

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12602 OF 2023

Shree Shivaji Shikshan Sanstha, Diskal
Having Registration No. NSA 63,
Taluka – Khatav, District -Satara,
Pin – 415 504

Through its Chairman

Shri. Pradip Ramchandra Godse,
Age – 43 Years, Occupation – Social Service,
Taluka- Khatav, District -Satara,
Pin – 415504

... Petitioner

Versus

1. The State of Maharashtra
[Summons to be served on the Learned
Government Pleader appearing for State of
Maharashtra under Order XXVII, Rule 4, of
the Code of Civil Procedure, 1908]
2. Department of Education,
[Summons to be served on the Learned
Government Pleader appearing for State of
Maharashtra under Order XXVII, Rule 4, of
the Code of Civil Procedure, 1908]
3. Director of Education (Pune),
[Summons to be served on the Learned
Government Pleader appearing for Stat of
Maharashtra under Order XXVII, Rule 4, of
the Code of Civil Procedure, 1908]
4. Deputy Director (Kolhapur),
[Summons to be served on the Learned

Government Pleader appearing for State of Maharashtra under Order XXVII, Rule 4, of the Code of Civil Procedure, 1908]

5. Education Officer (Satara)

[Summons to be served on the Learned Government Pleader appearing for State of Maharashtra under Order XXVII, Rule 4, of the Code of Civil Procedure, 1908

... Respondents

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Mr.Rushikesh C. Barge for the Petitioner.

Mr.R.P.Kadam, AGP for Respondent Nos. 1 to 5 –State.

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**CORAM : NITIN JAMDAR &
MANJUSHA DESHPANDE, JJ.**

DATE: 13 OCTOBER 2023

ORAL JUDGMENT:

Rule. Rule made returnable forthwith The Respondents waive service.

2. This is yet another matter where the Petitioner has to approach this Court despite substantive remedy of the Appeal to the State Government being availed by the Petitioner, yet no orders are passed by the State Government. In this case, the situation is even worse; keeping the Appeal and Application of stay pending and adjourning it from time to time, the same department has taken adverse steps against the Petitioner.

3. The Maharashtra Educational Institutions (Management) Act, 1976 (the Act of 1976) permits taking over management of the property of certain educational institutions for a limited period in the public interest. Section 4 of the Act of 1976 empowers the Director, with the approval of the State Government, to appoint an Administrator to manage the educational institution. As against the order of appointment, section 3(4) of the Act of 1976 gives the opportunity to the Management aggrieved by the order of the Director passed under section 3(1), to file an appeal before the State Government within fifteen days from the date of receipt of order of the Director. Section 3(1) of the Act of 1976 states that if the Director is satisfied that the Management of any educational institution has neglected to perform any of the duties imposed or the institution is being managed in a manner detrimental to the interest of education, then the Director can take over the Management of such institution.

4. The Government Resolution dated 15 October 2012 outlines the procedure to be followed while appointing an Administrator. The Government Resolution refers to the order passed by the Division Bench of this Court at Nagpur Bench in Writ Petition No. 1332 of 2009 dated 26 March 2009 wherein the Division Bench has stated that the Management which is aggrieved by the order of the Director of taking over management has a right of appeal to the State Government. It refers to section 3 of the Act of 1976 and states that

when the Administrator is to be appointed, a decision is taken under section 3(1) of the Act of 1976. Thereafter, the Director recommends the names for the Administrator and the Advisory Committee to the State Government, which approves the names after considering all aspects. Thereafter, if the Appeal is filed to the State Government, the State Government can hear the Appeal and take necessary decisions.

5. Considering this position and the order passed by the Division Bench in Writ Petition No. 1332 of 2009, the State Government issued certain directives on 15 October 2012. The directives issued under this Government Resolution are as follows: The orders passed under section 3(1) of the Act of 1976 would be a speaking order. Since there is an opportunity to file an Appeal after the order is passed by the Director, the Authority should be given 15 days to the Management. If the Management files an Appeal, the State Government will pass necessary orders after hearing the matter. If no Appeal is filed or the Appeal is dismissed, then the Director will recommend the names of the persons specified as the Administrator and Advisory Members to the State Government.

