

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5535 OF 2003

Balasaheb S/o Raghunath Haral,
Age : 33 Years, Occu. : Agri. & Upa-Sarpanch,
R/o Gundegaon, Tq. &
Dist. Ahmednagar. .. Petitioner

Versus

1. The State of Maharashtra
Through the Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai - 32.
2. The Chief Minister,
State of Maharashtra,
Mantralaya, Mumbai - 32.
3. The Cabinet Minister,
Department of Agriculture,
Mantralaya, Mumbai - 32.
4. The Cabinet Minister,
Department of Rural Development,
Mantralaya, Mumbai - 32.
5. The Secretary,
Department of Agricultural,
Mantralaya, Mumbai.
6. The Secretary,
Department of Rural Development,
Mantralaya, Mumbai. .. Respondents

Shri Santosh S. Jadhavar, Advocate for the Petitioner.
Mrs. A. V. Gondhalekar, Addl.G.P. for Respondents/State.

**WITH
CIVIL APPLICATION NO. 3801 OF 2015
IN
WRIT PETITION NO. 5535 OF 2003**

Maharashtra Rajya Krishi Seva
Maha Sangh Pune through its
Joint Secretary

Mr. Bhimrao Vasantrao Kulkarni .. Applicant

Versus

1. Balasaheb S/o Raghunath Haral
and others .. Respondents

Shri Anant R. Devakate, Advocate for the Applicant.
Shri Santosh S. Jadhavar, Advocate for the Respondent No. 1.
Mrs. A. V. Gondhalekar, Addl.G.P. for Respondents/State.

**CORAM : S. V. GANGAPURWALA
K. K. SONAWANE, JJ.**

CLOSED FOR JUDGMENT : 11.08.2016
JUDGMENT PRONOUNCED : 30.09.2016

JUDGMENT (Per S. V. Gangapurwala, J.) :-

. The petitioner seeks directions to hand over agricultural subjects and it's schemes to the Zilla Parishads from the Agriculture Department as per the Government Resolution dated 01.02.2001 issued by the Government of Maharashtra.

2. Mr. Jadhavar, the learned counsel for the petitioner submits that, the mandate of the Constitution as per Article 243-

G is that, there should be decentralization of power and the powers should go to the grass root level that is the self government bodies like Zilla Parishad and Panchayat Samities. The Government of Maharashtra has issued specific Government Resolutions and orders giving effect to the Seventy-third amendment to the Constitution and directed to transfer and handover the subjects listed in Eleventh schedule of the Constitution of India, but till today the agricultural subjects and schemes under it are not transferred to the Zilla Parishads. The learned counsel submits that, this inaction on the part of the Government of Maharashtra has frustrated the legislative intention to decentralize the powers. The legislative intention behind Article 243-G of the Constitution is to decentralize the powers so that the Panchayats would function as institutions of local self government. By way of Seventy-third amendment to the Constitution, Eleventh Schedule is added to Article 243-G. In the said list twenty nine subjects are listed and it includes agriculture subject. The Government of Maharashtra pursuant thereto has issued G. R. dated 28.09.2000 thereby resolving to transfer all twenty nine subjects listed in Eleventh Schedule to the Zilla Parishad. In the said Government Resolution other aspects like financial arrangement, audit, budget, etc. are provided. The said Government Resolution was intended to be implemented from 02nd October, 2000. Thereafter the Government of Maharashtra vide G. R. dated 01.02.2001 laid down the official structure of the officers and employees to be

followed in the Zilla Parishad and the way in which the officers and the employees of the Agriculture Department should be absorbed in the Zilla Parishads. A list of schemes of Agriculture Department to be handed over to Zilla Parishads is also annexed with the said Government Resolution.

