

(2009) 06 BOM CK 0065

In the Bombay High Court

Case No : Writ Petition No's. 7302 of 2006 and 473 of 2008

Ravindra Firake

APPELLANT

Vs

Janata Shikshan Mandal (a Registered Public Trust) and
Others
 Smt. Suchitra Laxman Vaidya Vs The
President, Kisan Vidya Prasarak Sanstha, Secretary, Kisan
Vidya Prasarak Sanstha, Deputy Director of Education, Nashik
Region and Director of Education

RESPONDENT

Date of Decision : 15-06-2009

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 10, 11, 12, 13, 14
Maharashtra State Council of Examination Act, 1998 — Section 3(1), 5
National Council for Teacher Education Act, 1993 — Section 2, 2(1)
University Grants Commission Act, 1956 — Section 2

Citation : (2009) 06 BOM CK 0065

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : S.P. Shah, holding for P.S. Shendurnikar, in Writ Petition Nos. 7302 of 2006 and V.J. Dixit, instructed by S.B. Yawalkar, in Writ Petition No. 473 of 2008, for the Appellant; S.R. Barlinge, for Respondents Nos. 1 to 3 in Writ Petition Nos. 7302 of 2006, K.M. Suryawanshi, AGP for Respondent No. 4 in Writ Petition Nos. 7302 of 2006, V.J. Dixit, instructed by S.B. Yawalkar, in Writ Petition Nos. 7302 of 2006, S.P. Brahme, in Writ Petition No. 473 of 2008, S.R. Barlinge, in Writ Petition No. 473 of 2008 and K.M. Suryawanshi, A.G.P. in Writ Petition No. 473 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Kingaonkar, J.—Rule. By consent, both the petitions have been heard finally.

2. The petitioners seek to challenge orders rendered by learned Presiding Officer, School Tribunal, Nashik Region, Nashik, in two (2) separate appeals No. Jal31/1998 and Dhl18/2006, respectively whereby and whereunder their appeals were dismissed on finding on preliminary issue of jurisdiction. The School Tribunal held

that it has no jurisdiction to entertain the appeals u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, "the MEPS Act").

3. It is not necessary to elaborately set out the cases put forth by the petitioners before the School Tribunal. Suffice it to say that petitioner Ravindra asserted that he was appointed as Craft Teacher in Adhyapak Vidyalaya, Khiroda and was working as such from March 13th , 1995. He alleged that his services were orally terminated on 16th October, 1997 without following any procedure laid down under the MEPS Act and the Rules there under. He, therefore, filed appeal No. Jal31/ 1998 in the School Tribunal.

4. According to petitioner Smt. Suchitra, she is a trained graduate teacher duly qualified for post of Principal. She was appointed as Principal in the D.Ed. College of Kisan Vidya Prasarak Sanstha, Shirpur, styled as "Dr. B.R. Ambedkar Junior College of Education, Boradi". Her appointment was duly approved by the Education Officer. She was working as Principal from 1st December, 2001 continuously till 25th August, 2006. Without any fault on her part, as a result of bias against her, the Management demoted her to the post of lecturer. She, therefore, challenged the said order by filing appeal No. Dhl18/ 2006 before the School Tribunal.

5. Common preliminary issues were framed by the School Tribunal in both the above referred appeals. The School Tribunal held that D.Ed./B.Ed. Colleges could not be regarded as recognized institutions within the meaning of Section 2 (21) of the MEPS Act. The Tribunal held that there was inherent lack of jurisdiction with it so as to entertain the appeals. Hence, the appeals were dismissed on preliminary findings on the issue pertaining to jurisdiction. Feeling aggrieved, the petitioners have filed these petitions.

6. Heard learned Counsel for the parties.

7. The common question involved in both these petitions is:

Whether the D.Ed./B.Ed. Training Institutes/ Colleges come within the ambit of definitions envisaged under Sections 2 (20), 2 (21) readwith Section 2 (24) of the MEPS Act and that the School Tribunal is competent to entertain the appeals preferred by the petitioners ?

