



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION No.8174 OF 2025

1. Vidarbha Minority Education Society
Federation, Akola, Having Office at
Hazrat-e-Aaeshah National Urdu Girls
Jr. College Arts & Science,
Nara Azad Road, Old City Akola,
through its President,
Syed Ishaque Rahi,
Aged about 67 years,
R/o. Dipak Square, Akola, District - Akola.
2. Data Minority Educational and
Welfare Organization, Akola,
through its Secretary
Mohd. Farooque Gulam Gaus,
Aged about 65 years,
R/o. Old City, Akola, District- Akola.
3. Millat Education Society Railway Station,
Road, Darwaha Tah. Yavatmal-445 202,
Registration No. F-2206/91,
Through its Secretary,
Noman Nabeel Muhammad Ilyas,
Aged about 28 years,
Railway Station, Road,
Darwaha Tah. Yavatmal - 445 202.
4. Maulana Abul Kalam Azad Education
& Welfare Society, Dhad,
Tah. & District - Buldhana,
Through its Chairman,
Abdul Riyaz Abdul Samad,
Aged about 60 years,
R/o. Dhad, Tah. & Dist. Buldhana
5. Shama Sarwajanik Sanstha,
Kalamb Venkatesh Society,
Plot No.12, Bhosa Road,

Yavatmal 445 001,
 through its President
 Dr. Abrar Ahmad Khan,
 Aged about 55 years,
 R/o. Plot No.12, Bhosa Road,
 Yavatmal – 445 001.

6. Raja Education Va Bahuuddeshiya
 Society, Pimpalgaon Raja,
 Tah. Khamgaon, District - Buldhana,
 through its President,
 Khan Raheel Shakil Ahmed,
 Aged about 50 years,
 R/o. Pipalgaon Raja,
 Tah. Khamgaon Dist. Buldhana. : PETITIONERS

...VERSUS...

1. State of Maharashtra,
 Through its Secretary,
 Education and Sport Department,
 Mantralaya, Mumbai-32.
2. The Director of Education
 (Secondary & Higher Secondary)
 Maharashtra State, Central Building,
 Dr. Anny Bezant Road, Pune.
3. The Deputy Director of Education,
 Amravati Division, Amravati.
4. The Education Officer (Secondary),
 Zilla Parishad, Akola.
5. The Education Officer (Secondary),
 Zilla Parishad, Buldhana.
6. The Education Officer (Secondary),
 Zilla Parishad, Yavatmal. : RESPONDENTS

 Mr. R.D. Karode, Advocate for Petitioners.

Mr. H.D. Futane, Assistant Government Pleader for Respondents.

CORAM : **SMT. M.S. JAWALKAR AND**
NANDESH S. DESHPANDE, JJ.
RESERVED ON : **11th FEBRUARY, 2026.**
PRONOUNCED ON : **23rd FEBRUARY, 2026.**

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

1. Rule. Rule made returnable forthwith. Heard finally by consent of parties.
2. The petition takes exception to the communication dated 28.05.2025 issued by the respondent No.2 - Director of Education and for further direction to grant approval and allot Shalarth ID to the appointments made by the petitioners-societies in accordance with the Government Resolution dated 04.04.2025.
3. We have heard Mr. R.D. Karode, learned counsel for the petitioners and Mr. H.D. Futane, learned Additional Government Pleader for the respondents.
4. By taking us through the impugned communication dated 28.05.2025, learned counsel for the petitioners submits that the respondent No.2 has directed all Deputy Directors of Education and Education Officers (Secondary) not to grant approval and not to issue Shalarth ID till the absorption of surplus non-teaching staff in the district.
5. Learned counsel for the petitioners contends that the petitioners being minority institutions, the said directive is totally

misconceived. He places reliance on a judgment of this Court in the case of **Young Boys Educational and Industrial Circle Vs. State of Maharashtra and others** reported in 2016(2) Mh.L.J. 212, as also judgment in the case of **Canossa Society and another Vs. The Commissioner Social Welfare and others** reported in 2015(3) ALL MR 575. By placing reliance on the said judgments, learned counsel submits that as far as petitioners are concerned the direction regarding absorbing the surplus staff is not maintainable.

