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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

39 WRIT PETITION NO. 1970 OF 2025

RAVIRAJ ABA PATIL
AASHA RAMESH PATIL

VERSUS

1. THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY, SCHOOL EDUCATION AND SPORTS DEPARTMENT,
MANTRALAYA, MUMBAI
2. THE COMMISSIONER FOR PERSONS WITH DISABILITY, PUNE
3. THE DISTRICT SOCIAL WELFARE OFFICER, ZILLA PARISHAD,
NANDURBAR
4. MAHATMA PHULE YUVAK VIKAS MANDAL, DHULE
5. KAI. SHRIRAM KARNAKAR MALI NIVASI MATIMAND
VIDYALAYA, NANDURBAR

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Mr P. D. Bachate, Advocate for petitioners
Mr M. M. Nerlikar, Addl.G.P. for respondent Nos.1 & 2
Mr P. S. Patil, Advocate for respondent No.3
Mr A. D. Khot, Advocate for respondent Nos.4 and 5

**CORAM : MANGESH S. PATIL
AND
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 4th March, 2025

PER COURT:

1. We have heard both the sides finally.
2. The petitioners are questioning the conduct of respondent No.3/District Social Welfare Officer in abdicating his duties while considering the proposal forwarded by respondent No.4/Management for grant of approval to the appointment of the petitioners as Health Worker and Cook, respectively.

3. The learned advocate for the petitioners submits that appropriate proposal was submitted pursuant to the appointments made by the Management and respondent No.3/District Social Welfare Officer ought to have considered the proposals on merits, but has refused to consider it only on the ground that there is dispute in the Management and no authorized body is holding the office. He submits that it was none of the business for respondent No.3 to resort to such reasoning. He was supposed to scrutinize the proposal independently on merits and could not have kept the proposals in limbo. The petitioners who have been appointed, working and receiving salaries, cannot be made to wait for resolution of the dispute in the Management.

4. The learned advocate for respondent No.3, referring to the decision in the matter of **Murlidhar s/o Janrao Kale and others Vs. State of Maharashtra and others, (2011) 1 Mh.L.J. 849**, which is subsequently referred to in the matter of **Ashwini Sushant Patil Vs. State of Maharashtra and others** in Writ Petition No.10894/2022 decided on 15/04/2024, submits that it is in nobody's interest to call upon respondent No.3 to take some decision regarding grant of approval when there is a dispute in the Management. He submits that

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it is not clear as to if the Management who is otherwise authorisedly holding the office has in fact appointed the petitioners. He submits that in exactly similar set of facts in the matter of Ashwini Sushant Patil (supra), the division bench at Nagpur has suggested the trustees to resort to the provisions of Section 41-A of the Maharashtra Public Trust Act, 1950. He submits that the same course can be followed in this matter as well.

5. Having heard both the sides and having perused the record, it transpires that in similar set of facts, at least on two occasions, the division benches of this Court in the matter of **Navnath Narsingh Gore Vs. State of Maharashtra, 2021 (6) M.H.L.J. 118** and in **Sudipa Atul Patil vs. State of Maharashtra and others** (Writ petition (L) No.15020/2022, decided on 20/09/2022) has directed the concerned Education Officer to decide the proposals for grant of approval without resorting to rejection on the ground of dispute in the Management.

6. In Ashwini Sushant Patil (supra), both these decisions have been referred to, apparently distinguishing directions therein, on the ground that the decision in the matter of Murlidhar Janrao Kale and others (supra) was not brought to the notice of the division benches

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which decided the matter of Navnath Narsingh Gore (supra) and Sudipa Atul Patil (supra).

