

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10702 OF 2013

1. Smt. Ashalata Gokool Katake
2. Smt. Arunadevi Vijaykumar Bhosale
3. Smt. Nanda Pravin Deshmane
4. Smt. Sunanda Vishwanath Kadam
5. Smt. Sangita Mohan Suryavanshi
6. Smt. Kalpana Gulab Kamble
7. Smt. Vaishali Babanrao Ithape

Adults, Indian Inhabitants, having
address at Post Sus, Taluka: Mulshi,
District: Pune.

.... Petitioners

- Versus -

1. State of Maharashtra
Urban Development Department
Through the Additional Government
Pleader, High Court, Bombay
2. Government of Maharashtra
Rural Development and Water
Conservation Department
Through the Additional Government
Pleader, High Court, Bombay
3. Government of Maharashtra
Department of Education and Sports

Through the Additional Government
Pleader, High Court, Bombay

4. Director of Education (Primary)
Government of Maharashtra, Pune.
5. The Zilla Parishad, Pune,
Through the Chief Executive Officer,
Zilla Parishad, Pune.
6. Education Officer (Primary),
Zilla Parishad, Pune.
7. Block Development Officer,
Panchayat Samiti, Mulshi,
Pune.
8. Pimpri Chinchwad Municipal
Corporation, Through Municipal
Commissioner, Pimpri Chinchwad,
Pune.
9. Pimpri Chinchwad Municipal
Corporation School Board,
Through its Administrative Officer,
Pimpri Chinchwad, Pune.
10. Dilipkumar Dinanath Ved Pathak,
presently residing at Kalewadi,
Pune.
11. Kisan Laxman Gore,
presently residing at Varje,
Haveli, Pune.
12. Sandhya Mahadeo Potdar,
presently residing at Ganga Asiyana,
Theregaon, Chinchwad, Pune.

13. Smt. Asha Mahadeo Bhujbal,
presently residing at Khergaon,
Haveli, Pimpri Chinchwad, Pune. Respondents

Mr. S.S. Pakale with Ms Manisha Devkar & Mr. Avinash
R. Belge for the Petitioners.

Mr. P.P. More & Ms Neha Bhide, Asstt. Government
Pleaders, for Respondent Nos.1 to 3.

Mr. Nitin P. Deshpande for Respondent Nos.5 & 7.

Mr. Deepak R. More for Respondent No.8.

Mr. V.B. Tapkir for Respondent Nos.10 to 13.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : OCTOBER 13, 2017

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. By this petition under Article 226 of the Constitution of India, the petitioners challenge a decision dated 30-10-2013 as unconstitutional and *ultra vires* to Section 257(vii) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (for short “the MZP & PS Act, 1961”).

2. Mr. Pakale, appearing for the petitioners, fairly

stated that so long as this Court considers the legality and validity of the Order in the light of the provisions of the above Act, he does not wish to raise any larger or wider challenge, so also question.

3. However, Mr. Pakale would submit that we must note a few relevant facts so as to appreciate his challenge.

4. He would submit that the petitioners before this Court are seven in number. Some of them may have been served with an order of transfer but there are still a few amongst them who continue to serve a Primary School of the Zilla Parishad, Pune and respondent No.5 to this petition.

5. The respondent Nos.1 to 3 are the State and two of its Departments, namely, Rural Development and Water Conservation Department and Department of School Education and Sports, Government of Maharashtra.

6. The 4th and the 6th respondents before this Court are the Director of Education (Primary), Government of

Maharashtra and the Education Officer (Primary), Zilla Parishad, Pune, respectively, whereas the 7th respondent is the Block Development Officer, Panchayat Samiti, Mulshi, Pune. The 8th and the 9th respondents are the Pimpri-Chinchwad Municipal Corporation (“PCMC” for short) and its School Board respectively.

7. The respondent Nos.10 to 13 have been impleaded as party respondents because it is the case of the petitioners that the impugned Order/decision has been passed purely to accommodate them.

