

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9132 OF 2013

01 The School Managing Committee
Shri Gurudev Datta Madhyamik
Vidyalaya, Manikdaundi, Tq.Pathardi,
District Ahmednagar, through the
Secretary Smt.Sanjivani Tatyaba
Dhavad.

02 The School Managing Committee
Shri Gurudev Datta Madhyamik
Vidyalaya, Manikdaundi, Tq.Pathardi,
District Ahmednagar, through its
Member Smt.Rukhmini Vasant
Waghmare.

Petitioners

Versus

01 The State of Maharashtra,
through its Principal Secretary,
to Secondary School Education
Department, Mantralaya,
Mumbai-32.

02 Dy. Director of Education,
Pune Division, Pune.

03 Dy. Director of Education,
Aurangabad Division, Aurangabad.

04 Education Officer (Secondary),
Zilla Parishad, Ahmednagar.

05 Education Officer (Secondary),
Zilla Parishad, Aurangabad.

06 Maharashtra Gramin Vikas
Mandal, A/p. Pimprilauki
Azampur, Tq. Sangamner,
District Ahmednagar, through
its President and/or Secretary.

07 Shri Sant Dnyaneshwar Gramin
Vikas Pratisthan, At Post -
Manikdaundi, Tq. Pathardi,
District Ahmednagar, through
its President and/or Secretary.

08 Shri Gurudev Datta Madhyamik
Vidyalaya, At Post : Manikdaundi,
Tq. Pathardi, District Ahmednagar,
through its Headmaster.

Respondents

Mr.S.T.Shelke, advocate for petitioners.

Mrs.A.V.Gondhalekar, AGP with Mr.V.M.Kagane, AGP for
Respondents No.1 to 5.

Mr.V.D.Hon, Senior Counsel i/by Mr.A.V.Hon, advocate for
Respondent No.6.

Mr.A.G.Ambetkar, advocate for Respondent No.7.

Mr.P.R.Nagare, advocate for Respondent No.8.

**CORAM : R.M.BORDE &
P.R.BORA, JJ.
Reserved on : 20th June, 2016
Pronounced on: 22nd June, 2016.**

JUDGMENT (Per R.M.Borde, J.):

1 Heard. Rule. Rule made returnable forthwith and
heard finally by consent of learned Counsel for respective parties.

2 Petitioners are objecting to the order passed by the
State Government on 26.06.2013, permitting transfer of
Respondent No.8 - Shri Gurudev Datta Madhyamik Vidyalaya, at
village Manikdaundi, Tq. Pathardi, District Ahmednagar, managed

by Respondent No.6 - Maharashtra Gramin Vikas Mandal, Pimprilauki Azampur, Tq. Sangamner, District Ahmednagar, from village Manikdaundi, Tq. Pathardi, to village Gandheli, Garkheda area, Aurangabad.

3 Petitioner no.1 is the school managing Committee of Respondent No.9 school, whereas, ward of petitioner no.2 is taking education in Respondent No.8 – school. Respondent No.6 – institution was granted permission to operate a school from the academic year 2000-2001. However, at the relevant time, since students' strength was quite deficient and it was impossible for Respondent No.6 to manage and operate the school. Respondent No.6 submitted a proposal for shifting of the school, which was approved and the school started functioning during the academic year 2008-2009 at village Manikdaundi, Tq. Pathardi.

4 According to the petitioners, the school was running smoothly, however, Respondent No.6, for the reasons known to the Management, tendered a proposal for shifting of the school from village Manikdaundi, Tq. Pathardi, to village Chinchale, Tq. Rahuri. Simultaneously, there was another proposal tendered by Respondent No.6 seeking permission to shift the school to village Gandheli, Garkheda area, Aurangabad. The State Government, considering the proposal, accorded permission to shift the school to village Gandheli, Garkheda area, Aurangabad, on the condition that all the teaching and non teaching staff working in the school shall be accommodated in the school at the transferred place and consent of Parents/Teachers Committee shall be obtained for shifting the school to village Gandheli, Garkheda area, Aurangabad

and the Management shall ensure that the transfer will not affect academic interest of the students.

5 Petitioners contend that consent of the teaching and non teaching staff of Respondent No.8 – school has never been obtained by Respondent No.6. In the proposal names of different persons were shown as employees and the State authorities were misled. It was tried to be demonstrated that the school is closed down from the academic year 2011-2012 which fact was totally incorrect. Petitioners also contend that the Gram Panchayat Resolution annexed to the proposal is forged. The Gram Panchayat did not accord approval to transfer of school from village Manikdaundi. The approval of the parents, whose wards are studying in the school, was not taken and interest of the students is given go bye.