6. We have perused the said judgments as also considered the contentions canvassed by the learned counsel for the parties. The issue seems to be covered by the authorities i.e. co-ordinate Division Benches of this Court. The Division Bench of this Court by exhaustively enunciating the law in the case of **Canossa Society and another (supra)** that a minority educational institution cannot be made to absorb the surplus staff.

7. The controversy in the present petition is squarely covered by an authoritative pronouncement of this Court in the case of **Canossa Society and another vs Commissioner, Social Welfare, Directorate, Government of Maharashtra and Others**, reported in 2014 SCC OnLine Bom 536 and more particularly para 22 thereof which reads as under :

22. *There is merit in the submissions of the learned counsel for the petitioners. In the present case by the impugned directive dated 28.05.2025 the respondent no.2 has foisted upon the petitioners the condition of absorption of surplus non-teaching staff as a prerequisite for granting approval and Shalarth ID. Admittedly, there is no consultation with petitioners-societies before such directive is imposed upon the petitioner-institutions. The respondent-authorities have also failed to take into consideration the fact that the petitioners are minority institutions exercising their right under Article 30(1) of the Constitution of India. Consequence of the impugned order issued by the respondent no.2 is that the valid exercise of right by the petitioners-minority institutions to recruit non-teaching staff as per the Government Resolution dated 04.04.2025 is being interfered with, coupled with a consequence that such recruitment would be stalled indefinitely. In our considered opinion it is impermissible for respondent nos. 1 and 2 to resort to such an action of imposing condition of absorption of surplus staff on the petitioner-institutions as it directly infringes the fundamental right guaranteed under Article 30 (1) of the Constitution of India conferred on the petitioners-institutions to administer and establish their educational institutions. The State authorities cannot indirectly do an act which cannot directly be done. In other words, when the State has no authority to make appointment of teaching and non-teaching staff in respect of a minority institution, even if aid has been granted, such action of making an appointment cannot be taken by directing absorption of a surplus employee. This is nothing but, making appointment of a staff member in a minority institution. The law confers no such authority and power with the State Government to thrust an employee rendered*

surplus in other schools to be absorbed by a minority institution. Rule 25 A of the Maharashtra Employees of Private Schools (Conditions of Services) Rules cannot be made applicable to appoint surplus staff in a minority institution unless the minority institution is consulted and concurs for such an appointment. We, therefore have no hesitation to conclude that the impugned communication dated 28.05.2025 issued by respondent no.2 is wholly arbitrary and illegal as the same infringes on the petitioners right guaranteed under Article 30 (1) of the Constitution of India.”

8. The view has been followed in *Young Boys Education and Industrial Circle vs. State of Maharashtra and others* (supra).

9. In view of the citations stated supra, we are of the considered opinion that the impugned communication is liable to be quashed and set aside. We, therefore, pass the following order :

ORDER

(i) The Writ Petition is allowed.

(ii) The impugned communication dated 28.05.2025, issued by the respondent No.2 - Director of Education, is hereby quashed and set aside.

(iii) It is hereby directed that the respondent authorities should not impose the condition of absorption of surplus non-teaching staff on the petitioners-minority institutions while

granting approval and while also granting allotting Shalarth ID for appointments made in accordance with the Government Resolution dated 04.04.2025.

(iv) The respondent authorities are directed to grant approval and allot Shalarth ID to the appointments made by the petitioners-societies in accordance with the Government Resolution dated 04.04.2025 and grant all consequential benefits ensuing therefrom.

(v) Rule is made absolute in the above said terms.

(vi) The petition is disposed of.

(NANDESH S. DESHPANDE, J.)

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