

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1841 OF 2009

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| 1 | Shikshan Mandal, Goregaon, Mumbai |] | |
| | a Public trust bearing PTR No. F-1818/ |] | |
| | Bombay having its registered office at A. B. |] | |
| | Goregaonkar English School, Aarey Road, |] | |
| | Goregaon (W) Mumbai 400 062. |] | |
| 2 | Abhinav Shikshan Prasarak Mandal |] | |
| | Goregaon a public trust bearing PTR No. |] | |
| | E-4573(BOM) having its registered office at] |] | |
| | Ashatai Gavankar Prathamik Shala |] | |
| | Jaiprakash Nagar, Goregaon (E), |] | |
| | Mumbai 400 063. |].. | Petitioners. |
| | v/s. | | |
| 1 | Election Commission of India |] | |
| | Nirvachan Sadan, Ashoka Road, |] | |
| | New Delhi 110 001. |] | |
| 2 | Chief Election Commissioner |] | |
| | Nirvachan Sadan, Ashoka Road, |] | |
| | New Delhi 110 001. |] | |
| 3 | Chief Electoral Officer |] | |
| | 6 th Floor, Mantralaya, Mumbai 400 032. |] | |
| 4 | District Election Officer |] | |
| | Mumbai Suburban District, Administrative |] | |
| | Building, 9 th Floor, Government Colony, |] | |
| | Bandra (E), Mumbai 400 051. |] | |
| 5 | Electoral Registration Officer |] | |
| | 163- Goregaon Legislative Assembly |] | |
| | Constituency, Unnat Nagar, Goregaon (W) |] | |
| | Mumbai 400 062. |] | |
| 6 | Assistant Electoral Registration Officer |] | |
| | 163- Goregaon Legislative Assembly |] | |
| | Constituency, Unnat Nagar, Goregaon (W) |] | |
| | Mumbai 400062. |] | |

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| 7 | Election Returning Officer |] | |
| | 163- Goregaon Legislative Assembly |] | |
| | Constituency, Unnat Nagar, Goregaon (W) |] | |
| | Mumbai 400062. |] | |
| 8 | Asstt. Election Returning Officer |] | |
| | 163- Goregaon Legislative Assembly |] | |
| | Constituency, Unnat Nagar, Goregaon (W) |] | |
| | Mumbai 400062. |] | |
| 9 | State of Maharashtra |] | |
| | High Court,P.W.D. Building, High Court, |] | |
| | Bombay. |] | |
| 10 | Union of India |] | |
| | Ayakar Bhavan, 3rd Floor, M. K. Road, |] | |
| | Churchgate, Bombay 400 020. |] | Respondents. |

Mr. V. Tulzaparkar, Sr. Advocate with Mr. Dilip Bagwe, for the Petitioner.
 Mr. Pradeep Rajgopal with Ms. Drishti Shah, for the Respondent No.1.
 Ms. Geeta Shastri, Addl. G.P. for the Respondent-State.
 Mr. M. S. Bhardwaj, for the Respondent-UOI.

**CORAM: A.S.OKA &
 M.S.SANKLECHA, JJ.**

**RESERVED ON : 11th APRIL, 2019.
 PRONOUNCED ON : 12th APRIL, 2019.**

ORAL JUDGMENT (Per M. S. Sanklecha,J.):-

This Petition under Article 226 of the Constitution of India, challenges one order dated 16th June, 2009 and two orders dated 3rd July, 2009, all issued by Respondent No.6 – Assistant Electoral Registration Officer. The aforesaid communications were addressed to Schools run by Petitioner Nos. 1 and 2, requisitioning the services of its non-teaching staff for electoral duties. The Petitioner has sought a declaration that the Respondent Nos. 1 to 8 i.e. the Election Commission of India and its

Officers have no power to requisition the staff of the Petitioner's schools under Section 29 of the Representation of the Peoples Act, 1950 (1950 Act). Besides, a declaration under Section 159 of the Representation of the Peoples Act, 1951 (1951 Act), that Respondent Nos.1 to 8 being the Election Commission of India and its Officers have no power to requisition for an indefinite and unspecified period, the staff of the schools run by the Petitioners.