6 It is pointed out that teaching and non teaching staff of the school has presented a writ petition in this Court bearing No.7948 of 2013, wherein it is specifically mentioned that Respondent No.6 has made unwarranted and unwanted demands from the staff members. There was an attempt on the part of Respondent No.6 to transfer management of the school in favour of Respondent No.7. There was also an agreement reduced into writing between Respondent No.6 Respondent No.7 in respect of transfer of the school from one institution to another, which is impermissible. The members of the teaching and non teaching staff have prayed for action against the management and also prayed to protect services of the employees and their financial interest. It is the contention of petitioners that the place, where

the school is transferred, is more than 100 Kms away from the place where the school was operated. There was absolutely no reason for transfer of the school. The petitioners, as such, prayed for quashing the transfer order issued by the State Government, which, according to the petitioners, is contrary to the policy prescribed by the State Government in respect of transfer of schools.

7 An affidavit-in-reply has been presented on behalf of Respondent No.6 wherein it is stated that petitioners do not have *locus standi* to challenge the orders issued by the State Government permitting transfer of the school. It is contended that instant petition shall not be entertained during pendency of petition presented by the employees, being Writ Petition No.7948 of 2013. According to Respondent No.6, after observing the procedure, permission was granted to start secondary school at village Kothe Malkapur, Tq. Sangamner on 18.09.2003. Since requisite number of students were not available, the State Government, by an order dated 19.12.2007, accorded permission to shift the school to village Manikdaundi, Tq. Pathardi. It is contended that since there is a Zilla Parishad school conducting classes from 1st to 7th Standards and there also exist a school receiving grant-in-aid conducting classes from 5th to 10th standards, it was difficult for Respondent No.6 to run the school as requisite number of students were not admitted in the school. Considering this aspect, Respondent No.6 tendered an application to the State Government seeking permission to transfer the school from village Manikdaundi to village Gandheli, Garkheda area, Aurangabad; and after observing the procedure, the State

Government has accorded sanction.

8 It is the contention of Respondent No.6 that petitioner no.1 – school managing committee is not a legal entity and said Committee does not have any permission to run the school at village Manikdaundi. It is contended that appointment of staff to teach the students, is at the instance of petitioners in collusion with Respondent No.7 and a false record is created in that regard. The officers of the Education Department were misled while they conducted inspection of the school. Respondent No.6 contends that petitioner no.1 and Respondent No.7 have created fraudulent record in respect of annual inspection of the school for the academic year 2011-2012. It is further contended that recognition granted by Respondent No.3 on 30.03.2013 under the provisions of Section 18 of the Right to Education Act, is also illegal and without verifying the documents. It is contended that since there were less number of students admitted to the school at Manikdaundi, a request was made for transfer of the school, which was accorded by the State Government. Respondent No.6 further contends that the school was not in operation at village Manikdaundi and same is already shifted to village Gandheli, Garkheda area, Aurangabad, after complying with necessary formalities. Respondent No.6, as such, prays for dismissal of the writ petition.

9 The petitioners have placed on record annual inspection reports of the school at village Manikdaundi for the academic years 2008-2009, 2009-2010, 2010-2011, 2011-12 and 2012-2013. The annual inspection reports are duly signed by Deputy Education Officer of the Zilla Parishad. The list of

members of teaching and non teaching staff is incorporated in the inspection reports. It is reported by the Deputy Education Officer that there are five trained teachers functioning in the school and the school is functional.

10 In view of the inspection reports conducted by the officers of Education department of the Zilla Parishad, contention raised by Respondents that there were no students in the school and the school was not operational for the academic year 2011-2012, does not appear to be correct. In fact, the school is operational and there are students admitted in the school, as reflected from the reports of the Education Department from 2008-2009 onwards till the date of presentation of the writ petition.

11 Apart from this, the list of employees verified by the Education Department also does support the contention raised by petitioners in the petition. The employees, whose names appear in the inspection reports, have presented writ petition bearing No.7948 of 2013 in this Court, seeking relief of protection of their services and for release of salary grants. The school has also been inspected after enforcement of provisions of Right to Education Act and the Education Officer has accorded permission to the school to run classes from 8th standard from 2013-2016 by an order dated 30.03.2013. The copy of the report of Education Officer is annexed at Exhibit-G to the petition.

