



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 491 OF 2024

1. Shri Dayaram Shivram Sukhdeve
age : 74 years, Retired Revenue
Inspector, Vice-President, Tathagat
Educational Trust, Lakhandur,
R/o Lakhandur, near Telephone Office,
District Bhandara
2. Shri Bharat Ramchandra Meshram
age : 56 years, Occ : Service,
Member, Tathagat Educational Trust
Lakhandur, R/o Lakhandur
3. Shri Gopal @ Maroti Atmaram Sahare,
age : 50 years, Occ : Cultivator,
R/o Lakhandur, Students' Guardian

.. Petitioners

Versus

1. The State of Maharashtra
Through its Chief Secretary,
School Education & Sports
Department, Mantralya,
Mumbai - 440032
2. The Director of Education,
(Secondary & Higher Secondary),
State of Maharashtra, Pune
3. The Divisional Deputy Director of
Education, Nagpur Division, Nagpur
4. The Education Officer (Secondary),
Zilla Parishad, Bhandara
5. Tathagat Educational Trust,
Lakhandur, through its Secretary
Shri Harishchandra Namaji Sukhdeve,
R/o B/3, Mulik Complex, Airport,
Near Centre Point Hotel,
Wardha Road, Somalwada, Nagpur
6. Shri Harishchandra Namaji Sukhdeve,
age : 76 years, Retired Bank Officer,
claiming to be Secretary of Tathagat

.. Respondents

Educational Trust, Lakhandur
R/o B/3, Mulik Complex, Airport,
Near Centre Point Hotel,
Wardha Road, Somalwada, Nagpur

Mr. A.Z. Jibhkate, Advocate for petitioners.
Mr. S.M.Ukey, Addl. G.P. for respondents No.1 to 4.
Mr. S.D.Abhyankar, Advocate for respondent No.5.

**CORAM : AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.**

DATED : MAY 05, 2025

JUDGMENT (PER : ABHAY J. MANTRI, J.)

Heard. **Rule.** Heard finally with the consent of the learned counsel appearing for the parties.

(2) The petition questions the order dated 10/11/2023 passed by respondent No.3, the Divisional Deputy Director of Education, directing the absorption of students studying in 11th and 12th standard in the school run by Tathagat Educational Trust, Lakhandur/respondent No.5 in the schools run by Zilla Parishad, namely, (i) Dr. Babasaheb Ambedkar School and High School, Lakhandur and (ii) Sevakhau Waghaye College, Lakhandur (page 81).

(3) This order has been passed on the basis of a directions contained in para 2 of the operative order dated 05/09/2023 (page 80)

passed by the Hon'ble Minister/respondent No.1 in appeal under Section 3(4) of the Maharashtra Educational Institutions (Management) Act, 1976 (for short 'Act of 1976) filed by respondent No.5 against an order dated 25/02/2022 (page 58) passed by respondent No.2 i.e. the Director of Education, Secondary and Higher Secondary, State of Maharashtra, Pune under Section 3(1) of the Act of 1976, which order dated 05/09/2023 is also under challenge.

(4) The facts in brief are as under :-

The respondent No.5 is a grant-in-aid educational institution/trust, which runs and administers Siddharth Junior College (Arts & Science), Tahsil Lakhandur, District Bhandara. Initially, it was run in rented premises; therefore, the respondent, No.5, the institution/trust, faced problems in continuing the classes. In the annual general meeting dated 30/03/2013, it was resolved that a committee should be formed for the alternate arrangement of classes. Accordingly, the respondent No.6 agreed to make available his open plot admeasuring 60 ft. x 60 ft. out of Survey No.386/1 area admeasuring 0.23HR to respondent No.5 institution/trust for construction of the College building, in pursuance of the same, construction of the ground floor was completed and work of first floor was in progress, however, respondent No.6 instead of co-operating with teachers for getting revised sanction to further construction, started disturbing the running of classes, therefore, the employees of the

Junior College had approached this Court. After considering the record, this Court restrained the respondents from functioning of the Junior College.