3. The learned counsel submits that, thereafter, the Assistant Director of Agriculture, State of Maharashtra has issued circular on 13.02.2001 prescribing methodology to be adopted by Zilla Parishads while executing and implementing the schemes handed over to it from the Agriculture Department. The learned counsel submits that, further steps were also undertaken, however, almost all the subject matters listed in the Eleventh Schedule of the Constitution and also in the Government Resolution dated 28.10.2000 except agriculture subject are transferred to Zilla Parishads. Till this date the agriculture subject and the schemes under it are not transferred to the Zilla Parishads. According to the learned counsel, agriculture is an important subject touching to the rural life. The Indian economy is based on agriculture. It is mandatory and obligatory for the Government of Maharashtra to issue orders for handing over the agriculture subject to the Zilla Parishads. If the same is not done, it is violative of constitutional mandate. The learned counsel submits that, the legislative intention behind the decentralization of powers and distributing it to the local self government is to strengthen the local self government and to

make it public oriented. The policy of decentralization of powers and distribution of it amongst the local self government would frustrate, if an important subject like agriculture is not handed over to local self government bodies. Therefore, it is necessary to implement all the Government Resolutions and orders in respect of handing over the agriculture subject and schemes under it to the Zilla Parishads from Agriculture Department.

4. Mrs. Gondhalekar, the learned Additional Government Pleader for respondents/State submits that, after the Seventy-third Constitutional Amendment, in 1993, twenty nine subjects enlisted in the Eleventh schedule to Article 243-G were decided to be transferred to the Zilla Parishads. The State of Maharashtra through its rural development department has issued G. R. dated 28.09.2000, in furtherance of the Seventy-third Constitutional Amendment resolving to transfer some of the subjects and schemes to the Zilla Parishads, and prescribing modalities in respect of financial management, audit, budget for such transferred schemes. Government Resolution dated 01.02.2001 has been issued sanctioning staffing pattern for implementation of such transfer of schemes, however, a corrigendum was issued to the said Government Resolution dated 01.02.2001 resolving not to implement the said resolution until further orders, due to administrative difficulties. The learned Addl. G. P. further submits that, the finance department issued instructions to all the administrative departments vide G.

R. dated 10.09.2001 directing to take review of the posts and schemes under the control of the respective departments. The Agriculture Department, after taking such review, revised the approved staffing pattern vide G. R. dated 22.05.2009. As a result, the G. R. dated 01.02.2001 remained inoperative and subsequently replaced by G. R. dated 22.05.2009 continuing with the pattern of distribution of schemes between State and Zilla Parishads.

5. The learned Addl. G. P. further states that, the Seventy-third amendment to the Constitution is intended to strengthen the local self Government and decentralize the powers, the subject agriculture being part of rural economy was included in the list of subjects to be transferred to Zilla Parishads. However, due to changed scenario, agriculture is not limited to the basic agricultural operations, but its scope is enlarged and diversified to a great extent, including various other aspects such as trade, export policies, research and development, biotechnology, etc. Hence all these aspects are not capable of being dealt with by the local self government. Therefore, the Government has taken a conscious decision in respect of staffing pattern and distribution of work in the agriculture department vide G. R. dated 22.05.2009. The learned Addl. G. P. further submits that, though it was decided to transfer 37 schemes to Zilla Parishads, as mentioned in G. R. dated 01.02.2001 by passage of time and the change in conditions, the status of those schemes also

changed accordingly. Few schemes have come to an end, some are revised and implemented through State machinery.

6. The learned Addl. G. P. further states that, due to globalization, changing environmental conditions and measures undertaken to combat its impact on agriculture sector, advancement in technology and use of technology in agriculture sector, agriculture has become a highly technical sector. For qualitative and quantitative development of agriculture sector, various technology driven schemes are now being implemented. Old schemes have been replaced by newer schemes that have technology as ingredient and for effective implementation of all these schemes in the changing scenario, a mechanism for effective dissemination has to be in place. The learned Addl. G. P. further states that, after the year 1993 due to globalization, agriculture is not limited by conventional knowledge of farming, trade related aspects such as patents intellectual property rights and their implementation is directly affecting global economy. Hence the agriculture sector has become responsibility of state. After 2000 the advancement in Biotechnology sector and use of genetically modified crops specifically cotton has been increased drastically and research and development of cottonseed and other is involving multinational companies, various nations, commercial business organizations, etc. For safeguarding their interests decisive authority needs to be at the national or at least at state level.

