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

CRIMINAL WRIT PETITION NO.543 OF 2021

1. Narayana Educational Society,
A Society Registered under the Societies
Registration Act, 1860 and A Public Trust
Registered under the Mumbai Public Trusts Act,
1950
Through its Administrator and Authorized
Signatory
Dr.Roshan Dhore,
Aged about 46 years, occupation service,
Having its Office at:
74, Pioneer Residency Park,
Somalwada, Wardha Road,
Nagpur-15.

2. Narayana Vidyalayam,
Chinchbhavan, Wardha Road,
Nagpur-15.

..... **Petitioners.**

:: VERSUS ::

1. Union of India,
In the Ministry of Human Resource
Development,
Department of School Education and Literacy,
Room No.429-A, C Wing,
Shastri Bhawan, New Delhi,
Through its Secretary.

2. State of Maharashtra,
In the Ministry of School Education and
Sports Division,
Mantralaya Annex,
Mumbai-32,

.....2/-

Through its Secretary.

3. Deputy Director of Education,
Nagpur Division,
Civil Lines, Nagpur-01.

4. Education Officer (Secondary)
Zilla Parishad,
Civil Lines, Nagpur-01.

5. Education Officer (Primary)
Zilla Parishad,
Civil Lines, Nagpur-01.

6. Police Station Officer,
Police Station Beltarodi,
Nagpur City.

..... **Respondents.**

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Shri Anil Mardikar, Senior Counsel with Shri Vishwas S.Kukday,
Advocate for Petitioners.

Shri Shaikh Majid, Counsel for Respondent No.5.

Shri S.S.Doifode, Addl.P.P. for Respondent Nos.2,3,4, & 6/State.

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CORAM : **V.M.DESHPANDE & AMIT B.BORKAR, JJ.**

DATE : **OCTOBER 05, 2021**

ORAL JUDGMENT (Per : Amit B.Borkar, J.)

1. Heard learned senior counsel Shri Anil Mardikar for petitioners, learned counsel Shri Shaikh Majid for respondent No.5, and learned Additional Government Pleader Shri S.S.Doifode for respondent Nos.2,3,4, and 6/State.

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2. **Rule.** Rule is made returnable forthwith. Heard finally by consent of learned counsel for parties.

3. By this writ petition under Articles 226 and 227 of the Constitution of India, petitioners challenge impugned communication dated 17.6.2021 issued by respondent No.5 and also impugned order dated 18.6.2021 by respondent No.6.

4. Facts giving rise to present petition are as under:

On 8.5.2020, respondent No.2 issued Government Resolution thereby providing guidelines for recovery of fees from students due to Pandemic situation. On 3.6.2020, respondent No.4 issued guidelines to headmasters of various schools prescribing manner of collection of fees in pursuance of Government Resolution dated 8.5.2000. It appears that one of institutions challenged Government Resolution dated 8.5.2000 by way of Writ Petition No.3021/2020 wherein the Division Bench of this Court by order dated 1.3.2021 held that Government Resolution dated 8.5.2000 is prospective and cannot be applied to schools which have already fixed their fees for Academic Year

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2020-2021. The Division Bench also clarified that Government Resolution dated 8.5.2000 cannot be construed as a direction for refund of any fees collected for Academic Year 2020-2021. It is clarified by clause (vii) of the order of the Division Bench that protection to parents in respect of Academic Year 2020-2021 shall apply only in the event there is increase in fees fixed in Academic Year 2020-2021 from the fees fixed in Academic Year 2019-2020 and even in such a case only it will increase component of fees and not the entire fees. The Division Bench by way of clause (viii) held that any actions initiated or communications issued against any of petitioner schools or members on the basis of Government Resolution dated 8.5.2000 shall stand withdrawn.

5. On 15.12.2000, respondent No.3 passed an order holding petitioners guilty of charging excessive fees for Years 2017-18 to 2019-2020 and they were directed to refund the amount to parents. The petitioners being aggrieved by the said order filed Writ Petition No.58/2021 before this Court and this Court by order dated 6.1.2021 directed respondents not to take coercive steps against petitioners.

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6. During pendency of the said petition, on 21.5.2021 a group of 40-50 parents approached petitioner No.2 school and sought 100% waiver of school fees. On 25.5.2021, respondent No.5 inspected petitioner No.2 school. On 27.5.2021, petitioner No.2 school filed its reply before respondent No.5 stating that due to Covid-2019 situation they are unable to provide inspection of their premises. However, petitioner No.2 school submitted necessary documents before the said respondent.

