

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9967 OF 2013

1. Maharashtra Urdu Shala
Sangharsha Samiti, Aurangabad,
through its Executive President
Prof. Shaikh Mansur Mustafa,
Age : 48 years,
R/o Aurangabad, Dist. Aurangabad
2. Al-Sabaha Shikshan Aani Samajik
Karya Sanstha, Aurangabad through
its Secretary Prof. Shaikh Mansur
Mustafa, Age : 49 years, Occu.
Service, R/o House no. 8-17-262,
Wahed Colony, Aurangabad
3. Kohetur Education and Welfare
Society, Aurangabad, through
its Chairman Mohammad Gaus
Shaikh Habib, Age : 56 years,
Occu. Business, R/o House
No. 1-12-42, Juna Bazar,
Aurangabad
4. Johar Educational and Welfare
Society, Aurangabad, through
its President Mohammad Ajmal Khan
Afzal Khan, Age : 54 years,
Occu. Business and social work,
R/o Near Water Tank, Shahaganj,
Shahabazar, Aurangabad
5. Rojabag Education Society,
Aurangabad, through its
Secretary Siddiqui Ahmed
Mohiyuddin, Age : 63 years,
Occu. Pensioner, R/o House No.3,
Krisent Society, Rojabag,
Aurangabad
6. Bharat Educational and Social Society,
Rani-Unchegaon, Tq. Ghanasawangi,
District Jalna, through its Secretary

Qureshi Shariq Mohammad Iqbal,
Age : 29 years, Occu. Agriculture,
R/o At Post Rani-Unchegaon, Tq.
Ghanasawangi, District Jalna

7. United Education, Welfare and Cultural Society, Aurangabad, through its Chairman Shaikh Ziauddin Ahmed, Age : 40 years, Occu. Service, R/o House No.6-22-8, Mujib Colony, Katkatgate, Aurangabad
8. The Rehmaniya Welfare Education Society, Kannad, Dist. Aurangabad, through its Secretary
9. Taha Shikshan Prasarak Mandal, Kannad, District Aurangabad, through its Secretary
10. Optimistic Education and Welfare Society, Aurangabad, through its President
11. Muslim Vikas Manch, Aurangabad, through its Secretary
12. Mohamadi Institute for Research, Muslim Development and Education and Computer, Jalna, through its President

PETITIONERS

VERSUS

1. The State of Maharashtra, through its Secretary, School Education and Sports Department, Mantralaya, Mumbai-32
2. The Director of Education (Secondary), Maharashtra State, Pune

3. The Director of Education
(Primary),
Maharashtra State, Pune
4. The Education Officer (Secondary),
Zilla Parishad, Aurangabad
5. The Education Officer (Primary), 2
Zilla Parishad, Aurangabad

RESPONDENTS

Mr. V.D. Sapkal, Advocate for the Petitioners
 Mr. V.H. Dighe, A.G.P. for respondent Nos. 1 to 4
 None for respondent No. 5

**CORAM : S.S. SHINDE AND
 SANGITRAO S. PATIL, JJ.**

**JUDGMENT RESERVED ON : 21st JULY, 2016
 JUDGMENT PRONOUNCED ON : 12th AUGUST, 2016**

JUDGMENT (PER : SANGITRAO S. PATIL, J.) :

Rule. Rule made returnable forthwith. With the consent of the learned counsel for the petitioners and the learned A.G.P., heard finally.

2. The petitioners have taken exception to the Government Resolution dated 15th November, 2011, issued by the Department of School Education and Sports, Government of Maharashtra, Mantralaya, Mumbai whereby the minimum strength of the students in the last year of primary school and 10th standard of secondary school has

been fixed as 30.