7. The learned Addl. G. P. further states that, after the year 1998 due to change in environmental conditions, due to global warming, agriculture sector is facing various challenges like food scarcity, scarcity of water, soil health, hailstorm, changing (increasing) temperature, agriculture marketing system etc. To combat these challenges comprehensive and effective measures are being taken which requires involvement and co-ordination of various departments of government and various states and its machinery. For this strategic planning is required to be done at the state level and also the implementing machinery necessarily has to be under control of state government. It is further submitted that, taking into consideration the requirement of experts for structuring of various schemes, field research related activities, the administrative control and planning requires to be at state level. As transfer of agriculture schemes would not serve purpose of public interest as also is not feasible, hence cannot be completely transferred to Zilla Parishad.

8. The learned Addl. G. P. states that, the schemes transferred to the Zilla Parishads by State Government under proviso of Sec. 123 of Zilla Parishad and Panchayat Samities Act, 1961 with or without agency charge is a policy matter of state and state has discretionary powers to decide the same. Presently, the schemes which are now implemented through state agriculture machinery come under various missions like

NHM, NFSM, ATMA, etc. which are sponsored by the Central Government. These missions have separate offices at district and at state level and are implemented by the staff of Agriculture Department. The implementation of these schemes under the mission is as per the directions of mission and central government. The state government has no power to transfer these schemes (under mission) to Zilla Parishad, hence are not capable of being transferred. The schemes of agriculture are part of planning at state level. Priorities at district and state level are some times different. As different type of targets/goals are required to be achieved at state level, some schemes require that for their planning and effective implementation, the agency must be with the State Government. The policies and/or schemes are decided taking into consideration the Agro Climatic Condition/Agro Ecological Condition. These references are not restricted to district. The administrative as well as the research oriented set-ups at state level are necessary for effective implementation and advancement of agro sector. En-bloc merger of State Agricultural Department in Zilla Parishad is therefore neither necessary nor desirable as it will adversely affect the public interest at large. Considering the present status of schemes, the respondents are reviewing the G. R. dated 01.02.2001 considering the provisions laid in Seventy-third Constitutional amendment.

9. The learned Addl. G. P. has placed on record various

Government Resolutions showing subjects which were transferred to the Zilla Parishad from the year 2000. The learned Addl. G. P. relies on the judgment of the Apex Court in the case of M/s Bajaj Hindustan Ltd. Vs. Sir Shadi Lal Enterprises Ltd. and another in *Civil Appeal No. 5856 of 2005 dated 29th November, 2010* and another judgment in the case of Census Commissioner and others Vs. R. Krishnamurthy in *Civil Appeal No. 9996 of 2014 dated November 07, 2014* to contend that, the Courts cannot issue directions to enact a particular piece of legislation. The learned Addl. G. P. further states that, the Court cannot strike down the policy decision taken by the Government merely because it feels that another decision would have been fair or more logical.

10. Mr. Devakate, the learned counsel appearing for the intervenor that is Maharashtra Rajya Krushi Seva Mahasangh whose employees are working in the department of agriculture, Government of Maharashtra states that, the Resolution dated 01.02.2001 is not possible to be implemented. More than 70% population is depending on agriculture. It would be very difficult to manage, monitor and implement the schemes for various agricultural purposes through Zilla Parishads. It is in the interest of people at large to have direct control of State Government over agriculture department. The government of Maharashtra has concluded that the scheme enshrined under G.