7. It appears that respondent No.5 on 17.6.2021 issued a communication to respondent No.6 directing it to register offence against petitioners. On 18.6.2021 respondent No.6 issued impugned notice to petitioners seeking documents which are stating in the said order. Being aggrieved and dissatisfied by communication dated 17.6.2021 issued by respondent No.5 and notice under Section 91 of the Code of Criminal Procedure issued by respondent No.6, petitioners have filed the present writ petition.

8. This Court on 28.7.2021 issued Notices to respondents

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by giving detailed reasons.

9. Respondent No.6 filed its reply on 1.10.2021 stating that respondent No.6 conducted enquiry into issue raised in complaint and respondent No.6 does not find specific allegation in respect of offences under the provisions of the Indian Penal Code. It is pertinent to note that respondent No.6 forwarded all documents including the complaint to the Deputy Director of Education, Nagpur for forwarding it to the Divisional Fees Committee for taking necessary action.

10. On careful consideration of impugned communication dated 17.6.2021 issued by respondent No.5 and also impugned order dated 18.6.2021 by respondent No.6 and on careful perusal of reply filed by respondent No.6, we are satisfied that respondent No.6 has committed serious error in law by issuing Notice under Section 91 of the Code of Criminal Procedure when essential ingredients of Section 91 of the Code are not complied with. The power to issue summon to produce documents would be vested with officer only in relation to investigation, enquiry, trial or other

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proceeding under provisions of the Code.

11. Perusal of complaint dated 17.6.2021, on which cognizance was taken by respondent No.6 issuing order dated 18.6.2021, discloses that respondent No.5 forwarded the complaint filed by 22 parents for registration of offence against petitioners. Respondent No.6 in its notice issued under Section 91 of the Code of Criminal Procedure stated that petitioners have violated order of the Education Officer, Nagpur and the Honourable Apex Court by charging higher amount of fees and have caused mental harassment to students. Before power under Section 91 of the Code was exercised, it was bounden duty of respondent No.6 to satisfy himself about allegations in the complaint of the commission of offence into provisions of the Indian Penal Code which are reflected in notice under Section 91 of the Code of Criminal Procedure. It appears that only allegations against petitioners are to the effect that petitioners have violated order of the Education Officer and the Honourable Apex Court by charging excessive amount of fees. In absence of any other offences being alleged against petitioners or any specific averments

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in relation to commission of offences under the provisions of the Indian Penal Code are against petitioners, Respondent No.6 was not justified in issuing notice under Section 91 of the Criminal Procedure Code. Ultimately, in reply filed on 1.10.2021, respondent No.6 stated that on enquiry, no offence under the provisions of the Indian Penal Code has been made out against petitioners. However, while making the said statement, respondent No.6 stated that he has forwarded all documents including the complaint to the Deputy Director of Education, Nagpur for forwarding it to the Divisional Fees Committee for taking necessary action. We fail to understand under which power Investigating Officer can send such application to the Divisional Fees Committee. Investigating Officer, is entrusted with only those powers which are specifically conferred on him by the Code of Criminal Procedure. Learned Additional Public Prosecutor is unable to point out any power under the Code of Criminal Procedure under which Investigating Officer can send complaint to the Divisional Fees Committee for taking necessary action.

12. In this view of the matter, we are satisfied that

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endeavour of respondent No.6 to send all documents including the complaint to the Deputy Director of Education, Nagpur for forwarding it to the Divisional Fees Committee for taking necessary action is wholly *ultra vires* of his powers conferred under code of criminal procedure. We are, therefore, satisfied that impugned communication dated 17.6.2021 issued by respondent No.5 to respondent No.6 for registration of offence against petitioners and also consequent impugned order dated 18.6.2021 by respondent No.6 under Section 91 of the Code of Criminal Procedure deserve to be quashed and set aside.

13. In view of the above, we pass following order:

ORDER

(1) The criminal writ petition is allowed.

(2) The communication dated 17.6.2021 issued by respondent No.5 to respondent No.6 for registration of offence against petitioners and also impugned order dated 18.6.2021 by respondent No.6 under Section 91 of the Code of Criminal Procedure are quashed and set aside.

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(3) It is clarified that respondent No.6 has no power to send all documents including the complaint received by him to the Deputy Director of Education, Nagpur for forwarding it to the Divisional Fees Committee for taking necessary action.

Rule is made absolute in above terms.

JUDGE

JUDGE

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