

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.757 OF 2016
in
WRIT PETITION NO. 5363 OF 2015

Mr. Rajendra G.Kulkarni and ors.

..Applicants/
Original Petitioners

Versus

The State of Maharashtra and ors.

..Respondents

Mr. S. S. Pakale along with Mr. A. R. Belge, advocate for the applicants/original petitioners.

Ms. Molina P. Thakur, AGP for respondent Nos. 1 and 2.

Mr. R. V. Govilkar, advocate for respondent No.4.

Mr. C. R. Naidu along with Mr. Haresh Motwani and Mr. J. S. Chandnani, advocate for respondent Nos. 5, 6 and 7.

CORAM	: SHANTANU KEMKAR & RANJIT MORE, JJ.
DATE OF RESERVING THE ORDER	: 21st APRIL, 2016.
DATE OF PRONOUNCEMENT	:

P. C. :

Heard learned counsel appearing for the respective parties.

2. The civil application is filed for quashing and setting-aside the termination notices issued to Mrs. N.R.Korde – petitioner No.7, Mr. D. K. Pawar - petitioner No.11 , Miss. K. B. Choudhary - petitioner No.13 , Mrs. N. R. Chavan- petitioner No.16, Mrs. A. A. Waghmare- petitioner

No.5., Mrs. V. S. Nadagauda – petitioner No.4, Mr. R. G. Kulkarni – petitioner No.1 and Mr. I. Sircar – petitioner No.2. Directions are also sought against respondent Nos. 5 to 7 to allow these persons to work in respondent No.7 on the posts, on which, they are presently working and they be paid their monthly salary regularly. Injunction is sought against respondent Nos. 5 to 7 from using the infrastructure of respondent No.7 for the purpose other than running respondent No.7.

3. The applicants are teaching and non-teaching staff of respondent No.7, which is being run by respondent Nos. 5 and 6. The above petition is filed by the petitioners challenging the order dated 25th May, 2015, passed by respondent No.1 granting approval for the closure of the respondent No.7 -Polytechnic for running the Engineering and Technology courses for the Academic Year 2015-2016.

4. It is the case of the applicants that respondent Nos. 5 and 6 had earlier submitted a proposal under Section 35 of the Maharashtra State Board of Technical Education Act, 1997 (for short “the MSBTE Act”) for closure of respondent No.7. The said proposal, however, came to be rejected on merits by the competent authority. Thereafter, once again, respondent Nos. 5 and 6 submitted fresh proposal to the competent authority under their letter dated 28th January, 2015 for NOC for

progressive (phase-wise) closure on respondent No.7. It is also the case of the applicants that respondent No.4, after examining the said proposal, vide its communication dated 12th February, 2015, called upon respondent Nos. 5 and 6 to submit a detailed information as to how existing teaching and non-teaching staff were to be absorbed in their other sections/divisions/schools/institutions. It is further specific case of the applicant that in response to the said communication, respondent Nos. 5 and 6 gave an undertaking that the teaching and non-teaching staff of respondent No.7 (i.e. the applicants) will be absorbed in the community college and other colleges managed by respondent Nos. 5 and 6 as per requirement, qualification and experience and, on the basis of this undertaking, respondent-board vide communication dated 24th February, 2015 forwarded "No Objection" for phase-wise closure of respondent No.7 to respondent No.3 and respondent No.3, thereafter vide its communication dated 30th April, 2015, conveyed their approval for closure of the said institution from the Academic Year 2015-2016. Respondent-State thereafter passed a resolution dated 25th May, 2015, under which, the approval for closure of Computer Technology, Electronics and Telecommunication Engineering and Information Technology courses was granted. As stated above, being aggrieved by the action of the respondents, the applicants filed the above said writ petition.

5. The above writ petition was placed for orders on 26th June, 2015. On that day, learned counsel for respondent Nos. 5 and 6 made a statement before the Court that they have already terminated seven staff members pursuant to the order of closure. He also made a statement that rest of the staff members shall not be terminated till the next date. The writ petition was again placed for orders on 17th July, 2015. After hearing the learned counsel appearing for the respective parties, the Division Bench admitted the above petition and the statement made by learned counsel for respondent Nos. 5 and 6 was continued till next date. On 19th August, 2015, a prayer was made by learned counsel for respondent Nos.5 and 6 that the statement so made by them and referred above, need not be continued and it needs to be modified. Thereafter on 27th August, 2015, respondent Nos. 5 to 7 filed an affidavit in support of their prayer that respondent Nos. 5 to 7 be relieved from the statement made on 26th June, 2015. The said prayer was opposed by the applicants by filing an additional affidavit-in-rejoinder. The writ petition thereafter was placed for orders on 31st August, 2015. After hearing learned counsel appearing for the respective parties, the Division Bench passed the following order:

