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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9632 OF 2015 WITH
CIVIL APPLICATION NO.227 OF 2017**

Bharatiya Manav Vikas Trust	... Petitioner
Vs.	
The State of Maharashtra and Ors.	... Respondents

**WITH
PUBLIC INTEREST LITIGATION NO.156 OF 2013 WITH
CIVIL APPLICATION (ST) NO.7743 OF 2018**

Mr. Ganpat Jotiba Karade	... Petitioner
Vs.	
The State of Maharashtra and Ors.	... Respondents

Dr. Siddhartha Priya Ashok for the Petitioner in WP and for the Respondent No.2 in PIL.
Mr. Ganpat Jotiba Karade the Petitioner in person in PIL.
Dr. Prakash K. Deshmukh for the Applicant in CAWs.
Mrs. R.A. Salunkhe, AGP for the Respondent Nos.1 and 3 in PIL and for Respondent Nos.1 and 2 in WP.
Mr. C.G. Gavnekar a/w Mr. Suhas Deokar for the Respondent No.4 in PIL and for the Respondent Nos.3 and 4 in WP.
Mr. Sarang Aradhya for the Respondent No.5 in PIL.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 8th JUNE 2018

ORAL JUDGMENT (Per A.S.Oka, J.)

1 As per the administrative order dated 29th November 2017 passed by the Hon'ble the Chief Justice, these two matters have been assigned to this Bench. The issue in these two petitions concerns subject

school run by the second respondent in Public Interest Litigation (for short “the said Trust”) for mentally challenged children at New Panvel in District Raigad. It is not in dispute that intake capacity of the school is 70 students and that the school is receiving grant for 50 students.

2 Public Interest Litigation is filed by one Ganpat J. Karade raising several issues concerning the said special school as well as the issue of re-admitting his son Siddhesh to the said school. The first prayer in the PIL is for challenging the letter dated 26th July 2012 issued by the Commissioner of Disabilities of the State Government to the Chief Executive Officer of Zilla Parishad, Raigad. By the said communication, inspection reports were forwarded to the Chief Executive Officer and a direction was issued to the Chief Executive Officer to take action. The second prayer in the PIL is based on report dated 18th October 2010 submitted by the Inquiry Committee headed by the Assistant Director of Social Welfare Department. Certain recommendations were made in the said report including recommendation for re-admitting the petitioner's son and another child. The third prayer in the PIL concerns re-admission of the petitioner's son. With the passage of time, this prayer does not survive. Prayers (d) and (e) are based on the allegations made by the petitioner against the management of the said school. Therefore, there is a prayer seeking a writ of mandamus to change the managing committee or to hand over

the management of the school to the Government or to any well established institution or organisation. The last prayer is a prayer which seeks personal relief in favour of the petitioner regarding grant of compensation. In Public Interest Litigation, such a prayer cannot be considered.

3 In Public Interest Litigation, an order was made on 6th July 2015 by a Division Bench of this Court which refers to the report of a Committee headed by the retired Judge of this Court Hon'ble Shri Justice R.J. Sindhkar, Professor Rubina Lal and an officer of Pay and Accounts Department of the State Government. The said Committee submitted a report recording a finding that there were several illegalities and irregularities regarding functioning of the said Trust which was running the school. Certain observations were made about the conduct of the Managing Trustee of the said Trust. Certain observations are also made in the report about the conduct of other trustees and it was observed that the trustees are responsible for the sorry state of affairs.

4 Writ Petition No.9632 of 2015 is filed by the said Trust essentially for challenging the order dated 24th August 2015. The said order is based on the report of the Committee headed by the Hon'ble Shri Justice R.J. Sindhkar as well as the report submitted by the

Commissioner of Disabilities, Government of Maharashtra dated 23rd June 2015. By the said order, the District Social Welfare Officer, Raigad Zilla Parishad was appointed as an Administrator to run the said school. The said order appointing Administrator was stayed in the writ petition by granting ad-interim relief. By an order dated 13th April 2017, this Division Bench for the reasons recorded therein rejected the prayer for interim relief. The said order was passed by this Court by relying upon the findings recorded by the Committee headed by the Hon'ble Shri Justice R.J. Sindhkar. Subsequently, the Administrator appointed under the said order took charge. On 20th April 2018, a report was submitted by the District Social Welfare Officer who was appointed as the Administrator.

5 The submission of the learned counsel appearing for the said Trust (Management of the school) in support of Writ Petition No.9632 of 2015 is that firstly the Committee headed by the Hon'ble Shri Justice R.J. Sindhkar has not given proper opportunity of being heard to the trustees. Secondly, it was contended that the impugned order dated 24th August 2015 appointing the Administrator has been passed by the State Government without giving an opportunity of being heard to the trustees of the said Trust. It is further contended that the report submitted by the Administrator indicates that now the school is functioning smoothly.

6 Civil Application (St) No.7743 of 2018 has been filed by the President of the Parents-Teachers Association and Head Mistress of the said school as well as the Vice President of the Parents-Teachers Association. By the said application, intervention was sought by them in the PIL. There is a prayer made to dismiss the PIL and direct the State Government to provide grant to 20 students (unaided students) so that the school can grant exemption to the said students from payment of fees.

