

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1647 OF 2014

1. Waghur Shikshan Prasarak Mandal,
Sakegaon, Tq. Bhusawal,
District : Jalgaon,
Through its Chairman,
Dilipsing S/o. Pratapsingh Patil,
Age : 55 Years, Occu. Agril.,
R/o. As above.
2. Waghur Shikshan Prasarak Mandal,
Sakegaon, Tq. Bhusawal,
District : Jalgaon,
Through its Secretary,
Bhadu S/o. Rupchand Patil,
Age : 75 Years, Occu. Agril.,
R/o. As above.

... Petitioners.

VERSUS

1. Indira Gandhi Madhyamik Vidyalaya,
Sakegaon, Tq. Bhusawal,
District Jalgaon.
Managed by Waghur Shikshan
Prasarak Mandal, through its
Head Master,
Ghanashyam S/o. Ramkrushna Chaudhari
Age: 50 Years, Occu.: Service,
R/o. As above.
2. The Education Officer (Secondary)
Zilla Parishad, Jalgaon.
3. The State of Maharashtra.
Through Education and Sports
Department, Mantralaya,
Mumbai -32.
4. Imram Ahmed Gulab Patel,
Age : 31 years, Occu.; Nil,
R/o. Patel Galli, Sakegaon,
Tq. Sakegaon, Dist. Jalgaon.

... RESPONDENTS.

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Mr. V.J. Dixit, Senior Counsel h/f. Mr. L.V. Sangit, Advocate for Petitioners.

Mr. N.B. Patil, AGP for State.

Ms. Surekha Mahajan, Advocate for Respondent No.1.

Mr. Girish Rane, Advocate for Respondent No.4.

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WITH

WRIT PETITION NO. 1675 OF 2014

1. Bhadu S/o. Rupchand Patil,
Age : 75 years, Occu. Agril.,
2. Dilipsingh S/o. Pratapsingh patil,
Age : 45 years, Occu. Agril.,
3. Sanjay S/o. Govindrao Patil,
Age : 40 years, Occu. Agri.,
4. Waman S/o. Sakharam Kachare,
Age : 55 years, Occu. Agril.,
5. Gopal S/o. Ramdas Patil,
Age : 55 Years, Occu. Agril.,
6. Ramdas S/o. Maharu Patil,
Age : 60 years, Occu. Agril.,
7. Ramdas S/o. Tukaram Khadke,
Age – 62 years, Occ. Agril.,

All R/o. Sakegaon, Tq. Bhusawal,
District : Jalgaon.

... Petitioners.

VERSUS

1. Indira Gandhi Madhyamik Vidyalaya,
Sakegaon, Tq. Bhusawal,
District Jalgaon.
Managed by Waghu Shikshan
Prasarak Mandal, through is
Head Master,
Ghanashyam S/o. Ramkrushna Chaudhari
Age: 50 Years, Occu.: Service,
R/o. As above.

2. The Education Officer (Secondary)
Zlla Parishad, Jalgaon.
3. The State of Maharashtra.
Through Education and Sports
Department, Mantralaya,
Mumbai -32.
4. Chetan S/o. Miling Pandav,
Age : 28 years, Occu. Service,
5. Chandrasingh S/o. Rama Walvi,
Age : 27 years, Occu. Service.

Both R/o. Indira Gandhi Madhyamik
Vidyalaya, Sakegaon, Tq. Bhusawal,
District. Jalgaon.

... Respondents.

....
Mr. V.J. Dixit, Senior Counsel h/f. Mr. L.V. Sangit, Advocate for
Petitioners.

Mr. N.B. Patil, AGP for State.

Ms. Surekha Mahajan, Advocate for Respondent No.1.

Mr. S.B. Yawalkar, Advocate for Respondents No.4 and 5.

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CORAM : S.S. Shinde and P.R. Bora, JJ.

RESERVED ON : 26th March, 2015

PRONOUNCED ON : 08th April, 2015

JUDGMENT: (Per : P.R. Bora, J.)

1) Rule. Rule made returnable forthwith. Heard finally
with the consent of the parties.

2) Since both the petitions relate to Waghur Shikshan
Prasarak Mandal, Sakegaon and the issue raised in both the
petitions is similar, we find it appropriate to decide both the

petitions by a common Judgment, providing common reasons there-for.

