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

WRIT PETITION NO.8911 OF 2018

1. Masum Educational and Welfare Society,
Parbhani, Rahimnagar, Parbhani,
Through its Secretary,
Shaikh Mohammad Khalil Mohd. Azam
Age: Major, Occu: Secretary of the said
Society, R/o. Parbhani, Tq. Parbhani,
Dist. Parbhani
2. Masum Urdu Primary School,
Rahimnagar, Parbhani
Through its Head Master,
Aquil Ahmed A. Wahab,
Age: Major, Occu. Service (Head Master),
R/o. Parbhani, Tq. Parbhani,
Dist. Parbhani
3. Gareeb Nawaz Education Society, Parbhani
Shaikh Mohd. Azam,
Age: Major, Occu. Secretary,
R/o. Parbhani, Tq. Parbhani, Dist. Parbhani
4. Gulshan-E-Aaftab Urdu Primary School,
Parbhani, Through its Head Mistress,
Raisa Sultana Hasan Mohioddin,
Age: Major, Occu: Service (Head Mistress),
R/o. Parbhani, Tq. Parbhani, Dist. Parbhani
5. Nomanala Urdu Primary School, Rahimnagar,
Parbhani, through its Head Master,
Sayed Yusuf Sayed Musa,
Age: Major, Occu. Head Master,
R/o. Parbhani, Tq. Parbhani, Dist. Parbhani
6. Sayed Aktar Shishan Prasarak Mandal,
Parbhani, Through its Secretary,
Shaheen Begum w/o Rashid Khan,
Age: Major, Occu. Secretary,
R/o. Parbhani, Tq. Parbhani, Dist. Parbhani

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7. Khursheed Begum Urdu Primary School,
Parbhani, Through its Head Mistress,
Farhat Sultana W/o. Afsar Ahmed,
Age: Major, Occu: Secretary,
R/o. Parbhani, Tq. Parbhani, Dist. Parbhani

8. Mahfoozur Rahman Farooqui,
Age: Major, Occu: Secretary,
R/o. Kaziwada, Bhadkal Gate,
Aurangabad

..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School and Sport Department,
Mantralaya, Mumbai-32
2. The State of Maharashtra,
Through its Secretary,
Minority and Welfare Department,
Mantralaya, Mumbai-32
3. The State of Maharashtra,
Through its Secretary,
Rural & Water Conservation Department,
Mantralaya, Mumbai-32
4. The Director Education (Primary),
Maharashtra State, Pune-01
5. The Commissioner of Education (Primary),
Maharashtra State, Pune
6. The Divisional Commissioner (Revenue),
Aurangabad Region, Aurangabad
7. The Chief Executive Officer,
Zilla Parishad, Parbhani
8. The Education Officer (Primary),
Zilla Parishad, Parbhani
9. The Block Education Officer,
Tq. Parbhani, Dist. Parbhani

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10. The Superintendent of Police, Parbhani,
Tq. Parbhani, Dist Parbhani

..RESPONDENTS

Mr S. G. Munde, Advocate for petitioners;
Mr G. O. Wattamwar, A.G.P. for respondents/State

CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.

DATE : 2nd August, 2018

ORAL ORDER:

Heard Mr Munde, learned Counsel appearing on behalf of petitioners and learned A.G.P. for respondents/State.

2. Mr Munde submits that on 11th June, 2017, notice was issued to the petitioners-institutes. Reference was made to the communication of the Director of Education dated 8th June, 2018. It was stated in the notice that the State Government conducted a special drive during the period from 3rd October, 2011 to 5th October, 2011. It is revealed in the special drive that various institutes obtained monetary benefits from the State Government by showing additional number of students. It is also stated in the communication/notice that the Public Interest Litigation Nos. 18 of 2012 and 31 of 2012 were filed in this Court and this Court issued directions time to time in said public interest litigations.

3. Mr Munde, learned Counsel for the petitioners then submitted that in response to the notice, the petitioners-institutes filed reply on 21st June, 2018. He then, by inviting our attention to a communication dated 26th July, 2018 placed on record, submitted that by way of the said

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communication, the Director of Education (Primary) informed to all the Education Officers (Primary), the School Inspectors, the Education Officers of Greater Bombay area and the Education Officer of the Corporation of Greater Bombay, to initiate action against the erring persons. He then submitted that the notices are issued even to the teachers and the Head Masters of the schools along with the President/Secretary of the education institutes.

