



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3888 OF 2026
WITH
CIVIL APPLICATION NO. 1165 OF 2026
IN
WRIT PETITION NO. 3888 OF 2026

PRAJAKTA ANAND MISTRI AND OTHERS

Vs.

UNION OF INDIA, THR. SECR ETARY, DEPARTMENT
OF HOME AFFAIRS (MHA), NEW DELHI AND ORS.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr. T. D. Mandlekar, Advocate a/w Mr. S. P. Bargi, Advocate a/w Ms Gayatri Sharma,
Advocate for the Petitioner.

Mr. K. S. Shukul, DSGI for Respondent No.1.

Mr. J. B. Kasat, Advocate for Respondent Nos.3 and 4.

CORAM : ANIL S. KILOR AND RAJ D. WAKODE, JJ.
DATE : 6th MAY, 2026.

CIVIL APPLICATION NO. 1165 OF 2026

For the reasons stated in the application, the
same is allowed.

2. Amendment to be carried out forthwith

3. Civil Application is disposed of.

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4. Heard learned counsel for the petitioners.

5. At the outset, learned counsel for the petitioners
seeks leave of this Court to delete petitioner No.11.

6. Permission granted.

7. Necessary correction in the cause title shall be carried out forthwith.

8. Heard.

9. Issue notice to the respondents, returnable after Summer Vacation.

10. Mr. K.N. Shukul, learned DSGI waives service of notice for respondent No.1 and Mr. J.B. Kasat, learned Advocate waives service of notice for respondent Nos. 3 and 4.

11. The challenge raised in this petition is to the order dated 23.04.2026 thereby appointing the petitioners as Enumerates and Supervisors for Census work under the Census Act, 1948 (for short, “the Act of 1948).

12. Heard learned counsel for the petitioners who submitted that the subject “Census” is enlisted at Serial No.69 of the Union List and the Act to provide legal

provisions for said purpose has been enacted by the Parliament. The petitioner No.1 is an Education Society which runs the petitioner No.2 unaided Minority School, having religious minority status. The respondent No.4 Charge Officer called upon Principal of petitioner No.2/school to submit the information of its employees for purpose of conducting Census 2027. The petitioner No.2-Principal was reluctant to supply the information of employees as the employees of private unaided Minority School cannot be deputed for Census work. However, respondent No.4-Charge Officer, threatened for criminal

action. Therefore, list was given. The petitioners have received the text message from respondent No.4 on 08.04.2026 and 24.04.2026 and they are required to join the training for Census purpose. He submitted that all these letters are contrary to the provisions. He invited our attention towards Section 4 of the Act of 1948 which reads as under:-

4. *Appointment of census staff.-*

(1) The Central Government may appoint a Census Commissioner to supervise the taking of the census throughout the area in which the census is intended to be taken, and [Directors of Census Operations] to supervise the taking of the census within the several States.

(2) The State Government may appoint persons as census-officers [with such designations as that Government may deem necessary] to take, or aid in, or supervise the taking of, the census within any specified local area and such persons, when so appointed, shall be bound to serve accordingly.

(3) A declaration in writing, signed by any authority authorised by the State Government in this behalf, that any person has been duly appointed a census-officer for any local area shall be conclusive proof of such appointment.

(4) The State government may delegate to such authority as it thinks fit the power of appointing census-officers conferred by sub-section (2).

[4A. Staff of every local authority to be made available for taking census.- Every local authority in

a State shall, when so directed by a written order by the Central Government or by an authority appointed by that Government in this behalf, make available to any Director of Census Operations such staff as may be necessary for the performance of any duties in connection with the taking of census.]

