

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

WRIT PETITION NO. 3683 OF 2021

**Amended
name and
address**

1. Saraswati Vidya Mandir Ganoja (Devi),
Tah: Bhatkuli, District Amravati
Mahasaraswati Vidyalaya (Ganoja Devi)
Amravati-44606.

Saraswati Vidya Mandir Ganoja (Devi),
Tah : Bhatkuli, Dist: Amravati,
Management of Mahasaraswati Vidyalaya (Ganoja Devi)
Amravati. Through its Secretary-
Namdeo Bhimrao Kale,
R/o. 6 LIC Colony,
PO Rukmini Nagar, Amravati.
Tal and Dist Amravati-444 606.

2. Namdeo Bhimrao Kale, Secretary (~~Deleted~~)

..... **PETITIONERS**

...VERSUS...

1. State of Maharashtra, through
Additional Chief Secretary, School Education and
Sports Department,
Madam Cama Road, Hutatma Rajguru Chowk,
Mumbai-32.
2. Director of Education,
Secondary and Higher Secondary Education,
Directorate Maharashtra State,
Central Buildings,
Dr. Anee Beasant Road, Pune.
3. Administrator of Mahasaraswati Vidyalaya
(Ganoja Devi), and Education Officer (Secondary),
Zilla Parishad, Amravati.

..... **RESPONDENTS**

Shri M.M.Sudame, Advocate for petitioners.
Ms N. P. Mehta, Assistant Government Pleader for respondent nos. 1 & 2.
Shri A.J.Gilda, Advocate for intervenor.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE :- JULY 04, 2022.

JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The management of the educational institution run by the petitioner-Society was taken over for a period of two years pursuant to an order passed under Section 3(1) of the Maharashtra Educational Institutions (Management) Act, 1976 (for short, the Act of 1976) by the Director of Education on 12.05.2017. The order passed by the Director of Education was challenged in an appeal preferred by the Society under Section 3(4) of the Act of 1976 and the said appeal has been dismissed on 12.02.2021. While dismissing that appeal, it has been directed that the appointment of the Administrator for managing the affairs of the educational institution would continue. Being aggrieved, the petitioner-Society has challenged the said order.

3. Shri M. M. Sudame, learned counsel for the Society submitted that the Director while invoking the provisions of Section 3(1) of the Act of 1976 ordered

that the management of the educational institution was being taken over for a period of two years during which period the Administrator was to look after the management of the educational institution. Pursuant to the said order the Board of Administrators was appointed which took over the charge of the management of the institution on 02.11.2017. The Society had challenged the aforesaid order by filing an appeal under Section 3(4) of the Act of 1976. The appellate Authority while confirming that order directed continuation of the appointment of the Administrator. This order was passed on 12.02.2021 which was much beyond the period of two years for which the management had been taken over initially. On expiry of the period of two years from 02.11.2017 when the management was taken over, the order passed by the Director ceased to operate. There was no legal basis for the appellate Authority to have thereafter directed continuation of the Administrator. As a result of the order passed by the appellate Authority the Board of Administrators has continued beyond the period for which it was initially appointed. Such course was not permissible and the management of the educational institution ought to have been handed over to the Society after expiry of the period of two years. He thus submitted that continuation of the Board of Administrators being contrary to the initial order appointing them was bad in law. The order dated 12.02.2021 passed by the appellate Authority was therefore liable to be set aside.

4. Ms. N. P. Mehta, learned Assistant Government Pleader for the respondent nos. 1 and 2 supported the impugned order. Referring to the affidavit in reply filed by the third respondent, it was submitted that under the provisions of Section 3 of the Act of 1976 the Board of Administrators could continue with the management of the educational institution for a maximum period of five years. The initial order passed by the Director had been subjected to challenge before the appellate Authority. Since the appeal was pending before the appellate Authority and it was decided only on 12.02.2021, the continuation of the Board of Administrators could not be faulted. The maximum period of five years would expire on 06.11.2022 after which the management of the educational institution would be handed over to the Society. Since the order passed by the Director was confirmed by the appellate Authority and the period of five years from taking over the management was yet to expire, there was no merit in the challenge raised to the order passed by the appellate Authority. The writ petition was therefore liable to be dismissed.

Civil Application (W) No. 1265 of 2022 has been filed by the President of Saraswati Vidya Mandir. It is stated in the application that the applicant had participated in the proceedings before the Director and also before the appellate Authority in his capacity as the President. There were various disputes pending between the trustees of the public trust and hence the applicant sought permission to intervene in the writ petition to assist the Court in adjudicating the same. Shri

A.J.Gilda, learned counsel for the applicant thus submitted that the aspect of presence of disputes in the Trust ought to be taken into consideration.

