

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.8016/2015

Navnirman Shikshan Prasarak Mandal.

...Petitioner..

Versus

The State of Maharashtra & others.

...Respondents...

.....

Shri S.S.Thombre, Advocate for the petitioner.

Shri V.S.Badak, AGP for Respondent Nos.1 to 3.

Shri R.N.Dhorde, Senior Advocate i/b Shri V.R. Dhorde,
Advocate for Respondent Nos.6 & 7.

None Appeared for Respondent No.8.

.....

**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 24.10.2016

ORDER :

1] The order dated 4.6.2015 passed by the respondent no.1 thereby granting permission to shift the respondent n.7 - school from Ambajogai Road, Kaij to Bhagwan Galli, Kaij Tq.Kaij is assailed in the present

- 2 -

petition.

2] Mr.Thombre, learned counsel for the petitioner submits that the petitioner – society is running four schools. Since 1989, the petitioner is running a primary school in the name and style as Maulana Azad Urdu Primary School, Kaij at Farooqui Masjid Roza Mohalla area. Presently there are four schools in the said vicinity. The staff approval has been accorded to the petitioner – school i.e. Maulana Azad Urdu Primary School as well as Noor Jahan Urdu Primary School. Initially on 6.9.2010, the respondent no.7 had approached the Education Officer (Primary) for shifting the school from Ambajogai Road, Kaij to the other place which was more than eight hundred meters away. The said school was allowed to be shifted to Bhagwan Galli, Kaij Tq.Kaij. The learned counsel submits that on 23.5.2013, the Education Officer granted permission to shift the school from Ambajogai Road, Kaij to Bhagwan Galli, Kaij, to the respondent no.7 – school. The said place is near the petitioner – school. The said order is passed purportedly resorting to the provisions of Right to Education Act, 2009. The said school is at a distance of only 200 meters from the petitioner – school.

- 3 -

The Head Master and the President of the petitioner – school had submitted application pointing out the illegalities committed by the authorities in granting permission to shift the school.

3] The learned counsel further submits that the petitioner had filed Writ Petition No.5441/2013 assailing the said permission to transfer the school accorded to the respondent no.7. This Court set aside the order of the Education Officer (Primary) and directed the respondent no.7 that if it wants to shift the school, the respondent no.7 shall submit proposal in accordance with the Government resolution dated 31.7.2013.

4] The respondent no.7 submitted the proposal for shifting the school. The same is allowed. The learned counsel submits that the said order permitting shifting of the school is not in consonance with the Government resolution dated 31.7.2013. The shifting of the school is permissible only in three contingencies as laid down in the said Government resolution i.e. if the building where the school was functioning is in dilapidated condition or is not sufficient to accommodate the activities of the school or the existing building is in

- 4 -

rented premises and the institution wants to shift to its own premises. According to the learned counsel, none of these conditions are being satisfied, still the Education Department has accorded permission to the respondent no.7 to shift the school. Even further conditions are to be adhered to before granting the said permission. The other conditions are also not satisfied. The learned counsel submits that because of transfer of the school, unhealthy competition takes place. Already other schools are run in the said vicinity. There is no way that the additional school can be accommodated. The learned counsel further submits that even the order allowing transfer of the school does not spell out the ingredients as are required to be complied as contemplated under the Government resolution dated 31.7.2013. Large scale illegalities are committed. The viability of running the school at a particular place also is required to be considered. The spot inspection of the respondent no.7 school at the transferred place has been conducted by the authorities and they have found that no proper building of school exists. The building where school is run is a godown. The learned counsel submits that the said

- 5 -

permission granted to the respondent no.7 to shift the school deserves to be set aside.

