

Suchitra

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 401 OF 2022**

**HUSN SAHARA MUSLIM WELFARE
EDUCATION SOCIETY THR. ITS
CHAIRMAN, HUSEN KHAN** ... PETITIONER

Versus

**STATE OF GOA THR. THE CHIEF
SECRETARY & 5 ORS.** ...RESPONDENTS

Mr Rohit Bras de Sa with Mr P. Naik, Advocates *for the Petitioner.*

Mr D. Pangam, Advocate General with Mr Suhas Parab, Additional
Government Advocate *for Respondent-State.*

Mr Dinesh Naik, Advocate *for Respondent No.5.*

Mr Abhay Nachinolkar, Advocate *for Respondent No.6.*

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ**

DATED : 4th SEPTEMBER 2023

P.C.

1. Heard Mr Rohit Bras de Sa for the Petitioner, Mr D. Pangam, learned Advocate General along with Mr Suhas Parab, learned Additional Government Advocate for Respondent-State,

Mr Dinesh Naik for Respondent No.5 and Mr Abhay Nachinolkar for Respondent No.6.

2. The petitioner in this petition is the Managing Committee which is operating a school in the village of Chimbhel. The petitioner complains that respondent no.6 was operating a school in the same village but through premises which were illegal and even unsafe.

3. Accordingly, considering the complaints and counter-complaints, we directed the authorities to inspect the school premises through which the petitioner and respondent no.6 have been operating their respective schools.

4. Some irregularities were noticed in the school operated by the petitioner. Therefore, orders were issued and finally, the irregularities, at least insofar as the ground floor and first floor of the petitioner school premises were concerned, were substantially regularized. Necessary compliance reports were also filed in this petition and the connected writ petitions. The petitioner also filed an undertaking not to use the second-floor premises until the occupancy certificate was duly obtained. More significantly, the Directorate of Fire Services has certified that the ground floor and first-floor premises are fire safety compliant.

5. The inspection however revealed that there were very serious illegalities concerning the premises through which the respondent no.6 was operating its school. The inspection revealed that the entire structure was backed by no permissions and even the fire safety requirements were a complete casualty.

6. Respondent no.6 operates its Jadeed Pre-Primary School, Jadeed Primary School, Jadeed English High School, and Jadeed Urdu High School through the premises, which are illegal, unauthorised, and not even fire safety compliant. Through all these schools, almost 475 students were being educated. The Government pays grants to these schools.

7. After reading the reports, we were not only shocked and surprised but were extremely disturbed that the students were being educated through such unsafe premises. Accordingly, we made orders from time to time to see whether the defects could be remedied. In particular, we were interested in ensuring fire safety requirements because, ultimately safety of the school children was of paramount consideration.

8. After a series of inspections, the authorities reported that the structure through which the school was being operated by respondent No. 6 was wholly illegal. They reported that there were no fire safety compliances and that fire safety compliances were not

even possible. The authorities reported that the school building was put up without any permission from any authorities. Since there were no permissions, respondent No. 6 did not bother to seek any occupancy certificates or even comply with the fire safety requirements.

9. Given the above startling position, we felt that we have no option but to close down this school so that the lives of innocent school children are not put in jeopardy. At the same time, what was bothering us was the closure of the school in the midst of the academic year would leave these innocent students in a complete lurch for no fault on their part.

10. Therefore, we requested the learned Advocate General to find out whether the Government, through its Directorate of Education, will find some alternate premises from where these innocent students could continue with their education without interruption in their academic year.

11. Learned Advocate General responded positively, and the officials from the Directorate of Education, after holding a series of meetings with the school managements of several schools in the locality, including respondent no.6, have presented an action plan to this Court. The action plan is taken on record and marked 'X' for identification, and the same reads as follows:-

**“A PLAN OF ACTION FOR SHIFTING JADEED PRE
PRIMARY SCHOOL, JADEED PRIMARY SCHOOL,
JADEED ENGLISH HIGH SCHOOL AND JADEED URDU
HIGH SCHOOL – TO ALTERNATE PREMISES TO BE
SUBMITTED TO HON’BLE HIGH COURT”**