(5) Thereafter, in compliance with the order of this Court dated 11/07/2018 in Writ Petition No.4094/2018, the respondent No.3 visited the College and made the enquiry and submitted its report to the respondent No.2 with a recommendation for appointment of an Administrator on the College. After affording an opportunity, the respondent No.2 on 25/02/2022 passed an order (page 58) to appoint an Administrator over the School Management for a period of two years from the said date.

(6) Aggrieved by the said order, the respondent No.5 Trust preferred an appeal before the Hon'ble Minister, School Education and Sports Department, State of Maharashtra. After affording an opportunity, the respondent No.1, Hon'ble Minister, vide order dated 05/09/2023, quashed and set aside the order dated 25/02/2022 passed by respondent No.2 and directed respondent No.3 to proceed with the proposal submitted by the respondent No.5 for closure of the Junior College. Pursuant to the said order, respondent No.3 passed a consequential impugned order dated 10/11/2023, whereby respondent No.3 ordered the absorption of the employees and students in another school. Hence, this petition.

(7) Mr. Jibhkate, learned counsel for the petitioners vehemently contended that the respondent No.1, the Hon'ble Minister while exercising powers under Section 3(4) of the Act of 1976 would have no authority to direct the respondent No.3 to take appropriate steps for closure of the school on account of which, the impugned order cannot be sustained. He further contended that the expression "*such order*" as occurring in Section 3(4) of the Act of 1976 would not confer any such power upon respondent No.1. For that reason, also the direction No.2 as contained in order dated 05/09/2023 and the consequent order dated 10/11/2023 cannot be sustained in the eyes of law.

(8) He further canvassed that respondent No.1, Hon'ble Minister, erroneously concluded that on account of the vacancies of teachers, there is an adverse effect on the career of the students. The Hon'ble Minister completely ignored the result of the examination of 12th standard of both the faculties, the strength of the students in the faculties and the reason for less admission in the Art faculty in the last academic session though same were specifically pointed out to the Hon'ble Minister by the petitioner No.1 and the Principal of the Junior College, however, he ignored the said facts and erred in concluding to close down the classes. The passing of the impugned order is arbitrary and contrary to the settled position of law. Hence, it is liable to be set aside.

(9) He further argued that the Hon'ble minister cannot pass the order beyond the ambit of section 3(4) of the Act of 1976 and therefore, passing of the impugned order is contrary to the contextual meaning "*such order*" and thus, impugned order is not tenable and liable to be set aside. Hence, he urged the petition to be allowed.

(10) *Per contra*, Mr. Ukey, learned Additional Government Pleader for respondents No.1 to 4/state, lays great stress upon the expression "*an order*" as occurring in Section 3(4) of the Act of 1976, to contend that while considering the appeal in terms of Section 3(4) of the Act of 1976, the respondent No.1 would have the power to issue any omnibus directions in case he deems it fit to do so considering the circumstances which he finds availing on record.

(11) He further submitted that the Education Officer (Secondary) has issued communication dated 06/06/2024 (page 111) to the Deputy Director of Education, Nagpur, by which he has informed that the record regarding students has been submitted to the Zilla Parishad, High School and Junior College, Lakhandur. The Education Officer has issued the record of teaching and non-teaching staff, and the Education Officer has also given no objection for absorption and submitted its report vide communication dated 28/06/2024 to the Deputy Director of Education, Nagpur.

(12) He also argued that, the expression "*such order*" as occurring in Section 3(4) of the Act of 1976, would empower the Appellate Authority to issue any such directions as it may deem fit considering the circumstances availing on record to protect the interest of the students, teachers, and other staff. So, he submitted that the order passed by respondent No.1 was only to ensure the compliance of provisions prescribed under the Secondary Schools Code and extant guidelines of this Court in ***Pujya Sane Guruji Vidya Prasarak Mandal vs. Prakash M. Patil 2025 (5) Mh.L.J. 149***, and therefore, no interference is required in the order in writ jurisdiction.

(13) To substantiate his contention, he has also relied upon the judgment in ***J. S. Jadhav vs. Mustafa Haji Mohamed Yusuf (1993) 2 SCC 562*** and pointed out para 13 of thereof. It was argued that when it says, "*deems fit*", *it must be construed as to meet the ends of justice*, which is *pari materia* to the expression "*such order*" as contemplated in Section 3(4) of the Act of 1976, and urged for dismissal of the petition.

