

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10917 OF 2015

Thane Zilla MadhyamikShikshak Sangh. .. Petitioner
 Vs
 The State of Maharashtra and Others. .. Respondents

WITH

WRIT PETITION NO.10827 OF 2015

Maharashtra Rajya Shala Kruti Samiti ...Petitioner
 Vs
 The State of Maharashtra and others ...Respondents

WITH

WRIT PETITION NO.10819 OF 2015

Maharashtra Rajya Prathamik Shikshak Sangh ...Petitioner
 Vs
 The State of Maharashtra and others ...Respondents

WITH

WRIT PETITION NO.10206 OF 2015

Maharashtra Rajya Prathamik Shikshak Sangh
 and ors. ...Petitioners
 Vs
 The State of Maharashtra and others ...Respondents

WITH

WRIT PETITION NO.9988 OF 2015

Maharashtra Rajya Prathamik Shikshak Sangh ...Petitioner
 Vs
 The State of Maharashtra and others ...Respondents

WITH

WRIT PETITION NO.11150 OF 2015

Shikshak Bharati and Anr. ...Petitioners
 Vs
 The Union of India and ors. ...Respondents

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Mr.Narendra V. Bandiwadekar a/w Mr.Sagar Mane for the Petitioners in WP/10917/15 and WP/10206/15.

Mr.Saurabh Dilip Butala for the Petitioners in WP/9988/15 and WP/10819/15.

Mr.Sachin S.Punde for the Petitioner in WP/11150/15.

Mr.Manish Pabale, AGP for State.

Mr. Y.R. Mishra a/w Mr.Dushyant Kumar for the Respondent No.5 in WP/10917/15.

Mrs.S.V.Bharucha a/w Mr.Y.R.Mishra and Mr.N.R.Prajapati for UOI.

Mrs.S.V.Bharucha a/w Mrs.Anjali Helekar for the Respondent No.1 in WP/10819/15.

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CORAM : A.S.OKA &

A.A. SAYED, JJ.

DATED : 28 SEPTEMBER 2016

ORAL JUDGMENT: *(Per A.S.Oka, J.)*

Rule. Learned AGP waives service for the State of Maharashtra and the officers of the State of Maharashtra who are party Respondents. Learned Counsel appearing for the Union of India waives service for the Union of India and its Officers. Taken up for final hearing.

2. The Petitioners in these Petitions filed under Article 226 of the Constitution of India are various organizations of the Teachers in the State of Maharashtra. The controversy involved in these Petitions is very narrow. The Union of India issued a Notification dated 25 June 2015 in pursuance of sub-rule (4) of Rule 3 of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 recording its decision to

prepare and update the Population Register. The notification further states that the field work for house to house enumeration throughout the country for collection of information relating to all persons who are usually residing within the jurisdiction of Local Registrar shall be undertaken from 1 July 2015 onwards. On 26 August 2015, the State Government issued a Notification on the basis of the said Notification dated 25 June 2015. By the said Notification, the State Government notified that the field work for house to house enumeration for collection of information relating to all local residents in the State of Maharashtra shall be conducted within a period of one month commencing from 10 October 2015 and ending on 9 November 2015.

3. The challenge in these Petitions under Article 226 of the Constitution of India is to the action of the State Government of requisitioning the services of teachers as enumerators for the purpose of doing the job of house to house enumeration for the implementation of the Notification dated 25 June 2015. The question involved in these Petition is whether in the light of Sections 25 and 27 of the Right of Children to Free and Compulsory Education Act, 2009 (For short "the Education Act"), the teachers can be compelled to work as enumerators for collection of information for updation of the National Population Register.

4. The submission of the Petitioners based on Section 27 of the Education Act is that forcing the teachers to work as enumerators is in breach of the prohibition imposed by Section 27. It is submitted that the work of updation of National Population Register is not covered by the exception carved out to Section 27 which enjoins that no teacher shall be deployed for non-educational purpose. Our attention is invited to provisions of Section 25 of the Education Act. Sub-Section (1) of Section 25 provides that within a period of three years of commencement of Education Act, the appropriate Government and the local authority shall ensure that Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school. Sub-Section (2) provides that for the purpose of maintaining the Pupil-Teacher Ratio, no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in Section 27. Our attention is also invited to the Schedule under the Education Act, which provides for the minimum number of working days/instructional hours in an academic year and minimum number of working hours per week for the teacher. Our attention is also invited to the Maharashtra Government Resolution dated 29 April 2011 issued in exercise of powers under the Education Act of fixing the minimum number of working days, instructional hours and minimum number of working hours per week for the teachers. The submission is that work of

enumerator for updation of National Population Register has nothing to do it with the decennial population census and therefore, forcing the teachers to work as enumerators will be in complete violation of Section 27 of the Education Act.

