

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

WRIT PETITION NO.1735 OF 2021

- PETITIONERS** : **1.** Vinod S/o Narayan Warhekar,
Aged about 58 years, Occu:
Service, R/o Shriram Nagar,
Shegaon, Distt. Buldana.
- 2.** Tulsidas S/o Genduji Pimpale,
Aged about 78 years, Occu: Nil, R/o
Phule Nagar, Shegaon, Distt.
Buldana.

..VERSUS..

- RESPONDENTS** : **1.** Dnyandeo S/o Kisan Shegokar,
Aged about 65 years,
Occu: Agriculturist, R/o Bhoot
Bangla, Shegaon, Distt. Buldana.
- 2.** Rajesh S/o Rambhau Kalore,
Aged about 58 years,
Occu: Business and Agriculturist, R/
o Kalore's Farm, Shegaon, Distt.
Buldana.
- 3.** Rajendrakumar S/o Bhaskarrao
Palhade,
Aged about 44 years, Occu:
Service, R/o Adarsha Nagar,
Shegaon, Distt. Buldana.
- 4.** Mahadeo S/o Irbhan Shegokar,
Aged about 44 years, Occu:
Agriculturist, R/o Dobalves,
Malipura, Shegaon, Distt. Buldana.
- 5.** Surendra S/o Shriram Shegokar,
Aged about 48 years, Occu:
Agriculturist, R/o Dobalves,
Malipura, Shegaon, Distt. Buldana.
- 6.** Vijay S/o Vinayak Kathole,

Aged about 54 years, Occu:
Agriculturist, R/o Phule Nagar
Shegaon, Distt. Buldana.

7. Vinayak S/o Shrikrushna Ghatol,
Aged about 59 years, Occu:
Agriculturist, R/o Near Sitamata
Mandir, Shegaon, Distt. Buldana.
8. Shankar S/o Gotiram Ghatole,
Aged about 57 years, Occu:
Service, R/o Near Charmori Bridge,
Shegaon, Distt. Buldana.
9. Amol S/o Ramdas Chincholkar,
Aged about 38 years, Occu: Occu:
Service, R/o Telipura, Near Sitamata
Mandir, Shegaon, Distt. Buldana.
10. Vinod S/o Narayan Dhanokar,
Aged about 63 years, Occu:
Business, R/o Talpura, Shegaon,
Distt. Buldana.
11. Education Officer (Secondary), Zilla
Parishad, Buldana.
12. Assistant Charity Commissioner,
Buldana.
13. Headmaster,
Mahatma Phule Vidyalaya,
Shegaon, Distt. Buldana.

Shri. R. L. Khapre, Senior Advocate a/w Shri. D. R. Khapre, Advocate for the
Petitioners.

Shri. A. B. Patil, Advocate for the Respondent Nos.1 to 9 and 13.

Shri. N. R. Patil, AGP for the Respondent Nos.11 and 12.

CORAM : **SUNIL B. SHUKRE AND**
SMT. M. S. JAWALKAR, JJ.

RESERVED ON : **5th MAY, 2022.**

PRONOUNCED ON **6th MAY, 2022.**

JUDGMENT : (Per : M. S. JAWALKAR, J.)

. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

3. By this petition, the Petitioners are challenging the order passed by the Assistant Charity Commissioner, Buldhana in Inquiry No.1 of 2021 dated 22.03.2021. The Petitioners are also seeking directions to restrain the Respondent Nos.1 to 10 from taking any major policy decision so also from taking any action with reference to Administration of Mahatma Phule Vidyalaya, Shegaon (hereinafter referred as "the school") run by Mahatma Phule Shikshan Prasarak Mandal, Shegaon, including any action of proceeding with disciplinary enquiry against employee including Petitioner No.1, till decision of rival change reports.

