

MAHARASHTRA ACT No. XLIX OF 1971¹

[THE MAHARASHTRA EDUCATIONAL INSTITUTIONS (TRANSFER OF MANAGEMENT)
ACT, 1971.]

[This Act received the assent of the President on the 21st December 1971, assent was first published in the *Maharashtra Government Gazette*, Part IV, Extraordinary, dated the 28th December 1971.]

Amended by Mah. 11 of 1976 (14-4-1976)*

An Act to provide for the transfer of management of the undertaking of certain educational institutions, which are being managed in a manner detrimental to the public interest and to provide for matters connected with the purpose aforesaid.

WHEREAS, it is expedient to provide for the transfer of management of the undertaking of certain educational institutions, which are being managed in a manner detrimental to the public interest and to provide for matters connected with the purpose aforesaid; it is hereby enacted in the Twenty-second Year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Maharashtra Educational Institutions (Transfer of Management) Act, 1971.

(2) It extends to the whole of the State of Maharashtra.

(3) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless the context otherwise requires—

(a) "Court" means in Greater Bombay, the Bombay City Civil Court and elsewhere, the principal civil court of original jurisdiction and includes any other civil court of a Judge of Senior Division or a Judicial Officer empowered by the State Government to perform the functions of the Court under this Act within the pecuniary or local limits of its jurisdiction;

(b) "educational institution" or "institution" means an institution by whatever name called which is carrying on (either exclusively or among other activities) the activity of imparting secondary education and includes a junior college for training teachers for imparting primary or pre-primary education and registered under the Societies Registration Act, 1860 or the Bombay Public Trusts Act, 1950 and also includes the trustees or the managing or governing body of such institution by whatever name called;

(c) "pre-primary education" or "primary education" means education imparted in a pre-primary, or as the case may be, primary school as defined by the State Government in this behalf or education equivalent thereto;

(d) "Secondary education" means such general, technical, vocational or special education (including any combined course thereof) which is designed to meet the needs of the period of adolescence and which follows immediately primary education and precedes immediately education controlled by universities established by law in India.

Short title,
extent and
commence-
ment.

Definitions.

¹ For Statement of Objects and Reasons, see *Maharashtra Government Gazette*, 1971, Part V, Extra., pages 363-364.

* This indicates the date of commencement of Act.

CHAPTER II

TRANSFER OF MANAGEMENT OF CERTAIN EDUCATIONAL INSTITUTIONS

Power to cause investigation to be made into educational institutions.

3. Where the State Government is of opinion that any educational institution is being managed in a manner detrimental to the public interest, the State Government may make or cause to be made an investigation into the circumstances of the case by such person or body of persons as it may appoint for the purpose. The person or body of persons shall, after making the investigation, submit his or its report in that behalf to the State Government. In making such investigation the person in charge of the institution shall be given an opportunity of being heard in relation to any matter pertaining to such investigation.

Power of State Government to issue directions.

4. (1) If, after making or causing to be made any such investigation as is referred to in section 3 and on considering the report submitted to it under that section, the State Government is satisfied that action under this section is expedient in the public interest, it may issue directions to the educational institution as may be appropriate in the circumstances for the purpose of improving the standard of education imparted in the institution or for ensuring the competence of teachers, or for maintaining the discipline of the institution or for the purpose of improving the administration or management of the undertaking or the institution in the manner specified or indicated in such directions, or in relation to any matter which promotes or is likely to promote in the public interest the administration or management of the institution.

(2) Without prejudice to the generality of the provisions of sub-section (1), such directions may be issued for all or any of the following matters, namely :—

(a) requiring the institution to pay the salaries of all the employees of the institution not later than the fifth day of each calendar month ; or requiring it to pay to each employee the amount of the salary in full (without any deductions other than deductions which are authorized by or under any law for the time being in force) as specified in the pay-bill in such manner as may be prescribed in this behalf ;

(b) requiring the institution to appoint the teaching staff possessing such prescribed qualifications as are necessary for the purpose of ensuring the maintenance of academic standards as laid down by the State Government from time to time in relation to the institution and for maintaining efficient administration and management thereof ; and accordingly, requiring the institution to terminate the services of any person or persons who do not possess such qualifications within such time as may be specified in the directions;

