

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12380 OF 2016

Human Multipurpose Development
Education Society, Ausa,
Tq. Ausa, Dist. Latur,
Through its Vice-President,
Rohidas s/o. Narayanrao Sitape,
Age : 62 years, Occ. Pensioner,
r/o. Railway Station Chowk,
Latur

..Petitioner

Vs.

1. The State of Maharashtra,
Through its Secretary to the
Government of Maharashtra in
School Education and Sports
Department, Maharashtra State,
Mantralaya, Mumbai – 32
2. Shri. Vinod Tawade,
The Hon'ble Minister,
School Education and Sports
Department, Maharashtra State,
Mantralaya, Fort,
Mumbai – 32
**(Resp. No.2 deleted as per
Court's order dated 21.12.2016)**
3. The Deputy Director of Education,
Latur Division, Latur,
4. The Education Officer (Secondary),
Zilla Parishad, Latur

5. Gram Shikshan Prasarak Mandal,
Patoda, Tq. Jalkor, Dist. Latur,
Through its President/Secretary
6. Dr. Shivraj s/o. Vishwanathrao
Karadkhele, Age : 65 years,
Occ. Pensioner,
r/o. Sharda Nagar, Latur,

..Respondents

Mr. N.P.Patil-Jamalpurkar, Advocate for petitioner
Mrs.A.V.Gondhalekar, Addl. Government Pleader for
respondent nos.1, 3 and 4
Respondent on.2 – deleted
Mr.S.S.Jadhavar, Advocate for respondent no.5
Mr.S.S.Thombre, Advocate for respondent no.6

**WITH
CIVIL APPLICATION NO.3421 OF 2018
IN
WRIT PETITION NO.12380 OF 2016**

Laxmikant Gangadhar Karadkhele,
Age : 47 years, Occ. Service
as Headmaster,
Rajarshi Shahu Vidyalaya, Ausa,
Tq. Ausa, Latur

..Applicant

Vs.

Human Multipurpose Development
Education Society, Ausa,
Through its Vice-President,
Rohidas s/o. Narayanrao Sitape,
Age : 62 years, Occ. Pensioner,
r/o. Railway Station Chowk,
Latur
and others

..Respondents

Mr. A.N.Sabnis, Advocate for applicant
N.P.Patil-Jamalpurkar, Advocate for petitioner in
W.P. No.12380 of 2018
Mrs.A.V.Gondhalekar, Addl. Govt. Pleader for
respondent nos.2, 4 and 5
Mr.S.S.Jadhavar, Advocate for respondent no.6
Mr.S.S.Thombre, Advocate for respondent no.7

**CORAM : PRASANNA B. VARALE
AND**

R.G. AVACHAT, JJ.

RESERVED ON : JULY 23, 2019

PRONOUNCED ON : JUNE 12, 2020

FINAL ORDER (*PER R.G. AVACHAT, J.*):

The challenge in this Writ Petition, under Article 226 of the Constitution of India, is to the order issued by the Deputy Director of Education, Latur (respondent no.3) on 22.07.2010 in respect of transfer of Rajashri Shahu Vidyalaya ("R.S. School", for short), AUSA, Dist.Latur to Gram Shikshan Prasarak Mandal, Patoda (Bk.), Tq.Jalkot, Dist. Latur and the order passed by Hon'ble Minister for School Education, Maharashtra State, on 09.05.2016, affirming the decision of the Deputy Director of Education.

2. Heard Mr.Jamalpurkar-Patil, learned Counsel for the petitioner, Mrs.Gondhalekar, learned Addl. Govt. Pleader for respondent nos.1, 3 and 4, Mr.Jadhavar, learned Counsel for respondent no.5 and Mr.Thombre, learned Counsel for respondent no.6.

