

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 913 OF 2000
WITH
CIVIL APPLICATION NO. 2428 OF 2007

Janata Jagruti Shikshan	}	
Prasarak Mandal-Nerli	}	
and Ors.	}	Petitioners
versus		
The State of Maharashtra	}	
and Ors.	}	Respondents

Mr.S.P.Thorat for the petitioners.

Mr.S.S.Panchpor-AGP for State.

Mr.A.V.Anturkar-Senior Advocate with
Mr.S.B.Deshmukh for respondent no.4.

CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.

DATE :- FEBRUARY 18, 2019

ORAL JUDGMENT :- (Per S.C.Dharmadhikari, J.)

1. This writ petition under Article 226 of the Constitution of India prays that records and proceedings in relation to the order dated 25th October, 1999 be called for and on the scrutiny thereof, it should be set aside.

2. The sum and substance of the grievance in the petition is that the management of a school known as New Secondary

School, Nerli, Taluka Khanapur, District Sangli be handed over to petitioner no. 1 Trust.

3. The parties to the writ petition include respondent nos.1 and 2 as the State of Maharashtra and Deputy Director of Education, Kolhapur Region, Kolhapur. Respondent no. 3 is the then Cabinet Minister and founder of respondent no. 4. Unfortunately, during the pendency of these proceedings, he has passed away. The fifth respondent to this writ petition is the party solely responsible for handing over the affairs of the petitioner no.1 Trust and thereby its educational institution to the Bharti Vidyapeeth.

4. The writ petitioners claim to be the trustees of a public charity Trust. It is claimed that the fifth respondent was already removed by petitioner no.1 Trust because of misappropriation of funds and other offences. He was, therefore, proceeded against by the Kadegaon Police Station for offence punishable under section 420 read with section 34 of the Indian Penal Code, 1860. It is claimed that he was instrumental in giving false promises and has gone ahead and created bogus institutions in the name of the first petitioner. He has appointed 114 employees. It is claimed that after taking huge amounts from students or those seeking admissions, he did not give any admissions. It is in these

circumstances that an offence is registered and the fifth respondent was arrested. It is in these circumstances that it is alleged that false and fabricated documents were created and with collusion, the entire school was taken over.

5. It is common ground that this is not the first occasion where this matter has been brought before this court. It is brought again and again by alleging that the petitioners are the real and genuine parties representing the first petitioner. Now, the educational institution is illegally merged and transferred in the Bharati Vidyapeeth. It is also alleged that the petitioners had knocked the doors of several authorities. Firstly, they moved the Charity Commissioner and when the Charity Commissioner was not inclined to take cognizance of the grievance and redress it, they had no alternative, but to approach this court. It is claimed that initially, there was an order passed on 1st December, 1993 by the Joint Charity Commissioner, Pune. That order purported to allow the said Anandrao Dadasaheb Patil and others to take charge of the educational institution and its properties. The application of the fifth respondent was allowed. Being aggrieved by this order, one Gorakh Keshav Patil and others filed a writ petition in this court being Writ Petition No.4963 of 1993. In that petition, it was alleged that meetings have not been convened of the Trust and

the said Anandrao Patil has taken charge of its affairs illegally and in a mala fide manner. The transfer of the school was opposed by 14 signatories. They stated that they filed an application to the Joint Charity Commissioner proclaiming that they are the real trustees and represent the Trust. There is absolutely no truth in what the said Anandrao Patil was alleging. In that writ petition, therefore, this court was persuaded to pass an order and which is an interim order and that order passed in that writ petition on 13th December, 1993 was continued till 2nd March, 1998. By a detailed order passed on that writ petition, copy of which is at Exhibit 'E', the writ petition came to be disposed of.

6. After the final order on the writ petition dated 13th December, 1993, the Joint Charity Commissioner heard the petitioners and the respondents. After detailed arguments were canvassed, it is held by the Joint Charity Commissioner that there is no provision for transfer of school with assets and liabilities under section 36(1)(a) of the Then Bombay Public Trust Act, 1950. The application eventually was held not maintainable. However, the Joint Charity Commissioner held that he has no objection if the Deputy Director of Education, Kolhapur and other authorities would be ready to accord sanction for transfer of the school. Without expressing any opinion, but

observing thus, by an order dated 22nd January, 1999, the Joint Charity Commissioner disposed of the application.

