

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 5409 OF 2017

Satara Zilla Prathmik Shikshak
Sangh & Anr. ... Petitioners
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION (St.) No. 16025 OF 2017

Santosh Jaysing Vidhate & Ors. ... Petitioners
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION (St.) No. 16554 OF 2017

Pune Zilla Prathamik Shikshak
Sangh & Ors. ... Petitioners
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION (St.) No. 14356 OF 2017

Sou Suprabha Namdev Kumbhar & Ors. ... Petitioners
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION (St.) No. 14380 OF 2017

Sateshkumar Maruti Malave & Ors. ... Petitioners

Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION (St.) No. 14381 OF 2017

Suryakant Siddappa Hatture & Ors. ... Petitioners
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 5405 OF 2017

Sainkar Subhash Damodar & Ors. ... Petitioners
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 5618 OF 2017

Pagar Sanjay Babanrao & Ors. ... Petitioners
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION (St.) No. 14280 OF 2017

Sanjay Bhaurao Patil & Ors. ... Petitioners
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION (St.) No. 14288 OF 2017

Shivanand Vitthal Bharale & Ors. ... Petitioners
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION (St.) No. 14426 OF 2017

Suvidya Sadanand Patil & Ors. ... Petitioners
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION (St.) No. 16028 OF 2017

Pravin Dinkarrao Deshmukh & Ors. ... Petitioners
Vs.
The State of Maharashtra & Ors. ... Respondents

Mr. Suresh S. Pakale i/b S. M. Katkar, for the Petitioners in WP.
5409/2017, WPST. 16025/2017, WPST. 16554/2017, WP. 5405/2017.

Mr. Tanaji Mhatugade, for the Petitioners in WPST. 14356/2017.

Mr. Satish S. Raut, for the Petitioners in WPST. 14380/2017, WPST.
14381/2017, WPST. 14288/2017.

Mr. Sachin Gite, for the Petitioners in WP. 5618/2017, WPST.
14280/2017, WPST. 16028/2017.

Ms. Chaitrali A. Deshmukh, for the Petitioners in WPST. 14426/2017.

Mr. Nitin P. Deshpande, Addl. Govt. Pleader a/w C. P. Yadav, AGP for
the Respondent – State.

Mr. A. R. Kapadnis, for Respondent No. 2 & 3 in for Respondent No.
2 in WP. 5618/2017 & WPST. 14280/2017.

Ms. Anamika Malhotra, for Respondent No. 3 in WP. 5405/2017.

Mr. R. D. Rane, for Respondent No. 2 in WPST. 14356/2017.

Mr. Uday P. Warunjikar a/w Akshay Deshmukh and Siddhesh
Pilankar, for Respondent Nos. 2 & 3 in WPST. 14380/2017.

Mr. Vijay Killedar, for Respondent Nos. 2 & 3 in WPST. 14288/2017.

CORAM : B. R. GAVAI, &
RIYAZ I. CHAGLA, JJ.

DATE : JULY 11, 2017

PC.

1. Writ Petition (St.) Nos. 14288 of 2017, 14426 of 2017 and 16028 of 2017 are not on board. Upon mentioning, these petitions are taken on board and heard finally alongwith other petitions in the group.

2. These petitions have been basically filed challenging the Government Resolution dated 27th February, 2017 and the list prepared by the Chief Executive Officer of the Nashik Zilla Parishad (for short “CEO”) dated 10th April, 2017 classifying difficult and general areas for the purpose of transfer of primary teachers.

3. Heard Mr. Pakale, learned counsel appearing on behalf of the Petitioners, Mr. A. R. Kapadnis, learned counsel appearing on behalf of the Respondent - Zilla Parishad and Mr. N. P. Deshpande, learned Additional Government Pleader appearing for the Respondent – State.

4. Learned counsel Mr. Pakale submits that once the State Government in exercise of powers under Article 244 of the

Constitution of India issued the list of villages to be considered as tribal villages, it is not permissible for the CEO to further classify the same into difficult and non difficult areas. The learned counsel further submits that in view of Section 4 of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (hereinafter referred to as the “1996 Act”), the Government Resolution which classifies the tribal areas into difficult and non-difficult areas is illegal.

5. Learned counsel Mr. Pakale submits that two lists prepared by the CEO; one of the difficult areas and second of the non-difficult areas, are prepared in most arbitrary and illegal manner, and that too without application of mind. The learned counsel further submits that the petitions deserve to be allowed and the Government Resolution as well as the lists prepared by the CEO are liable to be quashed and set aside.

6. Learned counsel Mr. Sachin Gite, who appeared for the Petitioners in Writ Petition No. 5618 of 2017, Writ Petition (St.) No. 14280 of 2017 and 16028 of 2017 supported the contention of learned counsel Mr. Pakale.

7. By now, it is settled position of law that interference in

the policy decisions of the Government would not be warranted unless it is found that the policy is arbitrary, illegal, discriminatory or mala fide.

8. By the Government Resolution of 2017, the State Government has issued directions. framing a new policy for transfer of teachers working in various schools of the Zilla Parishad within the district. The term “difficult area” (अवघड क्षेत्र) has been defined as the places which are away from the Taluka headquarter wherein the facilities of transport for travelling to the village of the school are not available and where schools or villages are situated in remote hilly area. The term “general area” (सर्वसाधारण क्षेत्र) has been defined as the villages which are not included in the difficult areas.

