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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.12431/2015

Maharashtra Rajya Prathamik Shikshak Sangha.
..Petitioner..

Versus

The State of Maharashtra & another.
...Respondents..

WRIT PETITION NO.12443/2015

Maharashtra Rajya Prathamik Shikshak Sangha.
..Petitioner..

Versus

The State of Maharashtra & another.
...Respondents..

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Shri S.P. Brahme, Advocate for petitioners.
Shri V.S. Badak, AGP for respondent no.1.
Shri M.S. Sonawane, Advocate for respondent no.2.

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

DATE: 13.10.2016

ORDER :

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1] These petitions take exception to the letter issued by the respondent no.2 - authority and the Government resolution issued pursuant thereto by virtue of which the attendance of the teachers and the time of their reporting to the respective school is to be communicated by the Head Master of the said school on Whats App to the Education Officer / Extension Officer so also the attendance of the students to be communicated to the Cluster Chief.

2] Learned counsel for the petitioners states that the scheme introduced by the respondents for collecting the information with regard to the time at which each teacher has reported to the duty so also the attendance of the students to the Cluster Chief and/or the Education Officer through Whats App is not feasible and viable. There would be many hurdles in operation of the said scheme. The Government resolution dated 18.2.2009 specifically bars the use of mobile phones in the school premises. Even penal consequences are provided for use of mobile phones in the school premises. The said scheme would be contrary to the said Government resolution dated

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18.2.2009. The learned counsel submits that many of the schools are situated in remote villages wherein the facility of Internet would not be available and even where the said facilities are available, the speed of the Internet would be too slow. The same would be time consuming. It would be taxing the Head Master. Valuable teaching time would be lost in the said process. All these aspects are not considered by the authorities while implementing the said scheme. The teachers would be put to hardship, unnecessary expenses would be involved. There are other schemes by virtue of which the attendance of the teachers and the students can be taken care of. There is no need to introduce such a scheme, which is expensive, time consuming so also not feasible. All these aspects are not considered by the respondent - authorities while insisting for the implementation of the said scheme.

3] Learned counsel for the respondent no.2 submits that the said scheme is introduced to keep check on the attendance of the teachers and the students via Whats App after making necessary survey. The said scheme is known as ezee STORM system. The same is functioning with

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effect from 29.6.2015 successfully and without any hindrance. According to the learned counsel, it is found that almost each and every teacher / Head Master is using the Whats App, they are having android phones, they are duly active on Whats App. According to the learned counsel, the problem of expenses would not arise as the administration is taking care of the same. There is no hurdle for providing Rs.100/- for the purpose of uploading the report regarding attendance. The learned counsel submits that even steps are taken to purchase about 1200 TABS from funds of Rs.59,00,000/- sanctioned for the schools and the tender process is in progress. The learned counsel submits that in spite of introducing the said scheme, the respondents are also accommodating the schools not getting proper Internet facility. The ezee STORM system is like biometric system. By using ezee STORM system, the respondents are getting the knowledge of the students who are not attending the schools and who are irregular. The object in introducing the said scheme is to increase the strength of the students and to see that the teachers also report on time. Before introducing the said scheme, the respondent

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no.2 held meeting with the representatives of the union of the teachers. In the said meeting, none of the representatives of the unions or the teachers have raised any objection with regard to the implementation of the eze STORM system. Wherever the Internet facility is not available, the respondent no.2 is taking information with regard to the presence of teachers on mobile / telephone. If there is a slow data speed, also the information is being sought on mobile / telephone. Even as per Clauses 2,3 and 5 of the Government resolution dated 30.11.2015, the respondent no.2 is adopting the stagnation of girls, use of biometric system and child track system by using STORM method. The learned counsel submits that if any of the employees of the schools have not received Rs.100/- allowance towards the same, it will be disbursed. The Government has published circular dated 28.5.2015 thereby permitting the use of Android phones as educational device. The use of phones in the schools is certainly not permitted and it can be used as an educational device only so also to access the information. The said scheme is in consonance with the policy of the Government of India (Digital India).

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4] We have considered the submissions canvassed by the learned counsel for the respective parties.

5] In a policy decision of the executive, the Courts would normally be slow to invoke its jurisdiction of judicial review. If a particular aspect is governed by the Rules / statute, then certainly the executive policy will have to be in consonance with the said statute / Rules. However, where no statute or Rules govern the field, then by way of an executive instruction, the State / authority can lay down a policy.

6] The policy as is introduced is with a laudable object and purpose of securing the attendance of the students so also about monitoring the reporting of the teachers on time. The object being laudable, this Court would certainly not interfere with the said scheme unless it is shown that the said scheme is arbitrary and irrational.

7] Perusing the said scheme, it is manifest that the same is in consonance with the present day situation. We could have accepted the arguments of the learned counsel for the petitioners had the same been argued about 10 to 15 years back, but not in this modern era.

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8] From the affidavit in reply filed by the respondents, it appears that the respondents have conducted a survey about the availability of Internet so also availability of Android phones with the teachers and thereafter has started implementing the said scheme. For more than a year, the said scheme is in force and neither the respondents nor the petitioners are confronted with any such a situation by virtue of which it can be said that the operation of the said scheme is not feasible or viable. Caution is also taken by the respondents inasmuch as wherever there is non-availability of Internet facility or the speed of the Internet is slow, alternative arrangements are made in that regard. It does not appear that for this one year, any coercive action has been taken by the respondents against the teachers or the Head Masters in operating the said scheme.

9] The said scheme is a progressive one and is in keeping with the progressive policy of the respondent no.1 - State. Even efforts are being made to provide TABS to the schools. The expenses incurred are also being taken care of. In such a situation, there is no

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reason for the petitioners to make a grievance of the same.

10] Considering the above, the writ petitions stand dismissed. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)