

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 390/2016**

SHRI DINESH NAIK AND OTHERS. Petitioners.
V/s.
STATE OF GOA AND OTHERS. Respondents.

Mr. S. N. Joshi, Advocate for the petitioners.

Mr. S. D. Lotlikar, Advocate General with Ms. P. Kalangutkar,
Additional Govt. Advocate for the respondent No.1 and 2.

Mr. P. Arolkar, Advocate for the respondent No.3.

Mr. A. D. Bhobe, Advocate for the respondents No.6, 7 and 8.

**CORAM :- F.M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date : - 05/10/2016.

P. C. :-

Heard Mr. S. N. Joshi, learned Counsel appearing for the petitioners, Mr. S. D. Lotlikar, learned Advocate General appearing for the respondent No.1 and 2, Mr. P. Arolkar, learned Counsel appearing for the respondent No.3 and Mr. A. D. Bhobe, learned Counsel appearing for the respondents No.6, 7 and 8.

2. The above petition challenges the communication dated 6th March, 2016 whereby the petitioners have been suspended of their

membership of the subject Society and seeking directions to the Registrar of Societies to hold elections to the Society in question.

3. Mr. S. N. Joshi, learned Counsel appearing for the petitioners has pointed out that the petitioners are a duly elected committee which is running the Society in question and that all of a sudden by the impugned communication they have been suspended from their membership. It is pointed out that in fact, a resolution was passed against the respondent No.6 in the meeting held on 6th February, 2016 and inspite of the said resolution, the respondent No.6 called for a Special General Body Meeting of the concerned Society to hold a fresh election. It is further pointed out that the respondent No.6 was not entitled to call for such a meeting, nor the meeting held thereupon is in terms of the constitution of the subject society. It is further pointed out that though the respondent No.6 claims to be a duly elected President of the subject Society, the minutes of such meeting have not been produced by the said respondent. The learned Counsel further points out that as the elections have not been held in accordance with the constitution of the Society, the claim of the respondent No.6 that he has been duly elected as the President of the subject Society is misconceived and untenable in law. The learned Counsel further

points out that as such, the Registrar of Societies be directed to hold elections of the concerned Society.

4. On the other hand, Shri S. D. Lotlikar, learned Advocate General appearing for the respondents No.1 and 2 has pointed out that in view of the dispute raised by the petitioners with regard to the running of the subject Society, an interim arrangement was worked out by an order dated 27th April, 2016 issued by the respondent No.2- Director of Education to ensure that the salaries of the teachers and the staff was duly paid. It is further pointed out that unless the parties agree with the Registrar to hold elections, the question of exercising powers with that regard would not at all be justified.

5. Mr. A.D. Bhobe, learned Counsel appearing for the respondents No.6, 7 and 8 has pointed out that the respondent No.6 has been duly elected as the President of the concerned Society. It is further pointed out that the elections held were in terms of the constitution of the concerned Society. It is further submitted that in fact, the respondent No.6 and other Members of the Committee are running the affairs of the Society from 28/02/2016. It is further pointed out that the respondent No.6 has rightly suspended the petitioners.

6. We have considered the submissions of the learned Counsel and we have also gone through the records. In order to examine the validity or otherwise of the impugned communication dated 27/04/2016 in the above petition, there are disputed questions of facts which would have to be adjudicated on its own merits, in an appropriate forum. This Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India cannot adjudicate the disputed questions of facts, especially when the allegations are in connection with the membership of the concerned Society which is registered under the Societies Registration Act, 1860 and running affairs of an educational institute.

7. In the present case, the respondent No.6 seriously disputes the claim of the petitioners that they still continue to be the Managing Committee of the Society and are also members of the Society, in question. These disputed questions of fact cannot be decided in the present petition and, if the petitioners are so advised, may resort to an alternate remedy to get their claim adjudicated, in accordance with law. To that effect, all contentions of both the parties are left open.

8. With regard to the reliefs sought by the petitioners to direct the Registrar of Societies to hold elections, Mr. Joshi, learned Counsel appearing for the petitioners fairly accepts that though the concerned Society is registered under the Societies Registration Act, 1860, there are no powers therein to direct the Registrar to hold such elections. The parties to the petition also agree that no mechanism is provided in the said Act that elections can be held at the instance of the Registrar of Societies. In any event, this aspect also can be examined in appropriate proceedings, in case raised by any of the parties, in accordance with law.

9. Reserving the right of the petitioners to avail of an appropriate alternate remedy, the petition stands dismissed. Needless to state, the interim arrangements arrived at for payment of salaries of the teachers and other staff in terms of the Order dated 27/04/2016, shall continue for a period of eight weeks from today.

NUTAN D. SARDESSAI, J.

F.M. REIS, J.

ssm.