8.The scheme of the MEPS Act may be briefly noticed. The preamble of the Act reads thus:

WHEREAS, it is expedient to regulate the recruitment and conditions of service of employees in certain private schools in the State, with a view to providing such employees security and stability of service to enable them to discharge their duties towards the pupils and their guardians in particular, and the institution and the society in general, effectively and efficiently;

AND WHEREAS, it is further expedient in the public interest to lay down the

duties and functions of such employees with a view to ensuring that they become accountable to the Management and contribute their mite for improving the standard of education;

AND WHEREAS, it is also necessary to make certain supplemental, incidental and consequential provisions; It is hereby enacted in the Twenty eighth year of the Republic of India as follows:

The Act was to come in force on such date as the State Government might by Notification in the Official Gazette, decide to appoint. It is not in dispute that the Act came into force with effect from July 15, 1981 which was "appointed date" as defined in Clause (1) of Section 2. Clause (6) of Section 2 defines "Director" and it reads thus:

"Director" means the Director of Education or the Director of Technical education, as the case may be, appointed as such by the State Government."

"Employee" is defined as any member of teaching and non teaching staff of a recognized school.

"Management" is defined in Clause (12) thus : "Management" in relation to a school, means:

(a) in the case of a school administered by the State Government, the Department;

(b) in the case of a school administered by a local authority, that local authority; and

(c) in any other case, the person or body of persons, whether incorporated or not and by whatever name called, administering such school". The terms "private school" and "school" have been defined in clauses (20) and (24) of Section 2 respectively and they read as under:

(20) "private school" means a recognized school established or administered by a Management, other than the Government or a local authority".

(24) "school" means a primary school, secondary school, or higher secondary school, or any part of any such school, a Junior College of Education, or any other institution or part thereof which imparts education or training below the degree level including any institution which imparts technical or vocational education.

The term "recognized" is defined in Clause (21) of Section 2 as recognized by the Director or an officer authorized by him or by the State Board.

9. Section 3 declares that the provisions of the Act "shall apply to all private schools in the State of Maharashtra", whether receiving any grant-in-aid from the State Government or not. Section 4 prescribes terms and conditions of service of employees of private schools. Section 5 lays down obligations of management of private schools. Section 8 requires the State Government to constitute one or

more Tribunals to be called "School Tribunals" and defines jurisdiction of each Tribunal. Section 9 confers right of appeal to Tribunal by employees of private schools. Section 10 deals with powers and procedure of the Tribunal. u/s 11, the Tribunal can issue directions and grant appropriate relief to the persons aggrieved. Section 12 makes the decision of the Tribunal final and binding. Section 13 imposes penalty on management for failure to comply with Tribunal's order. u/s 16, the State Government is empowered to make Rules for carrying out the purposes of the Act.

10. In exercise of the powers conferred under the Act, the State of Maharashtra framed Rules known as "The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981. They inter alia, provide qualifications, appointment of teaching staff, maintenance of seniority list and other matters connected with service conditions of employees. They also lay down procedure for holding inquiries and imposition of penalties.

11. The institutions dealing with training to teachers were previously governed by the Secondary Schools Code. The training institutes/colleges for teacher's education are now governed by the National Council for Teacher Education Act, 1993 (for short, "the NCTE Act"). The definition of "Recognized Institution" is envisaged in Section 2 (i) as follows:

2 (i) Recognised Institution means an institution recognised by the Council u/s 14;

Section 2 (l) defines "teacher education" as follows:

2 (l) "teacher education" means programmes of education, research or training of persons for equipping them to teach at preprimary, primary, secondary and senior secondary stages in schools, and includes no formal education, part time education, adult education and correspondence education;

The expression "teacher education qualification" is defined in Section 2 (m) as follows:

(m) "teacher education qualification" means a degree, diploma or certificate in teacher education awarded by a University or examining body in accordance with the provisions of this Act;

The term "University" as defined u/s 2 (n) does imply an University which is defined u/s 2 (f) of the University Grants Commission Act, 1956 and also is inclusive of an institution deemed to be a University u/s 3 of that Act.

12. The scheme under Chapter (IV) of the NCTE Act would make it amply clear that for recognition, the institution offering or intending to offer a course or training in teacher education is required to make an application to the Regional Committee as provided under the regulations. The proviso appended to Section 14 (1) permitted continuation of such training or course by a educational institution for a period of six (6) months if it was already being operated before

