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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13251 OF 2018

Mandesh Education Society	..Petitioner
Vs.	
Director of Education & ors.	..Respondents

WITH

CIVIL APPLICATION NO. 127 OF 2019

(FOR INTERVENTION)

IN

WRIT PETITION NO. 13251 OF 2018

Vilas Ramchandra Patil	..Applicant
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IN THE MATTER BETWEEN

Mandesh Education Society	..Petitioner
Vs.	
Director of Education & ors.	..Respondents

WITH

WRIT PETITION NO. 9599 OF 2018

Vilas Ramchandra Patil & anr.	..Petitioners
Vs.	
The Education Officer (Secondary) & ors.	..Respondents

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Mr. A.B. Tajane for the petitioners.
Mr. A.G. Damle, Senior Counsel I/b. Mr. I.M. Khairadi for
applicant in CA.
Mr. S.B. Kalel, AGP for State – respondent Nos.1 to 4.

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**CORAM : S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.
RESERVED ON : 21st JANUARY, 2019
PRONOUNCED ON : 29th JANUARY, 2019**

ORDER (PER M.S.KARNIK, J.) :- :

The petitioner – Mandesh Education Society has filed this Petition under Article 226 of the Constitution of India challenging the order dated 10/9/2018 at Exhibit 'O', order dated 29/9/2018 at Exhibit 'P', order dated 2/11/2018 at Exhibit 'Q' passed by respondent No.2 – Deputy Director of Education, Pune Region, Pune. The petitioner is also challenging the order dated 15/11/2018 passed by respondent No.3 – Education Officer (Secondary), Zilla Parishad, Solapur.

2. The facts of the Petition in a nutshell are thus :

The educational institution by name Shri Vitthal Shikshan Prasarak va Bahu Uddeshiya Sansta Supali, Taluka – Pandharpur, District – Solapur, filed an application for transfer of school – Hanuman Vidyalay. The petitioner - Institution filed an application on 1/10/2015 indicating its readiness to accept

the transfer of the school Hanuman Vidyalay to it. Respondent No.2 granted permission for transfer of Hanuman Vidyalay to the petitioner – Institution as per Rule No. 12.1 to 12.6 of the Secondary School Code subject to various conditions vide an order dated 29/10/2015. The order of transfer also came to be confirmed by the Education Officer on 23/11/2015.

3. The pay bills of all the teachers of Hanuman Vidyalay were sent through the petitioner – Institution on 3/6/2016. Thus the order dated 29/10/2015 of transfer was implemented. Some teachers from Vikas Vidyalay, Ajnale, were transferred to Hanuman Vidyalay on 6/7/2017. The pay bills of these teachers along with other teachers for payment of salary who were transferred to Hanuman Vidyalay were submitted on 8/6/2018. Thereafter, two Assistant Teachers from Vikas Vidyalay and two Assistant Teachers from Hanuman Vidyalay were transferred inter se on 15/6/2018 from one school to another.

4. A complaint came to be filed by Shri Vilas

Ramchandra Patil (the applicant in Civil Application No. 127/2019 for intervention filed in this Petition) on 22/6/2018, who is a teacher of Hanuman Vidyalay, alleging the transfer of the school is without consent of the staff members, both teaching as well as non teaching. According to the complainant, signatures were obtained on blank papers. The said papers were shown to be consent of staff members.

5. The complainant Shri Vilas Patil levelled various allegations in the matter of transfer of Hanuman Vidyalay. On the basis of the complaint made by Shri Patil, the Desk Officer in the Education Minister's office directed the Divisional Deputy Director of Education, Pune Region, Pune, to conduct an inquiry and submit report. By the impugned communication dated 10th September, 2018, the then Deputy Director of Education informed that the transfer of Hanuman Vidyalay to the petitioner – Institution is due to oversight. He further stated that only the Director of Education is having power to permit the transfer of school. Thereafter, respondent No.2 by an order

dated 2/11/2018 cancelled the order granting permission to transfer Hanuman Vidyalay to the petitioner – Institution. Consequently, respondent No.3 by an order dated 15/11/2018 cancelled the transfer of Hanuman Vidyalay and directed the staff to resume duties in the original school and submit a report to that effect.

6. Shri Tajane, learned counsel for the petitioners contends that the impugned orders are ex-facie illegal and erroneous in as much as the same are passed unilaterally without any notice or affording any opportunity of hearing to the petitioner – Institution. In the submission of learned counsel, the petitioners are visited with adverse civil consequences and therefore, respondent Nos. 2 and 3 ought to have complied with the principles of natural justice before passing the impugned orders.

