

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

WRIT PETITION NO.1514 OF 2017

1. Gokul S/o Shrirang Mundhe,
Age 43 years, Occ.Lecturer
in New Arts, Commerce and
Science College, Parner,
Dist.Ahmednagar.

2. Laxman S/o Kisan Pathare,
Age 57 years, Occ.Lecturer in
New Arts, Commerce and Science
College, Parner, Dist.
Ahmednagar.

3. Sunil S/o Narayan Pokale,
Age 62 years, Occ.Lecturer in
New Arts, Commerce and Science
College, Parner,
Dist.Ahmednagar.

4. Pradip S/o Shiaram Mutkule,
Age 46 years, Occ.Lecturer in
New Arts, Commerce and Science
College, Parner, District
Ahmednagar.

5. Anil S/o Chandrabhan Kale,
Age 46 years,
Occ.Lecturer in New Arts,
Commerce and Science College,
Parner, Dist.Ahmednagar.

6. Sukhdev S/o Laxman Kadam,
Age 47 years, Occ.Lecturer in
New Arts, Commerce and Science
College, Parner, Dist.Ahmednagar.

7. Ravindra S/o Narayanrao Deshmukh,

Age 47 years, Occ.Lecturer
in New Arts, Commerce and
Science College, Parner,
Dist.Ahmednagar.

8. Sajan S/o Laxman Kapade,
Age 50 years, Occ.Lecturer in
New Arts, Commerce and Science
College, Parner, Dist.
Ahmednagar.

9. Sambhaji S/o Mahipati Kale,
Age 50 years, Occ.Lecturer in
New Arts, Commerce and Science
College, Parner, Dist.
Ahmednagar.

10. Raghunath S/o Eknath Najan,
Age 46 years, Occ. Lecturer in
New Arts, Commerce and Science
College, Parner, Dist.Ahmednagar.

11. Rahul S/o Saidaji Diggikar,
Age 42 years, Occ.Lecturer in
New Arts, Commerce and Science
College, Parner, Dist.
Ahmednagar.

12. Vijay S/o Punju Deore,
Age 51 years,
Occ.Lecturer in
New Arts, Commerce and Science
College, Parner, Dist.
Ahmednagar.

13. Vijaykumar S/o Subhrav Raut,
Age 40 years, Occ.Lecturer in
New Arts, Commerce and Science
College, Parner, District
Ahmednagar.

14. Dattatray S/o Vinayak Dalvi,
Age 58 years, Occ.Lecturer
in New Arts, Commerce and Science
College, Parner, District
Ahmednagar.

15. Sanjay S/o Mohan Gaikwad,

Age 46 years, Occ.Lecturer in
New Arts, Commerce and Science
College, Parner, District
Ahmednagar.

16. Deepak S/o Pandharinath Sontake,
Age 38 years, Occ.Lecturer in
New Arts, Commerce and Science
College, Parner, District
Ahmednagar.

17. Dattatray S/o Sheshrao Ghungarde
Age 42 years, Occ.Lecturer in
New Arts, Commerce and Science
College, Parner, District
Ahmednagar.

18. Yuvaraj S/o Manohar Waghere,
Age 35 years, Occ.Lecturer in
New Arts, Commerce and Science
College, Parner, District
Ahmednagar.

19. Avinath S/o Vishnupanth
Mancharkar, Age 53 years,
Occ.Lecturer in New Arts,
Commerce and Science College,
Parner, District
Ahmednagar.

20. Hanumant S/o Yedu Gaikwad,
Age 48 years, Occ.Lecturer in
New Arts, Commerce and Science
College, Parner, District
Ahmednagar.

21. Bhimraj S/o Jayram Kakade,
Age 52 years, Occ.Lecturer in
New Arts, Commerce and Science
College, Parner, District
Ahmednagar.

... Petitioners.

Versus

1. The State of Maharashtra
through its Chief Secretary,

General Administration
Department, Mantralaya,
Mumbai-32.

2. The Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.

3. The Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.

4. The State Election Commission,
through its Secretary,
Mumbai.

5. The Returning Officer,
Zilla Parishads and Panchayat
Samitis General Elections,
2017, Taluka Parner,
District Ahmednagar. ... Respondents.

...
Mr.S.B.Talekar, advocate for the petitioners.
Mrs.V.S.Patil, A.G.P. for the State.
Mr.S.T.Shelke, advocate for Respondent Nos.4 and
5.

...

