

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.1966 OF 2020

Yogini Bathuwel Parkhe  
Age : 52 years, Occ : Headmistress,  
R/o Nisha Park Apartment, Flat No.2,  
Gulmohar Road, Savedi, Ahmednagar  
Tal & Dist. Ahmednagar

..PETITIONER

VERSUS

1. The State of Maharashtra  
Through Secretary,  
College & School Education Department,  
Mantralaya, Mumbai-32.
2. The Education Officer (Secondary)  
Zilha Parishad, Ahmednagar,  
Tal & Dist. Ahmednagar.
3. The Salvation Army Indian Western  
Territory Through Territorial Commander  
Office : Territorial Head Quarters  
Shaikh Hafizulla Marg Post  
Box No. 4510, Bhaikulla,  
Mumbai - 400 004.
4. The Salvation Army Willambooth  
Memorial High School,  
Through its Officer Incharge  
Mr.R.C. Shinde  
Willambooth Memorial High School  
Fariyabad, Solapur Road, Ahmednagar.  
Tal & Dist. Ahmednagar. .. RESPONDENTS

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Mr. S.P.Brahme, Advocate for the petitioner.  
Mr. S.J.Salgare, AGP for respondent nos.1 and 2.  
Mr. D.R.Korde, Advocate for respondent no.4.  
Respondent no.3 served.

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**CORAM : DIPANKAR DATTA, CJ.  
AND  
MANGESH S. PATIL, J.**

**DATE : SEPTEMBER 28, 2021**

**PC [Dipankar Datta, CJ.] :**

1. Petitioner is the Headmistress of the Salvation Army William Booth Memorial High School [hereinafter 'the School' for short], presently under an order of suspension. Disciplinary proceedings have been initiated against the petitioner based on 33 (thirty-three) separate accusations. Although a statement of allegations has been furnished to the petitioner, no charge-sheet has been served on her. To facilitate conduct of inquiry against the petitioner, the School has appointed an Inquiry Committee. The challenge in this writ petition is essentially to the constitution of the Inquiry Committee. According to the petitioner, the School is governed by the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereafter 'the said Rules', for short) and the Inquiry Committee, since constituted, does not conform to the mandatory provisions of rule 36(2) (b) thereof.

2. Appearing in support of the writ petition, Mr. Brahme, learned advocate submits that in

terms of rule 36(1) of the said Rules, a properly constituted Inquiry Committee is required to be constituted to conduct an inquiry only in such case where a major penalty may be inflicted. In the present case, although no charge-sheet has been issued, the statement of allegations containing 33 (thirty-three) separate accusations and the very nature thereof together with constitution of an Inquiry Committee are sufficient for the petitioner to infer that she is facing major penalty proceedings. In such view of the matter, he contends, it is all the more necessary that the management of the School should constitute an Inquiry Committee which is free from any defect of constitution and is in terms of the mandate of Rule 36(2)(b).

3. Inviting our attention to rule 36(2)(b)(i) of the said Rules, Mr. Brahme further contends that the Inquiry Committee, as constituted, does not include the President of the management of the School as one of its members but a representative of the management and, thereby, the relevant rule has been observed in the breach. It is also contended that contrary to rule 36(2)(b), which envisages a three-member Inquiry Committee, a fourth-member has been included which clearly infringes such rule.

4. Referring to the decision of the Supreme Court in **Vidya Vikas Mandal and another Vs. Education Officer and another**, reported in 2007 (3) Bom.C.R. 281, it is contended that the provisions of the said Rules *qua* inquiry to be conducted against teachers/members of the staff have been interpreted as mandatory and, therefore, the Inquiry Committee, from its very birth, is *void ab initio*. Our attention has further been invited to the Full Bench decision of this Court in **National Education Society, Nagpur and another Vs. Mahendra s/o. Baburao Jankar and another**, reported in 2007 (3) Mh.L.J. 707, as well as a Division Bench decision of this Court in **Kankubai Shrivikashram Trust and others Vs. Kamal Dattatraya Khajurkar and others**, reported in 1992 Mh.L.J. 216, for the proposition that any inquiry conducted by a committee, which is not constituted in accordance with rule 36(2), would be invalid and its proceedings inoperative.

5. Based on the above contentions, it is prayed by Mr. Brahme that constitution of the Inquiry Committee be declared illegal and the management directed to re-constitute the Inquiry Committee in accordance with law.

