

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL WRIT JURISDICTION

WRIT PETITION NO. OF 2020

DISTRICT: PUNE

In the matter of Article 226 and Article 227 of
the Constitution of India;

And

In the matter of Impugned Government
Resolution dated 13/7/2020 passed by the Rural
Development Department, State of Maharashtra;

And

In the matter of Impugned Government
Resolution dated 14/7/2020 passed by the Rural
Development Department, State of Maharashtra

1. Mr. Pradeep Shivaram Hulawale,

2. Mr. Prasad Prakash Hulavale

...Petitioners

Versus

1. The State of Maharashtra

Through the Secretary,

Rural Development Department,

Mantralaya, Mumbai -400001

.... Respondent

TO

THE HON'BLE CHIEF JUSTICE

AND THE HON'BLE COMPANION

JUDGES OF THE HIGH COURT OF

JUDICATURE OF BOMBAY

THE HUMBLE PETITION OF THE

PETITIONER ABOVENAMED

MOST RESPECTFULLY SHEWETH:-

1. The Petitioner No.1 is a member of the Gram Panchayat Karla and is an elected member since 2015. The Petitioner is a resident of the Karla village, Taluka and the term of Karla Gram Panchayat ended on 13 July 2020. The Petitioner No.2 is a resident of Karla village and is a tax-payer and is concerned about the well being of the Gram Panchayat Karla.
2. The Respondent No.1 is the State of Maharashtra through its Rural Development Department which has issued the Government Resolution dated 13/7/2020 and Government Resolution dated 14/7/2020 by which wide un-canalized and unfettered powers have been delegated to the Chief Executive Officer of the respective Zilla Parishads to appoint an Administrator with the assistance of the Guardian Minister of the respective District. The Petitioners state that the Respondent No.1 is “State” and/or Authority of State” as defined under Article 12 of the Constitution of India and is amenable to the Writ Jurisdiction of this Hon’ble Court.
3. The Petitioners by preferring the present writ petition under Article 226 and Article 227 of the Constitution of India seek to quash and set aside the Government Resolution dated 13/7/2020 and the Government Resolution dated 14/7/2020 issued by the Respondent by which the Respondent has delegated un-canalized and unfettered powers on the Chief Executive Officers of various Zilla Parishads to appoint **any suitable person as tried to be made out** as an Administrator over a Gram Panchayat in consultation with the Guardian Minister of the said District under the guise of the COVID-19 situation as elections cannot be held for the said Gram Panchayats. The Petitioners state that it is a settled proposition of law that a delegated legislation cannot be unfettered and un-canalized and that the present delegated legislation is contrary to the Constitutional Scheme of Article 243

which sets out the constitution of a Gram Panchayat or a Village Panchayat as well as the provisions of the Maharashtra Village Panchayat Act which sets out the powers of the elected members of the Gram Panchayat and important functions to be performed by them. The Petitioners *inter alia* also seek to challenge the Government Circular dated 14/7/2020 by which the Deputy Secretary of the Respondent No.1 has set out the norms and conditions for the appointment of an Administrator which reinforce the fact that the appointment sought to be done is not of appropriate Government Officers but of laymen who are to enjoy powers and perks of a Sarpanch in violation of provisions of Article 243 of the Constitution of India and as such would be political appointments.

4. Few facts and circumstances giving rise to the filing of the present writ petition are as follows:
 - a. The Petitioner No.1 is a resident of the Karla village and had contested the elections to the Karla Gram Panchayat which were held in 2015. The Petitioner No.1 had been elected since then and was since working diligently as a member of the Karla Gram Panchayat and was recently also working as the Deputy Sarpanch of the said Gram Panchayat. The term of the Karla Gram Panchayat ended on 13 July 2020. The Petitioners crave leave to refer to and rely upon the said documents as and when produced.
 - b. The Petitioner No.2 is a resident of the Karla village and is a public-spirited citizen and is concerned about the well-being of the Karla Gram Panchayat of which he is a citizen. Petitioner No.2 is a law-abiding citizen and also regularly participates in various social activities of his village.

- c. The Petitioners state that the world has been facing one of its biggest challenges in terms of the Covid-19 pandemic, a situation which has been unseen for over a century. The Petitioners state that from 25 March 2020, India has been under lockdown, which was enforced by the National Disaster Management Authority and Ministry of Home Affairs under powers vested with it by the Disaster Management Act, 2005. The Respondent No.1 through the State Disaster Management Authority has also issued various guidelines and lockdown measures in accordance with the powers of the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897.