**WITH
WRIT PETITION NO.1473 OF 2017**

1. Raju S/o Baliram Gore,
Age 48 years, Occ.Service,

2. Jairam S/o Gena Mete,
Age 58 years, Occ.Service.

3. Suryakant S/o Murlidharrao
Jogdand, Age 49 years,
Occ.Service,

4. Ghansham S/o Dharbaji Gore,
Age 51 years, Occ.Service,

5. Angad S/o Govindrao Pawar,
Age 54 years, Occ.Service.

6. Suryakant S/o Dashrathrao Gire,
Age 53 years, Occ.Service.

7. Nanasaheb S/o Shankarrao Gaikwad,
Age 49 years, Occ.Service,

8. Balajisingh S/o Ramkishansingh
Thakur, Age 42 years, Occ.Service,

9. Sahebrao S/o Ramrao Maldode,
Age 41 years, Occ.Service.

10. Namdeo S/o Nivarati Mundhe,
Age 47 years, Occ.Service,

11. Ramesh S/o Baloji Mahewar,
Age 50 years, Occ.Service.

12. Nanasaheb S/o Pundhlikrao
Suryawanshi, Age 50 years,
Occ.Service.

13. Amrut S/o Sawaji Jadhav,
Age 50 years, Occ.Service.

14. Ramesh S/o Mohanrao Dhondge,
Age 52 years, Occ.Service,

15. Navnath S/.o Nivrutti Bendre,
Age 34 years, Occ.Service.

16. Madhav S/o Marotirao Kendre,
Age 44 years, Occ.Service.

17. Jayram S/o Shriram Suryawanshi,
Age 34 years, Occ.Service,

18. Sanjaykumar S/o Virbhadrappa
Mandge, Age 52 years, Occ.Service.

19. Subhash S/o Ramkrishna Gundawar,
Age 52 years, Occ.Service.

20. Balaji S/o Babanrao Bondare,
Age 46 years, Occ.Service,

21. Shivraj S/o Subhanrao Mangnale,
Age 41 years, Occ.Service,

22. Shivaji S/o Mansingrao Kendre,
Age 48 years, Occ.Service,

23. Dhananjay S/o Manikrao Pawar,
Age 52 years, Occ.Service.

24. Dr.Limbraj S/o Sopanrao Ravangave,
Age 54 years, Occ.Service,

25. Dr.Namdeo S/o Tukaram Khandare,
Age 52 years, Occ.Service.

All R/o C/o Shri Sant Gadage
Maharaj Mahavidyalaya Loha,
Tq.Loha, Dist.Nanded. ... Petitioners.

Versus

1. The State of Maharashtra,
through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.

2. The State Election Commission,
through its Commissioner,
Madam Kama Road, New
Administrative Building,
Opp. Mantralaya, Mumbai.

3. The Returning Officer for the
Zilla Parishad, Panchayat Samiti,
Elections Loha, Tq.Loha,
District Nanded. ... Respondents.

...

Mr.A.G.Ambetkar, advocate for the petitioners.
Mrs.V.S.Patil, A.G.P.for the State.
Mr.S.T.Shelke, advocate for Respondent Nos.1 and
2.

**WITH
WRIT PETITION NO. 1643 OF 2017**

1. Dr. Parshuram S/o Vithalrao Pawar
Age: 42 years, Occu: Service,

2. Dr. Sainath S/o Bhanudas Zangade
Age: 33 years, Occu: Service,

3. Dr. Ramrao S/o Baburao Rampure
Age: 49 years, Occu: Service,
4. Dr. Bharat S/o Vithalrao Shinde
Age: 45 years, Occu: Service,
5. Dr. Nanasaheb S/o Balasaheb Patil
Age: 45 years, Occu: Service,
6. Dr. Shradhanand S/o Babasaheb Mane
Age: 45 years, Occu: Service,
7. Dr. Dhondiram S/o Panditrao Gadgile
Age: 35 years, Occu: Service,
8. Dr. Kalidas S/o Prabhakar Gudade
Age: 40 years, Occu: Service,
9. Dr. Sanjay S/o Prakashrao Balaghate
Age: 35 years, Occu: Service,
10. Dr. Varsha Fakira Dabhade
Age: 35 years, Occu: Service,
11. Dr. Sukhdeo S/o Govindrao Chavan
Age: 44 years, Occu: Service,
12. Dr. Gangadhar S/o Nagorao Sontakke
Age: 46 years, Occu: Service,
13. Dr. Sanjay S/o Namdeorao Gadpayale
Age: 46 years, Occu: Service,
14. Raghunath S/o Bhimrao Mortate
Age: 55 years, Occu: Service,
15. Dr. Mohan S/o Munjaji Damare
Age: 46 years, Occu: Service,
16. Chandrakant S/o Marotrao Lohande
Age: 49 years, Occu: Service,

All R/o C/o. Madhavrao Patil Art,
Commerce and Science College Palam,
Tq. Palam, Dist. Parbhani ... Petitioners.

