

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD.****WRIT PETITION NO. 7806 OF 2015**

Young Boys Educational and
Industrial Circle through its president
Habib Ur Rehman Abdul Majid,
age 60 years, occu. Retired Head Master,
r/o Plot No.11, Lane No.1,
Survey No.389/2, Aksanagar, Wadjai Road,
Dhule, Tq. And District Dhule. **...PETITIONER.**

VERSUS

1. The State of Maharashtra,
through its Secretary,
School Education Department,
Mantralaya, Mumbai.

2. The Director of Education,
(Secondary/Higher Secondary),
Maharashtra State, Pune.

3. The Deputy Director of Education,
Nasik Division, Nasik.

4. The Education Officer
(Secondary),
Zilla Parishad, Dhule.

...RESPONDENTS.

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Advocate for Petitioners : Mr.Barlinge S.R.
AGP for Respondents/State: Mr.S.D. Kaldate.
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CORAM : S.S. SHINDE & P.R. BORA, JJ.

Dated: January 07, 2016.

ORAL JUDGMENT: [Per SHINDE, J]

1. Rule, returnable forthwith. By consent of the parties, taken up for final hearing.

2. This petition has been filed with the following prayers:

“A) By a writ of certiorari, or any other appropriate writ, or order or directions in the like nature, the letter dated 09.04.2015, issued by the Deputy Director of Education, Nasik Division, Nasik, may kindly be quashed and set aside.

B) By a writ of mandamus, or any other appropriate writ, or order or directions in the like nature, the respondents be directed to sanction the staff as proposed by the petitioner as per its proposals and as recommended by the authorities like the Education Officer and Deputy Director of Education.

C) By a writ of mandamus, or any other appropriate writ, or order or directions in the like nature, the respondents be directed to allow the petitioner Institution to fill up the vacancies as per the proposals submitted by the petitioner, without compelling the petitioner Institution to absorb the surplus staff in other school/s.”

3. The learned Counsel for the petitioner invited our attention to the contents of the *inter se* communication between respondent No.1 and the Director of Education (Secondary and Higher Secondary), M.S., Pune and submits that, while granting additional staff as per the staffing pattern in the schools run by the petitioners, the condition to absorb surplus staff from other school is imposed, which is not permissible in view of law laid down by the Bombay High Court at Principal Seat at Mumbai, in the case of **Canossa Society & anr vs. Commissioner & ors.**¹ and in particular paragraph 22 of the said judgment. Therefore, he submits that the impugned order deserves to be quashed and set aside.

He further submits that, in fact, as per the staffing pattern and the Government Policy prevailing in the year 2011, the proposal was submitted to the respondent government authorities for additional staff, and the respondent-authorities ought to have considered the requirement of staff keeping in view the Government policy prevailing at the time of filing the proposal in the year 2011. However, the respondents have considered the requirement of staff in the schools run by the petitioner Institution keeping in view the Government Resolution dated

1 2014(3) Bom.C.R. 556;

23.10.2013. Therefore, the learned Counsel for the petitioner submits that, respondent No.1 may be directed to reconsider the proposal submitted by the petitioner, which is recommended by the Education Officer and the Deputy Director of Education for appointing additional employees and give sanction/approval for total posts mentioned in the said proposal.

4. On the other hand, learned AGP appearing for the respondents invited our attention to the affidavit-in-reply filed on behalf of the respondents by one Mr.Rajendra Shankarrao Pawar working as Deputy Secretary, School Education Department, Mantralaya, Mumbai and submits that, while considering the proposal of the petitioner for sanction of additional staff/employees, the proper procedure is followed as laid down in the Government Resolution dated 23rd October, 2013, issued by the School Education and Sports Department, Government of Maharashtra, Mantralaya, Mumbai, and accordingly, the proposal submitted by the petitioner has been acted upon, and the respondent No1 has granted sanction / approval for filling in six non teaching posts. He further submits that, in view of the provisions of section 3 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, the minority

institution can appoint head of the institution and other three employees of its choice. Therefore, he submits that the petition may be rejected.