(c) requiring the institution in the interest of ensuring the smooth and orderly administration thereof to avoid any disputes or dissensions amongst the persons managing the affairs of the institution. and for that purpose indicating in such directions the action which may be taken by the institution ;

(d) requiring the institution to provide it with adequate and proper accommodation, furniture, stationery, equipment and other facilities and matters which are necessary for the efficient administration or management of the undertaking of the institution, and specified in such directions;

(e) requiring the institution not to demand, either directly or indirectly any contribution, donation or payment of any kind, either in cash or in kind, from or on behalf of any pupil as a condition for granting him admission to the institution or promotion or any other special benefit ;

(f) requiring the institution to carry out the instructions from time to time issued by the Education Department of the State Government or of any officer not lower in rank than a Deputy Director of Education duly authorised by it in this behalf, and specified in such directions ;

(g) requiring the institution to take all such steps or action as is specified in the directions in relation to any matter involving misappropriation or misapplication of the funds of the institution which affects the working of the institution.

(3) Every direction issued under this section shall specify the period within which the direction may be complied with. The State Government may extend such period from time to time, if the circumstances of the case warrant such extension.

5. (1) The person or body of persons appointed to make any investigation under section 3 may, with the approval of the State Government, choose one or more persons possessing special knowledge of any matter relating to the investigation to assist him or it in holding the investigation.

Power of person or body of person to call for assistance in any investigation.

V of 1908.

(2) The person or body of persons so appointed shall have all the powers of a civil court under the Code of Civil Procedure, 1908, for the purpose of taking evidence on oath (which he or it is hereby empowered to administer) and of enforcing the attendance of witnesses and compelling production of documents and material objects, and the person or body of persons shall be deemed to be a civil court for all the purposes of section. 195 and Chapter XXXV of the *Code of Criminal Procedure, 1898.

V of 1998.

6. (1) If the State Government is of opinion that—

(a) an institution to which directions have been issued in pursuance of section 4 has failed to comply with such directions within the period specified in the directions, or

(b) an educational institution in respect of which an investigation has been made under section 3 (and any directions have been issued in pursuance of section 4) is managing the affairs of its undertaking in a manner detrimental to such institution or to public interest,

Power of State Government to transfer management and control of educational institution to Society.

the State Government may, by notification in the *Official Gazette*, direct that the entire management and control of the undertaking of the institution specified in the notification (hereinafter referred to as the 'said Institution') vested in such institution immediately before the date of such notification (hereinafter referred to as the "appointed date") shall be transferred to and vested in a Society formed for the purpose under the Societies Registration Act, 1860 (hereinafter referred to as "the Society") with a view to maintaining continuity of education imparted in the said Institution.

XXI of 1860

* See now the Code of Criminal Procedure, 1973 (2 of 1974).

(2) The Society shall among other members consist of such officers of the Education Department as may be nominated by the State Government and if the said Institution is an institution to which the provisions of clause (1) of article 30 of the Constitution of India apply, the Society shall consist of persons the majority of whom (including officers of Government) belong to the minority by which the said Institution has been administered immediately before the appointed date.

(3) The State Government shall cause the substance of such notification to be published at such places and in such manner as may be prescribed.

Dissolution
of
Institution
and transfer
of
undertaking
of
Institution
to Society
and
conse-
quences of
transfer.

7. (1) As from the appointed date,—

(a) the said Institution shall stand dissolved; and the undertaking of the said Institution, which immediately before the appointed date belonged to or was vested therein, shall for purposes of its management and control stand transferred to the Society and shall be used or applied for the purposes for which the Society is constituted ;

(b) all persons in charge of the management, including persons holding office as trustees, governors, directors, council, committee or governing body to whom the management of the said Institution is entrusted immediately before the appointed date shall be deemed to have vacated their offices as such ;

(c) any contract of management, if any, between the said Institution and any person in relation to carrying on the affairs of the undertaking of the said Institution immediately before the appointed date shall be deemed to have terminated ;

(d) the Society shall take all such steps as may be necessary to take into its custody or control all the property, effects and actionable claims forming part of the undertaking to which the said Institution is or appears to be entitled and all such property and effects shall be deemed to be in the custody of the Society as from the appointed date.