7. After that order was passed, this court was approached with Writ Petition No.4815 of 1999. The petitioners have also approached the Deputy Director of Education. He stayed the order of transfer on 28th January, 1999. As soon as the petitioners came to know about the order, they took objections by filing an affidavit. They opposed the transfer. The petitioners also raised objections by their advocate's letter of 7th February, 1999. Thereafter, the writ petitioners did not deem it fit and proper to circulate Writ Petition No. 4815 of 1999 to challenge the order of Joint Charity Commissioner, as they were hoping that the Deputy Director of Education will resolve the issue. However, the fourth respondent Bharati Vidyapeeth filed Writ Petition No.1509 of 1999 challenging the order of stay passed by the Deputy Director of Education. It was argued on behalf of respondent no. 4 that once there was an order of transfer, then, it could not have been stayed in this manner.

8. Since heavy reliance is placed by Mr.Thorat on this order passed in this writ petition dated 6th May, 1999, we deem it fit and proper to reproduce it. That order is reproduced hereinbelow:-

“Rule. By consent Rule is made returnable forthwith.

By the present petition the impugns an order passed by the Deputy Director of Education, Kolhapur, whereby the order dated 28-1-1999, issued by the Education Officer, permitting transfer of the Management has been stayed. The aforesaid order has been passed in response to certain complaints received. Having regard to the same, we direct the Deputy Director to hold an enquiry into the complaints and pass appropriate orders expeditiously and within a period of two weeks from today. It goes without saying that the petitioner will be entitled to raise such objections including the objections regarding jurisdiction of the Deputy Director to entertain the complaints.

Parties agree to appear before the Deputy Director on 11th May, 1999 at 11.30 A. M. on which date the Deputy Director will either proceed to hear the parties or fix suitable date for the said purpose. He will thereafter pass a speaking order within the aforesaid period.

Rule made absolute in the aforestated terms with no order as to costs.

Parties will act on a copy of this order authenticated by the Shirestardar of this Court.”

9. Pursuant to the above order, the matter was taken up by the Deputy Director of Education. He held a hearing before him. Thereafter, he passed an order and which order dated 27th May, 1999 (Exhibit 'H'), according to Mr.Thorat, clearly holds that the transfer cannot be effected. The earlier order of the Deputy Director, staying the transfer of the school to respondent no.4 was thus continued. However, that was subject to a decision in Writ Petition No.4957 of 1999. Thereafter, on 22nd September, 1999, the Bharati Vidyapeeth's Writ Petition No.3756 of 1999 came to be taken up and on which, the following order came to be passed on 22nd September, 1999:-

“It seems that being faced with the order passed by this Court in Writ Petition No.1509 of 1999 copy of which is at Annexure-A13 page 69 the concerned Officer who had given hearing and has passed his order on page 82 to 86 and that has been forwarded under Annexure-A15 page 81. But unfortunately he seems to have been influenced by existence of a Writ Petition in this Court.

2. So far as the Petition is concerned, it is numbered as Writ Petition No.4957 of 1999 as per the impugned order. This may or may not be stamp number. The fact remains that no orders are passed in the petition. The petition is therefore pending.

3. However, pendency of the Petition shall not come in way of the Officer in passing the final order. He is therefore directed to pass final order positively within two weeks and communicate the same through the Ld. A.G.P. who is representing on behalf of the State. The matter is kept after three weeks.”

10. Thereafter, the impugned order has been passed. In the impugned order, it has been said very clearly that the management and administration of the school was transferred in favour of respondent no. 4. Once that order was passed, but its effect has been stayed on several occasions, now, it will not be proper to stay or suspend it any further. Thus, the transfer should take effect. That transfer was thus allowed, but on conditions contained in the letters of the Deputy Director of Education, Kolhapur Region, Kolhapur dated 3rd December, 1993 and 28th January, 1999.