6. The procedure laid down in the Government Resolution balances the need to appoint an Administrator for the betterment and improvement of the quality of education as against the management's right. This exercise is expected to be completed in a

time-bound manner. Yet several Petitions are filed in this Court only with a grievance that the Appeals are kept pending by the State Government (the Hon'ble Minister) and they should be disposed of at an early stage.

7. The Petitioner itself had filed one such Petition, Writ Petition No. 10899 of 2023, which had come up for consideration on 4 September 2023 before this Division Bench. Instead of passing an order setting a period, we had given an opportunity to the State Government to inform as to within how much time an Appeal would be decided. On 11 September 2023, a communication issued by one A.R.Rajput, Under Secretary, State of Maharashtra, Education Department, was taken on record wherein it was stated that the Appellate Authority would take a decision within three months and, therefore, the Petition was disposed of based on this statement. At that time, the Petitioner had stated that the Application for interim relief should be taken up early by the Hon'ble Minister of Education. We had observed that upon request so made, the Application for interim relief will be taken up at an early date by the Appellate Authority. When we had given liberty to the Petitioner to make an Application for an early hearing of the Application for interim relief, the learned Counsel for the Petitioner states that the request was immediately made. The date of 13 September 2023 was given. It was adjourned and posted on 27 September 2023 again. Thereafter, it is again adjourned, but no date is given.

8. As of today, neither the Appeal nor the Application for interim relief is decided. Keeping this Appeal and the Application for interim relief pending, the matter has proceeded further. On 23 September 2023, the Director recommended the name of the Administrator and the Advisory Board. Thereafter, an order was passed on 9 October 2023. The order dated 9 October 2023, tendered by the learned Counsel for the Petitioner, is taken on record. It is to be noted that it is on the recommendation of Mr. A.R. Rajput, Under Secretary, State of Maharashtra, Education Department of 1 September 2023, all these developments were not informed to the Court. Therefore, keeping the Appeal and the Application for interim relief pending, the State has virtually nullified the Appeal and the Application for interim relief.

9. Even today, the learned AGP states that the Appeal will be disposed of in a time-bound period. To date, the application for interim relief is also not considered. Meanwhile, regardless of this pendency, the matter has moved. Such a position cannot be countenanced. We place our strong disapproval on record. It is not possible to believe that the same department, the officer who gave instructions to the office of the Government Pleader, will be unaware of the same proceeding to take it further and keep adjourning the Application. As a result, this Court is faced with entirely needless litigations in spite of the availability of alternate remedies.

10. However, the question remains: what is to be done about the utter failure to dispose of the Appeal and the Application for interim relief. It is clear that the right of the Petitioner to get at least their Application for interim relief heard is breached. However, this cannot lead to an automatic grant of interim order as the question would be about the prejudice to the Petitioner's students. In that context, we called upon the Petitioner to show us material qua the allegations made against the Petitioner. We have gone through those points listed. Most of the points listed therein can be the procedure, such as out of 10 computers, 5 computers were not working. Regarding shortfalls in water and hygiene, the learned Counsel for the Petitioner has placed the material with photographs which *prima facie*, demonstrates that this issue is adequately addressed for the present.

11. In these circumstances, we direct that the order of appointing the Administrator shall remain stayed during the pendency of the Appeal filed by the Petitioner. Subsequently, the order dated 9 October 2023 of appointing the Administrator is the subject matter of the Appeal, and the order dated 9 October 2023 of taking over charge of the Petitioner's institution also shall remain stayed during the pendency of the Appeal.

12. We have passed a detailed order and adopted this course of action in the hope that whenever the Appeals are filed under the provisions of the Act of 1976, they will be disposed of earlier or at least the Applications for interim relief are disposed of earlier. This Court stepping in to decide the Interim Application cannot be the solution. Also we does not intend to lay down a proposition that if an Application for stay is not decided, this Court shall grant interim order pending the Appeal. We have done so in the facts of this case where the officers of the Department are not candid to the Court and *prima facie* the shortfalls are addressed.

13. Rule made absolute in above terms. The Writ Petition is accordingly disposed of.

(MANJUSHA DESHPANDE, J.) (NITIN JAMDAR, J.)