8. Mr. Pakale would submit that Annexure “A” is a copy of the Notification issued on 30-7-2009. He would submit that this has been issued so as to exclude the local areas mentioned therein from Mulshi Block, namely, Village Tathawade comprising Survey Nos.1 to 176 including Gaothan. This Notification is brought into effect from 6-8-2009. Then, the first respondent issued a Notification dated 30-7-2009 including the said area of the Block within the limits of PCMC. Thus, Village

Tathawade and the particular Block became part of the PCMC. The Zilla Parishad School situate in Tathawade, where the petitioners are employed, and the staff stood transferred to the PCMC.

9. The primary contention of Mr. Pakale is that, once these steps have been taken, then some incidental, consequential and ministerial acts are left to be performed so as to give effect to the Government Resolution (“G.R.” for short) dated 20-7-1999. Mr. Pakale would submit that this G.R., copy of which is at Annexure “C”, is complete in itself. He would submit that it is a Code by itself. That Notification leaves very little scope for the administrative machinery to interfere with the decision of the State.

10. Our attention has been invited by Mr. Pakale to the MZP & PS Act, 1961. He would submit that this Act is to provide for the establishment in rural areas of Zilla Parishads and Panchayat Samitis; to assign to them local Government functions, and to entrust the execution of certain works and

development schemes of the State Five-Years Plans to such bodies, and to provide for the decentralisation of powers and functions under certain enactments to those local bodies for the purpose of promoting democratic institutions and securing a greater measure of participation by the people in the said Plans and in local and Government affairs.

11. With this avowed and laudable object, the law has been enacted and sub-section (11) of Section 2 defines the term “District”. It means a District as constituted under Section 4 of the MZP & PS Act, 1961.

12. Thereafter, our attention has been invited to Section 4 which appears under the sub-head “Administrative Areas”. Mr. Pakale would submit that sub-section (1) of Section 4 says that subject to any alteration of boundaries which may be made in pursuance of the provisions of Chapter XV, every local area formed or constituted into a district under the relevant Code, but excluding therefrom the limits of a Municipal Corporation, Municipality, etc., shall be a District for the purposes of the Act,

namely, the MZP & PS Act, 1961. The sub-section (2) of Section 4, according to Mr. Pakale, would denote that where any District comprises only a part of the district under any relevant Code, or two or more districts so constituted, or parts of the two or more such districts, the State Government may, by a notification in the Official Gazette, declare which officers shall be the Collector and Commissioner, and which other officers referred to in the Act shall be such officers, in respect of that District for the purposes of the MZP & PS Act, 1961.

13. Thereafter, our attention is invited to some of the provisions in Chapter II to contend that Chapter XV deals with Alteration of Boundaries of Districts and Blocks. Mr. Pakale would submit that Section 254 appears therein and by sub-section (1) it gives a discretionary power to the State Government to include within, or exclude from, any District, any local area or amalgamate two or more Districts into one District or divide any District or Districts into two or more Districts or otherwise alter the limits of any District, or declare that any local area which is a District shall cease to be a District, and

thereupon the local area shall be so included or excluded or the Districts shall be so amalgamated or divided or the limits of the District so altered, or as the case may be, the local area shall cease to be a District.

14. It is submitted that this power can be exercised on the recommendation of any Zilla Parishad or *suo motu* by the State.

15. Thereafter Section 255 contains definition of the term “specified day”. That is the day from which the boundaries of a District are altered under Section 254. Mr. Pakale would submit that Clauses (vi) and (vii) to sub-section (2) of Section 255 refer to some matters which can be provided for by the State Government notwithstanding anything contained in the MZP & PS Act, 1961, or any other law for the time being in force but by an order published in the Official Gazette. These matters, *inter alia*, are the transfer, in whole or in part, of the assets, rights and liabilities of an existing local authority to any successor local authorities or the State Government, and the

terms and conditions for such transfer, and thereafter refers to the substitution of any such transferee for an existing local authority.