(2) The undertaking of the said Institution shall be deemed to include all rights, assets, lease-holds including statutory tenancies, if any, powers, authorities and privileges and all property, movable and immovable, including lands, buildings including hostels, works, library, laboratory, instruments, equipment, furniture, stationery, stores, automobiles and other vehicles, if any, and other things required for carrying on the undertaking of the said Institution, cash balances, cash on hand, reserve fund, if any, investments and book debts and all other rights and interests arising out of such property as were immediately before the appointed date in the ownership, possession, power or control of the said Institution and all books of account, registers, maps, plans and all other documents of whatever nature relating thereto, and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of the said Institution.

(3) All debts and liabilities of the said Institution which stand transferred and attached to the Society under this section shall, after the appointed date, be discharged and satisfied by the Society.

(4) Any will, deed or other document whether made or executed before or after the commencement of this Act, which contains any bequest, gift or trust in favour of the said Institution shall, as from the appointed date, be construed as if the Society were named therein instead of the said Institution.

(5) Subject to the other provisions of this Act, all contracts and working arrangements which are subsisting immediately before the appointed date and affecting the undertaking of the said Institution shall, in so far as they relate to the undertaking of the said Institution, cease to have effect or be enforceable against the said Institution or any person who was surety or had guaranteed the performance thereof, and shall be of as full force and effect against or in favour of the Society and enforceable as fully and effectually as if, instead of the said Institution, the Society had been named therein, or had been party thereto.

(6) Subject to the other provisions contained in this Act, any proceeding or cause of action pending or existing immediately before the appointed date by or against the said Institution may, as from such appointed date, be continued and enforced by or against the Society as it might have been enforced by or against the said Institution if this Act had not been passed, and shall cease to be enforceable by or against the said Institution, its surety or guarantor.

8. Every employee (including the member of the teaching staff) in the employment of the said Institution, immediately before the appointed date shall, in so far as such employee is employed in connection with the affairs of the said Institution, become as from such date, the employee of the Society, and shall hold his office by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, provident fund, gratuity, if any, and other matters as he would have held under the said Institution if this Act had not been passed, and shall continue to do so, unless and until his employment under the Society is terminated (and the Society is hereby with the approval of the State Government empowered to terminate such employment), or until his remuneration, terms and conditions are duly altered by the Society :

Provisions
respecting
employees of said
Institution.

Provided that, if the alteration so made is not acceptable to any such employee, his employment may be terminated by the Society on payment to him by the Society of compensation equivalent to three months' remuneration, in the case of a permanent employee, and one month's remuneration in the case of other employee :

Provided further that, nothing contained in this section shall apply to any such employee who has, by notice in writing given to the Society within thirty days next following the appointed date, or such further period as the Society may specify in this behalf, intimated his intention of not becoming the employee of the Society.

Duty to
deliver
possession
of property
transferred
and
documents
relating
thereto.

9. (1) Where any property forming part of the undertaking of the said Institution stands transferred to the Society under section 7, every person, in whose possession or custody or under whose control the property may be, shall deliver the property to the Society forthwith.

(2) Any person who on the appointed date has in his possession or under his control any books, documents or other papers relating to the undertaking of the said Institution which stand transferred to the Society and which form part of the undertaking of the said Institution or would have so formed part if the undertaking of the said Institution had not been transferred to the Society shall be liable to account for the said books, documents and papers to the Society and shall deliver them up to the Society or to such person as the Society may specify in this behalf.

Duty to
furnish
particulars.

10. The said Institution shall, within such period as the State Government may allow in this behalf, furnish to the Society a complete inventory of all the properties and assets (including particulars of book debts, if any, investments and belongings) forming part of the undertaking of the said Institution immediately before the appointed date, all liabilities and obligations in relation to the undertaking of the said Institution subsisting at the appointed date and also of all agreements entered into by or on behalf of the said Institution and in force on such appointed date, including agreements, whether express or implied, relating to leave, pension, provident fund, gratuity, if any, and other terms of service of any employee of the said Institution under which, by virtue of this Act the Society has, or will have, or may have liabilities except such agreements that Society may exclude from the operation of this section, and for this purpose, the Society shall afford the said Institution all reasonable facilities.

Right of
Society to
disclaim
certain
agreements.