13. He also invited our attention towards Section 7 which reads as under:-

7. Power to call upon certain persons to give assistance.-

The District Magistrate, or such authority as the State Government may appoint in this behalf for any local area, may, by written order which shall have effect throughout the extent of

his district or of such local area, as the case may be, call upon –

(a) all owners and occupiers of land, tenure-holders,

and farmers and assignees of land revenue, or their agents,

(b) all members of the district, municipal, panchayat

and other local authorities and officers and servants of such authorities, and

(c) all officers and members of staff of any factory, firm or establishment, to give such assistance as shall be specified in the order towards the taking of a census of the persons who are, at the time of the taking of the census, on the lands of such owners, occupiers, tenure-holders, farmers and assignees, or

in the premises of factories, firms and other establishments, or within the areas for which such local authorities are established, as the case may be, and the persons to whom an order under this section is directed shall be bound to obey it and shall, while acting in pursuance of such order, be deemed to be public servants within the meaning of the Indian Penal Code.

14. There is a Charge-officer/respondent No.4 is Census Officer appointed under Section subsection (2) of Section 4 of the Act, of 1948. In that view of the matter, respondent No.4 is an officer appointed by State Government under subsection (2) of Section 4 of the Act of 1948. He therefore, could not have been invoked sub section 4 to further appoint the Census Officer. He also invited our attention towards Rule 3 of the Act of 1948 which reads as under:-

“3. The Central Government may, by notification in the Official Gazette, declare its intention of taking census in the whole or any part of the territories to which this Act extends, whenever it may consider it necessary or desirable so to do and thereupon the census shall be taken.”

15. He also submitted that under Rule 3 the State Government and the Union Territory Administration are empowered to appoint officers as mentioned in the chart table and serial No.3 the officers of the rank of Tahsildars and Additional Tahsildars can be appointed as a Charge-officers/Additional Charge Officers

in that sense and the clauses 4 and 5 of the table state about who are to be appointed as Supervisors and Enumerators.

TABLE

	<i>Designation</i>	<i>Officers to be appointed</i>
	<i>1</i>	<i>2</i>
<i>1.</i>	<i>Principal Census Officer</i>	<i>District Collectors/ Magistrates/ Commissioners or administrative heads of Corporations or any nominated Officer.</i>
<i>2.</i>	<i>District/Additional district/Deputy district/ Sub-divisional district/City/Additi onal City Census, Officer.</i>	<i>District Collectors/ Magistrates/ Officers assisting District Collectors/Magistrates/ Commissioner/ District Sub-divisional Officers or Revenue Divisional officers.</i>
<i>3.</i>	<i>Charge Officer/ Assistant Charge Officer/ Additional Charge Officer and Sub-Charge Officer.</i>	<i>Tehsildars/ Additional Tehsildars/Mamlatdars / Block Development Officer/Chief Administrative Officer of towns/ Executive Officers and other Officers</i>
<i>4.</i>	<i>Supervisor</i>	<i>Officers generally of a rank higher than enumerators or any person.</i>
<i>5.</i>	<i>Enumerator</i>	<i>Teachers, Clerks or any official or any person.”</i>

He placed reliance on various decisions of this Court as well as Apex Court which are as follows:-

Election Commission of India vs. State Bank of India Staff Association Local Head Office Unit, Patna and ors. reported in *1995 Supp (2) SCC 13* wherein the Hon'ble Apex Court while interpreting the word 'such staff' stated that obviously 'such staff' can only mean that staff which is under the control of the President or the concerned Governor and not any staff over which they do not exercise control. It could mean only that staff on which the President or the Governor, as the case may be, would be in a position to exercise disciplinary powers should they refuse the President's or Governor's directive. Although the Constitution-makers did not say the Union or the State Governments but only the President or the Governor, it is obvious they would have to act consistently with Article 74(1) and 163(1), respectively. Therefore, on a request by the Election Commission the services of those Government servants who are appointed to public services and posts under the Central or State Governments will have to be made available for the purpose of election. When the Constitution came into force the services of these officers were readily available. Of course, there were also local authorities and the services of the employees of the local authorities were also available. That is why Section 159 of the 1951 Act provides that on request from the Regional Commissioner or the Chief Electoral Officer of the State, the local authority of the State shall make available to any Returning Officer such staff as may be necessary to carry out the duties in connection with an election."

