

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.849 OF 2015.

1. Bhausahab Bandodkar,
Shikshan Saunsta,
a Society registered under
the Societies Registration
Act, 1860, having its registered
office at Dharbandora, Goa, through
its Chairman Shri P. R. Nadkarni,
major of age, Indian National,
having office at the above address.
 2. Shri Vaman Vishram Khandeparkar,
major of age, r/o H. No. 100, Bazar
Vada, Mollem, Goa, member of the
Respondent no.1 Society.
-Petitioners.

Versus

1. State of Goa,
through its Chief Secretary,
having office at Secretariat,
Porvorim, Goa.
2. The Director, Directorate of
Education, Government of Goa,
Porvorim, Goa.
3. The Deputy Director of Education
(PLG), having office at Directorate
of Education, Government of Goa,
Porvorim, Goa.
4. Sahyadri Dudh Sagar
Education Society, having office at
mollem, Dharbandora, Goa,
through its Chairman
Shri Vinay Dinu Tendulkar,
major of age, Indian National,
having office at the above address.
5. Shri Vinayak D. Tendulkar,
major of age, Indian National,
r/o S-1, 9/12/30(5), Khandeparkar
Apartment, Khadpabandh,

Ponda, Goa – 403 401.

.....Respondents.

Shri N. Sardessai, Senior Advocate with Shri D. Shirodkar, Advocate for the petitioners.

Shri S. D. Lotlikar, Advocate General with Shri P. Dangui, Addl. Government Advocate for the respondent nos. 1 to 3.

Shri. S. R. Rivonkar, Advocate for the respondent nos.4 and 5.

**Coram:-F. M. REIS,
NUTAN D. SARDESSAI, JJ.**

Date: 18th July, 2016.

JUDGMENT (Per F. M. REIS, J)

Heard Shri N. Sardessai, learned Senior Counsel appearing for the petitioner, Shri S. D. Lotlikar, learned Advocate General appearing for the respondent nos.1 to 3 and Shri S. R. Rivankar, learned Advocate for the respondent nos.4 and 5.

2. Rule.

3. Heard forthwith with the consent of the learned Counsel appearing for the parties. The learned Counsel appearing for the respondents waive notice.

4. The above petition takes exception to the order dated 22.4.2015 whereby the application filed by the petitioner

for granting permission to open a Higher Secondary School came to be rejected. The petitioners have also challenged the permission granted to the respondent no. 4 by an order dated 2.6.2015 as well as the decision on the representation of the petitioners dated 9.6.2015 rejecting the permission to open the Higher Secondary School. The petitioners have also challenged the order dated 2.6.2015 whereby the respondent no. 4 was granted permission to open a Higher Secondary as stated above.

5. Briefly the facts of the case are that the petitioners filed an application way back in November, 2014 to open a Higher Secondary School in the premises occupied by the petitioners. The application was under consideration and infact a report was called for from ADEI in connection with the said application. The ADEI thereafter submitted the report on 25.2.2015 inter alia stating that the distance from the nearest Higher Secondary School was more than 8 kms and that the school was being run in the premises of the panchayat building wherein the petitioners run the secondary school in the morning session and Higher Secondary School in the afternoon session. It is further contented by the petitioners that despite of such report of the Deputy Director of Education, by the impugned order dated 22.4.2015 the respondent no.2 rejected the application

filed by the petitioners. The petitioner further contended that they thereafter learnt that in March, 2015 the respondent no.4 had also applied for permission to start a Higher Secondary School which came to be granted by the impugned order dated 2.6.2015. It is further pointed out that the reason given in the impugned order to refuse permission to the petitioners is on the ground that one of the school of science faculty has objected for grant such permission. It is further pointed out that even with regard to the application filed by the respondent no.4 the petitioner as well as the said school had raised objections to grant permission to the respondent no.4 but, however, such permission was granted without considering the objections of the petitioners nor of that school.

6. Shri Sardessai learned Senior Counsel has pointed out that in terms of Rule 3 of the Education Rules an application to open a new Higher Secondary School had to be filed 6 months prior to the academic year. The learned Counsel further pointed out that in terms of the said Rules, the petitioners had submitted an application in November, 2014. It is further pointed out that in terms of the provisions of Section 4(5) of the Goa School Education Act, 1984 a new school can be permitted provided there is no such Higher Secondary School within a radius of 8 kms of such subject school. The learned Counsel has thereafter

taken us through the report of the ADEI dated 25.2.2015 wherein it is clearly recorded that there is no Higher Secondary School within a radius of 10 kms. The learned Counsel as such points out that there is no reason for the respondent no.2 to refuse the permission to the petitioners, as according to him, all the requirements of law were duly satisfied. The learned Senior Counsel further points out that the petitioners have obtained information under Right to Information Act and they were surprised to notice that permission was granted to the respondent no.4 is in blanket violation of the requirements of the Education Rules. It is further pointed out that the respondent no.4 did not even have available premises to run the Higher Secondary School but, however, the respondent no.2 has granted such permission. It is further submitted that the petitioners were not even given a hearing prior to the passing of the impugned order. It is further submitted by the learned Counsel that the petitioners came across a report which clearly suggests that there would be overlapping of timing between the classes conducted between morning session and proposed to be conducted in the afternoon session. It is further pointed out that as the petitioners were not given a hearing before passing the impugned order the petitioners were deprived of disclosing that such overlapping would not subsist.

