

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8136 OF 2017

- 1] Thane Zilla Madhyamik Shikshak]
Sangh, an organization registered under]
The Bombay Public Trust Act, 1950]
Having its registered office at :]
2nd floor, Rajeshwari Apartment,]
Palghar, Dist: Palghar,]
Maharashtra.]
- 2] Thane Zilla Madhyamik]
Shikshak Sangh Sahakari]
Maryadit Patpedi Ltd.,]
A society registered under the]
Maharashtra Co-operative]
Societies Act, 1960 having its]
Office at: Valan Naka, Palghar-Mahim]
Road, Palghar, Dist: Palghar,]
Maharashtra.]
- 3] Shri. Purushottam Thakasen Patil,]
Aged: 55 yrs, Occ: Teacher,]
Residing at: Rambaug, Post: Agarwadi,]
Taluka & Dist: Palghar, Maharashtra.]
- 4] Shri. Santosh Krishna Pawade,]
Age: 50 yrs, Occ: Teacher,]
Residing at: Shivneri Niwas,]
Navli, Palghar East,]
Dist: Palghar, Maharashtra.]
- 5] Bahujan Shikshak Shikshaketar]
Karmarchari Sansad (Maharashtra Rajya),]
Having its Regd. Office at: 204, C-Wing,]
New Shivdhara, Kadakpada,]
Kalyan (W), Dist: Thane 421 301,]

- Through its Chief Executive,]
Smt. Nirmala Ankush Mane.]
- 6] Nirmala Ankush Mane,]
Aged: 61 yrs, Occ: Retired,]
Residing at: 706 Saptashri CHS Ltd.,]
Barfiwala Colony Road, D. N. Nagar,]
Andheri (W), Mumbai-400 053.]
- 7] Samanvay Shikshak Pratisthan,]
Having office at: 201 Gautam Deep,]
Vishnu Nagar, Naupada, Thane.]
Through its Secretary]
Mr. Umakant Shankar Raut.]
- 8] Umakant Shankar Raut,]
Aged: 46 yrs, Occ: Instructor,]
Residing at: Ashthavinayak Co-op. Hsg.]
Society ltd., Bldg. No.C-4, Flat No.01,]
Sector – 16, Nerul, Navi Mumbai.]
- 9] Thane Zilla Madhyamik & Ucha]
Madhyamik Shala Mukhyadhyapak Sangh,]
Having office at: Masunda Co-op. Hsg. S. Ltd.,]
1st floor, Room No.107, Near Zilla Parishad,]
Thane. Through its Vice President]
Sandipan Janardan Mastud.]
- 10] Sandipan Janardan Mastud,]
Aged: 56 yrs, Occ: Head Master,]
Residing at: Gujarati Baug, Plot No.26,]
Tal: Shahapur, Dist: Thane.]
- 11] Maharashtra Rajya Shikshak Sena,]
Having office at: Masunda Co-op. Hsg.S. Ltd.]
1st floor, Room No.107, Near Zilla Parishad,]
Thane (West), through its Chairman]
Gokul Ramji Patil.]

- 12] Gokul Ramji Patil,]
aged: 51 yrs, Occ: Teacher,]
residing at: Plot No.50, Room No.B-18,]
Dyanda CHS Ltd., Savarkar Nagar,]
Thane (W) – 400 606.]
- 13] Maharashtra Rajya Manya Khajgi]
Pradhamik Shikshak/Shikshaketa]
Mahasangh, Indira Nagar, Rupadevi Pada]
No.1, Near Sanjay Gandhi Udyan,]
Wagle Estate, Thane – 400 604.]
Through its Chairman,]
Mr. Mahajan Mattu Prajapati.]
- 14] Mahajan Mattu Prajapati,]
Chairman, Maharashtra Rajya Manya Khajgi]
Pradhamik Shikshak/Shikshaketa]
Mahasangh, Indira Nagar, Rupadevi Pada]
No.1, Near Sanjay Gandhi Udyan,]
Wagle Estate, Thane – 400 604.]..Petitioners

Versus

- 1] The State of Maharashtra,]
Through the Government Pleader,]
High Court, Mumbai.]
- 2] The Secretary,]
Education Department,]
Government of Maharashtra,]
Mantralaya, Mumbai.]
- 3] The Secretary,]
Finance Department,]
Government of Maharashtra,]
Mantralaya, Mumbai.]
- 4] The Dy. Secretary,]
The Government of Maharashtra,]