- d. The Petitioners state that although it is the month of July, Maharashtra continues to remain one of the worst affected states with over 2,75,000 Covid-19 patients as on date and with the numbers steadily increasing. It has thus become virtually impossible to have elections to the various local bodies whose elections which were due in the months from March to July and in the coming months of the present year.

- e. The Petitioners state that in and around the month of May when the elections for some Municipal Corporations were due, a decision was taken by the State of Maharashtra under the Maharashtra Municipal Corporations Act, 1949 to appoint the Chief Executive Officer of the respective Corporation as an Administrator over the said Municipal Corporation. Petitioners crave leave to refer to and rely upon the said order as and when produced.

- f. The Petitioners state that similarly now keeping in view the elections which were due for the various Gram Panchayats, the Respondent was facing a situation wherein it could not hold the elections to the said Gram Panchayats and thus an Ordinance was promulgated by the Respondent on 25/6/2020 sighting emergent circumstances for the purpose of amending Section 151(1)(a) of the Maharashtra Village Panchayats Act and giving power to the State Government to appoint an Administrator on such Gram Panchayats. Hereto annexed and marked as **Exhibit “A”** is a copy of the Maharashtra Village Panchayats Act, amendment Ordinance dated 25/6/2020 promulgated by the State of Maharashtra.
- g. The Petitioners state that it is important to note some important aspects of the said Ordinance. The Ordinance states that a “*suitable person*” will be appointed by the State Government in exercise of powers under Section 151(1) and proviso to sub-Clause (a). It does not provide for what will be the duration of the Administrator and it also does not define the term “*suitable person*” nor does it state as to who will be the person. In any case the said Ordinance comes with a Statement of Objects and Reasons which specifies the situation of pandemic as the reason behind promulgating such an ordinance.
- h. The Petitioners state that the said Ordinance also specified a period from July 2020 to December 2020. The Petitioners state that thereafter in furtherance of the same, the Respondent- State of Maharashtra has come out with a Government Resolution dated 13/7/2020, by which in a sweeping effect, powers have been delegated to the Chief Executive Officer of the respective Zilla Parishad in whose territorial jurisdiction

the said Gram Panchayat is situated, to appoint **any person** as an Administrator of the said Gram Panchayat. The said Government Resolution also directs the Chief Executive Officer of the said Zilla Parishads to take assistance of the District Guardian Minister for the appointment of Administrators to Gram Panchayats. Hereto annexed and marked as **Exhibit “B”** is a copy of the impugned Government Resolution dated 13/7/2020 issued by the Respondent No.1 Rural Development Department.

- i. The Petitioners state that the said Government Resolution is completely contrary to the scheme of Chapter IX of the Constitution of India and which sets out the aspect of Village Panchayat/Gram Panchayat. The Petitioners state that the power to appoint an administrator although is vested in the State of Maharashtra, the said power cannot be delegated in such an un-canalized and an unfettered manner as the Constitution mandates that the Gram Panchayat i.e. the local self governing body will also receive public funds, perform various functions for the administration of the area and which functions and powers are to be exercised by elected representatives. The said function, at the moment cannot be exercised by elected representatives as their tenures are about to end and therefore wide power of such magnitude is given to appoint any person would be appointed on the said position.
- j. The Petitioners further submit that the inclusion of the Guardian Minister has only politicized the said function as the said Administrator also has powers to levy and collect taxes on behalf of the Gram Panchayat/Village Panchayat and various charges from residents of the

village as also receive grants from the State of Maharashtra and the Union of India.

- k. The Petitioners state that, Guardian Minister of a District is not a Constitutional Authority and as such does not have any statutory mandate, unlike the mandate given to various Ministers under the provisions of the Maharashtra Co-operative Societies Act, 1960, the Maharashtra Land Revenue Code, etc.
- l. The Petitioners state that under the Maharashtra Village Panchayats Act, 1959 no power has been delegated to a Minister and thus for the first time by virtue of an executive fiat a Minister is included in exercise of delegated legislation in the form of the said resolution of the State Government and to exercise powers of the Village Panchayat/Gram Panchayat for the appointment of an Administrator. The Petitioners state that the framework of the statute within which the Respondent is supposed to act, does not permit the Respondent to have such a carte blanche appointment of any person as an Administrator.
- m. The Petitioners state that thus such an appointment of an Administrator is completely contrary to the orders passed/issued by the State of Maharashtra in so far as functioning of a Municipal Corporation was concerned. One such example being the case of the Navi Mumbai Municipal Corporation wherein the Governments had appointed the Chief Executive Officer of the Municipal Corporation as an Administrator after the term of elected members of the Corporation ended.

