

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.10468 OF 2014

Vijay s/o Sukhdeo Ahire

Petitioner

Versus

Hon'ble Governor,
State of Maharashtra & others

Respondents

Mr.S.V.Natu, advocate for the petitioner
Mr.S.K.Tambe, A.G.P. for Respondents No.1 & 2.

**CORAM : R.M.BORDE &
P.R.BORA, JJ.**

DATE : 03rd February, 2015

PER COURT:

1 The petitioner is praying for issuing writ of certiorari or any other direction in the like nature and to quash the communications dated 06.06.2014 and 16.06.2014 issued by the Hon'ble Governor of Maharashtra accepting the recommendations made by the Hon'ble Chief Minister for appointment of twelve individuals as Members of Maharashtra Legislative Council in exercise of powers conferred under clause (e) of sub-section (3) read with sub-section (5) of Article 171 of the Constitution of India.

2 The Hon'ble Chief Minister made a request to the Hon'ble Governor to make appointment of twelve individuals as Members of Maharashtra Legislative Council and acting in pursuance to the recommendations of the Hon'ble Chief Minister, the Hon'ble Governor has issued a letter of acceptance and in furtherance thereof, Respondents No.4 to 15 have been appointed

as Members of Maharashtra Legislative Council.

3 The petitioner contends that nominations are made purely on political considerations without taking into consideration expertise of the individuals nominated, as contemplated under Article 171(5) of the Constitution of India. It is contended that it is a fraud on the Constitution to appoint the persons who had earlier unsuccessfully contested the elections to Legislative Assembly or any other Public Body; and nomination of such persons shall be viewed as back door entry of the political workers of ruling party. It is contended that none of the Respondents is publicly acclaimed as expert in the given field. It is alleged that the nominations are made with a view to accommodate six persons each from the quota of ruling coalition parties i.e. Indian National Congress and Nationalist Congress Party, which is apparent from the record. It is further contended that object of Article 171(5) of the Constitution is to ensure appointment of experts in the various fields, which has been given go bye by making appointment of political workers of the ruling coalition parties.

4 The objection raised by the petitioner in respect of desirability of appointment of Respondents No.4 to 15 as Members of Maharashtra Legislative Council need not be gone into in exercise of extraordinary jurisdiction under Article 226 of the Constitution. The question, as to whether Respondents No.4 to 15 are really experts in the given field is a matter requiring an inquiry and it would not be appropriate to take up the exercise in writ jurisdiction.

5 So far as the objection raised by the petitioner that no nominations are made from categories of experts in Arts, Literature and Scientific field, it is for the Hon'ble Governor to exercise the powers conferred on him and make appointments. The appointments made only from amongst one or two categories mentioned in sub-section (5) of Article 171 of the Constitution cannot be said to be illegal or contrary to the Constitutional provisions.

6 It would be impermissible to call in question the appointments made by the Hon'ble Governor in exercise of powers conferred under Article 171(5) of the Constitution of India in view of the bar contained in Article 361(4) of the Constitution. It is provided that no civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action, therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims. In view of sub-section (1) of Article 361, the President, or the Governor or *Rajpramukh* of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. It is,

thus, clear that the action of the Governor, in his official capacity, cannot be called in question nor any of his actions, in his personal capacity, shall be called in question.

7 The petitioner has sought writ against the Hon'ble Governor – Respondent No.1. In view of the bar contained in Article 361 of the Constitution of India, relief claimed by the petitioner, in the instant petition, does not deserve to be granted and the petition need not be entertained.

8 Writ Petition, as such, stands rejected. Pending Civil Application, if any, stands disposed of.

P.R.BORA
JUDGE

adb/wp1046814

R.M.BORDE
JUDGE