16. Similarly Ahmedabad High Court in ***Letters Patent Appeal No.244/2019*** decided on ***05.02.2019*** wherein similar issue was involved and in paragraph No.13 it is specifically observed that Section 7(c) of the Census act empowers the District Magistrate to call upon all the officers and members of the staff of any factory, firm or establishment to render assistance towards taking of a census of the persons, who are, at the time of taking of the census, in the premises of factories, firms and other establishments, as the case may be. It is, therefore, evident that under Section 7(c) the District Magistrate can take assistance of the officers and members of staff of any establishment towards taking the census of persons, who are, at the time of taking of census, in the premises of the establishment only.

17. It is further observed that Section 7(c) does not empower the District Magistrate to appoint the employees of the LIC as the Enumerators or Supervisors for the general census work. The meaning of the term “establishment” as sought to be assigned does not carry the case of the appellants any further and the interpretation of the term establishment by judgments referred to in para No.2 of the written submissions is not helpful in any manner to the appellants.

18. Under the Census Act, the work of taking census is assigned to the Central Government and the State Government under Section 4. They can take help of the staff of local authorities under Section 4A. Other than that, the Census Officers

cannot appoint the employees of the LIC as the Enumerators or Supervisors to perform the work of taking census as under the Census Act the Census Officers like, Deputy Municipal Commissioner, cannot further delegate the power to take census and there is no power, jurisdiction or authority under the Act to appoint the employees of the LIC as the Enumerators or Supervisors. The Citizenship Act has nothing to do with the Census Act though the powers may be delegated under both the Acts to the same officers.

19. Similar view is taken by Division Bench of this Court in *Gokul Shrirang Mundhe and others vs. State of Maharashtra and ors.* reported in *2017 SCC OnLine Bom 10083* and *Writ Petition No.10917/2015* with connected petitions decided on *28.09.2016*. In the case of *Gokul Shrirang Mundhe and ors. vs. State of Maharashtra and ors.* in paragraph No.15 itself it is specifically observed that it would not be within the powers of the Respondents to requisition the teachers of the aided/unaided Colleges for the purpose of election relying upon Order of 1995 issued by the State Election Commission. As it is held that the said order is not applicable to the teachers of aided/unaided Colleges and they do not come within the purview of clause (2) of the said Order, needless to state the order clauses with regard to punishment etc. would also not apply to them. It appears that the elections are already over. As the order of 1995 stands today, it will have to be held that the services of the teachers of the Colleges cannot be requisitioned for the election of the

Panchayats and Municipalities. Similarly, in Writ Petition No.10917/2015 by considering Section 27 of the Education Act reads as under:-

“27. Prohibition of deployment of teachers for non-educational purposes.-

No teacher shall be deployed for any non-educational purposes other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be.

It was held that “ the mandate of Section 27 is that no teacher shall be deployed for any non-educational purposes. The exception to the said mandate is laid down in Section 27 itself. The exception will apply when the teachers are employed for the work of decennial population census, disaster reliefs duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be. It is further held that the direction issued by the State Government to the teachers to work as enumerators for preparation and updation of the National Population Register will be contrary to the provisions of Section 27 of the Education Act, as the teachers will be deployed for non-educational purposes. The work will not be covered by the exception carved out in Section 27.”

20. Thus, consistent view of the Apex Court as well as various High Courts and this Court is that the teachers or non-

teaching staff of aided or unaided schools cannot be deputed for the work of Election as well as for the work of census.

21. Heard Mr. K.N. Shukul, learned DSGI for respondent Nos.1 and 2 and Mr. J.B. Kasat, learned counsel for respondent No.4.

22. Mr. Kasat, learned counsel for respondent No.4 strongly opposed the said contention and submitted that in view of Section 4 of the Act of 1948, respondent No.4 has acted upon and therefore, no illegality is committed.

23. In view of that, at prima-facie stage the communication issued by respondent No.4-Charge Officer for taking census work and the notices subsequent thereto appear to be contrary to the legal provision and therefore, interim prayer in terms of prayer clause (iii), (v) deserves to be allowed.

24. In view of that interim relief is granted in terms of prayer clause (iii), (v).

25. Authenticated copy be supplied to the learned counsel appearing for the parties to act upon.

(RAJ D. WAKODE, J.)

(ANIL S. KILOR, J.)