11. Now, this order has been challenged in the present petition and Mr.S.P.Thorat has taken us through the entire paper book. He would urge that once this court's orders are perused by us, it

would be clear that at no stage, this court has allowed the transfer of the school to respondent no.4. This court rather accepted the version of the petitioners that the fifth respondent created bogus and false records and colluded with Bharati Vidyapeeth in ensuring that the management and administration of the school is handed over to the Bharati Vidyapeeth. The attempt of the fifth respondent never succeeded though the Joint Charity Commissioner did not assist the petitioner. Even the Deputy Director of Education changed its stand. In that regard, Mr.Thorat invited our attention to an affidavit in reply which has been filed on behalf of the State of Maharashtra and the Deputy Director of Education, copy of which is at page 89 of the paper book. It is an affidavit in reply of the Deputy Education Inspector, Kolhapur Region, Kolhapur, wherein, it has been stated that the order of transfer came to be stayed on account of complaints of teachers, staff and the members of the managing committee of the first petitioner. All of them have objected to the same. This affidavit was filed in Writ Petition No.1509 of 1999, which petition, according to Mr.Thorat, is filed by Bharati Vidyapeeth against the order of the Education Department staying the transfer. If Bharati Vidyapeeth was very clean and had not secured the transfer in a clandestine manner, then, it should not have allowed the transfer order to be stayed. Its challenge did not

succeed in the writ petition filed by it. It is in these circumstances that Mr.Thorat would submit that this court should set aside the impugned order.

12. Mr.Anrutkar learned senior counsel appearing for the contesting respondent as also the learned AGP supported the impugned order. They have said that now nearly 20 years have passed from the date the transfer order was issued and thereafter, it came to be stayed, but, equally, that stay has been lifted in October, 1999. Now, the transfer is effective and complete. At the instance of parties like the petitioners, who do not come to the right court and seek the correct relief, this court, in writ jurisdiction, cannot go into disputed questions of fact. The writ petition, therefore be dismissed.

13. With the assistance of the learned counsel appearing for both parties, we have perused this writ petition and the annexures thereto. This writ petition came before a Division Bench of this court on 11th December, 2000. On that date, this court passed the following order:-

“Notice for admission to respondents returnable on 8th January, 2001. Office to inform the concerned respondents that petition may be decided finally at the admission stage.”

14. After that date, the writ petition could not be heard finally. Thereafter, it was formally admitted on 17th September, 2002.

From that date, for some reason or the other, it has remained pending. It is evident that this writ petition appeared on board before a Division Bench, but could not be taken up.

15. What we have before us is a petition of 11 persons claiming to be the members of the first petitioner. We do not know what the word "member" signifies and the word "membership" of the trust. It could be that there are persons managing the affairs of the trust and they would be known as trustees. Be that as it may, the petitioners themselves describe the fifth respondent to be the President of the first petitioner. They accuse him of having surreptitiously, secretly and in a mala fide manner transferred the management and administration of the school to respondent no.4- Bharati Vidyapeeth. The petitioners first made an application before the Joint Charity Commissioner. In the application filed by them, copy of which is at Exhibit 'C' at page 62 of the paper book, it is stated that this Trust was registered on 31st August, 1964. That from June, 1991, the Annual General Meeting has not been convened. It is categorically stated that from the year 1990, there are no elections of the managing committee. From June, 1991, there has not even been a monthly meeting. The signatories contacted the President, but beyond giving oral assurances, he did not convene any meeting. The records are in

possession of the President. The proceedings, including minutes, have been prepared by him. He has been carrying on the affairs without taking anybody into confidence. He has, thus, been solely directing the state of affairs and what he has done is that he has started one D.Ed. college. He has also started employing the persons in the higher secondary and girls' school. He then met the then Minister of Education Mr.Patangrao Kadam and tried to handover the affairs of the Trust-first petitioner to him or to anybody under his control. The prayer in this application is that the Joint Charity Commissioner should not allow such a permission to transfer the Trust.