3. Mr.Jamalpurkar-Patil, learned Counsel for the petitioner, would submit that the petitioner is an educational institution registered under Maharashtra Public Trusts Act, 1950. R.S. School is one of the schools run by the petitioner - Institution. Respondent no.6 joined hands with a few of the members of the petitioner - Institution and illegally and unauthorizedly moved a proposal for transfer of R.S. School. The Deputy Director of Education, in violation of the mandatory requirements as regards transfer of the school, passed the impugned order. Learned Counsel would submit that there was a dispute *inter-se* the members of the executive/management council of the petitioner -

Institution. In the given situation, respondent no.3 – Deputy Director of Education ought to have called for opinion of the Charity Commissioner as regards the proposal for transfer of R.S. School. Permission of the Charity Commissioner for transfer of the school was a condition precedent. No such permission has ever been obtained. The Rules governing transfer of management of the school have been thrown to the wind. Learned Counsel would further submit that respondent no.6 obtained a hefty monetary consideration from respondent no.5 for transfer of R.S. School. The same would be evident from the FIR lodged by respondent no.6 against respondent no.5. According to the learned Counsel, the school was all along under the management and control of the petitioner – Institution. Learned Counsel has placed reliance on the judgments of this Court in the case of **Jeejau Shikshan Sanstha Vs. State of Maharashtra and ors., 2011 (6)Bom.C.R. 97** and **Sailesh Developers Vs. The Joint Charity Commissioner, 2007(3)BCR 7.**

Learned Counsel, ultimately, urged for allowing the petition.

4. Respondent no.4 – the Education Officer (Secondary), Zilla Parishad, filed affidavit-in-reply, stating therein that at the relevant time, when the management of the R.S. School was being transferred, Shri.R.N.Sitape was not on the management of the petitioner – Institution. It seems that lateron, there was a change in the management and after that present petition has been filed. A copy of the document containing the names of the executive Committee members was annexed along with the affidavit-in-reply. The Education Officer supports the impugned order.

5. Respondent nos.5 and 6 have filed their respective affidavits-in-reply, contending therein that at the relevant time one, who has filed the petition on behalf of the petitioner – institution, was not a member of the management council. The

Deputy Director of Education had authority to take a decision as regards transfer of management of a school. Against such a decision, there was no remedy of appeal or revision. By subsequent Government Notification, the power has been taken over by the State Government as regards transfer of management of school. Attention was also drawn to the order dated 04.07.2012 passed by the Division Bench in Writ Petition No.10240 of 2010, taking exception to the impugned order. Both the affidavits are replete with the history of the litigation. It has further been contended that respondent no.5 has been running the school for little over nine years. The contention of the petitioner that the school is being managed by the petitioner – Institution, is untrue. The Deputy Director of Education, after having verified the relevant aspects of the matter, granted sanction for transfer of management of the school.

6. Learned Counsel representing both respondent nos.5 and 6 made submissions consistent with the

averments in the affidavits-in-reply and ultimately, urged for dismissal of the petition.

7. The Headmaster of the school sought intervention in the matter to contend that the school staff has been safe in the hands of the present management of the school. The school has made developments in many a fields. It was, therefore, to be not in the fitness of things to allow the petition, was the submission of the Headmaster.

8. R.S. School was a grant-in-aid school run by the petitioner – institution. At the relevant time, the subject of transfer of management of school was governed by the provisions of Clauses 12.1 to 12.5 of the Secondary School Code ("S.S. Code", for short).

The said clauses were as follows:-

Change of Managements:

12.1 When the management of a school is proposed to be changed, previous permission of the Deputy Director shall be obtained for effecting the change.

12.2 The transfer of a recognised school from one management to another shall be governed by the following sub-rules:

i) The transfer shall not be effected without the previous approval of the Deputy Director;

(ii) A previous notice of three months, for the intended transfer shall be given to the Deputy Director.

12.3 The Deputy Director may, at his discretion, dispense with the condition in sub-rule (ii) above.

12.4 If the condition laid down in Rule 12.2 (i) above is not complied with, the recognition of the school should be deemed to have been withdrawn automatically from the date of change of management. In very special cases, however, the Director may, at his discretion, waive the condition in Rule 12.2(i) above.