12 In view of the facts, as recorded above, the contention of Respondent No.6 that Respondent No.8 school was not functional from 2011-2012 onwards does not appear to be correct

and it does appear that Respondent No.6 misled the State authorities by informing that the school was closed down since June 2011. It also does transpire that Respondent No.6 tendered two proposals in respect of transfer of school to the State Government. One proposal relates to transfer of school to village Chinchale, whereas, another proposal was in respect of transfer of school to village Gandheli, Garkheda area, Aurangabad. In both the proposals, Respondent No.6 has informed the State authorities that the school is closed down at village Manikdaundi from 2011 onwards. It is also noted in the proposal for transfer of the school that since the employees functioning in the school are temporary, permission for transfer need not be secured. It does appear that Respondent No.6 has neither secured permission of the employees nor has looked into welfare of the students and has misled the State authorities by informing that the school is closed down since 2011 onwards. Respondent No.6 has annexed list of employees, which is totally different than the list of employees functioning in the school and those who have approached this Court by presenting Writ Petition No.7948 of 2013. The list of the employees functioning in the school has been recorded in the annual inspection report conducted by the Education Officer. However, Respondent No.6 has submitted the State Government particulars in respect of employees, which are patently misleading. It has been brought to the notice by the petitioners, by presenting an affidavit, that one of the employee whose name appears in the list tendered by Respondent No.6 by name Aghav Meenanath is not a teacher but is doing a private job. One Shri Palve Sanjay is working as Court clerk in Ahmednagar court premises. One Pote Seema is a housewife. Whereas, another employee Sow. Anjali Kulkarni is

working in the Primary Health Centre at Manikdaundi. Her date of appointment is 28.05.2009 and copy of the information supplied by Medical Officer, Primary Health Centre, regarding employment of Anjali Kulkarni is annexed to the rejoinder.

13 It does appear that list of the employees shown by Respondent No.6 as teachers functioning in the school, while tendering proposal for transfer of the school, is fraudulent. Respondent No.6 has misled the State by furnishing false list of employees and also by furnishing a false information to the effect that the school is already closed down. Respondent No.6 has relied upon fabricated record and is instrumental in securing order of transfer. Apart from this, Respondent No.7 – Institution represented by Madhukar Dhavad has presented an affidavit-in-reply wherein concerned Respondent has stated that there was an agreement in respect of transfer of Respondent No.8 school in favour of Respondent No.7 – Institution. Copy of the agreement arrived at between Respondents No.6 & 7 is placed on record at Exhibit-R-1 to the affidavit-in-reply presented by Respondent No.7. It also does appear that Respondent No.7 paid Rs.10,35,000/- to Respondent No.6. Respondent No.7 has furnished a proof of payment of Rs.50,000/-, which amount is deposited in the account of Respondent No.6 on 11.07.2009. and further sum of Rs.50,000/- has been transferred online to the account of Respondent No.6. It is also alleged by Respondent No.7 that Respondent No.6 was asking for payment of Rs.40,00,000/-. It does appear that Respondent No.6 is dealing with Respondent No.8 school as if it is a commodity and has entered into an agreement with Respondent No.7 for transfer of the school. Such a course is not permissible

under education policy adopted by the State.

14 The State Government has declared a policy prescribing guidelines for transfer of the schools on 9th June, 2010. Under the policy, schools are required to tender their proposals for transfer to Divisional Deputy Director of Education. The Divisional Deputy Directors of Education are expected to tender, in consultation with the Education Officer, the fact finding report to the State Government. It is also mandated under the policy that the place, from where the school is to be transferred by virtue of transfer of a school, students from the said place shall not be put to inconvenience and the place where the school is proposed to be transferred, shall not generate unnecessary competition. It is also required to be ensured that interest of the students is protected and employees also shall have to be accommodated.

15 In the instant matter, guidelines framed by the State Government under the policy dated 17th February 2009, have been given go bye. The interest of the students has not at all been considered nor consent of the employees has been adopted. The procedure prescribed under the policy also does not appear to be adhered to while permitting transfer by the State Government. The State Government has issued further instructions in respect of transfer of school under the policy formulated on 31.07.2013. It is mandated under the revised policy that the high school shall not be transferred beyond the area of 10 Kms. In the instant matter, although case of the petitioners is governed under the old policy, there is no reason as to why transfer of the school is permitted almost at a place which is 100 Kms away.

16 For the reasons set out above, we are of the view that action of the State Government, in according approval to the transfer of Respondent No.8-school, operated by Respondent No.6-Management, is illegal and deserves to be quashed and set aside and same is accordingly quashed and set aside.

17 Rule is accordingly made absolute. There shall be no order as to costs.

18 Pending Civil Applications, if any, do not survive and stand disposed of.

P.R.BORA
JUDGE

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R.M.BORDE
JUDGE