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. The State Election Commission,
Through its Commissioner,
Madam Kama Road, New
Administrative Building,
Opp. Mantralaya, Mumbai.
3. The Returning Officer for the,
Zilla Parishad, Panchayat Samiti
Elections Palam, Tq. Palam,
Dist. Parbhani ... Respondents

...
Mr.A.G.Ambetkar, advocate for the petitioners.
Mrs.V.S.Patil, A.G.P. for the State.
Mr.P.S.Paranjape, advocate for Respondent No.2.

...

**WITH
WRIT PETITION NO. 1697 OF 2017**

1. Bakhale Dr. Sukhdeo Rakhmaji,
Age: 57 years, Occu:
Associate Professor,
2. Waghmare Bhausahab Sagaji,
Age: 57 years, Occu:
Associate Professor,
3. Bawake Dr. Balasaheb Bhimaji,
Age: 53 years, Occu:
Associate Professor,
4. Kalamkar Dr. Rajendra Parvati,
Age: 54 years, Occu:
Associate Professor,
5. Nagpure Vijay Bhausahab,
Age: 35 years, Occu:
Associate Professor,

6. Sayyed Sadik Bashir,
Age: 50 years, Occu:
Associate Professor,

Petitioners No. 1 to 6
R/o. C/o. C.D. Jain College of
Commerce, Shrirampur,
Dist. Ahmednagar.
7. Dalvi Dr. Anup Sahdeo
Age: 40 years, Occu: Professor,
8. Niphade Bhaskar Vinayakrao
Age: 54 years, Occu: Professor,
9. Cholke Sunil Pandurang
Age: 53 years, Occu: Professor,
10. Sangle Dr. Mohan Dattu
Age: 54 years, Occu: Professor,
11. Chaudhari Chandrabhan Bhanudas
Age: 39 years, Occu: Professor,
12. Khilari Dr. Sunil Prabhakar
Age: 53 years, Occu: Professor,
13. Tonde Babasaheb Sakharam
Age: 43 years, Occu: Professor,
14. Khilare Dr. Shashikant Kuber
Age: 42 years, Occu: Professor,
15. Kale Dr. Chandrakant Narhari
Age: 38 years, Occu: Professor,
16. Pawar Dr. Kulbhushan Wamanrao
Age: 40 years, Occu: Professor,
17. Varpe Dr. Babasaheb Dadabhau
Age: 52 years, Occu: Professor,
18. Baddhe Pravin Vishnu
Age: 46 years, Occu: Professor,
19. Gagare Amirtkumar Shankarrao
Age: 40 years, Occu: Professor,

20. Lokhande Dr. Ganesh Vishnu
Age: 37 years, Occu: Professor,
21. Shelke Dr. Balasaheb Shankar
Age: 42 years, Occu: Professor,
22. Auti Eknath Dharmaji
Age: 60 years, Occu: Professor,
23. Gardi Balu Pandurang
Age: 42 years, Occu: Professor,
24. Kakde Genudas Nivrutti
Age: 53 years, Occu: Professor,
25. Pawar Nanasaheb Chandrabhan,
Age: 48 years, Occu: Professor,
26. Barve Ramdas Vitthal
Age: 55 years, Occu: Professor,
27. Jagtap Rajendra Ramesh
Age: 39 years, Occu: Professor,
28. Ingle Chetan Devidas
Age: 36 years, Occu: Professor,
29. Vaidya Dr. Sanjay Govindrao
Age: 44 years, Occu: Professor,
30. Rahane Ashok Bhausahab
Age: 44 years, Occu: Professor,

Petitioners No. 7 to 29
R/o. C/o. R.B.N.B. College,
Shrirampur, Dist. Ahmednagar.

31. Dr. Nannar Ramdas Kisan,
Age: 54 years, Occu:
Associate Professor,
32. Bhoje Chandrakant Murlidhar,
Age: 40 years, Occu:
Associate Professor,
33. Mengal Narayan Hemaji,
Age: 36 years, Occu: Librarian,

34. Shinde Bhagwat Asaram,
Age: 38 years, Occu:
Associate Professor,
35. Karvar Anil Kisan,
Age: 54 years, Occu:
Associate Professor,
36. Patole Vijay Santu,
Age: 42 years, Occu:
Associate Professor,

Petitioners No. 30 to 36
R/o. C/o. S.S. Bharti
College of Education,
Shrirampur, Dist. Ahmednagar.... Petitioners.