4. The case of the Petitioners in nut shell is as under :

That, both the Petitioners are the Members of Trust namely Mahatma Phule Shikshan Prasarak Mandal (hereinafter referred as “the Trust”), which is registered as Public Trust under the provisions of the Maharashtra Public Trust Act, 1950 (for short, “the MPT, 1950”). The Trust has established the school, which is recognized and grant-in-aid school. The conditions of services of employees are governed by the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, “the MEPS Act, 1977”) and Rules of 1981 framed thereunder. Petitioner No.1 Vinod Narayan Warhekar is an employee of the said school, which is run by the Trust, as a Laboratory Assistant and he is approved permanent Laboratory Assistant. He is also a life member of the Trust. Petitioner No.2 is also a Member of the Trust.

The Respondent Nos.1 to 10 are claiming to be elected Managing Committee as per alleged elections held on 15.10.2000, 21.12.2016 and 05.01.2017.

5. Shri. R. L. Khapre, learned Senior Advocate for the Petitioners submitted that there are serious dispute in management of the Trust. It is further submitted that the Respondent Nos.1 to 10 filed Change Report bearing Change Report Inquiry No.838 of 2000, which came to be disposed of by the learned Assistant Charity Commissioner on 12.03.2008 for want of prosecution. Change Report bearing Change Report Inquiry No.984 of 2011 came to be filed by the Respondent Nos.1 to 10, on the basis of alleged elections held in meeting dated 01.05.2011. Another Change Report bearing Change Report Inquiry No.985 of 2011 came to be filed by the Respondent Nos.1 to 7 alongwith application for condonation of delay in filing Change Report. In the meeting dated 26.06.2011, the Managing Body of the Trust resolved to induct new members in which, Petitioner No.1 Vinod Narayan Warhekar inducted as life member of the Trust. It is further contention of the Petitioners that other faction headed by Dhnyadeo Kisan Shegokar started acting in vengeful and illegal manner with Petitioner No.1 and issued a letter to Petitioner No.1 informing him that behavior and

actions of the Petitioner No.1 are detrimental to the interest of the Trust and his life membership was cancelled. Being aggrieved by the same, the Petitioner No.1 alongwith his brother filed Civil Suit bearing No.72 of 2016 for grant of permanent injunction restraining Respondent No.1 alongwith others from prohibiting the Petitioner No.1 for participating in the proceedings of the Trust as a life member.

6. The learned Trial Court, after hearing both the parties, granted temporary injunction. The said order granting temporary injunction is challenged before this Court by the Respondent No.1 and others vide Writ Petition No.5344 of 2019. The further proceedings were stayed by this Court in RCS No.72 of 2016, till the decision of petition. The said petition was converted into Civil Revision Application. In between, Change Report Inquiry No.74 of 2019 was filed by one Ramesh Rambhau Lokhande on the basis of election held on 07.04.2019. It is claimed that in the said election, the Petitioner No.1 was inducted as a "Secretary" and Petitioner No.2 inducted as a

Member of Managing Committee of the Trust. It is alleged that due to this animosity, the Petitioner No.1 was being victimized and departmental enquiry was initiated against Petitioner No.1 in December, 2020. As many as 2 to 4 change reports of rival factions are pending before the Assistant Charity Commissioner, the Authority to initiate departmental enquiry cannot be given to any trustee. Thus, initiation of disciplinary proceeding by the Respondents is illegal, arbitrary and without any authority.

7. It is further contention that in view of Section 2 sub-section 10 of the MPT Act, 1950, "interested person" includes employee/servant of Trust, and therefore, he is having every right under Section 41-A of the MPT Act, 1950, for seeking directions for better management of the Trust from the learned Assistant Charity Commissioner, Buldhana. The Petitioners filed application before the Assistant Charity Commissioner under Section 41-A of the MPT Act, 1950, seeking direction to appoint committee of fit person as well as for restraining the Respondent Nos.1 to 10 from taking any policy decision and