2 On 30th September, 2009, this Petition was admitted. At the time of admission, following order was passed:-

“1 The contention raised before us is that a private aided school is not a local authority within the meaning of Section 29 of the Act of 1950. Therefore, the staff of such school cannot be summoned for election duty.

2 Rule.

3 Operation of the impugned order is stayed till final disposal of the Writ Petition.

4”

3 Petitioner Nos. 1 and 2 are Public Trust registered under the Bombay Public Trusts Act. Each of the two Petitioners conduct primary and secondary schools at Goregaon in Bombay. Each of the two schools are aided schools i.e. they receive funds from the State. The Respondent No.1 is the Election Commission of India, constituted under Article 324 of the Constitution of India. The Respondent Nos.2 to 8 are Officers of Respondent No.1 appointed under the provisions of 1950 Act and/or 1951 Act. Respondent No. 9 is the State of Maharashtra and Respondent No.10 is the Union of India.

4 The Petitioners have challenged three orders – one dated 16th

June, 2009 and two dated 3rd July, 2009 passed by Respondent No.6 – Assistant Electoral Registration Officer. All the three impugned orders seek to requisition the services of the Petitioners' employees (non-teaching staff) for the work of registration of new voters without specification of period for which the services are required. The three impugned orders did not in terms mention under which Section of the 1950 Act or 1951 Act have these orders been passed. However, the Respondents have filed their affidavit in reply dated 11th October, 2013 to this Petition and have specifically stated that the three impugned orders have been issued by them under Section 29 of the 1950 Act. It was in the aforesaid circumstances that on 30th September, 2009, the Petition was admitted on the issue of the applicability of Section 29 of the 1950 Act in requisitioning staff of a private aided school for the purpose of the preparation/revision of Electoral Rolls. In fact, before us also Mr. Rajgopal, the learned Counsel appearing for Respondent No.1 states that all the three impugned orders have been issued in exercise of powers under Section 29 of the 1950 Act.

5 Before proceedings further, it would be appropriate to reproduce Section 29 of the 1950 Act under which three impugned orders have been issued. It reads as under:-

“29 – Staff of local authorities to be made available – Every local authority in a State shall, when so requested by the chief electoral officer of the State make available to any electoral registration officer such staff as may be necessary for the performance of any duty in connection with the preparation and revision of electoral rolls.”

6 A bare reading of the above Section 29 of the 1950 Act,

would clearly indicate that the Chief Electoral Officer can exercise powers under the above Section only to requisition staff of a local authority in the State. The local authority has not been defined either under the 1950 Act or the 1951 Act. Therefore, in these circumstances, a reference to the General Clause Act, 1897 (the Act of 1897) is required. As held by the Supreme Court in ***Valjibhai Muljibhai Soneji v/s. State of Bombay AIR 1963 (SC) 1890***, the definitions given in the Act of 1897 would govern all Central Acts made after its commencement. Section 3 (31) of the Act of 1897 defines the local authority as under:-

“(31) “local authority” shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.”

7 From the plain reading of the above definition of the local authority, it is clear that a private school aided by the State do not satisfy the meaning of a local authority. Undisputedly, the Petitioners or its schools are not entitled or entrusted by the Government with Control or Management of a Municipal or local fund. Thus, the notice issued under Section 29 of the 1950 Act to the Petitioners or its aided school is completely without jurisdiction for requisitioning its staff to assist in preparation and/or revision of Electoral Rolls. The Supreme Court in ***Commissioner of Income Tax v/s. U. P. Forest Corporation reported in AIR 1998 (SC) 1125*** has held that the words 'other authority' in the definition of local authority as given in Section 3(31) of the 1897 Act has to be interpreted *ejusdem generis* keeping in view the order bodies specifically enumerated and preceding it. It further held in the above case that in the absence of power to levy any tax, cess or fee, the U. P. Forest

Corporation will not fall in the class of local authority as defined in Section 3(31) of the Act of 1897. Thus, on the above reasoning, the Petitioners and its two Schools cannot be held to be local authorities to enable the Respondent Nos.1 to 8 to requisition its staff in exercise of powers under Section 29 of the Act.