- School Education and Sports Dpt.,]
Government of Maharashtra,]
Mantralaya, Mumbai.]
- 5] The Education Officer,]
Thane Zilla Parishad,]
Thane.]
- 6] The Superintendent,]
Pay Unit, Zilla Parishad,]
Thane.]
- 7] The Thane District Central]
Co-op. Bank Ltd., having its]
Office at: Chhatrapati Shivaji]
Path, P. B. No.19, Thane (W),]
Maharashtra – 400 601.]
- 8] The Thane Janata Sahakari]
Bank Ltd., having its Corporate]
Office at: TJSB House, Plot No.5B,]
Road No.2, Wagle Estate,]
Thane (W) – 400 604.]..Respondents

AND
WRIT PETITION NO.8139 OF 2017

The Thane District Central Co-op Bank Ltd.,]
a Co-operative Bank,]
having its Office at: Chhatrapati]
Shivaji Path, P. B. No.19,]
Thane (W), Maharashtra – 400 601.]
Through its authorized]
Representative Shri. Sanjay S. Patil.]..Petitioner

Versus

- 1] The State of Maharashtra,]
Through the Government Pleader,]
High Court, Mumbai.]
- 2] The Secretary,]
Education Department,]
Government of Maharashtra,]
Mantralaya, Mumbai.]
- 3] The Secretary,]
Finance Department,]
Government of Maharashtra,]
Mantralaya, Mumbai.]
- 4] The Dy. Secretary,]
The Government of Maharashtra,]
School Education and Sports Dpt.,]
Government of Maharashtra,]
Mantralaya, Mumbai.]
- 5] The Superintendent,]
Pay Unit, Zilla Parishad,]
Thane.]
- 6] The Education Officer (Secondary),]
Thane Zilla Parishad,]
Thane.]
- 7] The Thane Zilla Madhyamik and Uccha]
Madhyamik Shala Mukhyadhyapak Sangh,]
Masunda Co-operative Housing Society Ltd.,]
1st Floor, Room No.107, Near Zilla Parishad,]
Thane (W).]
- 8] The Samanvaya Shikshak Pratisthan,]
201, Gautam Deep, Vishnunagar,]
Naupada, Thane (W).]

- 9] The Maharashtra Rajya Shikshak Sena,]
(Thane Division),]
Masunda Co-operative Housing Society Ltd.,]
1st Floor, Room No.107, Near Zilla Parishad,]
Thane (W).]
- 10] The Bahujan Shikshak Shikshketar]
Karmachari Sansad (Maharashtra Rajya),]
204, C-Wing, New Shivdhara,]
Opposite Cinemax, Khadakpada,]
Kalyan (W), Dist. Thane – 421 301.]
- 11] The Thane Zilla Madhyamik Shikshak Sangh,]
an organization registered under]
The Bombay Public Trust Act, 1950,]
Having its registered office at:]
2nd floor, Rajeshwari Apartment,]
Palghar, Dist: Palghar,]
Maharashtra.]
- 12] The Thane Zilla Madhyamik]
Shikshak Sangh Sahakari]
Maryadit Patpedi Ltd.,]
A society registered under the]
Maharashtra Co-operative]
Societies Act, 1960, having its]
Office at Valan Naka, Palghar – Mahim Road,]
Palghar, Dist. Palghar, Maharashtra.]
- 13] The Thane Janata Sahakari Bank Ltd.,]
a Multistate Co-operative Bank,]
having its Head Office located at]
TJSB House, Plot No. B-5, Road No.2,]
Wagle Estate, Thane – 400 604.]..Respondents

ALONGWITH
CIVIL APPLICATION NO.366 OF 2018
IN
WRIT PETITION NO.8139 OF 2017

Maharashtra Rajya Shikshak Parishad,]
Having its Registered No.821/72,]
Through its President,]
Mr. Venunath Vishnu Kadu,]
Age 48 years, Occ: Nil,]
R/at – Gurudev – 1, Katrap,]
Badlapur, Dist. Thane – 421 306.]..Applicant

IN THE MATTER BETWEEN

The Thane District Central Co-op Bank Ltd.,]
a Co-operative Bank,]
having its Office at -]
Shivaji Path, P. B. No.19,]
Thane (W), Maharashtra – 400 601.]
Through its authorized]
Representative Shri. Sanjay S. Patil.]..Petitioner

Versus

- 1] The State of Maharashtra,]
Through the Govt. Pleader,]
High Court, Mumbai.]
- 2] The Secretary,]
Education Department,]
Government of Maharashtra,]
Mantralaya, Mumbai.]
- 3] The Secretary,]
Finance Department,]
Government of Maharashtra,]
Mantralaya, Mumbai.]
- 4] The Dy. Secretary,]
The Government of Maharashtra,]
School Education and Sports Dpt.,]
Government of Maharashtra,]
Mantralaya, Mumbai.]

