

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

WRIT PETITION NO. 2520 OF 2009

The Malad Cosmopolitan
Education Trust

.. Petitioner.

v/s.

Union of India
& Others

.. Respondents.

Mr. Dilip G. Bagwe, for the Petitioner.

Ms. Geeta Shastri, Addl. G.P. for the Respondent-State.

Mr. Pradeep Rajgopal and Ms. Drishti Shah, for the Election Commission
of India.

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

DATE : 12th APRIL, 2019.

P.C:-

This Petition under Article 226 of the Constitution of India challenges 8 orders dated 26th May, 2008, 12th June, 2008, 22nd June, 2008, 5th November, 2008, 26th November, 2008, 12th December, 2008, 17th July, 2009 and 11th August, 2009 (Exhibits 'B' to 'H') passed by the Electoral Registration Officer being Respondent Nos. 7 and 8. The above impugned orders requisitioned the services of the Petitioner's staff for the purposes of preparation/ revision of electoral rolls. The impugned orders have undisputedly been passed under Section 29 of the Representation of Peoples Act, 1950 (1950 Act). The Petitioner also seeks a declaration that the Respondent No.3 i.e. Election Commission of India and its Officers

being Respondent Nos. 4 to 8 have no power to requisition the staff of the Petitioner's unaided school under Section 29 of the 1950 Act.

2 Besides, the Petitioner also seeks a declaration that under Section 159 of the Representation of the People's Act, 1951 (1951 Act), the Respondent Nos. 3 to 8 being the Election Commission of India and its Officers have no power to requisition the Petitioners' staff for election work under Section 159 of the 1951 Act.

3 The Petitioners runs two Educational Institutions at Malad, Mumbai and at Kandavili, Mumbai. Both the schools are private unaided Schools. The Respondent No.1 is the Union of India, Respondent No.2 is the State of Maharashtra, Respondent No.3 is the Election Comm of India and Respondent Nos. 4 to 8 are its Officers.

4 We have today passed an order in Shikshan Mandal, Goregaon v/s. Election Commission of India being Writ Petition No.1841 of 2009, holding that the Schools run by Trust/ Institutions even when aided by the State, would not be a local authority under the 1950 Act or 1951 Act. Thus, Schools as such, are not subject to the provisions of Section 29 of the 1950 Act. This finding though rendered in the context of aided schools, would equally apply to unaided schools. Therefore, the 8 impugned orders are quashed and set aside for the reasons indicated in our order passed today in Shikshan Mandal (supra).

5 So far as the prayer for the declaration that Section 159 of the 1951 Act is concerned we have in our order dated 3rd April, 2019 passed in Unaided Schools Forum v/s. State Election Commission & Others (Writ Petition No.3093 of 2019) held it would not apply. This in

view of the statement of Mr. Rajgopal, the learned Counsel for Election Commission of India stated that Section 159 of the 1951 Act is inapplicable to private unaided schools. This statement on the part of the Election Commission of India equally applies to the Petitioner. Thus, we declare Section 159 of the 1951 Act is not applicable to private unaided schools.

6 In the above view, we pass the following order:-

- (a) The 8 impugned orders being Exh. 'A' to 'H' issued in exercise of powers under Section 29 of the 1950 Act is quashed and set aside;
- (b) It is declared that Section 29 of the 1950 Act does not empower the Respondent to requisition the staff of the Petitioner and its School as they not local authorities; and
- (c) In view of the statement made by Mr. Rajgopal, the learned Counsel appearing for the Election Commission of India in Unaided Schools Forum (supra), it is declared that the provisions of Section 159 of the 1951 Act does not entitle the State to requisition staff from the Petitioner or its two Schools.

7 Accordingly, **Petition** is **allowed** in the above terms.

(M.S.SANKLECHA,J.)

(A.S.OKA,J.)