6. *Per contra*, Mr. Korde, learned advocate for the School, respondent no.4, has objected to the maintainability of the writ petition. According to him, after the Inquiry Committee submits its report and if the report is adverse to her, the petitioner would have full opportunity to controvert its contents. If at all, an order of penalty is passed against her thereafter, the petitioner would be at liberty to pursue further remedy before the Education Tribunal to challenge not only the final order of penalty but also to raise the point that the Inquiry Committee was not constituted according to law as well as its findings. In view of availability of such alternative remedy to the petitioner under the said Rules, he submits that interference at this stage, when the inquiry is in progress, would be premature.

7. On the merits of the challenge, Mr. Korde contends that for administrative convenience, the President of the management of the School, who is the Territorial Commander, has kept himself out of the Inquiry Committee. Instead, in exercise of powers of delegation, as would be traceable in the Articles of Association of the School, a responsible and competent officer has been nominated to be part of the Inquiry Committee as the management's representative. Also, a fourth-member has been included in the Inquiry Committee

to assist it in course of the inquiry. According to him, the petitioner has not exhibited how constitution of the Inquiry Committee would be prejudicial to her interest or that any action taken by such committee would cause a failure of justice.

8. Accordingly, Mr. Korde submits that the writ petition be dismissed, the interim order passed thereon vacated, and the petitioner be required to participate in the inquiry and raise defence against the allegations.

9. Mr. S.J. Salgare, learned AGP appearing for the respondent no.1/State has adopted the submissions of Mr. Korde. It is also his contention that the writ petition is premature and that the petitioner, while being told off at the threshold, be relegated to the Inquiry Committee with all her objections and if the same fail, to avail the alternative remedies available to her.

10. In his rejoinder address, Mr. Brahme has referred to the unreported judgment dated September 24, 2021 of the Supreme Court in the case of **M/s. Magadh Sugar & Energy Ltd. Vs. The State of Bihar and others** (Civil Appeal No.5728 of 2021) as well as the Division Bench decision of this Court in **Param Bir Singh s/o. Hoshiyar**

**Singh Vs. State of Maharashtra and others**, reported in 2021 (2) Bom.C.R. (Cri.) 631, to contend that alternative remedy can never be considered to be a factor to oust the jurisdiction of a writ court. He further contends that if one or more of the exceptions carved out in **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others**, reported in (1998) 8 SCC 1, is/are satisfied, the court may in its discretion exercise jurisdiction. The jurisdiction of the Inquiry Committee to proceed with the inquiry having been made the subject matter of challenge, it is also contended that decisions of the Constitutional Courts are legion that if the constitution of the Inquiry Committee is found to be *void ab initio*, the Court may not hesitate to examine the point of jurisdiction of such committee to even collect facts for returning findings on each of the charges leveled against a delinquent teacher.

11. We have heard learned advocates appearing for the parties.

12. The preliminary objection to the maintainability of the writ petition need not detain us for too long. If a writ court refuses to entertain a writ petition on the ground that an efficacious, alternative and speedy legal remedy is available to the petitioner, such

refusal is based on a rule of convenience rather than a rule of law. Here, two of the exceptions carved out in **Whirlpool Corporation** (supra) have to be borne in mind. The first is the question of jurisdiction of the Inquiry Committee to proceed further without the President of the management of the School being one of its members, and the inclusion of two other members who, not being competent for nomination, could not have been included in the Inquiry Committee. If the petitioner succeeds on this point and her prayer is granted, there would be no existence of the Committee and a new committee, as of necessity, has to be constituted in accordance with rule 36(2)(b) subject of course to the School being desirous of taking the inquiry forward. The other exception, though not specifically urged by Mr. Brahme, is referable to utter arbitrariness in the action of the School, which is akin to breach of the Fundamental Right guaranteed to the petitioner by Article 14 of the Constitution. The said Rules having been framed for proper and fair conduct of inquiry, every school bound by the same have to mandatorily follow it. It cannot be left open to each and every school to devise its own procedure for conducting an inquiry. Since these two exceptions arise for consideration, we proceed to examine the petitioner's claim on merits.