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. The State Election Commission,
New Administrative Building,
Opp. Mantralaya, Madam Kama Road,
Mumbai-32.
3. The Returning Officer for
holding the elections of
Zilla Parishad & Panchayat
Samiti, Shrirampur, Dist.
Ahmednagar. ... Respondents

...
Mr.P.B.Shirsath, advocate for the petitioners.
Mrs.V.S.Patil, A.G.P. for the State.
Mr.S.T.Shelke, advocate for Respondent Nos.2 and
3.

...

WITH
WRIT PETITION NO. 1698 OF 2017

1. Dattaprasad S/o Dnyandeo Palwe
Age: 42 years, Occ: Service,
2. Dr. Prashant S/o Suresh Salve
Age: 36 years, Occ: Service,
3. Ashok S/o Vaijinath Shinde
Age: 51 years, Occ: Service,
4. Dr. Ashok S/o Raghuji Dolas
Age: 40 years, Occ: Service,
5. Dr. Abhimanyu S/o Ramkisan Dhormare
Age: 34 years, Occ: Service,
6. Ananda S/o Hiranman Ghongade
Age: 40 years, Occ: Service,
7. Arjun S/o Shankar Kerkal
Age: 37 years, Occ: Service,
8. Arun S/o Mahadeo Rakh
Age: 38 years, Occ: Service,
9. Dr. Ashok S/o Kadubhau Kanade
Age: 44 years, Occ: Service,
10. Dr. Bhagwan S/o Dinkar Sangale
Age: 45 years, Occ: Service,
11. Bramhanand S/o Jalindar Darade
Age: 26 years, Occ: Service,
12. Dr. Ajaykumar S/o Madhukar Palwe
Age: 46 years, Occ: Service,
13. Vijay S/o Yashwant Deshmukh
Age: 45 years, Occ: Service,

All R/o. C/o. Babuji Avhad
Mahavidyalaya, Pathardi, Tq.
Pathardi, Dist. Ahmednagar. ...

Petitioners

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,

Rural Development Department,
Mantralay, Mumbai-32

2. The State Election Commission,
Through its Commissioner,
Madam Kama Road, New
Administrative Building,
Opp. Mantralaya, Mumbai.
3. The Returning Officer for the,
Zilla Parishad, Panchayat Samiti
Elections Pathardi, Tq. Pathardi,
Dist. Ahmednagar ... Respondents

...
Mr.A.G.Ambetkar, advocate for the petitioners.
Mrs.V.S.Patil, A.G.P. for the State.
Mr.S.T.Shelke, advocate for Respondent Nos.2 and
3.

...

**WITH
WRIT PETITION NO. 1712 OF 2017**

1. Sanntosh Savleram Bhujbal
Age: 41 years, Occ: Service,
R/o At post Bhalwani,
Taluka-Parner
District-Ahmednagar.
2. Vasant Murlidhar Nikale
Age: Major years, Occ: Service,
R/o At Post Rahata
Taluka- Rahata
District- Ahmednagar.
3. Ashok Sampat Pise
Age: Major years, Occ: Service,
R/o At Post-Karjat
Taluka-Karjat
District-Ahmednagar
4. Balbhim Bhausahab Gawade
Age: Major years, Occ: Service,
R/o At Post Chawarsangavi
Taluka-Shrigonda,
District-Ahmednagar

5. Rushikesh Haribhau Khodade
Age: Major years, Occ: Service,
R/o At Post-Chakan,
Taluka- Khed, Dist. Pune.
6. Mahedag Asaram Patil
Age: Major years, Occ: Service,
R/o At Post-Pimpri
District-Pune.
7. Santosh Jabaji Lagad
Age: Major years, Occ: Service,
R/o At Post-Athwad,
Taluka and District-Ahmednagar
8. Bapusaheb Babasaheb Thorat
Age: Major years, Occ: Service,
R/o At Post-Takali Bhan,
Taluka-Shrirampur,
District-Ahmednagar
9. Sanjay Gajaba Thube
Age: Major years, Occ: Service,
R/o At Post- Kanhur Pathar,
Taluka & District-Ahmednagar
10. Vandas Pandurang Pund
Age: Major years, Occ: Service,
R/o At Post-Aarangaon,
Taluka & District-Ahmednagar
11. Ashok Bhanudas Navale
Age: Major years, Occ: Service,
R/o At Post-Karmala,
District-Solapur.
12. Bhagwat Ganpat Yadav
Age: Major years, Occ: Service,
R/o At Post-Karjat
Taluka-Karjat, District-Ahmednagar
13. Bhaskar Nivrutti More
Age: Major years, Occ: Service,
R/o At Post-Karjat
Taluka-Karjat, District-Ahmednagar

