

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2281 OF 2019

Sajid Khan Peer Khan & Anr.

.... Petitioners

Vs.

Malegaon Municipal Corporation,
Malegaon & Others

.... Respondents

Mr. I.M. Khairdi for the Petitioners.

Mr. S.S. Patwardhan for Respondent No.1.

Ms Anamika Malhotra for Respondent No.3.

Mr. S.B. Kalel, AGP, for the Respondent-State.

Mr. Priyadarshan Kamble, Under Secretary,
Rural Development Department, present.

**CORAM: S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.**

DATE : FEBRUARY 28, 2019

P.C:

1. By this petition under Article 226 of the Constitution of India, the grievance of the petitioners is that there is an obstacle or obstruction placed in the implementation of a policy. That policy is carved out by the Government. Under that policy, certain villages (7 in number) within the purview

and control of the Nashik Zilla Parishad will now vest and be under the control of the Municipal Corporation, namely, Malegaon Municipal Corporation.

2. Once these 7 villages became part and parcel of this Municipal Corporation, naturally, the Zilla Parishad was directed to indicate as to how many schools are operational and functional in these 7 villages. These are primary schools. After the broad policy was communicated, the Nashik Zilla Parishad was called upon to obtain individual choice and preference of teachers. Those schools of the Zilla Parishad together with their assets and the number of teachers who filled in their choices and preferences came to be transferred. When this process was underway, the impugned communication has been issued.

3. On 8-2-2019, the Department of Rural Development, Government of Maharashtra, informed the Chief Executive Officer of the Zilla Parishad, Nashik, that the said Chief Executive Officer addressed a communication on 30-1-2019. In that guidance was sought as to how the teachers have to be

transferred and for that there would have to be a process enunciated. Thus the transferees will have to be selected.

4. In the garb of rendering assistance and acting as a guide, the Department informed the Chief Executive Officer that he should prepare a list and the list has to be prepared of Urdu teachers. These Urdu teachers must be employed in the Nashik Zilla Parishad. Mr. Khairdi submits that so long as such selection is made from the teachers within the 7 villages, which are now going to be transferred to the Malegaon Municipal Corporation, the petitioners have no objection. However, a direction as sweeping as this to prepare a list of all Urdu teachers functional and under the control of the Nashik Zilla Parishad is *per se* illegal. The said teachers could be working in several villages under the control of Nashik Zilla Parishad and some of these villages may not have been transferred to the Malegaon Municipal Corporation. Therefore, there is no necessity to obtain choice from the Urdu medium teachers from all villages under the control of the Nashik Zilla Parishad. The exercise should be restricted only to the 7 villages, is his submission.

5. Mr. Kalel, learned AGP, on instructions, states that the Government did not have any desire to scuttle the process or to place any obstacle or hurdle in the smooth implementation of this policy. It is only to ensure transparency in the process that such a guidance has been issued.

6. Mr. Kalel would, therefore, submit that the apprehension is baseless and the petition be dismissed.

7. After hearing both sides, we are of the firm view that 54 teachers have approached this Court under an apprehension that those who are not liable to be transferred would also be transferred in the garb of the impugned communication. Secondly, some of those who are neither due for transfer nor are affected by the policy of absorption of teachers from the 7 villages in the service of the Malegaon Municipal Corporation would also jump on the the bandwagon and obtain undue benefit and advantage. This ought to have been present to the minds of those who addressed such a communication. If the idea was not to scuttle the whole policy, then we do not see how the

Government issues such a communication in the teeth of its own Notifications and which are in force from 2011, to say the least. If the 7 villages are transferred and effective from 5-10-2011, then, consequential steps should have been taken smoothly and expeditiously within these 8 years. Far from that we have found that every day it is this Court which has removed the obstacles and the hindrances in the way of the Municipal Corporation and the other Department equally of the Government, namely, the Urban Development Department. If there is total lack of co-ordination in the two Departments, that should not result in the obstruction of the policy of the Government.

8. In the circumstances, by clarifying that no choice of anybody other than the teachers in the Urdu Medium School in the said 7 villages shall be taken into consideration, the Chief Executive Officer shall ignore the communication of 8-2-2019 from the Government and act strictly in accordance with the earlier policies of the Government which are equally in writing now. The preference form and before the cut-off date duly filled in by such teachers in these 7 villages and functioning in Urdu

Medium Schools shall be the basis on which the authorities concerned shall proceed. They shall then place these teachers in the services of the Municipal Corporation and in the respective schools or such other schools in the village or otherwise in the vicinity. The matters and grievances relating to service conditions shall not be affected and they must be decided independently of their choice and willingness. All issues in relation thereto are kept open for being raised at an appropriate stage in appropriate proceedings.

9. A grievance was made in the passing by Mr. S.S. Patwardhan, appearing for Malegaon Municipal Corporation, that in all these days, months and years, beyond oral statements nothing has been done which would ensure that the infrastructure together with the school is transferred to the Malegaon Municipal Corporation.

10. Mr. A.R. Kapadnis, appearing for the Nashik Zilla Parishad in connected Civil Writ Petition Nos.549 and 2140 of 2018, says that the decision to transfer the infrastructure has

already been taken. Some modalities have to be completed so as to physically transfer the infrastructure and such measures would be taken within the next 2-3 weeks. He says that within four weeks, the entire infrastructure in relation to the schools in question located in the 7 villages will be handed over to the Malegaon Municipal Corporation.

11. This statement, made on instructions by Mr. Kapadnis, is accepted as an undertaking to this Court.

12. The writ petition is disposed of accordingly.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)