commencement of the said Act. In other words, the fallout of this Enactment is that after commencement of the Act w.e.f 29th December, 1993, even though some training colleges/institutions were dealing in the courses meant for teacher education, yet, afresh recognition of the competent authority under the NCTE Act was necessary after a period of six (6) months. The recognition is further needed in order to commence such training courses after the appointed date only from the competent authority under the NCTE Act. This is the Central Act. Nowhere, the NCTE Act gives any leeway to continue recognition of the training courses run under the approval of the State authorities. Mr. Dixit, learned senior counsel and Mr. S.P. Shah, learned advocate, strenuously argued that the concept of "recognition" for the educational institution under the MEPS Act within the meaning of Section 2 (21) and permission required from the central authority under the NCTE Act to run the training courses are distinct. It is pointed out that the institutions dealing in "teacher education" are included in Section 2 (10). It is contended that otherwise Section 2 (10) would be redundant if the junior college of education comprising of the training courses for teachers are not considered within the meaning of Section 2 (21) of the MEPS Act. It is contended that Section 2 (21) ought to be duly interpreted having regard to object of the MEPS Act which is explicit from the preamble. It is argued further that purposive interpretation of Section 2 (21) is required in order to fill up the gap of non inclusion of the competent authority under the NCTE Act. Another limb of the argument advanced by learned Counsel is that the NCTE Act is meant only for standardization of the teacher education and does not deal with service conditions of the teachers and the staff members of the education institutions. It is argued, therefore, that the provisions of the MEPS Act continue to apply to the institutions imparting training for "would be teachers". So also, it is argued that the Maharashtra State Council of Examination Act, 1998 would be applicable and, therefore, the institutions could be regarded as recognized one within the meaning of Section 2 (k) thereof. It is pointed out that the State Council as enumerated u/s 5 of the Maharashtra State Council of Examination Act, 1998 (for short, "the MSCE Act") comprises of the Director of Education of the Government or his nominee. Thus, the recognition, according to the learned Counsel, is implicit when the Director of Education is the member of the State Council established u/s 3 (1) of the said Act. The learned senior counsel would point out from the affidavits of the Education Officer that the fact about availability of jurisdiction to the School Tribunal is undisputed. As against this, Mr. Barlinge supports the impugned orders.

13. At this juncture, let it be noted that the MSCE Act does not deal with the subject of "recognition of institution" for the purpose of the MEPS Act. The preamble of the said Act reads as follows:

WHEREAS it is expedient to provide for the establishment of a State Council to regulate the matters pertaining to scholastic, professional and certain other examinations in the State of Maharashtra and for other matters connected therewith or incidental thereto; It is hereby enacted in the Fortyninth Year of the

Republic of India as follows:

Thus, it manifestly clear that the object of the said Act is to regulate professional examinations and allied examinations in the State of Maharashtra. The focus is on manner of conducting the examinations. It has no relevance with the subjects pertaining to service conditions of the employees of private schools or institutions. It is difficult to countenance the argument, therefore, that the recognized institution under the said Act is the same one for the purpose of the MEPS Act.

14. The contention of the learned Counsel that the affidavits of the Education Officer go to indicate availability of jurisdiction to the School Tribunal and, therefore, the impugned orders are required to be interfered with, must be rejected forthwith. For, the admission or concession by a party does not clothe any Court or Tribunal with the jurisdiction. It is well settled that jurisdiction cannot be given to a Court or Tribunal merely by consent of the parties, except and save in some cases of contracts.

15. The neat question to be asked by oneself is whether the teacher education can be imparted by any institute/college without approval of the competent authority under the NCTE Act ? The answer obviously is in the negative. The next question to be addressed is whether the competent authority under the NCTE Act is the authority within the meaning of Section 2 (21) of the MEPS Act. A plain reading of Section 2 (21) would make it amply clear that the recognition can be by (i) the Director of Education or Director of Higher Education or the Director of Technical Education, etc. (ii) The Divisional Board or the State Board or by an authorized officer.

16. The expression "any officer authorized by him or any of such Boards" would mean an officer authorized by the Director of Education or one who is authorized by the Divisional Board of Education or the State Board of Education. The competent authority within the meaning of provisions of the NCTE Act does not figure anywhere as an authority for the purpose of recognition of the private school. The term "private school" does mean a recognized school established or administered by a Management, other than the Government or the local authority. It is for such reason that the Government schools or the municipal schools fall outside the ambit of the MEPS Act. It is true that the term "junior college of education" is defined in Section 2 (10), but it does not mean that the said definition would become redundant only because recognition of the courses to be imparted in such a college or institution ought to be given by the competent authority under the NCTE Act. Assuming that corresponding amendment is not effected in Section 2 (21) so as to include the competent authority under the NCTE Act, then also, I find it difficult to assume that the omission can be cured by stretching the definition to the extent it cannot be so done. This may amount to the exercise of judicial enactment and certainly, it is not a mere gap filling process.