NAME OF THE SCHOOL	MEDIUM OF INSTRUCTION	ENROLMENT
Jadeed Pre-Primary School	English	60
Jadeed Primary School	Konkani	171
Jadeed English High School	English	156
Jadeed Urdu High School	Urdu	88
	TOTAL	475

The arrangements for shifting the classes / students of the said schools is proposed as under:

NAME OF THE SCHOOL	MEDIUM OF INSTRUCTION	ENROLMENT	NEARBY SCHOOLS IN WHICH CLASSES /STUDENTS SHALL BE SHIFTED

<i>Jadeed Pre-Primary School</i>	<i>English</i>	<i>60 students alongwith teachers</i>	<i>Government Primary School, Santa Barabara, Chimbel-Tiswadi in the evening session</i>
<i>Jadeed Primary School</i>	<i>Konkani</i>	<i>171 students & 8 teachers</i>	<i>Government Primary School, Kirlawada, Chimbel Tiswadi in the afternoon session</i>
<i>Jadeed Urdu High School</i>	<i>Urdu</i>	<i>88 students & 9 teachers</i>	<i>Government Primary School, Mercedes, in the afternoon session</i>
<i>Jadeed English High School</i>	<i>English</i>	<i>156 students</i>	<i>i. Total 88 students of Std.V, VI and VII to be shifted to Government High School, Kirlawada, Chimbel Tiswadi. These students shall study with the students of respective classes of Government High School, Kirlawada, Chimbel.</i>

			ii. Total 68 students alongwith Nine (09) teachers of Jadeed English High School shall be shifted to Union High School, Chimbel Tiswadi. These students shall study with the students of respective classes of Union High School, Chimbel Tiswadi. The nine (09) teachers will work in the Union High School, Chimbel until further orders.
	<i>TOTAL</i>	<i>475</i>	

A meeting of Headmaster of Jadeed High School, Chimbel, Incharge Headmistress of Union High School, Chimbel, Headmaster of Government High School, Mercas, Headmaster of Government High School, Kirlawada Chimbel, ADEI - Tiswadi, Deputy Education Officer - Central Educational Zone, Deputy Director of Education (Academic) was held by the Director of Education in the conference room of the Directorate of Education, Porvorim on 11/08/2023 at 12.00 noon and the above mentioned arrangements were decided unanimously in the said meeting.

Further, following conditions were agreed upon by the Heads of institutions concerned in the said meeting:

1. The aforesaid arrangement of shifting the classes/students is just a stop-gap arrangement in the interest of safety of students. The said arrangement is till 31/12/2023, which may be extended till 30/04/2024 i.e. till the end of the Academic Year 2023-2024 and will not be extended beyond that. The management of Jadeed School shall find a permanent solution/shall make arrangements of safe infrastructure/school building satisfying all the applicable Acts and Rules and submit the same to Hon'ble High Court and shift all the classes in their own building with the permission/ orders of Hon'ble High court (within the above mentioned timeframe), failing which the Director of Education shall withdraw all the permissions and recognition to open the school/start classes/divisions issued to the Jadeed English High School, Jadeed Urdu High School, Jadeed Primary School, Jadeed Pre Primary. School, and order to close the said schools permanently and make arrangements to admit the students in nearby schools.

2. No damage whatsoever shall be caused to the property (moveable or immovable) of the school and its surrounding by the student/staff of Jadeed School in which the classes are shifted. The management of Jadeed School shall immediately compensate the cost of any such damage, if reported, without any argument (the said costs shall be borne by the management from their own funds and Government grant should not be used for said purpose).

The staff of Jadeed English High School shall be deployed under the Incharge Headmistress, Union High School, Chimbel until, further orders from the Directorate of Education.

The students of Jadeed English High School will continue to wear the uniform of Jadeed English High School for initial period of one month from the date of shifting. Thereafter, the students of Std V, VI, and VII of Jadeed English High School shall wear the uniform of Government High School, Kirlawada Chimbhel and the students of Std VIII, IX and X of Jadeed English High School shall wear the uniform of Union High School, Chimbhel. The arrangements for their new uniform shall be made by Jadeed English School Management. However, these students shall remain the students of Jadeed English High School (separate General Register, Staff records, muster roll will be maintained of Jadeed English High School)."