4. Mr Munde then submitted that the Government Resolution dated 2nd May, 2012 was the subject matter before this Court in Writ Petition No.4168 of 2012 and by judgment and order dated 24th October, 2013, the Division Bench of this Court was pleased to strike down Clause Nos.1.2, 1.3, 1.4, 1.5, 1.6 and 1.7 of the said Government Resolution. It was the submission of learned Counsel for the petitioners that in view of the decision of this Court, the Director of Education could not have issued a communication dated 26th July, 2018 nor notice could have been issued against the petitioners-institutes or against the other President/Secretary of alike institutes.

5. A similar attempt was made before us in Writ Petition No.8242 of 2018. We have dealt with in detail the submissions of the learned Counsel for the petitioners. It is not necessary for us to reiterate our observations which are already placed on record with the copy of the order dated 24th July, 2018 in Writ Petition No.8242 of 2018. At the cost of repetition, we state that the communication dated 26th July, 2018 refers to certain orders

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passed by this Court in public interest litigation. It states that this Court directed the authorities of the State Government to initiate action. In communication dated 26th July, 2018, it is specifically stated that on the material available with the State Government, a prima facie opinion is formed by the State Government that institute owners have obtained the monetary gains from the State Government which were under the various State Government schemes, like the mid-day meal, uniform facilities, stationary, term fees, scholarship fees, tuition fees., etc. Then it is stated that the institutes were not entitled to receive these facilities, but by misleading the Government, such benefits are obtained and in some cases when the institutes were required to utilize the Government funds for a specific purpose, it was revealed that the funds were utilized for the other purposes than the purposes for which it were actually required to be utilized. Thus, the institute owners, by creating fabricated material and impressing upon the Government that the said material is true material, obtained certain benefits, as such, it is necessary to take criminal action against such institutes.

6. Clause No.4 of the communication then states that notices were already issued to certain institutes and by considering all the relevant record, the responsibility be fixed on such erring persons and action be initiated against such persons, who are at fault. It also refers to a contempt petition filed in this Court and then it is stated that the necessary action be initiated at the earliest.

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7. Considering the text and tenor of the communication, it only reveals that the State Government is desirous of initiation of an action against those persons, who have obtained the monetary gains from the Government. In our opinion, this mischief is not only causing loss to the public exchequer but it also results in depriving those students, who were in fact entitled to receive the benefits of the State Government scheme and the benefits of the scheme never reached to these students and the amount was siphoned for some other oblique motive than to disburse it to needy students. If the State Government is proceeding with this object, then the object is certainly laudable and any hindrances in such attempt of the Government would frustrate the object.

8. Considering these facts, we are unable to accept submissions of the learned Counsel for the petitioners that the State Government is prevented from taking any action against the erring persons, even if the mistake is in the nature of certain criminal act.

9. Though it was vehemently submitted that Clause Nos.1.2, 1.3, 1.4, 1.5, 1.6 and 1.7 of the Government Resolution dated 2nd May, 2012 were struck down by this Court, as such, the State Government ought not to have initiated action, we are unable to accept this submission also, as referred to in our earlier order. We have dealt with these clauses and again at the cost of repetition, we state that these clauses are in a way of protection to the

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teaching staff for holding them responsible in the affairs of inadequate students being available in the school. None of the clauses is in relation to a criminal act which is specified in the communication dated 26th July, 2018.

10. When we have stated that the Clause Nos.1.2, 1.3, 1.4, 1.5, 1.6 and 1.7 of the Government Resolution dated 2nd May, 2012 were struck down by this Court while dealing with the strength of the students, etc., it will not be out of place to refer to the relevant observations of this Court in the judgment and order dated 24th October, 2013, which read thus:

"48. However, the Managements and the employees cannot be prosecuted and charged with commission of offence merely because during special drive, attendance of the students in the school was found to be less than 50%. The management as well as employees of the schools, if are suspected to be guilty of fabricating the record or indulging in any unlawful activities and are responsible for creating false record to demonstrate inflated strength of students in school with a view to extract inadmissible financial gain, they can be prosecuted by taking recourse to the provisions of the Indian Penal Code."

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The aforesaid observations of the Division Bench of this Court leave no room to say that if any mischief in the nature of criminal liability is observed by the State Government, the State Government is prevented to initiate criminal action against such mischief players.

11. Considering all these aspects, we are of the opinion that the petition is clearly premature and the only order that can be passed is in the nature of directions in our order dated 24th July, 2018 and more particularly enumerated in paragraph No.8 of the said order.

12. Accordingly, we dispose of the petition at the admission stage with directions that if respondent No.2 receives the reply to the notice issued to the petitioner, respondent No.2 to take appropriate steps as expeditiously as possible. Respondent No.2 is permitted to grant personal hearing, if the petitioner makes such request before him within a period of one week from today.

With these directions, the petition is disposed of.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)

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