

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

WRIT PETITION NO.161 OF 2013

Ramji Assar Vidyalaya Wadi Trust .. Petitioner.
v/s.
Election Commission of India
& Others .. Respondents.

Mr. Mr. Dilip G. Bagwe, for the Petitioner.
Mr. Milind More, Addl. G.P. for the Respondent-State.
Mr. Pradeep Rajgopal and Ms. Drishti Shah, for the Respondent- 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 two orders dated 1st August, 2008 and 29th February, 2012 being Exhibits 'B' and 'D' issued by the Respondent No. 5 being the Electoral Registration Officer. The impugned order dated 1st August, 2008 seek to requisition the Petitioner's staff for the preparation/ revision of the Electoral Rolls. The impugned order dated 29th February, 2012 though titled as release order directed the Petitioner's staff to report for election work every Tuesday and Wednesday. The impugned orders have undisputedly been issued under Section 29 of the Representation of the People Act, 1950 (1950 Act). The Petitioner also seeks a declaration that

the Respondent Nos.1 to 5 being the Election Commission of India and its Officers cannot requisition staff of the Schools/ College run by the Petitioner whether aided or unaided under Section 29 of the 1950 Act. Moreover, the Petitioner also seeks a declaration that the Respondents have no jurisdiction to issue notices under Section 159 of the Representation of People Act, 1951 (1951 Act) to the Petitioner and the Schools/Colleges run by it.

2 The Petitioner is a Public Trust registered under the Bombay Public Trust Act. It runs/ conducts various schools and also a college at Ghatkopar, Mumbai. Some of the schools are aided by the State while some are unaided. The college run by it is an aided institution.

3 We first take up the challenge to the impugned order passed under Section 29 of the 1950 Act. We note that in our order passed today in Shikshan Mandal, Goregaon v/s. Election Commission of India (Writ Petition No. 1841 of 2009) we held that orders issued under Section 29 of the 1950 Act to requisition the staff of the Schools is without jurisdiction. For the reasons indicated therein, the Petitioner and/or its Schools/ College are not covered within the definition and meaning of the words 'local authority' to which alone Section 29 of the 1950 Act applies. The aforesaid decision was given in the context of aided schools. However, the reasons given therein would equally apply to unaided school/s run by the Petitioner herein. Thus, the two impugned orders being Exh. B and D which are admittedly issued in exercise of power under Section 29 of the 1950 Act, are quashed and set aside. Therefore, following our decision in Shikshan Mandal (supra) we declare that Section 29 of the 1950 Act cannot be exercised to requisition staff of

private aided and unaided schools/ colleges as they are not a local authority.

4 We next take up the prayer for a declaration that Section 159 of the 1951 Act cannot be invoked to requisition services of the staff of unaided schools/ colleges. We had occasion to deal with a similar challenge in Unaided School Forum v/s. State Election Commission and Others [Writ Petition No.3043 of 2009] decided on 3rd April, 2019. In the above case, Mr. Rajgopal, learned Counsel appearing for the Respondent No.1 – Election Commission of India stated that the provisions of Section 159 of the 1951 Act will have no application to private unaided school. This statement on behalf of the Election Commission would equally apply in respect of the Petitioner's unaided schools run by it.

5 So far as application of Section 159 of the 1951 Act to the aided school/ college is concerned, we note that today we have passed an order in Shikshan Mandal, Goretaon (supra). In the above case, Mr. Rajgopal, learned Counsel appearing for the Respondent No.1- Election Commission of India had stated that the Respondent would requisition staff of private aided schools (both teaching and non-teaching) for only three days training and only for two days at the time of election i.e. one day prior to polling day and on the polling day itself. It was also submitted that so far as training is concerned, it would be the endeavor of the Commission to call the staff of the Petitioners for training on non-working days as far as possible. The above statement made by Mr. Rajgopal on behalf of the Respondent No.1- Election Commission of India would equally apply to the present Petition to the extent it relates to private aided Schools/ College.

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

- (a) The two impugned orders being Exh. B and D to the Petition issued under Section 29 of the 1950 Act are quashed and set aside;
- (b) It is declared that Section 29 of the 1950 Act does not empower the Respondent - Election Commission of India and its Officers to requisition staff of the Petitioners Schools/ Colleges (aided and unaided) for preparation and/or revision of electoral rolls as already held by us in Shikshan Mandal (supra);
- (c) The statement made by Mr.Rajgopal in Unaided School Forum (supra) on 3rd April, 2019 that Section 159 of the 1951 Act has no application to private unaided schools would equally apply in the case of the Petitioner to the extent of the unaided schools/college; and
- (d) Section 159 of the 1951 Act would apply so far as private aided Schools/Colleges are concerned as held by us in Shikshan Mandal, Goregaon (Supra) wherein a statement was made on behalf of the Election Commission of India that the staff (teaching and non-teaching) will be requisitioned for a definite and specified period i.e. 3 days training and 2 days at the time of polling.

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

(M.S.SANKLECHA,J.)

(A.S.OKA,J.)