5. Learned AGP supported the impugned action. He invited our attention to the letter dated 19 October 2015 issued by the Directorate of Census Operations, Maharashtra under the Ministry of Home Affairs, Government of India. He urged that in the light of the directions of the Government of India that the State Government has requisitioned the services of the teachers. Learned Counsel representing the Union of India relied upon the Affidavit-in-Reply filed in Writ Petition No.9988 of 2015. The said Affidavit is by Shri S.S.Hiremath, Joint Director of Census Operations, Maharashtra, Mumbai. It was submitted that the work undertaken has a direct nexus with the Census work as set out in the Affidavit. The submission is that the work will be covered by the exception carved out in Section 27 of the Education Act. A reliance was placed by the Union of India upon the judgment and order dated 8 February 2016 of the Division Bench of the Madras High Court in Writ Petition (MD) No.2072 of 2016 (Tamil Nadu Primary School Teachers Federation v/s. The Home Secretary, Government of India and others). Our attention was invited to the

paragraphs 10 and 11 of the said decision. It was submitted that in view of the decision of the Madras High Court, no interference is called for.

6. We have considered the submissions. Section 27 of the Education Act reads thus:

27.Prohibition of deployment of teachers for non-educational purposes.- No teacher shall be deployed for any non-educational purposes other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be.

The mandate of Section 27 is that no teacher shall be deployed for any non-educational purposes. The exception to the said mandate is laid down in Section 27 itself. The exception will apply when the teachers are employed for the work of decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be. In the cases in hands, admittedly we are not concerned with disaster duty or duty relating to elections. The question is whether the work as enumerator for updation of National Population Register can be said to be the work relating to decennial population census.

7. Therefore, it will be necessary to consider the stand taken in the Affidavit of Shri S.S.Hiremath, Joint Director of Census Operations. In the said Affidavit, reliance is placed on the Notification dated 25 June 2015 issued by the Ministry of Home Affairs. The said Notification reads thus:

“MINISTRY OF HOME AFFAIRS
(OFFICE OF REGISTRAR GENERAL CITIZEN REGISTRATION
INDIA)
ORDER
New Delhi, the 25th June, 2015

S.O.1694(E).- In pursuance of sub-rule (4) of rule 3 of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, **the Central Government hereby decides to prepare and update the Population Register and the field work for house to house enumeration throughout the country for collection of information relating to all persons who are usually residing within the jurisdiction of Local Registrar shall be undertaken** with effect from the 1st day of July, 2015 onwards.”
(emphasis added)

8. On the basis of the said Notification the State Government issued the Notification dated 26 August 2015. The said Notification reads thus:

“CITIZENSHIP Act, 1955.

No.MIS.0815/CR-624/FDR-1.- Whereas, the Government of India has, in pursuance of sub-rule (4) of rule 3 of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 framed under the Citizenship Act, 1955 (57 of 1955), vide Government of India under dated the 25th June 2015 published in the Gazette of India, Extraordinary No.1332, dated the 25th June 2015, which is also republished in the Maharashtra Government

Gazette, Extraordinary No.61, Part IV-C dated the 25th August 2015 notified its decision to update the National Population Register and the field work for house to house enumeration through the country for collection of information relating to all persons who are usually residing within the jurisdiction of Local Registrar and the work shall be undertaken with effect from the 1st July 2015 onwards;

And whereas, the Government of India in the Ministry of Home Affairs, Office of the Registrar General Citizen Registration, India has directed all the State governments and Union Territories to publish in the State Gazettes, the enumeration period of one month for collection of necessary information for that purpose;

Now, therefore, the Government of Maharashtra hereby notifies that the fieldwork for house to house enumeration for collection of information relating to all local residents in the State of Maharashtra shall be conducted within a period of one month commencing from the 10th October 2015 and ending on the 9th November 2015.”

9. Hence, it is crystal clear from both the Notifications that the field work for house to house enumeration throughout the country for collection of information for preparation and updation of National Population Register was undertaken under the provisions of Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003. In paragraph 3, at page 22 of the said Affidavit, it is stated thus:

“The collection of demographic data of all population was undertaken along with 2011 Census. This was a first step to create basic frame for National Population Register of Indian Citizens as mandated under Section 14(a) of the Citizenship Act 1955 to prepare the National Register of Indian Citizens (NRIC) and issue of National Identity Cards (NIC). The Citizenship

(Amendment) Act, 2003 envisages the “compulsory” registration of every citizen of India and issue of National Identity Card by creating and maintaining a National Register of Indian Citizens (NRIC). NRIC will be maintained and updated by setting up NRIC Centres at Tehsil level and linking it with Registration of Births and Deaths.

Hence the NPR is the first step towards creation of a NRIC. Once the NPR is completed, the next step is creation of the National Register of Indian Citizens (NRIC) by verification of citizenship status of every usual resident in the NPR. It may also be mentioned here that several efforts are made in the past to create a Citizen Register in India. The first NRC was prepared in 1951 during 1951 Census. But this is the first time, such a huge task is completed with the full and active co-operation of teachers in 2011 Census who worked as enumerators and a mass data base could be created because of their active support in providing quality data.”