17. The learned Counsel for the petitioners referred to Union of India (UOI) and Others Vs. Shah Goverdhan L. Kabra Teachers College, and State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, . The Apex Court held that the decision of the Council under the NCTE Act should not be lightly tinkered with by the Courts. It has been held that the function of the State Government under the guidelines issued by the NCTE was only to collect the data and material and to furnish the same to NCTE to enable NCTE to take the appropriate action.

18. In "Shobha Kailash Bonekar v. Cantonment Executive Officer and Ors." 2007 (3) Bom.C.R.1, a special Bench of this Court held:

When this phrase, namely; recognized "by any officer authorized by the Director or by any such Boards", is included in the later part of section 2 (21), such Boards will be of the level of the State Board or the Divisional Board. This view has been taken now by the Apex Court in Dagdu Vs. President, Anandrao Naik S.P. Mandal and Others, decided on 20.3.2006....

Section 2 (21) of MEPS Act defines the term "recognised". The last clause therein is "by any of such boards". The term "such" is defined in Oxford Dictionary as of the kind or degree indicated or implied by the context. Therefore, the term "such Board" will have to mean a Divisional Board or of the level of Divisional Board or the State Board. We may mention in this connection that the learned Advocate General referred us to the proposition in para 10 of the decision in Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, to the effect that an adjectival phrase qualifies the proximate substantive word. That was for explaining the phrase "such boards" in the correct context.

19. In Suryakant Sheshrao Panchal Vs. Vasantrao Naik Vimukta Jati, Bhatakya Jamati Aadarsh Prasarak Mandal and Others, , it has been held that remedy under the MEPS Act is available to employees of "private schools" and it cannot be extended to employees of "any school" by framing of Code. It can only be done by amending the Statute. It has been observed that by framing the Ashram Schools Code, the schools which were not recognized could not be brought within the ambit of the MEPS Act.

20. Mr. S.P. Shah referred to K.V. Muthu Vs. Angamuthu Ammal, . The Apex Court held that while interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. The question of purposive interpretation is hardly of any significance in the present case. The words of Section 2 (21) are clear enough and, therefore, golden rule of interpretation will have to be applied instead of mischief rule.

21. A Single Bench of this Court in St. Francis Industrial Training Institute and Others Vs. P.J. Jose and Others, , dealt with Sections 9 and 2 (21) of the MEPS Act. It is held:

On behalf of the first respondent, however, it was sought to be urged that the enquiry was initiated under the provisions of the M.E.P.S. Act, 1977 and the rules framed thereunder and the petitioners must therefore be stopped from denying the application of the Act. The submission cannot be accepted for the simple reason that there can neither be an estoppel against statute nor can jurisdiction upon the Tribunal be confirmed by consent. The statute applies to private schools and unless the institution fulfills the definition of the expression "private school", the Act does not apply. The right to appeal is conferred by Section 9 and unless a person is an employee of a private school the Tribunal would have no jurisdiction.

The learned Single Judge proceeded to hold that the institution which was under the control of the Director of Vocational Education and Training could not be regarded as "recognized school" which the meaning of Section 2 (21) of the MEPS Act. I respectfully agree with the view taken by the learned Single Judge in the above referred case.

22. In the present case, both the educational institutions do not fall within the ambit of Section 2 (21) of the MEPS Act. The jurisdiction available to the School Tribunal u/s 9 of the MEPS Act could not have been invoked by the petitioners. It is argued that the petitioners would be rendered remedy less if there is no fora available for ventilating their legal grievances. It is contended, therefore, that this Court may in the exercise of writ jurisdiction decide the petitions on merits thereof. I do not think that the petitions would be rendered without remedy. The remedy to approach the civil Court is available when the petitioners are not covered by the MEPS Act. Full Bench of this Court in *St. Ulai High School and Shri Adishakti Hindi Prachar Samitee Vs. Shri Devendraprasad Jagannath Singh and The Zilla Parishad*, held that remedy by way of suit is impliedly barred when the matters pertain to clauses (a) and (b) of Sub-section (1) of Section 9 of the MEPS Act, 1977. However, when Section 9 is not attracted, there is no substantial reason to infer ouster of jurisdiction of the civil Court. This Court cannot decide the disputed questions of facts and, hence, I deem it proper to decline to entertain the request to decide the petitions on merits of each case.

23. For the aforesaid reasons, I have no hesitation in holding that the School Tribunal has no jurisdiction to entertain the appeals, preferred by the petitioners, u/s 9 of the MEPS Act. The impugned orders are, therefore, sustainable. No interference is called for. Hence, both the writ petitions are dismissed. Rule is discharged.