9. Perused the affidavit in reply dated 26th July, 2017 filed on behalf of Respondent No. 1 by Mr. Asim Gupta, Secretary to the Government, Rural Development Department, Mantralaya, Mumbai, as also the affidavit filed by Mr. Girish Bhalerao, Dy. Secretary in the same department. It is stated therein that the Government has taken a decision in order to ensure that all the teachers work in the difficult areas and also to ensure that the teachers who work in the difficult

areas for a period of three years are again brought back to non difficult areas. By now, it is also a well settled position that a reasonable classification having nexus to the purpose, which has to be achieved, is a part of Article 14 of the Constitution of India. The State Government has framed a policy of identifying the areas to be difficult areas as not having proper access and the general areas which are easily accessible for the purpose of transfer so as to ensure that every teacher works in difficult areas. In our considered view, by no stretch of imagination, such policy can be said to be violative of Article 14 of the Constitution. On the contrary, we find that such a policy would lead towards equality, inasmuch as all teachers would be required to work in difficult areas and upon completion of three years tenure in the difficult areas, they would be entitled to come to the places, which are easily accessible.

10. A general allegation is made in the petitions that classification is arbitrary, without application of mind. It would have been more appropriate for the Zilla Parishad to place on record the methodology on the basis of which it has classified the areas into difficult areas and maximum difficult areas. However, that itself does

not discharge the Petitioners from discharging their initial burden. Not a single instance has been given in the petitions to show that the villages, which have been included / classified in the difficult areas are, in fact, not in the difficult areas. Conversely, it is also not an allegation that the villages which are included in non-difficult areas are, in fact, in difficult areas. It is presumed that an official act is done in a legal manner and it is for the person, who alleges that it has been done in an illegal manner, to prove the same.

11. We find that the challenge to the impugned Government Resolution, being violative of Article 14 of the Constitution, is without any substance. We also find that the contention of the Petitioners that the list prepared by the CEO of Zilla Parishad of classification of the areas as difficult and non difficult areas in an arbitrary and irrational manner, needs to be rejected.

12. Insofar as contention of the learned counsel Mr. Pakale on 1996 Act is concerned, Section 4 of the said Act reads as under:

“4. Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely:-

(a) a State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;

(b) a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs;

(c) every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level;

(d) every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;

(e) every Gram Sabha shall -

(i) approve of the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level;

(ii) be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;

(f) every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds by that Panchayat for the plans, programmes and projects referred to in clause (e);

(g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population

of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution;

Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;

Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes;

(h) the State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the district level:

Provided that such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat;

(i) the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;

(j) planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;

(k) the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas;

(l) the prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of

minor minerals by auction;

(m) while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with-

(i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;

(ii) the ownership of minor forest produce;

(iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;

(iv) the power to manage village markets by whatever name called;

(v) the power to exercise control over money lending to the Scheduled Tribes;

(vi) the power to exercise control over institutions and functionaries in all social sectors;

(vii) the power to control over local plans and resources for such plans including tribal sub-plans;

(n) the State Legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha;

(o) the State Legislature shall endeavour to follow the

pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district levels in the Scheduled Areas.

Continuance of existing laws on panchayats:”

13. It can be seen that the said provision requires that notwithstanding anything contained under Part IX of the Constitution, the legislature of the State shall not make any law under that part which is inconsistent with any of the features, which have been enumerated from clauses (a) to (o) of Section 4 of the 1996 Act. The Petitioners have not been in a position to point out a single feature which can be said to have been violated on account of passing the impugned Government Resolution.

14. It appears that the Petitioners are mixing the tribal area with the difficult area. The classification, as envisaged by the State Government, is not as a tribal and non-tribal area but is of the difficult and general areas. The classification on the basis of the villages being accessible and non-accessible cannot be said to be arbitrary, e.g. a particular village situated in a tribal area may be situated on a national highway having large frequency of vehicles. On the contrary, there may be a village which is situated at hardly 15 Kms. away from the

district headquarter, but there may be no facilities of road for going to such a place and, a person may be required to travel on feet. In that view of the matter, we find that the contention raised by the learned counsel appearing on behalf of the Petitioners is without substance. In any case, we find that the Petitioners have hurriedly approached this Court without permitting the Zilla Parishad even to make transfers. On account of status-quo, which is granted by the Vacation Bench of this Court, the process of transfer has been stalled. In that view of the matter, no case is made out for interference. All the writ petitions are, therefore, rejected, and accordingly disposed of.

15. It is made clear that since the Petitioners have approached in wholesale petitions challenging the entire Government Resolution and the entire list, the same would not come in the way of the individual petitioners if they have individual grievance.

16. At this stage, the learned counsel appearing on behalf of the Petitioners seeks extension of interim protection granted by the Vacation Bench of this Court by an order dated 5th May, 2017. The learned counsel appearing on behalf of Zilla Parishad and the learned AGP have vehemently opposed this request. We find that on account

of status-quo granted by this Court, the entire process of transfer was stalled, which has an adverse effect on the functioning of the entire Zilla Parishad schools in the entire districts. The prayer for extension of interim protection is therefore, rejected.

Sd/-
[RIYAZ I. CHAGLA, J.]

Sd/-
[B. R. GAVAI, J.]

Vinayak Halemath