8 In fact, in this regard, useful reference can be made to a decision of the Supreme Court in ***Election Commission of India v/s. State Bank of India Staff Association 1995 Suppl. (2) SCC 13***. In the above case, the Supreme Court was concerned with the applicability of the erstwhile Section 159 of the 1951 Act. Section 159 of the 1951 Act as then existing (before amendment), read as under:-

“159 – Staff of every local authority to be made available for election work – Every local authority in a State shall, when so requested by a Regional Commissioner appointed under clause (4) of Article 324 or the Chief Electoral Officer of the State, make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election.”

9 The Supreme Court held that a notice issued to the State Bank of India under Section 159 (as then existing) of the 1951 Act, is without jurisdiction as the State Bank of India is not a local authority. Therefore, holding the requisition made under the erstwhile Section 159 of the 1951 Act, is without jurisdiction to the extent it seeks to requisition the services of the employees of the State Bank of India. The scope/ reach of Section 29 of the 1950 Act to the extent of its applicability is similar/ identical to the erstwhile section 159 of the 1951 Act which was, inter alia, a subject matter of consideration in State Bank of India Staff

Association (supra). Thus, in view of the above also, the three impugned orders admittedly issued under Section 29 of the 1950 Act seeking to requisition the staff of a private aided school is without jurisdiction. The power under Section 29 of the 1950 Act to requisition staff is restricted only to local authorities. Undisputedly the Petitioners' school though aided by the State does not fall within the meaning of local authority, so as to be subject to the requisition of the Respondents under Section 29 of the 1950 Act.

10 Mr. Rajgopal, learned Counsel appearing on behalf of the Respondent No. 1- Election Commission of India does not dispute the fact that these impugned orders are without jurisdiction. It is fairly conceded that the Respondent Nos. 1 to 8 have no jurisdiction to invoke Section 29 of the 1950 Act to requisition the staff of an aided school to do the work of preparation/ revision of Electoral Rolls.

11 In the above view, the three impugned orders – one dated 16th June, 2009 and two dated 3rd July, 2009 are quashed and set aside. It is also declared that the Respondent Nos. 1 to 8 have no power to requisition staff of a private aided school for the purpose of preparation and/or revision of the Electoral Rolls under Section 29 of the 1950 Act.

12 So far as the declaration sought with regard to Section 159 of the 1951 Act is concerned, we may point out that Ms. Shastri, the learned Counsel appearing alongwith Mr. Rajgopal, for the Respondent-No.1 i.e. Election Commission of India, on instructions, states that so far as Section 159 of the 1951 Act is concerned, the Respondent would requisition the staff (both teaching and non-teaching staff) of private aided school for only three days trainings and only for two days at the

time of election i.e. one day prior to polling date and on the polling day. It is further stated that so far as training is concerned, it would be their earnest endeavor to call them for training on non-working days as far as possible. We accept the above statements made on behalf of the Respondent-State.

13 Therefore, for the reasons recorded herein above, we pass the following order:-

- (a) Three impugned orders – one dated 16th June, 2009 and two orders dated 3rd July, 2009 are quashed and set aside;
- (b) It is declared that Section 29 of the 1950 Act does not empower the Respondent to requisition staff of the Petitioner's private aided school for preparation and/or revision of electoral rolls; and
- (c) The statement of Mr. Rajgopal and Ms. Shastri, the learned Counsel appearing for the Respondent No.1- Election Commission of India recorded in paragraph 12 above that the staff (teaching and non-teaching) will be requisitioned only for a definite and specified period i.e. three days for training and two days at the time of polling, We accept the above statement.

14 Accordingly, **Petition allowed** in the above terms. The pending Notice of Motion No.507 of 2011 in this Petition is also disposed of as infructuous.

(M.S.SANKLECHA,J.)

(A.S.OKA,J.)