

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

WRIT PETITION NO. 13434 OF 2017
WITH
CIVIL APPLICATION NO.7323 OF 2018
IN
WRIT PETITION NO.13434 OF 2017

VIDYAVIKAS SHIKSHAN PRASARAK MANDAL THROUGH ITS PRESIDENT
G S SUPEKAR.

VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioners : Shri V.D.Sapkal h/f Shri Choukidar S.R..
AGP for Respondents 1 to 3 : Shri S.K.Tambe.
Advocate for Respondent 4 : Shri Avinash D. Aghav.
Advocate for Respondent 5 : Shri Suhas R. Shirsat.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th June, 2018

Per Court:

1 By this Writ Petition, the President of the Petitioner Trust has
put forth the following prayers in prayer clauses B and C :-

- "B) Pending hearing and final disposal of this petition, effect, operation and execution of order dated 03.10.2017 passed by Hon'ble Minister, Social Welfare Department, Mantralaya, Mumbai in Appeal No.EDD-2017/ PRA.KRA327/AKI may be stayed.
- C) Rule may be made absolute and by allowing this following reliefs may be granted :-
- (i) Quash and set aside the order dated 03.10.2017 passed by Hon'ble Minister, Social Welfare Department, Mantralaya, Mumbai in Appeal No.EDD-2017/ PRA.KRA327/AKI.

(ii) Direct the Hon'ble Minister to hear and decide the appeal filed by the present petitioner on 03.05.2017 on its own merits."

2 The learned AGP submits that pursuant to the impugned order dated 03.10.2017, the Deaf and Dumb Residential School has been moved out from Shirur Kasar, Taluka Patoda, District Beed and is shifted to Tambarajuri, Taluka Patoda, District Beed. Considering the order of the Honourable Minister dated 03.10.2017, Respondent No.4/ District Social Welfare Officer has taken effective steps and is presently in-charge of the said Residential School under the orders of the Honourable Minister.

3 I have heard the learned Advocates for the respective sides and the learned AGP on behalf of Respondent Nos.1, 2 and 3, at length.

4 Considering the order that I am passing, I am not required to advert to the entire extensive submissions of the litigating sides since the appeal preferred by the Petitioner, President of the Trust, at page 123 of the petition paper book dated 03.07.2017, is pending and the said appeal will have to be decided by the Honourable Minister.

5 It is uncontroverted that there is a dispute between the President and the Secretary of the Trust. Change Report No.302/2013 submitted by the Secretary of the Trust Shri Vitthal Namdeo Tambe has been rejected by the Assistant Charity Commissioner by the judgment dated 17.05.2014. Similarly, one more Change Report No.101/2013 filed

by the same Secretary, has also been rejected on 19.05.2014. Consequentially, the Trustees elected prior to the submission of these change reports, meaning thereby, that the Petitioner President and the Secretary Shri Tambe, stand restored and they form the governing body of the said Trust.

6 The issue is that the Secretary Shri Tambe is heading one branch of litigation and the President Shri Supekar is heading another branch of litigation in relation to the Deaf and Dumb Residential School, which was earlier existing at Shirur Kasar.

7 In this backdrop, I have perused the constitution and the by-laws applicable to the Trust, which are a part of the petition paper book. From clause 12(4) defining the powers of the Secretary, I do not find, prima facie, that the Secretary is empowered to file or defend the cases or sue or be sued on behalf of the Society in any court, tribunal or authority. Per contra, it appears from clause 12(1) that those duties not cast upon any other office bearer, would be shouldered by the President, besides those which are defined in sub-clause (1). Consequentially, prima facie, it appears that the Secretary does not have the authority to initiate any litigation on behalf of this Trust.

8 I find from the impugned order that the Petitioner/ President was not arrayed as the Respondent and an impression was created before the Honourable Minister that the Secretary is the authorized person to

represent the Trust. This Secretary had preferred Writ Petition No.5969/2015 before this Court for challenging the order dated 28.05.2015 issued by Respondent No.4 herein. The President was arrayed as Respondent No.5. By an order dated 08.01.2016, the said Secretary was permitted to withdraw the said petition in the backdrop of certain factors pointed out by the President of the Trust. The said petition was, therefore, dismissed as withdrawn unconditionally. Despite the same, the said Secretary has then approached the Honourable Minister by suppressing these facts which led to the passing of the impugned order dated 03.10.2017.

9 The learned Advocate for the Petitioner submits that the Honourable Minister would have to decide as to whether, the Secretary is empowered to represent the Trust in any proceedings, judicial or quasi-judicial, before any court or tribunal or authority. So also, the Honourable Minister will have to decide the appeal preferred by the Petitioner, which is at page 123 of the petition paper book.

10 The learned AGP submits that as a consequence of the internal squabbles between the President and Secretary, innocent deaf and dumb students are suffering. These litigants are more interested in power broking rather than taking care of the interest of the handicapped students for whom the said residential school has been granted. He, therefore, rightly submits that while maintaining the status-quo as existing today so

as to avoid any disturbance to the students, who are now shifted to Tambarajuri, Respondent No.4 be permitted to monitor the said school until the decision of the Honourable Minister.

11 Considering the above, this Writ Petition is partly allowed as under :-

- (a) The impugned order dated 03.10.2017 is quashed and set aside.
- (b) Appeal No.EDD-2017/ PRA.KRA327/AKI is remitted to the Honourable Minister.
- (c) The residential school, which is now transferred to Tambarajuri from Shirur Kasar, would continue to operate for this academic year. Respondent No.4 would monitor the said school until further orders from the competent authority.
- (d) The appeal of the Petitioner at page 123 of the petition paper book dated 03.05.2017 would be considered by the Honourable Minister along with the appeal preferred by Respondent No.5.
- (e) The Honourable Minister would decide both the appeals together after hearing all the sides.
- (f) While deciding the appeals, the issue as to whether, the Secretary is empowered by the constitution and the by-laws of the Trust to file any such proceedings and his locus-standi,

would be decided.

- (g) All the litigating sides agree to appear before the Honourable Minister on 10.07.2018 at 03:00 pm and would abide by the dates of hearing that may be posted in the matter by the Honourable Minister.
- (h) The Honourable Minister would endeavour to decide the said appeals as expeditiously as possible and preferably on or before 29.09.2018.
- (i) All the contentions of the litigating sides are kept open for the Honourable Minister to consider.

12 The pending Civil Application stands disposed of.

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(RAVINDRA V. GHUGE, J.)