

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1644 OF 2021

1) Bhumiputra Shikshan Prasarak Sanstha,
Mr. Sanjay Burghate, Ambarpan Colony,
near New Congressnagar, Amravati,
through its President Advocate
Madhukarrao s/o Suryabhanji Lokhande,
aged about 76 years, r/o New Ganesh
Colony, near Hindu Cremation ground,
Amravati.

2) Ashok s/o Vishnugir Giri,
aged about 39 years, occupation :
service, r/o Sainagar, Trimurti
Colony, Daryapur, Taluq Daryapur,
District Amravati.

... Petitioners

- Versus -

1) The State of Maharashtra, through
the Secretary, Department of Education,
Mantralaya, Mumbai – 32.

2) The Director of Education,
Maharashtra State, Pune.

3) The Deputy Director of Education,
Amravati Division, Amravati.

4) Bhumiputra Shikshan Prasarak
Sanstha, 33, Congress Nagar,
Amravati, through Mr. Madhukarrao
s/o Sukhdeorao Abhyankar,
r/o Bhumiputra Colony, near
Congress Nagar, Amravati, Taluq and
District Amravati.

- 5) Mr. Jay Madhukar Abhyankar,
aged about 44 years, occupation :
service, r/o Bhumiputra Colony,
near Congress Nagar, Amravati,
Taluq and District Amravati.
- 6) Ku. Sangita Kashiram Punde,
aged about 45 years, occupation :
service, c/o Mr. Mohan Paturde,
Sai Nagar, Daryapur, Taluq
Daryapur, District Amravati.
- 7) The Superintendent of the Office
of Charity Commissioner,
Amravati, MHADA Bhavan,
2nd floor, Tope Nagar, near
Maltekdi Road, Taluq and District
Amravati.
- 8) The Assistant Charity Commissioner-3,
Amravati, MHADA Bhavan, 2nd floor,
Tope Nagar, near Maltekdi Road,
Taluq and District Amravati.
- 9) The Deputy Education Officer
(Secondary), Zilla Parishad,
Amravati.

... Respondents

Shri M.G. Bhangde, Senior Advocate, assisted by Adv. S.S. Sarda
for petitioners.

Shri N.R. Patil, Assistant Government Pleader for respondent nos.1,
2, 3, 7, 8 and 9.

Shri S.P. Dharmadhikari, Senior Advocate, assisted by Adv. S.M.
Vaishnav, for respondent nos.4 to 6.

CORAM : SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED : OCTOBER 12, 2021

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

Heard Shri Bhangde, learned Senior Counsel for the petitioners, Shri Patil, learned Assistant Government Pleader for the respondent nos.1, 2, 3, 7, 8 and 9 and Shri Dharmadhikari, learned Senior Counsel for the respondent nos.4 to 6.

2) Rule, returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

3) There is an internecine dispute between two factions of the Managing Body of the petitioner Trust. One faction is led by Adv. Madhukar Lokhande and another is led by respondent no.4 Madhukar Abhyankar and both these factions have filed change reports under Section 22 of the Maharashtra Public Trusts Act, 1950 before the Assistant Charity Commissioner. These reports bearing Nos.80/2019 and 124/2019 are still pending decision of the Assistant Charity Commissioner. It appears to us that because of pendency of these change reports and no decision having been taken by the learned Assistant Charity Commissioner as regards these change reports, the complications arising from dispute between these two factions are increasing day by day. Today the position is

that even the day-to-day affairs of the Schools run by the Trust have been affected. At one point of time, the respondent no.3 Deputy Director of Education had given limited administrative powers to the petitioner no.2 for smooth running of the affairs of the School and that too, after giving due hearing to both the factions and this order was passed on 16/3/2019 and at another point of time, the same Deputy Director of Education, i.e. respondent no.3 passed a contrary order dated 10/3/2021 whereby he withdrew the administrative powers given to the petitioner no.2 and transferred these powers to the respondent no.6.

