

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11062 OF 2023

1] Mataji Educational Institution,
Through its Secretary,
R/o. Waghala CIDCO,
Tq. and Dist. Nanded

2] Head Master,
Secondary & Higher Secondary
Ashram School Waghala,
Tq. & Dist. Nanded

.. Petitioners

Versus

1] State of Maharashtra,
Through its Deputy Secretary,
Other Backward Bahujan Welfare Department,
Mantralaya, Mumbai 400 032

2] The Regional Deputy Director,
Other Backward Bahujan Welfare Department,
Dist. Latur

3] Assistant Commissioner,
Social Welfare Department,
Dist. Nanded

4] Shaikh Abdul Sattar S/o Abdul Rajjak,
Age : 40 years, Occu. Service,
R/o. Deshmukh Nagar, Tq. Biloli,
Dist. Nanded

.. Respondents

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Advocate for petitioners : Dr. R.J. Godbole
AGP for the respondent – State : Mr. S.R. Yadav – Lonikar
Advocate for respondent no. 4 : Mr. Shantanu Deshpande

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**CORAM : MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

DATE : 10 NOVEMBER 2023

ORAL ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner – management has been running a residential school (Ashram School) governed by the Ashram School Code (**Code**). It is challenging the communication dated 21-08-2023 addressed to the respondent no. 2 – Regional Deputy Director, Other Backward Bahujan Welfare Department, by the respondent no. 1 – Deputy Secretary of the Other Backward Bahujan Welfare Department *inter alia* directing the appointment of the respondent no. 2 as an administrator over the ashram school being run by the petitioner and further soliciting a proposal for cancellation of the permission granted to the school.

3. Learned advocate for the petitioners points out that though the impugned order expressly mentioned as to under which provision the order / communication was being issued, the action of the appointment of an administrator on a ashram school could only be traced to clause 3.2 of the Code read with section 3 of the Educational Institute Management Act, 1976 (**Act**). He submits that even the

affidavit in reply is conspicuously silent as to under which provisions of law the impugned communication has been issued.

4. The learned advocate would submit that in the light of both these provisions, clause 3.2 of the Code and section 3 of the Act, only the Assistant Director or the Assistant Commissioner or District Social Welfare Officer and the Director, respectively, have been conferred with the powers to appoint an administrator. He would point out that the impugned communication has been issued by the respondent no. 1 who is the Deputy Secretary of the Other Backward Bahujan Welfare Department on his own, appointing the respondent no. 2 – Regional Deputy Director, Other Backward Bahujan Welfare Department as an administrator. He would submit that the impugned communication appointing the administrator is *de hors* the provisions of law and the respondent no. 1 was not competent to pass any such order or issue any direction regarding appointment of the administrator.

5. Independently, the learned advocate for the petitioner would submit that accepting the stand of the authorities in the impugned communication as also in the affidavit in reply, a drastic decision has been taken for the misconduct of one of its teachers and the allegations about the headmaster having connived with that teacher. If it is a question of management of the school, even if it is assumed that the headmaster and the teacher had connived wherein

the latter, in spite of having been engaged in the school had secured some employment elsewhere for some time, the management cannot be blamed.

6. He would submit that according to the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977 (**MEPS Act**), necessary steps can be taken against the headmaster and the teacher, however, that in itself cannot fit in to the pre-requisites which would justify action of appointment of administrator as envisaged in clause 3.2. None of the grounds contemplated therein was available to take recourse for appointing the administrator. He would, therefore, submit that apart from the jurisdictional error, even factually there existed no grounds to invoke the powers under clause 3.2.

7. The learned AGP referring to the affidavit in reply would submit that there was serious irregularity in the management of the school. The headmaster in connivance with the teacher had acted to the detriment of the welfare of the school. A teacher could work at two places simultaneously and even earned salary from the Central as well as the State government. The action was required to proceed against them under the provisions of the MEPS Act which was not done and this had prompted passing of the impugned order appointing the administrator.

8. The learned AGP would further submit that considering the wording of clause 3.2 of the Code, even State government could appoint the administrator. There was no error of jurisdiction in passing the order.

9. The learned AGP, in addition, would submit that already the charge has been taken over by the respondent no. 2 on 29-08-2023 and the teachers are happy in the management being undertaken by him.

10. We now proceed to deal with the rival submissions.

11. Obviously, neither the impugned order nor the affidavit in reply expressly mention as to under which provision the impugned order / communication has been issued for appointing the administrator. In the absence of which, since it is a matter regarding appointment of administrator over an ashram school governed by the Code, all such powers could only be traced to clause 3.2. Clause 3.2 of the Code, made available to us is in Marathi, and roughly translated, reads as under:-

“3.2 Appointment of Administrator

As per the provisions of the Maharashtra Educational Institutes (Management) Act, 1976 or the rules, government decisions, orders issued by the Government from time to time in this regard, Assistant Director/Assistant Commissioner (Group A/B), may appoint an administrator or a board of administration comprising of District Social Welfare Officer (Group A/B), Authority running Excellent Ashram Schools or the Principal or the Administrative Board/Committee comprising more than one member or the Authority appointed by the Government for following reasons:-

i) Disputes or disagreements in the management of a government-recognised registered organization

ii) Not providing necessary physical facilities to the students.

iii) Academic loss of the students due to internal disputes or disagreements within the institution.

iv) Disagreement or disputes between the institution and the Ashram School staff.

v) Educational loss to students and staff due to mismanagement in the institution/ ashram school

vi) Institution/Ashram/Management not complying with the rules and regulations of the government

vii) Difficulty for the institution/management to run the day-to-day operations of the ashram school

viii) Neglect of the institution/management towards the ashram school, staff and the students.

ix) Not making adequate arrangements for accommodation, food, breakfast etc. of the students

x) Not protecting students, not taking care of their health, starving of the students, physically and mentally abusing the students

xi) Financial exploitation of staff, students and parents

xii) Embezzlement of the government funds, amounts

12. A plain reading of this provision clearly shows that it is only the Assistant Director or the Assistant Commissioner (Group A / B) or District Social Welfare Officer (Group A / B), who have been empowered to appoint the administrator which can be the officers of the management running an ashram school or a board consisting of headmaster and one or more of the members or a government nominee. The impugned communication issued by the respondent

no. 1 to the respondent no. 2 is in the reverse order. The secretary of the Other Backward Bahujan Welfare Department has by the impugned communication appointed the respondent no. 2 who is the Regional Deputy Director as the administrator. Irrespective of the sustainability of the reason for invoking the power under clause 3.2, when this provision expressly requires and empowers only the specific authorities to pass the orders, the impugned communication / order is clearly sans any power.

13. Again, even if the afore-mentioned aspect is overlooked for the sake of arguments, clause 3.2 lays down 12 instances as a *sine qua non* for invoking the power for appointment of an administrator. Ex facie, the allegations about a teacher having worked at two places to the knowledge of the headmaster is a circumstance not contemplated in any of these clauses. Even the impugned communication does not expressly mention as to under which of these categories alleged misconduct of the teacher and the headmaster would fall. Even the affidavit in reply is conspicuously silent and does not seek to address this issue.

14. If such is the state-of-affairs, where the impugned order appointing the administrator has originated in the office of the respondent no.1, who had no power to pass it by resorting to clause 3.2 and when the reasons which had prompted him to pass the order

cannot fit in to the categories of the instances covered by that clause , the impugned order, besides being without power, is not sustainable on merits.

15. The writ petition is allowed.

16. The impugned order is quashed and set aside. If the charge has been taken over by the respondent no. 2, it shall be immediately restored to the petitioners.

17. Rule is made absolute in the above terms.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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