13. The question as to whether the management of the School could exercise its power of delegation and appoint a representative to be part of the Inquiry Committee instead of the Territorial Commander (President of the management of the School) has to be decided keeping in mind the Rules, as well as the Articles of Association of the School to which our attention has been drawn by Mr. Korde. From the tenor of the Articles of Association, we find it to be a document of vintage era. At page 13 of the Articles of Association, there is a chapter with heading 'Territorial Boards'. Paragraph 37 of the Articles lay down as follows :

*37. The number of Directors for each Territorial Board shall not be less than three or more than seven, and the Directors shall be the persons who shall for the time being (and from time to time) hold the following offices in the respective Territories that is to say (a) the office of Territorial Commander, (b) the office of Chief Secretary or General Secretary, (c) the office of Field Secretary, (d) the office of Financial Secretary or Finance Officer, and/or (e) such other or alternate office-bearers as may be appointed under Article 11 (e) hereof.*

*The holders of such respective offices at the date hereof are as follows that is to say :-*

- (1) *MADRAS AND TELUGU (INDIA)*  
*TERRITORY :-*  
*Territorial Commander, Lt. Colonel*  
*Muriel Booth-Tucker,*  
*General Secretary, Brigadier*  
*Penumaka Bhushanam,*  
*Field Secretary, Brigadier*  
*Devadasi Sudarsanam,*  
*Financial Secretary,*  
*Senior Major Cecil Dark.*
- (2) *NORTH-EASTERN INDIA TERRITORY :-*  
*Territorial Commander, Colonel*  
*Ivar Palmer, General Secretary,*  
*Brigadier Frederick E. Jewkes,*  
*Field Secretary, Brigadier*  
*Arjandas Andrew, Financial*  
*Secretary, Senior Captain Grace*  
*Goldie.*
- (3) *SOUTHERN INDIA TERRITORY :-*  
*Territorial Commander, Lieut-*  
*Commissioner Samuel Manuel, Chief*  
*Secretary, Colonel William H.*  
*Smith, Field Secretary, Brigadier*  
*Samuel Gnanaselan, Financial*  
*Secretary, Brigadier P. Idiculla*  
*Jacob.*
- (4) *WESTERN INDIA TERRITORY :-*  
*Territorial Commander, Commissioner*  
*Janet L.Allan, Chief Secretary,*  
*Lt. Colonel Joseph Dahya, Field*  
*Secretary, Lt. Colonel Lilian*  
*Stebbing, Financial Secretary,*  
*Major Arthur W. Hook.*

The holders of such respective offices in the respective Territories shall ex-officio be Directors of the respective Territorial Boards so long (and so long only) as they hold their said respective offices without the necessity for any appointment or removal. The Territorial Commander for the time being shall by virtue of that office be the Chairman of the Territorial Board, and the Chief Secretary or the General Secretary for the time being shall by virtue of that office be the Vice-chairman. Three Directors shall constitute a quorum."

[emphasis supplied]

14. It would appear from the aforesaid extract that so far as Western India Territory is concerned, Commissioner Janet L. Allan was designated as Territorial Commander. Commissioner Janet L. Allan could function as an ex-officio Director of the Western India Territory so long, and so long only, he held the office of Commissioner. We are not too sure as to whether the composition of the Western Indian Territory continues to be as such, neither have we been shown any document or instrument by which the Articles of Association have been amended nor shown who presently is the Territorial Commander.

15. Be that as it may, our attention was next drawn to paragraphs 43 and 44 of the Articles with special reference to sub paragraph no. 11. We may note that paragraph no.11 has no manner of application in the present case. It deals with the provisions of the management or the affairs of the Association outside the Territorial Headquarters. It could not be and is not even the case of the School that the matter pertaining to conducting inquiry against a delinquent teacher is a matter outside the Territorial Headquarters. Having noticed the provisions of the Articles of Association, to which our attention has been drawn by Mr. Korde, we are of the considered opinion that the same do not remotely have any application here.

16. We are also of the considered opinion that even if there are other provisions in the Articles of Association, which might have been incorporated by subsequent amendment relating to delegation of powers but have not been placed before us, such amendment cannot have the effect of overriding the provisions of the statutory rules, viz. the said Rules. The School being bound by the said Rules, it could not have included any member in the Inquiry Committee so as to defeat the very purpose of rule 36(2)(b).