12.5. The school may be held eligible for grant-in-aid under the new management when the transfer has been effected with the permission of the Deputy Director; or when the condition in Rule 12.2(i) above is waived by the Director, unless he directs otherwise.

9. There is on record the Circular dated 08.12.2005 issued by the Directorate of Education, Secondary and Higher Secondary, stating therein that the Deputy Director of Education, before granting

approval for transfer of management of a school, shall obtain no objection certificate from the Charity Commissioner. The Circular further states that the proposal as regards transfer of management of a school shall be under the signature of the members of the managing committee of both the institutions.

10. It is the case of the petitioner that respondent no.6 prepared a bogus resolution of the managing committee as regards transfer of management of R.S. School. No opportunity of hearing was given to the then Vice-President and other office bearers of the institution.

11. In this regard, it is necessary to peruse the impugned order dated 22.07.2010 of the Deputy Director of Education. The order records that the Education Officer, Zilla Parishad, Latur, submitted a proposal dated 15.07.2010. The Deputy Director of Education held enquiry in this regard on 22.07.2010.

It further records that the office-bearers of both the institutions namely, the petitioner – institution and respondent no.5, were present. The office bearers affirmed the proposal. The order further records that the members of the managing committee of the petitioner – institution informed that no proceeding was pending before the Court of law. The Deputy Director of Education, therefore, granted approval to the proposal of transfer of management of R.S. School.

12. An affidavit-in-reply filed by the Education Officer, states that at the relevant time, Shri.R.N.Sitape was not on the management committee of the petitioner – Institution. Along with the affidavit, a copy of schedule-1 of the register pertaining to public trust was produced on record. The same indicates that by the Change Report No.1512 of 2000, respondent no.6 and six others were shown to be the trustees of the petitioner – Institution. Shri.R.N.Sitape and six others were no longer the

trustees of the petitioner – Institution. The same indicates that at the relevant time, Shri.R.N.Sitape and his group, were not the members of the executive committee of the petitioner – Institution. Soon after the impugned order was passed, Shri.R.N.Sitape and others filed the Writ Petition, being Writ Petition No.10240 of 2010, taking exception to the impugned order. The Division Bench of this Court, by its order dated 04.07.2012, disposed of the said petition with the following order :-

"1.

2. *It is not in dispute that the impugned order dated 22.7.2010 has been implemented and the School is transferred to Respondent No.3 and is being run by Respondent No.3.*

3. *The petitioners contend that they are the founder trustee and the school has been illegally transferred by other group i.e. Respondents No. 4 to 9 by fabricating the documents.*

4. *During arguments, learned Counsel for the petitioner has fairly stated that dispute inter-se the managements is pending before the Charity Commissioner.*

5. *The fact that the school is being run by Respondent No. 3 itself shows that the present petitioners are not in*

management and cannot aspire to regain the management by filing such petition. If the petitioners are aggrieved by transfer of school to any third person, such grievance is required to be made before the appropriate authority under the Bombay Public Trusts Act, or they will have to obtain orders in the pending proceedings.

6. We are not inclined to interfere in the writ jurisdiction. Petition rejected."

(Emphasis supplied)

The said Writ Petition was filed on 28.09.2010 i.e. two months after the impugned order was passed.

13. In those days, the Deputy Director of Education had a plenary power to sanction/approve the proposal for transfer of management of a school. No forum was provided before whom an exception could be taken to such a decision of the Deputy Director of Education.