3) Writ Petition No. 1647/2014 is filed by the Education Institute itself, whereas the Writ Petition No. 1675/2014 is filed by seven individuals, who claim themselves to be the members of Waghur Shikshan Prasarak Mandal, Sakegaon. In Writ Petition No. 1647/2014, the Petitioner Institute has prayed for setting aside the order dated 31.12.2013, whereby the Education Officer (Secondary), Zilla Parishad, Jalgaon has given approval to the appointment of Imram Ahmed Gulab Patel, Respondent No.4 in the Petition. Whereas, in Writ Petition No. 1675/2014, the Petitioners have sought the quashment of the order dated 14.08.2013 passed by the Education Officer (Secondary), Zilla Parishad, Jalgaon, whereby he has given approval to the appointments of Chetan Milind Pandav and Chandrasingh Rama Walvi, Respondents No.4 and 5 in the Petition.

4) In both the aforesaid Petitions, it is the common contention of the Petitioners that, the approval given to the appointments of the Respondent No.4 in Writ Petition No. 1647/2014 and Respondents No. 4 and 5 in Writ Petition No. 1675/2014 is illegal, without jurisdiction and contrary to the facts. In both the petitions, it is the further contention of the Petitioners that, before granting approval to the respective

teachers, the Education Officer has overlooked and/or ignored the fact that, their basic appointments are made by the persons who were not having any right or authority to make such appointments.

5) Mr. V.J. Dixit, learned Senior Counsel appearing in both the Petitions for the Petitioners apprised us about the various litigations filed and decided in regard to the Waghur Shikshan Prasak Mandal. Learned Senior Counsel pointed out that, long back in the year 2002, the then Joint Charity Commissioner, Nashik Region, Nashik, while disposing of Appeal No.86/2001 and 87/2001 had appointed ad-hoc committee of Nine persons to look after day to day management and administration of the Trust until final decision of the matter by the competent authority or the Court. The learned Senior Counsel pointed out that, in the said order the learned Joint Charity Commissioner had directed that, the ad-hoc body shall not take any policy decision including the recruitment of staff and employees and not to make expenses more than Rs.5,000/-. The learned Senior Counsel brought to our notice the operative order passed by the Joint Charity Commissioner, Nashik on 28.03.2002 in the said Appeals. The learned Senior Counsel thereafter took us through the further litigations fought between the rival groups claiming the management of Waghur Shikshan Prasarak Mandal.

The learned Senior Counsel invited our attention to the order passed by the learned Single Judge of this Court in Second Appeal No. 225/2013 on 31.07.2013, whereby the learned Single Judge has directed the Assistant Charity Commissioner, Jalgaon or his authorized officer to take charge of the Waghur Shiksahn Prasark Mandal Sakegaon and its institutions after 26th August, but before 31st August, 2013. The learned Senior Counsel further submitted that, the learned Single Judge has also clarified that, the Assistant Charity Commissioner shall have powers only to perform day to day work of trust and its institution and nothing more. After referring to the orders as aforesaid, the learned Senior Counsel submitted that, in the back-drop of such orders, the appointment made of Respondent No.4 in Writ Petition No. 1647/2014 and appointment of Respondents No.4 and 5 in Writ Petition No. 1675/2014 apparently appear to be illegal, unauthorized and without jurisdiction. The learned Senior Counsel further submitted that, in such circumstances, the Education Officer (Secondary), Zilla Parishad, Jalgaon ought not have given approval to such appointments contrary to the provisions of Law. Learned Senior Counsel therefore prayed for setting aside the respective approval orders, which are subject matters of the respective Writ Petitions.

6) The Respondent No.4 in Writ Petition No.1647/2014

and the Respondents No.5 and 6 in Writ Petition No. 1675/2014 have filed their affidavits in reply. In both the Writ Petitions, Indira Gandhi Madyamik Vidyalaya is the Respondent No.1 through its Head Master. The said Respondent has also submitted his affidavit in reply in both the Writ Petitions. One Shri Narendra Jaikumar Khandare, working as Deputy Education Officer (Secondary) Zilla Parishad, Jalgaon has filed the affidavit in reply in both the Writ Petitions on behalf of Education Officer (Secondary), Zilla Parishad, Jalgaon.

