

(2015) 04 BOM CK 0152
In the Bombay High Court
Case No : Writ Petition No. 11297 of 2014

Adarsh Vidyalaya Shikshan Samiti

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Maharashtra Public Trusts Act, 1950 — Section 22

Citation : (2015) 3 ABR 405 : (2015) 4 BomCR 584

Hon'ble Judges : S.S. Shinde, J; P.R. Bora, J

Bench : Division Bench

Advocate : N.P. Patil Jamalpurkar, for the Appellant; N.B. Patil, AGP, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

S.S. Shinde, J.

1. Heard.
2. Rule. Rule made returnable forthwith heard with the consent of the parties.
3. This Petition is filed with following prayers:

B] The order dated 12.11.2014, issued by the respondent No. 3 - Education Officer [Secondary], Zilla Parishad, Nanded granting approval to the appointment of the respondent no.5 as Headmaster on the basis of proposal submitted by the respondent no.6 on 10.10.2014, may please be quashed and set aside by issuing writ of certiorari, or orders, or directions or any other appropriate writ in the nature of writ of certiorari.

C] The respondents no.1 to 4 may please be directed not to accept and consider any correspondence / communication and proposal submitted by the respondent no.6 for and on behalf of Adarsh Vidyalaya Shikshan Samiti, Manatha, Tq. Hadgaon, Dist. Nanded.

D] It may please be held and declared that, the Executive Committee / Management elected on 01.05.2013 is legally entitled to administer, control and manage the day-to-day affairs of Adarsh Vidyalaya Shikshan Samiti, Manatha, Tq. Hadgaon, Dist. Nanded.

Brief facts as disclosed in the Memo of Petition are as under:

4. It is the case of the petitioners that, the petitioner - Adarsh Vidyalaya Shikshan Samiti, Manatha, Taluka Hadgaon, District Nanded has been registered in accordance with the provisions contained in the Societies Registration Act, 1860. It has also been registered in accordance with the provisions contained in the Maharashtra Public Trusts Act, 1950. It bears registration No.F-90 [Nanded]. It is running a High School under the name and style as "Adarsh Vidyalaya" at Manatha, Taluka Hadgaon, District Nanded, and conducting the classes from 1st to 7th Standard. It is the further case of the petitioners that, the last elections to the Executive Committee of Adarsh Vidyalaya Shikshan Samiti were held on 01.05.2013. In the said elections, new Executive Committee consisting of 11 members is constituted. The petitioners no.1 and 3 respectively were elected as President and General Secretary. The respondent No. 6 was General Secretary of Executive Committee of the said trust for earlier term.

5. It is the further case of the petitioners that, after the elections, on 18.06.2013, the petitioner No. 1 - Marotrao s/o. Nagorao Shinde filed change report before the Assistant Charity Commissioner, Nanded, in accordance with the provisions contained in Section 22 of the Maharashtra Public Trusts Act, 1950. It is registered as Enquiry No. 578/2013 in the office of the Assistant Charity Commissioner, Nanded. It is now pending. It is the further case of the petitioners that, in the month of April, 2014, as the post of Headmaster of Adarsh Vidyalaya fell vacant due to retirement of Shri Wagh, the newly elected Executive Committee took a decision to appoint Shri S.M. Manatkar as Incharge Headmaster of Adarsha Vidyalaya. Accordingly, a proposal was forwarded to the respondent No. 3 - Education Officer [Secondary], Zilla Parishad, Nanded for grant of approval to the appointment of Shri S.M. Manatkar as Incharge Headmaster. It is the further case of the petitioners that, on 30.06.2014, the respondent No. 3 - Education Officer [Secondary], Zilla Parishad, Nanded granted approval to the appointment of Shri S.M. Manatkar as Incharge Headmaster with directions to the petitioners to take immediate steps for appointing regular Headmaster.

