

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 5338 OF 2013

Manohar Gorakh Patil,
(President of Janata Vidyaprasarak
Mandal, Shindkheda),
Age 50 years, Occu. Service,
R/o. Shindkheda, Taluka Shindkheda,
District Dhule.

....Applicant.

Versus

1. State of Maharashtra
Through its Police Station,
Shindkheda, Taluka Shindkheda,
District Dhule.
2. Rajendra Shivdas Desale (Patil)
(Claiming to be the President of
Janta Vidyaprasarak Mandal,
Shindkheda)
Age 53 years, Occu. Agril.,
R/o. Shindkheda, Taluka Shindkheda,
District Dhule.

[Note : Respondent No. 2 is not the
President of Janta Vidyaprasarak Mandal,
Shindkheda. But, as the complaint came
to be filed by - Respondent No. 2, hence,
respondent No. 2 is added as party
respondent]

....Respondents.

Mr. Amol S. Sawant, Advocate for applicant.

Mrs. P.V. Diggikar, APP for respondent No. 1/State.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.
DATED : JULY 25, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

- 1) The proceeding is filed under section 482 of Criminal
Procedure Code for relief of quashing of F.I.R. No. 92/2013

registered with Shindkheda Police Station, District Dhule for the offences punishable under sections 406, 409, 419, 468, 120-B etc. of Indian Penal Code. The F.I.R. is given by respondent No. 2 Rajendra Desale. The learned counsel for applicant and the learned APP are heard. Nobody turned up for first informant.

2) The crime is registered on the basis of order made by the learned Judicial Magistrate, First Class, Shindkheda in Criminal Misc. Application No. 125/2013, which was filed by respondent Rajendra. The order was made to make investigation under section 156 of Cr.P.C. It is the case of Rajendra that he has right to file proceeding for complainant institution Janta Vidyaprasarak Sanstha, Shindkheda, Taluka Shindkheda, District Dhule. Present applicant was working as Secretary, according to the complainant, of the aforesaid institution. Allegations are made that even when accused No. 3 Pankaj Deshmukh was removed by the school, the Secretary joined hands with him, created false record to regularise his services and took help of Education Officer for that. It is contended that the regularisation of service and giving regular scale to accused No. 3 on 31.8.2013 is illegal and Government is deceived. Other vague allegations are made that some other appointments are made illegally by creating false record of resolution.

3) This Court had occasion to consider the dispute between respondent Rajendra and present applicant Manohar Patil. Manohar Patil is contending that he is the President of the aforesaid institution. This Court had allowed Criminal Application No. 2476/2014 which was filed for quashing of F.I.R. No. 99/2013. This Court has discussed the nature of dispute in the said order and that discussion is as under :-

"4) It is the contention of the applicant that he is President of Janata Vidyaprasarak Mandal, a Trust which runs schools and colleges. There is dispute between the applicant and the persons on his side with respondent No.2 over the management of the Trust. The Trust came in existence in the year 1968. It is the contention of the applicant that in the past he was the Secretary of the Trust and then he became the President of the Trust.

5) A scheme was prepared for the Trust by the Assistant Charity Commissioner and the Trust was run for the term 2005-2006 as per the said scheme and the term of the trustees was increased to 5 years. The new scheme provided for voting in the election by secret ballot. It is the contention of respondent No.2 that in the year 2011 the election was held by voice vote and the necessary procedure was not followed. The applicant is not disputing that the said election was held by voice vote. This ground is considered by the Assistant Charity Commissioner and the scheme is

modified on application made by respondent No.2 after starting of the dispute. After the election 2011, change report was filed which was bearing No. 549 of 2011 showing that present applicant and his persons were the elected trustees. Subsequently, the present applicant became the President. To this resolution of the election present respondent No.2 was the signatory. Afterward he created dispute and he even filed an application for modification of the scheme.

6) The submissions made and the record show that, Change Report No.549/2011 was opposed by present respondent No.2. Misc. Application No.2/2012 was filed by respondent No.2 for modification of the scheme before the Assistant Charity Commissioner. The Change Report was rejected and the application filed for modification of the scheme was allowed on 2-6-2012. The learned Assistant Charity Commissioner made an order in favour of respondent No.2 and new trustees were appointed.

7) The present applicant challenged the order of modification of the scheme made by the learned Assistant Charity Commissioner by filing proceeding No.50/2012 in the District Court. On 26-6-2012 the District Court granted interim relief and stayed the order made by the learned Assistant Charity Commissioner in Proceeding No.2/2012. This stay order was challenged by respondent No.2 by filing Writ

Petition No.5566/2012. The proceeding was dismissed by this Court and so from 26-6-2012 due to the interim relief granted by the District Court, there was stay to the order of appointment of the new trustees by the Assistant Charity Commissioner. Proceeding No.50 of 2012 filed by the applicant was, however, subsequently dismissed on 1-1-2013. This decision was challenged by filing proceeding which was given Second Appeal No.117 of 2013 in this Court. Application like C.A.No.1386/2013 was also filed. In the second appeal order of "*status quo*" was made and the appeal was also admitted on 30-7-2013. Thus, according to the present applicant, interim relief which was granted by the District Court was continued and so he continued to manage the Trust.

8) It is the case of the applicant that as his body was duly elected, necessary correspondence was made with the authority and power was also given to the applicant to operate the bank accounts of the Trust. It is his contention that he has been operating the accounts of the bank and he is controlling and managing the Trust.