- n. The Petitioners state that although the mandate should be in favour of democratically elected representatives, in case of any emergent circumstances an appropriate representative from the executive with knowledge of the tasks to be executed ought to be appointed and any layman who does not meet these criteria ought not to be appointed. It is important to note that statutory functions are imposed on the persons holding such posts and therefore it is reasonable that a person with some administrative experience or some person who is known with the functioning of the Gram Panchayat/Village Panchayat ought to be permitted to be appointed.
- o. The Petitioners state that thus the mandate cannot be in favour of anybody who does not meet the said criteria, by an executive fiat executed in a wide and broad manner.
- p. The Petitioners state that it is a settled principle that such un-canalized and unfettered powers cannot be permitted to be exercised in form of a delegated legislation, especially when the legislation at hand has not permitted the same and therefore the said Government Resolution is liable to be quashed and set aside to the extent that it seeks to appoint a person without any administrative experience and who without being a part of the executive/administration is sought to be appointed to the various Gram Panchayats/ Village Panchayats and also to the extent that the Chief Executive Officer is required to act in consultation with the Guardian Minister of the said District.
- q. The Petitioners state that thereafter by a further Government Resolution dated 14/7/2020, the Deputy Secretary of the Respondent No.1 has

directed the concerned Chief Executive Officer to before taking a decision in consultation with the Guardian Minister, ensure that:

- A. Person chosen as an Administrator is a resident of the said Gram Panchayat/Village Panchayat and is registered as a voter in the said Gram Panchayat;
- B. Persons whose tenure as members of the Gram Panchayat cannot be appointed as Administrators;
- C. Powers of a Sarpanch as defined under the Maharashtra Village Panchayats Act, 1959 will be available to persons appointed as as Administrator;
- D. All salaries and perks of a Sarpanch will be liable to be paid to an Administrator appointed for the said purpose and during the tenure of their appointment;
- E. Post of an Administrator and powers granted to an Administrator will come to an end the day a duly elected Gram Panchayat/Village Panchayat is constituted.

Hereto annexed and marked as **Exhibit "C"** is a copy of the impugned Government Resolution dated 14/7/2020 issued by the Deputy Secretary of the Respondent No.1 Rural Development Department.

- r. The Petitioners state that the said Government Circular only reiterates that the Chief Executive Officer can appoint anybody even without any experience of Government Working or functioning to the said important post of an Administrator. It also reinforces the fact that a predominant role is sought to be attributed to the Guardian Minister of the respective District thus re-enforcing the fact of appointment of laymen to the said posts without appropriate experience.

- s. The Petitioners state that in this situation they are left without any alternative but to prefer this writ petition under Article 226 and Article 227 of the Constitution of India, on the following grounds which are taken in the alternative and without prejudice to each other:

GROUND:

- A. That the impugned Government Resolution dated 13/7/2020 does not provide for what will be the duration of the Administrator and it also does not define the term “suitable person” nor does it state as to who will be the person and thus the said Government Resolution delegated unfettered and unguided powers on the Chief Executive Officer of the respective Zilla Parishad.
- B. That the said Government Resolution is completely contrary to the scheme of Chapter IX of the Constitution of India and which sets out the aspect of Village Panchayat/Gram Panchayat. The Petitioners state that the power to appoint an administrator although is vested in the State of Maharashtra, the said power cannot be delegated in such an un-canalized and an unfettered manner as the Constitution mandates that the Gram Panchayat i.e. the local self-governing body will also receive public funds, perform various functions for the administration of the area and which functions and powers are to be exercised by elected representatives. The said function, at the moment cannot be exercised by elected representatives as their tenures are about to

end and therefore wide power of such magnitude is given to appoint any person would be appointed on the said position.

