



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

WRIT PETITION No.2757 OF 2025

Jyoti Shikshan Prasarak Mandal,
through it's Secretary,
Namely Prashant Uttamrao Janorkar,
Aged about 55 years,
Occupation : Secretary/Service,
R/o. Jyoti Niwas, Vijay colony,
Gaurakshan Road, Akola,
Tal. and Dist. Akola. : PETITIONER

...VERSUS...

1. The State of Maharashtra,
through it's Secretary,
School Education and Sports Department,
Mantralaya, Mumbai.
2. Deputy Director of Education,
Amravati region Amravati,
Tal. and Dist. Amravati
3. Education Officer (Secondary),
Zilla Parishad, Akola,
Tal. and Dist. Akola.
4. Mahadeo Tulsiram Mankar,
Aged about – 75, Occupation- Retired,
R/o. Vijay Vidyut Colony,
Near Water Reservoir,
Opp. Keshav Nagar, Akola,
Tq. & Dist. Akola. : RESPONDENTS

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Mr. A.A. Naik, Senior Advocate along with Mr. J.B. Gandhi, Advocate
for Petitioner.

Mrs. M.S. Naik, Assistant Government Pleader for Respondent Nos.1
to 3.

Mr. N.S. Warulkar, Advocate for Respondent No.4.

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CORAM : **SMT. M.S. JAWALKAR AND**
NANDESH S. DESHPANDE, JJ.
RESERVED ON : **09th APRIL, 2026.**
PRONOUNCED ON : **08th MAY, 2026.**

JUDGMENT : (Per : NANDESH S. DESHPANDE, J.)

1. Rule. Rule Returnable forthwith. Heard finally with the consent of parties.

2. The present petition takes exception to the communication dated 21/4/25 issued by the respondent No.3 Education Officer (Secondary), Zilla Parishad, Akola, thereby directing the petitioner to submit the copy of Public Trust Register (PTR) reflecting the entries of Managing Committee members of the Petitioner Trust.

3. The facts as stated in the petition are as under :

The petitioner before this Court is a Public Trust duly registered under the provisions of the Bombay Public Trust Act, 1950. The petitioner runs and manages School and junior college by name Late Jyoti Janorkar Vidyalaya and Junior College which are aided by the Government. As per the averments in the petition, the Executive Committee of the Society looks after the administration of the Trust which is elected after every five years. The last election was conducted on 8/1/2023 and the members of the Executive Body were elected in the said election by General

Body. Accordingly, a Change Report in respect of the term from 24/1/2018 to 24/1/2023 is pending before the Assistant Charity Commissioner, in Enquiry Case No.4156/2018. Further, a change report with respect to election held on 08/01/2023 is also pending. The petitioner further states that the respondent No.4 with a sole intention to disturb the peaceful and smooth functioning of the Society has filed an objection before the Assistant Charity Commissioner and the same is pending.

4. Thereafter, in the abovesaid facts since there were 30 vacancies in the secondary school run by the petitioner Trust, the petitioner submitted a proposal with the Education Officer, Akola. The Education Officer thereafter vide communication dated 12/2/2025 called upon the petitioner to submit certain documents till 17/2/2025, which was accordingly done. After scrutinizing the said documents permission was granted to fill up 23 posts by paper publication by the Education Officer vide his communication dated 27/2/2025. Accordingly, an advertisement was published on 8/3/2025 for filling-up the said posts.

5. In the backdrop of these facts, the respondent No.4 filed a complaint with the Education Officer on 2/4/2025 thereby alleging that he is the Founder Secretary of the said Trust and is still working as a Secretary. It is further alleged in the said

complaint that the authorities have refused to recognize the Trust and the Executive Body thereof. Acting upon the said complaint of the respondent No.4, the Education Officer issued the impugned communication dated 21/4/2025 calling upon the petitioner Trust to submit copy of Public Trust Register reflecting the entries of Managing Committee members of the petitioner as on date by 23rd April 2025. The said communication also intimates that omission to comply with the same would result in the respondent No.4 reporting for cancellation of advertisement to the higher authority. It is this communication which is impugned in the present petition.

6. We have heard Mr. A.A. Naik, Senior Advocate along with Mr. J.B. Gandhi, learned Advocate for the petitioner, Mrs. M.S. Naik, learned Assistant Government Pleader for the respondent Nos.1 to 3 and Mr. N.S. Warulkar, learned Advocate for the respondent No.4.