16. Mr. Pakale would submit that by virtue of the two Notifications dated 30-7-2009 and issued by both the Rural Development and Water Conservation Department and the Urban Development Department, what the authorities have done is to implement the G.R. of 20-7-1999. That is a G.R. on the subject of transfer of property/assets and liabilities by Zilla Parishads to the local authorities like the PCMC. That is a G.R. by the Rural Development and Water Conservation Department. Once this also provides for the transfer of the assets and liabilities of the Primary School together with the staff, then, the moment the stipulations in this G.R. are implemented, as in this case on 30-7-2009, none of the further measures can be of any assistance to the respondents in contending that the petitioners continue to be the Zilla Parishad Primary School Teachers. The Zilla Parishad would have no control and supervision over their services which stand transferred to PCMC.

17. Mr. Pakale invited our attention to Annexure “D”, page 36, which is a communication from the PCMC. It says that certain areas of Village Tathawade and its Gaothan stand included within the PCMC limits. Therefore, a Charge Officer needs to be put in place and some incidental matters have to be taken care of. That is why the Charge Officer would be responsible for collection of information and forwarding it to the PCMC. The information, *inter alia*, is the existence of Primary School, Staff, Anganwadi, Balwadi and the staff of Gram Panchayat as also their pay-scales and other terms and conditions of their service. It is submitted that on 7-8-2009 the information was provided and in that regard he relies upon page 39 of the paper-book. It is submitted that the Head Mistress of the Primary School of the Zilla Parishad in Mulshi, Taluka and District Pune, has forwarded the relevant information. Further, the Zilla Parishad, Pune, through its Block Development Officer has placed on record the position of the Teachers with their attendance as on 30-7-2009. Mr. Pakale would submit that even consent letters of the concerned Teachers have been obtained

and copies of the same are available from page 41 to page 47 of the paper-book.

18. Our attention is invited by Mr. Pakale to Annexure “G”, page 48, which is a communication from the Administrative Officer, Education Board of the PCMC to the Education Officer (Primary), Pune Zilla Parishad. It says that the Zilla Parishad Primary School, which is in Village Tathawade, is included in the decision of the State Government to transfer certain school properties at Village Tathawade and its Gaothan to the PCMC. Now the school will have to be handed over. There is a query from the Deputy Director of Education, Maharashtra State as to when the process/transfer would be complete. The Education Officer (Primary), Pune Zilla Parishad was informed that the Primary School at Village Tathawade is under his authority and control. It is, therefore, necessary that not only the articles and goods, but assets, properties and the staff and officers would have to be transferred to the PCMC. It is in these circumstances that he called for the necessary information from the Education Officer (Primary). This communication is dated 7-6-2011.

Thereafter, on 21-10-2011 the Pune Zilla Parishad through the Education (Primary) Department addressed a communication to the Secretary, Department of School Education and Sports, Government of Maharashtra, on the subject and this communication contains all the details.

19. It is, therefore, apparent that the relevant bodies and Departments of the Pune Zilla Parishad passed the Resolution and recommending the transfer. There was a Resolution of the Zilla Parishad itself. Copies of these have been relied upon by Mr. Pakale to submit that even when the Pune Zilla Parishad carried on correspondence, for example and illustration at page 56 of the paper-book, dated 24-4-2012 with the Rural Development and Water Conservation Department, Government of Maharashtra informing about the Zilla Parishad's Resolution so also the Chief Executive Officer of the Pune Zilla Parishad communicating with the Administrative Officer of the Education Board, the PCMC on 4-5-2012. What these communications refer to are the specific dates. The specific date is 30-7-2009 or, in any event, 6-8-2009. The authorities may correspond with

each other on the subject of transfer of the school's assets, properties and the staff but there is nothing therein which would take away the operation of the self-contained Code.

20. Mr. Pakale, therefore, relies upon Annexure “K”, page 59 of the paper-book, which is a letter of the Joint Secretary, Rural Development and Water Conservation Department approving the transfer, but even that, according to Mr. Pakale, refers to the G.R. of 20-7-1999.