14. The record further indicates that in 2000, the Board of Trustees of the petitioner – Institution came to be changed. Respondent nos.6 and six others were elected as Executive Trustees. Shri. R.N.Sitape

and five others were no longer in control and management of the petitioner – Institution. The Division Bench of this Court has specifically recorded in this regard in paragraph 2 of the order herein above. The record further indicates that the change in the management of the petitioner – Institution was reported to the Assistant Charity Commissioner way back in 2000. Learned Assistant Charity Commissioner accepted the said change report in 2001. Shri.R.N.Sitape and others appear to be well educated. The acceptance of the change report continued for little over eight years i.e. until the Joint Charity Commissioner set it aside and remanded the matter back to the Assistant Charity Commissioner. The record indicates that Shri. R.N.Sitape took exception to the change report about 10 years after the change was effected in the management of the petitioner – Institution.

15. It is true that we are not sitting in appeal against the decisions given in this regard by the

authority under the Maharashtra Public Trust Act ("M.P.T. Act", for short). The fact, however, remains, that for little over nine long years Shri R.N.Sitape and five others did not have control and management of the petitioner – Institution. The Education Officer has affirmed the same in his affidavit-in-reply. True, learned District Judge confirmed the order passed by the learned Joint Charity Commissioner remanding the matter back to Assistant Charity Commissioner for making a fresh enquiry into the change report. It is reported that an appeal has been filed against the said order before High Court.

16. The record indicates that after the change report of the year 2000 until the Revision was preferred against the said order in July, 2010, there was no dispute among the members of the Trust. The Deputy Director of Education was, therefore, justified to record in the impugned order that the members of the managing committee informed him that

no dispute was sub-judice. In the earlier petition (Writ Petition No.10240 of 2010), Shri R.N.Sitape and others did not take exception to the impugned order relying on Clauses 12.1 to 12.5 of the S.S. Code. The said Clauses also indicate that the Deputy Director of Education was authorised to relax the mandate of sub-rules (i) and (ii) of Clause 12.2 of the S.S. Code. No statutory provision mandates for obtaining prior permission of the Charity Commissioner for transfer of management of a school. It is true that after the judgment of the Division Bench of this Court in the case of **Jeejau Shikshan Sanstha** (supra), the State has framed guidelines as regards transfer of the management of a school/schools. Thus, the guidelines came into being long after the impugned order came to be passed. In the very judgment, the Division Bench in paragraph 18, observed thus:-

".....The Court of Assistant Charity Commissioner, from the reading of the aforesaid Circular dated 8/12/2005, seems to have been treated as if it is an office of the Government giving no objection certificates. It is

unfortunate that Director of Education even does not understand that the Assistant Charity Commissioner or the Charity Commissioner is not an office of Government issuing no objection certificate."

17. Reliance by the petitioner – Institution on the judgment in the case of **Sailesh Developers** (Supra) pertaining to Section 36 of the M.P.T. Act, would suggest that such permission is required in respect of transfer of immovable property of a Public Trust. Transfer of management of a school does not get covered by Section 36 of the M.P.T. Act.

18. The management of the school came to be transferred to respondent no.5 on 22.07.2010. The same indicates that R.N.Sitape and his group members were not the members of the executive committee, managing the affairs of the petitioner – institution. It also appears that they were not in the management until the Joint Charity Commissioner set aside the order of Assistant Charity Commissioner accepting the change report. The record indicates

that after the Joint Charity Commissioner's decision in the Revision Application (28 of 2010), R.N.Sitape and others approached the State of Maharashtra in Department of Education and by the order dated 07.08.2014, the decision granting approval to the transfer, was revoked. Against the said order, respondent no.5 preferred Writ Petition, being Writ Petition No.7485 of 2014. The Writ Petition was allowed with a direction to the State to give hearing to the parties and then decide the proceedings afresh. Thereafter, the Minister for School Education, State of Maharashtra, gave hearing to the parties and passed the order dated 11.07.2015 revoking the decision dated 22.07.2010 passed by the Deputy Director of Education approving the transfer of the management of the school. Again, the matter was carried in Writ Petition before this Court. The Division Bench, by its order dated 28.10.2015 allowed the Writ Petition (9002 of 2015), setting aside the order dated 11.07.2015 passed by the Minister for

