

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

35 WRIT PETITION NO.7002 OF 2023
WITH CAST/20934/2023 IN WP/7002/2023

- 1) Gramvikas Shikshan Mandal Marwad,
Tq. Amalner, Dist. Jalgaon, Through
Its President Shri. Jaywantrao Mansaram
Patil, Age 71 years, Occ. Agriculture,
R/o. Amalner, Tq. Amalner, Dist. Jalgaon.
 - 2) Laxmikant Namdeo Saindane,
Age 53 years, Occ. Service,
Principal S.H. Mundada High School
and Smt. D.F. Salunke Junior College
Marwad, Tq. Amalner, Dist. Jalgaon.
- ... **Petitioners**

VERSUS

- 1) The State of Maharashtra
 - 2) The Director of Education Maharashtra
State, Central Building Pune.
 - 3) The Deputy Director of Education
Nashik Region, Nashik.
 - 4) The Education Officer (Secondary)
Zilla Parishad Jalgaon, District
Jalgaon.
- ... **Repondents**

...

Advocate for the Petitioners : Mr. V.D. Hon, Senior Advocate i/b Mr. Ashwin
Vinayak Hon.

A.G.P for the Respondent Nos. 1 to 4 : Mr. P.S. Patil

Advocate for Intervenor : Mr. Sachin S. Deshmukh

CORAM : **MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : **10.07.2023**

PER COURT :

Heard. Rule. Rule is made returnable forthwith. The learned

A.G.P waives service for the respondent Nos. 1 to 4. He also tenders across the Bar an affidavit in reply. It is taken on record.

2. There is an intervention application filed by one of the teachers from out of the three schools being run by the petitioner No. 1-management.

3. The petitioner No. 1-management, by a resolution has transferred the petitioner No. 2 who is a headmaster from one school to the other school. By the impugned order the respondent No. 4-Education Officer (Secondary) has refused to grant approval on the ground that he was informed by the office of the Charity Commissioner that there was a dispute amongst the management members and the dispute was pending adjudication. Over and above, he called upon the petitioner No. 1-management to send a proposal in respect of the senior most teacher from the school to which the petitioner No. 2 has been transferred. Incidentally, the intervenor *prima facie* being the senior most teacher from the school is aggrieved.

4. Though there is a reference to a Government circular dated 06.03.2010 pertaining to authorizing the Education Officer to consider aspects pertaining to few matters like processing the pension papers etc., that list does not contain a situation where approval is sought for the transfer of a headmaster from one school to the other school being run by the same management.

5. It is also apparent that even before the proposal was received by the respondent No. 4-Education Officer(Secondary) regarding transfer, he had undertaken an enquiry with the office of the Charity Commissioner and was informed inability of that office to opine about the fact as to which is the body legally in the office.

6. There are certain circulars/communications whereby the Director of Education seems to have attempted at regulating the situations where there are disputes amongst the managing committee members of the management

running the schools. In our considered view, such internal communication would not take the place of law. The conduct of the respondent No. 4-Education Officer (Secondary) in refusing to consider the proposal for transfer only on the ground of dispute amongst the Managing Committee Members, in our considered view is not legally acceptable. We do not intend to impress upon him anything. But to our mind, legality or otherwise of the resolution whereby the petitioner No. 2 has been transferred from one school to the other would be the crux of the matter. It would, therefore, be necessary in all such similar cases wherever there is a proposal seeking approval to either appointment or transfer, the Education Officer will have to go into the aspect of legality and sustainability of the resolution whereby the employees are appointed or transferred.

7. Pertinently, the impugned order does not expressly state as to if the Education Officer had received some grievance from anybody much less the rival faction in the managing committee questioning the legality of the resolution. In the absence of any such stand being taken by anybody, in our view, the Education Officer without going into the aspect of legality of the resolution could not have refused to grant approval simply because the office of the Charity Commissioner was unable to opine as to which was the managing committee which was in the office and was managing the affairs of the Trust.

8. In the light of the above, the impugned order is not sustainable. It is liable to be quashed and set aside and the matter deserves to be relegated to the respondent No. 4-Education Officer (Secondary).

9. The Writ Petition is partly allowed. The impugned order is quashed and set aside. The matter is remitted back to the respondent No. 4-Education Officer (Secondary) Zilla Parishad Jalgaon, who shall undertake a fresh scrutiny and shall pass a fresh order but shall not reject it for the reason mentioned in the impugned communication/order. The decision

shall be taken as expeditiously as possible and in any case within four weeks from today.

10. Pending Civil Application (St) No. 20934/2023 is disposed of.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-