16. Pertinently, the signatories took the position that they are of the opinion that the whole Trust, its affairs and properties are being handed over. Thereafter, they are saying that now there is a school and therefore, it is the transfer of school at Nerli, District Sangli which is the real issue. The crux of the matter is that on the date when the application was taken up, namely, 22nd January, 1999, before that, Writ Petition No.4963 of 1993 was filed by Gorakh Keshav Patil-petitioner no. 3 herein. In that, there is an allegation that whether the said school was not run properly or there was mis-management cannot be decided by anybody other than the competent authority.

17. It is claimed that there was an application being Application No. 47 of 1993 filed before the Joint Charity Commissioner. There, the transfer of the school was opposed and came to be objected. On 1st December, 1993, the matter was moved before the Joint Charity Commissioner. When he issued notices on this application, they discovered that there was another application moved for transfer of the school. In that, there was an allegation that there is a mis-management and the school was not run properly and the students were suffering. The school building requires repairs and was in danger. On 1st December, 1993, the Joint Charity Commissioner, Pune passed an order transferring the school by putting certain conditions. That order was challenged by Gorakh Keshav Patil and by filing Writ Petition No. 4963 of 1993. On that petition, there was an order of stay issued by this court and that order was passed after hearing the concerned advocates. That writ petition was then placed for final hearing. It could not, however, be taken up till 2nd March, 1998. On 2nd March, 1998, the whole petition came to be disposed of with the following order and direction:-

“The impugned order dated 1.12.93 passed by the Joint charity Commissioner, Pune Region, Pune, in application No.47 of 1993 (page 57) is set-aside. The learned Joint charity Commissioner, Pune Region, Pune, is directed to hear and dispose off the said application preferably before the end of May, 1998 after giving opportunity to both sides to lead evidence and after hearing the parties.”

18. Thus, it is evident that the Charity Commissioner, though clothed with the power to issue directions with regard to proper management of the affairs of the Trust and protection of its properties, was not moved in order to seek such a relief. It is not the properties of the Trust or its management and administration which is the focal point being projected, but it is the transfer of a secondary school. It is situate in rural area. The area is backward. The school could not make progress and there are many difficulties in running the school. The interest of the students is adversely affected. The Trust, therefore, decided to transfer the school in favour of the other Trust. It is claimed that the school is to be transferred along with assets and liabilities. A resolution was passed in the meeting of the committee held on 9th January, 1993. All this is attributed to the President who filed this application with the Joint Charity Commissioner being Application No. 47 of 1993. Pertinently, Bajrang Maruti Suryavanshi and Gorakh Keshav Patil, who were objecting to the transfer, were arrayed as objectors. Bajrang Maruti Suryavanshi claimed to be the secretary. This application was heard extensively. After noting all the objections, the Joint Charity Commissioner was of the opinion that such an application could not be entertained by him. It is concerning the affairs of a school. Therefore, the Joint Charity Commissioner observed that the

application in the present form is not maintainable. It is the Deputy Director of Education, Kolhapur Region, Kolhapur and other concerned authorities who have to accord sanction for transfer of the school as per the Rules. It is, therefore, their duty to consider such an application and the objections thereto. Observing thus, the Joint Charity Commissioner abided by the directions of this court and passed final orders on 22nd January, 1999.

19. The matter was then taken by the Deputy Director of Education. The Deputy Director of Education allowed the transfer of the school on conditions. The petitioners were aggrieved by such an order of the Deputy Director of Education. They filed a writ petition in this court. That writ petition was heard by a Division Bench and the order of the Division Bench has already been reproduced by us.

20. Several aspects of the matter and particularly from the affidavit of the Deputy Director of Education filed in another writ petition of the Bharati Vidyapeeth have been brought to our notice. The order of 6th May, 1999 reproduced above was passed on the writ petition of Bharati Vidyapeeth. They were aggrieved not by the main order of the Deputy Director of Education, but that order of the Deputy Director of Education which stayed his