21. It is in these circumstances that Mr. Pakale would fault the communication at page 60 from the Director of Education (Primary), Government of Maharashtra. It is submitted that the Deputy Director of Education (Primary) cannot reopen the concluded issues and matters by seeking to rely on this communication to submit that everything may have been agreed in principle but the actual process was not concluded in view of this communication. Mr. Pakale would submit that the Director of Education (Primary) instead of

performing the incidental task and duties or ministerial matters has sought to communicate through him and to the Department of School Education and Sports that the relevant or specified date would be 30-10-2013. That is how the G.R. dated 30-10-2013 is termed as a decision by Mr. Pakale. He may submit that Clause (2) of this decision may be employing the word “presently” (सध्या) but that does not mean that such Primary Teachers who are functional are on the roll of the Zilla Parishad Primary School on the date of the communication, namely, 30-10-2013.

22. The whole attempt of Mr. Pakale is to highlight the development between 30-7-2009 to 30-10-2013. There may have been alteration or changes in the posting and some transfers may also have been effected of the petitioners/Primary Teachers but those are of no consequence. We must reckon the date as 30-7-2009 or at least 6-8-2009 and should not permit the State to rely on the language of this impugned Government decision.

23. It is in these circumstances that Mr. Pakale, handing over a written note, has reiterated the submissions which we have noted above.

24. Mr. Pakale would also contend that once the areas/villages having been included within the municipal limits of the Pune Municipal Corporation, the Zilla Parishad authorities are denuded of their power and authority over these areas/villages. Consequently, the Teachers who have been employed in the Primary Schools located in the said areas/villages no longer remain under their control and supervision. Our attention is then invited to a G.R. dated 27-2-2017 r/w G.R. dated 12-9-2017 to submit that it would be applicable to only such Teachers employed within the territorial limits of the Zilla Parishads, as defined by the MZP & PS Act, 1961. The attempt is to demonstrate that the petitioners are no longer the Zilla Parishad Primary Teachers but their services are made over to the PCMC.

25. In support of his contentions, Mr. Pakale would rely

upon a communication dated 20-5-2017 to submit that this enacts a policy of the State. He would submit that though this is on the subject of extension of the municipal limits of the Kalyan-Dombivli Municipal Corporation, and including therein 27 villages coming under 28 Zilla Parishads and the schools of such Zilla Parishads would have to be then made over or transferred, still, the Zilla Parishad Teachers should not be shifted or transferred. The whole attempt is, therefore, to impress upon us as to what holds good for the Kalyan-Dombivli Municipal Corporation as a policy of the Department of School Education and Sports cannot be distinct or different for the instant Primary Teachers before us.

26. In the circumstances, he would submit that the writ petition be allowed.

27. Reliance is placed by Mr. Pakale on the Judgment of a Division Bench of this Court in Writ Petition No.7594 of 2017 along with other matter, decided on 18-7-2017 **{Euro School Education Trust v. Divisional Fee Regulatory Committee,**

Pune & Ors. }.

28. Needless to state that all the respondents before us have not agreed with this stand of the petitioners. Each one of them have submitted that there is no merit in the contentions of Mr. Pakale. Mr. Pakale's arguments overlook what the law specifically deals with. Each one of them would point out that there are three different Departments of the Government which are involved and concerned. The first is the Rural Development and Water Conservation Department. That controls the Zilla Parishads in the State. The next is the Urban Development Department under which all the Municipal Corporations of the State are placed. The third is the Department of School Education and Sports of the Government of Maharashtra. It is in-charge and deals with the primary education. It is not as if the G.R. is issued on 20-7-1999 setting out the procedure and thereafter the two G.Rs of the Rural Development and Water Conservation Department and the Urban Development Department, that the process is over. Once primary education is the subject of the Department of School Education and Sports

and equally the Primary Schools of the Zilla Parishads through the Education Officer (Primary) of the Zilla Parishad and the Directorate of Education (Primary), Maharashtra State, then, all the more the process is not complete, as suggested by Mr. Pakale. Nothing, therefore, could be read as a Code by itself, as is suggested by him. It is the whole process which must be looked at and not the role of one or two Departments or Wings. If all the three are required to act to complete the process, then, it is but natural that it is for the Government to direct the concerned Department to issue the orders, and that is precisely what has been done. Hence the petition has no merit. Even otherwise, the Teachers cannot dictate as to where and under whom they should be placed. Even if they continue as Zilla Parishad Teachers, it is not for them to dictate about their positing and transfer. If their services are made over to some other authority or are in the process of being made over, then, they cannot complain. Their employment, their service conditions and emoluments are not affected in the least. In the circumstances, there is no right vesting in them which can be

enforced through a writ of mandamus. Consequently, the writ petition be dismissed.

