

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

BENCH AT AURANGABAD.

**WRIT PETITION NO.14910 OF 2017
WITH
CIVIL APPLICATION NO.2008 OF 2018
IN
WRIT PETITION NO.14910 OF 2017.**

Maulana Mohammad Ali Johar
Education Society, Sillod,
and others. ... Petitioners.

Versus

The State of Maharashtra
and others. ... Respondents.

...
Mr.A.S.Bajaj, advocate for the petitioners.
Mr.A.S.Shinde, A.G.P. for the State.
Mr.U.B.Bondar, advocate for Respondent No.4.
Mr.V.C.Patil, advocate for Respondent NO.6.
Mr.R.I.Wakade, advocate for Respondent No.7.
Mr.R.K.Ashtekar, advocate for Applicants in
C.A.No.2008 of 2018.

...

**CORAM : S.V.GANGAPURWALA AND
A.M. DHAVAL, JJ.**

Date : 11.04.2018.

PER COURT :

1. The proposal submitted by the
institution seeking approval to the transfer of

Respondent Nos.6 and 7 is rejected by the Education Officer, Primary and Education Officer, Secondary. The proposal is basically rejected by the Education Officer, Primary on the ground that there is a dispute in the Management and the Education Officer, Secondary, on the ground that Respondent No.6 has not joined at the transferred place. Mr.Bajaj, learned counsel submits that in a proceedings U/s 41E of the Maharashtra Public Trusts Act, the members of the rival group were injuncted in interfering with the Management being run by the present petitioners. Upon rejection of the application U/s 41E of Maharashtra Public Trusts Act, the petitioners approached the District Court and the District Court in MARJI No.41/2015 has directed maintenance of statusquo as regards the Management of the Trust. According to the learned counsel for the petitioners, the Education Officer, Primary could not have rejected the proposal on the ground that dispute in the Management exist. All other proposals forwarded by the petitioners are accepted by the Education Officer, Primary. Learned counsel submits that

Respondent No.6 has joined at the transferred place. The salary was not being paid to Respondent No.6, though he has joined at the transferred place. Thereafter, the Respondent No.6 approached this Court for payment of salary. Learned counsel for Respondent NO.6 has submitted that he has joined at the transferred place.

2. Mr.Bondar, learned counsel for Education Officer, Primary submits that considering the dispute in the Management and on the basis of the communication received from the Deputy Director of Education, the order is passed.

3. We have also heard learned A.G.P. also.

4. Mr.Ashtekar, learned counsel for the interveners submits that interveners are the President and Secretary of the Trust. The change report is pending. The interveners were appointed as defacto Trustees. The application filed by the petitioners U/s 41E of the Maharashtra Public Trusts Act, is rejected. The

petitioners can not claim to be in the Management. It is the interveners who is the Management.

5. We would be guided by the judicial orders passed. It is not disputed by any of the parties that petitioners had filed an application U/s 41E of the Maharashtra Public Trusts Act and in the said application, interim orders were passed by the Joint Charity Commissioner, thereby restraining the rival group from interfering in the Management. The said order of injunction was in force till the rejection of application U/s 41E of the Maharashtra Public Trusts Act. The petitioners filed appeal before the District Court. Below Exh.5 in the said MARJI No.41/2015, interim order is passed by District Judge-2 on 31.1.2015, directing maintenance of statusquo as regards the Management of the Trust. Even learned Single Judge of this Court in W.P.No.6927/2014 under order dated 19.8.2014 had directed that the position subsisting under order dated 23.2.2012 be maintained during pendency of Application No.6/2011 i.e. Application U/s 41E of

the Maharashtra Public Trusts Act.

6. In view of the above, the interveners can not be heard to say that the petitioners are not in Management.

7. The Respondent No.6 also contends that he has joined at the transferred place. This aspect was also required to be considered by the Education Officer, Secondary.

8. Considering the above, the order rejecting the approval to the proposal submitted by the Management for transfer of Respondent Nos.6 and 7 is quashed and set aside. The Education Officer, Primary and Education Officer, Secondary shall reconsider the proposal submitted by the petitioners seeking approval to the transfer of Respondent Nos.6 and 7 on its own merits and shall not reject it on the ground that there is dispute in the Management. The decision shall be taken within three (3) months. The petitioners and/or Respondent Nos.6 and 7 may represent themselves before the Education

Officer.

9. The Writ Petition is disposed of. No costs.

10. In view of disposal of Writ Petition, the Civil Application also stands disposed of.

(A.M.DHAVAL, J.)

(S.V.GANGAPURWALA, J.)

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