

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

WRIT PETITION NO.2548 OF 2015

Late Abdul Quadar Patel Gramin Vikas
Sanstha Chikhlwardha, Tq. Ghatanji,
Dist. Yeoatmal

[Through its Secretary]

Abdul Rafiq s/o. Abdul Majid Patel,
Age 55 Years, Occ: Secretary,
R/o. A/P. Chikhlwardha, Tq. Ghatanji,
Dist. Yeoatmal

PETITIONER

VERSUS

- 1] The State of Maharashtra,
[Through its Principal Secretary],
School Education and Sports
Department, Mantralaya,
Mumbai – 32.
- 2] The Director of Education,
Central Building,
M.S.Pune [Primary School Education].
- 3] The Deputy Director of Education,
Latur.
- 4] The Education Officer [Primary],
Zilla Parishad, Nanded,
Dist. Nanded

RESPONDENTS

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Mr. S.K.Mathpati, Advocate for the Petitioner
Mr. S.K.Kadam, AGP for the Respondent Nos. 1 to 3
Mr. Sham B. Patil, Advocate for the Respondent No.4.

...
**CORAM: S.S.SHINDE &
A.M.BADAR, JJ.**

Reserved on : 30.09.2015
Pronounced on: 07.10.2015

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard.

2] Rule. Rule made returnable forthwith, and heard with the consent of the parties.

3] This Petition takes exception to the order dated 25.09.2014 passed by the respondent No.1, and the order dated 2nd February, 2015, thereby rejecting the prayer of the petitioner seeking permission to start new Urdu Medium Primary School at Gondwadsa, Taluka Mahoor, District Nanded, and also takes exception to the Government Resolution dated 25th September, 2013.

4] Heard the learned counsel appearing for the petitioner. He invited our attention to the pleadings in the Petition and grounds taken therein, and submits that, the petitioner has experience of running educational institution. The proposal of the petitioner was initiated in the Year 2008, and therefore, the Government Resolution which is issued by the State of Maharashtra on 25th September, 2013 is not applicable in case of the petitioner. It is submitted that, right to establish and administer

educational institution is right given and specifically protected by Article 30 [1] of the Indian Constitution, which can not be abrogated by Government also, and hence the applicability of Government Resolution dated 25th September, 2013 to the minority educational institution is unconstitutional or bad in law. It is further submitted that, initially, the constitutional validity of the 2009 Act was considered by a Three Judges Bench of Court in *Society for Unaided Private School of Rajasthan Vs. Union of India and another reported in 2012 [6] SSC 102*. The Supreme Court has already held that, the 2009 Act to be constitutionally valid. It is also held that, the 2009 Act is not applicable to unaided minority Schools protected under Article 30 [1] of the Constitution by the Apex Court in the case of *Pramati Education & Cultural Trust & Others Vs. Union of India & Others reported in 2014 [3] Bom.C.R. 496*. It is observed in the said Judgment that, if the 2009 Act is made applicable to minority school, aided or unaided, the right of minorities under Article 30 [1] of the Constitution will be abrogated. Therefore, the 2009 Act insofar it is made applicable to minority schools referred in clause [1] of Article 30 of the Constitution is *ultra vires* the Constitution. Right to Children to Free Compulsory Education, 2009 Act will not be

applicable to Minority Schools [Aided or Unaided] which are protected under Article 30[1] of the Indian Constitution.

5] It is further submitted that, five Judges Bench has already come to the conclusion that, the majority Judgment of Apex Court in *Society for Unaided Private School of Rajasthan Vs. Union of India and Another* reported in 2012 AIR SC 3445, 2012 SSC 102 insofar as it holds that, the Right to Children to Free Compulsory Education 2009 Act is applicable to aided minority school is not correct. It is further submitted that, under Article 30 [1] the Constitution, all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice, the State while making the law to provide free and compulsory education to all children of age of six to fourteen years can not be allowed to encroach on this right of the minority institutions under Article 30 [1] of the Constitution.

6] Therefore, the learned counsel appearing for the petitioner submits that, the Petition may be allowed.

7] On the other hand, the learned AGP appearing for the Respondent – State invited our attention to the

averments in the affidavit-in-reply filed by the respondent Nos. 1 to 3 on 5th June, 2015 and 15th June, 2015 and also the contents of the aforementioned Government Resolution and submits that, the Petition may be rejected.

