed the aforesaid orders and passed the order of affirmation on 18.12.2020. As a consequence, the order affirming the impugned order dated 18.12.2020(Annexure-R/1) is also quashed and set aside.

This petition is allowed. No order as to costs.

**(S. A. DHARMADHIKARI)**  
**JUDGE**

**(PRANAY VERMA)**  
**JUDGE**