“By Writ Petition No.5363 of 2015, the Petitioners challenge the Government Notification dated 25 May 2015 and order dated 24 February 2015 issued by the Director of MSBTE, Mumbai read with the approval order dated 8 May 2015 and order dated 30 April 2015

passed by Respondent No.3. This Court, after hearing the matters, has admitted the Petitions. So far as the interim relief is concerned, based upon the statement from time to time, it has been continuing. Learned Counsel appearing for Respondents Nos.6 & 7, however, places on record Affidavit alongwith the Pursis (marked "X" for identification) and submits that there is no question of continuing the statement so already recorded. The Pursis is reproduced as under:"

" That Respondents Nos. 5 or 6 shall give three months notice to Petitioners Nos.1, 2, 4, 5, 7 to 14, 16 to 21, 24, 25, 27 to 33, who are in employment of the college, in the event their services are to be terminated except by way of disciplinary action, on account of closure of the division/institute/abolition of post. In the case of Petitioners Nos.3, 6, 15, 22, 23 and 26 whose services have been terminated prior to filing of the Petition, the Respondent No.7 be permitted to deposit their legal dues in this Hon'ble Court without prejudice to their rights and contentions of parties within two weeks from date hereof."

2. Learned Counsel appearing for the Petitioners, however, insisted that the earlier statements be continued and there is no question of taking action of termination, even by giving three months notice, so recorded above.

3. After hearing both parties on interim relief, we are inclined to observe that as the issue of closure of the Respondent Institute is required final hearing and unless the same is set aside and/or disturbed, there is

no question to stop the further proceedings which are necessary after passing of order of closure. Necessary consequences should follow. However, it is made clear that the Respondent Trust has given an undertaking that the Respondent Trust has already submitted a proposal to settle and consider the cases of all the employees including the Petitioners who are in employment with the Trust Institute since more than 3 to 20 years. They have also made a statement that they will absorb them from time to time phase-wise. There is also no issue, as specifically averred by the Respondents, that 2nd Class will be closed permanently on completion of the academic year 2015-16 and 3rd Class will be closed permanently on completion of the academic year 2016-17. Thereafter the Institute will be permanently and irrevocably disclosed as 'Closed'. This itself mean that the Respondent -Institute-Management requires to take steps phase-wise as ordered and on the basis of undertaking. Learned Counsel appearing for the Respondent-Trust submitted that they will accommodate the Petitioners in terms of the undertaking. Therefore, we see no reason not to modify the earlier statement in view of the Pursis so filed on record, wherein it is stated that the Management/Institute will give three months notice before taking any action of termination to the Petitioners on the ground so mentioned therein.

4. Liberty is granted to the Petitioners to apply for appropriate order in case of such notices, if issued against the settled provisions and/or in breach of any undertaking.

5. The statement so recorded in the order dated 17 July 2015 is modified accordingly."

Respondent Nos. 5 and 6 thereafter started issuing termination orders to the applicants in phase-wise manner. It is the case of the applicants that these notices are illegal and non-tenable and, therefore, the present civil application is filed for their reinstatement.

6. Mr. Pakale, learned counsel appearing for the applicants invited our attention to the documents at "Exhibits F & G" – pages 117 to 119 and submitted that the termination notices given to some of the applicants are in breach of the undertaking. He submitted that unless the applicants are absorbed, respondent Nos. 5 and 6 cannot be allowed to close respondent No.7 in pursuance of the orders made in the writ petition. He submitted that there are vacant positions in other institutions, on which, the present applicants can be absorbed by respondent Nos. 5 and 6. However, respondent Nos. 5 and 6, taking advantage and misinterpreting the order dated 31st August, 2015, have started victimizing the applicants.

7. Mr. Naidu, learned counsel for respondent Nos. 5 to 7 has vehemently opposed the civil application. He submitted that the present application is not maintainable inasmuch as the relief sought in the application is already vacated by the Division Bench by order dated 31st August, 2015. Mr. Naidu further stated that respondent Nos. 5 and

6 are planning to start a community college, and permanent and eligible teaching and non-teaching staff of respondent No.7 would be absorbed in the community college. However, sanction/approval to this community college is at final stage and they are hoping to get it in the month of June-July 2016. Mr. Naidu submitted that respondent Nos. 5 to 7 are suffering huge losses. He also submitted that there are no students so as to continue respondent No.7-college and, therefore, they are constrained to consider closure of the same. He submitted that respondent Nos. 5 and 6 cannot bear the financial burden of payment of salaries of the applicants in these circumstances. He lastly submitted that the terminations notices are not in breach of the undertaking given by respondent Nos. 5 and 6 before the competent authority.

