

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5783 OF 2014  
WITH  
WRIT PETITION NO. 5784 OF 2014

Shri Suresh Vasantji Gada (Shah)  
Chairman, Thane Municipal  
Corporation School Board, Thane .. Petitioner  
vs.  
The State of Maharashtra & Ors. .. Respondents

Mr. N. V. Bandiwadekar for Petitioner in both Petitions.  
Ms Vaishali Nimbalkar – AGP for Respondent Nos. 1 to 3 in both  
Petitions.  
Mr. Mandar Limaye for Respondent No.4 in both Petitions.  
Mr. M. S. Lagu for Respondent No. 6 in WP 5783 of 2014.  
Mr. Manoj Patil for Respondent No. 6 in WP 5784 of 2014.

**CORAM : M. S. SONAK, J.**  
**DATE: 20 JANUARY 2015**

**P.C. :-**

1] Both these petitions challenge orders dated 20May 2014 made by the Joint Director of Education (Primary), who has been impleaded as respondent no. 3 to these petitions.

2] The learned counsels appearing for respondent no. 6, in whose favour the impugned order has been passed objected to the *locus standi* of the petitioner to prefer the present petitions. They submit that the petitioner was himself a constituent of the Tribunal under Section 24(2) of the Bombay Primary Education Act, 1947.

They also submit that the Bombay Primary Education Act, 1947 has since been repealed by the Maharashtra Primary Education Act, the Hyderabad Compulsory Primary Education Act, 1952 and the Madhya Pradesh Primary Education Act (Repeal) Act, 2013 ("said Act"). In terms of the repeal, the School Board, of which the petitioner claims to be the Chairman stand dissolved and the members thereof shall be deemed to have vacated their offices.

3] Mr. Bandiwadekar, the learned counsel for the petitioner points out that disciplinary action, which culminated into imposition of penalty of reversion was imposed upon the aforesaid respondents by the Administrative Officer under Section 24(1) of the Bombay Primary Education Act, 1947. As against such penalty, sub section (2) of section 24 of the Bombay Primary Education Act, 1947 provides an appeal to a Tribunal comprising the Chairman of the School Board and any officer designated by the Director. In the present case, the said respondents had approached this Court with a petition impugning the penalty imposed upon them. The petition was disposed of in view of an alternate remedy available to the respondents under sub section (2) of section 24 of the Bombay Primary Education act, 1947. The respondents, instead of preferring appeals to the Tribunal, chose to prefer appeal to the Director of Education. There was some dispute as between the officer

designated by the Director and the petitioner, who was the Chairman of the School Board. Ultimately, the Director purported to exercise powers under section 24(2) of the Bombay Primary Education Act 1947. Here again, hearing was afforded to the petitioner / School Board by the Administrative Officer and the impugned order has been made by the Joint Director. In view of all such irregularities, Mr. Bandiwadekar submitted that the impugned order is totally without jurisdiction and the petitioner is not some stranger to these proceedings and therefore cannot be denied *locus standi* to place such facts before the Court.

4] Mr. Bandiwadekar also pointed out that at the stage when the present petition was filed, there was interim order dated 8 May 2014 in writ petition no. 2149 of 2014 in operation, which held that Municipal School Boards at Thane will continue to function pending the hearing and final disposal of the said petition. Mr. Bandiwadekar also pointed out that the Repeal Act had specifically saved appeals of employees of schools established under Repeal Acts relating to the service conditions filed and pending before any other authority under the Repeal Act, which were to be continued and disposed of by said Authorities, until a new Authority is established by the Government. This according to Mr. Bandiwadekar, is an additional reason as to why the petitioner could be said to be vested with

*locus standi* to maintain the present petition.

5] Having heard the learned counsels for the parties and perused the record, the preliminary objection with regard to *locus standi* shall have to be upheld.

6] The petitioner has purported to file the present petition in his capacity as the Chairman of the School Board. Admittedly, there was no resolution of the School Board, authorizing the petitioner to file the present petition. It is the petitioner's own case that at the time when the petition was preferred, interim order dated 8 May 2015 was in operation and the School Boards in so far as Thane is concerned, were functional. If this be so, then there was no difficulty in such School Board adopting a resolution for filing the petition against the impugned orders. Such resolution, could have perhaps authorized the petitioner to file the petition for and on behalf of the School Board. However, nothing of this sort was done. Clearly, this cannot be regarded as petition filed for and on behalf of the School Board.

7] It is now an admitted fact that by subsequent order dated 20 August 2014 made in writ petition no. 2149 of 2014, the main petition itself has been disposed of. In the said order, this Court has

observed thus :

*“2. Our attention is invited to the provisions of the City of Mumbai Primary Education Act, the Maharashtra Primary Education, the Hyderabad Compulsory Education and the Madhya Pradesh Primary Education (Repeal) Act, 2013 (for short “the said Act”). In sub-section 2 of clause 1 of the said provisions, it is provided that the said shall be deemed have come into force on the 1<sup>st</sup> July 2013. The said Act received assent of the Governor on 26<sup>th</sup> June 2014. Sub section (2) of section 3 deals with the fate of the School Boards established under the Act which were repealed under the said Act.*

*3. As of today, there is no challenge to the validity of the said Act. Therefore the status of the School Boards shall be governed by sub-section (2) of section 3 of the said Act. The communications issued / orders passed by the State Government prior to 26<sup>th</sup> June 2014 will have no legal effect as the provisions of the said Act will now prevail.*

*4. In view of the provisions of the said Act, nothing survives in these petitions and the same are disposed of.”*

8] From the aforesaid, it is clear that the interim order made on 8 May 2014 can no longer be said to be operative and the provisions of section 3 sub section (2) of the Repeal Act shall prevail. The provisions contained in Section 3(2) of the Repeal Act in terms provides that the School Boards constituted under the Repeal Act and the Rules made thereunder shall stand dissolved

and the member shall vacate their offices. Thus, as of today it cannot be said that the School Boards are in existence or that the petitioner continues to be the Chairman of the School Board. Finally, there can be no gain saying that the petitioner was himself one of the constituent of the Tribunal constituted under Section 24(2) of the Bombay Primary Education Act, 1947 which has since been repealed. As a constituent member, the petitioner certainly would not be entitled to maintain a petition in his name and on his own behalf. The position might have been slightly different, were the petitioner armed with a resolution of the School Board, authorizing him to prefer this petition. In the present case, clearly there was no resolution of the School Board authorizing the petitioner to prefer the petition. For all these reasons, preliminary objection with regard to the *locus standi* of the petitioner shall have to be upheld. The petitions are not entertained on this ground alone.

9] It is also necessary to record that the Thane Municipal corporation, which will now be the employer of respondent no. 6 has been impleaded as party respondent to these proceedings. The learned counsel for Thane Municipal Corporation stated that he has no instructions with regard to the Corporation having filed or proposing to file any proceedings against the impugned order.

10] Accordingly, present petitions are dismissed. There shall be no order as to costs.

**(M. S. SONAK, J.)**

Chandka