7) In the affidavit in reply filed by the the Head Master, Indira Gandhi Madhyamik Vidyalaya in Writ Petition No. 1647/2014, it is his contention that, at the relevant time he had acted under the instructions of the then management. It is his further contention that, he had however brought to the notice of Shri Shakil Musa Patel the then Chairman of the institution that, there was a backlog and also there were trained graduate teachers and in such circumstances, it may not be legal and proper to give appointment to Respondent No.4. It is further contended that, the note of the resistance so made by the Head Master was also recorded in the proceeding book dated 21.04.2012. It is further contended that, since the backlog was not filled-in as per sanctioned Roaster Point, the Education Officer vide his order dated 01.12.2011 refused to grant approval

to the appointment of the Respondent No.4 by Respondent No.2. The Head Master, Indira Gandhi Madhyamik Vidyalaya had also filed additional affidavit in Writ Petition No. 1647/2014 so as to bring on record the subsequent events.

8) The Respondent No.4 in Writ Petition No.1647/2014 and Respondents No.4 and 5 in Writ Petition No.1675/2014 have opposed the contentions raised in the Petitions and have justified their appointments stating that, their appointments have been made on clear vacant posts and after following due process of law and have therefore been rightly approved by the Education Officer (Secondary), Zilla Parishad, Jalgaon. These Respondents have further contended in their respective affidavits that, they are being unnecessarily victimized because of the disputes between two groups of Management. These Respondents have prayed for dismissal of the Petitions.

9) We have carefully considered the submissions advanced by the learned Counsel for respective parties. We have perused the entire record and material placed on record and the orders passed by the learned Single Judge of this Court and the Joint and Assistant Charity Commissioners. On perusal of the material on record, it is revealed that, the dispute had first arisen in the year 1999 when it was alleged by Narayansingh Patil, the then President of Waghur Shikshan Prasarak Mandal

that, Musa Patel, Anil Patil and others forcibly took the record of the trust with them. At that time, the Management Committee headed by Narayansingh Patil had expelled Musa Patel and others for acts of misconduct and had filed a change report in that regard. In the meanwhile, Narayansingh Patil died and his son Dilipsingh Patil started looking after the management of Waghur Shikshan Prasarak Mandal. The record further shows that, in the period between 1999 and 2014 the legal battle was going on between the two groups, one headed by Dilipsingh Patil and another headed by Shakil Musa Patel. However, considering the limited controversy raised in the present Writ petitions, we do not find it necessary to go into the details of the several litigations fought between the rival parties.

10) The issue raised in the present petitions is in regard to the legality of the approvals granted by the Education Officer (Secondary), Zilla Parishad, Jalgaon to the three appointments which are subject matter of the present Writ Petitions. So far as the Writ Petition No.1647/2014 is concerned, it is the contention of the Petitioners that, in view of the order dated 28.03.2002 passed by the Joint Charity Commissioner, Nashik in Appeal No. 86/2001 and 87/2001 and the order passed by the learned Single Judge of this Court in Second Appeal No.225/2013, no approval could have been granted to the appointment of the Respondent

No.4. In Writ Petition No.1675/2014, it is the contention of the Petitioners that, during the pendency of Second Appeal No. 225/2013 before the High Court, no decision should have been taken of making appointments of Respondents No.4 and 5. It is their further contention that, after passing of the Judgment and Order by the High Court in the aforesaid Second Appeal on 31.07.2013 any act done on behalf of the so called Chairman and Secretary was illegal and consequently the approval given by the Education Officer (Secondary) vide his order dated 31.12.2013 in favour of Respondents No.4 and 5 is also unauthorized and illegal.

11) We however, are not at all convinced with the submissions made on behalf of the Petitioners in both the Writ Petitions. Admittedly, when Respondent No.4 in Writ Petition No. 1647/2014 came to be appointed and Respondents No.4 and 5 in Writ Petition No.1675/2014 were appointed and their proposals were forwarded to the Education Officer (Secondary), Zilla Parishad, Jalgaon seeking approvals for their appointment, de-facto Shakil Musa Patel and his team was in-charge of the Waghur Shikshan Prasarak Mandal. Further, the Petitioners have not disputed the facts which have come on record in the affidavits in reply submitted by the Respondents that, at the relevant time, there were clear vacant posts to which