- C. That the inclusion of the Guardian Minister has only politicized the said function as the said Administrator also has powers to levy and collect taxes on behalf of the Gram Panchayat/Village Panchayat and various charges from residents of the village as also receive grants from the State of Maharashtra and the Union of India.
- D. It is important to note that the statutory scheme envisages multiple functions and gives wide powers to the local self government setup of a Gram Panchayat whose members are locally elected representatives, and who are headed by a Sarpanch. The statute-the Maharashtra Village Panchayat Act sets out the vast powers and important functions which are to be exercised and performed by the elected members. The Gram Panchayats receive huge funds which are public funds and which are to be utilized for various important public and welfare purposes.
- E. Just because of a pandemic, the said powers cannot be delegated to a “suitable person”, in a democracy the powers have to be delegated with great caution, as the saying goes, “with great power comes great responsibility”. The Respondent could have mandated appointment of Government officers to perform functions of the Administrators and not just any individuals who would be without any check and balance. Thus, a serious flaw is sought to be introduced by the said impugned Government

Resolutions which ought to be quashed and set-aside as being contrary to the Constitutional framework of Chapter IX and contrary to the statutory framework of the Maharashtra Village Panchayat Act.

- F. The appointment as sought to be done by the Respondent under the Impugned GR's is clearly a political appointment and thus the said person is also bound to unduly influence the future elections of the Gram Panchayats and which cannot be permitted in law. One such example is a letter being issued by a worker of a political party seeking candidates after payment of some charges and then clarifying that money is not required for such candidature. Hereto annexed and marked as **Exhibit "D"** is a copy of the said letter.
- G. That there is involvement of serious exchequer involved in running and functioning of Gram Panchayats and thus such persons politically appointed cannot at all be held accountable or responsible. In that context the impugned GR grants unfettered powers and thus when there are Government Officers of the Revenue and other Departments available, private persons cannot be directly appointed after shutting out the duly elected persons.
- H. That Village Panchayat or Gram Panchayat forms an essential part of the local administration or model of self-governance. The Constitution itself mandates the same and thus by political appointments like the ones set up in the GR, the whole structure of a local self-governance is sought to be altered.

- I. The Guardian Minister of a District is not a Constitutional Authority and as such does not have any statutory mandate, unlike the mandate given to various Ministers under the provisions of the Maharashtra Co-operative Societies Act, 1960, the Maharashtra Land Revenue Code, etc.
- J. The Maharashtra Village Panchayats Act, 1959 no power has been delegated to a Minister and thus for the first time by virtue of an executive fiat a Minister is included in exercise of delegated legislation in the form of the said resolution of the State Government and to exercise powers of the Village Panchayat/Gram Panchayat for the appointment of an Administrator. The Petitioners state that the framework of the statute within which the Respondent is supposed to act, does not permit the Respondent to have such a carte blanche appointment of any person as an Administrator.
- K. That such an appointment of an Administrator is completely contrary to the orders passed/issued by the State of Maharashtra in so far as functioning of a Municipal Corporation was concerned. One such example being the case of the Navi Mumbai Municipal Corporation wherein the Government had appointed the Commissioner of the Municipal Corporation as an Administrator after the term of elected members of the Corporation ended. Hereto annexed and marked as **Exhibit "E"** is a copy of the appointment order dated 28/4/2020 issued by the Urban Development Department of the State of Maharashtra appointing

the Commissioner of the Navi Mumbai Municipal Corporation as an Administrator to the said Corporation.

- L. That the mandate of running a Gram Panchayat cannot be in favor of any suitable person who does not meet the said criteria, by an executive fiat executed in a wide and broad manner as is sought to be done by the Government Resolutions dated 13/7/2020 and 14/7/2020.
- M. That it is a settled principle that such un-canalized and unfettered powers cannot be permitted and therefore the said Government Resolution is liable to be quashed and set aside to the extent that it seeks to appoint a person without any administrative experience and who without being a part of the executive/administration is sought to be appointed to the various Gram Panchayats/ Village Panchayats and also to the extent that the Chief Executive Officer is required to act in consultation with the Guardian Minister of the said District.
- N. That even the Government Circular dated 14/7/2020 only reinforces the prominent role sought to be given to the District Guardian Minister inspite of him not having any Constitutional mandate to make any such appointments.
- O. That the Petitioners apprehend that the said posts will end up being proxy political nominations to misuse the situation arising out of the Covid-19 pandemic.

