

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2246 OF 2020

PETITIONER :-

1. Nava Yuwak Education, Society, Nagpur, Public Trust duly Registered under the Bombay Public Trusts Act, 1950 on 5/11/1962 vide Registration P.T.R, Number F-475 (N) and Society registered under the Societies Registration Act, 1860 vide Registration Number Maharashtra 151/1962 (Nagpur) Office at New Babulkheda, Kunjilal Peth, Nagpur-400027 through its President Smt.Birjulabai Pandurang Meshram.
2. Manavata High School and Junior College, Kesalvada, Taluka:-Tiroda, District Gondia 441911 through its Head Master.

...VERSUS...

RESPONDENTS :-

1. The Education Officer (Secondary), Zilla Parishad, Fulchurpeth, Gondia 441601.
2. Shri Krishnakumar Maroti Badvaik, aged about 61 years, Occupation:-Retired (Suspended) Head Master of Petitioner No.2-School, R/o Parth Nivas, Keshavnagar, Khat Road, Taluka and District Bhandara 441904.
3. Mr. Andeo Vitthobaji Dongre, aged about 72 years , Occ. Nil, R/o. Plot number

365-A, New Nandanvan Layout, Near
Gayatri Convent, Nagpur 440024.

Mr. Swapnil A. Pathak, counsel for the petitioners.
Mr.K.L.Dharmadhikari, AGP for respondent No.1.
None for respondent Nos.2 and 3.

**CORAM : SUNIL B.SHUKRE &
ANIL L. PANSARE, JJ.**

DATE : 29.11.2021.

ORAL JUDGMENT (Per : Sunil B.Shukre, J.)

Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties. Though respondent Nos.2 and 3 are served, none present on their behalf.

3. The order of suspension dated 21/08/2019 of respondent No.2 was objected to by respondent No.3 before the Education Officer i.e. respondent No.2. Respondent No.2- Education Officer held the hearing on 23rd September 2019 and came to the conclusion that the suspension order having been

passed by only one member out of two Schedule-I members was not sustainable in law. He also found that prior permission of the Education Officer was necessary before issuance of suspension order.

4. According to learned counsel for the petitioners, it is well settled law, as held in the Full Bench decision rendered in the case of *Awdhesh Narayan K. Singh v. Adarsh Vidya Mandir Trust and another*, reported in *2004 (1) Mh.L.J 676*, that prior permission of the Education Officer for issuing suspension order of a school teacher or head master is not necessary. He further submits that when the suspension order was passed, the signatory to the suspension order, Smt.Birjubhai Meshram, was already elected as President of the Managing Committee and her change report was pending before the learned Assistant Charity Commissioner and therefore, no fault could be found with Smt.Birjubhai Meshram signing the suspension order.

5. Shri Dharmadhikari, learned AGP submits that it is also well settled law that it is only the Schedule-I trustees, who would have authority to take decision on behalf of the registered

trust and in the present case, the petitioners could not show that on the date on which the suspension order was issued which was 21st August, 2019, name of Smt.Birjubhai Meshram was recorded in Schedule-I Register as the President of the society. But, he also concedes that as held by the Hon'ble Full Bench, there is no need for the Management to obtain prior permission of the Education Officer for suspending a school employee.

6. The impugned order dated 1st October, 2019, whereby the Education Officer has held suspension of respondent No.2 to be illegal is based upon two grounds. Firstly, there is no document, particularly, the one in the nature of Schedule-I Register of trustees, which would show that Smt.Birjubhai Meshram was the President of the society at the time when the suspension order was issued. Secondly, it was found by the Education Officer that prior permission for issuance of suspension order was necessary.

7. So far as the second ground taken by the Education Officer is concerned, it is squarely covered by the view taken by the Hon'ble Full Bench in the case of *Awdhesh Narayan K. Singh v.*

Adarsh Vidya Mandir Trust (supra) in para-43 of the judgment, the Hon'ble Full Bench has held that "Conjoint reading of Rules 33 and 35 in their entirety leaves no room of doubt that failure to obtain prior permission of education authorities does not affect an action of suspension pending inquiry and it has its repercussions and consequences only in payment of subsistence allowance." Such being the view, we find that the reason given by the Education Officer regarding non-obtaining of his prior permission is inconsistent with the requirement of law and therefore, on this ground, the impugned order dated 1st October, 2021 cannot be sustained. But, matter does not end here.

8. The impugned order also rests on another ground. It states that it could not be reliably ascertained from the material available on record that Smt.Birjubhai Meshram was the President at the time when the suspension order was issued. It is an admitted fact that name of Smt.Birjubhai Meshram had been entered in Schedule-I Register only as the member and not as the President of the society and it continued to be so, till the time the suspension order dated 21st August, 2019 was issued. We must

add here that this position continues even today as admittedly the Change Report showing election of Smt.Birjubhai Meshram as President of the society is still pending and it has not been accepted by the Deputy Charity Commissioner. Therefore, other reason given by the Education Officer in the impugned order cannot be faulted with.

9. The learned counsel for the petitioners relying upon the view taken by the Coordinate Division Bench of this Court in the case of *Adarsh Vidyalaya Shikshan Samiti v. The State of Maharashtra and others*, reported in *2015 SCC OnLine Bom 1162*, argues that submission of the change report is the mere formality and till such time as orders are passed by the Competent Authorities rejecting the Change Report, the newly elected representatives could not be prohibited from functioning and that merely because the Change Report is pending, the old body does not continue and the old body therefore, cannot be permitted to function merely on the count that the Change Report is pending consideration before the appropriate authority.

10. In the said case of *Adarsh Vidyalaya Shikshan Samiti v. State of Maharashtra and others (supra)*, what the Coordinate Division Bench of this Court has held is that merely because the Change Report is pending, it cannot be said that the old body continues and is permitted to function, rather during such pendency of the Change Report, the newly elected representatives could not be prohibited from functioning and this would only mean that the Division Bench, by holding so, has ensured that no crisis occurs in the management of day-to-day affairs and the basic functions of the society or the trust are discharged in accordance with law so that the society or the trust does not come to a sudden halt. This view is, therefore, only in the interest of smooth running of the affairs of the society or the trust with a view to ensure that the society or the trust does not cease to exist. But, this is the reason why the Division Bench has only said that the newly elected representatives can function and nothing more. The Division Bench has not said anything about taking of major policy decisions by the newly elected representatives pending the Change Report and has not granted any permission to the newly elected representatives to effect any permanent change to the

administration of the society or the trust. Suspension of a Headmaster like the petitioner is a major policy decision, which is not expressly permitted to be taken by the said decision in *Adarsh Vidyalaya Shikshan Samiti v. State of Maharashtra and others* (*supra*). This is also in consonance with the settled position of law.

11. In the result, we find no substance in the petition. The petition stands dismissed.

12. Rule stands discharged. No costs.

(ANIL L. PANSARE, J)

(SUNIL B. SHUKRE, J)