- 5] The Superintendent,]
Pay Unit, Zilla Parishad,]
Thane.]
- 6] The Education Officer (Secondary),]
Thane Zilla Parishad,]
Thane.]
- 7] The Thane Zilla Madhyamik and Uccha]
Madhyamik Shala Mukhyadhyapak Sangh,]
Masunda Co-operative Hsg. Society Ltd.,]
1st Floor, Room No.107, Near Zilla Parishad,]
Thane (W).]
- 8] The Samanvaya Shikshak Pratisthan]
201, Gautam Deep, Vishnunagar,]
Naupada, Thane (W).]
- 9] The Maharashtra Rajya Shikshak Sena,]
(Thane Division),]
Masunda Co-operative Hsg. Society Ltd.,]
1st Floor, Room No.107, Near Zilla Parishad,]
Thane (W).]
- 10] The Bahun Shikshak Shikshketar]
Karmachari Sansad (Maharashtra Rajya),]
204, C-Wing, New Shivdhara,]
Opposite Cinemax, Khadakpada,]
Kalyan (W), Dist. Thane – 421 301.]
- 11] The Thane Zilla Madhyamik Shikshak Sangh,]
an organization registered under]
The Bombay Public Trust Act, 1950,]
Having its registered office at:]
2nd floor, Rajeshwari Apartment,]
Palghar, Dist: Palghar,]
Maharashtra.]

- 12] The Thane Zilla Madhyamik]
Shikshak Sangh Sahakari]
Maryadit Patpedi Ltd.,]
A society registered under the]
Maharashtra Co-op. Societies Act, 1960,]
Having its Office at -]
Valan Naka, Palghar – Mahim Road,]
Palghar, Dist. Palghar, Maharashtra.]
- 13] The Thane Janata Sahakari Bank Ltd.,]
A Multistate Co-op. Bank,]
Having its Head Office at -]
TJSB House, Plot No. B-5, Road No.2,]
Wagle Estate, Thane – 400 604.]..Respondents

Mr. P. S. Dani, Senior Counsel a/w Manish Gaikwad i/by E. A. Sasi, Advocate for the Petitioners in Writ Petition No.8136 of 2017.

Dr. D. S. Hatle i/by Deepak Jamsandekar, Advocate for the Petitioner in Writ Petition No.8139 of 2017 and for Respondent No.7 in Writ Petition No.8136 of 2017.

Mr. R. S. Apte, Senior Advocate i/by Mandar Limaye, Advocate for Respondent No.8 in Writ Petition No.8136 of 2017 and for Respondent No.13 in Writ Petition No.8139 of 2017.

Mr. S. M. Oka i/by S. A. Joshi, Advocate for the Applicant in Civil Application No.366 of 2018.

Mr. Kedar Dighe, AGP for Respondent – State in both the Writ Petitions.

CORAM : B. R. GAVAI &
B. P. COLABAWALLA, JJ.
DATE : 21st FEBRUARY, 2018

ORAL JUDGMENT: (Per B. R. Gavai, J.)

- 1] Rule. Rule made returnable forthwith. Heard by consent.
- 2] Since the facts and question of law raised in both the Petitions are common, the same are being decided and disposed of by this common judgment and order.
- 3] Writ Petition No.8136 of 2017 is filed by various Associations of teachers as well as individual teachers from Thane and Palghar districts. The Writ Petition No.8139 of 2017 is filed by the Thane District Central Co-operative Bank, which was earlier entrusted with the work of disbursement of salary of the teaching and non-teaching staff of aided and unaided Primary, Secondary and Higher Secondary Schools (hereinafter referred to as “the said employees” and “the said schools”) till the impugned Government Resolution came to be issued on 14th June 2017. By the impugned Government Resolution dated 14th June 2017, the said work has been entrusted to the Thane Janata Sahakari Bank Ltd. the Respondent No.8 in the first Petition and the Respondent No.13 in the second Petition. For the sake of convenience, Thane District Central Co-operative Bank would be referred as “TDCC”, whereas

the Thane Janata Sahakari Bank Ltd. would be referred as “TJSB”.

4] The facts in brief giving rise to the present Petitions are as under :-

The Government of Maharashtra after taking into consideration that there were various malpractices in the matter of payment of salaries to the said employees of the said schools in the entire State of Maharashtra, issued a Government Resolution dated 29th May 1973, which was clarified by the subsequent Government Resolution dated 25th June 1973. Vide the said Government Resolution, which was issued by the School Education Department, it was provided that the disbursement of the salaries to the said employees of the said schools shall be entrusted to the District Central Co-operative Bank in the State of Maharashtra. A detailed procedure for opening accounts etc. was provided in the said Government Resolution. It is not in dispute that subsequent to the said Government Resolution, TDCC was entrusted with the work of disbursement of salary of the said employees of the said schools from 1973 onwards, which was continued till the impugned Government Resolution was issued.