4) According to Shri Bhangde, learned Senior Counsel for the petitioners, the impugned order dated 10/3/2021 could not have been passed by the respondent no.3 without giving due opportunity of hearing to both the factions, especially when the earlier order was passed by him after giving hearing to both the factions and that it could not have been passed without considering the reasons stated in the earlier order dated 16/3/2019. He also submits that since the faction led by the respondent no.4 was not the authorized Body, the petitioner no.2 could not have been proceeded against departmentally and that no suspension order could have been issued by it.

5) Shri Dharmadhikari, learned Senior Counsel for the respondent nos.4 to 6, countering the above submissions, submits that the respondent no.4 was well within his authority to have initiated departmental enquiry proceedings and also to have suspended the petitioner no.2 as the last recorded President in Schedule I register was Shri Madhukar Abhyankar (respondent no.4) and not the petitioner no.1. He also submits that the order dated 10/3/2021 passed by the respondent no.3 is legal for the reason that during pendency of the proposal of respondent no.4 regarding giving of administrative powers to the candidate suggested by the respondent no.4, the petitioner no.2 was suspended and, therefore, there was no senior-most Teacher available for being appointed as a provisional Principal and as such, no fault could be found with the order dated 10/3/2021 passed by the respondent no.3.

6) Whatever may be the rival submissions, the fact remains, which we have noted earlier, that the dispute between two factions has become more and more boisterous, probably for the reason that the change reports have not been decided by the Assistant Charity Commissioner and we are of the considered view that if an

appropriate decision is taken by the learned Assistant Charity Commissioner in the matter, most of the problems will be sorted out.

7) As regards the order dated 10/3/2021 passed by the respondent no.3 Deputy Director of Education, we must note that this order does not give any such reason, which relates to the necessity arising from suspension of the petitioner no.2. It also does not consider the reasons given in the earlier order dated 16/3/2019 whereby limited administrative powers were conferred upon the petitioner no.2. This order appears to have been passed without giving any opportunity of hearing at least to the petitioner no.1 when at the time of passing of the earlier order, the rival of the petitioner no.1, i.e. respondent no.4 was given an opportunity of hearing. Therefore, on all these grounds, in our opinion, the order dated 10/3/2021 passed by the respondent no.3 must go.

8) In respect of the communication dated 13/3/2020 issued by the respondent no.7, we find that even this communication cannot be upheld by us when the Assistant Charity Commissioner, as seen from his reply, has admitted that the order, which was passed on the inspection report of the Inspector, was confined only to removing of

the display board of the Executive Committee from the College and that it did not say anything about the respondent no.4 being retained as President of the Trust and, therefore, this communication in the nature of an order would also have to be quashed and set aside.

9) In view of above, we find that the aforesaid impugned orders would have to be quashed and set aside and the issues limited to those orders would have to be relegated to the lower Authorities for their appropriate decisions in respect of the same. Since the dispute is being referred back to the lower Authorities, it would also be necessary that the departmental enquiry proceedings as well as suspension order of the petitioner no.2 are stayed for the limited period of time.

10) Accordingly, the petition is partly allowed. The impugned communication in the nature of order dated 13/3/2020 issued by the respondent no.7 and the impugned order dated 10/3/2021 passed by the respondent no.3 are quashed and set aside. So far as the issue of conferment of limited administrative powers is concerned, the matter is remanded back to the respondent no.3 for his appropriate decision in the matter, which he shall take within two months from the date of appearance of parties before him. The

parties shall appear before him on 25th October 2021. It is clarified that the respondent no.3 shall not be influenced by the observations made hereinabove while deciding the issue, which is now remanded back to him and shall decide the issue on its own merits.

The learned Assistant Charity Commissioner is directed to decide the pending change reports in accordance with law after giving due opportunity of hearing to the parties within a period of two months from the date of appearance of the parties before him. The parties shall appear before him on 26th October 2021.

Departmental enquiry proceedings as well as suspension order of the petitioner no.2 are hereby stayed till change reports are decided.

Rule accordingly. No costs.

JUDGE

JUDGE

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