(14) We have appreciated the rival contentions of the learned counsel appearing for the parties and perused the record and judgments relied upon by the parties.

(15) The short question that arises is '*whether respondent No.1, while exercising powers in appellate jurisdiction under Section 3(4) of the Act of 1976, can pass the order beyond its ambit/scope?*'

(16) While determining the controversy in the facts in issue, we would like to state the material facts of the case, which are as under :-

Initially, the employees of the Junior College approached this Court by filing Writ Petition No.4094/2018, wherein this Court passed an order dated 11/07/2018 and granted interim relief in favour of the petitioners therein. The respondent/state was directed to point out whether any situation warrants the appointment of an administrator for the school management. Pursuant to the said order, respondent No.3 conducted the enquiry and submitted its report with a recommendation of respondent No.2 for the appointment of an Administrator. According to the said report, the respondent No.2 while exercising power under Section 3(1) of the Act of 1976 vide order dated 25/02/2022 (page 58) appointed an Administrator over the School Management for the period of 2 years, the said order was challenged under Section 3(4) of the Act of 1976 before the Hon'ble Minister. In view of this, it would be appropriate to reproduce Sections 3(1) and 3(4) of the Act of 1976 as under: -

“3. Taking over management of an educational institution.— (1) Whenever the Director is satisfied that the Management of any educational institution has neglected to perform any of the duties imposed on it by or under any law for the time being in force, or the memorandum of association, or any instrument (including any rules, regulations or by-laws) which regulates its administration or is being managed in a manner detrimental to public interest, and that it is expedient in the public interest, and in particular, in the interest of education imparted in such institution to take over the management of such institution in so far as its activity relates to imparting education, he may, notwithstanding anything contained in any law for the time being in force, after giving the management of such institution, a reasonable opportunity of showing cause against the proposed action, by an order take over the management of such institution in so far as its activity relates to imparting education specified in the order for a limited period not exceeding three years :

Provided that, where the management of an institution has been taken over for a period of three years, the Director may, if he is of opinion that in order to secure proper management of the institution, it is expedient that such management should continue to be in force after the expiry of the said limited period, he may from time to time, by an order issue directions for the continuance of such management for such period not exceeding one year at a time as he may think fit, so however, that the total period for which such management is taken over shall not, in any case, exceed five years :

Provided further that, no such show cause notice shall be necessary where the Director is satisfied that the Management or a majority of persons in control thereof are members of an organisation which is or whose members or persons in control thereof are or have been indulging in activities which are prejudicial to the internal security, the public safety and the maintenance of public order in the State and such activities are reflected in the course of management and administration of the institution.

(2) ...

(3) ...

(4) **Any Management, which is aggrieved by the order of a Director under sub-section (1), may make an appeal to the State Government within a period of 15 days from the date of receipt of the order of the Director. The State Government may, after considering the representation made by the Management and the order of the Director, pass such order, including an order for the restoration of the Management or for the reduction of the period during which the management of such institution shall remain vested in the Administrator as it may deem fit.**”

(17) It is pertinent to note that the respondent No.2 under the provision of section 3 (1) of the Act of 1976 passed an order *on 25/02/2022 (page 58)* for "*appointment of the Administrator on the school for a period of two years, i.e. till 24/02/2024.*" The said order was challenged before the Hon'ble Minister, who had set aside the same by impugned order dated 05.09.2023. However, by clause (2) of the said impugned order, he directed for closure of the School, therefore, the learned counsel for the petitioners submitted that the expression of "*such order*" as occurring in Section 3(4) of the Act of 1976 would not confer any such power upon the respondent No.1 for which reason also, the direction No.2 as contained in the order dated 05/09/2023 and consequent order dated 10/11/2023 cannot be sustained.