5. We have heard the learned counsel for the parties and we have perused the documents placed on record. After giving due consideration to the rival submissions, we are of the view that the continuation of the Board of Administrators after expiry of the period of two years from taking over of management of the educational institution is unsustainable and the management of the educational institution is liable to be restored to the Society in accordance with law.

6. Under Section 3(1) of the Act of 1976 on the Director being satisfied that the management of any educational institution is liable to be taken over on account of its neglect in performing duties imposed upon the management, the same can be done after giving a reasonable opportunity of showing cause against the proposed action. The management can be taken over for a limited period not exceeding three years. Where the management of an institution has been taken over for a period of three years, it is open for the Director after forming an opinion that such management should continue to direct continuance of such management for a period not exceeding one year at a time. The total period for which such management can be taken over cannot exceed five years. The order passed by the Director is subject to appeal to the State Government under Section 3(4) of the Act

of 1976. The appellate Authority can order restoration of the management or also reduce the period during which the management of the institution shall remain vested in the Administrator. Under Section 8 of the Act of 1976 the Administrator is required to hand over the institution alongwith its property to the Management concerned. It is open for an Administrator to make an application to the Charity Commissioner to settle a scheme of management for proper administration of the institution under Maharashtra Public Trusts Act, 1950.

7. It is an undisputed position that initially on 15.10.2011 the Director had taken over the management of the educational institution run by the Society for a period of two years. However in the appeal preferred under Section 3(4) of the Act of 1976, the Additional Chief Secretary on 28.11.2012 allowed the appeal and set aside the order passed by the Director. Thereafter again by issuing a show cause notice on 18.05.2016 the Director proceeded to order taking over of the management of the educational institution for a period of two years. That order was passed on 12.05.2017 and the management was accordingly taken over on 02.11.2017. The Society in the meanwhile preferred an appeal under Section 3(4) of the Act of 1976 on 06.06.2017. This appeal was pending for a considerable period and ultimately on 12.02.2021 the appellate Authority confirmed the order passed by the Director but observed that no action could be taken for the present to hand over management of the institution back to the Society. It was observed that

the appointment of the Administrator would continue further.

8. As per order dated 12.05.2017 by which the Administrator was appointed for a period of two years, the management was taken over on 02.11.2017. On expiry of the period of two years which would be 01.11.2019, it was necessary for the Administrator to have handed over the management of the institution to the Society under Section 8(1) of the Act of 1976. However at that point of time, the appeal preferred by the Society was pending and the same was decided only on 12.02.2021. Mere pendency of the appeal cannot operate to the prejudice of the Society in the light of the admitted position that the period of two years for which the Administrator was appointed came to an end during the pendency of the appeal. There is no justification in the stand taken by the respondents that as the appeal was pending, the management could not be handed over despite completion of the period for which the Administrator was appointed. The continuation of the Administrator after expiry of the period of two years from 02.11.2017 was thus illegal and against the provisions of the Act of 1976.

9. On the expiry of the period for which the Administrator was appointed the appellate Authority ought to have decided the appeal keeping that aspect in mind. On the contrary, the appellate Authority has proceeded to direct continuation of the Administrator beyond the period for which the Administrator was appointed by the Director without there being any such statutory power

conferred. If at all the Administrator was to be continued beyond the period of two years, it was necessary for the Director to have arrived at his satisfaction as required by the first proviso to Section 3(1) of the Act of 1976. Section 3(4) of the Act of 1976 does not permit the appellate Authority to further extend the period for which the Administrator has been appointed by the Director, that too in the appeal preferred by the aggrieved Society. In other words, the Society by filing an appeal has been placed in a worse position than it was if it would not have challenged the order passed by the Director. As held in *Pradeep Kumar vs. Union of India and others [(2005) 12 SCC 219]* a party cannot be put in a worse position by availing of legal remedy than it would have been by not availing such remedy. On this count also, the order passed by the appellate Authority is liable to be set aside. In any event, the order dated 12.02.2021 passed by the appellate does not indicate that the Society was put to notice that the appointment of the Administrator was proposed to be extended beyond two years or that the position prevailing after expiry of two years from 02.11.2017 was considered by the Director so as to warrant continuation of the Administrator.

10. Hence for aforesaid reasons the order dated 12.02.2021 passed by the appellate Authority directing continuation of the Administrator beyond the period of two years as directed by the initial order dated 12.05.2017 passed by the Director cannot be sustained. It is held that the Administrator as ordered to be

appointed by the Director was only for a period of two years. The order dated 12.02.2021 is set aside being illegal. In these facts it is not necessary to enter into the merits of the stand of the applicant seeking impleadment.

The respondent no.3 shall within a period of one week from receipt of copy of this judgment hand over the institution alongwith the property of the institution to the Society in accordance with the provisions of Section 8 of the Act of 1976.

Rule is made absolute with aforesaid directions with no order as to costs.

Civil application is also disposed of.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

Andurkar..