

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

WRIT PETITION NO.6511 OF 2015

1. Vasantrao Naik Shikshan Prasarak Mandal,
Airport Road, CIDCO, Aurangabad
Through its Secretary
Nitin Rajaram Rathod,
Age-46 years, Occu- Social Service,
R/o. Flat No.24-D, Ellora Complex,
CIDCO, Cannught, Aurangabad
2. The Principal,
Vasantrao Naik Junior College of Science,
Aurangabad, Taluka and Dist. Aurangabad

..PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Secretary,
School Education & Sports Department,
Mantralaya, Mumbai.
2. The Deputy Director of Education
Aurangabad Division, Aurangabad.
3. The Joint Director,
Directorate of Vocational Education
& Training, State of Maharashtra,
3, Mahapalika Marg,
P.O.10036, Mumbai.

..RESPONDENTS

Mr. Santosh S. Jadhavar, Advocate for the petitioners.
Mr. K.G.Patil, AGP for respondent Nos.1 to 3.

**CORAM : A.V. NIRGUDE &
V.K.JADHAV, JJ.
DATED : 26.08.2015**

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

1. Heard.
2. Rule.
3. Rule made returnable forthwith.
4. The facts leading to this litigation, in short, can be stated as under:-

The petitioner is Society and Public Trust who runs a School as well as College on grant-in-aid basis. The State of Maharashtra enacted the Maharashtra Self Finance School (Establishment & Regulation) Act, 2012 (hereinafter referred as "said Act") and brought the same w.e.f. January 2013. Accordingly, the petitioner moved an application for up-gradation of their School. The School would be upgraded on Self Finance Basis for opening a new standard, which was 11th standard, in Science faculty.

5. The said Act provides that such proposals would be scrutinized by the Scrutiny Committee. In the present case, the Scrutiny Committee submitted a report, and, on 15.06.2013, the Government resolved to accord permission for up-gradation of the petitioner's School. Accordingly,

the Government Resolution specifically mentioned that the petitioner's Society could start the upgraded part of the School within 18 months. Accordingly, in June-July, 2014, the petitioner started to give admission to the students for 11th standard for Science, specifically mentioning that this would be upgraded Self Finance School by August-2014. They allowed admission to as many as 330 students.

6. The Education Officer (Secondary) visited the School which started in August, 2014, and submitted his report that the School is properly run. It is, thereafter, in December, 2014, the Deputy Director (Education) send a letter to the Education Officer (Secondary) that he had granted recognition as per Rule 5.1 of the Secondary School Code to newly open standard. (While establishing this part of old School, the petitioner's Society named the new part as "Vasantrao Naik Junior College of Science").

7. The Deputy Director however mentioned that he would permit one Division for the year 2013-2014 etc. As said above, by the time, this letter was issued. The petitioner's Society had already started about four Divisions of 11th standard. Therefore, on 28/04/2015, the Principal of the Junior College, sent a letter to the

Deputy Director seeking permission to start four Divisions. The Deputy Director informed to the Principal that he would not grant such permission. The petitioner challenged this action on the part of the Deputy Director. The first question that arises for our consideration is; whether the Deputy Director is empowered to permit number of students or number of divisions in College or School established by obtaining permission under the Act? On perusal of the Act, we found that the permission to start School or College on Self Finance basis, is given by the Government, and such permission can be withdrawn by the Government. There is no provision in the Act regulating the number of students that would be admitted in the School or College established on Self Finance Basis.

8. Since the permission is given by the Government and since the Government is empowered to regulate the activities started pursuant to such permission, it is but natural to hold that the Government would also have an authority to restrict the number of students or number of divisions in such School or College. In absence of clear provisions in this regard, the Deputy Director does not appear to have any authority either to give permission for one division or to enhance number of Division etc.

9. We are therefore inclined to set aside the orders/letters dated 23.12.2014 and 25.06.2015 issued by Deputy Director and one show cause notice dated 19.05.2015 issued by Joint Director, Directorate of Vocational Education.

10. In view of this, we direct the Deputy Director and Education Officer to allow the students of this upgraded School or College, to appear for Board Examination.

11. We need not add that Government is still free to take action pursuant to the provisions of the Act.

12. In view of this, the Writ Petition stands disposed of. Rule is made absolute in the above terms.

[V.K. JADHAV, J.]

[A.V. NIRGUDE, J.]