

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No. 10957 / 2023

Izak English Medium School,
Bhalvani, Tal. Parner, Dist. Ahmednagar,
Established and run by Alfa Social and Education
Foundation, Dhanwantary Campus,
Datrange Mala, Nalegaon, Ahmednagar,
Through it's Secretary
Mr. Rehan Shafi Ahmed Kazi,
Age : 48 years, Occ: Social Worker,
R/o At & Post : Ahmednagar, Dist. Ahmednagar.

...Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
2. Commissioner Tribal Development,
Maharashtra State, Nasik
Adiwasi Vikas Bhawan, 1st Floor,
Gadkari Chowk, Juna Agroa Road,
At & Post and Dist. Nasik.
3. Additional Commissioner Tribal Development,
Maharashtra State, Nasik Region,
Adiwasi Vikas Bhawan, Ground Floor,
Gadkari Chowk, Juna Agroa Road,
At & Post and Dist. Nasik.

4. The Project Officer,
Yekatmik Adiwasi Vikas Development,
Project Office At : Rajur, Tal, Akole,
Dist. Ahmednagar.

...Respondents

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Mr. Atul B. Gatne, Advocate for the Petitioner.

Mr. S.B. Yawalkar, Addl.GP for Respondent Nos.1 to 4/State.

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CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

RESERVED ON : 19 OCTOBER 2023.

PRONOUNCED ON : 08 NOVEMBER 2023.

JUDGMENT [SHAILESH P. BRAHME, J.] :

. Rule. Rule is made returnable forthwith. With the consent of learned Counsel for the parties, the matter is heard finally.

2. The petitioner is challenging Government Resolution dated 31.08.2023 to the extent of its denomination and the consequences as stated in clause no. 2 and 3. It is seeking direction to implement communication dated 15.06.2023.

3. The petitioner is a Minority Institution. It runs English Medium and residential School. It was allotted the students under the scheme floated by Government Resolution dated 18.05.2018,

providing education to the scheduled tribe students in the English Medium School. For the year 2022-2023, the petitioner was discontinued from the scheme and no students were allotted for that year. By letter dated 15.06.2023 issued by the respondent no.1, the petitioner was again restored nomination by allotting 365 students from English Medium School and Junior College, Shevgaon run by Pravara Medical Trust.

4. By letter dated 27.06.2023 issued by the respondent no.3, the respondent no.4/Project Officer was directed to accommodate the students in the petitioner's school. Accordingly, the petitioner received transfer certificates of near about 355 students on or about 31.07.2023 from the other school. Meantime, by letter dated 24.07.2023, the Tribal Development Commissionerate instructed the additional Commissioner of all the divisions to upload the profile for the year 2023-2024 on web-portal during the period 26.07.2023 to 05.08.2023. When the petitioner tried to upload the profile of its school and the students on 03.08.2023, it faced problem. A message was displayed that the students' registration was yet to be started and the date would be notified. It is a case of the petitioner that the date was never notified.

5. The inspection of the petitioner's school was conducted by the respondent no.4 on 25.08.2023. The petitioner was having good

infra-structure and it was complying with all the requirements and hoping for the approval from the respondents/authorities. However surprisingly Government Resolution dated 31.08.2023 was issued denominating the petitioner for not uploading the profile online. By clause no.3 of the Resolution, it was directed to accommodate the students allotted to the petitioner's school to the Eklavya English Medium School; Government English Medium School and Old nominated residential schools. Being aggrieved, the present petition.

6. After filing of the petition, the petitioner received information that web-portal would be open from 06.09.2023 to 30.09.2023 for uploading the profile. The petitioner accordingly uploaded its profile. However while uploading the students' profile, a remark was flashed on the site that the approval of the school was pending. On 26.09.2023, the petitioner made representation to accept school's profile and to approve the students' registration, but it was not responded to.

7. The respondents have contested the petition by filing affidavit-in-reply. It is stated that the Government Resolution dated 18.05.2018 provides for the modalities for allotting the students to the nominated schools. The profile of the schools was to be updated on web-portal from 26.07.2023 to 05.08.2023. The petitioner failed to

follow the schedule. Other 45 schools have updated their profiles online. It is stated that there was no technical error or difficulty for uploading the profile. No communication was made by the petitioner regarding the difficulty faced by it.

8. The petitioner was having sufficient time to upload the profile. After uploading the profile the authorities were to evaluate the school by inspecting it. No such evaluation could be done in case of petitioner. The petitioner failed to follow the procedure. It is further contended that the mail sent by the petitioner refers to uploading the profile of the students. The respondents would rely upon Government Resolution dated 09.12.2022 prescribing stage wise program which is not followed by the petitioner.

9. The respondents have filed additional affidavit after the subsequent developments occurred after filing of the petition. The contentions of the petitioner that the other schools were permitted to upload the profile after cut off period is denied. It is explained that due to technical problem those schools could not upload the profile and were permitted to do so. The petitioner was not permitted to upload the profile. It is further clarified that now it is not possible to regularize the situation by approving the petitioner's school. The proposal of the petitioner for approval for nomination cannot be considered. The respondents have prayed to dismiss the petition.

