

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9499 OF 2016

Smt. Jyoti Hanuman Patil .. Petitioner
Vs.
The Principal Secretary (Revenue) and ors. .. Respondents

WITH
WRIT PETITION NO. 7035 OF 2016

Nagesh Prabhakar Patil and ors. .. Petitioners
Vs.
The Principal Secretary (Revenue) and ors. .. Respondents

WITH
WRIT PETITION NO. 8276 OF 2016

Ms.Kalpana Dattatray Dhavle .. Petitioner
Vs.
The Principal Secretary (Revenue) and ors. .. Respondents

WITH
WRIT PETITION NO. 8421 OF 2016

Vandana Madhukar Kharmale and ors. .. Petitioners
Vs.
The Principal Secretary (Revenue) and ors. .. Respondents

WITH
WRIT PETITION NO. 8804 OF 2016

Shri Pradeep Krushnkant Bhoje .. Petitioner
Vs.
The Principal Secretary (Revenue) and ors. .. Respondents

**WITH
WRIT PETITION NO. 9917 OF 2016**

Shri Vishwanath Narayan Vetkoli and ors. .. Petitioners

Vs.

The Principal Secretary (Revenue) and ors. .. Respondents

Mr.Girish Paryani, for the Petitioners in WP/9499/2016, 8421/2016, 7035/2016, 8276/2016.

Mr.A.A.Kumbhakoni, Senior Counsel a/w Mr.Akshay Shinde, for the Petitioner in WP/8804/2016.

Mr.R.S. Apte Senior Counsel i/b Mrs.Suman Y. Lengare, for Petitioner in WP/9917/2016.

Mr.J.K. Khambata, Senior Counsel a/w Mr.Nitin Deshpande, Additional Government Pleader, for State.

Mr.S.B. Shetye, for Respondent No.4 – State Election Commission.

**CORAM : NARESH H. PATIL &
M.S.KARNIK, JJ.**

07th DECEMBER, 2016

P.C. :

. The petitioners were discharging their duties in the capacity of Land Acquisition Officer, Tahsildar, Deputy Collector, Revenue Officer in the respective districts. They came to be

transferred under order issued by the State Government. The State Government transferred them consequent to the instructions issued by the State Election Commission.

2. The State Election Commission issued directions in exercise of powers under Article 324 of the Constitution of India for conducting free and fair elections. One of the directions issued relates to transfer of employees entrusted with election duties who were found to be native of respective places.

3. The learned Senior Counsel Mr.Kumbhakoni submits that the said directions are more precisely mentioned in clause (c) of Directives dated 01/02/2016 which is at Exhibit 'C'. Clause (c) is contrary to the statutory provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short 'Act'). The learned Senior Counsel further submitted that the State is implementing these directions by causing inconvenience to various such officers in the State. It would be imaginary on the part of the State to believe that unless these

officers are transferred, no free and fair elections can be conducted in the State of Maharashtra. One of the suggestions given by the learned Senior Counsel is that at the most, officers could be sent on deputation for some period till the elections are over and could be brought back thereafter.

4. The learned Senior Counsel – Mr.Apte supported the contentions of the learned Senior Counsel appearing for the petitioner – Mr.Kumbhakoni.

5. The learned Senior Counsel Mr.Khambata referred to provisions of Section 4 of the Act. Sections 4(4) and 4(5) of the Act read as under :

4(4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May: Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:—

(i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;

ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority.

4(5) Notwithstanding anything contained in section 3 or this section the competent authority may, in special cases,

after recording reasons in writing and with the prior [approval of the immediately superior]¹ Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.

6. Learned Senior Counsel submits that the State Election Commission is empowered under the Constitution with statutory provisions to issue such necessary directions for holding free and fair elections. Consequent to the directions of the State Election Commission, the State was convinced that it is in the interest of holding free and fair elections that such directions are required to be issued. More than 450 officers were transferred by now. On instructions, learned Counsel therefore submits that no interference is warranted and necessary orders be passed as interim orders are running against the respondents.

7. Learned Counsel appearing for the State Election Commission submitted that officers above the rank of Tahsildar and at the level of Collector are involved in election process undertaken by the State Election Commission in respect of the

¹ Substituted for the words "permission of the immediately preceding Competent" by Mah.Act.No. 13 of 2007,s.3

State Municipal areas and Corporation areas. The State Election Commission has specific reason to issue such directions so that it would strengthen the confidence of the people in the election process. Learned Counsel submits that the State Election Commission continuously monitors the changing scenario and thereafter issues instructions from time to time. Learned Counsel submits that purpose and intention behind issuance of such directions should be taken into account. Learned Counsel submitted that various transfer orders were issued since February onwards. Very few of them, including petitioners approached this Court.

8. We perused the record and statutory provisions of the Act as also the judgment referred to by the learned Senior Counsel Mr.Khambata in the case of **Union of India Vs. Association for Democratic Reforms and another, 2002 DGLS (SC) 548.**

9. The provisions under Article 324 of the Constitution refers to superintendence, direction and control of elections to

be vested in an Election Commission. Such corresponding powers are conferred on the State Election Commission of the State of Maharashtra. We find that for holding free and fair elections, State Election Commission had issued these directions. During the course of hearing, we are informed that many Revenue Officers are posted in the native districts. This aspect needs to be reconsidered by the State Government for effective and fair administration of the State of Maharashtra.

10. It is likely that in some cases, some inconvenience could be caused to the employees who had been transferred due to holding of elections in a particular district or local area, but keeping in view the larger public interest, if the State Election Commission had taken a decision, the State Government would implement the same keeping in view constitutional intent and spirit and for holding free and fair elections. It is informed that in the State of Maharashtra, election process relating to elections of Corporations, Councils, Panchayats, Zilla Parishad, Village Panchayat is already set in motion.

11. The State Government and the State Election Commission are free to contemplate on the issue of transfer of officers keeping in view various aspects for consideration and frame a proper policy for future with sole objective of holding free and fair election.

12. For all these reasons stated above, we are not inclined to continue interim protection. Accordingly, interim relief stands vacated. The Writ Petitions stand disposed of.

13. At this stage, learned Senior Counsel Mr.Kumbhakoni submitted that interim protection granted earlier be continued for a period of 2 to 3 weeks. Request is opposed by learned Counsel for the respondents. We are not convinced with the request. Request stands rejected.

(M.S.KARNIK, J.)

(NARESH H. PATIL, J.)