11. (1) Where it appears to the Society that the making of any agreements under which the said Institution has, will have or may have liabilities was not reasonably necessary for the purposes of the undertaking of the said Institution or has not been entered into in good faith, the Society may, within three years from the appointed date, apply to the Court for relief from the agreement, and the Court, if satisfied, after making such inquiry in the matter as it thinks fit, that the agreement was not reasonably necessary for the purposes of carrying on the undertaking of the said Institution, or has not been made in good faith may make an order cancelling or varying the agreement on such terms as it thinks fit to impose, and the agreement shall thereupon have effect accordingly.

(2) All the parties to the agreement which is sought to be cancelled or varied under this section shall be made parties to the proceeding.

No right to
compensa-
tion for loss
of office or
premature
termination
of contract
of manage-
ment.

12. Notwithstanding anything contained in any law for the time being in force, no person who ceases to hold any office by reason of the provisions contained in clause (b) of sub-section (1) of section 7, or whose contract of management is terminated by reason of, the provisions contained in clause (c) of that sub-section shall be entitled to any compensation for the loss of office or for the premature termination of his contract of management :

Provided that, nothing contained in this section shall affect the right of any such person to recover from the said Institution moneys recoverable otherwise than by way of such compensation.

13. The State Government may give to the Society such directions as it may deem fit and necessary and the Society shall carry out these directions.

Power of State Government to give directions to Societies

CHAPTER III

MISCELLANEOUS

14. (1) Any person who—

Penalties.

(a) having in his possession, custody or control any property forming part of the undertaking of the said Institution wrongfully withholds such property from the Society or from any person or persons authorized by it to manage the affairs of the said Institution; or

(b) wrongfully obtains possession of any property forming part of the undertaking of the said Institution, the management and control of which stands transferred to the Society under the Act;

(c) wilfully withholds or fails to furnish to the Society or any person specified by that Society as required by sub-section (2) of section 9 any documents which may be in his possession, custody or control ; or

(d) wilfully fails to furnish an inventory as required under section 10; or

(e) when required to furnish such inventory, furnishes any particulars therein which are false and which he either knows or believes to be false or does not believe to be true; or

(f) wilfully obstructs any person from duly carrying out all or any of the provisions of this Act,

shall, on conviction, be punished with imprisonment for a term which may extend to two years, or with fine or with both :

Provided that, the Court trying any offence under clause (a) or clause (b) of this sub-section may, at the time of convicting the accused person, order him to deliver up or refund within a time to be fixed by the Court any property wrongfully withheld or wrongfully obtained or any document wilfully withheld or not furnished ;

Provided further that, nothing contained in this section or any other provision of this Act shall render any person liable to be convicted of an offence in respect of anything done or omitted to be done by him before the appointed date.

(2) No Court shall take cognizance of an offence punishable under this section except with the previous sanction of the State Government or of an officer authorised by that Government in this behalf.

15. No suit, prosecution or other legal proceeding shall lie against the Society or an officer or other employee serving in connection with the affairs of the Society for anything which is in good faith done or intended to be done under this Act.

Protection of action taken under this Act.

Power to make rules.

16. (1) The State Government may, by notification in the *Official Gazette*, make rules to carry out the purposes of this Act including provision for charging fees for carrying out such purposes.

(2) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the Legislature of the State while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modifications or annulment shall be without prejudice to the validity of anything previously done under that rule.

Amendment of Act XXI of 1860.

17. In the Societies Registration Act, 1860, after section 20, the following new sections shall be inserted, namely :—

Definition of Special Society.

“¹[20A.] For the purposes of this Act, ‘a Special Society’ means a Society formed for the purposes of the Maharashtra Educational Institutions (Transfer of Management) Act, 1971. Mah. XLIX. of 1971.

Power to modify Act in relation to Special Societies.

¹[20B.] (1) The State Government may, by notification in the *Official Gazette*, direct that any of the provisions of this Act specified in the notification—

(a) shall not apply to a Special Society; or

(b) shall apply to the Special Society with such exception, modifications and adaptations as may be specified in the notification.

(2) A copy of every notification proposed to be issued under sub-section (1) shall be laid in draft before both the Houses of the Legislature of the State for a period of not less than thirty days while they are in session, and if within that period, either House disapproves of the issue of the notification, or approves of such issue only with modifications, the notification shall not be issued or, as the case may require, shall be issued only with such modifications as may be agreed on by both the Houses.”

¹ The new sections 21 and 22 of the Societies Registration Act, 1860 were renumbered as sections 20A and 20B respectively by Mah. 11 of 1976, s. 3, Second Schedule.