

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 474 OF 2018

Dhanwantary Medical and Educational
Foundation, Datrange Mala, Baug Rouza Hudco
Near Delhi Gate, At & Post Ahmednagar
Dist. Ahmednagar
Secondary and Higher Secondary Ashram School
At Dhawalpuri, Tq. Parner, Dist. Ahmednagar
Through its President Dr. Saeed Ahmed Kazi
Age 62 years, occ. Medical Practitioner
r/o 1730 Ramchandra Khunt,
At & Post Ahmednagar
Dist. Ahmednagar

Petitioner

Versus

- 1 State of Maharashtra
(Through Secretary
For social welfare department
Mantralaya, Bomby 32.
- 1A The Chief Secretary
State of Maharashtra
Mantralaya, Mumbai 32.
- 2 The Commissioner,
V.J.N.T., O.B.C. and Special Backward Class,
Social Welfare Directorate,
Maharashtra State, Pune
- 3 The Regional Dy. Commission,
Social Welfare Department
Esrtwhile Divisional Social Welfare
Officer, Nasik Division, Nasik

Respondents

Mr. A.B. Gatne, advocate for petitioner.
Mr. S.S. Dande, A.G.P. for respondents.

WITH
WRIT PETITION NO. 481 OF 2016

Dhanwantary Medical and Educational
Foundation, Datrange Mala, Baug Rouza Hudco
Near Delhi Gate, At & Post Ahmednagar
Dist. Ahmednagar
Secondary and Higher Secondary Ashram School
At Dhawalpuri, Tq. Parner, Dist. Ahmednagar
Through its President Dr. Saeed Ahmed Kazi
Age 62 years, occ. Medical Practitioner
r/o 1730 Ramchandra Khunt,
At & Post Ahmednagar
Dist. Ahmednagar

Petitioner

Versus

- 1 State of Maharashtra
(Through Secretary
For social welfare department
Mantralaya, Bomby 32.
- 1A The Chief Secretary
State of Maharashtra
Mantralaya, Mumbai 32.
- 2 The Commissioner (Erstwhile designated Director)
V.J.N.T., O.B.C. and Special Backward Class,
Social Welfare Directorate,
Maharashtra State, Pune
- 3 The Regional Dy. Commission,
Social Welfare Department
Esrtwhile Divisional Social Welfare
Officer, Nasik Division, Nasik
- 4 The Assistant Commissioner,
Social Welfare Ahmednagar
(Erstwhile Special District Social
Welfare Officer, Ahmednagar)
Abhivihwa Complex Bolhegaon Phata
Nagar Manmad Road,
At & Post & Dist. Ahmednagar

Respondents

Mr. A.B. Gatne, advocate for petitioner.
Mr. S.S. Dande, A.G.P. for respondents.

**CORAM : R.M.BORDE &
K.K. SONAWANE, JJ.
DATE : 24th APRIL, 2018**

ORAL JUDGMENT : (PER R. M. BORDE, J.)

- 1 Rule. Rule made returnable forthwith.
2. Heard finally at admission stage with the consent of learned counsel for the respective parties.
3. Petitioner is a minority institution run by minority community and is operating secondary and higher secondary Ashrama school at village Dhawalpuri, Tq. Parner, Dist. Ahmednagar. According to petitioner, the institution has received ISO certification. Petitioner is praying for issuance of writ or direction in the nature of writ of mandamus directing respondents to accord sanction to the petitioner-institution for operating additional division for 8th standard i.e. Division 'C' in the secondary and higher secondary Ashram School at Dhawalpuri, Tq. Parner, Dist. Ahmednagar.
4. It is not a matter of dispute that on 29.06.2017, the State Government has sanctioned additional division for 8th and 9th standards i.e. 8-C, 8-D and 9-C. However, while according sanction, the State Government has prescribed certain preconditions in paragraphs 1 (B), (C) and (D). It is mandated for the institution to absorb surplus teachers and to secure certificate from the competent authority that there are no surplus teachers

available for absorption. It is also provided in clause (D) that the department shall first of all ensure absorption of the additional teachers in the division and if such teachers are not available in the division, the teachers from other division shall be appointed for filling up the vacancy. Petitioner contends that the conditions mentioned cannot be made applicable in case of minority institution. The minority institution has right to administer the educational institution.

5. Reliance is placed by petitioner on decision rendered by this Court (R.M. Borde, J.) in Writ Petition no. 116/2012 decided on 16.07.2012. In the decided matter, the direction issued by the Grievance Committee to the Education Officer to send surplus teachers to the concerned institution for being accommodated in employment was a matter of challenge. It was contended that the Grievance Committee has exceeded its jurisdiction in issuing direction touching the administration and management of the minority institution. It was also contended that the direction issued by the Grievance Committee infringes the rights extended to the minority institution to administer the educational institution. Appointment of teacher is a part of administration and management of the institution and as such, the minority institution has right to appoint a teacher selected and chosen by it and nobody can force it to appoint any person as teacher who is not selected by the management. On consideration of the law laid down by the Honourable Supreme Court in the matter of Ahmedabad St. Xavier's College Society & another Vs. State of Gujarat & another reported in **(1974) 1 SCC 717**, Sindhi Education Society & another Vs. Chief Secretary, Government of

NCT of Delhi & others reported in **(2010) 8 SCC 49** as well as T.M.A. Pai Foundation & others Vs. State of Karnataka & others reported in **2002(8) SCC 481**, this Court has observed in paragraphs no. 13 and 14 of the judgment as quoted below :

13. Considering the law laid down by the Supreme Court in the judgments cited supra, it is clear that the law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution would be void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The right to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management and this is facet of fundamental right of the minorities to administer the educational institutions established by them. It is made clear by the judgments of the Supreme Court, cited above, that making appointment of teacher is a part of regular administration and management of the educational institution and, therefore, minority institutions have right to appoint a teacher selected and chosen by them and nobody can force upon the minority institutions to appoint a particular person, who is not selected by it as a teacher.

14. The directions issued by the Grievance Committee to the Educational Officer in respect of sending surplus teachers for being accommodated by the minority institution and mandate requiring the managements of minority institutions to absorb such teachers and prescription of consequences for breach of the directives issued by the Grievance Committee, is beyond the scope of interference in view of the rights guaranteed to the minority institutions under Article 30(1) of the Constitution.

6. In view of the prescription by this Court as quoted above, petitioner - minority institution cannot be directed to accommodate surplus teachers and such prescription is beyond the scope of interference of the State Government in view of the rights guaranteed to the minority institutions under Article 30(1) of the Constitution of India. Direction issued by the State Government touching management of the petitioner-institution shall stand quashed and set aside. Rule is accordingly made absolute. No costs.

K. K. SONAWANE
JUDGE

R.M.BORDE
JUDGE