

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

WRIT PETITION NO.828 OF 2016

GAUTAM MAGASVARGIYA SHAIKSHNIK
SANSTHA THROUGH ITS
PRESIDENT AND ANOTHER. **..PETITIONERS.**

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS. **..RESPONDENTS.**

...
Advocate for Petitioners: Mr.Kotkar Sanjay D.
AGP for Respondents/State: Mr.S.B. Yawalkar.
...

CORAM : S.S. SHINDE & SANGITRAO S. PATIL, JJ.

Dated: 2nd AUGUST, 2016.

PER COURT :-

Heard the learned Counsel appearing for the petitioners and the learned AGP appearing for the respondents – State.

2. The fact that the petitioners have filed an appeal and the same is pending before respondent No.1, is not in dispute. It also appears that some interim orders have been passed in the said appeal by the concerned Minister.

3. It is the submission of the learned Counsel for the petitioner that the Director of Education is the competent authority to take a decision about taking over the management of the school, if he is convinced, after giving an opportunity to the management to put forth its contention. However, in the facts of the present case, though show cause notice has been issued by the Director of Education and reply has been filed by the petitioners to the said show cause notice, the State Government has taken the decision to take over the management and accordingly, appointed the Administrator. It is submitted that though the petitioners have filed an appeal in view of the scheme under the provisions of the Maharashtra Educational Institutions (Management) Act, 1976, the Director of Education is supposed to seek approval of the State Government for such appointment of an administrator. However, so far taking over the management is concerned, the Director of Education himself is the competent authority under the said Act. Therefore, the learned Counsel for the petitioners submits that

this petition deserves to be allowed.

4. On the other hand, the learned AGP appearing for the respondents – State submits that already the petitioners have preferred an appeal and the State Government is seized with the said appeal and interim orders have also been passed in the said appeal.

5. In that view of the matter, in our considered view, when the petitioners themselves have availed the remedy of appeal knowing fully well that an appeal would lie before the State Government against the order of the Director of Education taking over the management, unless the said appeal is decided, we are not inclined to entertain this petition.

6. In the circumstances, we direct respondent No.1 to decide the pending appeal of the petitioners, as expeditiously as possible; however, within six weeks from today and communicate the decision so taken to the

petitioners. Needless to observe that the petitioners will be entitled to bring to the notice of the appellate authority the relevant provisions of the Maharashtra Educational Institutions (Management) Act, 1976 and also to raise the grounds / contentions taken in this petition before the said appellate authority.

7. With the above observations, the writ petition stands disposed of.

(SANGITRAO S. PATIL, J.) (S.S. SHINDE, J.)