action with reference to administration of the Trust. By this present petition, the Petitioners are challenging the order passed on that application by which, the Petitioners application under Section 41-A of the MPT Act, 1950, came to be rejected. Shri. Khapre, learned Senior Advocate for the Petitioners, in support of his contentions, relied upon the following citations :

i) Nanda Deo Pandey ..Vs. Committee of Management and Ors., 1991 Supp (2) SCC 264,

ii) Balaji S/o Bhikaji Kapale and another ..Vs.. Punjaji S/o Balaji Tayade and Ors., 2002 (1) Bom. C. R. 155,

iii) Dinkar Shankarrao Patil and Ors. ..Vs.. Sheshrao Shankarrao Patil and Ors., 2008 (3) Bom. C. R. 676,

iv) President, Purohit Sangh and Ors. ..Vs.. Prabhakar Ramchandra Gokhale and Ors., 2004 (Supp.) Bom. C.R. 292,

v) Sandeep Ram Meghe and Ors .Vs.. Punlikrao Balaji Gohad (Dead) and Ors., 2013

(4) Bom. C. R. 420.

8. Per contra, Shri. A. B. Patil, learned Advocate for the Respondent Nos.1 to 9 and 13, vehemently opposed the petition. It is submitted that the application filed by the present Petitioners under Section 41-A of the MPT Act, 1950, itself is not maintainable and so does the present petition. The Petitioner No.1 is trying to mislead this Court by sidetracking the main issue and mixing the issue referring to pendency of two change reports filed by two different sets of Management. Learned Advocate for the Respondents drawn our attention to the application filed by Petitioner No.1 for grant of earned leave. This application is sufficient to demonstrate the kind of conduct, behavior and nature of the Petitioner No.1 in this Court. He has been clearly admitted in the undertaking. It is an admitted fact that the Petitioner No.1 is an employee of the school run by the Trust and it is a grant-in-aid school. The enquiry initiated by the answering Respondents has been initiated under the provisions of the MEPS Act, 1977, and Rules framed thereunder. Therefore, the

question for consideration is that the enquiry has been legally and properly initiated or not, as per the provisions of the MEPS Act, 1977.

9. The learned Advocate further drawn our attention to the relevant provisions i.e. Section 2(12), which defines "Management". It is submitted that in order to initiate departmental enquiry against an employee, the name of person or body of persons need not be on Schedule-I of the Trust. The change reports need not be accepted by the Charity Commissioner, but what is important is that at the relevant time, such person or body of persons must be administering the affairs of the school. The Respondent Nos. 1 to 10 are elected in the election held on 21.12.2016 and administering the affairs of the school. Therefore, the Respondent Nos.1 to 10 and 13 have all the right to initiate the departmental enquiry against the Petitioner No.1 and there is nothing illegal in it. Initiation of departmental enquiry against an employee cannot be a subject matter of an application under Section 41-A of the MPT Act, 1950, neither, it can be termed as major

policy decision. It is further contention of the Respondents that there are many documents, which establishes that the Respondents are administering the affairs of the school, which includes earned leave application filed by the Petitioner No.1 himself, addressing to the school committee constituted by the Respondents. All the bank accounts are also managed by the committee constituted by answering Respondents. All correspondence with Education Department is carried out by the Respondents. Even till 2019 i.e. holding of illegal election by other group and filing of change report, there was no other body claiming to be trustee of the Trust.

10. Learned Advocate further submitted that on perusal of Section 41-A of the MPT Act, 1950, the person under this said Section can be exercised only under three circumstances i.e. 1) improper administration of the Trust, 2) misappropriation and misutilization of income of the Trust and, 3) in case of danger to property of the Trust. As such, the application was rightly rejected as was not maintainable. The filing and pendency of the change

reports are matter of record. However, it has nothing to do with the departmental enquiry of Petitioner No.1. Even if, there is any lacuna in procedure or authority, the remedy is under the MEPS Act, and not under the MPT Act. The learned Advocate, therefore, prayed for dismissal of the petition.