7. On the other hand, Shri S. D. Lotlikar, learned Advocate General appearing for the respondent nos.1 to 3 has pointed out that the report submitted by the ADEI on 10.3.2015 clearly discloses that the feasibility of conducting classes in the afternoon session which would go upto 6.30 pm which would not be appropriate considering the age of the student who would attend such classes. This itself would suggest according to the learned Advocate General that there is no case made out for any interference in the impugned order passed by the respondent no.2. The learned Advocate General further submitted that the respondent no.4 has premises to start a Higher Secondary School and that as the petitioners did not satisfy the requirement of proper infrastructure the respondent no.2 was justified to grant permission to the respondent no.4. It is further pointed out that based on the feasibility report the question of granting any permission to the petitioners to start a Higher Secondary School will not at all be in the interest of the students of the locality. The learned Advocate General, as such, submitted that the petition be rejected.

8. We have considered the submissions of the learned Counsels and we have also gone through the records.

9. On perusal of the impugned order refusing

permission to the petitioners dated 22.4.2015, we find that the only reason recorded therein is on account of the objection raised by another Higher Secondary School which is located at a distance of more than 8 kms from the subject school. In any event, such objection, would not at all be material unless it was raised in public interest. It is not disputed that the impugned order dated 22.4.2015 was passed without giving an opportunity of hearing to the petitioners. On this ground alone, the impugned order cannot be sustained and deserves to be quashed and set aside for gross violations of the principles of natural justice.

10. Shri Sardessai, learned counsel for the petitioners has also brought to our notice a judgment passed by this Court in Writ Petition no. 249/1996 in the case of Shikshan Prasarak Sangh and another Vs The State of Goa and others which came to be disposed off by the judgment dated 19.3.1997 wherein it has been observed at paragraphs 13 and 14 thus:-

13. In the circumstance, we have no hesitation to hold that the impugned order was passed, as alleged by the petitioners, without taking into account the relevant materials and circumstances. Non-application of mind is writ large in the impugned order. In the result, the Writ Petitions are allowed

and the impugned order dated 20th June, 1996 is liable to be set aside and quashed. We do so. In order to protect the interest of the students and the teachers of the third respondent, we allow them to continue till the end of the academic year. The Director of Education should issue necessary order as per the Education Rules to protect the interest of the students and the teachers.

14. In order to avoid any other future dispute, like this, and to keep the education field free from personal conflicts and political manoeuvring and other unhealthy tendencies, we issue the following directions to the State Government:-
 1. The Director of Education shall within three months from today, collect and prepare necessary details and statistics about the educational needs of the localities and identify the localities where the schools in different grades are required to be opened in the Sate of Goa. In arriving at this decision, he can seek the help of local bodies and social organizations.
 2. After identifying the localities, mentioned above, the Government to issue public notice in that respect for the information of the public.
 3. The Government of Goa then to decide as to which

are the localities in which the aided/unaided recognized schools are allowed to be opened. It is also open to the Government to open their own school in the selected localities after identifying the localities as mentioned above.

4. After completing the aforesaid exercise, the Government may invite the applications for opening of new schools, at places which are identified as above.
5. No permission should be given for opening of a new school before or without the Government making necessary preparatory work for identifying the localities of the school, as directed above.
6. The permission to open a new school should always be given at least six months before beginning of the academic year and no new school is allowed to be opened unless permission is obtained at least six months prior to the beginning of the academic year.

11. Taking note of the said observations wherein this Court clearly noted that while granting permission to open such Higher Secondary School such an application shall be filed 6 months prior to the academic year and the government is also expected to take a decision with that regard within a period

specified therein.

12. In the present case, the record clearly reveals that as far as the respondent no. 4 is concerned, the directions issued by this Court have not all been complied with. Besides that, we find that, there are reports by the ADEI one dated 22/2/2015 which infact suggests that permission should be granted. No doubt the feasibility report which was submitted through the Director of Education was dated 10.3.2015. The observations in the report had to be made known to the petitioners before the concerned respondent takes a final decision on such application. Without going into the merits of the rival contentions, we find that the impugned order dated 22.4.2015 cannot be sustained for gross breaches of the principles of natural justice. Needless to say that the impugned order deserves to be set aside. Considering that presently a permission has been granted to the respondent no.4 to start a Higher Secondary School and it is brought to our notice that the school is functioning from the academic year 2015-16 in order not to jeopardised the interest of the student, we find it appropriate to make the order dated 2.6.2015 granting permission to the respondent no.4 subject to the decision which may be taken by the Director on the application filed by the petitioner in November, 2014 a fresh in the light of the observations made herein above. The

respondent no.2 herein shall consider the application without being influenced by the grant of permission to the respondent no.4 and in the light of the observations made herein above. As far as the challenge to the subsequent permission granted to the respondent no.4, we do not like to go into that aspect at this stage considering the view we proposed to take as herein above. All the contentions with that regard are left open.

13. Hence, we pass the following:

ORDER

- (i) The impugned order dated 22.4.2015 is quashed and set aside.
- (ii) The respondent no.2 is directed to decide the application filed by the petitioners dated 25.11.2014 afresh in the light of the observations made herein above and after given a hearing to the petitioners and also an opportunity to produce additional documents if any, to the petitioners in accordance with law.
- (iii) The impugned permission dated 2.6.2015 to the respondent no.4 shall be subject to the decision on the said application filed by the petitioners as stated

above.

(iv) Rule in the above terms.

NUTAN D. SARDESSAI J.

F. M. REIS, J.

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