14. Kalyan Rajendra Watane
Age: Major years, Occ: Service,
R/o At Post-Devdhanora,
Taluka-Kalamb, Dist. Ahmednagar
15. Dattatray Malhari Chaudhari
Age: Major years, Occ: Service,
R/o At Post-Marwad,
Taluka-Mangalveda, District-Solapur
16. Pradeep Gopinath Magar
Age: Major years, Occ: Service,
R/o At Post-Jeur,
Taluka & District-Ahmednagar
17. Ashok Sahebrao Mhaske
Age: Major years, Occ: Service,
R/o At Post-Dahigaon,
Taluka & District-Ahmednagar.
18. Dagadu Shripati Kumbhar
Age: Major years, Occ: Service,
R/o At Post-Keloshi,
Taluka-Radhanagari, District-
Kolhapur
19. Baban Namdeo Kumbhar
Age: Major years, Occ: Service,
R/o At Post- Uplai,
Taluka-Barshi, District-Solapur
20. Ajit Popat Ingle
Age: Major years, Occ: Service,
R/o At Post-Karjat,
District-Ahmednagar
21. Pradip Mahadev Jagtap
Age: Major years, Occ: Service,
R/o At Post-Uplai,
Taluka- Madha,
District-Solapur
22. Mohammad rizwan Khan
Age: Major years, Occ: Service,
R/o At Post- Karjat,
District-Ahmednagar. ... Petitioners.

VERSUS

1. The State Election Commission,
Maharashtra State
Through
The Chief Election Officer,
Maharashtra State,
General Administrative Department,
Madam Cama Road,
Hutatma Rajguru Chowk,
Mantralaya Extension, Mumbai-32
2. The Returning Officer
Zilla Parishad and Panchayat
Samiti Election 2017
Having Office at Tahsil Office,
Karjat, Taluka-Karjat,
District-Ahmednagar ... Respondents.

...
Mr.A.K.Gawali, advocate for the petitioners.
Mrs.V.S.Patil, A.G.P. for the State.
Mr.S.T.Shelke, advocate for Respondent Nos.1 and
2.

...

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**

**Reserved on : 08.03.2017.
Pronounced on : 05.05.2017.**

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

1. Rule. Rule made returnable forthwith.
With the consent of the parties, the petitions
are taken up for final hearing.
2. All these Writ Petitions are based on

similar set of facts and involve common question of law, as such are decided together.

3. The petitioners herein are the Associate Professors, Lecturers and the members of the teaching staff of respective Colleges. These petitioners are allotted election duty for the elections of Zilla Parishad and Panchayat Samiti. The petitioners assail the orders of the Respondents allotting them election duty.

4. Mr.Talekar, learned counsel for the petitioner in his lucid manner canvassed following propositions :

a) Article 243-K of the Constitution of India deals with the elections to Panchayat Samiti. Article 243-K(4) provides that subject to the provisions of the Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with elections to Panchayats. 243ZA(2) similarly deals with elections to the Municipalities. Though the said

articles are brought into force with effect from 24.4.1993, the State Legislature has not yet passed any law with regard to conduct of the elections of the Panchayats or Municipalities on the lines of the Representation of the People Act, 1950 and the Representation of the People Act, 1951.

b) In absence of any Legislation by the State in this regard, the State Election Commissioner does not have power to utilise the services of the School or College teachers for the purpose of holding elections of Zilla Parishads, Panchayat Samitis and Corporations.

c) The Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 and the Rules framed thereunder do not provide for requisitioning of staff for election. Similarly the Panchayats and Municipalities Elections (Requisition of staff, premises, vehicles etc.) Order, 1995 (hereinafter referred to as Order 1995) passed by the State Election Commissioner on 2.3.1995 and more particularly clause 2 thereof specifically

provides for requisitioning of staff for election, the teachers are excluded therefrom. The learned counsel submits that in absence of any power, the Respondents could not have requisitioned the services of the members of the teaching staff of the Colleges and the Schools.

d) The Election Commission has to act as per law. When the Parliament or any State Legislature has made valid law relating to or in connection with elections then the Election Commissioner shall act in conformity and not in violation of such law. The learned counsel relies on the judgment of the Apex Court in the case of **"M.S.Gill Vs. Chief Election Commissioner** reported in **(1978) 1 SCC 405**.

e) While requisitioning the services of the petitioners, the Respondents have not followed the dictum of the Apex Court in the matter of **"Election Commission of India Vs. St.Mary's School"** reported in **(2008) 2 SCC 390**, wherein it is held that the teaching staff can be put on duties of election work only on holidays

and non-teaching days. The said order is by consensus. In the present case, the State Election Commission has asked the petitioners to undergo training on 4.2.2017, 10.2.2017 and 15.2.2017 all being working days. The said judgment was delivered considering the provisions in Section 159 of Representation of People Act, 1951 which required staff of certain authorities to be made available for election works including the staff of any institution which is financed wholly or substantially by funds provided directly or indirectly by Central Government or the State Government. There is no similar provision in the Order of 1995 passed by the State Election Commissioner, Maharashtra. As such the services of the members of the teaching staff of the private Colleges and Schools though aided can not be requisitioned for election duty.