(18) It is pertinent to note that the expression of "an order" as occurring in Section 3(4) of the Act of 1976, will have to be read and understood in terms of the purpose and object for enactment of the Act of 1976 and the mandate of Section 3(1) of the Act of 1976, which is the source of the power to the Director to pass an order for taking over the Management of the educational institution and once the respondent No. 1 in an appeal holds that the order under Section 3(1) of the Act of 1976 cannot be sustained, he cannot by use of the expression "*such order*", direct the authorities to take appropriate steps for closure of the educational institution.

(19) The respondent No.5 had challenged the order passed by respondent No.2 before the respondent No.1 regarding the appointment of Administrator only and therefore; while exercising the jurisdiction under an appeal, the Appellate Authority has to consider the said order only and it would not be appropriate to pass the order beyond the challenge raised therein. While dealing with the controversy before the Hon'ble Minister, the question of directing the respondent No.5 to close the school is beyond the purview of Section 3(4) of the Act of 1976. The basic rule of interpretation is that every provision and every word must be looked at generally and in the context in which it is used. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation, one should not concentrate too much on one word and pay too little attention to other words. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Wherever the words are clear, there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the authority or Court to take the task of amending or altering the statutory provisions. Whenever the language is clear, the intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute and what has not been said has to be noted. The construction that requires the addition or substitution of words for its support, or which

results in the rejection of words, has to be avoided.

(20) According to the learned Additional Government Pleader the word "**deems fit**" used in the section 3(4) of the Act is *pari-materia* with the word used "**deem fit**" in the judgment in **J.S. Jadhav** (*supra*), and therefore, what has been held in the said judgment, the word "**deem fit**" must be construed as to meet the ends of justice. We do not agree with his submissions, as the title of Section 3 indicates taking over the management of an educational institution/school. The said section does not deal with the closure of the school. So, the question of directing the closure of the school is beyond the ambit of section 3 (1) and (4) of the Act. In such an eventuality, the word "such order", including "an order" (*supra*) for restoration of the management, used in Section 3(4), is to be construed in accordance with the intent of the legislature and not otherwise. Moreover, "**deems fit**" means making an order in terms of the statute. Similarly, the words "**deems fit**" do not bestow a power to make any order on considerations dehors the statute which the authorities consider best according to their notions of justice. Thus, the principle of '*ejusdem generis*' has no application to the facts of the case, as the words are clear in their meaning. Hence, the dictum laid down in **J.S. Jadhav** (*supra*) and **Pujya Sane Guruji Vidya Prasarak Mandal** (*supra*) are hardly of any assistance in supporting submissions of Additional Government Pleader.

(21) The respondent No.5 challenged the order of appointment of the Administrator, which means the order under challenge is to be considered as "such order" and not otherwise. Therefore, the respondent Appellate Authority has to pass the order to that extent. The appellate forum while determining the question of controversy has to construe "such order" to that extent only instead of directing the respondent No.3 to take steps for closure of School of respondent No.5. Thus, it is apparent that respondent No.1 Hon'ble Minister passed an order beyond the purview of Section 3(4) of the Act of 1976 and therefore, the same cannot be sustained in the eyes of law.

(22) *Moreover,* the Hon'ble Minister without calling the report in respect of vacancies of the teachers and ignoring the result of the examination of XIIth standard students and strength of the students and the faculties in the school/college, erred in drawing the inference that it would have adverse the effect upon the carrier of the students and has erroneously drawn conclusion on account of the vacancies and directed the respondent No.3 to take the steps to close down the school. Therefore, the impugned order cannot be sustained.

(23) Thus, in the wake of above, it is apparent that the respondent No.1 Hon'ble Minister has exceeds its jurisdiction and

passed the order beyond the purview of Section 3(4) of the Act of 1976 and therefore, cannot be sustained in the eyes of law and liable to be set aside. As such, we partly allow the petition. The impugned order dated 05/09/2023 passed by respondent No.1, the Hon'ble Minister, to the extent of the direction of closure in para 2 thereof and the consequent order dated 10/11/2023 passed by respondent No.3, Divisional Deputy Director of Education, Nagpur, are hereby quashed and set aside.

Rule is made absolute in the above terms. No costs.

[ABHAY J. MANTRI, J.]

[AVINASH G. GHAROTE, J.]

KOLHE