

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

909 CIVIL APPLICATION NO.917 OF 2023
WITH CA/937/2023 IN RAST/34244/2022 WITH CA/932/2023 IN
RAST/34248/2022 WITH CA/914/2023 IN RAST/34250/2022 WITH
CA/930/2023 IN RAST/34252/2022 WITH CA/931/2023 IN
RAST/34254/2022 WITH CA/935/2023 IN RAST/34257/2022 WITH
CA/918/2023 IN RAST/34259/2022 WITH CA/923/2023 IN
RAST/34273/2022 WITH CA/926/2023 IN RAST/34276/2022 WITH
CA/928/2023 IN RAST/34279/2022 WITH CA/939/2023 IN
RAST/34386/2022 WITH CA/934/2023 IN RAST/34394/2022 WITH
CA/924/2023 IN RAST/34397/2022 WITH CA/921/2023 IN
RAST/34396/2022 WITH CA/936/2023 IN RAST/34400/2022 WITH
CA/922/2023 IN RAST/34402/2022 WITH CA/933/2023 IN
RAST/34405/2022 WITH CA/938/2023 IN RAST/34410/2022 WITH
CA/925/2023 IN RAST/34411/2022 WITH CA/3632/2023 IN
RAST/34414/2022 WITH CA/929/2023 IN RAST/34416/2022 WITH
CA/927/2023 IN RAST/34407/2022

THE CHIEF EXECUTIVE OFFICER
VERSUS
NILESH LAXMAN SHELKE AND OTHERS

Mr.V.V.Gujar, Advocate for the Applicants.
Mr.V.M.Kagne, AGP for the Respondent/State.
Mr.P.A.Kulkarni, Advocate for the Petitioners in Writ Petitions.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : MARCH 17, 2023

PER COURT :

1. By consent of the parties and in view of the similar orders passed in other review petitions, civil applications are allowed and

delay is condoned.

REVIEW PETITIONS

2. We have considered the extensive submissions of the learned advocates for the respective sides as well as the learned AGP on behalf of the State.

3. Since these are Review Petitions, we are considering them in the light of the law laid down by the Honourable Supreme Court in *Lily Thomas vs. Union of India, AIR 2000 SC 1650, S.Madhusudhan Reddy vs. V. Narayana Reddy and others, 2022 LiveLaw (SC) 685 : 2022 SCC Online SC 1034* and *Pancham Lal Pandey vs. Neeraj Kumar Mishra and others, 2023 LiveLaw (SC) 111 : 2023 SCC Online SC 143 : SLP (C) No.3329/2021 decided on 15.02.2023.* The Honourable Supreme Court has ruled that if the intent of the Review Petitioner is to indicate perversity and illegality in the judgment, the proceedings in the nature of a review is not maintainable and the judgment of the Court will then have to be challenged. If there is an error apparent on the face of record or even if it is pointed out that an opportunity of hearing was never afforded to the Review Petitioner, a review could be entertained.

4. The Review Petitioners before us is the Zilla Parishad, Jalgaon. The issues seriously taken up by the review petitioners are as under:-

(a) Out of 23 original Writ Petitions, notices were not issued to the Zilla Parishads in 6 Writ Petitions. In the remaining 17 Writ Petitions, in which notices were issued, the Zilla Parishads had not even appeared.

(b) Affidavits in reply in the Writ Petitions were not filed by the Zilla Parishads.

(c) Not a single copy of the contract with the contractor by which, the Petitioners were engaged as Ambulance Drivers on contractual basis, was placed on record.

(d) Not a single appointment order was placed on record.

(e) The stark distinction between the cases decided at Nagpur/ at the Principal seat at Mumbai and these cases is that the Zilla Parishad, Jalgaon had neither floated the tender nor advertised the contract, nor had they signed the contract with the contractors, nor had they issued the appointment order to any of the Petitioners.

(f) There was non-joinder of parties as the Project Director of

the National Health Mission (NHM), which floated the scheme under the NHM, Union of India, was not arrayed as a respondent.

(g) Not a single contractor was arrayed as a respondent.

(h) The Zilla Parishad, Chandrapur, had directly engaged the Ambulance Drivers and this led the Nagpur Bench of this Court to conclude that the Ambulance Drivers were recruited by the Zilla Parishad. Hence, consequential reliefs were granted in the case of the Chandrapur Zilla Parishad in Writ Petition No.2247/2014 (*Dhiraj s/o Sudhakar Rao Wankhede and others vs. The Zilla Parishad, Chandrapur and others*) decided on 20.11.2019.

(i) Relying on the order passed in the Zilla Parishad, Chandrapur's case (supra), the Principal Seat at Mumbai also passed similar order on 08.12.2020 in Writ Petition (Stamp) No.92250/2020 *Nagendrayya Panchalingayya Hiremath and others vs. The State of Maharashtra and others*, with connected Writ Petitions. Consequentially, the orders under review were passed by this Court, mechanically.

