

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

**CRIMINAL WRIT PETITION NO. 360 OF 2019**

1. Anant Shesharao Hadgekar  
Age 53 years, Occ. Service,  
R/o. Latur, Dist. Latur.
2. Sow. Sandhyarani Shivanand Vibhute,  
Age 41 years, Occ. Service,  
R/o. Latur, Dist. Latur.
3. Vinod Narayan Deshmukh,  
Age 45 years, Occ Service,  
R/o. Latur Tq. & Dist. Latur. ... **Petitioners.**

VERSUS.

The State of Maharashtra,  
Through The Police Inspector,  
Anti Corruption Bureau,  
Latur. ... **Respondent.**

...

Advocate for the petitioners : Mr. Dr. R.R. Deshpande, h/f  
Priyanka R. Deshpande.

A.P.P. for the respondent : Mr. S.B. Joshi.

**CORAM : MANGESH S. PATIL, J.**

**RESERVED ON : 05/09/2019**

**PRONOUNCED ON : 11/09/2019**

**JUDGMENT :**

Heard.

2. Rule. The rule is made returnable forthwith. Learned A.P.P.  
waives notice for respondent/State. On the request of both the parties

the matter is heard finally at the stage of admission.

3. The petitioners are challenging the order passed by the learned Assistant Sessions Judge Latur on their application (Exhibit 9) whereby their request for discharge was rejected.

4. The petitioners are the employees of a private school. The petitioner No. 1 is the Headmaster, petitioner No. 2 is the teacher and the petitioner No. 3 is the Clerk in that school. It is alleged that the petitioner No. 1 made a demand of bribe of an amount of Rs. 3000/- for issuing a transfer certificate to the son of the complainant. It is alleged that pursuant to such demand money was accepted by the petitioner No. 1 and the other two petitioners abetted commission of such crime. Accordingly they were charge-sheeted for the offences punishable under sections 7, 12, 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988.

5. The petitioners submitted the application (Exhibit 9) seeking discharge primarily on the ground that it is the Director of Education (Secondary and Higher Secondary) who has accorded sanction. In fact initially the Investigating Officer had solicited a sanction to prosecute the petitioners from the Management. However, it was rejected. Subsequently a fresh request was made to the Director of Education,

pursuant to which the sanction was accorded by referring to the Government Resolution dated 05.11.2015. By the impugned order the learned Assistant Sessions Judge rejected the application. Hence this writ petition.

6. The learned advocate for the petitioners submitted that in view of the provisions of Section 4 of the The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as M.E.P.S. Act) and the rules framed thereunder of the year 1981, the petitioners being the employees of a private school, the Management which runs the school would be the authority competent to remove them from the office within the meaning of clause (c) of Sub section 1 of Section 19 of the Prevention of Corruption Act. It is pursuant to such a provision that initially the sanction was solicited from the Management. The Management for the elaborate reasons through its communication dated 30.11.2015 refused to accord the sanction. The learned advocate would submit that without disclosing such rejection, pursuant to a Government Resolution dated 05.11.2015 the investigating officer solicited the sanction from the Director of Education, obtained a fresh favourable order and the prosecution was launched by filing the charge-sheet. The learned advocate would submit that in fact when it is the

Management which alone was competent to remove the petitioners from the employment under the provisions of Section 4 of the M.E.P.S. Act, the State Government could not have by issuing such a government resolution superseded the statutory provision contained in Section 19 of the Prevention of Corruption Act. In support of his submission he placed reliance on the decision of the Supreme Court in the case of **Rajasthan State Industrial Development & Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society & Oth. 2013 AIR (SC) 1226.**

7. Thus according to the learned advocate, the Director of Education being not the competent authority to remove the petitioners from the employment under the provisions of Section 4 of the M.E.P.S. Act, he was not the competent authority to accord sanction under Section 19 of the Prevention of Corruption Act to prosecute them. The Management having already refused to accord sanction the petitioners could not have been prosecuted. The learned Assistant Sessions Judge has failed to consider these aspects and by the impugned order refused to discharge them. The order is not sustainable in law and may be quashed and set aside and the petitioners may be directed to be discharged.

