



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12822 OF 2024

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Karachi Education Society]
[Registered Public Trust]]
(Linguistic Minority Educational]
Institution – Sindhi), having]
Office at 774, Bhawani Peth, Pune]
-411 042, Through its]
President/Secretary.] ...Petitioner.

V/s

1] The State of Maharashtra,]
Through the Secretary, School]
Education Department, Mantralaya,]
Mumbai – 400 032]
2] The Director of Education]
(Secondary and Higher Secondary),]
M.S. Pune – 1]
3] The Deputy Director of]
Education, Pune Region, Pune.]
4] The Education Officer [Secondary]]
Zilla Parishad, Pune.]
5] Smt. Asma Momin,]
Deputy Education Officer,]
in the office of Education Officer]
[Primary], Zilla Parishad, Pune,]
being appointed as Administrator]
on the school of the Petitioner]
Institution.] Respondents.

Mr. Narendra Bandiwadekar, Senior Advocate i/by Ms. Ashwini N.

Bandiwadekar, Mr. Darshanchandra B. Zaveri, Advocates for the petitioner.

Mrs. D. S. Deshmukh, Assistant Government Pleader for the respondent-State.

**CORAM: A.S. CHANDURKAR &
RAJESH S. PATIL, JJ.**

DATE: 17th October, 2024.

JUDGMENT: (Per A.S. Chandurkar, J.)

1] Rule. Rule made returnable forthwith and heard learned Counsel for the parties. The petitioner – a Public Trust registered under the provisions of the Societies Registration Act, 1860 as well as under the Maharashtra Public Trusts Act, 1950 has filed this writ petition through its President raising a challenge to the order dated 21/08/2024 by which the Director of Education (Secondary and Higher Secondary) has appointed an Administrator on the school run by it under Section 12 of the Maharashtra Educational Institutions (Management) Act, 1976 (for short, “Act of 1976”). The principal ground of challenge as raised is that the provisions of the Act of 1976 are not applicable to an educational institution that is administered by a religious or linguistic minority institution. Mr. Narendra Bandiwadekar, learned Senior Advocate for the petitioner by referring

to the Certificate dated 14/07/2014 issued by the Minorities Development Division of the State Government submits that since the school conducted by the Trust is recognized as a Linguistic Minority Institution, Section 12 of the Act of 1976 makes it clear that the provisions of the Act of 1976 are not applicable to it. Despite aforesaid, the impugned order has been passed in exercise of the power conferred by Section 3 of the Act of 1976. On this ground it is urged that the impugned order being without jurisdiction is liable to be set aside.

2] Mrs. D. S. Deshmukh, learned Assistant Government Pleader for the respondents supported the impugned order by relying upon the affidavit-in-reply filed on behalf of Deputy Education Officer. It is submitted that considering the conduct of the teaching and non-teaching staff of the school, such action of appointing an Administrator has been taken. It is further submitted that against the order passed by the Director of Education, the remedy of filing an appeal is available. Hence, there is no reason to interfere with the impugned order.

3] Having heard the learned counsel for the parties and having perused the documents on record, we find that as the Institution run by the Trust has been recognized as a Linguistic Minority, provisions of Section 12 of the Act of 1976 would apply. Consequently, the provisions of the Act of 1976 would not be applicable to such Educational Institution. This is clear from a plain reading of Section 12 of the Act of 1976. Perusal of the impugned order indicates that an Administrator has been appointed under the provisions of Section 3(1) of the Act of 1976. In the light of the provisions of Section 12 of the Act of 1976, such jurisdiction could not have been invoked by the Director of Education. On this short ground the challenge to the order dated 21/08/2024 ought to succeed.

4] Once it is found that the impugned order suffers from a jurisdictional defect, the fact that the remedy of preferring a statutory appeal is available cannot be a reason not to entertain a challenge to the impugned order. Since we find that the impugned order suffers from a jurisdictional defect, the writ petition is entertained on merits.

5] Hence, for the foregoing reasons, the writ petition is allowed in terms of prayer clause (b) which reads as under:-

“(b) By a suitable writ, order or direction, this Hon’ble Court may be pleased to quash and set aside the impugned order dated 21.8.2024 issued by the Respondent No.2, received by the Petitioner / its school at 4.30 p.m. on 26.8.2024, thereby appointing the Respondent No.5 – Administrator over the school conducted by the Petitioner Institution by name Navin Hind B.T. Shahani High School & Junior College, 774, Bhavani Peth, Pune, since the same is illegal, bad in law, violative of the principles of natural justice and in breach of the provisions of the Maharashtra Educational Institutions [Management] Act, 1976.”

This adjudication however would not preclude the respondents from initiating appropriate action against the Educational Institution, if warranted and so advised, in accordance with law.

6] Rule is made absolute in the aforesaid terms with no order as to costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]