8] We have given anxious consideration to the rival submissions. With able assistance of the learned counsel appearing for the petitioner, and the learned AGP appearing for the respondent – State, we have carefully perused the pleadings in the Petition, and the grounds taken therein, and also annexure placed on record with the Petition, and the affidavit-in-reply filed by the respondent Nos.1 to 3.

9] The petitioner has stated detailed facts leading for filing the Petition in the memo of Petition, and also comprehensive grounds are taken in support of the contention of the petitioner, as and when it is necessary, we will refer to the relevant pleadings / grounds. Upon careful perusal of the pleadings in the Petition, it is abundantly clear that, the petitioner institution did file proposal seeking permission to start Urdu Medium Primary School at Gondwadsa, Taluka Mahoor, District Nanded. It further appears that, time to time the petitioner, on refusal

by the respondent to grant permission to start New Urdu Primary School, has approached this Court. This Court granted liberty to the petitioner to apply afresh. It appears that, in pursuant to the order passed by this Court on 26th November, 2012, the petitioner did file fresh proposal with the respondent, however, the respondent No.1 has rejected the same and communicated the same order by letter dated 2nd February, 2015 to the Education Officer [Primary], Zilla Parishad, Nanded of which copy was marked to the present Petitioner. Upon careful perusal of the contents of the impugned letter, the Government of Maharashtra issued Government Resolution dated 25th September, 2013 and entrusted responsibility of opening and running Primary as well as Higher Primary Schools with the local bodies, and therefore, on that ground the proposal of the petitioner seeking permission to start Urdu Medium Primary School at Gondwadsa, Taluka Mahoor, District Nanded has been rejected.

10] Upon perusal of the affidavit-in-reply filed by the respondent Nos.1 to 3, it is stated that, in view of the aforementioned Government Resolution, it is not open for the State Government to grant permission to provide

institutions to start primary schools and those have to be run by the local bodies.

11] We have carefully perused the contents of the Government Resolution, and we do not find express prohibition to allow the private institutions to establish the Primary and Higher Primary School. On specific query to the learned AGP for the Respondent – State, how many schools have been established in pursuant to the said Government Resolution by the local bodies in the Nanded District, the learned AGP on instructions submitted that, there is no single Urdu Primary School is opened / established by the local bodies in the Nanded District. Upon careful perusal of the affidavit-in-reply, it appears that, after aforementioned Government Resolution came into force, the State Government has granted permission to Chistiya Education and Welfare Society, Jalna to run Urdu Primary School at Jalna on 24th July, 2014. Therefore, it is not the case that, the Government has stopped granting permission. At present, we do not see any reason to consider the challenge of the petitioner to the Government Resolution on the ground that, the petitioner being minority institution, and it has right to establish and administer the

School invoking Article 30 of the Constitution of India, therefore, said Resolution may be quashed. Admittedly, the proposal seeking permission to open New Urdu Primary School was initiated by the petitioner in the year 2008-09, which is prior to issuance of such Government Resolution.

12] Therefore, we reject the contentions of the respondents that, in view of the aforementioned Government Resolution, the proposal of the petitioner cannot be considered on merits. The petitioner has placed overwhelming material on record including recommendations of the local authorities and also petitioner is ready to place on record the Resolution of the Grampanchayat for opening such School at village Gondwadsa. Therefore, the impugned communication stands quashed. We direct the respondent No.1 to consider the proposal of the petitioner afresh on merits, and not to reject the same on the ground that permission can not be granted in view of aforementioned Resolution dated 25th September, 2013.

13] The petitioner shall submit copy of the Petition with annexure to the respondent No.1. One of the grounds raised by the petitioner in this Petition is that, before taking

decision rejecting the proposal of the petitioner, the petitioner was not heard. We hope and expect that, the respondent No.1 will hear the petitioner and allow the petitioner to place on record further additional documents, if any, in support of his contention, and then take final decision as expeditiously as possible and preferably within 3 months from today.

14] With the above observations, the Petition is partly allowed. Rule is made absolute in above terms.

Sd/-
[A.M.BADAR]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE

DDC