3. The learned counsel for the petitioners submits that the petitioners are the Minority Institutions running the schools in Urdu medium. According to him, the petitioners being Minority Institutions, the schools run by them are governed by the provisions of the Secondary Schools Code. As per Clause-III, Appendix-TWENTY-TWO of the Secondary Schools Code, the Minority Language Secondary Schools and the Schools in Tribal Areas are allowed to be opened on grant in aid basis for minimum average attendance in a class with 12 students. As such, the Minority Language Secondary Schools and the Schools in Tribal, hilly and remote areas are treated at par. As per Proforma-A Class-I of the impugned Govt. Resolution dated 15th November, 2011, for the purpose of evaluating the performance of Primary/Secondary Schools, minimum attendance of the students has been prescribed as 30. The Department of School Education and Sports, Government of Maharashtra issued another Resolution dated 16th July, 2013 and reduced the strength of minimum attendance of the students in Primary/Secondary schools which are being run in hilly and remote areas from

30 to 20. However, though the petitioners-Institutions are running the Primary/Secondary schools in Urdu medium and were being treated at par with the schools in Tribal areas, the condition of minimum strength of the students has not been relaxed in respect of the petitioner Institutions.

4. He then submits that the petitioner Institutions have been subjected to discrimination by not treating them at par with the schools that are being run in Tribal and Hilly areas. The petitioner Institutions have been treated at par with the other general Primary/Secondary schools which are much advanced than the petitioner Institutions. According to him, unequals cannot be treated equally and equals cannot be treated unequally. By making Government Resolution dated 15th November, 2011 applicable to the petitioner Institutions, their fundamental right of equality under Article 14 of the Constitution of India has been infringed.

5. He further submits that Muslim community in the State of Maharashtra is educationally and socially backward. It is essential to teach the students from

Muslim community in their language i.e. Urdu so as to encourage them to show progress in their career. He submits that for the purpose of imparting education in Urdu medium, certain protections have been granted under Article 29 and 30 of the Constitution of India on the basis of linguistic minority. He submits that if the Government Resolution dated 15th November, 2011 is made applicable for Urdu medium schools, none of the said schools would be eligible for the purpose of getting grant-in-aid.

6. He further submits that the Department of School Education and Sports, Government of Maharashtra issued one more Resolution dated 20th November, 2013 and revised the norms for opening and continuation of secondary schools run in the Hilly, Tribal and Naxalite areas, reducing the minimum strength of the students for opening and continuing the division for 9th and 10th standards to 15. However, the said Government Resolution has not been made applicable to the petitioner Institutions and they have been treated at par with the general category schools. Relying on the averments made in the petition and the documents annexed thereto, he

submits that Government Resolution dated 15th November, 2011 is arbitrary and unconstitutional since it has infringed the fundamental rights of the petitioner Institutions. He, therefore, prays that respondent No. 1 may be directed to amend the Government Resolution dated 15th November, 2011, particularly in respect of the minimum strength of the students required for opening and continuing the primary/secondary schools to make it in consonance with the provisions of the Secondary Schools Code and the Right of Children to Free and Compulsory Education Act, 2009.

7. Respondent Nos. 1 and 3 filed affidavit-in-reply and opposed the petition. They denied that by issuing Govt. Resolution dated 15th November, 2011, any right of the petitioner has been infringed. According to them, there is no difference in general schools of Marathi medium and the schools of linguistic minority. They are to be treated at par. The Secondary Schools Code is a compilation of instructions and has no statutory force. The provisions of the Right of Children to Free and Compulsory Education Act, 2009, which has come into force from 1st April, 2010, would supersede the

provisions of the Secondary Schools Code. It is stated that the petitioners cannot claim that they should be treated at par with the schools run in Hilly, Tribal and Naxalite areas where because of geographical and social reasons, the strength of the students remains very less. Therefore, the petitioners cannot get any benefit as given to the schools which are being run in Hilly, Tribal and Naxalite areas pursuant to the Govt. Resolution dated 16th July, 2013. The Govt. Resolution dated 20th November, 2013 is in respect of the secondary schools for 9th and 10th standards. It is not applicable to the primary school.

8. The learned counsel for respondent No. 1 and the learned counsel for respondent No.3, submit that the petitioners cannot claim parity with the schools run in Hilly, Tribal and Naxalite areas. They cannot claim any special concession in the matter of minimum required strength of the students for opening and continuing a division in primary/secondary schools. According to them, no right of the petitioners has been infringed. Therefore, they pray that the writ petition may be dismissed.

