

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6195 OF 2018

Madhyamik Vidyalaya Waghra-Waghri .. Petitioner
Tq. Parola, Dist. Jalgaon.

Versus

The State of Maharashtra & others .. Respondents

Mr.Sachin S. Deshmukh, Advocate for the petitioner.
Mr.A.S.Shinde, AGP for respondent/State.

**CORAM : PRASANNA B.VARALE &
S.M.GAVHANE, JJ.**

DATED : 11.07.2018

P.C. :-

1. Heard Mr.Sachin Deshmukh, learned Counsel appearing for the petitioner. Learned AGP appears for respondent Nos.1 and 2.

2. A peculiar situation gave rise to file this petition is the submission of Mr. Deshmukh learned Counsel appearing for the petitioner. Mr. Deshmukh, learned Counsel then submitted that the petitioner is a school, namely, Madhyamik Vidyalay, Waghra Waghri and Mr. Ashok Patil is the Head Master of the said School. He submitted that Mr.Patil filed a public interest litigation in this Court bearing PIL No.3 of 2018, in respect of certain mis-deeds in the matter of grant-in-

aid to the school. Mr. Deshmukh, learned Counsel then by inviting our attention to the Government Resolution dated 09.05.2018 submitted that the State Government considering the larger issue involved in the matter and in view of the orders passed by this Court in PIL No.3 of 2018, directed detailed enquiry. It was submission of Mr. Deshmukh, learned Counsel that respondent No.2 was keeping some grudge against the petitioner – Mr. Patil. As such, notice was issued on 20.04.2018. He then submitted that representation was made to the Chief Executive Officer, Zilla Parishad, Jalgaon. Mr. Deshmukh, learned Counsel then submitted that respondent No.2 entered in the school premises on 20.04.2018 and on finding that the Head Master is not available in the premises, collected 37 answer-sheets of the students who appeared for standards 6th to 9th annual examination. Mr. Deshmukh, learned Counsel then submitted that respondent No.2 kept answer-sheets with him and same resulted in delay in results of standards 6th to 9th classes. Thus, the petitioner is before this Court with prayer clause (A), which reads thus :-

“(A) By issuance of writ of mandamus or writ or direction in like nature, it be directed to the respondent authorities more particularly respondent No.2 to handover the answer sheets of the students of the petitioner school of the annual examination 2018 forthwith; and for that

purpose issue necessary directions;"

3. Per contra, learned AGP submitted that respondent No.2 was acting in accordance with the law more particularly Secondary School Code and the rules thereof. Learned AGP submitted that initially show-cause notice was issued. In the said show-cause notice, it is stated that though the Education Officer sought for record, the record was not made available. Learned AGP then submitted that on 19.04.2018 when the Education Officer informed the Head Master by telephonic communication about his visit to the school on next date on 20.04.2018, the Head Master, even though had an intimation, was found absent in the school premises. As the Head Master was duty bound to submit the report for perusal of the Education Officer under the provisions of Maharashtra Employees of Private School Act, 1981 and as there was failure in discharge of duty by Head Master, the Education Officer left with no choice but to issue final notice on 11.05.2018. Learned AGP then submitted that as per Rule 22, Schedule-I of the MEPS Rules, school management is duty bound to supply record and information whenever it is asked for inspection and when respondent No.2 – Education Officer found that the answer-sheets are not properly assessed, the Education Officer in the larger interest of the students, took custody of the answer-sheets. Learned AGP then submitted that the

Education Officer is proposing enquiry in the matter of non-supply of record as well as allotment of marks to the students, to his superior officer, namely, Dy. Director of Education. Learned AGP then invited our attention to the documents placed on record i.e. Exh.R-1. It is a chart showing roll number of the students and marks obtained by these students. Learned AGP then submitted that said document is endorsed by senior-most teacher, namely, Mr. Kailash Daulat Patil, who was present at the time of visit of the Education Officer.

4. Considering these rival submissions, we are of the opinion that the petition is having texture of ego hassle, more than legal question being involved in the petition. Considering above referred facts, we are of the opinion that though respondent No.2 under Schedule I (2)(q) was empowered for seeking of information from the school management, the act of taking answer-sheets in the custody was just a over-zealous act. Learned AGP, on instructions, submitted that respondent No.2 is having no objections for declaration of result and the students to know marks obtained by them, so as to prosecute their studies further. Learned AGP submitted that as the Education Officer found that the assessment is not proper and it may hamper academic standards, the Education Officer with bona fide intention took custody of the

answer-sheets.

5. Considering the submissions of Mr. Deshmukh, learned Counsel as well as learned AGP, in our opinion, the issue can be resolved and the petition can be disposed of by giving certain directions :-

(i) Respondent No.2 to submit proposal to the Dy. Director of Education, Nashik within one week from today.

(ii) The Dy. Director of Education, if received the proposal submitted by the Education Officer within one week from today, the Dy. Director of Education to decide the proposal within two weeks. Thereafter, if the Dy. Director of Education is of opinion that no fruitful purpose would be served by keeping answer-sheet in his custody, he may immediately return the answer-sheets to the petitioner-school after two weeks from the date of proposal received by the Education Officer.

(iii) The Dy. Director of Education to provide photocopies of the answer-sheets to the representative of the petitioner - school.

Respondent No.2 may also permit representative of the petitioner - school to verify the answer-sheets and take entries corresponding to roll numbers and then to prepare a list of marks obtained by these students.

(iv) If respondent No.2 fails to submit any proposal to the Dy. Director of Education within one week, he shall hand-over answer-sheets to the petitioner-school.

6. The petition is disposed of in above terms.

[S.M.GAVHANE, J.]

[PRASANNA B.VARALE, J.]