29. After hearing all parties and perusing the petition together with its annexures, we are unable to agree with Mr. Pakale.

30. The primary argument must be considered in the backdrop of the G.R. of 20-7-1999.

31. That is on the subject of the affairs of the Zilla Parishads, its properties, assets and liabilities being transferred to a Mahanagar Palika or Nagar Palika. This G.R. is issued by the Rural Development and Water Conservation Department. This G.R. refers to sub-section (2), Clause (vi) of Section 255 of the MZP & PS Act, 1961. Section 255 is a power of the State Government to make suitable provision by order when a District is altered. After sub-section (1) of Section 255 defines certain terms and which have to be understood and interpreted accordingly, unless the context otherwise requires by sub-section (2), the provision says that where during the term of office of

the Councillors of any Zilla Parishad, any local area is included within a District, any local area is excluded from a District, two or more Districts are amalgamated into one District, or a District is split up into two or more Districts, then, the State Government may, notwithstanding anything contained in the MZP & PS Act, 1961 or any other law for the time being in force, by an order published in the Official Gazette, provide for all or any of the matters enlisted in the sub-clauses of sub-section (2) of Section 255, and one of which pertains to transfer, in whole or in part, of the assets, rights and liabilities of an existing local authority (including the rights and liabilities under any agreement or contract made by it) to any successor local authorities or the State Government, and the terms and conditions for such transfer. Precisely this is the matter which has been provided for in the G.R. dated 20-7-1999. The Government was contemplating as to how the transfer in terms of Clause (vi) of sub-section (2) of Section 255 would come into effect. The transfer could be conditional or unconditional. If it is conditional, then what terms and conditions have to be set was

till that date not provided anywhere. There was nothing to advise or guide the authorities in that behalf. The G.R. was issued because the whole process is of a permanent nature. Once it is of a permanent nature, then the Zilla Parishad's assets, rights and liabilities have to be handed over and once they have to be handed over and transferred to such authorities, as in this case, namely, the PCMC, then what can be the provision or the terms set for such transfer is then dealt with in extenso. The first para deals with the matter of education.

32. At this stage, it would be relevant to refer to the provisions of the MZP & PS Act, 1961 to the extent it enlists the matters to be dealt with through the Committees. There are certain powers and there are certain duties and functions which the Zilla Parishad is required to perform and discharge. They are set out in the First Schedule to the MZP & PS Act, 1961. The Section 78 provides for appointment of Standing Committee, Subjects Committees and other Committees. We have found that consistent with the matters dealt with by the Zilla Parishad, one of which is education and sports that the G.R. dated 20-7-1999

refers to education. It should always be borne in mind that there are certain schools and under the control of the Zilla Parishads known as Zilla Parishad Schools. Once a school, on the alteration of a District or in any of the eventualities dealt with by sub-section (2) of Section 255 arising, is being transferred or handed over, then, the transfer is of not only the school and the classes but the teaching staff as well. If the teaching staff goes with a school and the school itself goes to some other local authority by virtue of alteration of the District or otherwise, then, it is but natural that those Teachers rendered surplus have also to be accommodated. Then, before the transfer of Teachers to another managing and administering authority like the PCMC, their consent has to be obtained. If some of them oppose their services being made over to the local body like the PCMC, then, they have to be accommodated elsewhere. Next comes the matter, and that only the classes or divisions should not be transferred. They have to be transferred together with Teachers. If there are any borrowings or loans and particularly from the Rural Development Fund and which has been taken by some of

the Gram Panchayats within whose limits these schools are located or situate, then, such borrowings and loans ought to be cleared before the transfer can take effect. Importantly, the land on which the building of the school is standing, if required to be transferred, then a valuation of both has to be obtained and the value or the amount determined after such valuation has to be first recovered from the transferee body like the PCMC in this case. Then comes the issue of Resolutions and to be passed by the Subjects Committees and the Zilla Parishads itself.

