

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 135 OF 2022

WITH

INTERIM APPLICATION NO. 30573 OF 2022

IN

WRIT PETITION NO. 135 OF 2022

Balwant Mahadev Babar

...Petitioner

Versus

The State of Maharashtra through Education Minister, Maharashtra State and Ors ...Respondents

SHEPHALI
SANJAY
MORMARE

WITH

WRIT PETITION (ST) NO. 28604 OF 2022

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Mohan Balwant Lavate & Ors

...Petitioners

Versus

The State of Maharashtra through Department of Education & Ors ...Respondents

Mr RG Panchal, *with Mohan Rawat & SS Gundajwar, for the
Petitioner in WP/135/2022.*

Mr Vishal Kanade, *with T Patankar, i/b Prabhakar Jadhav, for the
Petitioner in WPST/28604/2022.*

Mr NC Walimbe, AGP, *for State in both WP.*

**CORAM G.S. Patel &
Dr Neela Gokhale, JJ.**

DATED: 30th January 2023

PC:-

1. The basic facts in these two Petitions are not in dispute. In Writ Petition No. 134 of 2022, the Petitioner, Balwant Mahadev Babar seeks these reliefs:

“(a) This Hon’ble Court be pleased to issue writ of mandamus, directions, order or any order or directions in the nature of a writ of mandamus, and thereby direct the respondents to hand over the institution, namely ‘Shri Ashokrao Desai, Krishi Vidhyalay, Alegao, Taluka Sangola, District Solapur, together with the property of the institution to the Petitioner/Management, u/s 8(1) of Maharashtra Educational Institutions (Management) Act, 1976 to the Petitioner, in view of the expiry of the period of two years for which the management of the aforesaid institution had been taken over vide order dated 3.1.2018; by quashing and setting aside the impugned orders dated 18th April 2022 and 10th May 2022.

(b) This Hon’ble Court be pleased to direct the Respondents to suitably compensate the petitioner and further be pleased to direct Respondent No.1 to take suitable action against the officers concerned who have shown disobedience to the direction of law under 8(1) of Maharashtra Educational Institutions (Management) Act, 1976 to the Petitioner, by way of illegally retaining the institution even after expiry of the period for which administrator was appointed.

2. In Writ Petition (St) No. 28604 of 2022, the nine Petitioners seek these reliefs:

“(a) In its Jurisdiction under Article 226 of the Constitution of India, be pleased to issue a Writ of Mandamus or any other Writ, Order or Direction and direct

the Respondent No.2 herein to extend the appointment of the Administrator appointed to the Respondent School through order of Respondent No.2's beyond 10th January 2023.

(b) In the alternative, in its Jurisdiction under Article 226 of the Constitution of India, be pleased to issue a Writ of Mandamus or any other Writ, Order or Direction and direct the Respondent No.2 herein to appoint the administrator once again as envisaged under Section 3(1) of the Maharashtra Educational Institutions (Management) Act, 1976.

(c) In its Jurisdiction under Article 226 of the Constitution of India, be pleased to issue a Writ of Mandamus or any other Writ, Order or Direction and direct the Respondent No.2 herein to make an application to the Charity Commissioner to settle a scheme of management in the interest of the proper administration of the institution.”

3. Mr Kanade for the Petitioners in Writ Petition (St) No. 28604 of 2022 restricts his relief to prayer clause (c).

4. There is no dispute that the Ashokrao Desai Krishi Vidyalaya School has been under an administrator or in administratorship since 10th January 2018. We are leaving aside the questions of why this came to pass because of the Affidavit in Reply filed in Babar's Petition on behalf of the State Government. Babar's case is that such an order cannot continue indefinitely. It can continue for two years. That period expired on 7th January 2020 and the Respondents were required to hand over the institution under Section 8(1) of the Maharashtra Educational Institutions (Management) Act 1976. Babar's complaint is about the delay.

