

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

WRIT PETITION NO. 13044 OF 2018

GANGUBAI SAHEBRAO KHETMALIS ALIAS GANGUBAI BAPURAO
ANANDKAR AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioners : Mr. Vivek V. Tarde
AGP for Respondents : Mr. P. S. Patil

**CORAM : S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATED : 29th NOVEMBER, 2018

Order :-

Heard learned counsel for appearing parties.

2 This writ petition under Article 226 of the Constitution of India, is filed with following substantive prayers :-

"B. To declare the Government Resolution dated 11-10-2018 and amended provision in Section 10-1(C) of the Act of 1958 to the extent of its retrospective effect applicability from dated 31-03-2016 is unconstitutional and ultra-virus to Article 14, 15, and 16 of the Constitution of India by issuing writ of Mandamus or any other writ or direction.

C. To kindly be direct the respondent No.1 to decide the representation dated 31-10-2018 seeking for applicability of G.R. dated 11.10.2018 from the Members of village Panchayat who have been elected in 2015 election by issuing writ of mandamus or any other writ or direction."

3. Learned counsel appearing for the petitioners submits that respondents may be directed to apply amended provisions in section 10 (1)(C) of the Bombay Village Panchayats Act, 1958 (for short "Act of 1958") with retrospective effect from 31st March, 2016 instead of 11th October, 2018. According to learned counsel appearing for petitioners, said amended provision, since not applied with retrospective effect, therefore, same be declared as unconstitutional, ultra-virus to Articles 14, 15 and 16 of the Constitution of India. He further submits that if said provision is made applicable with retrospective effect to the case of the petitioners, in that case, the petitioners as a member of the Gram Panchayat would get protection.

4. Learned AGP submits that no mandatory direction can be issued to the Legislature to make an aforesaid amendment applicable with retrospective effect.

5. We have given careful consideration to the submissions advanced by the learned counsel appearing for parties and also perusal of the Government Resolution dated 11-10-2018 and also aforesaid amended provision under Act of 1958. It is abundantly clear that State Government intended to apply the said amendment prospectively. On plain reading of the aims and objects and amended provisions of the said Act, there is nothing to indicate that State Government intended to apply said amendment with retrospective effect.

6. It is not for the Court to embark / encroach upon the field occupied by the Legislature, keeping in view the concept of 'separation of powers' existing under the Constitution of India. No any special circumstances have been brought to our notice so as to invoke extra-ordinary writ jurisdiction under Article 226 of the Constitution of India. For the aforesaid reasons, we are unable to persuade ourselves to grant relief as prayed in the petition. In the circumstances, the writ petition deserves to be rejected. Accordingly, writ petition stands rejected. No costs.

[K. K. SONAWANE, J.]

[S. S. SHINDE, J.]

MTK