R. dated 01.02.2001 is unworkable. The Government has approved revised staffing pattern of agriculture department from state level to village level vide G. R. dated 22.05.2009. The G. R. dated 01.02.2001 has been replaced by G. R. dated 22.05.2009. It is purely policy decision of Government not to implement G.R. dated 01.02.2001. If G. R. dated 01.02.2001 is implemented, the service conditions of thousands of employees of the agriculture department would suffer severely. The learned counsel relies on the judgment of the Apex Court in the case of **Bhanumati and others Vs. State of Uttar Pradesh through its Principal Secretary and others** reported in (2010) 12 SCC 01, so also another judgment of the Apex Court in the case of **State of Uttar Pradesh and another Vs. Zilla Parishad, Ghaziabad and another** reported in (2013) 11 SCC 783 and also the judgment of the learned Single Judge of the Andhra Pradesh High Court in the case of **Govindu Venkata Sivananda Murthy Vs. The State of Andhra Pradesh** reported in 2010(4) ALD 776 to contend that, Article 243-G of the Constitution is only an enabling provision and it is in the discretion of the State whether to give power to the Panchayat referred to under Article 243-G of the Constitution of India. The learned counsel for the intervenor also relies on the judgment of the Apex Court in the case of **U. P. Gram Panchayat Adhikari Sangh and others Vs. Daya Ram Saroj and others** reported in (2007) 2 SCC 138.

11. We have given our anxious thoughts to the submissions canvassed by learned counsel for respective parties.

12. The Seventy-third Constitutional amendment adding part IX titled, "The Panchayats" introduced local self Government. Article 243-G of the Constitution prescribes the power, authority and responsibility of panchayats. Eleventh schedule to the Constitution define the matters in respect of which schemes for economic development and social justice are to be implemented by the panchayats with regard to Article 243-G of the Constitution. Article 243-G in a way is an extension of Article 40 of the Constitution. It came up in order to give effect to directive principle. The directive principles of State policy require the state to take steps to organize village panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self government and same is sought to be achieved by the Seventy-third amendment to the Constitution by incorporating Article 243-G. So also adding Article 243 to 243-O and Eleventh Schedule to the Constitution.

13. Article 243(g), defines "Village" to mean a village specified by the Governor by public notification to be a village for the purpose of this part and includes a group of villages so specified. Article 243(b) defines "Gram Sabha" to mean a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level,

whereas Article 243(d) defines "Panchayat" to mean an institution (by whatever name called) of self government constituted under Article 243-B, for the rural areas. Article 243-A states that a *Gram Sabha* may exercise such powers and perform such functions at the village level as the Legislature of a State may by law, provide. Article 243-B states that there shall be constituted in every State, *Panchayats* at the village, intermediate and district levels in accordance with the provisions of this Part of the Constitution. Article 243-D makes a provision for reservation of seats for Scheduled Castes and Scheduled Tribes including women belonging to the Scheduled Caste/Scheduled Tribes and also for other women in the *Panchayats* at all the levels. Article 243-E provides for the term of the *Panchayat* which is for 5 years and Article 243-G speaks of powers, functions and responsibilities of the *Panchayat* to be determined by the Legislature of the State.

14. Article 243-G along with Eleventh schedule indicates the nature and the kinds of functions to be discharged by the panchayats. Reading Article 243-G of the Constitution of India, it is manifest that, it does not guarantee assignment of a set of exclusive function to the panchayat. The constitutional guarantee under Article 243-G relating to the implementation of the schemes of economic development and social justice cannot be equated with imperative constitutional mandate. Article 243-G of the Constitution is an enabling provision. The said article

gives discretion to the state legislature to enact a law so as to endow the panchayats with such powers and authority as may be necessary to enable them to function as institutions of self government and such law may contain provision for devolution of powers and responsibility upon panchayat at appropriate levels subject to such condition as may be specified with regard to the preparation of plans for economic development and social justice and the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters enlisted in the Eleventh Schedule. This enabling provision is further subject to condition as may be specified. Therefore, it is for the state legislature to consider local conditions and make the law accordingly. It would also be open for the State to eliminate or modify provisions regarding devolution of powers upon the panchayats. Reference can be had to the judgment of the Apex Court in the case of **U. P. Gram Panchayat Adhikari Sangh and others Vs. Daya Ram Saroj and others** referred to supra.

