

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD****WRIT PETITION NO. 822 of 2015**

1. Al-Saba Educational and Welfare Society through its Secretary Shaikh Mansoor s/o Shaikh Mustafa, Age 49 years, Occupation: Service, r/o Wahed Colony, Roshan Gate, Aurangabad.
2. Head Master, Mustafa Urdu Night High School, Aurangabad.

...PETITIONERS

VERSUS

1. The State of Maharashtra through Secretary, School Education Department, Mantralaya, Mumbai 400 032.
2. The Director, Secondary Education, Maharashtra State, Central building, Pune.
3. The Deputy Director of Education, School Education Department, Aurangabad.
4. The Education Officer (Secondary), Zilla Parishad, Aurangabad.

...RESPONDENTS

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Mr.Zia Ul Mustafa, Advocate for the petitioner.

Mr. D.V.Tele, AGP., for respondent State.

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WITH

WRIT PETITION NO.805 of 2015

1. Urdu Education Society,
Through its Chairman
Shaikh Mohammed Ayyub s/o Shaikh Habib,
Age 42 years, Occ. Service,
r/o. Juna Bazar, Aurangabad.
2. Fatema Girls High School
through Head Master
At Kaiser Colony,
Aurangabad.

...PETITIONERS

VERSUS

1. The State of Maharashtra,
through Secretary, School Education
Department, Mantralaya, Mumbai 400 032
2. The Director,
Secondary Education Maharashtra State,
Central Building, Pune.
3. The Deputy Director of Education,
School Education Department,
Aurangabad.
4. The Education Officer (Secondary),
Zilla Parishad, Aurangabad.

...RESPONDENTS

...

Mr. Zia Ul Mustafa, Advocate for the petitioners.
Mr.G.R.Ingole, AGP, for respondent State.

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**CORAM: S.S.SHINDE
AND
P.R.BORA, JJ.**

Date: April 28th, 2015

P.C.:-

1. Heard. Rule. Rule made returnable and heard forthwith with the consent of learned Counsel for the parties.

2. It appears that in the impugned communication / order, the respondent authority has made certain observations placing reliance on the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as '2009 Act').

3. The Supreme Court in the case of **Pramati Educational & Cultural Trust & Ors. Vs. Union of India and others** (WP (C) No.416/2012 and connected matters), in paragraph no.47 held that, 2009 Act, in so far as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution, is ultra vires the Constitution. The petitioners have placed on record copy of certificate showing that the petitioners are declared as minority institution.

4. In the light of the exposition of the Supreme Court in the case of **Pramati Educational & Cultural Trust (supra)**, and in particular, paragraph No.47 thereof, the respondent authority should not have placed reliance on the provisions of 2009 Act while considering the case of the petitioners for staffing pattern.

5. In the light of of above, we quash the impugned communications / orders; dated 16th October, 2014 in WP No.822/2015 at Exh.C, and dated 21st/22nd October 2014 in

WP No.805/2015 at Exh.D, and direct respondent no.4 to reconsider the issue of staffing pattern in the light of the observations made here-in-before and the judgment of the Supreme Court in the case of **Pramati Educational & Cultural Trust (supra)**, as expeditiously as possible, however, on or before 15th June, 2015.

Needless to observe that if respondent no.4 feels it necessary to hear the petitioners, he will be at liberty to do so.

Both the petitions are disposed of.

Rule made absolute in above terms.

(**P.R.BORA**)
JUDGE

(**S.S.SHINDE**)
JUDGE

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agp/822-15wp