5. We have heard learned Counsel for the petitioner and the learned AGP appearing for the respondents. With their able assistance, perused the pleadings in the petition, annexures thereto, contents of the impugned communication and the judgments of this Court and the Supreme Court placed on record by the learned Counsel for the petitioner. So far directions contained in the *inter se* communication at Exh.R-3 at page 17 to absorb the surplus employees from other school is concerned, in view of the law laid down by the Bombay High Court at Principal seat in case of **Canossa Society & anr** (supra), and in particular, paragraph 22 of the said judgment, no such communication / direction should have been issued asking the petitioner to absorb the surplus staff from other school. Paragraph 22 of the said judgment reads, thus:

“22. There is merit in the submissions of the learned counsel for the petitioners. In the present case by the impugned directive dated 17.6.2011 the respondent nos. 1 to 3 have foisted upon the petitioners the

appointment of the respondent no.4 who is rendered a surplus employee in view of the closure of a school situate in Nanded District. Admittedly, there is no consultation with petitioner no.2-school before such appointment is thrust upon the petitioner no.2-school. The respondent-authorities have also failed to take into consideration the fact that there is no vacancy as urged by the petitioners before the authorities, in view of the appointment of Mrs.Jyotsna Thorat who came to be appointed on 30.9.2006 and whose appointment was approved on 18.8.2007. Consequence of the impugned order issued by the respondent no.1 is that the approved appointment of Mrs.Jyotsna Thorat as validly done by the petitioner No.2-institution in exercise of its right to administer a minority educational institution is being interfered, coupled with a consequence that such valid appointment would be required to be cancelled. In our considered opinion it is impermissible for respondent nos. 1 to 3 to resort to such an action of foisting appointment of respondent no.4 on the petitioner no.1-institution as it directly infringes the fundamental right guaranteed under Article 30(1) of the Constitution of India conferred on the petitioner no.2 institution to administer and establish petitioner no.2 school. The State authorities cannot indirectly do an act which cannot directly be done. In other words, when the State has no authority to make appointment of teaching and non-teaching staff in respect of a minority institution, even if aid has been granted, such

action of making an appointment cannot be taken by directing absorption of a surplus employee. This is nothing but, making appointment of a staff member in a minority institution. The law confers no such authority and power with the State Government to thrust an employee rendered surplus in other schools to be absorbed by a minority institution. Rule 25 A of the Maharashtra Employees of Private Schools (Conditions of Services) Rules cannot be made applicable to appoint surplus staff in a minority institution unless the minority institution is consulted and concurs for such an appointment. We, therefore have no hesitation to conclude that the impugned order dated 17.6.2011 issued by respondent no.1 is wholly arbitrary and illegal as the same infringes on the petitioner's right guaranteed under Article 30(1) of the Constitution of India.”

6. In the light of the law laid down by this Court in case of **Canossa Society & anr** (supra), the impugned communication, to the extent it mentions that the petitioner should absorb the surplus staff, needs to be interfered with.

7. Accordingly, the condition to appoint surplus staff while appointing the employees on new posts, cannot sustain. The impugned communication stands quashed and set aside. The petitioner would be entitled to appoint the staff; however, subject

to the procedure established by the petitioner - institution for appointment of staff.

So far as prayer of the petitioner seeking directions to the respondents to reconsider to allow the petitioner to fill up the remaining eight posts is concerned, in our opinion, since the said issue of requirement of staff has been considered by the State Government by taking decision on the proposal submitted by the petitioner, keeping in view the Government Resolution dated 23rd October, 2013 issued by School Education and Sports Department, we are not inclined to entertain the said prayer. Hence the said prayer is rejected.

Petition is partly allowed and stands disposed of. Rule made absolute in above terms with no order as to costs.

[P.R. BORA, J]

[S.S. SHINDE, J]

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Kadam.