7. Mr. A.A. Naik, learned Senior Advocate submits that the action of the respondent No.3 Education Officer (Secondary), Zilla Pariahdd Akola is *de-hors* the settled principles of law, inasmuch as it fails to consider the fact that the elected body starts functioning from the date of election. He further submits that it is an admitted fact on record that a Change Report is pending consideration before the competent authority under the Public

Trusts Act.

8. By taking us through Section 22 of the Maharashtra Public Trusts Act, 1950, learned Senior Advocate submits that the said Section contemplates that changes already effected by the Trust will attain finality from the date it is entered in the register, but it does not mean that till the changes are recorded in the register, the Trustees so appointed cannot function as trustee. He further submits that the respondent No.3 has no jurisdiction to issue the impugned communication since the entering of names in the PTR register has nothing to do with the vacancies to be filled in. He further submits that admittedly there are huge vacancies in the School which are necessarily to be filled in for smooth functioning of the Institution. He relies on Judgment reported in **2002 (3) Bom. C.R. 161 (Chembur Trombay Education Society and Others Vs. D.K. Marathe and Others)**, **2009 (6) Mh.L.J. 419 (Hislop Education Society, Nagpur Vs. Presiding Officer University College Tribunal Nagpur)** to buttress his submission.

9. Per contra, Mrs. M.S. Naik, Assistant Governing Pleader appearing for the respondent Nos.1 to 3 and Mr. N.S. Warulkar learned Advocate appearing for the respondent No.4 submit that the action of the respondent No.3 Education Officer is perfectly legal and valid. By taking us through the record of the

matter it is the submission of the learned Advocate for the respondents that the Education Officer was within his right to ascertain as to whether the Trustees, who have been granted permission for publication of advertisement are in fact the recorded Trustees. In nut shell, the Advocate for the respondents support the impugned order.

10. We have considered the contentions canvassed by the Advocates for the respective parties. The fact that elections were held on various dates as mentioned in the petition and a Change Report being pending before the competent authority under the Public Trusts Act are not disputed. In the backdrop of these facts, Section 22 of the Bombay Public Trusts Act, 1950 is re-produced as under :

“Section 22.

Change - (1) Where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of the occurrence of such change, or where any change is desired in such entries in the interest of the administration of such public trust, report such change or proposed change to the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where the register is kept. Such report shall be made in the prescribed form.

(1A)-----

(2)-----

(3) If the Deputy or Assistant Charity Commissioner, as the case may be, after

*receiving a report under sub-section (1) and holding an inquiry, if necessary under sub-section (2), or merely after holding an inquiry under the said sub-section (2), is satisfied that a change has occurred in any of the entries recorded in the register kept under section 17 in regard to a particular public trust, [or that the trust should be removed from the register by reason of the change, resulting in both the office of the administration of the trust and the whole of the trust property ceasing to be situated in the State] he shall record a finding with the reasons therefor [to that effect; and if he is not so satisfied, he shall record a finding with reasons therefor accordingly]. [Every inquiry held, either upon receipt of a report under sub-section (1) or merely held under sub-section (2), shall be completed within a period of one year from the date of initiating such an enquiry. Where such inquiry is not completed within a stipulated period of one year, the reasons for delay shall be recorded.] [any such finding] shall [amend or delete the entries] in the said register [in accordance with the finding which requires an amendment or deletion of entries] and if appeals [***] were made against such finding. In accordance with the final decision of the competent authority provided by this Act. The amendments in the entries so made [subject to any further amendment or occurrence of a change or any cancellation of entries, shall] be final and conclusive.”*

11. This Court in judgment of *Chembur Trombay Education Society and Others* (supra) while dealing with the said issue held that the law with regard to the efficacy of any change

brought about and its application is no more *res integra*. Relying on the judgment of the Apex Court reported in **AIR 1993 S.C.W. 3006 (Managing Committee Khalsa Middle School and Another Vs. Smt. Mohinder Kaur and Another)** it was observed that in absence of any requirement in the Act that the alteration in the rules and regulations must be registered with the Registrar, it cannot be held that registration of the amendment is a condition precedent for such an alteration to come into effect. A priori, any amendment or change brought about in accordance with law would come into effect from the date of resolution of the Society to bring about such a change.

12. This proposition is fortified from the plain language of Section 22 of the Bombay Public Trusts Act. The said Section requires that where any change occurs in any of the entries recorded in the register kept under Section 17, the trustee shall, within 90 days from the date of the occurrence of such change report such change to the Deputy or Assistant Charity Commissioner. This Court also deciphered the meaning of expression "occur" and observed that in the Black's Law Dictionary the meaning of the said phrase is "To happen; to meet ones eye; to be found or met with; to present itself; to appear".