own order. Thus, initially, the transfer was permitted on 22nd January, 1999, but that very order was stayed on 28th January, 1999. Therefore, the Deputy Director of Education was directed by this court to hold an inquiry and pass appropriate orders. He passed an order on 27th May, 1999 (Exhibit 'H') and he held that some teachers and six non-teaching staff are opposed to the transfer. The majority of the members of petitioner no. 1 were also opposing the transfer. Thus, the grounds on which the transfer order was stayed are prevailing and continuing even today. It is doubtful whether the President of the Janata Jagruti Shikshan Prasarak Mandal, Nerli could have approached the authorities and sought approval for transfer. The resolution and the minutes of the meetings or the notices of the meetings and the receipt/acknowledgment thereof are the relevant documents, but Mr. Anandrao Patil could not produce them. The dispute about membership, namely, Case No. 15 of 1993 is still pending and during the pendency thereof, no order should be passed with regard to transfer of the school. Then, it is said that the matter is pending in this court and so long as it is sub-judice, it is not possible to pass any order. Observing thus, the Deputy Director continued the stay. It is this direction with which everybody was aggrieved. In fact, the Bharati Vidyapeeth approached this court by Writ Petition No. 3765 of 1999 and also sought a clarification

whether a final order should be passed by the concerned authorities. This court clarified the issue on 22nd September, 1999 and thereafter, the impugned order has been passed.

21. This sequence of events would denote that though directed by this court to hold an inquiry, the Deputy Director, beyond noting grievances and objections, held no inquiry. He was proceeding on the footing as if he has been approached not for a detailed inquiry, but to find out whether the stay order staying the effect of the transfer of the school from petitioner no. 1 to Bharati Vidyapeeth deserves to be vacated or not. He has observed that there was no document placed on record in relation to any transfer. There was no resolution of the Trust. The related papers, including the notice of meeting at which this resolution was passed has not been produced nor are there any minutes of the meeting. However, there is absolutely no record in relation thereto produced by the said Anandrao Patil. With the comprehensive directions of this court, none prevented this Deputy Director from holding a detailed inquiry, but he abruptly ended the hearing by observing that since the proceedings are pending in this court, he should not vacate the stay, but continue it.

22. To our mind, this is not compliance with the order of the High Court. By the detailed order passed by this court in Writ Petition No.1509 of 1999 dated 6th May, 1999, it was clear that a stay was granted on 28th January, 1999 to the transfer. That order was passed because of certain complaints. The Division Bench of this court directed that final orders be passed as expeditiously as possible. The petitioner in that petition-Bharati Vidyapeeth can also raise objection regarding jurisdiction of the Deputy Director to entertain the complaint.

23. Now, the nature of the complaint is noted by us. There are allegations of forgery and fraud, misappropriation and cheating against Shri. Anandrao Patil. Even a criminal case was registered at the instance of some aggrieved complainants. Nothing has been placed on record before us which would enable us to hold as to what is the outcome of the complaint. Rather, what we have before us is an application being Civil Application No. 2428 of 2007 in which the earlier events have been referred by the petitioners and the same allegations have been made. We have the allegations made against Anandrao Patil being reproduced. However, it is common ground that in the event the management or administration of Trust is not being carried out in accordance with the object of the Trust but contrary to it, then, it is the

competent authority under the Bombay Public Trust Act, 1950 who must be approached. It is that competent authority which can deal with the complaint and issue directions with regard to proper and efficient management of the Trust. In the event the Trust properties are in danger, there are enough powers in the Charity Commissioner to take note of such complaint.

24. In fact, we invited the attention of Mr.Thorat to sections 41A, 41B as also we invited the attention of Mr.Thorat to section 41D. Finally, we invited his attention to section 41E and section 47. Section 47(1) opens with the words “any person interested in a public trust may apply to the Charity Commissioner for appointment of a new trustee where there is no trustee for such trust or the trust cannot be administered until the vacancy is filled; or for the suspension, removal or discharge of a trustee and if there were no meetings held and there was no records and proceedings”, this power could have been invoked. If the trust property is being wasted or is in danger or disposed of or dealt with contrary to the objects of the Trust or there is a breach of public trust, negligence, mis-application or misconduct on the part of trustee or trustees, where a direction or decree is required to recover the possession or follow a property belonging to public trust, then, the Charity Commissioner can make inquiry as he

thinks necessary or two or more persons having interest in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in section 51 may institute a suit. It could be a contentious suit or not but would have to be instituted in the court within the local limits of whose jurisdiction the whole or part of the subject matter of the trust is situate. The word “court” has been clearly defined and prior to the amendment to the Act, it was a court competent to take cognizance of such issue or suit.

