

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.547 OF 2017

The Managing Committee,
Kshatrakulotpanna Maratha Samaj
and Anr.

...Petitioners

v/s.

Sachin Maruti Patil and Ors.

...Respondents

Mr.Arshad Shaikh i/b Manoj Kadam for the Petitioners.
Mr.Mayur Khandeparkar a/w Sanjeel Kadam a/w Sayhalee Rajpurkar
i/b Kadam & Co. for the Respondent No.3.
Mr.Shaikh Nasir Masin for the Respondent No.1.

CORAM : A.A. SAYED, J.

DATED : 01 FEBRUARY 2017

P.C.

1 The challenge in this Petition is to two orders, both dated 26 October 2016, passed on the Applications filed before the School Tribunal in an Appeal filed by Respondent No.1/original Appellant/ teacher.

2 By the first impugned common order dated 26 October 2016 the School Tribunal rejected the Applications (Exhibits-28 and 32) dated 15 July 2015 and 13 August 2015 respectively, in relation to the objections raised to the Vakalatnama filed on 3 July 2015 by Advocate

Ms. Ranjana Todankar on behalf of Swapnik Subhash Phatak (Respondent No.3 herein) claiming to represent the Board of Trustees (arraigned Petitioner No.2 herein and Respondent No.2 in the Appeal).

3 By the second impugned order dated 26 October 2016, the School Tribunal rejected the Application (Exhibit 40) dated 7 April 2016 seeking disposal of the Appeal itself before the School Tribunal as infructuous, in view of the Additional Affidavit (Exhibit-15) filed by the Respondent No.1/original Appellant/teacher stating that he has been taken back in service.

4 At the outset, a preliminary objection has been raised by Mr.Khandeparkar, learned Counsel appearing for the Respondent No.3 Swapnik Subhash Phatak. Learned Counsel for the Respondent No.3 states that the Petition is filed by wrongly arraigning the Board of Trustees as Petitioner No.2. He also pointed out that Swapnik Subhash Phatak (Respondent No.3 herein) is not a party-Respondent in the Appeal before the School Tribunal and has been wrongly arraigned as party-Respondent No.3 in the present Petition.

5 Mr. Arshad Shaikh, learned Counsel appearing for the Petitioners submits that the School Tribunal is insisting on hearing of

the matter finally and proceedings before the School Tribunal are required to be stayed pending this Petition and/or the Petition is required to be heard finally. He submitted that the Respondent No.3 herein has wrongly filed Vakalatnama on behalf of the Board of Trustees – Petitioner No.2 herein, before the School Tribunal and the impugned orders are erroneous and required to be set aside. Mr. Shaikh Nasir, learned Counsel for the Respondent No.1 teacher submits that the Respondent No.1 teacher is unnecessarily being made a scapegoat in the interse rivalry between two groups claiming to be in Management. The learned Counsel for the parties have made other submissions also, however in the nature of order I propose to pass, it is not necessary to rule on those contentions.

6 I have heard the learned Counsel for the parties and perused the Applications and the impugned orders. Having regard to the facts and circumstances of the case, I am not inclined to interfere with the impugned orders. It is not in dispute that the Appeal before the School Tribunal is at the final hearing stage. The Applications essentially stem from the interse rivalry between the two factions claiming to be in Management. It is pointed out that as per the constitution of the trust, “Managing Committee” and “Board of Trustees” are two different and distinct bodies. It is noticed by an order dated 29 June 2013, the

Bombay City Civil Court has appointed an Administrator to take over the Management and hold an election within three months and handover the charge of affairs of the Trust to the elected Managing Committee. This order is subject matter of challenge in the First Appeal No.892 of 2013 which is pending in this Court. The Court is informed that there is also another Appeal being First Appeal No.826 of 2013 pending in connection with the dispute pertaining to administration of the Trust. In my view, the hearing of the Appeal before the School Tribunal cannot be deferred merely because of the interse rivalry between the two factions claiming to be in Management.

7 The apprehensions of the parties appears to be that the School Tribunal may arrive at certain findings which may be prejudicial to the interest of the parties in the proceedings filed in this Court. As of today, both the factions are appearing before the School Tribunal. Even assuming that the School Tribunal is required to go into the issue of administration of the Trust, the said findings, if any, would be only prima facie and limited for the purposes of the Appeal before it and its observations or findings shall not be construed an expression of final opinion as to the faction in charge of administration, which issue is the subject matter of proceedings in this Court.

8 Subject to the above observations, the Petition is disposed of with no orders as to costs. It is clarified that this Court has not expressed any opinion on merits. All contentions of the parties are expressly kept open to be agitated in proceedings that may be taken out from the final order passed by the School Tribunal.

(A.A. SAYED, J.)