11. We have heard both the parties at length. Perused the documents on record. The rival contentions now fall for our determination.

12. The Petitioners are challenging the order passed by the Assistant Charity Commissioner, Buldhana in Inquiry No.1 of 2021 in respect of application filed by the Petitioners under Section 41-A of the MPT Act, 1950. By this application, the Petitioners sought relief of appointment of committee of fit persons for administration of school, till the decision of rival change reports and also for direction restraining the Respondent Nos.1 to 10 from taking any policy decision and action with reference to administration of school including action of the departmental proceeding against Petitioner No.1. It

is averred in the documents placed before the Court that the Respondent Nos.1 to 10 are managing the affairs of the Trust including Petitioner No.2. The only averment which is made in the application is that two rival change reports are pending before the Assistant Charity Commissioner, Buldhana.

13. It is a contention of the Petitioners that with vengeful attitude, a departmental enquiry was initiated against Applicant No.1. It is admitted that the Applicant No.2 is the member of the Managing Committee. However, there are many documents on record to show that the Respondent Nos.1 to 10 are managing the Trust. Even, Applicant No.1 addressed the application for grant of leave to the school committee constituted by Respondent group of trustees. The Respondent Nos.1 to 10 are also recognized as managing the Trust by the Education Office. The said school run by the Trust is recognized as grant-in-aid school and is governed by the provisions of the Maharashtra Employees of Private School (Conditions of Service) Regulations Act, 1977 and Rules framed thereunder. Section 2(12) of the

MEPS Act, defines “Management”, which reads out as under :

- (a) in the case of a school administered by the State Government, the Department;*
- (b) in the case of a school administered by local authority, that local authority; and*
- (c) in any other case, the person or body of persons, whether incorporated or not and by whatever name called, administering such schools;*

Thus, it can be seen that there is no word trustee used in this Section. Thus, what is relevant and important is that while initiating any action against the employee of the school, body of persons must be administering the affairs of the schools. In the present matter, the only ground which is raised by the Petitioners is that there were rival change reports pending before the the Assistant Charity Commissioner, Buldhana for adjudication. However, nowhere it is claimed or pleaded that there are two groups of persons are managing the schools or then parallel management. The elected body by the election dated 21.12.2016 were managing the Trust.

In the year 2019, Change Report No.74 of 2019 came to be filed by the factions of supporting the Petitioner's side. If Section 41-A of the MPT Act, 1950 is seen, it confers the power on the Charity Commissioner to issue directions from time to time. The said directions may be issued to any trustee to Public Trust or any person connected therewith. Such directions can be issued to ensure that firstly, the Trust is properly administered, secondly, income thereof is properly accounted for or duly appropriated and applied to the objects of the Trust, and thirdly, any property of the Trust is in danger of being wastage, damaged, alienated or wrongfully sold and removed or disposed of. The application under Section 41-A of the MPT, Act, 1950, filed by the Petitioners if perused, admittedly there is no allegation of any wastage, danger of the property or any misappropriation of income. But, only allegation is that there is mismanagement and inappropriate administration of the school. The Applicant praying for appointment of committee of fit persons for administration of Mahatma Phule Vidyalaya, Shegaon. Thus, bare reading of this prayer, it can be

seen that the Assistant Charity Commissioner has no power under Section 41-A of the MPT Act, 1950, to grant such relief. The another direction which is sought is to restrain the Respondent Nos. 1 to 10 from taking any decision or action with reference to administration of the school including action of any departmental proceedings against any employee including Applicant No. 1, till the decision of rival change reports.

14. Admittedly, change reports are pending for adjudication. However, it is not the case of the Petitioners herein that they are managing the Trust. Moreover, on the ground of pendency of change reports, the employees cannot avoid the disciplinary proceedings. In the present matter, initially stay was granted to the departmental proceedings. However, subsequently it was vacated and departmental enquiry was completed. The Applicant No. 1 was terminated from the service. As the Petitioner No. 1 is an employee of the school, which is on grant-in-aid basis, his services will be governed by the MEPS Act. He is having remedy open in the MEPS Act. As

enquiry is already completed, the challenge to the constitution of enquiry has become redundant.