5] It appears that the State of Maharashtra in the Finance Department issued a Government Resolution on 29th August 2005, vide which it took a decision to entrust the work of payment of salaries of the employees of the State Government from the Nationalized Banks as well as from private Banks, list of which was annexed alongwith Government Resolution dated 29th August 2005.

6] It further appears that, the Education Department in order to bring the payment of the salaries in tune with the provisions contained in Government Resolution dated 29th August 2005, issued by the Finance Department, issued Government Resolution dated 3rd November 2012, so that the payment of salary is done in timely manner and to further ensure that the public exchequer is benefited. Perusal of the said Government Resolution dated 3rd November 2012 would reveal that the State Government has taken note of various complaints to the effect that the said employees of the said schools were not receiving their salaries in timely manner. It further noted that, the State Government had issued a Government Resolution dated 29th August 2005 and therefore taking into consideration the said policy of the State

Government, it was necessary that the disbursement of salary should be done only through the Electronic Clearing System. It further states that vide Government Resolution dated 3rd August 2012, the State Government had decided that the payment of salary should be done by the Banks who are having Core Banking facilities and who are in a position to deposit salaries of the said employees directly in the account of the said employees, on first of every month. It further refers that NABARD has made it mandatory for District Central Co-operative Banks to have Core Banking facilities by 31st March 2013. The Government Resolution further refers to the precarious conditions faced by certain District Central Co-operative Banks. The Government Resolution further states that accordingly the State Government has taken a following decision. A true translated version of the relevant part of said Government Resolution dated 3rd November 2012 reads thus :-

“GOVERNMENT RESOLUTION

- I) It is necessary to pay salary and allowances to the Teaching / Non-teaching Staff in each District through the Bank having core banking facility, as per the Government Resolution dated 3rd August, 2012. However, those District Co-operative Banks which shall give undertaking (Proforma enclosed herewith) on the below mentioned points upto the date 30/11/2012, they will be given extension upto

the date 31st March, 2013.

- a) The concerned District Co-operative Banks shall make available core bank services up-to-the date 31st March, 2013.
 - b) However, now onwards, after receiving the funds from the Government every month, the concerned Co-operative Banks shall credit salary etc. of Teaching / Non-teaching staff within next four working days to the individual Bank Accounts of the Teaching /Non-teaching Staff .
- II) Those District Co-operative Banks which shall not give undertaking, as aforesaid, up-to-the date 30/11/2012, the work should be entrusted to any other bank having core banking facility in such district. For this purpose, procedure mentioned in Government Resolution dated 3/08/2012 shall be followed.
- III) In-spite of having given the undertaking, if core banking facility is not made available up-to-the date 31/03/2013, then in such district work should be entrusted to another bank having core banking facility, as per the Government Resolution dated 3/08/2012.
- IV) Hereafter, service charges (commission) (together with arrears) shall not be payable to the Co-operative Banks.
- V) Those banks which shall going to do the work of salary and allowance, for them parking interest should be charged.”

7] It could thus be seen that, by the 3rd November 2012 Government Resolution, the State Government has taken a conscious decision that only such of the Banks who are willing to

provide Core Banking facilities by 31st March 2013 and would deposit salaries of the said employees within a period of four working days from the receipt of the amount from the State Government, would be entitled to the said work. It further provides that such of the District Central Co-operative Banks who would not submit a bond by 30th November 2012, would not be permitted to continue the work of disbursement of salary and the same should be transferred to some other Bank having Core Banking facility. It further provides that the work of such of the Banks, who would not be in a position to get the Core Banking facility by 31st March 2013 would be stopped and the same work would be transferred to some other Banks having Core Banking facility. It further provides that none of the Banks would be entitled to any service charges, commission etc. and such banks should be willing to give parking interest to the State.

8] The material placed on record would reveal that in accordance with the Government Resolution dated 3rd November 2012, the TDCC has submitted its undertaking on 31st December 2012. It is the specific submission of the Petitioners in both the

Petitions that the TDCC has complied with the said undertaking and was continuing to do the work of disbursement of salaries to everybody's satisfaction till the impugned Government Resolution came into effect. It is the case of the Petitioners that in an abrupt manner without any of the Petitioners being given an opportunity of being heard, the impugned Government Resolution has been issued arbitrarily only to favour the TJSB. In this premise, the Petitioners have approached the Court impugning the said Government Resolution.