f) The Respondents have also violated the judgment of this Court delivered in W.P.No.7482/2016, wherein this Court directed to appoint people such as retired teachers, retired Government servants on contract basis for the

purpose of performing the election duty in consultation with the State Government. The Election Commission was further directed to consider about appointment of permanent staff for that purpose. This Court had further made it clear that under no circumstances, teachers/lecturers/professors shall be asked to do election duty on working days as directed by the Apex Court.

g) The Order of 1995 is unconstitutional. The State Election Commissioner, Maharashtra State can not act as a super-Legislature and thereby arrogate the powers of law making unto himself. Clause 9 of Order 1995, prescribes punishment for offences under sub-clauses (1) or (2) of clause (9) with imprisonment for a term which may extend to one year or with fine or with both. The State Election Commissioner, Maharashtra has prescribed far more severe punishment than provided under Section 134 of the Representation of People Act, 1951 for breaches of official duties in connection with elections. The State Election in the garb of passing order

for regulating the conduct of elections can not take upon itself a purely legislative activity which has been reserved only to Parliament and the State Legislature. The learned counsel relies on the judgment of the Apex Court in the case of **"A.C.Jose Vs. Sivan Pillai"** reported in **(1984) 2 SCC 656**.

h) The State Government is under obligation to provide educational facilities at all levels to his citizens. Right to Education is implicit in the right to life which is also considered as a basic structure of the Constitution. It can not be dispensed even for holding elections for Panchayats and Municipalities.

i) The teachers who are requisitioned are illtreated at the hands of the Revenue Officers, Returning Officers. There is lack of accommodation, pick and choose policies are adopted by the Returning Officer while requisitioning the staff. The petitioners are required to work under Class III employees which

itself is derogatory. The Respondents have merely denied the allegations regarding illtreatment, lack of accommodation, non-payment of allowances. In fact specific instances are given in the petition to that effect.

5. Mr.Shelke, learned counsel for the Respondent Nos.4 and 5 eruditely put forth following submissions :

a) The allegations and averments made about illtreatment and other aspects is without any basis, substance and proof. The Apex Court has held in the case of "**Election Commission of India Vs. St.Mary's School**" referred to supra that number of Government/Semi Government/Local bodies employees fall short of required hands for conducting elections and the Election Commission has to requisition other staff like School Teachers etc. The said judgment is consensual. In the present case the services of the teachers are required for election duty. The Government also declares holiday on the day of poll. Training is also given to the petitioners on the

holidays.

b) In absence of Legislation for requisition of staff for election, the State Election Commission has legitimately under his powers issued order dated 2.3.1995. Clause 2 of the said order so also the expression in the explanation "any body" constituted under any law for the time being in force will have to be interpreted liberally, so as to include the College also which is established under the Maharashtra University Act. The Election Commission is the reservoir of power and can issue necessary instructions or orders for fair and free elections. The learned counsel relies on the judgment of the Apex Court in the case of **"Mohinder Singh Gill Vs. Chief Election Commissioner"** reported in [(1978)] SCC 405, **"A.C.Jose Vs. Sivan Pillai"** reported in [AIR (1984) SC 921], **"Union of India Vs. Association for Democratic Reforms"** reported in [(AIR (2002) SC 2112 and **"Prashant Bamb Vs. State and others"** reported in [2007(4) Mh.L.J.341].

c) It is further submitted by the learned counsel that Section 9-A(4) of Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961 also empowers the Election Commissioner to issue such special or general orders or directions consistent with the provisions of the Act for fair and free election. The Election Commission invoking the constitutional and statutory provisions has issued the order dated 2.3.1995.

d) Chapter II of the Maharashtra Zilla Parishads (Electro Divisions and Conduct of Elections) Rules, 1961 also permits the Collector to appoint Returning Officer and it is the general duty of the Returning Officer to do all such acts and things as may be necessary for effectually conducting the elections of Zilla Parishad and Panchayat Samiti. In view of this provision, the Returning Officer has issued orders soliciting services of the petitioners. To illustrate, in Parner Taluka around 1717 persons were required for election purpose and the staff of Government/Semi Government/Local body was not sufficient to meet the requirement

and, therefore, the petitioners were requisitioned.

