

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

920 WRIT PETITION NO.2776 OF 2023

SHRI SHIVAJI MOFAT EDUCATION SOCIETY THROUGH ITS
PRESIDENT PURUSHOTTAM KESHAVRAO DHONDAGE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.R.S.Deshmukh, Senior Counsel a/w Mr.Kunal Kale i/b Mr.Amol Joshi
and Mr.Devang Deshmukh, Advocates for the petitioner.
Mr.D.R.Kale, GP for the respondent/State.
Mr.R.N.Chavan, Advocate for respondent No.5.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : MARCH 9, 2023

PER COURT :

1. The issue raised in this petition is as regards the jurisdiction vested in the Deputy Chief Minister of the State of Maharashtra to interject with the selection process of 17 Associate Professors in the Educational Institutions operated by the Petitioner Shivaji Mofat Education Society, Taluka Kandhar.

2. Respondent No.5 had tendered a representation dated 21.02.2023 to the Deputy Chief Minister, who in turn had directed that

the selection process be stayed, without issuing notice to the Education Trust and without there being any proceedings before him, save and except a personal letter addressed by Respondent No.5. The letter addressed by respondent No.5 to the Deputy Chief Minister dated 21.02.2023, bearing the remarks of the latter, is taken on record and marked as X-1 for identification.

3. The Petitioner has relied upon a judgment of the Division Bench of this Court, at Nagpur dated 03.03.2023 in WP No.8041/2022 wherein similar circumstances pertaining to the order of the Chief Minister interjecting in the selection and appointment of employees, was dealt with. There was no hearing granted to any of the stake holders. No notices were issued. The Chief Minister did not hold the portfolio of the Co-operation Department. This Court, therefore, concluded in paragraph No.60 as under :-

"60. Admittedly, the Chief Minister was not the head of the Co-operation Department, but the said department was assigned to a separate Minister. There is no authority/power vested in the Chief Minister as per Rules of Business and Instructions to have supervisory powers over the decision taken by the concerned Minister. Nor do the Rules indicate that the Minister is subordinate to the Chief Minister as regards independent functioning of a department assigned to him by

the Rules. Obviously, subordination must be express either by a Statute or the Rules of Business. Once the powers are distributed by the Rules of Business and Instructions, there must be an express provision authorizing the Chief Minister to indulge in the matter assigned to the particular Ministry. Since a Minister-in-charge of a department is supposed to function for the concerned department, he is responsible for the affairs thereof and his orders would assume the character of an order passed by the State Government. There is no provision in the Business Rules to go beyond allocation of work. Rule 15 of the business Rules specifies the classes of cases which shall be submitted to the Chief Minister before issuance of orders, but the concerned subject does not fall within specified subjects contained therein. No doubt the order of granting permission for recruitment is of administrative nature which can be reviewed, but only by the In-charge-Minister. The intervention of the Chief Minister is not authorized under the Business Rules and the Instructions issued thereunder. The Intervention of the Chief Minister is wholly unwarranted and without the authority of Law. The Chief Minister has no independent power under the Business Rules and Instructions to interfere into the subject which was allocated to the Incharge Minister."

4. In the present case, it is purely a personal communication on the letterhead of the Petitioner Educational Society, which is addressed by Respondent No.5 to the Deputy Chief Minister.

5. It is now informed that the same Respondent No.5 has addressed a communication to the Deputy Chief Minister alongwith the present Petitioner, who is the President of the Educational Society, requesting that the earlier order passed by the Deputy Chief Minister (undated) staying the selection process, be withdrawn. Copy of the said letter is taken on record and marked as X-2 for identification.

6. The learned Advocate representing Respondent No.5 submits that the documents X-1 and X-2 were signed and tendered by him. This petition can be disposed off by setting aside the earlier order of the Chief Minister passed on X-1 .

7. In addition to the above, he prays to the Petitioner to delete paragraph Nos. 20, 21 and 22 from the memo of the petition. The learned Senior Advocate submits, on instructions from the Briefing Counsel, who has taken instructions from the President of the Petitioner and who is the signatory to X-2, that the Petitioner is agreeable and paragraph Nos.20, 21 and 22 shall be deleted and be treated as deleted from the memo of the petition.

8. In view of the above, this petition is partly allowed by consent and the order passed by the Deputy Chief Minister at X-1 stands set aside. Consequentially, the impugned communication by the Deputy Secretary dated 27.02.2022 and the impugned letter dated 01.03.2023 issued by Respondent No.3 / Joint Director, Higher Education, Nanded Region Nanded stand quashed and set aside.

9. The learned AGP would communicate this order to Respondent Nos. 2 and 3.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)