9] We have heard Mr. P. S. Dani, learned senior counsel in the first Petition and Dr. D. S. Hatle, learned counsel in the second Petition on behalf of the Petitioners. We have also heard Mr. Kedar Dighe, learned AGP on behalf of Respondent – State, Mr. R. S. Apte, learned senior counsel on behalf of TJSB and Mr. S. M. Oka who appears for Association of employees who have intervened to support the TJSB.

10] It is the basic contention of Mr. P. S. Dani and Dr. D. S. Hatle that when the TDCC was continuously doing the work from 1973 and even after 2012 in accordance with the conditions

provided in the said Government Resolution of 2012, without any inconvenience to the said employees, there was no occasion for the State Government to abruptly change the policy. It is also submitted that, the number of branches which the TDCC is having in the Thane city as well as in the rural area as compared to TJSB is much larger. It is submitted that TDCC is having 62 branches, whereas TJSB is having only 32 branches.

11] Dr. D. S. Hatle submitted that the impugned action of withdrawing the work, which the TDCC was doing efficiently for almost more than 40 years is violative of principles of natural justice, in as much as no show-cause notice nor an opportunity of hearing was accorded to the TDCC.

12] Mr. P. S. Dani, learned senior counsel has also relied on a judgment of Division Bench of this Court recently delivered on 9th February 2018, in an identical matter, wherein, this Court has set aside the Government Resolution dated 3rd June 2017. The learned senior counsel submits that, the principles of law laid down in the said judgment would also be applicable to the present case in as much as the impugned Government Resolution also suffers from

same illegality, irrationality and procedural impropriety.

13] Mr. Kedar Dighe, learned AGP and Mr. R. S. Apte, the learned senior counsel for TJSB with full vehemence at their command submit that, the scope of interference by this Court while exercising power under Article 226 of the Constitution of India is very limited. It is submitted that only if policy laid down by the State Government is found to be violative of fundamental rights guaranteed under the Constitution, the interference by this Court would be permissible.

14] Mr. Kedar Dighe has relied on the judgment of Their Lordships of the Apex Court in the case of **Ekta Shakti Foundation Vs. Govt. of NCT of Delhi**¹. Mr. R. S. Apte, learned senior counsel relies on the Judgment of the Division Bench of this Court, to which one of us (B. R. Gavai, J) is a party in the case of **Coastal Marine Construction and Engineering Limited, Mumbai Vs. Oil and Natural Gas Corporation Limited, Mumbai and another**². Mr. R. S. Apte, learned senior counsel as well as Mr. Kedar Dighe, learned AGP would therefore submit that since there is no violation of any

1 (2006) 10 SCC 337.

2 2010(3) Mh.L.J. 73.

of the fundamental rights of the Petitioners and since the Government has freedom to change the policy, interference by this Court would not be warranted in the present Petitions. Learned counsels therefore pray for dismissal of the Petitions.

15] Very recently, this very Bench had an occasion to consider a similar challenge in similar Petition with regard to the scope of interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India, in respect of policy matters. To appreciate the rival submissions of the parties, it will be necessary to refer to the law laid down in the issue before the Hon'ble Supreme Court.

16] It will be relevant to refer to paragraph 77 of the law laid down by the Apex Court in Tata Cellular Vs. Union of India³ which reads thus :-

“77. The duty of the court is to confine itself to the question of legality. Its concern should be :

1. Whether a decision-making authority exceeded its powers ?

3 (1994) 6 SCC 651.

2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under :

- (i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) Irrationality, namely, Wednesbury unreasonableness.
- (iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind* [(1991) 1 AC 696], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

Perusal of the aforesaid observations of the Apex Court would reveal that the Court would be permitted to interfere with the decision making process in administrative matters, when it finds that such a decision making process suffers from illegality, irrationality or procedural impropriety. If this Court finds that the decision maker has not understood correctly the law which regulates the decision making power, the Court can very well interfere with the same. The Court can also interfere if the decision making process is found to be vitiated by irrationality and the case is of “Wednesbury unreasonableness”. The Court would also be empowered to interfere, if it finds that the procedural impropriety has erupted in the decision making process.

17] No doubt that Mr. R. S. Apte, learned senior counsel has tried to distinguish the present case from the case of *Shikshak – Bharati (supra)*, which has been decided by us recently. It is submitted that this Court was basically impressed with the fact that the Hon'ble Minister for School Education, who in 2013 was the leader of opposition had found serious irregularities and illegalities in the functioning of the Mumbai District Central Co-operative Bank

and as such the decision by the same person as a Minister of School Education, to allot the said work to the same Bank suffered from illegality, irrationality and procedural impropriety. The learned senior counsel submitted that such is not the case here. It is further submitted that in the said case, the issue was with regard to transfer of work from Nationalized Bank to District Central Co-operative Bank, which is not the case here. It is submitted that in the present case the work is being transferred from one Co-operative Bank to another Co-operative Bank.