f) The learned counsel further submits that Section 27 of the Right of Children to Free and Compulsory Education Act, 2009 also authorises the Election Commissioner to allot election duties to teachers. The State Election Commissioner has issued order dated 11.11.2008 that training of election duties be given on holidays as far as practicable.

g) The election work is a national work and the citizens including the petitioners are required to contribute in this work. The employees of Departments rendering essential services are not assigned election duties.

h) The teachers command high respect of the society including the Returning Officer. The allegations that they are treated like slaves or beasts is false. In our civilized society, it can not be thought of that the teachers are given the treatment like slaves. The Returning

Officers are Class I gazetted Officers and the Polling staff work under Officer and not under Zonal Officer. The allegations that Zonal Officers abuse Presiding Officers in most filthy language and that they are required to work under inhuman conditions, so also that Returning Officer adopt the policy of pick and choose while requisitioning the staff are totally incorrect.

i) The election duty is a pious obligation, in order to strengthen the democracy, it is expected of everyone to contribute in this holy work. The Writ Petition be dismissed.

6. We have considered the submissions canvassed by the learned counsel for respective parties, so also the provisions of the different statutes relied by the respective parties and the Order of 1995 issued by the State Election Commission.

7. Article 243-K dealing with elections to Panchayat and Article 243-ZA of the Constitution of India dealing with elections to the Municipalities empowers the Legislature of the

State to legislate and make provision with respect to all matters relating to or in connection with elections to Panchayats/Municipalities. These articles have been introduced with effect from 24.4.1993, however, as yet the State Legislature has not passed any law as contemplated under said Article 243-K and 243-ZA on the lines of the Representation of the People Act, 1950 and 1951.

8. Section 159 of the Representation of People Act, 1951 specifically provides that the authorities specified in sub-section (2) shall when so requisitioned by a Regional Commissioner appointed under clause (4) of Article 324 or the Chief Electoral Officer of the State make available to any Returning Officer such staff as may be necessary for the performance of any duties in connection with an election. University established under the Central Provincial or State Act is included therein, so also any other institution, concern or undertaking established by or under a Central Provincial or State Act or which is controlled or

financed wholly or substantially by funds provided directly or indirectly by the Central or the State Government is also included in it. The staff of such institution, University can be requisitioned for the purpose of election. The said provision of Section 159 of Representation of People Act would be applicable for the elections to the houses of Parliament and to the house or houses of the Legislature of each State. The State Legislature though empowered under Article 243-K(4) and Article 243-ZA(2) to enact laws for conduct of election of Panchayats/Municipalities has not enacted any law till date. The State Election Commission, as such has issued the order on 2.3.1995 namely the Panchayats and the Municipalities Elections (Requisitioning of staff, premises, vehicles etc.) Order 1995. The said order applies to the Panchayats and/or Municipalities. The same was necessitated because the relevant State Acts under which the Panchayats and the Municipalities are constituted did not provide for requisitioning the staff, premises, vehicles that may be required at or for an election to a

Panchayat or a Municipality. The State Election Commission, as such has exercised its powers in issuing the said order. The Election Commission has plenary powers to cope with certain situation which may not be provided for in the enacted laws and rules.

9. Clause 2 of the Order 1995 is relevant for consideration in the present matter. The same reads as under :

"2. Requisitioning of Staff for election. - Every State Government Department or Office, local authority, Corporation owned or controlled by the State Government, or a company or any subsidiary company set up by the State Government, in the State shall, when so requested, in the case of any election to a Municipal Corporation, by the Municipal Commissioner concerned or, in any other case, by the Collector, or by an officer authorised by the Municipal

Commissioner or, as the case may be, by the Collector (hereinafter in the Order referred to as "the requisitioning authority"), make available to them such staff as may be necessary for the performance of any duty in connection with the preparation and revision of electoral roll or list of voters and the conduct of election.

Explanation. - For the purpose of this clause, -

(1) the expression "a corporation" means any body corporate and shall include a society registered under the Societies Registration Act, 1860 (21 of 1860) in its application to the State of Maharashtra or any body constituted under any law for the time being in force;

(2) the expression "a corporation controlled by the State Government" shall include a

corporation in which not less than twenty five per cent of the paid up share capital is held by the State Government;

(3) the expression "staff" shall include officers."

10. Perusal of the said clause 2, it is manifest that it deals with the powers to requisition the staff for election. Explanation to the said clause 2 explains terminologies appearing in clause 2. The said provision explicitly provides that every State Government Department or office, local authority, Corporation owned or controlled by the State Government or a company or any subsidiary company set up by the State Government in the State shall when so requisitioned by the Municipal Commissioner in case of election to a Municipal Corporation or by the Collector make available to them such staff as may be necessary for the performance of any duty in connection with the preparation and revision of electoral roll or list of voters and the conduct of election.