15. The learned Advocate for the Petitioners relied upon the decision in the case of **Nanda Deo Pandey** (supra) is not applicable in this case as departmental enquiry is complete and there is remedy available to the Petitioner to challenge the same before appropriate authority. Petitioners placed reliance on the decision in the case of **Dinkar Shankarrao Patil** (supra). However, in the said judgment, it is made clear that *“prime importance seems to have been given under Section 41-A of the said Act to prevent wastage, damage, alienation or disposal of the trust property, either by the trustee of the registered public trust or person connected with such trust. Removal of trustees, appointment of trustees or committee, to look after the affairs of the trust are not the powers vested with the Charity Commissioner under Section 41-A of the said Act”*.

16. Learned Advocate for the Petitioners also relied on **Sandeep Ram Meghe** (supra) in support of

his contention that *“the Executive Council can remain in office till the new Executive Council is elected only to take care of day to day business of the trust and such body would be care taker body and would refrain itself from taking any policy decisions”*. However, principles laid down in the said citation, is not applicable in the present case as the elected body of 2016 was managing the Trust and in-fact till 2019, there was not even any election by the other fraction of the Trust or any change report by the said group of persons. As such, from 2016 to 2019 admittedly, the Respondent Nos.1 to 10 were managing the affairs of the Trust, which can be seen from the correspondence between education officer, operation of bank accounts, letter by the Petitioner No.1 himself. It is not claimed by the Petitioners that there were two parallel managements managing the Trust. There is no illegality or impropriety in the order dated 22.03.2021 passed by the Assistant Charity Commissioner, Buldhana in rejecting the application under Section 41-A. The learned Advocate for the Petitioners made a statement that he is not pressing prayer Clause (I), which is challenging the order of

Assistant Charity Commissioner. By way of amendment, Petitioners prayed for setting aside report of disciplinary enquiry committee dated 18.06.2021, thereby recommending the termination of services of the Petitioner No.1 and order dated 20.06.2021, thereby services of the Petitioner No.1 came to be terminated. Admittedly, as Petitioner No.1, who is employee of the school will be governed by the MEPS Act, he is having remedy in MEPS Act itself against the termination. The action of initiation of departmental enquiry against employee of the school cannot be said to be a policy decision in respect of the Trust. Thus, in the background of this position that since the election of 2016, the Respondent Nos.1 to 10 alongwith Petitioner No.2 were managing the affairs of the Trust. There is no contention that parallel management is managing the Trust, therefore, otherwise also, there is no question of restraining the trustees, who were actually managing the Trust to refrain from taking policy decision under Section 41-A. Moreover as, at the cost of repetition, initiation of departmental enquiry cannot be said to be a policy decision in

relation to the Trust. Grievance about induction of new members can be agitated by the Petitioners before the appropriate authority. Thus, we decline to grant any relief as prayed for.

17. In view of the above facts and circumstances, the Petitioner No.1 can take recourse as per the provisions of law. He is at liberty to avail such recourse and all rights and contentions including constitution of enquiry committee in respect of the enquiry of the Petitioner No.1 and to challenge termination before appropriate forum are kept expressly open. Accordingly, we proceed to pass the following order :

- i) The petition is **dismissed**.
- ii) All the grounds and challenges in respect of departmental enquiry are expressly kept open to be agitated before the Competent Authority.
- iii) Liberty is granted to Petitioner No.1 to file an appeal under Section 9 of the

Maharashtra Employees of Private Schools
(Conditions of Service) Regulation Act, 1977,
and if, any such appeal is filed by the
Petitioner, the Tribunal shall appropriately
consider the question of limitation by taking
into consideration the provisions made in
Section 14 of the Limitation Act, 1963.

(JUDGE)

(JUDGE)

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