7. Emphasis has been laid on the observations in paragraph No.12 from Murlidhar Janrao Kale & others (supra), which read as under :-

“12. From perusal of the provision of Section 41 A of the Bombay Public Trusts Act, we find that the Charity Commissioner is empowered to issue directions to any trustee or a person connected therewith to ensure that the trust is properly administered. Since schools, colleges and institutions are run by public trusts, it follows that any such directions will ensure that they are properly administered either during the pendency of disputed change reports or as the case may be. We, therefore, hold that an order under Section 41 A of the Bombay Public Trusts Act can be passed to direct or recognise a trustee/trustees/Board of Trustees or the persons connected with the trust whose names are either entered or not entered in the P.T. Register maintained under Section 17 of the Act, pending disputes between them or even otherwise. We, however, do not agree with the proposition stated in judgment dated 28.8.1999 in First Appeal No.354/1998, that 'somebody' other than whose name is to be found in P.T. Register can be empowered under Section 41 A of the Bombay Public Trusts Act. Section 41 A of the Bombay Public Trusts Act speaks of only 'trustees' or the 'persons connected therewith' and not 'somebody'. It is also not possible to agree with the statement that in the absence of any order under Section 41 A of the Bombay Public Trusts Act, only those persons whose names are entered in the register can continue to manage the affairs of the trust. It is a matter of common experience that persons shown as trustees in the register i.e. Schedule - I under Rule 5 of the Bombay Public

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Trusts Rules, 1951 are shown to exist as trustees even though their tenure/term as trustees as indicated in the bye-laws, memorandum of association or Rules or regulations had come to an end years back or such names are hardly one or two or who are unable to run the trust for one or the other reason. Therefore, merely because names of such persons whose names exist in Schedule - I and whose term had expired or for any other reason they cannot function as trustees or fresh elections have been held under a particular fact situation, such trustees alone would not be entitled to continue to manage the affairs of the Trust. In our opinion, each case will have to be decided on the facts, materials and evidence available on record and by applying the law. The change reports in respect of elections, filling up of vacancies of trustees, schemes are filed with the Assistant Charity Commissioner and every endeavour should be made by the Assistant Charity Commissioner to decide such change reports expeditiously and in case of any dispute amongst the trustees, power under Section 41 A of the Bombay Public Trusts Act can be invoked either suo motu by the Assistant Charity Commissioner or on application of the trustees or the persons connected with the Trust or the Education or other authority for issuance of directions in the matter of administration of the Trust and its institutions. In the case in hand, the Deputy Director of Education ought to have directed the parties before him to either get the change reports decided one way or the other or get directions under Section 41 A of the Bombay Public Trusts Act as to the persons/trustees authorized to manage the Trust and its institutions.

8. It is to be noted that in the matter of Murlidhar Janrao Kale (supra), the Deputy Director of Education had undertaken a scrutiny to reach the conclusion as to which body of the trustees was actually holding the office and was authorized to take decision on

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behalf of the trust. With respect, that is not a fact situation in the matter in hand. The impugned communication proceeds on the premises that there is no authorized Management. It is not clear as to how respondent No.3 could reach this conclusion in the absence of any reference to any objection being raised by somebody to the appointment of the petitioners. The impugned communication also does not make it clear as to if any enquiry was made by respondent No.3 with the office of concerned Assistant Charity Commissioner to ascertain as to which Managing Committee is in the office and is authorized to function on behalf of the trust. In view of such peculiar state of affairs, in our considered view, the fact situation in the matter in hand will not be appropriately governed by the decisions in the matters of Murlidhar Janrao Kale (supra) and Ashwini Sushant Patil (supra) and would rather be governed by the decisions in the other two matters, namely, Navnath Narsingh Gore (supra) and in Sudipa Atul Patil (supra).

9. In the light of the above, we allow the writ petition partly. The impugned communication is quashed and set aside. Respondent No.3 shall undertake scrutiny of the proposals of the petitioners and take the decision, as expeditiously as possible and in any case within a

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period of six weeks, regarding grant of approval or otherwise to the appointment of the petitioners.

(PRAFULLA S. KHUBALKAR, J.) (MANGESH S. PATIL, J.)

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