15. The powers to be given to the village panchayat and its functions will vary from province to province and State to State and so Article 243-G does not give any hard and fast direction. It has been left to the State Legislature to enact a law as would be conducive for the panchayat in the State to function as institutions of self government and to put forth such conditions with regard to the preparation of plans for economic development

and social justice and implementation of scheme in that regard.

16. The State Legislature after Seventy-third amendment to the Constitution and introduction of Part IX in the Constitution has amended the provisions of the Maharashtra Village Panchayat Act.

17. The State of Maharashtra in its affidavit and as argued by the learned Additional Government Pleader has given the details of the subjects which were proposed to be transferred and the difficulties for transferring the said subjects to the Zilla Parishad. It is not that, the State had not taken the steps, but considering the changing scenario, it is not possible for the State to hand over the entire agriculture subject to the village panchayats or Zilla Parishads. The Apex Court in the case of **Bhanumati and others Vs. State of Uttar Pradesh through its Principal Secretary and others** (supra) has referred to the objects and reasons behind Seventy-third Constitutional amendment in Part IX and observed as under :

26. What was in a nebulous state as one of directive principles under Article 40, through Seventy-third Constitutional Amendment metamorphosed to a distinct part of constitutional dispensation with detailed provision for functioning of Panchayat. The main purpose behind this is to ensure democratic decentralization on the Gandhian principle of participatory democracy so that the panchayat may become viable and responsive people's bodies as an institution of governance and thus it

may acquire the necessary status and function with dignity by inspiring respect of common man. In our judgment, this Seventy-third Amendment of the Constitution was introduced for strengthening the Preambular vision of democratic republicanism which is inherent in the constitutional framework.

33. The Panchayati Raj Institutions structured under the said amendment are meant to initiate changes so that the rural feudal oligarchy lose their ascendancy in village affairs and the voiceless masses, who have been rather amorphous, may realize their growing strength. Unfortunately, effect of these changes by way of Constitutional Amendment has not been fully realized in the semi-feudal set up of Indian politics in which still voice of reason is drowned in an uneven conflict with the mythology of individual infallibility and omniscience. Despite high ideals of Constitutional philosophy, rationality in our polity is still subordinated to political exhibitionism, intellectual timidity and petty manipulation. The Seventy-third Amendment of the Constitution is addressed to remedy these evils.

38. Under the Constitutional scheme introduced by the Seventy-third Amendment, Government of the State is no longer a service provider but is a felicitator for the people to initiate development on the basis of equity and social justice and for the success of the system people has to be sensitized about their role and responsibility in the system.

18. Article 243-G read with Eleventh Schedule is not source of legislation and it is a provision that empowers a State enabling it

to endow functions and devolve powers and responsibilities to the local bodies by enacting relevant laws. The local body can only implement the schemes entrusted to them by the State. It is a matter of policy of the State Legislature to decide upon enacting a law as contemplated under Article 243-G of the Constitution. However, no directions in this regard can be issued by the Court. The Court cannot issue any directions to the legislature to make any particular kind of enactment. In doing so, the Court would be transgressing upon the sovereign power of the Legislative Assembly to enact the law. The Court cannot direct legislature to enact a particular law. In view of this, the Court in exercise of its power under Article 226 of the Constitution of India would not issue directions to the State Legislature to enact a law with reference to Article 243-G of the Constitution and it can only expect the State Legislature to enact the law. No mandamus as prayed would be issued in that regard.

19. The writ petition as such is dismissed, however, with no order as to costs. Rule discharged.

20 The civil application also stands disposed of.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]