

**(2024) 08 BOM CK 0032**

**In the Bombay High Court**

**Case No :** Writ Petition Nos. 1263, 1382, 1400 Of 2024

Pandit Bhika Jadhav

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

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**Date of Decision :** 21-08-2024

**Acts Referred:**

Constitution of India, 1950 — Article 226

Maharashtra Educational Institutions (Management) Act 1976 — Section 3, 3(1), 4

Right of Children to Free and Compulsory Education Act, 2009 — Section 16, 16(1)

**Citation :** (2024) 08 BOM CK 0032

**Hon'ble Judges :** Mangesh S. Patil, J; Shailesh P. Brahme, J

**Bench :** Division Bench

**Advocate :** R. R. Shinde, S. S. Tope, A. R. Kale, P. G. Rodge

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## **Judgement**

Shailesh P. Brahme, J

1. Rule. Rule is made returnable forthwith. Heard the litigating sides finally at the admission stage with their consent.

2. The petitioners are office bearers of registered trust namely Marathwada Banjara Seva Sangh, which runs seven Ashram Schools in Chhatrapati Sambhajinagar (Aurangabad). They are invoking jurisdiction under Article 226 of the Constitution of India to challenge order dated 29.03.2023 passed by the respondent No. 2/Desk Officer Other Backward Bahun Social Welfare Department, for appointment of administrator, order dated 18.04.2023 issued by the respondent No. 4/Deputy Director, order dated 15.12.2023 issued by the respondent No. 2 and consequential order dated 27.12.2023 issued by the respondent No. 3/Director for withdrawal of recognition of seven Ashram Schools. We propose to decide the matters by common judgment and order as there are common grounds of challenge. We are referring the parties as per their status in Writ Petition No. 1263 of 2024.

3. Marathwada Banjara Seva Sangh, Aurangabad (Chhatrapati Sambhajinagar)

(hereinafter referred as to 'Sangh' for the sake of brevity and convenience) runs three Primary Ashram Schools, three Secondary Ashram Schools and one Higher Secondary Ashram School receiving 100% grant in aid. There was election of managing committee on 31.08.2009 for the period 2009-2011. The last change report was accepted on 16.04.2015. Other change reports are awaiting adjudication. We need not go into rivalry amongst the office bearers.

4. There were disputes amongst the members of the Sangh. The respondent No. 6 and others had made complaint regarding misappropriation and the cognizance was taken by the respondent No. 5 – Assistant Commissioner calling upon President/Secretary of the Sangh and the Head Masters vide notice dated 18.10.2022. Thereafter by letter dated 11.11.2022, he recommended the respondent No. 3 – Director and the respondent No. 1 – Secretary to appoint administrator considering mismanagement. The respondent No. 2 further forwarded the proposal to the respondent No. 1 vide letter dated 13.12.2022.

5. The respondent No. 5 – Assistant Commissioner issued notice to the office bearers of the Sangh and the Head Masters of the schools to submit their say within 15 days vide notice dated 08.03.2023. On 15.03.2023, the respondent No. 5 – Assistant Commissioner informed the respondent Nos. 1 to 4 that no say or any correspondence was received from the Sangh.

6. The respondent No. 1 informed the respondent No. 4 – Deputy Director that as no explanation or say was filed by the office bearers of the Sangh, the respondent No. 5 – Assistant Commissioner was appointed as administrator over 07 Ashram schools vide letter dated 29.03.2022 and he was further directed to submit proposal for de-recognition. In pursuance of that, an order was issued by the respondent No. 4 – Deputy Director appointing administrator for the year 2022-2023 stipulating certain terms. One of the terms was that if it was found that there was no improvement in the management, the Assistant Commissioner would submit proposal for de-recognition by the end of the academic year 2022-2023.

7. The respondent No. 5 - Assistant Commissioner reported to the respondent No. 4 – Deputy Director vide letter dated 05.06.2023 that there was no improvement and lack of coordination amongst the office bearers of the Sangh and recommended to revoke the recognition of 07 Ashram Schools. The proposal was forwarded to the Director and thereafter to the State Government vide letter dated 10.06.2023. Ultimately, the respondent No. 1 took a decision of withdrawing recognition of 7 Ashram schools, albeit, the schools were permitted to run till end of the academic year 2023-2024. Thereafter, the procedure for transferring the schools and students to new schools was also proposed.