School Education. Again, the concerned Minister heard the matter and passed the order dated 09.05.2016, whereby the decision of the Deputy Director of Education dated 22.07.2010 came to be upheld. The said order indicates that the Headmaster of R.S. School had appeared before the Minister and submitted that the school under the control and management of respondent no.5 has made developments in many spheres. Before us also, the Headmaster of the school appeared through Advocate and made same submissions. It was also submitted on behalf of the Headmaster representing the teaching and non-teaching staff that the school has made strides in many spheres. There is conflict between the members of the managing committee of the petitioner – institution. It would, therefore, not be in the interest of the students and staff of R.S. School to be governed by the petitioner – Institution.

19. It was submitted on behalf of the petitioner – Institution that the Headmaster is related to

respondent no.6. A document dated 14.03.2018 was also produced on record on behalf of the petitioner – Institution to indicate that the school is being managed by the petitioner – Institution and not by respondent no.5. The said document indicates that one Advocate has been appointed to make an enquiry into delinquency of the school employee – Shri.L.G. Karadkhele.

20. We do not propose to give much credence to the said document in view of the fact that it was, in no uncertain terms, admitted before the Division Bench (Writ Petition No.10240 of 2010) that the management of the school has already been transferred. It is reiterated that for over a few years, the school has been run by respondent no.5. The decision to transfer management was taken by respondent no.6 and others, who were, in fact, managing the affairs of the petitioner – Institution. As stated above, there was, in fact, no dispute *inter-se* the members of the petitioner – Institution

for little over nine years from Change Report No.1512 of 2000, submitted to the Assistant Charity Commissioner. R.N.Sitape and others, being founder members of the petitioner – Institution, must have taken to their heart the decision of respondent no.6 and others, who were ruling the trust, to transfer management of the Institution and therefore, a number of litigations ensued.

21. It was also submitted on behalf of the petitioner – Institution that respondent no.6 obtained unlawful consideration for transfer of management of the school. In support of the said contentions, a copy of the complaint in Regular Criminal Case No.554 of 2017 has been produced on record. It is a complaint filed by respondent no.6 against Dhanaji Jadhav, President of respondent no.5 – Institution. It has been alleged in the complaint that Dhanaji Jadhav had agreed to pay respondent no.5 Rs.40 Lakhs. Rs.16 Lakhs were said to have been paid. The balance amount was agreed to be paid after

transfer of management of the school to respondent no.5 is complete in all respects. It is also alleged in the complaint that the land ad-measuring one and half acres belonging to respondent no.6 was also transferred to Dhanaji Jadhav. The record indicates that based on the said complaint, learned Judicial Magistrate, First Class, directed to make investigation in view of Section 156(3) of the Code of Criminal Procedure. The FIR is, thus, said to have been registered. We do not propose to make any comment as regards allegations in the complaint. Suffice it to say that the Director of Education is at liberty nay under duty to make enquiry into the said allegations, and if found to be true, take appropriate action against the present management of R.S. School.

22. In short, the management of the school has been transferred to respondent no.5 way back in 2010. The proposal for transfer of management of the school was moved by the persons – in authority/management of

the petitioner – Institution. It would also not be in the interest of the students and the staff of the school to upset the impugned order, merely on the ground that Shri.R.N.Sitape and others claimed to have come in control and management of the petitioner-institution, based on the decision in the Revision entertained and decided by the Joint Charity Commissioner ten years after the Change Report was accepted by the Assistant Charity Commissioner.

23. It is further made clear that the authorities under the M.P.T. Act should not be influenced by these observations, while deciding the proceedings as regards the change report. The observations made herein are limited to decide the matter before us.

24. In the result, no interference is called for in the impugned orders. The petition fails and the same is dismissed.

25. In view of dismissal of the Writ Petition,
the Civil Application also stands disposed of.

[R.G. AVACHAT, J.]

[PRASANNA B. VARALE, J.]

kbp