18] As is settled position of law, while exercising jurisdiction under Article 226 of the Constitution of India, for examining the correctness of the said action, this Court would not be entitled to examine the final decision, the limited inquiry would be with regard to the decision making process of the authority. Only if it is found that the decision making process suffers from irrationality, illegality or malice, this Court would be entitled to interfere with the same under Article 226 of the Constitution of India. As already discussed by us in the case of *Shikshak – Bharati (supra)*, no doubt that the State is empowered to change the policy. However, while doing so,

the least that is expected is there should be some rationale behind the change. There have to be at least some reasons for which the change in the system which is smoothly working for more than 40 years is found necessary.

19] It cannot be forgotten that the public authorities hold their office in public trust. The authorities cannot be permitted to change the decision as per their whims and fancies, without there being any rationale behind the same. If this is permitted, we will be permitting the State to enter into an arena of Laissez faire. In this background, we will have to examine the present case. In order to examine the decision making process, we had requested the learned AGP to produce original file for our perusal. We are grateful to the State and the learned AGP for producing the original file for perusal of this Court.

20] Undisputedly, right from 1973, it is the TDCC which has been doing the work of disbursement of salary to the said employees of the said schools. There is nothing on record, which would show that the TDCC was not doing the work properly. Not only that but in 2012 itself, the State Government came up with a

policy that the work of disbursement of salary would be continued with the District Central Co-operative Banks, only if they are having Core Banking facilities and that if they are willing to make payment within four days from the date of receipt of the payment from the State Government. Not only that, but District Central Co-operative Banks were not entitled to service charge and commission. On the contrary such Banks were required to pay parking interest. In accordance with the said changed policy of the State Government, undisputedly the TDCC has submitted its undertaking on 31st December 2012, which specifically undertook that it shall get the Core Banking facility by 31st March 2013. It further undertook that it shall ensure that salary would be paid directly in the account of the employees, within four working days from the date on which it receives the payment from the State Government. It further undertook that it shall not charge any service charges or commission to the employees. It further undertook to pay the parking interest to the State Government. Had the TDCC breached the undertaking, they could not have continued to operate after 31st March 2013. From the very fact that they were permitted to continue after 31st March 2013 till the impugned Government Resolution was passed

would lead to a presumption that there was no complaint with regard to the functioning of the TDCC.

21] In this background, the million dollar question would be, as to what prompted the State Government to change the decision abruptly. The Government Resolution reads thus :-

“Government of Maharashtra
Department of School Education and Sports
Govt. Resolution No.Vetan/1215/Pr.Kr.430/15/TNT-3
Madam Cama Road, Hutatma Rajguru Chowk,
Mantralaya, Mumbai – 400 032
Dated 14th June 2017

- Ref: 1) School Education Govt. Resolution No.SSN-1867/76142-G-dated 29.05.1973.
2) Govt. Resolution Finance Department No.DDO-1005/pr.kr.5/kosha-prasha-5 dated 29.10.2005.
3) Govt. Resolution Finance Department No.DDO-1005/pr.kr.62/kosha-prasha-5 dated 07.04.2008.
4) School Education Govt. Resolution No.SSN-1007/77/12/Mashi-2 dated 03.08.2012.
5) Govt. Corrigendum, School Education Department No. SSN-1007/77/12/ Mashi-2 dated 31.08.2012.
6) Govt. Resolution School Education No.SSN-1007/77/12/Mashi-2 dated 31.10.2012.

PROPOSAL :-

Government of Maharashtra by the Resolution

Referred to at Sr. No.1 had permitted to release the salaries and allowances of teaching and non-teaching of aided and unaided Primary, Secondary and Higher Secondary Schools through Co-operative Banks. Presently Nationalized and private banks are willing to distribute salaries and allowances without any service charges. Therefore, Finance Department with view to monetary savings of the Government has ordered to pay the salary and allowances through nationalized and private banks. Accordingly, implementation of the said scheme in aided and unaided Primary, Secondary and Higher Secondary Schools of Thane District under the School Education Department was under consideration of the government.

Government Resolution :-

As mentioned in the above proposal, the scheme which is adopted for the purpose of disbursing the salaries and allowances of the Government Servants vide Govt. Decisions of the Finance Department referred to at Sr. No.2 and 3 above will be applicable to Thane District. The government hereby approve the disbursement of salaries and allowances of the teaching and non-teaching staff of recognized aided and unaided Primary, Secondary and Higher Secondary Schools of Thane District through the T.J.S.B. (TJSB) Co-operative Bank Ltd., Thane, instead of Thane District Central Co-operative Bank.