8. We have heard learned counsels for the petitioners who are led by learned advocate Mr. P. B. Shirsat. He submits that impugned orders dated 29.03.2023 and 15.12.2023 and consequential letter dated 27.12.2023 are against principles of natural justice. Without extending any opportunity to the petitioners and

Sangh drastic action was taken. The petitioners were neither supplied the documents, nor apprised of the allegations and in a clandestine manner impugned orders were passed.

9. He would submit that order of appointment of administrator is against the provisions of the Maharashtra Educational Institutions (Management) Act 1976 (hereinafter referred as to the 'Act of 1976' for the sake of brevity and convenience). It is further submitted that withdrawal of recognition is against the provisions of the Secondary School Code (hereinafter referred as to the 'S. S. Code' for the sake of brevity and convenience) and the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred as to the 'R. T. E. Act' for the sake of brevity and convenience).

10. Learned counsel Mr. P. B. Shirsat vehemently submits that impugned orders are without jurisdiction and they were passed without following due procedure of law. There was no objective scrutiny of the proposal and no inspection was conducted for verification before passing impugned orders. It is further submitted that impugned orders are arbitrary, predetermined and reflect colourable exercise of powers. He seeks to rely on the judgments of the Supreme Court and this Court in the matters of Union of India and others Vs. Somasundaram Viswanath and others reported in (1989) 1 SCC 175 and Marathwada Gramin Apang Vikas Mandal Vs. The State of Maharashtra and others reported in 2023(6) ALL MR 388.

11. Per contra, learned Additional Government Pleader Mr. A. R. Kale supports impugned orders and communication dated 27.12.2023. He would refer to the affidavit in reply to demonstrate that due procedure was followed before passing impugned orders. He would submit that due intimation was given to the petitioners and the office bearers of the Sangh and time was granted to file their say. Even time was extended for filing say. He would point out that hearing was conducted on 01.11.2022 for which the office bearers and the Head Masters were present and thereafter impugned orders were passed. He would submit that there were serious lapses on the part of the petitioners and the students were the sufferers. To safeguard the interest of the students, the respondent authorities have passed impugned action.

12. The learned Addl. G. P. would strenuously point out that the manner in which the impugned orders are passed is described in para No. 7 of reply. It is submitted that objective scrutiny was made into the allegations and as there was no improvement in the administration the drastic action was resorted to. He would submit that Rule 3.2 of the Code of Conduct of Ashram Schools empowers the competent authority to appoint the administrator. Lastly, it is submitted that impugned action is legal, proper and no interference is called for.

13. Learned counsel Mr. Rodge for the respondent No. 6, who is original complainant supports the submissions of the petitioners to the extent of challenging the impugned orders.

14. We have considered rival submissions of the litigating sides. The petitioner in Writ Petition No. 1263 of 2024 has also filed Writ Petition No. 7845 of 2024 challenging the proposed action of transfer of the ashram schools. The cause of action for the present matters is prior in time and fate of the subsequently filed petition would depend on the outcome of the present matters. Therefore, consideration of the Writ Petition No. 7845 of 2024 is deferred for the time being.

15. Before proceeding to deal with the matters on merits, it is relevant to notice that appointment of the administrator is regulated by the provisions of the Act of 1976. De-recognition/withdrawal of recognition of Secondary or Higher Secondary schools is governed by provisions of the S. S. Code. De-recognition of the primary schools is governed by the provisions of the R.T.E. Act.

16. There is elaborate procedure prescribed for appointing administrator under the Act of 1976. Its Section 3(1) contemplates extending an opportunity of hearing before taking over management for a period not exceeding three years. The Director U/Sec. 4 of the Act of 1976 is empowered to appoint an administrator over the educational institution taken over U/Sec. 3 of the Act of 1976 on certain conditions.

