

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14181 OF 2023

Vidyangan Shikshan Prasarak Mandal	...Petitioner
Versus	
The State of Maharashtra and Ors.	...Respondents

Mr. Prajakt Arjunwadkar for the Petitioner.

Mr. K.S. Thorat 'B' Panel Advocate a/w S.H. Kankal, Assistant Government Pleader for the Respondent Nos. 1 to 3/State.

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**CORAM : A.S.CHANDURKAR AND
M.M. SATHAYE, JJ.**

DATE : 14th JANUARY 2025

P.C. :

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties.

2. The challenge raised in this Writ Petition is to the decision taken by the Deputy Director of Education, Kolhapur Division, Kolhapur on 13.02.2023 thereby rejecting the proposal that was moved on behalf of the Petitioner and Respondent Nos. 4 and 5 seeking transfer of the Educational Institution that was run by Respondent Nos. 4 and 5 in favour of the Petitioner/Institution. The principal reason for rejecting the proposal is that the procedure prescribed by the Government Resolution dated 17.02.2012 had not been followed while seeking transfer of the management of school.

3. After hearing the learned counsel for the parties and after

perusing the documents on record, it is evident that the application seeking transfer of Management was moved on 10.10.2008. Pursuant to this application, a report was called by the Deputy Director of Education as well as Education Officer (Secondary). However, when the proposal was pending, the School Education and Sport Department came up with Government Resolution dated 17.02.2012 amending the provisions of the Secondary Schools Code. Clause 12.1 to 12.6 thereof came to be amended pursuant to the judgment of this Court in *Jijau Shikshan Sanstha, Nagpur v/s. State of Maharashtra (2011 (4) Mh.L.J.352)*. It is clear that the amendment incorporated on 17.02.2012 would be prospective in nature. While deciding the Petitioner's proposal dated 10.10.2008, no retrospective effect could have been given to the same. The Deputy Director of Education ought to have considered the policy that was prevailing on the date when the proposal was moved and he therefore, could not have taken recourse to the Government Resolution dated 17.02.2012. On this count, the impugned decision is liable to be set aside and re-consideration of the said proposal by the Deputy Director of Education would be necessary.

4. Accordingly, the following order is passed:

- (i) The decision taken by the Deputy Director of Education, Kolhapur Division, Kolhapur on 13.02.2023 is quashed and set aside.
- (ii) It is directed that the Petitioner's proposal dated 10.10.2008 shall be re-considered in accordance with the policy prevailing on the date of the proposal.
- (iii) It is made clear that the amended provisions of the Secondary Schools Code pursuant to the Government Resolution

dated 17.02.2012 shall not be relied upon while deciding the proposal.

(iv) All other compliance as required, should be taken into consideration.

(v) The fresh decision in this regard be taken within a period of 8 weeks of receiving copy of this Court and after giving the opportunity to all the concerned parties.

5. Rule is made absolute in the aforesaid terms. No order as to costs.

(M.M. SATHAYE, J.)

(A.S.CHANDURKAR, J.)