

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7863 OF 2014

Waghur Shikshan Prasarak Mandal
and Another .. Petitioners

Versus

Indira Gandhi Madhyamik Vidyalaya
and Others .. Respondents

Shri V. J. Dixit, Senior Advocate i/b Shri L. V. Sangeet, Advocate
for Petitioners.

Kum. Surekha Mahajan, Advocate for the Respondent No. 1.

Shri S. B. Yawalkar, Advocate for the Respondent No. 2.

Shri Rupesh Bora, Adv. h/f Shri Maheshkumar Sonavane,
Advocate for the Respondent No. 3.

Smt. M. S. Patni, A. G. P. for Respondent Nos. 4 to 6.

Shri A. V. Deshmukh, Advocate for the Respondent No. 7.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATE : 29TH JULY, 2015.

PER COURT :

1. The order dated 07.08.2014 passed by the Education Officer (Secondary) is impugned in the present petition. Vide the impugned order the powers were given to the Headmaster to spent the amount to the extent of 1,25,000/- (Rs. One Lac Twenty

Five Thousand) apart from the rent of the building.

2. Mr. Dixit, the learned senior counsel submits that, as per the order dated 31st July, 2013, passed by this Court in Second Appeal No. 225 of 2013, the Assistant Charity Commissioner, Jalgaon or his authorised officers were directed to hold elections of the Managing Committee of the Trust and declare result of such election and proceed further. The learned senior counsel submits that, said order is confirmed by the Apex Court also. Pursuant thereto, the Assistant Charity Commissioner has conducted the election of the Trust of the Waghur Shikshan Prasarak Mandal and handed over the record and the charge to the newly elected body. The newly elected body was declared on 07.12.2013 and the charge with the record was given on 16.12.2013. The learned senior counsel submits that, even Change Report is filed and the same is pending. The elections were conducted as per order passed by this Court by the office of the Assistant Charity Commissioner. Still the impugned order is passed, whereby the elected body is restrained from operating the account and powers are given to the Headmaster. According to the learned senior counsel, said order is illegal and does not stand to any reason. The Education Officer does not have any power / authority to pass such an order.

3. The learned A. G. P. states that, if the salary is not paid to the employees, then the Education Officer has got the power to pass such order pursuant to the Government Circular dated 01st March, 2011. As objection was taken to the operation of Bank account by the Ex-Chairman, the Education Officer in the interest of institution has to pass the impugned order.

4. Miss. Mahajan the learned counsel for Respondent No. 1 submits that, the powers have been rightly invoked by the Education Officer as laid down by the Secondary School Code and so also, circular dated 01st March, 2011. Earlier there was dispute in Management and the Bank had restrained the Trustees to operate the account. The employees were not getting salaries in time, as such the Education Officer has to step in and has to pass the order.

5. The learned counsel for the Bank submits that, as objection is raised by the Ex-Chairman, the petitioner has to get the orders from the Assistant Charity Commissioner.

6. We have considered the submissions canvassed by the learned counsel for respective parties.

7. There is no prohibitory order passed by the Assistant

Charity Commissioner restraining any party from operating any account. It would be within the domain of Assistant Charity Commissioner to pass the appropriate order with regard to injunction or otherwise. It appears that, this Court in Second Appeal No. 225 of 2013 vide order dated 31.07.2013 had directed the Assistant Charity Commissioner, Jalgaon or his authorised officer to hold the elections to the Managing Committee of the Trust. Pursuant thereto, the Assistant Charity Commissioner's office has held the election of the Trust and it appears that, the charge is handed over to the elected body on 16.12.2013 (Page 41), the change report is also pending. It was stated that, earlier administrator was appointed, however, now the elections have taken place. If any party has objections to the elected body, said party has right to approach to the Assistant Charity Commissioner / Joint Charity Commissioner and seek appropriate orders with regard to the management of the trust. Unless there are some prohibitory orders passed by the Assistant Charity Commissioner, the Education Officer could not have passed the impugned order. Of course, if the salaries of the employees are not been paid regularly then, naturally the Education Officer will have every right to step in and to see that, the salaries of the employees are paid regularly and salary bills are submitted regularly.

8. Considering the above, the impugned order is quashed and set aside. It is made clear that, in the event, it is noticed by the Education Officer that, the salary of the employees is not been paid regularly for any reason whatsoever then, the Education Officer is at liberty to pass appropriate orders for payment of salary to the employees. The writ petition is accordingly disposed of with aforesaid observations and directions. No costs.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]

sam/July. 15