5. The learned Advocate for the original Petitioners concedes to the extent that the Union of India as well as none of the contractors

were arrayed as Respondents, in the Writ Petitions. He, however, submits that all these Ambulance Drivers are identically placed. All are doing identical work throughout the State. All need to be treated on par with those Ambulance Drivers, who have been performing work in the said capacity in various Zilla Parishads on their regular establishments. Each of them has been working for more than at least one decade and many of them are working for about 15 years. All of them are required to work on every day depending upon the emergency and need to provide services of the ambulances. All of them are deployed at Primary Health Centres at various talukas and localities where such Primary Health Centres have been established by the Zilla Parishads.

6. Insofar as the notices being not issued to the Zilla Parishads in some matters and no affidavit in reply having been filed by any of the Zilla Parishads in the writ petitions, the learned advocate submits that all the Ambulance Drivers are similarly situated as in the case of the *Zilla Parishad, Chandrapur (supra)* and therefore, the order sought to be reviewed is just and proper and there is no error apparent on the face of record.

7. With the assistance of the learned advocates, we have noted that the National Health Mission introduced the scheme for engaging Ambulance Drivers on contractual basis. The scheme was floated by the Union of India and 60% of the funds are to be granted by the Union of India. The Union of India, therefore, appears to be a necessary and answering Respondent. Same was not arrayed as a Respondent in the original Writ Petitions.

8. We are also informed that the said scheme was in coordination with the Union of India and the State of Maharashtra, with 60% of the funds being generated by the Union of India and 40% being generated by the State of Maharashtra. There is no record placed before us, either in the Writ Petitions or even in the Review Petitions, that the Zilla Parishad was one of the funding agency in these matters, unlike the situation with the Chandrapur Zilla Parishad.

9. A coordinate Bench at Nagpur in Writ Petition No.6025/2015 decided on 29.06.2017, has already dismissed the Writ Petition filed by such contractual ambulance drivers seeking regularization with the Zilla Parishad, Chandrapur. This is recorded by

the learned Bench in its judgment dated 20.11.2019 delivered in Writ Petition No.2247/2014 filed by **Dhiraj Sudhakar Rao Wankhede and others vs. The Zilla Parishad, Chandrapur and others (supra)**. Taking into account that Dhiraj Wankhede and others were identically placed, the learned Bench at Nagpur concluded in its judgment dated 20.11.2019 that they would be entitled to the same protection of drawing minimum pay scale at the lowest grade in the regular pay scale available to the regular employees. The prayer for regularization was rejected. Insofar as the terminated ambulance drivers were concerned, the Court ruled that they would not be entitled for the benefits of the said judgment and the said benefits would be extended even to the similarly situated in-service contractual drivers, who have not approached the Court.

10. In another batch of Writ Petitions bearing Writ Petition (stamp) No.92250/2020 filed at the Principal Seat by **Nagendrayya Panchalingayya Hiremath and others (supra)** and connected group of matters, the learned Division Bench delivered a common order on 08.12.2020 taking into account the law laid down by the Nagpur Bench in **Dhiraj Wankhede (supra)**. It was pointed out to the learned Division

Bench that the Zilla Parishad, Solapur, was receiving the services of the contractual drivers, who are employees of the S.P. Securities Services Private Limited. The drivers were never appointed by the Solapur Zilla Parishad. Based on *Dhiraj Wankhede (supra)*, the petitions were disposed off and the drivers were granted similar minimum pay scale at the lowest grade in the regular pay scale, which is extended to the regular employees holding the same posts, with effect from the date of petitions.

11. All these orders i.e. *Dhiraj Wankhede (supra)* and *Nagendrayya Panchalingayya Hiremath (supra)*, are sustained by the Honourable Supreme Court, is what is conveyed to us by the learned advocate for the petitioners.

12. Considering the above, it appears to us, on the basis of the record placed before us, as under:-

(a) The distinction between these cases and the Chandrapur Zilla Parishad is that these Zilla Parishads never floated any tender, nor signed any contract nor issued any appointment orders.

(b) The contracts were signed by the contractors.

(c) These drivers were engaged under the scheme floated by the Union of India under the National Health Mission with 60% funding by the Union of India and 40% funding by the State of Maharashtra.

(d) Neither these contractors, nor the Union of India were arrayed as the respondents.

(e) Salaries of the original petitioners are paid by the contractors.

(f) In the case of Chandrapur Zilla Parishad, the Zilla Parishad itself was engaging such drivers on contract basis and hence, it was directed to pay the salaries.

(g) In another batch of petitions at the Nagpur Bench bearing Writ Petition Nos.1305/2021 and 1810/2021 filed by ***Ritesh @ Jeetu Babulal Chakravarty and others vs. The State of Maharashtra and others (Nagpur and Bhandara Zilla Parishads)***, the contractor was arrayed as a respondent. The Nagpur Zilla Parishad as well as the Bhandara Zilla Parishad were arrayed as the respondents. Since it was established that these Zilla Parishads were directly involved in the process of paying salaries to the contractual drivers and entering into contracts with the contractor, that the salaries were directed to be calculated and paid by the Zilla Parishads, Nagpur and Bhandara.