7 The order passed by this Court vacating ad-interim relief in Writ Petition No.9632 of 2015 is based on the findings recorded by the Committee headed by the Hon'ble Shri Justice R.J. Sindhkar. Considering the contents of the said report, it is not possible for us to record a finding that an adequate opportunity of being heard was not given by the Committee. However, we find that the said report was submitted on 16th March 2015. Thereafter, much water has flown. Now the Administrator appointed by the State Government is in-charge who has submitted report dated 20th April 2018. It is not possible for us to record a finding of fact that in view of the report of the Administrator, it can be said that the said Trust can be allowed to manage the school by cancelling the appointment of Administrator.

8 We are dealing with the issue of future of 70 mentally challenged children. Therefore, it is necessary that an appropriate authority makes a proper investigation by perusing the record and by visiting the school on the question whether the appointment of Administrator deserves to continue. Only on the basis of affidavits and counter affidavits, it will not be appropriate for the writ Court to come to a conclusion one way or the other, considering the seriousness of the issue and future of 70 children.

9 We, therefore, propose to direct the State Government to give hearing to the said Trust and its trustees on the question of continuation of appointment of Administrator. The State Government will also hear representatives of the Parents-Teachers Association.

10 As far as PIL is concerned, now that the action has been taken by the State Government on the basis of the report submitted by the Committee headed by the Hon'ble Shri Justice R.J. Sindhkar, it is not necessary to keep the PIL pending. Moreover, the issue of admission of the child of the PIL petitioner to the said school no longer survives. PIL petitioner is relying upon a report submitted by the Inquiry Officer (Assistant Director). Perusal of the said report shows that the same has been submitted way back in the year 2010. Thereafter, there is a report of the Committee headed by the Retired Judge of this Court as well as a

report of the Administrator. Hence, we propose to direct the Administrator to submit a fresh report which can be considered by the State Government. As stated earlier, the Administrator is an officer of the Raigad Zilla Parishad.

11 After giving hearing as aforesaid, if the State Government comes to the conclusion that the appointment of the Administrator does not deserve to continue, it is always open for the State Government to pass the said order. If the State Government is of the view that considering the material on record, the appointment deserves to continue, appropriate order in that behalf shall be passed by the State Government. We are not making any adjudication on the question whether the appointment of Administrators deserves to be discontinued. This issue will have to be decided by the State Government after making in-depth enquiry.

12 There is a prayer made in the civil application by the Parents Teachers Association seeking a direction to the State Government to release grant to 20 students as the grant presently payable is confined to 50 students. Though there is no specific prayer made in the Public Interest Litigation/Writ Petition in that behalf, considering the specific prayer made in the civil application for intervention, it will be always open for the said trust to make a formal

application to the State Government for sanctioning grant to 20 students. Such application, if made, will have to be decided by the State Government in a time bound schedule.

13 Considering the aforesaid discussion, we dispose of the matters by passing the following order :-

ORDER

- (i) We direct the trustees of the petitioner Trust in WP/9632/2015 to appear before the Secretary/ Principal Secretary of Social Justice and Special Assistance Department of the State Government on 9th July 2018 at 3.00 pm. Even the District Social Welfare Officer, Zilla Parishad, Raigad who is the Administrator shall remain present. He shall file a fresh report setting out the status of the school. The report shall be filed on the date fixed for appearance;
- (ii) On the date fixed for appearance, the Secretary or Principal Secretary of the said department, as the case may be, shall inform the parties the name and designation of the officer or officers who will give hearing to the parties;
- (iii) The officer or officers appointed by the State Government as aforesaid shall give an opportunity of being heard to the trustees of the said Trust, the District Social Welfare Officer

of Zilla Parishad, Raigad (Administrator) and representatives of Parents Teachers Association;

- (iv) The officer or officers appointed by the State Government shall peruse all the reports on record of both the petitions including the latest report which may be submitted by the Administrator. The officer or officers so appointed shall also make a visit to the school and shall also inspect the records of the school;
- (v) The officer or officers appointed as aforesaid shall submit a detailed report after giving an opportunity of hearing to all concerned parties after inspection of the record as aforesaid on or before 29th September 2018;
- (vi) After considering the report, the State Government shall take appropriate decision on the question of continuing or discontinuing the appointment of Administrator made under the order dated 24th August 2015. Such decision shall be taken by the State Government as expeditiously as possible and in any event on or before 31st October 2018;
- (vii) We make it clear that none of the reports which are on record and the report which may be submitted by the Administrator are not conclusive and considering the entire material on record, the State Government is entitled to

record appropriate findings and come to appropriate conclusion in accordance with law;

- (viii) It will be open for the petitioner in WP/9632/2015 to make an application to the State Government for sanctioning grant to 20 students in addition to the grant which is already sanctioned for 50 students. If such application is made, the State Government shall decide the same as expeditiously as possible and preferably within a period of three months from the date on which application is decided. No further directions are required to be issued;
- (ix) Rule issued in both the petitions is made partly absolute on the above terms.
- (x) There will be no order as to costs;
- (xi) Pending civil applications do not survive and the same are disposed of.

Pallavi
Mahendra
Wargaonkar
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by Pallavi
Mahendra
Wargaonkar
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(A.K. MENON, J)

(A.S. OKA, J)