6. It is the further case of the petitioners that, on 13.08.2014, the respondent No. 6 by posing himself as General Secretary of the Trust made a representation to the respondent No. 3 - Education Officer [Secondary] and requested to cancel the appointment of Shri S.M. Manatkar as Incharge Headmaster. On the basis of the representation dated 13.08.2014 submitted by the respondent No. 6, the respondent No. 3 Education Officer [Secondary] vide order dated 20.08.2014 cancelled the approval granted to the appointment of Shri S.M. Manatkar as Incharge Headmaster. It is the further case of the petitioners that, in the year

2014, the newly elected President of the Trust i.e. petitioner No. 1 has filed Writ Petition No. 8299/2014 in this High Court for and on behalf of the Trust, challenging the order dated 20.08.2014, issued by the Education Officer [Secondary], Zilla Parishad, Nanded, cancelling the order of approval granted in favour of Shri S.M. Manatkar as Incharge Headmaster in pursuance of the complaint made by the respondent No. 6.

7. It is the further case of the petitioners that, after hearing the parties, on 29.09.2014, this High Court disposed of the Writ Petition No. 8299/2014 and Writ Petition No. 8077/2014 on the basis of the statement made for and on behalf of the petitioners that, if Shri Kondba s/o. Namdeorao Sandve would approach the newly elected Executive Committee for his appointment as Headmaster, then the Executive Committee / Management would take decision for his appointment. After the order passed by this Court as referred to above, it was expected from the respondent No. 5 - Kondba s/o. Namdeorao Sandve to give consent in writing for his appointment on the post of Headmaster. However, the respondent No. 5 did not give consent. In spite of that, the present Executive Committee has taken a decision to appoint the respondent No. 5 - Kondba s/o. Namdeorao Sandve as Headmaster. It is the further case of the petitioners that, appointment order was issued in favour of the respondent No. 5 on 07.10.2014, directing him to join the post of Headmaster. However, the respondent No. 5 refused to accept the said appointment order dated 07.10.2014.

8. It is the further case of the petitioners that, it appears that, the respondent No. 6 posing himself as General Secretary of the Trust appears to have submitted a proposal dated 10.10.2014 to the respondent No. 3, seeking approval to the appointment of respondent No. 5 - Kondba s/o. Namdeorao Sandve as Headmaster. It is the further case of the petitioners that, the respondent No. 5 - Kondba s/o. Namdeorao Sandve wrote a letter to the petitioner No. 1 on 13.10.2014, stating that, the Management of the Trust has already appointed him as Headmaster vide order dated 01.08.2014. This appointment has been given by the Executive Committee members, whose names appeared in the scheduled-I of the trust. It is the further case of the petitioners that, the petitioner No. 1 made a representation on 17.10.2014 to the respondent No. 3 - Education Officer [Secondary], Zilla Parishad, Nanded on 17.10.2014 and requested not to issue any order on the basis of proposal submitted by the respondent No. 6 for and on behalf of Adarsh Vidyalaya Shikshan Samiti. The respondent No. 3 - Education Officer [Secondary], Zilla Parishad, Nanded by order dated 12.11.2014 granted approval to the appointment of the respondent No. 5 - Kondba s/o. Namdeorao Sandve as Headmaster. Hence this Petition.

9. The learned counsel appearing for the petitioners submits that, after the elections the petitioner No. 1 has filed change report in accordance with the provisions contained in Section 22 of the Maharashtra Public Trusts Act, 1950, and same is registered as Enquiry No. 578/2013 in the office of the Assistant Charity Commissioner, Nanded. It is submitted that, the petitioner No. 1 is the

President and the petitioner No. 2 is the General Secretary of the newly elected body and in view of the reported Judgment of Division Bench of this Court in the case of Janata Shikshan Prasarak Mandal and another Vs. The State of Maharashtra and others in Writ Petition No. 6073/2005 delivered on 22.09.2005, the newly elected representatives can not be prohibited from functioning, merely because the change report is pending. The old body therefore cannot be permitted to function merely on the count that the Change Report is pending consideration before the appropriate authority. Therefore, relying on the pleadings in the Petition, grounds taken therein, annexure thereto, learned counsel appearing for the petitioner submits that, Petition may be allowed.