9. There is no dispute that the petitioners are the linguistic minority institutions running the schools for imparting education to the children of Muslim community mainly in Urdu medium. The petitioners are governed by the Secondary Schools Code. As per Rule 98 (3) of the said Code, the minimum strength of the students required for opening and continuing a class of primary/secondary school is 15. Relying on the judgment in the case of ***Shikshan Mandal through the Secretary Dr. R.G. Prabhune and others Vs. State of Maharashtra and others, 2012 (2) Bom.C.R. 875***, the learned counsel for the petitioners submits that the provisions of the Secondary Schools Code have statutory status. He cites the judgment in the case of ***M.G. Pandke Vs. Municipal Council Hinganghat, District Wardha, 1993 AIR S.C. 142*** wherein it has been observed in paragraph No. 8 of the judgment that the provisions of the Maharashtra Secondary Education Board Act, 1965 and the Maharashtra Secondary Education Board Regulation, 1966 give statutory recognition to the Secondary Schools Code. Under the Maharashtra Regulations, it is obligatory for the schools, which have been given recognition under the

Maharashtra Act and the Maharashtra Regulations, to follow the provisions of the Code. In view of this judicial pronouncement, the contention of the learned counsel for respondent No. 3 that the provisions of the Secondary Schools Code have no statutory force, cannot be accepted.

10. As per the norms prescribed in Clause-III of Appendix-TWENTY SECOND of the Secondary Schools Code, the Minority Language Secondary Schools and the Schools in Tribal Areas are treated at par in the matter of minimum average attendance of the students in a class for opening the schools on grant-in-aid basis. Accordingly, the minimum average attendance of the students was fixed at 12.

11. The learned counsel for the petitioners invites our attention to the Govt. Resolution dated 10th February, 1994 whereunder for the purpose of opening and continuing the schools on grant-in-aid basis, the minimum strength of linguistic minority schools has been prescribed as 15. From this Resolution, it is clear that the linguistic minority schools were given some special concession and were not treated at par with the

general schools. It is further clear that the linguistic minority schools were treated at par with the schools in Hilly, Tribal and Naxalite areas. If that be so, the Government Resolution dated 15th November, 2011 whereunder the linguistic minority schools of the petitioners have been treated at par with the general schools and not at par with the schools in Hilly, Tribal and Naxalite areas, certainly would subject the petitioner-Institutions to discrimination. By this Govt. Resolution, an attempt has been made to treat the unequals as equally and the equals as unequally. The petitioner Institutions have a right to be treated at par with the schools which are being run in Hilly, Tribal and Naxalite areas since they were being given such concession prior to the impugned Government Resolution dated 15th November, 2011. The petitioners are entitled to get excluded from the operation of the Government Resolution dated 15th November, 2011 so far as the requirement contained in Proforma-A, annexed thereto about the minimum strength of the students in a class as '30'. The petitioners are entitled to be treated at par with the schools run in Hilly, Tribal and Naxalite areas. They are entitled to get the benefit of the

Government Resolution dated 16th July, 2013, which is extended to the schools run in Hilly, Tribal and Naxalite areas. In the circumstances, we accept the claim of the petitioners for treating them at par with the schools run in Hilly, Tribal and Naxalite areas. In the result, we pass the following order :-

- (i) It is declared that the minimum strength of the students as 30 for opening and continuing the primary/secondary schools as mentioned in Proforma-A, annexed to the Govt. Resolution dated 15th November, 2011, is not binding on the petitioners.
- (ii) Respondent No. 1 shall issue corrigendum to the Government Resolution dated 15th November, 2011, reducing the minimum strength of the students required for opening and continuing the primary/secondary schools by the petitioners from 30 to 20.
- (iii) Rule is made absolute in the above mentioned terms.

(iv) The writ petitions are accordingly disposed of.

(v) No costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**S.S. SHINDE**]
JUDGE

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