33. We do not see how Mr. Pakale can submit that on the issuance of the two G.Rs, one by the Rural Development and Water Conservation Department and another by the Urban Development Department, copies of which are at pages 27 and 29 of the paper-book, that the process is complete.

34. We should not, rather we are not required to go into any larger question or a wider controversy. The premise on which Mr. Pakale argues that what is self-contained and a Code by itself is these two G.Rs of 30-7-2009 and 20-7-1999, then, his

argument is entirely misconceived.

35. If nothing further was required to be done, then the G.R. of 20-7-1999 itself remains unimplemented or not complied with. All the steps and measures envisaged by the same have to be carried out. If one of the subjects dealt with by this G.R. is of education and transfer of school on account of either the inclusion of a local area within a District, or exclusion of a local area from a District, or amalgamation of two or more Districts, or split up of a District, and as in this case the exclusion of an area from a District, then, it is but natural that every Committee of the Zilla Parishad has a definite role to play. The Zilla Parishad, as a whole, is a body and deals with several matters and subjects enumerated in the MZP & PS Act, 1961 itself. If one of them is education and we are concerned here with the Primary School and primary education, then, it is clear that the subject of primary education being dealt with by the Zilla Parishads, its controlling authority is none other than the Department of School Education and Sports of the Government of Maharashtra. That Department through its Directorate of

Primary Education and the Education Officer (Primary) of the Zilla Parishad have to come on the scene and for completion of the process. Precisely that has happened in this case. After issuance of the two G.Rs of 30-7-2009, the other officials are expected to swing into action. That is how the transferee PCMC, on being informed of the State's decision by the Urban Development Department, took up the matter and through its Charge Officer sought information. Before we refer to any communication, we must bear in mind that the whole edifice of Mr. Pakale's argument is built on an extremely small issue and that is severance from the Zilla Parishad, Pune of Mulshi Block, Village Tathawade but not in its entirety. The areas, namely, Survey Nos.1 to 176 including Gaothan from the village are excluded from the District Zilla Parishad's control. It is not as if the whole village goes out of the limits or control of the Pune Zilla Parishad. It is but these survey numbers and Gaothan from this village which are excluded. They cease to be part of that village for the purpose of Part IX of the Constitution. The date from which cessation takes effect is 6-8-2009. Concededly,

therefore, Mr. Pakale refers to both the dates – 30-7-2009 as also 6-8-2009. The Primary School where the petitioners are working is on one of these survey numbers. Therefore, those survey numbers and the Gaothan now being included in the PCMC area that the PCMC must know what are the assets and rights it is gaining and what are the liabilities that it has to meet. If it has to take over a Primary School, then it must know how many Teachers are working, how many students are taking education and how many people are employed as non-teaching staff. That is why it called for this information. When this information is forwarded by the Head Master/Head Mistress of the Primary School in question, then, that has to have an endorsement for it to be authentic. That is how it is endorsed by the Block Development Officer, Panchayat Samiti, Mulshi (see page 40). Thereafter, in terms of the G.R. dated 20-7-1999 consent letters have to be obtained. That is how the consent letters from pages 41 to 47 are obtained from the concerned Teachers. That is not enough for all that we know up till now is that the Department of School Education and Sports of the

Government of Maharashtra, the Directorate of Primary Education and the Education Officer (Primary), Zilla Parishad, Pune are not aware of the decisions that have been taken to transfer or make over the Primary School and the Teachers so also the staff to the PCMC. That is how they became aware of the whole process only when the Administrative Officer, Education Board of the PCMC corresponded with the Education Officer (Primary) of the Zilla Parishad. That is how on 7-6-2011 he addresses a letter and informs this Education Officer (Primary) that the Directorate, and particularly the Deputy Director of Education has been repeatedly making inquiries. Now that the transfer of the Primary School is to take effect with its staff and Teachers, then, details have to be obtained and communicated to him. That is how the details are obtained from the Pune Zilla Parishad and which details are also forwarded by the Pune Zilla Parishad, as is required, to the Secretary, Department of School Education and Sports, Government of Maharashtra, under whom the Directorate as a whole itself functions and operates. At page 49 is this communication and it

