

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

WRIT PETITION NO. 3590 OF 2015.

Shetkari Shikshan Prasarak Mandal Karmachari Vyawasayeeek Sanstha

..VS..

The State of Maharashtra and others.

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

Court's or Judge's orders

Mr.R.L.Khapre, Advocate for the petitioner.
Mr.A.Z.Fulzele, AGP for respondent nos.1 to 3.
Mr.P.S.Tiwari, Advocate for respondent no.4.

**CORAM : B.P.DHARMADHIKARI AND
P.N.DESHMUKH, JJ.**

DATED : APRIL 15, 2016.

Heard for some time.

It is not in dispute that presently two schools in question are being run and managed by petitioner – Institution.

The impugned orders, by which respondent no.1 had directed petitioner to return those schools to respondent no.4 are withdrawn by respondent no.1 itself. The respondent no.1 through its Hon'ble Minister has shown readiness and willingness to extend an opportunity of hearing to petitioner before taking any decision.

Shri Khapre, however, submits that against the order dated 24th of December, 2012 which has been assailed in that appeal, Writ Petition No.398 of 2013 was filed before this Court and it is disposed of for want of locus observing that there was no sanction of any meeting of managing committee or any general body. Thereafter, Writ Petition No.2367 of 2014 came to be filed and it was

disposed of as barred by principles of constructive *res judicata*. Thereafter, said order dated 24th of December, 2012 is sought to be assailed in appeal before the Hon'ble Minister.

According to Advocate Shri Khapre, the appeal is without jurisdiction and even otherwise not maintainable. He submits that a Writ of Prohibition is sought from this Court. As such, petitioner cannot be asked to appear before respondent no.1 and to submit to its jurisdiction.

Learned Assistant Government Pleader appearing for respondent nos.2 and 3 submits that in view of subsequent statutory amendments, the appeal has been filed before the competent authority. He further adds that as appeal is quasi judicial proceeding, the appellate authority can consider all objections including objections as to jurisdiction and also to maintainability of proceedings before it.

Advocate Shri Tiwari adopts arguments of learned Assistant Government Pleader.

Advocate Shri Khapre points out that so called amendments are not pointed out or pleaded before this Court. He further states that in this situation if this Court is not inclined to keep the petition pending, in case adverse order is passed by appellate authority, the schools with petitioners should be allowed to continue for a reasonable period so as to allow it to approach this Court in the matter. This request is being opposed by learned AGP and also by Shri Tiwari.

The fact that the impugned order passed by Hon'ble Minister is being withdrawn or is withdrawn is not in dispute.

As proceedings are before the responsible authority and quasi judicial authority, we cannot at this stage presume that said authority will not apply its mind to necessary legal issues, which arise in the matter.

Thus, lack of jurisdiction or then objection to tenability of proceedings can be gone into by the said authority. If petitioner appears before that authority and raises such objections, it can not be said that the petitioner has acquiesced in its jurisdiction.

As such we find that interest of justice can be met with by directing petitioner to raise appropriate objections as are available in law before respondent no.1 Authority. The said authority shall give respondent no.4 proper opportunity to meet those objections and thereafter proceed with adjudication in accordance with law.

However, in this situation, as schools are continuing with petitioner since 2012 (as per petitioner) or since 2014 (as per respondent), we direct that if order passed is adverse to petitioner, same shall not be given effect for a period of three weeks after its communication to petitioner.

As pleaded before us by learned AGP, the office of respondent no.1 Hon'ble Minister shall issue notice to petitioner as also to respondent no.4 for appearance at the earliest.

JUDGE

JUDGE

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