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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11458 OF 2013 WITH
WRIT PETITION NO.9020 OF 2013

Parmeshwar Vidya Vardhak
Shikshan Prasarak Mandal
and others

...Petitioners
(IN BOTH THE PETITIONS)

vs.

The State of Maharashtra
and others

...Respondents
(IN BOTH THE PETITIONS)

Mr.Shrishail Sakhare for the Petitioners in both the petitions

Ms Aparna Vhatkar, AGP for the respondent Nos.1, 5 to 7 in W.P.No.11458/2013 and for respondent Nos.1 and 4 in W.P.NO.9020/2013

Mr.Suhas Inamdar for applicant in Civil Application
Mr.Anand S. Kulkarni for respondent Nos.2 to 4 in W.P.No.11458/2013 and for respondent Nos.2 and 3 in W.P.NO.9020/2013

CORAM : A.S.OKA, &
A.K.MENON, JJ.
DATE : APRIL 25, 2017

P.C.:

1 We issue Rule in Writ Petition No.11458 of 2013. Added respondent (the applicant in Civil Application No.753 of 2014) waives service. The learned AGP waives service for respondent Nos.1, 6 and 7. The learned counsel for the respondent Nos.2,3 and 4 waives service. Considering the fact that the petitioners are pressing only prayer clause (b), service of Rule to the respondent Nos.5 and 7 is not necessary.

2 In Writ Petition No.9020 of 2013, we issue Rule. The learned AGP waives service for respondent Nos.1 and 4. The learned counsel for the respondent Nos.2 and 3 waives service.

3 Both the petitions are forthwith taken up for final disposal. The learned counsel for the petitioners in both the petitions states that the petitioners are pressing only prayer clause (b) in both the petitions. We accept the said statement.

4 Parmeshwar Vidya Vardhakk Shikshan Prasarak Mandal, Wagdari is a public charitable trust (for short "the said trust") registered under the Maharashtra Public Trusts Act, 1950 (for short 'the said Act'). The said trust is running a hostel by the name Sitabai Patne Magasvargiya Vasatigrah, Wagdari in Taluka Akkalkot, District Solapur (for short "the said hostel"). The said Hostel is receiving grant-in-aid from Solapur Zilla Parishad. It appears from the impugned order subject matter of challenge in Writ Petition No.9020 of 2013 that there appears to be a dispute inter-se two groups claiming to be the trustees of the said trust. By the impugned order dated 13th September 2013 which is the subject matter of challenge in W.P.No.9020 of 2013, the Additional Chief Executive Officer, Zilla Parishad, Solapur directed that the Change report as regards election of trustees of the said trust shall be got approved by 30th September 2013 from the Assistant Charity Commissioner. The order further

directs that if an order showing disposal of the Change Report by 30th September 2013 is not produced in the Office of the Zilla Parishad, the recognition granted by the said Zilla Parishad to the said hostel shall be withdrawn. In this petition, on 26th September 2013, ad-interim relief in terms of prayer clause(c) was granted by which the impugned order dated 13th September 2013 was stayed.

5 Exhibit-A is the order dated 14th October 2013 which is the subject matter of challenge in W.P.No.11458 of 2013. By the said order passed by the Additional Chief Executive Officer of the Zilla Parishad, the Assistant Block Development Officer, Panchyat Samiti, Akkolkot was appointed as an Administrator of the said hostel. By order dated 23rd October 2013, ad-interim order of status quo was passed. On 28th October 2013, the following was the order passed by a Division Bench of this Court:-

"1 Heard the learned counsel appearing for the petitioners. The grievance of the petitioners that the respondents have appointed an Administrator on the hostel (Petitioner No.2) which is run by the Petitioner No.1. It is submitted that there is no provision in law for appointment of administrator in respect of the hostel.

2 Issue notice to the Respondent Nos.1 to 7 returnable on 9.12.2013. In the meantime, there shall be an ad-interim relief in terms

of prayer clause (e)."

The result of the said order is that the impugned order appointing an Administrator was stayed.

6 The question which arises in both the petitions is as regards the statutory power of the Additional Chief Executive Officer, Zilla Parishad to pass the impugned orders. As far as the impugned order dated 14th October 2013 which is the subject matter of challenge in W.P.No.11458 is concerned, the stand of the Zilla Parishad, intervenor and the State government is that in view of the Government Resolution dated 27th January 2010, the Additional Chief Executive Officer has exercised the power of appointing Administrator. As far as the impugned order subject matter of W.P.No.9020 of 2013 is concerned, the stand taken by the contesting respondents is that the said order was passed only with a view to ensure that the dispute regarding management of the said trust comes to an end and the inmates of the said hostel do not suffer.

7 We have carefully gone through the Government Resolution dated 27th January 2010. The Resolution is issued by the Social Justice and Special Assistance Department. It records that in some cases of hostels of backward class students, there is inter se dispute between the trustees and the proceedings are pending either before the Court or the Charity Commissioner. It further provides that

if due to such disputes, it is found that there is some mis-management, an Administrator should be forthwith appointed. The resolution purports to confer power on the Chief Executive Officer of the Zilla Parishad to appoint an Administrator.

8 The Government Resolution does not refer to any statutory provision or any statutory rule. We have already quoted the order dated 28th October 2013 in which it is specifically noted that the contention of the petitioners is that there is no provision in law for appointment of an Administrator in respect of the said hostel. The State Government has not come out with any reply pointing out the statutory power on the basis of which the aforesaid Government Resolution was issued conferring a power on the Chief Executive Officer of the Zilla Parishad to appoint an Administrator. The Zilla Parishad is only relying upon the said Government Resolution. Therefore, we are of the view that the Zilla Parishad had no power to appoint an Administrator to administer the said hostel and only on that ground, the impugned order dated 14th October 2013 deserves to be set aside.

9 As regards the impugned order in W.P.No.9020 of 2013, it is directed by the order that the Change Report as regards the election of managing Committee of the said trust shall be got approved by 30th September 2013 from the Assistant Charity Commissioner, Solapur. The order records the statement of the person claiming to be the

President of the said trust that the approval to the Change Report will be obtained at the earliest. The direction issued by the Additional Chief Executive Officer is that if the Change Report is not approved by 30th September 2013, the recognition granted to the hostel shall be cancelled.

10 The proceedings of Change Report under section 22 of the said Act are held to be judicial proceedings by this Court. Therefore, the Additional Chief Executive Officer, Zilla Parishad had no power to direct the persons claiming to be the trustees to get the Change Report approved on or before a particular date and to direct that the failure to obtain approval will result in passing a drastic order of withdrawal of recognition of the said hostel. Hence, the impugned order dated 13th September 2013 will have to be set aside being illegal.

11 However, we must clarify that if the Zilla Parishad has a power to cancel the recognition of the said hostel, notwithstanding the setting aside of the impugned orders in both the petitions, the said power can be always exercised in accordance with law after giving an opportunity of being heard to the parties. We also hasten to clarify that we have made no adjudication on the question whether a person who has verified both the petitions is the President of the said trust.

12 We also clarify that if there are illegalities and irregularities in connection with the management of the said hostel, appropriate action can be always taken as regards said illegalities and irregularities against the responsible person/s in accordance with law.

13 Subject to aforesaid clarifications, we pass the following order:

- (I) Rule issued in both the petitions is made absolute in terms of prayer clause (b);
- (II) There will be no order as to costs.

(A.K.MENON,J.)

(A.S.OKA,J.)