For the said purpose strict compliance of the terms and conditions which are prescribed by the Finance Department shall be implemented. The said decision will be implemented with effect from 1st July, 2017. In case of any difficulty in that regard, the assistance of Director, Accounts & Treasury and Divisional Dy. Director, Accounts & Treasury may be taken.

In this regard Main Pool Account (Parking Account) of Education Officer (Primary/Secondary), Thane shall be

opened immediately with T.J.S.B. (TJSB) Co-operative Bank Ltd., Thane.

This Government Resolution is available on website of Maharashtra Government www.maharashtra.gov.in and its code number is 201706141233457921. This order is digitally signed.

As per order of Governor of Maharashtra.

Charushila Chaudhary
Dy. Secretary, Maharashtra State”

Perusal of the said Government Resolution would reveal that with a view to ensure monetary savings, the Government has ordered to pay the salary and allowances through Nationalized and private Banks. It further observes that, the implementation of the said scheme for payment and salaries to the said employees of the said schools was under consideration of the Government. The said Government Resolution further provides that the decisions of the Finance Department referred at Sr No.2 and 3 i.e. 2005 and 2008 Government Resolution would be applicable to the Thane District and that the Government approves the disbursement of salaries and allowances of the said employees of the said schools through the TJSB Co-operative Bank Ltd., Thane, instead of Thane District

Central Co-operative Bank. It could thus clearly be seen that the perusal of Government Resolution would reveal that no reasons are given as to why, it is found necessary to transfer the said work from TDCC to TJSB.

22] The answer to the said could be found in the original file. The original file would show that TJSB addressed three representations to the Hon'ble Minister for School Education for allotting the work of disbursement of salary of the said employees. The Hon'ble Minister without awaiting the remarks of the Finance Department took a decision on 5th October 2016 of entrusting the said work to TJSB. Normally, the file in the State Government moves from lowest pedestal to highest pedestal and finally reaches to the Hon'ble Minister. However, in the present matter, it appears that the State Government has followed the reverse mechanism. On the representation being made by the TJSB, the Hon'ble Minister took a decision on 5th October 2016 to allot the said work to TJSB as would be evident from the page No.9 of the original file.

23] Not only this, perusal of the original file would reveal that, after coming to know about the State Government's decision to

allot the work to TJSB, various elected representatives addressed representation to the Hon'ble Minister for School Education opposing such decision. It is specifically stated in the communications addressed by various elected representatives that since there are no branches of the TJSB in the rural areas, a great inconvenience would be caused to the said employees working in the Thane district.

24] However, it appears that in order to give effect to the decision taken by the Hon'ble Minister on 5th October 2016, the file was moved through the School Education Department as well as Finance Department. After the file was cleared by the Hon'ble Minister on 5th October 2016, the file went to the Finance Department. The Finance Department specifically put an endorsement on 29th December 2016 stating therein that at present said work is being undertaken by the TDCC. It further goes on to state that the said work is being regularly done by the TDCC and as such there does not appear to be any rationale for changing the Bank. It further goes on to state that School Education Department has not given valid reasons for changing the Bank. The Finance

Department therefore observes that, it will not be appropriate to give approval to the proposal as submitted by the School Education Department. It further appears that the Finance Department again recorded its objection somewhere in March 2017 stating therein that the name of TJSB is not included in the list of Banks which are annexed to the Government Resolution of 2005 and as such it will not be appropriate to grant permission of the said work to TJSB.

25] However, the School Education Department for the reason best known to it is adamant on entrusting the work to the TJSB. It again moves the file in the month of April 2017 with an endorsement that in the Government Resolution dated 29th August 2005 of the Finance Department, there is no reference to the teaching/non-teaching employees. It further goes on to state that the services to be provided by TJSB are far superior than the TDCC. It further goes on to state that since on an earlier occasion the decision to allot the work to TDCC was approved by the Hon'ble Chief Minister, the file be sent to Hon'ble Chief Minister for approval. It further goes on to state that by ensuring that the principles laid down in Government Resolution of 2005 of securing

the public finances, a draft agreement should be got approved from the Law Department and the Finance Department and thereafter necessary Government Resolution should be issued.

26] It appears that the file which is again moved after objections of Finance Department, by the School Education Department in the month of April and it has been finally approved by the Hon'ble Chief Minister somewhere in June. It further appears that, thereafter the impugned Government Resolution has been issued on 14th June 2017.