10. On the other hand, the learned AGP appearing for the respondent Nos. 1 to 3 submits that, this Court may pass appropriate orders. The learned counsel appearing for the respondent No. 5 invited our attention to the impugned order at Exhibit-J Page 63 of the compilation of the Writ Petition i.e. a letter written by the Education Officer [Secondary], Zilla Parishad, Nanded to the President / Secretary, Adarsh Vidyalaya Shikshan Samiti, Manatha, Taluka Hadgaon, District Nanded and submits that, the present petitioner also recommended the name of the present respondent No. 5 for appointment and approval, and therefore, the impugned order of granting approval to the appointment of the respondent No. 5 as Headmaster deserves no interference.

11. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioners and the learned counsel appearing for the respective respondents. With their able assistance, perused the pleadings and the grounds taken in the Petition, annexure thereto and we are of the opinion that, the newly elected representatives are entitled to function and look after the affairs of the Adarsha Vidyalaya Shikshan Samiti, Manatha, Taluka Hadgaon, District Nanded. The Division Bench of this Court in the case of Janata Shikshan Prasarak Mandal and another Vs. The State of Maharashtra and others in Writ Petition No. 6073/2005, while considering the issue whether the pendency of the Change Report before the Assistant Charity Commissioner enables the old body to continue to function in spite of the fact that, newly elected representatives have assumed charge, after considering the earlier authoritative pronouncement on the aforesaid aspect held that, submission of the Change Report is a mere formality and till such time as orders are passed by the competent authorities rejecting the Change Report, the newly elected representatives could not be prohibited from functioning. Merely because the change report is pending, the old body does not continue and the old body therefore cannot be permitted to function merely on the count that the Change Report is pending consideration before the appropriate authority.

[Emphasis supplied]

12. In the light of the afore stated observations of this Court in the case of Janata Shikshan Prasarak Mandal and another Vs. The State of Maharashtra and others in Writ Petition No. 6073/2005, in the facts of the present case, once the

newly elected representatives have submitted change report and elected office bearers i.e. petitioners, respondent No. 6 herein had no authority either to appoint respondent No. 5 or give recommendation for the approval of the appointment of Respondent No. 5 as Head Master. Since respondent No. 6 had no authority to appoint respondent No. 5 as squal Education Officer could not have acted upon recommendation of the respondent No. 6 for granting approval to the appointment of the respondent No. 5 as Headmaster.

It is not in dispute that, Kondba s/o. Namdeo Sandve is the senior most teacher, and the petitioners have also appointed him as Headmaster and forwarded his proposal to that effect to the Education Officer. Therefore, in our considered view, the appointment of the respondent No. 5 as Headmaster and approval to his services can only be on the basis of the appointment - recommendations of the newly elected representatives i.e. petitioners. Therefore, we hold that, the appointment of the respondent No. 5 and also approval to his appointment as Headmaster granted by the Education Officer was at the instance of the present petitioners and appointment of the respondent No. 5 by the respondent No. 6, or his recommendations will have to be held per se illegal, and accordingly, we hold that the appointment of the respondent No. 5 at the instance of the respondent No. 6 or his recommendation for the approval for the appointment as Headmaster was not sustainable in law.

13. In the light of the discussion herein above, in our opinion, though filing of change report is a necessary formality, the newly elected representatives i.e. petitioners can not be prohibited from functioning on the ground that the change report has not been accepted by the Assistant Charity Commissioner. Merely because the change report is pending, the old body does not continue and cannot be permitted to function.

14. Thus, Respondent No. 6 was not having any right or authority to forward the proposal of Respondent No. 5 for approval. Such proposal could have been moved only by the present petitioners and non else. Respondent Nos. 1 to 4 have to act only at the instance of the elected representatives in respect of affairs of Adarsh Vidyalaya Shikshan Samiti, Manatha, Taluka Hadgaon, District Nanded.

15. Rule made absolute in above terms. Petition is allowed to above extent, and same stand disposed of.