8. The learned A.P.P. submitted that though by virtue of the

provisions of the M.E.P.S. Act the Management is apparently the appointing authority and therefore removing authority as well under section 4 of the M.E.P.S. Act, section 4A empowers the Director of Education to initiate an enquiry against the employees of private schools and therefore it cannot be said that the Director of Education could not be the competent authority. When the State Government has issued the Government Resolution on 05.11.2015, i.e. even before the Management refused sanction by the correspondence dated 30.11.2015, no fault can be found with the Investigating Officer in approaching the Director of Education and soliciting sanction under Section 19 of the Prevention of Corruption Act. The learned Assistant Sessions Judge therefore has correctly appreciated these facts and has rightly rejected the application seeking discharge.

9. There is no dispute about the fact that the petitioners are the employees of the private school and are governed by the M.E.P.S. Act. By virtue of provisions of section 4(6) of the M.E.P.S. Act, it is the Management which alone is competent to suspend, dismiss or remove them from the employment. By virtue of section 4A of the M.E.P.S. Act it is only when the Enquiry Committee enquiring into the misconduct or misbehaviour of an employee unreasonably exonerates him that it empowers the Director of Education to direct the Management to

impose penalty upon such an employee. It further empowers the Director of Education to hold an enquiry if in spite of his instructions the Management fails to initiate the action. By virtue of Section 4(6) of the M.E.P.S. Act it is only the Management which has the power to remove its employees. The powers conferred upon the Director are only contingent. Therefore it cannot be said that the Director of Education independently derives any power under section 4A of the M.E.P.S. Act to remove an employee of a private school. If such is the legal position, by virtue of Section 19 of the Prevention of Corruption Act it would be the Management of a private school which alone would be competent to accord sanction and nobody else i.e. not even the Director of Education can usurp that power.

10. True it is that initially the Anti-Corruption Bureau has solicited such a sanction under Section 19 of the Prevention of Corruption Act by addressing a letter to the Management on 21.10.2015 and the Management has refused to accord sanction by its correspondence dated 30.11.2015. However in the meantime the Government Resolution was issued on 05.11.2015 declaring that the Director of Education would be the competent authority to accord sanction under Section 19 of the Prevention of Corruption Act in respect of the employees of private schools. But having considered the

provisions of Section 19 of the Prevention of Corruption Act which requires the sanction to be accorded by an authority competent to remove the employee from his office and when in view of the above discussion it has been found that it is the Management of such a private school which alone has a power to remove such an employee by virtue of sub section 6 of Section 4 of the M.E.P.S. Act, irrespective of the Government Resolution dated 05.11.2015, the Director of Education would not be competent to accord the sanction under section 19 of the Prevention of Corruption Act. Therefore without going into the intricate question as to whether the State Government could by an executive order supersede the provisions of Section 19 of the Prevention of Corruption Act and without examining its virus, it can be safely concluded on a conjoint reading of Section 19 (1)(c) of the Prevention of Corruption Act and Sub Section 6 of Section 4 of the M.E.P.S. Act, that it is only the Management of a private school which would be competent authority to remove an employee of the school being run by it and the Director of Education will not have any such power. Consequently the sanction to prosecute the petitioner accorded by the Director of Education stating to have derived the power under the Government Resolution dated 05.11.2015 is indeed an illegality which goes to the root of the matter and the very prosecution of the petitioners.

11. In this regard, following observations of the Division Bench in paragraph No. 7 of the judgment in case of **Sau. Jyoti Ramesh Upase Vs. State of Maharashtra in Criminal Writ Petition No. 630/2013** in the judgment dated 21.20.2013 of the Bombay High Court (Nagpur Bench) are relevant and binding :