13. Thus, giving natural meaning to this word in Section

22 coupled with the authoritative pronouncement of the Apex Court, this Court held that when the Act does not require that registration of any change is a condition precedent to come into effect, the amendment to the constitution as well as the subsequent elections of the President and members of the Governing Council, would therefore come into effect from the respective resolutions of the general body. It was further held that the enquiry postulated under Section 22 is only to ascertain the factum as to whether the change has occurred or not. The resolution of the general body of the Society is sufficient to ignite the changes of amendment in the constitution as well as of electing new general body for administering the affairs of the Society. This Court also considered the aspect regarding the pendency of the change report being pending for consideration before the Charity Commissioner. It is, thus, clear that mere pendency of change report before the Charity Commissioner would be of no avail, and therefore, as a necessary corollary, during the pendency, the Trustees who have been duly elected in the election have all rights in law to work on the respective post.

14. This principle has been further enunciated in the judgment of *Hislop Education Society, Nagpur* (supra) in which this Court considered the contentions advanced in the said matter that

till the Charity Commissioner decides as to who are the Trustees, if the elected Trustees are prohibited from working as Trustees, there will be anarchy and mismanagement in the institutions which are run by such Trusts. In the said judgment in paragraph 14 thereof, this Court held as under :

“14. In Pushpadevi M. Jatia vs. M.L. Wadhawan, (1987) 3 SCC 367. It is in paragraph 21 as under :

*"21..... Where an office exists under the law, it matters not how the appointment of the incumbent is made, so far as validity of his acts are concerned. It is enough that he is clothed with the insignia of the office, and exercises its powers and functions. The official acts of such persons are recognised as valid under the **de facto doctrine**, born of necessity and public policy to prevent needless confusion and endless mischief. In Gokaraju Rangaraju case, Chinnappa Reddy, J. explained that this doctrine was engrafted as a matter of policy and necessity to protect the interest of the public. He quoted the following passage from the judgment of Sir Ashutosh Mukherjee, J. in Pulin Behari Das V. King Emperor at p. 574:*

The substance of the matter is that the de facto doctrine was introduced into the law as a matter of policy and necessity to protect the interest of the public and the individual where those interests were involved in the official acts of persons exercising the duties of an office without being lawful officers. The doctrine in fact is necessary to maintain the supremacy of the law and to preserve peace and order in the community at large. The learned Judge also relied upon the following passage from the judgment of P. Govindan Nair, J. in P.S. Menon vs. State of Kerala at p. 170:

This doctrine was engrafted as a matter of policy and necessity to protect the

interest of the public and individuals involved in the official acts of persons exercising the duty of an officer without actually being one in strict point of law. But although these officers are not officers de jure they are by virtue of the particular circumstances, officers, in fact, whose acts, public policy requires should be considered valid.”

15. Thus, having considered the rival contentions, the Court in the said judgment held that the “*de facto*” doctrine has taken birth out of necessity to maintain a continuity of authority in management of affairs of such Societies or Trusts. There can’t be any vacuum if there is death of trustee the function of the Trust must go on with elected/remunerated Member as the case may be.

16. If the facts of the present case are evaluated on the touchstone of the authoritative pronouncement of this Court as held above, we have no hesitation to hold that the impugned communication by the respondent No.2 can withstand the scrutiny.

17. As we have stated supra, the elections of the Trust were duly held and the change report is pending. In view of the authoritative pronouncement mentioned above and under the *de facto* doctrine which is born out of necessity, the Trustees elected in the said Trust were duly empowered to act as Trustees during the pendency of the decision on the change report. A change report with respect to elections held on 08/01/2023 is also

pending. It, therefore, consequently follows that the respondent No.3 had no jurisdiction to call upon the petitioner Trust to submit the PTR register as has been sought to be done. The impugned communication, is therefore, liable to be quashed and set aside. In that view of the matter, the following order is passed :

ORDER

- (i) The Writ Petition is allowed.
- (ii) The communication dated 21/4/2025 issued by the Respondent No.3 Education Officer (Secondary) Zilla Parishad, Akola is quashed and set aside.
- (iii) It is further directed that the respondent No.3 Education Officer (Secondary) Zilla Parishad, Akola shall permit the petitioner to continue with the recruitment process in the School run by the Petitioner Trust as per law and procedure in that regard.
- (iv) Writ Petition is disposed of.
- (v) Rule is made absolute in the abovesaid terms.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)