refers also to the Resolutions of the Subjects Committees and of the Zilla Parishad as well. The Zilla Parishad itself convened a meeting of the Education Committee on 20-10-2011 and passed the requisite Resolution. Thereafter, there are Resolutions of the Zilla Parishad's Standing Committee. Thus, what we have on record is Subject No.572 and Resolution No.415 of the Education Committee of the Pune Zilla Parishad and passed in its meeting on 20-10-2011. The Standing Committee Resolution dated 25-10-2011 (Subject No.683 and Resolution No.867) and prior thereto the General Body Meeting of the Pune Zilla Parishad's Resolution dated 3-9-2011 (Subject No.489 and Resolution No.832). All these Resolutions have to be forwarded to the Rural Development and Water Conservation Department with copies to the concerned authorities.

36. On 4-5-2012, the Chief Executive Officer of the Pune Zilla Parishad informs the Administrative Officer, Education Board of the PCMC that the Resolution may have been passed on 30-7-2009 by the concerned Department of the Government to take effect from 6-8-2009 but on that day only the areas

which were to be transferred, are resolved to be transferred. Thereafter, there has been correspondence on 7-6-2011. The PCMC sought information and this communication informs that the School comprising of the Deputy Assistant Teachers, Graduate Teachers and Head Master, in all 20 and the non-teaching staff – Class-III – are now approved to be made over to the PCMC. Thereafter, the relevant details are annexed to his communication.

37. The acknowledgement comes on 13-12-2012 and prior thereto there is a reference made to the Deputy Director of Education's communication of 7-7-2012, as also of the Additional Commissioner of the PCMC dated 3-12-2012. All these communications are referred to in the letter at page 58 of the paper-book, which is addressed, once again, by the Administrative Officer of the Education Board of the PCMC to the Chief Executive Officer of the Pune Zilla Parishad. The Chief Executive Officer is requested to act on the letter of the Department of School Education and Sports dated 21-10-2011.

38. Thereafter, what we find is a letter of 5-4-2013. Even the Rural Development and Water Conservation Department informs the Chief Executive Officer of the Zilla Parishad, Pune that the Government has approved the Resolution No.832, dated 3-9-2011 of the Pune Zilla Parishad.

39. It is in these circumstances that we are unable to agree with Mr. Pakale that the Directorate of Primary Education or the Director of Primary Education, Government of Maharashtra is a usurper or has absolutely no role to play in the scheme of things. Mr. Pakale would then turn to the correspondence carried out by him as an interference in the process but it is not contrary to law. It is not an interference as well. It is to give effect to the Resolution passed in principle and to take effect after all the terms and conditions are complied with that he has come into the picture. He also comes into the picture because there is a correspondence equally by him with the Rural Development and Water Conservation Department, which is the controlling authority of the Zilla Parishads. That is why he informs that once the Departments of the State have

acted and performed their functions or discharged their obligation, it is the Controlling or the Supervising Authority of the Zilla Parishad which must place its stamp of approval. That is how the correspondence between the Pune Municipal Corporation and the Zilla Parishad is relied upon by him. The Directorate of Primary Education informs the Rural Development and Water Conservation Department that there is a requirement of approval to the transfer of Teachers, staff, etc.. It is in these circumstances that he also corresponds with the Department of School Education and Sports on 23-9-2013 (see page 61 of the paper-book). It is in these circumstances that the Department of School Education and Sports passes the Government Resolution or takes the requisite decision. Therefore, that decision is taken on 30-10-2013. We are not reading the word “सध्या” (presently) in Clause (2) of this G.R. at page 62 of the paper-book in isolation or out of context. If it is read in the context, it only means that there is compliance with the process enunciated in the G.R. of 20-7-1999 on the subject. Once that requires all these incidental and ancillary acts to be

performed, they may be ministerial, but while they are being approved or are being confirmed, it is open for the authorities to make a stipulation, as is to be found in Clause (2) and equally employ the word “presently”. All this is traceable to the sub-heading, Education, appearing in the G.R. dated 20-7-1999 together with its clauses. Therefore, there is a definite legal sanction, in the facts and circumstances of the present case, to the impugned decision.