25. Now, nothing of this kind seems to have ever been done. There is no proceeding apart from what is referred in the petition styled as a criminal case which is pending against Shri.Anandrao Patil. The petitioners have not bothered to seek a comprehensive inquiry nor have they bothered making a proper application to the Charity Commissioner. They are themselves confused and they do not know what to oppose, whether the takeover of the Trust allegedly by Anandrao Patil and misappropriation of the funds or his dealing with the properties of the Trust in a wrongful manner or merely transferring the management and administration of the school to Bharati Vidyapeeth. Now, if that entails a property of the Trust going in the hands of Bharati Vidyapeeth, then, appropriate orders and directions could have

been sought by approaching the competent authority under the Maharashtra Public Trust Act, 1950 or bringing legal proceedings. After being armed with an interim order in a writ petition, the petitioners have not done anything. We have not seen any challenge to the order which was passed on the petitioners' writ petition. What the learned Single Judge of this court, while setting aside the order of the Joint Charity Commissioner in Application No. 47 of 1993, did was to restore Application No. 47 of 1993. That application was directed to be reheard. The allegations in that behalf are clear. First of all, that was not the application made by the petitioners. That was the application made by Shri. Anandrao Patil. The petitioners in that petition, namely, Gorakh Patil and Bajrang Maruti Suryavanshi were objectors. They may be one of the petitioners before us, but in that application, nothing could have materialised. In that matter, what the Bharati Vidyapeeth argued was that there is a dispute about the membership of the petitioners and they have no locus standi. This argument of the Bharati Vidyapeeth was opposed and it was argued that necessary and mandatory conditions, as laid down in section 36 of the Maharashtra Public Trust Act, 1950, have not been fulfilled. The application made by the said Anandrao Patil is vague. There are several discrepancies in the original documents. To this objection, the said Bharati

Vidyapeeth countered by arguing that provisions of section 36(1) (a) of the Bombay Public Trust Act, 1950 cannot be applied and the only point is whether there is permission required for transfer of the school. Now, if the transfer of the school is the issue, the Joint Charity Commissioner rightly held that he is not the competent authority to consider this application. These reasons in paras 12 to 14 of the order passed by him on 22nd January, 1999 are consonance with the essential factual controversy.

26. It is pertinent to note that the present petitioners did not deem fit and proper to file independent proceedings, but sought to take advantage of the order passed in the proceedings instituted by Gorakh Patil and Bajrang Suryavanshi. Pertinently, we find that Bajrang Suryavanshi and Gorakh Patil are petitioner nos. 2 and 3 in this petition. They also, with others, did not deem it fit to approach competent courts or authorities. The Deputy Director of Education permitted the transfer, but later on stayed it on 28th January, 1999. He was not the authority who could have inquired into the allegations of mismanagement and mal-administration of the affairs of the Trust. All that he was required to consider was whether permission should be granted to transfer the school and the management of the same. There, we find, he does not hold any inquiry.

27. In the above circumstances, we do not see any justification for now quashing and setting aside the impugned order. The order of transfer was passed on 22nd January, 1999. It was stayed on 28th January, 1999 by the Deputy Director of Education, Kolhapur Region, Kolhapur. That order was continued on 27th May, 1999 (order of stay). However, when this court was approached in Writ Petition No. 3765 of 1999 and the impediment was removed in passing a final order, on 25th October, 1999, the Deputy Director vacated the stay. He has, therefore, granted the transfer. The transfer has become effective and for now nearly 20 years. To now interfere with such a transfer order and at this belated stage would be subversive to the interest of not only the stake holders, but the public at large. We do not think in today's time the school, which is being managed by Bharati Vidyapeeth, now should be taken away from them.

28. In the circumstances, we do not think that the writ petition can succeed. It is accordingly dismissed. Rule is discharged, but with no order as to costs.

29. In the light of the dismissal of the writ petition, the civil application does not survive and stand disposed of as such.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)