8. Having considered the rival submissions and having gone through the compilation of the civil application and writ petition, we find merit in the civil application. At "Exhibit F" annexed to the petition is a communication dated 12th February, 2015 from the Director of respondent No.4 addressed to respondent Nos. 5 and 6. By this communication, respondent Nos. 5 and 6 were called upon to furnish detailed information as to how existing staff of respondent No.7 were to be absorbed in their other sections/divisions/schools/institutions. In response to this letter, one professor – J. K. Bhambhani, Rector and

Secretary of respondent Nos. 5 and 6 has given an undertaking dated 12th February, 2015, a copy of which is annexed at "Exhibit G" to the petition. The undertaking is in the following terms :

"The HSNC Board is planning to start community college. Permanent and eligible teaching and non-teaching staff of Smt. S. H. Mansukhani Institute of Technology will be absorbed in the community college and other colleges managed by the HSNC Board as per requirement, qualifications and experience of the staff."

Section 35 of the MSBTE Act deals with the closure of a Technical Institution, which reads as follows :

"35(1) No management of an institution shall be allowed to close down the institution without the prior permission of the Government.

(2) The management desirous of closing down the institution shall apply to the Board on or before the first day of April of the preceding year, stating fully the grounds for closure and pointing out the assets in the form of building and equipments, their original costs, the prevailing market value and the grants so far received by it from the Government or public funding agencies.

(3) On receipt of such an application, the Board shall cause to make enquires as it may deem fit, to assess and determine whether the institution be permitted to effect the closure. The Board may, examine whether the closure should be avoided by providing necessary assistance or taking over the institute by the Government or transferring it to another management.

(4) If the Board decides to recommend the closure, it shall prepare and submit to the Government, a report on the extent of damages or compensation to be recovered from the management and whether the assets created utilizing the funds provided by the Government or other public funding agencies, be transferred to the Government or other management, and the payment of compensation to the teachers and the staff retrenched.

(5) The Board shall, with the approval of the Government decide whether the affiliated institution be permitted the closure.

(6) If the Government decides to take over the institution or transfer the same to another management, the procedure to be followed shall be as such may be prescribed by the Government.

(7) The procedure to effect the closure shall be in phases, so as to ensure that the students already admitted to the institution are not affected, and that the first year shall be closed first and no new admissions shall be effected. The procedure to phase out the closure shall be such as may be prescribed by the Government."

Perusal of the above section, especially clause (3) thereof, makes it clear that respondent No.4 is obliged to make enquires to assess and determine whether the institution be permitted to effect closure. Respondent No.4 is also obliged to examine whether the closure should be effected by providing necessary assistance or taking

over the institute by the Government or transferring it to another management. It is obvious that the exercise contemplated under clause (3) of Section 35 of the MSBTE Act is not undertaken by respondent No.4. We are of the *prima facie* opinion that such exercise was not undertaken as respondent Nos. 5 and 6 had given undertaking that the teaching and non-teaching staff of respondent No.7 shall be absorbed in the community college which respondent Nos. 5 and 6 propose to start or in any other institutions run by them. In our *prima facie* opinion, it is not permissible for respondent Nos. 5 and 6 to close down respondent No.7 without complying with the solemn undertaking.

9. Mr. Naidu submitted that, this Court having modified the statement made by respondent Nos. 5 and 6 by order dated 31st August, 2015 passed in the above petition, now it is not open to the applicants to file separate civil application. We do not agree with this submission inasmuch as in paragraph 4 of the said order, the Division Bench granted specific liberty to the applicants to apply for appropriate order, in case of termination notices, if issued against the settled provisions and/or in breach of any undertaking. As we find that the termination notices are *prima facie* in breach of the undertaking, we are inclined to entertain this civil application.

10. Mr. Naidu submitted that out of 8 persons named above,

to whom the termination notices are issued, two persons viz. Mr. R. G. Kulkarni - petitioner No.1 and Mr. I. Sircar – petitioner No.2 have already been terminated. This statement is not disputed by Mr. Pakale, learned counsel for the applicants. Since services of these two persons are already terminated, at this stage, we are not inclined to grant any relief in their favour. Since Mr. Naidu's statement that the approval/sanction is likely to be granted to the community college which the respondent Nos. 5 and 6 are planning to start by June-July 2016 coupled with the fact that services of the six persons viz. Mrs. N.R.Korde – petitioner No.7, Mr. D. K. Pawar - petitioner No.11 , Miss. K. B. Choudhary - petitioner No.13 , Mrs. N. R. Chavan- petitioner No.16, Mrs. A. A. Waghmare- petitioner No.5., Mrs. V. S. Nadagauda – petitioner No.4 are not yet terminated, we adjourn this civil application to 4th July, 2016.

11. Till then, respondent Nos. 5 and 6 shall not terminate the services of the aforesaid six persons and respondent Nos. 5 to 7 will allow the aforesaid six persons to continue in respondent No.7 on the posts on which they are presently working and they be paid their monthly salaries regularly as admissible to their posts.

[RANJIT MORE, J.]

[SHANTANU KEMKAR, J.]