"7. The service conditions of the petitioner are governed by the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 hereinafter referred to as Act of 1977. The petitioner has been working as the Head Mistress of the school and as per the provisions of Act of 1977 and the Rules framed thereunder, the appointment of the petitioner has to be by the "Management" as defined under Section 2(12)(c) of the Act of 1977. Consequently, the Authority Competent to remove the petitioner from the service is the Management of the school. The Investigating Officer had sought the sanction of the Management by the communication dated 22nd October, 2008 but the Management had refused to grant sanction for the prosecution of the petitioner by the resolution dated 3rd January, 2009. In our view the prosecution of the petitioner is illegal and cannot be continued as it is without there being proper sanction as required by the provisions of Section 19(1)(c) of the Act of 1977. The submission as made by the learned Additional Public Prosecutor that the order dated 6th May, 2011 issued by the Principal Secretary is the sufficient compliance of the provisions of Section 19(1)(c) of the Anti-Corruption Act, 1988 is misconceived and unsustainable in

law. Though the school is receiving grants from the State exchequer but as per the service conditions of the petitioner, the Management of the School only is the Competent Authority to remove the petitioner from the service. Under the provisions of the Act of 1977 and the Rules framed thereunder the Principal Secretary of School Education and Sports Department has no concern with the Management of the school in which the petitioner is working and the Principal Secretary is not a Competent Authority to remove the petitioner from her office."

12. Even if one is to examine the competence of the State Government to issue the Government Resolution dated 05.11.2015, as has been rightly submitted by the learned advocate for the petitioner by referring to the decision of the Supreme Court in case of **Rajasthan State Industrial Development & Investment Corporation Vs. Subhash Sindhi** and particularly para No. 19, the State Government had no power to override the provisions of Section 19 of the Prevention of Corruption Act by issuing such executive instructions :

"19. Executive instructions which have no statutory force, cannot override the law. Therefore, any notice, circular, guidelines etc. which runs contrary to statutory laws cannot be enforced."

Therefore for this reason also, the sanction accorded by the Director of Education based on such Government Resolution cannot be said to be

a valid sanction under Section 19 of the Prevention of Corruption Act.

13. For that matter, a coordinate bench of this Court at Nagpur bench in **Criminal Revision Application No. 198 of 2018; Pranita Prakashrao Katewale Vs. The State of Maharashtra** by the judgment and order dated 10.07.2019 relying upon the decision in case of **Jyoti Ramesh Upase (supra)** has considered this aspect in the light of Government Resolution dated 05.11.2015 and has made following observations in para No. 15 and 16.

"15. In the backdrop of said position of law clarified by the aforesaid Judgments of this Court, it cannot be said that sanction granted in the present case for prosecution against the applicant by the Director of Education was sustainable because it was in terms of Government Resolution dated 05.11.2015. The said Government Resolution is nothing but an executive instruction issued by the State and such executive instructions can certainly not prevail over statutory provisions of the MEPS Act and Rules and the aforesaid judgment of this Court, wherein it has been categorically laid down that only the management of the school has the power and authority to grant sanction for prosecution of a teacher or Headmistress for offences under the provisions of the Prevention of Corruption Act, 1988. The said conclusion has been given in the aforesaid judgment upon analysis of the provisions of the MEPS Act and Rules and such position of law cannot be circumvented

by issuing executive instructions in the form of aforesaid Government Resolution dated 05.11.2015.

16. Thus, the contention raised on behalf of non-applicant State that the Director of Education was competent to grant sanction for prosecution against the applicant in the present case is wholly unsustainable and it is a fallacious argument raised on behalf of the non-applicant State that as long as the Government Resolution dated 05.11.2015 exists and it is not set aside, the Director of Education is entitled to grant sanction. This is because in no case can an executive instruction like the Government Resolution dated 05.11.2015, prevail over the statutory provisions of the MEPS Act and Rules and the Judgments rendered by this Court. Therefore, it is found that the Court below committed a grave error in rejecting the contention raised on behalf of the applicant regarding defective sanction as ground for discharge".

14. Apparently the decision in the case of **Jyoti Ramesh Upase** was not brought to the notice of learned Assistant Sessions Judge. The decision in case of **Pranita Prakashrao Katewale** obviously being decided later in point of time that could not have been brought to the notice of the learned Assistant Sessions Judge. The impugned order therefore suffers from grave illegality and cannot stand the legal scrutiny.

15. In view of such state of affairs, the impugned order is liable to

be quashed and set aside and the petitioners' application (Exhibit 9) seeking discharge deserves to be allowed by allowing this writ petition.

16. The writ petition is allowed, in above terms. The rule is accordingly made absolute.

( MANGESH S. PATIL, J. )

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