- P. That the Government Circular does not set out the requirement of the Administrator having any adequate knowledge for holding the said post and does not require him/her to be a Government Officer with relevant knowledge for the said post and thus might result in misuse of power.
- Q. That considering the facts and circumstances of the case in hand it is clear that it is a fit case for this Hon'ble Court to exercise its wide discretionary powers under Article 226 and Article 227 of the Constitution of India and grant the reliefs as prayed for by the Petitioner.
5. The Petitioners crave leave to add, to delete, to amend and/or to alter the aforesaid grounds as and when required.
 6. The Petitioners state that it has an extremely strong prima facie case and that balance of convenience also lies in its favour. Petitioners state that no irreparable loss or harm would be caused to the Respondents if interim reliefs as sought for by the Petitioners is granted. It is also important to note that the impugned Government Resolutions as stated above are arbitrary and unjust and thus ought to be quashed and set aside. The Petitioners have thus prayed for an interim relief that the impugned Government Resolutions be stayed and pending the hearing and final disposal of the present Writ Petition.
 7. The Petitioners state that they are seeking urgent ad-interim and interim orders in the nature of seeking a stay to the Government Resolutions. The Petitioners state that their grievance is only to the extent of seeking a stay to the appointment of private persons (suitable persons) and they have no grievance

if any government servant like Talathi, BDO, Tehsildar, Circle-Officer or any other officer is appointed in the present circumstances which are emergent circumstances. In the present circumstances the delegation under section 182 of the Maharashtra Village Panchayat Act, certainly would not be bad.

8. The Petitioners state that the Impugned Government Resolution are dated 13/7/2020 and the impugned Government Circular is dated 14/7/2020 and thus the Petitioners have approached this Hon'ble Court with extreme urgency and without any delay on its part.
9. The Petitioner states that the cause of action is well within the jurisdiction of this Hon'ble High Court and thus the Hon'ble Court has the jurisdiction to hear and decide the present Writ Petition.
10. The Petitioners have not filed any other petition, appeal, revision before this Hon'ble Court or any other Hon'ble Court in India in respect of the subject matter of the present Writ Petition.
11. The Petitioners have paid the necessary court fees as required for the filing of the present Writ Petition. The Petitioners have not received any caveat notice from the Respondents.
12. The Petitioners therefore pray that:
 - a) Rule be issued and record and proceedings be called for;
 - b) That this Hon'ble Court be pleased to issue any appropriate writ, order or direction in the like nature of Article 226 and Article 227 of the Constitution of India:

- i. To quash and set aside the Impugned Government Resolutions dated 13/7/2020 and 14/7/2020 issued by the Respondent Rural Development Department, State of Maharashtra to the extent that it provides for appointment of “any suitable person as tried to be made out” as Administrators of Gram Panchayats by the CEO of the concerned Zilla Parishad in consultation with Guardian Ministers of the District;
 - ii. In the alternative and without prejudice to the first prayer:
To read down the Impugned Government Resolution dated 13/7/2020 issued by the Respondent Rural Development Department to mean that “any suitable person” would mean only a Government Officer to be appointed as an Administrator;
- c) Pending the hearing and final disposal of this writ petition this Hon’ble Court be pleased to stay the effect, operation, execution and implementation of the Impugned Government Resolution dated 13/7/2020 issued by the Respondent - Rural Development Department, State of Maharashtra and the impugned Government Resolution dated 14/7/2020 issued by the Deputy Secretary of the Rural Development Department, State of Maharashtra and any further orders issued in furtherance of the Government Resolution dated 13/7/2020;
- d) Pending the hearing and final disposal of this writ petition this Hon’ble Court be pleased to read down the Impugned Government Resolution dated 13/7/2020 issued by the Respondent - Rural Development Department, State of Maharashtra and the impugned Government Resolution dated 14/7/2020 issued by the Deputy Secretary of the Rural Development Department, State of Maharashtra to mean only Government

Officers as suitable persons for being appointed as Administrators over the Gram Panchayats in the State of Maharashtra.

- e) Ad interim and interim relief in terms of prayer clauses (c) and (d) may be granted;
- f) Pass such further and other reliefs as the nature and circumstances of the case may require

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL EVER PRAY

Pralhad Paranjape
Advocate for the Petitioners

VERIFICATION

I, Mr. Pradeep Hulawale, Age Adult, residing at the address mentioned above at Karla Gram Panchayat, the Petitioner No.1 above named, do hereby state on solemn affirmation that the contents in Para No. 1 to 11 hereinabove are true and correct and as per my knowledge and information and the contents of para s are the legal grounds and I believe the same is true and correct and I put the signature thereof. The contents of para 12 are the prayers which I seek in the present Writ Petition.

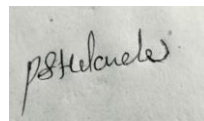
Solemnly affirmed at Mumbai

Dated this 16 July 2020

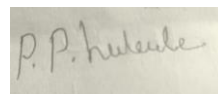
Identified by me

Pralhad Paranjape

Before me



Mr. Pradeep Shivaram Hulawale



Mr. Prasad Prakash Hulavale