40. As a result of the above discussion and finding no merit in the principal contention of Mr. Pakale, we have no hesitation in discharging the Rule and dismissing the petition but without imposing any costs.

41. We do not think that the principle relied upon by Mr. Pakale based on the Judgment of the Privy Council in the case of *Nazir Ahmad v. King Emperor* {AIR 1936 PC 253} would enable us to agree with him. All that *Nazir Ahmad v. King Emperor* (supra) says is that where a power is given to do certain thing in a certain way the thing must be done in that

way or not at all and other methods of performance are necessarily forbidden. We have found that there is, in the facts and circumstances before us, a power to do a certain thing and it is done in a certain way only. Therefore, any reliance on this principle is totally misplaced as far as the present controversy or facts are concerned.

42. We have already clarified that any larger issue and on the interpretation of Section 254 and Section 255, sub-section (2), Clause (a) of the MZP & PS Act, 1961 need not be considered or dealt with. Suffice it to say that even Clause (a) of sub-section (2) of Section 255 would support the factual conclusion that we have reached in this case.

43. The Rule is, therefore, discharged with no order as to costs. The order of status quo stands vacated forthwith.

44. At this stage, Mr. Pakale would submit that this Court may not vacate the interim order of status quo for it is running for more than three years. Secondly, its operation could be limited and restricted to those petitioners who are now going

to be displaced mid-term. They, therefore, be allowed to complete their term under the Pune Zilla Parishad. Mr. Pakale would urge that at least now their services stand transferred and even if this Court has not agreed with him that the word presently (सध्या) has to be interpreted by referring to the date 6-8-2009, the vacating of status quo would displace these Teachers and mid-term. They may be, therefore, allowed to report for duty to the PCMC.

45. It is this request which is opposed by Ms Bhide and Mr. Deshpande and equally by the counsel for the Zilla Parishad.

46. Having disagreed with Mr. Pakale on the principal issue or point and having found that there would be an administrative inconvenience and equally there would be disruption, we are of the opinion that the request of Mr. Pakale cannot be acceded to. However, in the facts and circumstances peculiar to this case and without this order being treated as precedent, only because there are some lady Teachers involved, while vacating the order of status quo which is operating till

date, we clarify that it would be open for all such petitioners to forward their consent/option and if that is forwarded within ten days from today, irrespective of the decisions which have been taken by the authorities earlier and duly implemented, the petitioners can be posted at a Primary School within close vicinity of Village Tathawade preferably so that they are not completely uprooted and dislocated. This may be done as a special case and till the end of the current academic session.

47. Mr. Pakale, on instructions, makes a statement that the Primary School at Village Tathawade, which is the subject-matter of the petition/litigation, is still functioning and from the same building and site. We inquired from Ms Bhide as to how this is possible given that all the decisions have been taken in relation to this school and for handing over and transferring it to the PCMC. It is stated by Mr. Deshpande, appearing for the Zilla Parishad, that till date the valuation of the land and building has not been carried out. The moment valuation report is prepared, the amount to be paid to the Zilla Parishad would be determined and after payment the process would be complete.

48. To say the least, this is disgusting. If the G.R. of 30-7-2009 contemplates the effective date as 6-8-2009 and the process could not be completed till 2013 and when it was about to be completed, the petition of this nature is filed and order of status quo is passed, that is utilised to postpone the obvious. All this gives, therefore, such ideas to the parties like the petitioners to take a chance and repeatedly. Mr. Pakale, on instructions, states that the school is still functioning and there is likelihood of four vacancies occurring in the near future. The petitioners can be accommodated, therefore, in the same school.

49. We clarify that even if the petitioners give option for being accommodated in the very Primary School, such option shall not be considered. The other option be considered so that the petitioners can be accommodated in a Zilla Parishad Primary School in a near-by village so as to allow him/her to complete the academic session in the event his/her/their children are school going.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)