(h) Clearly distinguishable feature between the cases at the Nagpur Bench and the Aurangabad Bench, is that in these Review Petitions filed before us, not in a single case, the Zilla Parishad, Aurangabad or the Zilla Parishad, Nanded, entered into any contract with the contractor or issued any appointment order.

(i) A specific stand is taken in these Review Petitions that these Zilla Parishads did not have an opportunity to file an affidavit in reply to meet all the contentions of the Petitioners, much less, even to contradict the amended prayers which were made even without supplying the copies to the Zilla Parishads and on the same day, the Writ Petitions were disposed off with a common order.

(j) These Zilla Parishads had never generated funds to pay these ambulance drivers or had contributed with the Union of India or the State of Maharashtra for making payments to the contractors. It is for this purpose that the contractor was also necessary respondent to indicate to us as to whether, the State of Maharashtra or the Union of India or both together, were clearing its bills and service charges for deploying ambulance drivers and for paying their salaries.

13. Considering the above aspects, we find that the Writ

Petitions were decided by us overlooking the fact that the Union of India, which was the source of the scheme and was funding the scheme, as well as the contractor, who selected and appointed the drivers, were not arrayed as the Respondents. So also, an opportunity of filing an affidavit in reply was also not available to the Zilla Parishad of Jalgaon. So also, the distinction between the Zilla Parishads of Chandrapur, Nagpur and Bhandara, in comparison to the Zilla Parishads of Nanded and Aurangabad was that these two Zilla Parishads had never floated any tender or signed any contract with any contractor. This was not pointed out to us and we were told that all these drivers are identically placed and hence, we proceeded on the plea that what has happened with the Zilla Parishads of Chandrapur, Nagpur and Bhandara, may also have happened with the Zilla Parishad of Jalgaon.

14. In view of the above, **these Review Petitions are partly allowed**. The orders sought to be reviewed, are partly recalled to the extent of restoring the Writ Petitions to the file of this Court.

15. While restoring the Writ Petitions to the file, we deem it

appropriate to balance the equities in order to ensure that the original Petitioners, who have been working as Ambulance Drivers on contractual basis in between 10 to 15 years, are adequately protected and their monthly salaries are paid without interruption.

16. It is pointed out to us by the learned advocate for the original Petitioners that there is a recent development in the nature of the earlier contractor, namely, Ashkom Media India Private Limited having suffered termination of contract. At the same time, another contractor, who stepped in place of the former, namely, Laxmidatta Solutions Private Limited, has also suffered cancellation of the contract. For the present, the Government of Maharashtra through its Directorate of Health Services has issued the communication dated 24.01.2023 to the District Health Officers of all the Zilla Parishads that all the Zilla Parishads should submit details of salaries payable to the contractual drivers. A specific format/chart has been supplied, which also includes the GST to be levied. The Zilla Parishads are called upon to state the quantum of funds that they would require to pay monthly salaries of these ambulance drivers, directly through the Zilla Parishads.

17. We, therefore, direct that the minimum pay scale at the lowest grade in the regular pay scale extended to regular employees holding the same ambulance driver post, shall be paid to the Petitioners until further orders in their Writ Petitions. So also, their services shall not be terminated without leave of the Court, only in relation to their contractual employment.

18. Since the petitioners have not been paid salaries for periods ranging between 12 to 15 months, keeping in view the communication by the State of Maharashtra through the Joint Director of Health Services dated 24.01.2023, the concerned Zilla Parishads would intimate to the Joint Director of Health Services, Mumbai, as regards the quantum of unpaid salaries of these ambulance drivers. The chart annexed to the communication dated 24.01.2023, shall be filled in by the Zilla Parishads and shall be tendered to the Joint Director of Health Services, Mumbai, within 10 (ten) days from today, if not already submitted.

19. Considering the communication dated 24.01.2023 issued by the Joint Director to all the District Health Officers of the Zilla

Parishads, we expect the Directorate of Health Services to initiate immediate steps to ensure that monthly salaries of these drivers are paid beginning from the month of March, 2023. Needless to state, as the contractors had deployed these Petitioners and since their contracts have been terminated, their further bills shall not be cleared without the leave of our court.

20. The learned advocate for the petitioner submits that the contractors, would be arrayed as the Respondents in the Writ Petitions. So also, the Union of India would also be arrayed as the respondents. Let such addition be carried out and those contractors, who were deploying these Petitioners at the time of filing of the petitions and subsequently, be arrayed as Respondents in the Writ Petitions. This exercise would be completed by 31.03.2023.

21. The pending Civil Applications do not survive and stand disposed off.

ORDER IN THE WRIT PETITIONS, RESTORED TODAY

22. In view of the Order passed today in the Review

Applications, office to issue notice to the added respondents in the Writ Petitions, returnable on 24.04.2023. The learned Standing Counsel waives service of notice on behalf of the added Respondent Union of India. Besides the court notice, the Petitioners are at liberty to serve these added contractors through private service by speed post A.D. as well as on their email addresses.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)