27] Perusal of the file would clearly show that the Finance Department has objected for transferring the work from TDCC to TJSB on more than one occasion. However, the School Education Department was determined to allot the work to the TJSB. It is difficult to appreciate as to what was the reason behind doing so. The Finance Department has specifically observed that there was no complaint with regard to the functioning of the TDCC. The work of payment of salary was being done by them in a regular manner and as such there was no rationale behind transferring the said work. The Finance Department further observed that, in the list of Banks

annexed to the Government Resolution of 2005, name of TJSB was not included and therefore, it would not be appropriate to grant said permission. However, it appears that ignoring the said observations of the Finance Department, final decision has been taken by the School Education Department, which is approved by the Hon'ble Chief Minister.

28] No doubt that as submitted by Mr. Kedar Dighe and Mr. R. S. Apte, the State Government is free to change its decision. However, while doing so, some rationale and cogent reasons should be provided.

29] However, in the present case, though material placed on record shows that the functioning of the TDCC was found to be satisfactory and though the elected representatives have submitted that entrusting of the said work to TJSB would cause great inconvenience to the teachers in Thane district, in as much as the TJSB has no branches in rural areas, the same has been totally ignored and the decision which the Hon'ble Minister has taken on 5th October 2016 has been culminated in the impugned Government Resolution dated 14th June 2017.

30] We may refer to the following observations of Their Lordships of the Apex Court in the case of Kalabharati Advertising Vs. Hemant Vimalnath Narichania and others⁴.

“25. The State is under obligation to act fairly without ill will or malice in fact or in law. “Legal malice” or “malice in law” means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for “purposes foreign to those for which it is in law intended”. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts.”

“26. Passing an order for an unauthorised purpose constitutes malice in law. (Vide *Punjab SEB Ltd. v. Zora Singh* [(2005) 6 SCC 776] and *Union of India v. V. Ramakrishnan* [(2005) 8 SCC 394]).”

31] In the present case, it could clearly be seen that by the Government Resolutions dated 3rd August 2012 and 3rd November 2012, the State Government had taken a conscious decision that in

4 (2010) 9 SCC 437.

tune with the policy of the State Government as is reflected in 2005 and 2008 Government Resolutions of the Finance Department, it had decided to make the payment of the salaries of the said employees of the said schools through the Core Banking system. It has also taken a conscious decision that only such of the Banks, which would file an undertaking by 30th November 2012, to the effect that they shall get Core Banking facilities by 31st March 2013 and only such of the Banks would in fact get Core Banking facility by 31st March 2013 were to be entitled to be continued to do the said work. On failure to file such undertaking by 30th November 2012, or to in fact get the Core Banking facility by 31st March 2013, their services were liable to be discontinued and transferred to a Bank having Core Banking facility. Not only this but in tune with the said policy, the TDCC had filed an undertaking and also got Core Banking facility by the specified date. In these premises, there was no reason to take an isolated decision in respect of one particular district, when the 2012 Government Resolutions issued by the School Education Department themselves took care of interest of the payment of salary of the said employees of the said school as well as public exchequer.

32] It could thus clearly be seen that, the decision making process is not guided on any rationale or sound reason, but is effected by only one factor and that is to allot the work of disbursement of the salary of the said employees, in any event to TJSB whatever the position be.

33] We are of the considered view, that the decision making process is vitiated on account of irrationality, unreasonableness and impropriety. The material placed on record would also go on to show the decision has been taken with an oblique motive to ensure that the work is allotted in any event to TJSB for which they had requested. We therefore find that the decision only in order to ensure the work is allotted to TJSB, would be a decision for unauthorized purpose and as such constitute malice in law.

34] In that view of the matter, we have no hesitation in holding that the impugned Government Resolution is not sustainable in law. Rule is therefore made absolute by quashing and setting aside the Government Resolution dated 14th June 2017. The Petitions are allowed and disposed of.

35] In view of disposal of Writ Petitions, Civil Application does not survive and accordingly stand disposed of.

36] At this stage, Mr. R. S. Apte, learned senior counsel appearing on behalf of TJSB and Mr. Kedar Dighe, learned counsel for Respondent – State request for stay of the judgment.

37] However, we may note that in the similar matter, which we have decided on 9th February 2018, the learned Advocate General had submitted that, there was total freedom to the employees and the schools to open their accounts in whichever bank they desired. Learned Advocate General fairly submitted that, though the communication dated 21.06.2017 addressed by Respondent No.5 (in the said Petition) compels the headmaster of the schools and the teachers to open the account in Respondent No.7 bank (in the said Petition), the same is not being implemented. He further stated that even as of now the salaries are being paid to the teachers in their account in the bank of their choice. We find that, even after the impugned Government Resolution is quashed and set aside, no change is required to be done in that system. The only change would be the “pool account”, which is being operated

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by TJSB, would be operated by TDCC. Hence the prayer for stay is rejected.

[B. P. COLABAWALLA, J.]

[B. R. GAVAI, J.]