17. For the de-recognition of secondary school or higher secondary school procedure contemplated under Rule 7.1 to 7.6 of the S. S. Code would govern the field. Rule 7.2 of the S. S. Code contemplates giving an opportunity to the management and Rule 7.3 of the Code contemplates granting of time to remove the defects. The de-recognition of primary school is governed by Sec.16 of the R. T. E. Act. Its Section 16(1) contemplates an opportunity of hearing to be given to the management.

18. The common thread of the relevant provisions of the Act of 1976, S. S. Code and the R. T. E. Act is that it is mandatory for the competent authorities to extend opportunity of hearing to the management and its office bearers, to apprise them of the illegalities or the lapses and to extend time to remove the deficiencies. Appointment of administrator and de-recognition are drastic actions, having serious effects not only on the management, but on the students, staff, infrastructure and the parents of the students. Therefore, every precaution needs to be taken to comply with the statutory procedure in its letter and spirit.

19. In the present matters, if the authorities were of the opinion that administrator was to be appointed then, it was necessary to comply the provisions of the Act of 1976. We do not find that any communication was issued by the respondent No. 3/Director or its subordinates to the petitioners or the office bearers of the Sangh intimating the proposed action either U/Sec. 3 or 4 of the Act of 1976. None of the communications would indicate any reference to the Act of 1976. On 08.03.2023 the respondent No. 5 Assistant Commissioner issued notice to the office bearers calling upon them to file their reply within fifteen days. Even without waiting for fifteen days thereafter, he reported to the Deputy Director vide letter dated 15.03.2023 that no reply was filed. There is no record

as to what happened between 08.03.2023 and 18.04.2023. There is no material to show that any hearing was conducted before arriving at a conclusion for appointment of an administrator. What is pressed into service is the notice dated 08.03.2023 calling upon the office bearers and the Head Masters to file their say on the proposal of appointment of administrator. There is nothing on record to show that the petitioners were apprised of the allegations, lapses or deficiencies or they were supplied with relevant documents. Surprisingly, Assistant Commissioner had made up his mind and on 11.11.2022 written to the respondent Nos. 1 and 3 recommending appointment of administrator. Similarly, the Director also addressed a letter to the respondent No. 1 communicating proposed action of appointment of administrator and de-recognition. We are of the considered view that action of appointment of administrator is predetermined. No opportunity of hearing was given as contemplated by Sec. 3(1) of the Act of 1976.

20. It is very surprising that the respondent No. 2/Desk Officer addressed a letter to the respondent No. 4 – Deputy Director on 29.03.2022 informing the appointment of administrator and calling upon him to submit proposal for de-recognition. This conduct is arbitrary and dehors the provisions of the Act of 1976. Thereafter by impugned order dated 18.04.2023 administrator was appointed on the Ashram Schools of the Sangh. It is evident that due to written instructions of the respondent No. 2 – Desk Officer a formality was completed for appointing administrator. We have gone through the affidavit-in-reply filed by the respondent Nos. 1 to 5. We do not find any reference to the compliance of the procedure as contemplated under the Act of 1976 for appointment of administrator, S. S. Code or the R. T. E. Act for withdrawing the recognition of the schools. It refers to Rule 3.2 of the Ashram School Code which in turn refers to application of Act of 1976.

21. The scheme of the Act of 1976 shows that before appointing administrator U/ Sec. 4, the Director has to take over the management by following procedure laid down U/Sec. 3 of the Act of 1976. Without complying with Section 3, Section 4 of the Act of 1976 cannot be resorted to. There is nothing on record to show that any steps were ever taken or any order was passed U/Sec. 3 of the Act for taking over the management. The appointment of administrator is directly resorted to by-passing earlier statutory stages and the compliances. We have no hesitation to hold that order of appointment of administrator is against the principles of natural justice and against Sec. 3 and 4 of the Act of 1976.

