

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 7485 OF 2014

Gram Shikshan Prasarak Mandal,
Patoda [Bk.], Taluka Jalkot, District Latur,
Through its Secretary,
Dhanaji Shankar Jadhav,
Age 47 Years, Occu. Service,
R/o. Shastri Colony, Udgir,
Taluka Udgir, District Latur.

... **PETITIONER**

VERSUS

- 1] The State of Maharashtra,
Through its Department of Education
& Sports, Mantralaya, Mumbai.
- 2] The Director of Education,
State of Maharashtra, Pune.
- 3] The Deputy Director of Education,
Latur Division, Latur.
- 4] Human Multi-purpose Development
Education Society, AUSA, Taluka AUSA,
District Latur.

[Copy to be served on Publication
Prosecutor, High Court of Bombay,
Bench at Aurangabad]

... **RESPONDENTS**

Mr. Santosh S. Jadhavar, Advocate for the Petitioner.
Mr. A.S.Shinde, AGP for Respondent Nos.1 to 3.
Mr. N.P.Patil (Jamalpurkar), Advocate for Respondent No.4.

CORAM : **S. V. GANGAPURWALA and
V. L. ACHLIYA, JJ.**

DATE : 17th February, 2015.

ORAL JUDGMENT: (Per S. V. Gangapurwala, J.)

1 Rule. Rule made returnable forthwith. With the consent of the learned counsel appearing for the parties, the petition is taken up for final hearing.

2 Heard.

3 Mr.Jadhavar, learned counsel for the Petitioner states that the school run by Respondent No.4 was transferred to the Petitioner in the year 2010. The said transfer was also challenged by one of the person who claims himself to be a trustee of Respondent No.4 – Society by filing Writ Petition No.10240 of 2010. The said writ petition was dismissed, however, with the observation that if the Petitioners therein are aggrieved by the transfer of schools, such grievance is required to be made before the appropriate authority. The learned counsel submits that the complaint was filed before Respondent No.2 – Director of Education. No notice was issued to the Petitioner. The Petitioner *suo moto* appeared and filed his say. Thereafter, the Petitioner was not given any notice of any proceedings and the State Government passed the impugned order cancelling the order of transfer even without issuing notice to the Petitioner and without hearing the Petitioner. The learned

counsel submits that such procedure is violative of the principles of natural justice.

4 Mr.N.P.Patil (Jamalpulkar), learned counsel for Respondent No.4 submits that the initial transfer itself was without following any procedure of law. It was in total violation of the provisions of the statute and the code. The Director of Education considered the say filed by the Petitioner and thereafter, forwarded his report to the State Government. The State Government acted upon the said report having the supervisory jurisdiction and has passed the order. It cannot be said that principles of natural justice are violated. The say of the Petitioner was on record and the same is considered.

5 We have considered the submissions canvassed by the learned counsel for respective parties. The impugned order effects the rights of the parties. There is nothing on record to even remotely suggest that the State before passing the order had given any opportunity to the Petitioner of either filing say or hearing. It appears that merely on the report of the Director of Education, the State has passed the order. The principles of natural justice seem to have been transgressed. The initial order of transfer of the school run by Respondent No.4 is in favour of the Petitioner that too of the year 2010.

The Petitioner was running the school. As such, when the said order, which is already passed in favour of the Petitioner is sought to be cancelled, minimum requirement of principles of *Audi Alteram Partem* ought to have been adhered.

6 In light of the above, we pass the following order:

- I. The impugned order is quashed and set aside.
- II. The parties are relegated before the State.
- III. The parties are entitled to file their respective say.
- IV. The State after hearing the parties shall decide the proceedings afresh.
- V. The parties shall appear before the State on 11th March, 2015.
- VI. The State shall thereafter, decide the said proceedings, expeditiously, preferably before end of May 2015.
- VII. It is made clear that we have not considered the submissions of the learned counsel for respective parties on merits.

VIII. All contentions on merit are kept open.

IX. Rule is accordingly made absolute on above terms. No costs.

[V. L. ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]

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