9) It is the case of the applicant that even when, in fact, respondent No.2 was not running the institution, respondent No.2 made some orders against the employees including Headmistress, who is shown as accused and one Assistant Teacher, who is shown as other accused in the F.I.R. under challenge. It is

contended that the Assistant Teacher had challenged the order of his termination by filing proceeding before School Tribunal. It is contended that other employees had also approached the School Tribunal and even criminal case was also filed against respondent No.2. It is contended that the applicant represented the institution before the School Tribunal and the termination was set aside though due to compromise *pursis* filed in the said proceeding. It is contended that as per the procedure the services of the said Assistant teacher are approved by the Education Officer and that was a routine thing.

10) The appeal which was filed in this Court to challenge the decision given by the District Court was subsequently treated as first appeal and it came to be dismissed on 5-5-2017. Copy of the said decision is produced on the record. While dismissing the appeal this Court, learned Single Judge, observed that the dispute can be put to an end by holding elections as per new / modified scheme through independent person who can be appointed by the Assistant Charity Commissioner. Those observations were made as the term of the allegedly elected body of the applicant had come to an end and the term of the trustees appointed by the Assistant Charity Commissioner under modified scheme had also come to an end.

11) The record produced shows that the learned Assistant Charity Commissioner appointed one

retired Superintendent of Public Trusts Office to assist the Inspector of the Trust and gave direction to hold elections for electing new managing body of the Trust as per the order made by this Court on 5-5-2017. The record is produced to show that the elections are held by the said Election Officer and the report given shows that the new 11 trustees came to be elected as per the programme published by the Returning Officer and the body of the present applicant came to be elected unopposed for the term 2017-2022. It was submitted by the learned counsel for the respondent No.2 that, this report is disputed by the respondent No.2 and it is the contention of the respondent No.2 that the election was held at other place by the members and other body was elected of the persons of respondent No.2.

12) The aforesaid record and the circumstances show that respondent No.2 still has the dispute with regard to the control over the Trust. However, the aforesaid circumstances and the record is sufficient to infer that present applicant has the control over the institution from 2011 and even the resolution which was passed about the said election was signed by respondent No.2. Everything including bank accounts are in the name of present applicant and the record shows that respondent No.2 made many attempts to take control over the institution after the orders made by the learned Assistant Charity Commissioner but he could not succeed in it. Even

order of injunction was made by the learned Assistant Charity Commissioner against the applicant on 5-12-2013 to prevent him from interfering in the management of the Trust. Learned counsel for respondent No.2 submitted that in view of various orders made by the learned Assistant Charity Commissioner it cannot be presumed that the present applicant was managing the Trust. This submission is not at all acceptable. In fact, the applicant remained in control and he has been in control since the year 2011. However, this observation is made for the purpose of present proceeding.

13) In the background of the aforesaid facts and circumstances, the report given by respondent No.2 to the police station needs to be considered. The submissions made and the record show that on 25-9-2013 one report was given on the basis of which Crime No.92/2013 was registered for similar offence and similar allegations were made by respondent No.2. In the said report also allegations were made against the applicant, one Bharti Marathe (in charge Headmistress) was shown as accused No.2 and one Pankaj Deshmukh, Assistant Teacher was shown as accused No.3. It was contended that accused No.3 - Pankaj Deshmukh was illegally appointed by the institution and by joining hands with the accused persons, the Education Officer, accused No.4, has created false record of approval of the proposal in favour of accused No.3. Then, Criminal Application

No.837/2013 was filed in this Court and in the said proceeding stay is given to the investigation of the said crime and the order was made on 6-3-2014.

14) Present respondent No.2 filed private complaint before Judicial Magistrate, First class, on 27-9-2013 and similar allegations are made in the said complaint. It is contended that police had not taken any action on the basis of previous report (CR No.92/2013). The Judicial Magistrate made order on this application bearing No.130/2013 and directed police to make investigation of the matter under section 156(3) of the Cr.P.C. On the basis of this order and the complaint, Crime No.99/2013 came to be registered and that F.I.R. is under challenge now.

15) The allegations made in the aforesaid two reports are mainly in respect of the authority of the applicant to submit proposal for approval of the appointment of accused No.3, Assistant Teacher. The facts and circumstances already mentioned show that the applicant was in fact controlling the Trust and he represented the Trust before School Tribunal in the proceeding which was filed by the Assistant Teacher. Considering the initial date of apportionment of accused No.3 and the circumstance that respondent No.2 had no dispute with the applicant at the relevant time, it can be said that the grievance of respondent No.2 that accused No.3 was illegally appointed has no force. Further, all these things are required to be

verified by Education Department. The termination order of accused No.3 made by respondent No.2 was challenged before School Tribunal and the said order is set aside. Though the order was made on the basis of compromise document, that order has become final. As per the rules regarding giving permanency benefits, after 3 years of the date of appointment, accused No.3 was entitled to get permanent post. It is a routine thing as per the rules and if the present applicant had submitted proposal due to the circumstance that he was in fact controlling the Trust and the Education Officer has given approval to the appointment of accused No.3, it cannot be said that they have created false record and they have joined hands to regularise any illegal thing. Due to all these circumstances nothing can be achieved by allowing police to investigate into the aforesaid allegations made by respondent No.2. This Court is not touching the orders made by the learned Assistant Charity Commissioner including the order of injunction as these things can be considered separately and not in the present proceeding. Considering the nature of dispute and the ingredients which are required to be made out for the aforesaid offences this Court holds that, relief needs to be granted to the applicant. Entire F.I.R. needs to be quashed and set aside."

- 4) The papers of investigation and report of Investigating Officer show that police did not find any substance in the allegations

and as per the Education Department, proper procedure was followed. It is also reported that the complainant was not available to supply more information and he was virtually absconding. In view of these circumstances, this Court holds that, it will be abuse of process of law if the applicant is made to face the trial for aforesaid offences in C.R. No. 92/2013. In the result, the application is allowed. Relief is granted in terms of prayer clause 'A'. Rule is made absolute in aforesaid terms.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

ssc/