10. This statement on oath itself indicates that an exercise undertaken by the Government of India is under the provisions of the Citizenship Act, 1955 of preparation of National Population Register of Indian Citizens. In the further part of the Affidavit, it is stated that as teachers worked as enumerators in decennial population census of 2011, they have good rapport with the local people and are able to get accurate data. If the entire Affidavit is perused, it is not the stand of the Union of India that the work of decennial population census of the year 2011 is still incomplete or that the work of 2021 decennial population census has commenced. In fact, there is

no specific stand taken that the work sought to be assigned to the teachers is a part of the work of decennial population census. In paragraph 7 of the Affidavit, a specific stand has been taken that the work is of national importance. It is obvious that the work of preparation of the National Population Register is undertaken under the provisions of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003. All that can be said after reading the Affidavit is that the data collected during decennial population census of 2011 will form the basis of the work of preparation and updation of National Population Register as per the provisions of Section 14 of the Citizenship Act, 1955.

11. We have perused the provisions of the Census Act, 1948. Section 17A provides that the Central Government may by notification in its official gazette extend the provisions of the Census Act with such restrictions and modification as it thinks fit to pre-tests, pilot studies, census of houses which precede the population count and post enumeration check and evaluation studies or statistical surveys or any other operations as may be necessary for the purpose of census. We have perused each and every notification annexed to the Affidavit Shri Hiremath. None of the notifications indicate that the provisions of the Census Act have been extended by the Central Government by the exercise of powers under Section 17A of the

Census Act, 1948 to the work of preparation and/or updation of National Population Register.

12. Now, we turn to the decision of the Madurai Bench of the Madras High Court. Paragraphs 10 to 12 of the said decision read thus:

“10. As rightly contended by the learned Assistant Solicitor General, the conduct of fresh census is to be done once in every 10 years. National Population Register (NPR) stem out of such exercise. Updating thereof, necessarily would have to be a continuous exercise. The updating of NPR is to be seen as a part of the census exercise that of and causing entry of Aadhaar numbers an incidence thereof.

11. We would accept the contention of learned Assistant Solicitor General that communication of Tahsildar, Musiri dated 25.01.2016, requiring the primary school teachers to carry out the work of updating of National Population Register (NPR) and seeding of Aadhaar number in the NPR database during the school hours should be seen as a mistake. We record the submissions of learned Assistant Solicitor General that members of the petitioner-federation would not be required to carry out the work during school hours.

12. Accordingly, this Writ Petition is disposed of with the observation that the members of the petitioner federation shall not be required to carry out the work entrusted to them during school hours. No costs. Consequently, connected Miscellaneous Petition stands closed.”

It appears that the Madras High Court accepted the statement made by the learned Assistant Solicitor General that the work of updating NPR is part of the census exercise. Paragraph 11 shows that the Bench proceeded on the basis of the said factual contention canvassed by the learned Assistant Solicitor General. There is no adjudication made whether the said stand is factually correct. Moreover, it was not pointed out to the Madras High Court that the exercise is undertaken on the basis of Notification dated 25 June 2015 was under the provisions of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003. Therefore, the decision of the Madras High Court will not be a binding precedent.

13. Reliance was place on interim order passed by the Apex Court in Writ Petition (Civil) No.494 of 2012 (Justice K.S.Puttaswamy (Retd.) and another v/s. Union of India and others). The issue involved in the case before the Apex Court is completely different. The issue involved is as regards the right of privacy available to the citizens in the context of scheme of "Aadhaar Card". The said order has nothing to do with the controversy in hand.

14. Therefore, it is impossible to accept the submission that the work of preparation and updation of the National Population Register can be said to be a work forming a part of decennial population census or work in connection with decennial population census. All that can be gathered from the Affidavit of Shri Hiremath is that the data collected during 2011 decennial population census will be the basis for the preparation and updation of the National Population Register. Therefore, it is not possible for us to accept the contention that the work will be covered by the exception to Section 27.

15. Section 25 of the Education Act reads thus:

“25. Pupil-teacher Ratio.- (1) Within three years from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school.

(2) For the purpose of maintaining the Pupil-Teacher Ratio under sub-Section (1), no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in Section 27.”

Sub-Section (2) reiterates that for the purpose of maintaining the Pupil-Teacher Ratio under sub-Section (1), no teacher in a school shall be made

to serve in any other school or office or deployed for any non-educational purpose other than specified in Section 27.

16. In our view, the direction issued by the State Government to the teachers to work as enumerators for preparation and updation of the National Population Register will be contrary to the provisions of Section 27 of the Education Act, as the teachers will be deployed for non-educational purposes. The work will not be covered by the exception carved out in Section 27.

17. We may note here that now the work contemplated under the said Notification is already over. Therefore, while holding that the action of directing the teachers to work as enumerators for preparation and updation of the National Population Register is hit by Section 27 of the Education Act, it is not necessary to grant any specific relief in these Petitions in that behalf. Needless to add that no penal action or coercive action shall be taken against any teacher represented by the Petitioner who declined to work as an enumerator for the work of preparation and updation of the National Population Register and accordingly, any proceedings initiated in that behalf shall stand quashed and set aside.

18. With the above findings and directions, the Petitions are disposed of. Rule is made absolute on the above terms. There will be no order as costs. All concerned to act upon an authenticated copy of this Judgment.

(A.A. SAYED, J.)

(A.S.OKA, J.)