

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

WRIT PETITION NO.1336 OF 2004

1. Shaikh Abdul Kalim Shaikh and others **..PETITIONERS**
Aged-41 years, Occupation-Service,
R/o. C/o. United Typewriting Institute,
Gugri Bazar, Parbhani,
Tq. & Dist. Parbhani
2. Faruqui Samin Parveen D/o. Hanoddin,
Aged-30 years, Occupation-Service,
R/o. Dr. Zakir Hussain Nagar,
Near Dr. Shahana Hospital,
Parbhani, Tq. & Dist. Parbhani
3. Rabiya Sultana D/o. Munawwar Khan,
Aged-35 years, Occupation-Service,
R/o. Turabul Haque Nagar,
Durga Road, Parbhani,
Tq. & Dist. Parbhani
4. Shabina Begum D/o. Munawwar
Aged-40 years, Occupation- Service,
R/o. Bhaji Market, Kranti Chowk,
Near Top Tailor, Parbhani,
Tq. & Dist. Parbhani

VERSUS

1. The State of Maharashtra, **..RESPONDENTS**
through its under Secretary,
the Social Welfare, Cultural Affairs,
and Sports Department, Mantralaya,
Mumbai

2. The Competent Authority-Cum
Director of Social Welfare
Maharashtra State, Pune
3. The Divisional Social Welfare,
Officer, Aurangabad Division,
Aurangabad
4. The Direct Social Welfare
Officer, Parbhani,
Dist. Parbhani
5. Ravi Tushar Shikshan Prasarak Mandal,
Parbhani through its President,
Shaikh Mohammad Akheel, Sainath
Mohalla, Mitti Ka Sher,

Mr.R.J.Godbole, Advocate for the petitioner.
Mr.A.H.Koralkar, Advocate for respondent No.5

**CORAM : A.V.NIRGUDE &
V.K.JADHAV, JJ.
DATED : 14.09.2015**

ORAL JUDGMENT [PER: A.V.NIRGUDE,J.]

1. Heard.
2. No reply is filed in this petition, though at interim stage the effect of impugned circular dated 02.08.2000 was kept in abeyance. The facts leading to this litigation are as under:-
3. The enactment viz. The Persons with Disabilities (Equal Opportunities, Protection Of Rights and Full

Participation) Act, 1995 came into force w.e.f. 01.01.1996. As the name suggests, this statute is enacted for protecting, enforcing full participation and equality of people with disabilities. Section 2(t) defines the person with disability as under:-

"2(t) 'person with disability' means a person suffering from not less than forty per cent, of any disability as certified by a medical authority"

4. In view of this definition, it is clear that the persons suffering from not less than 40% of any disability would get benefits of this Act. Section 26 of the said Act reads under:

"26. Appropriate Government and local authorities to provide children with disabilities free education, etc.

The appropriate Governments and the local authorities shall:

a) ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of the eighteen years;

b) endeavor to promote the integration of students with disabilities in the normal schools;

c) Promote setting up of special schools in Government and private sector for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to such schools;

d) endeavor to equip the special schools for children with disabilities with vocational training facilities."

5. This provision enjoins the Government and local authorities to provide free education to children with disabilities. Accordingly, in our State, several schools were established by private managements for providing free education to children with disability. They were giving admissions to such children, who were suffering from not less than 40% disability. The Government was providing grants to such schools. Section 56 of the Act also provides that the Government should establish and maintain institutions for persons with severe disabilities. The work 'severe disability' is defined in Sub-section (4) and would mean that the person who

suffers from 80% or more disability. Chapter X of the Act deals with recognition of institutions for persons with disabilities. On 02.08.2000, the Government of Maharashtra issued a circular stating that the Government would allow admission to special schools only to such persons with disabilities who suffer 60 or more percentage of disability. The petition is filed to challenge the propriety of this circular.

6. As said above, the effect of the said circular was stayed when the petition was admitted. In spite of this, the respondent State did not file any reply. The main objection to the propriety of this circular is that it runs contrary to the Section 2(t) of the Act of 1995. A person with disability is a person who suffers not less than 40% of disability. For such person, special schools are established and the Government has provided aid to such schools. Due to impugned circular, the Management of such schools would not be able to admit children, who suffer disability from 40% to 60%. Resultantly, the strength of students would get reduced drastically. Apart from that, as said above, the circular offends the provisions of the Act and deserve to be set aside.

7. In the result, we are inclined to allow the petition and it is accordingly allowed. The Circular

dated 02.08.200 stands set aside as it is not maintainable. Accordingly, the petitioners are entitled to all consequential benefits. The petition stands disposed of. Rule made absolute in the above terms.

[V.K.JADHAV, J.]

[A.V. NIRGUDE, J.]