22. By order dated 15.12.2023, recognition of seven ashram schools was withdrawn by the respondent No. 2. We have already referred that withdrawal of recognition in the case of Secondary and Higher Secondary School is regulated by Rule 7.3 of the S. S. Code. There is no reference and compliance to the due procedure contemplated therein. No opportunity was given to the management either to tender explanation or to remove the defects. There is nothing on record to show that the defects were ever communicated and time was given to remove

the defects, muchless there is any objective scrutiny into the allegations. Shockingly, in one go primary schools, secondary schools and a higher secondary school were de-recognized. The respondent No. 2 – Desk Officer had no jurisdiction to undertake any procedure for de-recognition. Order of de-recognition dated 15.12.2023 is void.

23. It can be seen from the record that the respondent No. 2 – Desk Officer had instructed Deputy Director vide letter dated 29.03.2022 to submit proposal for de-recognition of the schools. Order dated 18.03.2023 appointing administrator also indicates the intention for de-recognition of the schools. The respondent No. 5 – Assistant Commissioner recommended de-recognition while addressing a letter dated 05.06.2022 to the Deputy Director of Education. The above correspondence indicates that already the authorities had made up mind for de-recognition. Thereafter, impugned order was passed on 15.12.2023 de-recognizing seven ashram schools. We do not find any material on record to indicate compliance of Rule 7.2 and 7.3 of the S. S. Code. The respondent No. 2 – Desk Officer had no authority to undertake any enquiry and to pass order of de-recognition.

24. Admittedly, there are three primary ashram schools which are also de-recognized by order dated 15.12.2023. For de-recognizing primary schools different procedure was required to be followed by the competent authority. The procedure stipulated U/Sec. 16 of the R. T. E. Act has been given a go-bye. The respondent No. 2 – Desk Officer appears to have conducted enquiry and passed order of de-recognition which has no sanctity of law. We have no hesitation to hold that the order dated 15.12.2023 passed by the Desk Officer is without jurisdiction and bad in law.

25. It reveals from record that administrator was appointed by order dated 23.03.2022 for one academic year. He took charge of the schools. Thereafter, the steps were taken for revoking the recognition of the schools. When administrator was in charge of the schools, the recognition could not have been withdrawn.

26. Impugned letter dated 27.12.2023 addressed by the Director to the Deputy Director is consequential one. It was issued in pursuance of order of de-recognition passed on 15.12.2023. As the order of de-recognition is held to be illegal, consequential letter dated 27.12.2023 is also unsustainable.

27. Learned Addl. G. P., in alternative would submit that the matter may be remitted to the competent authorities for reconsideration on the point of appointment of administrator or withdrawal of the recognition. The present matters are not adversarial in nature. The competent authority has power to undertake the procedure contemplated in law for either appointment of administrator or de-recognition. Since we have been pointing out the breach of procedure since inception, no purpose would be served in remitting the matters either to the respondent No. 2 or any other competent authority. In the facts and circumstances, we do not approve the submissions of the learned Addl. G. P.

28. Though the learned counsel for the petitioner would rely on the judgment of this Court in the matter of Marathwada Gramin Apang Vikas Mandal Vs. The State of Maharashtra and others (supra), it was mainly a matter of transfer of management under the provisions of the Maharashtra Educational Institutions (Transfer of Management) Act of 1971. In those facts and circumstances we had recorded that the statutory procedure was required to be followed.

29. For the reasons recorded above, we are of the considered view that the impugned orders and the letters are liable to be quashed and set aside. We, therefore, pass following order.

#### ORDER

- a. The order dated 29.03.2023 passed by the respondent No. 2– Desk Officer and order dated 18.04.2023 passed by the respondent No. 4/Deputy Director appointing administrator on seven ashram schools of the Sangh are quashed and set aside.
- b. Order dated 15.12.2023 issued by the respondent No. 2/Desk Officer revoking the recognition of seven ashram schools and consequential letter dated 27.12.2023 issued by the respondent No. 3/Director of Other Backward Bahujan Welfare Department, Pune are quashed and set aside.
- c. The respondent No. 5 – Assistant Commissioner, who is administrator over the schools shall restore management of all the schools to the management/Sangh immediately.
- d. Rule is made absolute in all petitions in above terms.