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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1077 OF 2024

Dhananjay Khusr Rao Garje

... Petitioner

Versus

The Election Commission of India

... Respondent

Mr. Mahadeo A. Choudhari a/w Mr. Ranveer Choudhari for the Petitioner
Mr. Pradeep Rajagopal with Ms. Drishti Shah i/b Ms. Rekha Rajagopal for
the Respondent No.1

Mr. Manish Upadhye, A.G.P. for the State

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 26th March, 2024

P.C.

1. We have heard the learned counsel for the petitioner and the learned counsel for the respondents.
2. The challenge as raised in the petition is to the validity of Clause nos.1.3, 2.3.4, 2.3.5 and 2.3.6 of the Revised Instructions issued by the Election Commission of India dated 5th September 2016 to the Chief Electoral Officers of six states namely Andhra Pradesh, Telangana, Bihar, Karnataka, Uttar Pradesh and Maharashtra.
3. The contention of the Petitioner is primarily in regard to the discretion kept with the Head of the Institution to issue a certificate as provided for in Clause no.2.3.5 which reads thus:

"2.3.5 Every person applying for enrolment (in Form-19) in Teachers' constituency must submit documentary proof of having been engaged in teaching in any of the specified educational institutions for a total period of at least three years within six years immediately before the qualifying date. The Electoral Registration Officer or the Assistant

Electoral Registration Officer concerned should make such verification of the documentary proof as he considers necessary. A certificate by the Head of the teaching institution should normally be considered adequate documentary proof of possessing that teaching qualification. The certificate from the Head of the Institution shall be in the Format at Annexure-2

Clarification - If any person, who has applied for inclusion of his name in a teachers' constituency, has been engaged in teaching in more than one specified educational institutions in the last six years, the certificate from the Head of institution of each of such educational institution will be required for the period for which he was engaged in teaching in that educational institution."

4. It is submitted that, in fact, there are large number of educational institutions. There are disputes many times as to who is the Head of the Institution. Thus, Clause 2.3.5 leaves the entire discretion to the Head of the Institution to issue a certificate that a particular person has been engaged in teaching in any of the specified educational institutions for a total period of atleast three years within six years immediately before the qualifying date. It is the Petitioner's submission that, if such a discretion is vested with the Head of the Institution, it needs to have further sanctity by way of such certificate being counter signed / approved by the Education Officer or the Deputy Director of Education. It is submitted that, in fact, a large number of bogus certificates have been submitted in the past, in respect of which even the Election Commission of India has filed FIRs. Mr. Choudhary has also submitted that, in fact, Clause 2.3.6 also makes a provision for the Election Registration Officer to receive list of specified educational institutions obtained by the Chief Election Officer from the State Government and also provides that he should collect information of all persons who are eligible for enrolment in Teacher's Constituency from heads of specified educational institutions. It is submitted that Clauses 2.3.5 and 2.3.6 conjunctively read, would support the Petitioner's contention that the endeavour of the Election Commission of India is also to maintain the purity of the election process by having genuine and eligible persons enrolled from the teachers' constituency. However, the discretion

being left to the Head of the Institution is what is objected by the petitioner. Clause 2.3.6 can also be noted which reads thus:

“2.3.6 - As soon as Electoral the Chief Electoral Officer from State Government, he should collect information about all persons who are eligible for enrolment in Teacher's Constituency from heads of specified educational institutions. He should further check whether all such eligible persons are enrolled in the draft electoral rolls being prepared by him or not. If the Electoral Registration Officer finds that an eligible person is left out, he should send a blank Form 19 to the concerned person with a request to fill the application form and send it to the Electoral Registration Officer through the head of the institution, in which the applicant has been working.”

5. After hearing the learned counsel for the parties, we are prima facie of the view that there is substance in the contention as urged on behalf of the Petitioner. At the end of Clause 2.3.5 if it is incorporated that the certificate issued by the Head of the Institution should be counter signed / approved by the concerned Education Officer or Deputy Director of Education, in our opinion, it would suffice the purpose that only *bona fide* and genuine persons are enrolled in the teachers' constituency. This considering the fact that there are thousands of educational institutions and there are disputes as to who is the Head of the Institution. In these circumstances, we accept the request made on behalf of the learned counsel for the Election Commission of India to adjourn the proceedings so that appropriate decision is taken in that regard. We adjourn the proceedings for a period of two weeks so that the Election Commission of India responds to this Petition by filing a reply affidavit.

6. Stand over to **10th April 2024, High on Board.**

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)