5. The Affidavit in Reply by the State Government says that the Covid-19 pandemic delayed matters. All existing processes continued in status quo. The Director, Secondary and Higher Secondary, Pune, recommended an extension of the post of administrator for three years from 10th January 2020. That period was extended thus till 10th January 2023 by a letter dated 18th April 2022 passed under Section 3(1) of the 1976 Act. Even that period has expired.

6. The question is not about whether the administration should be handed back, but to whom. Babar claims that he is the president of the Vidyalaya in question. He also says he is the president of the Samajik Sanskrutik Congress, Maharashtra, Branch Alegaon, Taluka Sangola, District Solapur. At the forefront of the Petition, he lays claim to philanthropy and good works. In fact, the Petition begins by the recitation of some verse by Khalil Gibran. This does not actually paper over what the Petitioners in Writ Petition (St) No. 28604 of 2022 have to say about Babar, namely that there are allegations of great seriousness against him personally and misconduct on his part.

7. Sections 4 and 8 of the 1976 Act read thus:

“4. Administrators.—

(1) The Director shall, with the approval of the State Government appoint one or more Administrators, to manage the educational institution, taken over under section 3. Where more than one Administrator are appointed, the State Government may, by order in writing assign sphere of his duties to be performed by each Administrator, subject to such directions as the Director may from time to time think fit to give in this behalf.

(2) The Administrator shall be a person who has experience of managing an educational institution or, who possesses such other qualifications as the State Government may by order specify.

(3) The terms and conditions of service of an Administrator appointed under this section shall be such as the State Government may by order in writing determine and different terms and conditions may be determined for different Administrators depending on the nature of duties which may be assigned to him.

(4) The Administrator shall as far as practicable consult the Committee in respect of the affairs of the administration or management of the institution, and be guided in all such matters by its advice, unless for reasons to be recorded in writing he disagrees with the advice of the Committee. If he disagrees, then he may disregard the advice of the Committee, but he shall inform the Director of the disagreement and the action taken by him. If the Director does not approve the action taken by the Administrator, the Director shall issue such directions as he thinks fit, and the Administrator shall comply with such directions.

8. Handing over of institution back to management.

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(1) After the expiry of the period for which the management of any institution has been taken over, the Administrator shall, subject to the provisions of sub-section (2), hand over the institution together with the property of the institution to the Management concerned.

(2) Before handing over the institution to the Management, the Administrator may make an application to the Charity Commissioner to settle a scheme of management in the interest of the proper administration of the institution; and thereupon, the provisions of section 50-A of the Bombay Public Trusts Act, 1950, shall apply, as

they apply in relation to a scheme settled by the Charity Commissioner under that section.

(3) If the Management fails to administer the institution according to the scheme of management settled by the Charity Commissioner, the institution shall be liable to be taken over under this Act:

Provided that, no institution shall be taken over for management again, unless the Management has been given a reasonable opportunity of being heard.”

8. We believe it would be imprudent to direct the State Government to hand over the institution to Babar. We believe Mr Kanade is correct in his submission that the *Assistant Charity Commissioner* should settle a scheme of management in the interest of proper administration and thereupon the provisions of Section 50-A of the Maharashtra Public Trusts Act 1950 would apply. The administrator who is represented before us today by learned AGP will thus make the necessary application before the *Assistant Charity Commissioner*, Mumbai on or before 24th February 2023.

9. We request the *Assistant Charity Commissioner* to consider that application and to pass a reasoned order thereon at the earliest possible and, in any event, by 31st March 2023 formulating a scheme under Section 8(2). The contentions of all concerned are expressly kept open before the *Assistant Charity Commissioner*. The *Assistant Charity Commissioner* will identify the person, persons or body to whom the administrator must hand over charge. Until the *Assistant Charity Commissioner* makes his decision, the administrator in question will continue.

10. The Petitions are disposed of in these terms.

11. The pending Interim Application is infructuous and does not survive.

(Dr Neela Gokhale, J)

(G. S. Patel, J)

Note: This order is modified as per order dated 16th March 2023. The corrections are shown in bold and italics.