The expression "Corporation" has been explained in clause (1) of Explanation to clause (2) which means any body corporate and also includes a society registered under the Societies Registration Act, or any body constituted under any law for the time being in force. The meaning of expression Corporation clarified in clause (1) of Explanation is referable to a Corporation owned by the State Government. It includes a society registered under the Societies Registration Act, however, such a Corporation is the one owned by the State Government and an expression a Corporation controlled by the State Government has been explained in clause (2) of the Explanation which means it includes a Corporation in which not less than twenty five per cent of the paid up share capital is held by the State Government. Clause (2) of the order 1995 which empowers requisition of staff for election has to be a person employed or working in a State Government Department or office, a local authority, Corporation owned or controlled by the State Government.

11. We have to read an Explanation in the context of the provision. An explanation does not enlarge the scope of the original Section that it is supposed to explain. It is settled law that explanation to Section is not a substantive provision by itself. It is entitled to explain the meaning of the words contained in the Section or clarify certain ambiguities. The explanation should be read so as to harmonise with and clear up any ambiguity in the main Section. It should not be so construed as to alter the ambit of the Section. Its basic function is to elucidate the main provision.

12. We will have to read and interpret the explanation to clause 2 of Order 1995 keeping in view the aforesaid principle of Interpretation. The expression "Corporation" referred to in clause 1 of the Explanation is the one referrable to Corporation owned by the State Government and the Corporation as referred to in clause 2 of Explanation is the one referable to Corporation controlled by the State Government. Private aided Colleges are excluded from the purview of

clause (2) of Order of 1995. Interpreting the said clause (2) even liberally we can not include private aided Colleges even remotely within the realm of clause (2) of the Order of 1995. No doubt, the Commissioner has the power to issue an order for requisition of staff but the order of 1995 as it stands excludes from its operation, the staff of private aided/unaided Colleges. Private aided Colleges can not be included within the realm of expression Corporation owned or controlled by the State Government. The private College is not a local authority nor a State Government Department or Office nor a subsidiary Company set up by the State Government. If the said clause (2) would have been on the lines of Section 159 of the Representation of People Act, 1951 then it could have been possible to hold the teachers working in aided Colleges receiving grant-in-aid from the Government to be liable for requisition for election duty. In absence of similar clause in Order of 1995, it will not be possible to hold that the teachers working in private aided/unaided Colleges can be subjected to requisition for the purpose of election duty.

The reliance placed on Maharashtra Zilla Parishads (Electoral Divisions and Conduct of Election) Rules, 1962, more particularly, the powers of the Returning Officer to appoint Presiding and/or Polling Officers would not enure to the benefit of the Respondents. The Returning Officer can appoint a Presiding Officer only from a staff which is requisitioned.

13. It is true that Section 27 of the Right of Children to Free and Compulsory Education Act, 2009 suggest that teachers can be deployed for decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislature or Parliament, as the case may be. However, the provisions of the Right of Children to free and Compulsory Education Act, would be applicable to the extent of primary teachers i.e. teachers teaching from 1st to 8th standard as the said Act is applicable for primary Schools imparting elementary education from Ist to 8th standard. The same would not apply to the teachers of higher secondary or Colleges.

14. There can not be any dispute that conduct of election is a pious obligation of the State and every citizen is required to contribute for the conduct of free and fair elections. There is no bar for the lecturers of Colleges offering voluntary services. In the case of **"Election Commission of India Vs. St.Mary's School"** referred to supra, Order of 1995 issued by the State Election Commissioner was not the subject matter of discussion nor in any of the judgments of the Division Bench of this Court referred to by the learned counsel it appears that the order of 1995 was a subject matter of debate.

15. Considering the aforesaid, it would not be within the powers of the Respondents to requisition the teachers of the aided/unaided Colleges for the purpose of election relying upon Order of 1995 issued by the State Election Commission. As it is held that the said order is not applicable to the teachers of aided/unaided Colleges and they do not come within the purview of clause (2) of the said Order, needless to

state the other clauses with regard to punishment etc. would also not apply to them. It appears that the elections are already over. As the order of 1995 stands today, it will have to be held that the services of the teachers of the Colleges can not be requisitioned for the election of the Panchayats and Municipalities. As we have held that the order of 1995 would not empower the Respondents to requisition the services of the staff of private aided and unaided Colleges for the elections of Panchayats and Municipalities. The other prayers would not survive.

16. Rule made absolute accordingly. No costs.

Sd/-

(K.L.WADANE, J.)

Sd/-

(S.V.GANGAPURWALA, J.)