17. We are conscious of the Constitution Bench decision of the Supreme Court in **Pradyat Kumar Bose Vs. the Hon'ble Chief Justice of Calcutta High Court**, reported in AIR 1956 SC 285. There, the Chief Justice of the Calcutta High Court had initiated proceedings against one of the Registrars. After such initiation, the Chief Justice had appointed a Judge of the High Court to inquire into the charges. Point raised before the High Court first and thereafter before the Supreme Court was that the Chief Justice could not have delegated to a companion Judge the function of conducting the inquiry. It is in such facts and circumstances that the Supreme Court had the occasion to observe that the Chief Justice, as the administrative head, did have the power to delegate the function of conducting an inquiry by deputing a responsible and competent official to inquire and report. The impugned act of the Chief Justice nominating a companion Judge as the Inquiry Officer was upheld on the ground that an administrative power could be delegated, which is the ordinary mode of exercise of such powers. It was also held that what cannot be delegated, except where the law specifically so provides, is the ultimate responsibility for the exercise of such power; a functionary who has to decide an administrative matter, such as the dismissal of a member of the staff, can obtain

the material on which he is to act in such manner as may be feasible and convenient, provided only that the affected party has a fair opportunity to correct or contradict any relevant and prejudicial material.

18. However, the law laid down in **Pradyat Kumar Bose** (supra) may not apply in the present case, since the petitioner and the School, both are governed by statutory provisions, which in the decisions relied on by Mr. Bramhe, have been held to be mandatory in nature. The power and authority of the School, if any, to delegate a particular function in exercise of its administrative powers stands curtailed by reason of rule 36 which, even though it is not palatable to the management of the School, has to be complied. We are at this stage reminded of what Justice Frankfurter said in the decision in **William Vincent Vitarelli Vs. Fred A. Seaton, Secretary of the Interior, et al.** reported in 359 U.S. 535 (1989) :

*" .... An executive agency must be rigorously held to the standards by which it professes its action to be judged. ... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. ... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly*

*so. He that takes the procedural sword shall perish with that sword."*

Our Supreme Court has, in fact, in multiple decisions approved such an observation and there could be little reason not to follow such dictum.

19. We may, however, observe that in the ordinary course, our conscience may not have been pricked and hurt merely because instead of the President of the management of the School, someone else has been included by nomination in the Inquiry Committee as its representative and if by reason thereof, no failure of justice had occasioned; however, the said Rules having binding effect on such management, it is required to follow the same no matter what the consequences would be. We are also reminded at this stage of the decision of the Supreme Court reported in (1975) 1 SCC 559 (**Ramchandra Keshav Adke Vs. Govind Joti Chavare**) that "*where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden*". Whatever be the demand or necessity of administrative convenience perceived by the management of the School for not nominating the President for inclusion in the Inquiry Committee, the same could not have prevailed over the binding nature of the said Rules. Also, the fourth-member being absolutely

foreign to the scheme of the said Rules, the action has to be declared wholly illegal.

20. In such view of the matter, we have no other option but to hold that the constitution of the Inquiry Committee to inquire into the allegations against the petitioner is illegal and *void ab initio*. Proceedings of inquiry conducted by the said Committee shall be no effect and stand nullified by reason of this order.

21. However, this order shall not preclude the management of the School to constitute a proper committee in accordance with rule 36 of the said Rules. If such committee is constituted, it shall proceed to inquire *de novo* in accordance with law and the three members thereof shall place a combined report, as required by the decision in **Vidya Vikas Mandal** (supra), before the management of the School for its consideration. Obviously, since the President would be a member of the Inquiry Committee, he shall not participate in any further proceedings to take the disciplinary proceedings initiated against the petitioner to its logical conclusion.

22. The writ petition stands allowed to the aforesaid extent. No costs.

23. In view of the aforesaid order, nothing survives for consideration in Civil Application

No.4740 of 2020 and the same stands disposed of.

24. Since the petitioner is under suspension w.e.f. 19<sup>th</sup> March, 2020, it would be appropriate for us to direct the management of the School to expedite the inquiry against the petitioner. We order accordingly. The petitioner is also granted liberty to make appropriate application for revocation of the order of suspension and if such application is received, the management is at liberty to pass an appropriate order considering all relevant facts and circumstances.

**[MANGESH S. PATIL,J.]**

**[CHIEF JUSTICE]**

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