IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 148 OF 2016

Shree Sandeep Pandurang Patil .. Petitioner
V/s
The State of Maharashtra & Ors. .. Respondents

Mr. A.S. Rao i/b Mr. P.L. Bhujbal for the petitioner.
Mr. C.P. Yadav, A.G.P. for the Respondent State.

CORAM: DR. MANJULA CHELLUR, CJ. &
M.S. SONAK, J.

DATE : 23rd SEPTEMBER 2016

__P.C.__:

This petition is filed challenging the self-seeking Bill passed on 5th August 2016 wherein enhancement of salaries of Members of Legislative Assembly and Members of Legislative Council as well as pension of ex-MLAs and ex-MLCs of the State came to be passed. The petition apart from challenging the Act in question, explains how the two Houses of Maharashtra Legislative Assembly was formed, by narrating the history right from 1861 till formation of Maharashtra Legislative Assembly in the year 1960 consisting of Vidhan Sabha and Vidhan Parishad.

2. According to the petitioner, the decision of the Legislative Assembly on 5th August 2016 would burden the State Exchequer with an estimation of Rs.125 crores per year. This would increase Rs.7.86 crores to this fund every month. It is also contended that if any former MLA or MLC has completed more than one term, the pension may again go up depending upon number of years of service. The contention of the petitioner seems to be that when it comes to increase in salaries and pensions of teachers or giving debt relaxation to farmers or providing adequate infrastructure to public, the Government come out with the excuse of deficit funds, but so far as the present Bill (now Act) is concerned, it is nothing but extra financial burden on the shoulders of people of Maharashtra.

3. Though at the time of filing the petition it was only a Bill, subsequently the enactment has come into existence on 24th August 2016 which is Maharashtra Act No. XXXII of 2016 dated 24th August 2016 as per the amendment carried out on 23rd September 2016. The petitioner also narrates details of the budget session for the year 2015-16 in order to indicate that the State of Maharashtra is going to pay interest towards the debts amounting to Rs.2,98,825.6 crores. The budgetary estimate, so far as the pension is concerned, is Rs.1,64,945.3 crores. With these figures, the petitioner contends that the enhancement of salaries of sitting MLAs / MLCs and increase in the pension of ex-MLAs / ex-MLCs would overburden Maharashtra's debt which in no manner extend any benefit to the

public at large. The petitioner further complains about the State not attending to alleged suicides of farmers due to debt burden. Instead of helping the poor and needy farmers and other citizens in the State of Maharashtra, the respondent authorities ought not to have proceeded with the Act in question. The Act in question provides nothing but irrational hike in salaries and life time pension for their minimum period of service. According to the petitioner, this is nothing but financial burden which will be thrown on to the people of the State for the benefit of few persons who are in power or who were in power.

4. The petitioner also claims that he has no personal interest of any nature in filing the present public interest litigation.

5. We have heard the learned counsel for the petitioner apart from going through the detailed averments made in the petition.

6. The learned A.G.P. answering the petition brought to the notice of the Court the earlier decision of this Court in Public Interest Litigation No.172 of 2014 which came to be disposed of on 2nd February 2015. In that petition, the challenge was to the constitutional validity of section 3(1)(a) of the Maharashtra Legislature Members' Pension Act, 1976 as amended by Maharashtra Act No.XXIV of 2013. By virtue of said amendment, pension of the

Members of Legislature in the State of Maharashtra was enhanced from Rs.25,000/- per month to Rs.40,000/- per month. This Court had occasion to see what was the pension drawn by the Members of Legislature right from 1977 upto 1993 and subsequent enhancement depending upon the number of years of service. By virtue of amending the provisions from time to time as on 8th January 2013, the pension payable became Rs.40,000/- (Rs.2,000/- for every additional year). The contention, that was raised, was with all the facilities provided to Members of Legislature during the tenure as members of Legislatures, why they should be paid for additional years service rendered by them, subsequent to completion of their tenure.

7. Similar provision with regard to payment of salaries to Members of Legislature so far as Tamilnadu Payment of Salaries Act (20 of 1951) came to be challenged before the Madras High Court in ***M/s Lily Thomas vs. State of Tamilnadu, AIR 1986 Madras 290.*** The Division Bench of Madras High Court upheld the Act of 20 of 1951 which provided payment of salaries to Members of State Legislature.

8. ***Writ Petition Nos.4120/2001, 3849/2001 and 18635/2002 decided on 18th February 2011 (Division Bench, Karnataka High Court)***. Challenges were mounted to Official Memorandum / Order conferring status of Deputy Minister on sitting

Members of Parliament, facilities of vehicles, stenographers, personal assistant etc. to be also provided to them and Members of Legislative Assembly. The government expressed the view that such facilities were given to enable them to function as public representatives and to aid in the MPLAD Scheme (Member of Parliament Local Area Development). The validity of the MPLADS has been upheld in Bhim Singh vs. Union of India and Ors., (2010) 5 SCC 538. The Court upheld the validity of the impugned Notifications, since the expenditure incurred by the State was for public purpose. Under Article 282 of the Indian Constitution, there is no restriction on such spending powers for public purpose, including facilities to legislators.

9. Further, in ***R.S. Joshi vs. Ajit Mills, AIR 1979 SC 2279***, the Apex Court observed that "when examining a legislation from the angle of its vires, the Court has to be resilient, not rigid, forward-looking, not static, liberal, not verbal in interpreting the organic law of the nation". The said judgment also makes approving reference to the view of the United States Supreme Court in Munn vs. Illinois, (1876) 94 US 113 that "courts do not substitute their social and economic beliefs for the judgment of legislative bodies."

10. In the present case, they have challenged the constitutional validity of the Act. Definitely we cannot question the competency of the State to enact such law. This is purely a policy matter where the State Legislature in its wisdom has come out with

such enactment. Nature of benefit is not alien to any other State. Almost all the States in India have made such provisions. Now the only question is why there has to be enhancement of salaries and pensions to the sitting and former Members of Legislature. With the price index going up due to inflation, the cost of living naturally is rising and the per capita income of the individual also is calculated vis-a-vis the inflation. The pay commission takes into consideration the inflation and likelihood of increase in the cost of living for about 10 years and recommends how the hike in the payment of salaries to various categories of employees should be made, both who serve Union of India and also respective States. When such policy decision in hiking the salaries of other group of working class is possible, we fail to understand why the salaries of Members of Legislatures and also the pensions of former MLAs / MLCs should not be increased. What amount should be paid as a salary to the Members of State Legislature definitely is a policy decision and the question is whether we should intervene in such policy decision by invoking extraordinary writ jurisdiction of this Court under Article 226 of the Constitution.

11. All the averments and arguments referring to the problems in the society, including the drought, deaths of farmers being on increase indicated in the petition vis-a-vis the wisdom in making the impugned enactment in question, would be best suited for debate on a different Floor rather than in a Court of law invoking

discretionary writ jurisdiction of this Court. Since it is a challenge with regard to feasibility in given circumstances, we decline to interfere since no constitutional principle being violated. There is nothing arbitrary or unreasonable in the exercise undertaken under questioned statute. We see no illegality in the exercise undertaken.

12. In the light of above discussion and reasoning, we are of the opinion that none of the grounds raised in the petition could be entertained and accordingly the PIL is dismissed.

(M.S. SONAK, J.) **(CHIEF JUSTICE)**