7. Learned Counsel for the petitioner – Institution further submitted that proper applications were made for transfer of Hanuman Vidyalay to the petitioner – Institution and

after following the procedure laid down in Secondary School Code, more particularly Rule No.12.1 to 12.6, the transfer was approved subject to various conditions. Not only this but even the order of transfer was implemented, salary bills of the teachers working in the said school were duly submitted by the petitioner. Learned counsel for the petitioner – Institution submits that as the allegations levelled against the petitioners are serious in nature and as it is this complaint which forms the basis for passing the impugned orders, it was imperative for respondent Nos. 2 and 3 to have granted an opportunity of hearing to the petitioners before taking such extreme steps.

8. Learned AGP on the other hand supported the impugned orders. He submitted that the Deputy Director of Education has clearly indicated that the powers of transfer vested with the Deputy Director only till 2011. However, thereafter, the proposal had to be forwarded by the Deputy Director of Education to the State Government. According to him, Deputy Director had no power to pass the order transferring the school. The order granting approval to the

transfer of school was granted erroneously through oversight. According to him the impugned order merely revokes the earlier order which was passed without jurisdiction.

9. Shri Damle, learned Senior Counsel appearing for the complainant – intervener also supported the impugned orders. He submitted that action was taken on the basis of the intervener's complaint. According to him, no consent was obtained of the teaching as well as non teaching staff before the transfer was effected. He further submits that bogus documents of consents were relied upon while applying for transfer. He contends that the transfer is for benefit of relatives of the petitioner – Institution and there is no benefit either to the student or staff members of the Hanuman Vidyalay as a result of the transfer. Learned Senior Counsel pointed out that the intervener has also filed Writ Petition No. 9599/2018 challenging the transfer of Hanuman Vidyalay.

10. We have heard learned Counsel for the parties. We find that on an application made by respondent No.5 –

Institution, permission for transfer of the school Hanuman Vidyalay in favour of the petitioner – Institution was granted by respondent No.2 as per Rule No.12.1 to 12.6 of the Secondary School Code subject to various conditions. Not only the order of transfer came to be confirmed by the Education Officer but even the teachers from petitioner – Institution were transferred from one school to another. In the complaint made by the intervener Shri Vilas Ramchandra Patil, serious allegations are made against petitioner – Institution.

11. No doubt, from the impugned orders it appears that the order dated 29/10/2015 for transfer of the school was cancelled on the ground that the Deputy Director of the Education, as on the date when the permission to transfer the school is granted, had no power to transfer the school and that the order granting permission to transfer the school was passed through oversight. Nonetheless we notice that the complainant Shri Vilas Patil has made serious allegations against the petitioner – Institution and even a report has been called for

from the Deputy Director of Education, Pune Division, Pune, by the Minister of Education on the complaint.

12. We find that the order of transfer is already implemented. Factually even teachers are transferred from one school to another. Learned Senior Counsel Shri Damle though contends that the said transfers are malafide and vindictive, we however, make it clear that we are not commenting on the rival contentions raised. In these circumstances, the order cancelling the permission to transfer once granted is bound to visit the petitioner – Institution with adverse civil consequences. The petitioners were not given any opportunity of hearing before passing the impugned orders. The impugned orders are unsustainable and liable to be quashed as they are passed in utter breach of the principles of natural justice.

13. We, therefore, have no hesitation in setting aside the impugned orders for want of compliance with principles of natural justice.

14. In view of the order that we propose to pass, learned Senior Counsel for the intervener does not wish to presently prosecute Writ Petition No. 9599/2018 filed by the complainant Shri Vilas Ramchandra Patil challenging the transfer of the school.

15. Considering the allegations and counter allegations made, we deem it appropriate in the fitness of things to request the Secretary, Education Department, Mantralaya, to consider the matter afresh and pass a speaking order.

16. Hence the following order :-

ORDER

(i) Writ Petition No.13251/2018 is allowed in terms of prayer Clause (b).

(ii) The Secretary, Education Department, Mantralaya, to consider the matter afresh and in accordance with law and after giving an opportunity of hearing to the petitioner-Institution in Writ Petition No.13251/2018 as well as the petitioners in Writ Petition No.9599/2018 & to pass a fresh order within

a period of two months from 4th February, 2019.

(iii) The parties undertake to appear before the Secretary, Education Department, Mantralaya, Mumbai, on 4th February, 2019, at 3.00 p.m.

(iv) It is made clear that we have not dealt with any of the rival contentions. All contentions are kept open.

17. No orders are necessary on the Civil Application and the same is disposed of.

18. Writ Petition No.9599/2018 is disposed of as not pressed by the petitioners.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)