Respondent No.4 in Writ Petition No.1647/2014 and Respondents No.4 and 5 in Writ Petition No. 1675/2014 came to be appointed. Though some dispute has been raised as regards the Respondent No.4 in Writ Petition No.1647/2014 and though it has come on record through the affidavit in reply of the Head Master, Indira Gandhi Madhyamik Vidyalaya that, when for the first time approval was sought to the appointment of Respondent No.4 there was a backlog, subsequently, it has come on record that, the said backlog was duly filled-in and only thereafter the appointment of Respondent No.4 was approved by the Education Officer. The Petitioners have further not disputed that, all these appointments were made by following due process of Law. It has come on record that, before making the appointments in question, an advertisement was published in the daily local news paper and the applications were invited from the aspiring candidates. There is further no dispute that, the Respondent No. 4 in Writ Petition No. 1647/2014 and Respondents No.4 and 5 in Writ Petition No.1675/2014 possess the requisite qualification for their appointments on respective posts. The Petitioners have further not disputed that, at the relevant time, there was no backlog and the Roaster was duly followed in making appointments in the respective institutions run by Waghur Shikshan Prasarak Mandal.

12) In the background of the aforesaid facts, the question arises, whether the appointments so made can be invalidated and request for the their cancellation can be accepted only on the ground that, there was an order dated 28.03.2002 passed by the then Joint Charity Commissioner, Nashik appointing ad-hoc committee and preventing the said committee from taking any policy decision and making appointments of the staff and employees and further that in an order dated 31.07.2013 in Second Appeal No.225/2013, the learned Single Judge of this Court had directed the Assistant Charity Commissioner, Jalgaon to take charge of Waghur Shikshan Prasarak Mandal, Sakegaon and its institutions after 26th August, but before 31st August, 2013? In so far as the order passed by the Joint Charity Commissioner, on 28.03.2002 is concerned, in any case, it cannot be approved that such order can be kept operative for next 12-13 years so as to stand still the entire administration. We do not wish to enter into the controversy, whether the said order was sought to be modified at any point or was in fact modified or not? Suffice to say that, on the strength of such order the administration of any institution cannot be stopped for such a long period.

13) In so far as the order passed by the High Court in Second Appeal No. 225/2013 is concerned, the record shows that, not only the appointments of Respondent No.4 in Writ

Petition No.1647/2014 and Respondents No.4 and 5 in Writ Petition No.1675/2014 were made prior to passing of the said order, but the proposals for their approval were also sent to the Education Officer, Zilla Parishad, Jalgaon before passing of the said order. In such circumstances, it cannot be accepted that, the respective approval orders in any way violate the order passed by the High Court.

14) The learned Counsel Mr. Girish Rane, appearing for Respondent No.4 in Writ Petition No.1647/2014 submitted that, even if the body which was in power at relevant time is held to be illegal, the acts done by the said body in lawful manner cannot be held to be illegal. In order to substantiate his contention, the learned Counsel relied upon the Judgment of Hon'ble Apex court in the case of Gokaraju Rangaraju Vs. State of Andra Pradesh (1981) 3 Supreme Court Cases 132. In the said matter the point at issue before the Hon'ble Apex Court was that, "what would be the effect of the declaration of the Supreme Court that the appointment of the Sessions Judge is invalid on the judgments pronounced by the said Judge prior to such declaration." While answering the issue so raised, the Hon'ble Apex Court interpreted the de-facto doctrine and held that, even if the appointment of a Judge is found to be invalid, the judgments, decrees or orders made by the said Judge would

continue to be valid and effective. In the instant case also, even if it is assumed that the body which made the appointments of Respondent No.4 in Writ Petition No.1647/2014 and Respondents No.4 and 5 in Writ Petition No.1675/2014 was illegally in power, the appointments made by them by following due process of law and which are otherwise held to be valid by the competent authority would continue to be valid and effective.

15) For the reasons stated above, we do not find any substance in the Writ Petitions so filed. The Education Officer (Secondary) Zilla Parishad, Jalgaon after having considered that, the appointments were made on the vacant posts, that they were made after following due process of law, that the persons appointed were duly qualified, that the Roaster was duly followed has duly and legally approved the said appointments. In his affidavit in reply the Education Officer has contended that the questioned appointments were approved by him for and in the interest of the students at large. Therefore, no question arises of setting aside such approvals. Both the Writ Petitions therefore fail and are accordingly dismissed. Rule discharged. No order as to costs.

**P.R. Bora,
Judge**

**S.S. Shinde,
Judge**