

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.246/2016

(Madhukar Zingar Shahare and others. .vs. The State of Maharashtra and others.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. A.M. Sudame, Advocate for Petitioners.
Mr. Neeraj Patil, AGP for Respondent Nos. 1 to 4.
Mr. V.P. Marpakwar, Advocate for Respondent No.5.
Mr. Shashikant Borkar, Advocate for Respondent Nos. 6 to 8.
Mr. A.Z. Jibhkate, Advocate for Respondent Nos. 11 and 12.

CORAM : B.R. Gavai & P.N. Deshmukh, JJ.

DATED : February 09, 2016.

1. The petitioners have approached this Court being aggrieved by the orders issued by the Ad-hoc Committee of the Secondary Education Society, Sakoli consisting of respondent Nos. 6 to 8.

2. Mr. Sudame, learned counsel appearing on behalf of the petitioners submits that as per the orders passed by the learned Joint Charity Commissioner in Appeal Nos. 54 of 2001 and 55 of 2001, an ad-hoc committee consisting of respondent Nos. 5 to 9 has been constituted. The learned counsel further submits that as per clause 4 of the said order, it is only respondent no.5 who is empowered to convene the meeting. It is further submitted that since the orders of transfer are not taken in a meeting which is convened by respondent no.5, the said orders are not sustainable in law. Mr. Sudame further submits that on account of infighting between the two groups, the employees are unnecessarily made to suffer.

3. Mr. Borkar, learned counsel appearing on behalf of respondent Nos. 6 to 8 on the contrary submits that though the said respondents are insisting upon respondent no.5 to convene the meeting, he is not cooperating inasmuch as in a Committee consisting of five members he is alone and all four members are on the other side.

4. Undisputedly the orders passed by the learned Joint Charity Commissioner dated 27.03.2003 was challenged before the learned District Judge, which challenge failed. The same was further carried out by way of second appeal before this Court. The appeal is also dismissed. Now the matter is pending before the Hon'ble Supreme court. However, no interim orders are passed by the Hon'ble Supreme Court.

5. It is further urged that though the elections were held pursuant to the order dated 27.03.2003, the change report is rejected by the learned Assistant Charity Commissioner. The appeal against the order of the learned Assistant Charity Commissioner is pending before the learned Joint Charity Commissioner. It is also not disputed that there are no interim orders passed in those proceedings. In that view of the matter, the order passed by the learned Joint Charity Commissioner still holds the field.

6. The learned Joint Charity Commissioner has constituted the Committee of five members. Though the learned Joint Charity Commissioner has in clause 4 observed that the respondent no.5 shall be the Secretary of the coordination committee and he will be entitled to convene the meetings, if respondent no.5

does not cooperate, the functioning of the society cannot come to a standstill. In a committee of five, the will of the majority must prevail. If all the four members are on one side and have taken a decision, the non-cooperation on the part of respondent no.5 should not come in the way of the decision of the majority. In that view of the matter, the apprehension as expressed by Mr. Sudame is ill-founded. We make it clear that in a Committee of five members, the decision taken by the majority will prevail and the authorities of the Education Department will abide by the same. Mere technicality of the meeting being not convened by respondent no.5 should not come in the way of the Education Officer in accepting the decision of the majority of the ad-hoc committee.

7. In that view of the matter, we find no merit in the petition. The petition is, therefore, dismissed.

8. At this stage Mr. Sudame, learned counsel appearing on behalf of the petitioners submits that in view of the orders passed by respondent no.5 the petitioners having not joined their respective posting, now the petitioners would join their respective posting within a period of three days. We make it clear that the petitioners on account of *bona fide* belief that they are bound to obey the orders of the respondent no.5, did not join their posting within the prescribed period. Now in view of the orders passed by this Court, any doubt in the mind of the petitioners must have been removed. In that view of the matter, we make it clear that in the event the petitioners join at their respective posting within a period of three days from today, the respondent

Nos. 6 to 8 shall not take any coercive steps against the petitioners.

JUDGE

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