12. Mr Abhay Nachinolkar, learned counsel for respondent no.6, based on instructions from respondent no.6, states that full cooperation would be extended to the officials from the Directorate of Education for the implementation of the action plan. The action plan will ensure that at least up to 31.12.2023, the students receive education from alternate premises in the locality. The action plan states that this period may be extended up to 30.04.2024 i.e. the end of the academic year 2023-2024. This is a welcome gesture on the part of the officials of the Directorate of Education and also the schools which have offered their premises to the students who would otherwise be left in a lurch.

13. Respondent No. 6 is directed to extend full cooperation so that the interests of the students from their school do not suffer or

are compromised. Respondent No. 6 must realise that it is on account of their illegal acts that the students are left in such a lurch. The learned Advocate General and the officials of the Directorate of Education have come forward to help these students so that they are not left in a lurch in the midst of their academic year. Therefore, if respondent No. 6 creates any further complications in the implementation of this action plan, the same will have to be viewed extremely seriously.

14. Further, we would be failing in our duty if we did not comment upon the illegal structure put up by respondent No. 6 to operate its school with almost 475 school children. At least prima facie, we think that this was quite a rash and negligent act on the part of respondent no.6, which was duty-bound to protect the interests of the students and take all steps necessary to ensure their physical safety. Be that as it may, we are also surprised that the Village Panchayat of Chimbel, which is a party to this petition, chose to ignore such an illegal structure which was put up within their jurisdiction without obtaining permission from any authorities.

15. It is the duty of the Panchayats to prevent the mushrooming of illegal constructions. In any case, if illegal constructions come up clandestinely, it is the duty of the panchayat to take action

against such illegal constructions without waiting for complaints. Unfortunately, the Panchayats, even after complaints, avoid taking action. Otherwise, we fail to understand how a ground plus two-storey building can come up in a small village like Chimbhel without obtaining permission from any authorities. It is not as if this structure is some small structure that escaped the attention of the panchayat and the Panchayat officials. Through this structure, the respondent no.6 was operating a school with almost 475 students.

16. Accordingly, we direct the Panchayat to initiate action against this structure within a month from today. Mr Dinesh Naik, learned counsel for the Panchayat, based on instructions from the Secretary of the Panchayat who is present in the Court, states that necessary inspection will be carried out and show cause notice will be issued by the Village Panchayat within four weeks from today. This statement is accepted. The show cause notice must be taken to its logical conclusion expeditiously.

17. Further, we record Mr Nachinolkar's statement, made based on instructions that once the school students are shifted, the resultant vacant place will not be occupied by respondent no.6 or used for any purposes. This statement is accepted, and the Panchayat must ensure that this position is enforced. Mr Nachinolkar clarifies that if there are permissions in place, then

that portion of the structure will continue to be occupied and used, but not the portions for which there are no permissions, etc.

18. The action plan submitted by the officials of the Directorate of Education constitutes only a stop-gap arrangement in the interest of the safety of the students. This is made clear in the action plan quoted above. In any case, we, too, make this position clear to respondent no.6. Therefore, if respondent no.6 wishes to continue with the school, then respondent no.6 will have to make alternate and permanent arrangements by the next academic year.

19. The Directorate of Education, which releases grants to respondent no.6 school, must also, from time to time, see the progress, if any, undertaken by respondent no.6 towards acquiring alternate and more permanent premises.

20. Learned Advocate General states that the students will be shifted to the alternate premises within two weeks from today. An endeavour will be made to commence classes at the alternate premises from 25.09.2023 or soon after the Ganesh Chaturthi vacation.

21. We sincerely commend the proactive approach of the Advocate General and the officials of the Directorate of Education in finding alternate premises and accommodating the school children in the alternate premises. Otherwise, for no fault

attributable to the students, their academic careers would have been affected. Requiring the students to undergo their studies through unauthorised and, moreover, unsafe premises was not really an option before us. At the same time, we were concerned about the interruption of the student's educational classes in the midst of the academic year. Only because the learned AG and the officials of the Directorate of Education intervened and arranged alternate temporary premises can the students continue their education without any serious interruption.

22. With the above directions, we dispose of this petition without any order for costs.

23. Misc. Civil Applications, if any, do not survive, and the same are also disposed of.

24. All concerned to act on an authenticated copy of this order.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

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