10. There is no dispute that the petitioner's school is a residential school and it was permitted to accommodate and receive students being a nominated school in the past. For the academic year 2022-2023, it was discontinued from the scheme. However for the year 2023-2024, it was restored the privilege to be a nominated school by letter dated 15.06.2023. It is referred 356 students for accommodation from English Medium School and Junior College, Shevgaon. As per the scheme, the procedure for uploading the profile of school and students is to be undertaken.

11. We find that 356 students are directed to be accommodated in the petitioner's school. The correspondence dated 23.06.2023 refers to 79 students and communication dated 28.06.2023 refers to 214 students referred to the petitioner's school. There is no dispute that the petitioner received near about 355 students for the accommodation. The students are actually accommodated in the petitioner's school. They are about to be displaced by impugned Government Resolution dated 31.08.2023. It transpires that from July 2023, the accommodated students are not only taking education but residing in the petitioner's school.

12. The nominated school has to upload the school profile within stipulated period prescribed. Thereafter there is stage of inspection by the respondents authorities. After having satisfied with the

facilities, the registration of the students take place. The profile of the students is required to be then uploaded. In the present matter, the respondents are denying to accept the profile of the petitioner, though it accommodated the students. According to the petitioner, there was technical problem which was ventilated by sending mail on 03.08.2023. The respondents have disputed this plea of the petitioner.

13. We have passed interim orders on 04.09.2023. It is recorded that 214 students from another schools were accommodated and the registration could not be undertaken due to technical problem. To safeguard the interest of the students who are already accommodated, an order of status-quo was passed in respect of shifting of the students as per the impugned Government Resolution. Thus at-least 214 students remain with the petitioner till date.

14. It is a matter of record that the petitioner learnt about whatsapp message regarding uploading of profile by the schools which could not upload it earlier. During the pendency of the petition, the profile of the school was uploaded by the petitioner. Then the petitioner was confronted with a message that school's approval was pending. Thereafter on 26.09.2023, the petitioner made a representation to the respondents to approve the profile. Thus the factual situation is that the students have already been

accommodated. Inspection of the petitioner's school was done on 25.07.2023. However the profile of the petitioner and students have not been approved by the respondents.

15. The learned Counsel for the petitioner has made elaborate submission challenging impugned action. He tried to demonstrate that the petitioner was not at fault. The petitioner wanted to upload the information honestly but due to technical difficulty, it was not possible. He vehemently submitted that there is discrimination. He further submitted the selective attitude and arbitrariness of the respondents.

16. The submissions of the petitioner are repelled by the learned AGP. He has also made submission in tune with the affidavit in reply. It is tried to be demonstrated that the petitioner failed to follow the schedule. It is also contended that now it is not possible to approve the profile and registration of the students. The accommodated students will have to be shifted.

17. We are of the considered view that a peculiar situation has arisen in the present school. Education of tribal students is at stake. It is not only the question of their education but lodging also. The academic year has already commenced. The accommodated students are under going the curriculum for the year 2023-2024. It is in the

interest of those students that they are allowed to continue with the education in the petitioner's school. Any change at this stage is bound to adversely affect the students and is likely to cause hardship to their parents who all must be from weaker sections.

18. We do not propose to examine the merits of the rival submissions of the parties. The technical approach is not proper. We cannot be oblivious of the hardship of the concerned students which are likely to be displaced if the submissions of the respondents are upheld. The petitioner's school was nominated previously. It has not been transpired that it lacks basic infrastructure. Therefore taking pragmatic view of the matter, we do not propose to displace the students.

19. The ends of justice would be met by directing the respondents/ authorities to conduct inspection of the petitioner's school within stipulated period to oversee the infrastructure and facilities, if so advised. After taking the stock of the situation, the respondents/ authorities would be at liberty to take appropriate decision for approving the profile of the petitioner's school and registration of the students. However the paramount consideration would be interest of the students and the hardship likely to be faced by them before arriving at any decision in this regard.

20. We, therefore, pass following order :

ORDER

(i) The Government Resolution dated 31.08.2023 to the extent of clause no.2 and 3 denominating/cancelling the approval of the petitioner's school and accommodating students to other schools is quashed and set aside.

(ii) The petitioner is permitted to retain and continue with the students accommodated by it for the academic year 2023-2024 subject to the inspection and further decision to be taken by the respondents.

(ii)-a The respondents shall permit the petitioner to upload/submit profile of school as well as students either online or offline and necessary arrangement be made for that purpose.

(iii) The respondents are at liberty to conduct the inspection of the petitioner's school if so advised, within a period of four weeks from today and thereafter may take further decision regarding grant of approval or otherwise to the petitioner's school.

(iv) The writ petition is disposed of. Rule is made absolute in the above terms.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]