5] Mr.Dhorde, the learned Senior Advocate for respondent nos.6 & 7 submits that the school run by the petitioner at Ambajogai Road, Kaij, was on highway near the petrol pump and was in rented premises. The premises at Bhagwan Galli where the school is ordered to be shifted is belonging to the society. The President of the society has given the land as a gift to the society wherein the building of the school has to be erected. The running of school on the highway was not advisable and it was risky to the lives of the students. More over, it was just adjacent to the petrol pump. Considering this aspect, the proposal has been rightly considered. According to the learned counsel, earlier premises at Ambajogai-Parli road was in a tenanted premises. Considering the interest of the students, the decision has been taken. There will not be adverse effect on the strength of the students in the school run by the petitioner. There are also other shops on the highway. All these aspects are considered by the Education Department while according the permission. The

- 6 -

Government resolution dated 31.7.2013 has been complied with.

6] Learned AGP states that the authority has taken into consideration the danger to the students at the initial place where the respondent no.7 was running the school. The same was on the highway and near the petrol pump. More over, because of the shifting of the school, the strength of the students of the petitioner – school is not affected. The same has increased. The learned AGP further submits that the place at which the school of the respondent no.7 is transferred is in the premises owned by the respondent nos.6 & 7.

7] Upon consideration of the submissions of the learned counsel for the respective parties, it is manifest that the respondent no.7 was initially running a primary school at Ambajogai – Parli Road. It is not disputed by any of the parties that the said school was near the highway. The said school was adjacent to the petrol pump and other shops. The said school was on a tenanted premises. The Government resolution dated 31.7.2013 relied upon by the learned counsel for the petitioner lays down the conditions to be complied with

before directing shifting of the school. The said Government resolution is in vernacular language. The relevant part is reproduced as under:-

"१) खाजगी शाळांना (सध्या अस्तित्वात असलेल्या व नवीन मंजूर होणा-या) खाली नमूद केलेल्या अपवादात्मक परिस्थिती सोडून इतर कोणत्याही कारणास्तव स्थलांतराची परवानगी देता येणार नाही.

- (१) 'शाळेची इमारत जीर्ण व धोकादायक किंवा नैसर्गिक आपत्तीमध्ये क्षतिग्रस्त झालेली असल्यास किंवा प्रकल्पामुळे बाधित होत असल्याने अशा शाळांमध्ये शिक्षण घेणे अशक्य.
- (२) सध्याच्या अपु-या इमारतीमधून स्वयंपूर्ण इमारतीमध्ये स्थलांतराचा प्रस्ताव.
- (३) सध्याच्या भाड्याच्या इमारतीमधून स्वतः च्या इमारतीमध्ये स्थलांतराचा प्रस्ताव इ."

8] Perusing the said conditions, it is manifest that the permission to shift the school from one place to another can be granted if either of the three conditions are satisfied. In the present case, the respondents have relied upon condition no.3 i.e. shifting of the school from the tenanted premises to its own premises.

9] It is a fact that at Ambajogai Parli Road, the respondent no.7 was running the school in a tenanted premises. The premises where the school is directed to

- 8 -

be shifted are the premises owned by the respondent nos.6 & 7. The said land where the school is directed to be shifted has been given as a gift by one of the trustees to the respondent nos.6 & 7. The said shifting is at a distance of less than 2 Kms. One of the conditions would stand satisfied. It is expected that the respondent nos.6 & 7 would construct the building commensurate with the requirements. We had asked the learned AGP to place on record the strength of the students from the year 2012-13 on record. The learned AGP has placed the same on record. On perusal of the said details of the strength of the students as placed on record, it is clear that the petitioner - school has not been adversely affected by the shifting of the respondent no.7 - school. The respondent no.7 is running the school at the transferred place for more than two and half years. The strength of the students in the petitioner - school and the respondent no.7 - school is sufficient enough. Moreover, as observed above, the strength of students in the petitioner - school has not been reduced. On the contrary, it has shown upward trend. The students for more than two and half years are taking education in the

- 9 -

respondent no.7 school at the transferred place, the staff has been transferred.

10] Considering the above conspectus of the matter, we are not interfering in the order passed. The writ petition as such is disposed of. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)