

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 3011 OF 2013**

M/s. Dabhol Educational Society, Through its  
President, Mr. Shaban Amir Bamne & Ors. ... Petitioners

Vs

The State of Maharashtra Through the Secretary,  
Dept. of Primary Education & Sports & Ors ... Respondents

**WITH**

**WRIT PETITION NO. 3197 OF 2013**

Dnyanho-Vidyamandir Shikshan Prasarak Mandal,  
Through its Chairman / Secretary ... Petitioner

Vs

The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**

**WRIT PETITION NO. 3198 OF 2013**

Vidyapeeth Shikshan Prasarak Mandal,  
Through its Chairman ... Petitioner

Vs

The State of Maharashtra, Through the Secretary,  
School Education Department & Ors. ... Respondents

**WITH**

**WRIT PETITION NO. 3199 OF 2013**

New Maharashtra Shikshan Sanstha,  
Through its Chairman ... Petitioner

Vs

The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3200 OF 2013**

Shirgaon Shikshan Prasarak Mandal ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3201 OF 2013**

Anand Education Society, Through its Chairman ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3202 OF 2013**

Shree R.R. Khadake Academy, Through its Chairman ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3203 OF 2013**

Abhinav Education Society, Through its Chairman ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3204 OF 2013**

Panhalgad Education & Sports Complex,  
Through its Chairman ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3205 OF 2013**

Tejaswini Charitable Trust, Miraj,  
Through its Chairman, ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3206 OF 2013**

Manas Gramin Vikas Prakalp,  
Through its Chairperson ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3290 OF 2013**

Shree Ghodeshwar Shikshan Prasarak Mandal,  
Kurukali, Through the Secretary ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3416 OF 2013**

Vatsalya Samajik Sanstha, Satave,  
Through its Chairman / Secretary ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3538 OF 2013**

Sanjeevan Education Society,  
Through its Chairman ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3630 OF 2013**

Krantiveer Dattajirao Patil Shikshan Prasarak Va Samaj  
Seva Mandal, through its Chairman / Secretary ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3631 OF 2013**

Shree Hanuman Gramin Vikas Pratishthan,  
Mouje Karwe, Through its Chairman/Secretary ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3632 OF 2013**

Gatway Ministries International,  
Through its Chairman / Secretary ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3633 OF 2013**

Shree Vatvruksha Swami Education Society,  
Through its Chairman / Secretary ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3634 OF 2013**

Parampujya Baban Bapu Bahuuddeshiya Sanstha, Kargani,  
Through its Chairman / Secretary ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3635 OF 2013**

R.R. Patil Bahuuddeshiya Samajseva Sanstha,  
Through its Chairman / Secretary ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3636 OF 2013**

Boragalli Education Society, Hitani,  
Through its Chairman ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3637 OF 2013**

Shree Morjai Shikshan Sanstha,  
Through its Chairman ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3638 OF 2013**

Savitribai Phule Shikshan Prasarak Mandal, Islampur,  
Through its Chairman / Secretary ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3640 OF 2013**

Womens Education Society,  
Through its Chairman / Secretary ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 3641 OF 2013**

Hazrat Ladle Mashayak Education Society,  
Through its Chairman / Secretary ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 4551 OF 2014**

J.K. Educational Society, Bhiwandi,  
Through its Chairman / Secretary ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 4552 OF 2014**

Doctors Vision Education And Welfare Society, Bhiwandi,  
Through its Chairman ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 4553 OF 2014**

Ratbahadur Singh, Rajmani Singh, Prakash Singh Society,  
Through its Chairman / Secretary ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

**WITH**  
**WRIT PETITION NO. 5015 OF 2013**  
**WITH**  
**WRIT PETITION NO. 5016 OF 2013**  
**WITH**  
**WRIT PETITION NO. 5017 OF 2013**  
**WITH**  
**WRIT PETITION NO. 5018 OF 2013**

Shree Ram Shikshan Vikas Mandal, Dhamod,  
Through its Chairman ... Petitioner  
Vs  
The State of Maharashtra, Through the Secretary,  
School Education Dept. & Ors. ... Respondents

....

Mr. S.S. Pakale a/w Mr. Avinash Belge for the Petitioner in WP/ 3011/13.

Mr. N.V. Bandiwadkar, for the Petitioners in WP/3197/13, WP/3198/13, WP/3199/13, WP/3200/13, WP/3201/13, WP/3202/13, WP/3203/13, WP/3204/13, WP/3205/13, WP/3206/13, WP/3290/13, WP/3416/13, WP/3538/13, WP/3630/13, WP/3631/13, WP/3632/13, WP/3633/13, WP/3634/13, WP/3635/13, WP/3636/13, WP/3637/13, WP/3638/13, WP/3640/13, WP/3641/13, WP/4551/14, WP/4552/14, WP/4553/14, WP/5015/13 WP/5016/13, WP/5017/13, WP/5018/13,

Mr. Nitin Deshpande, Additional G.P. for the State-Respondents in WP/3011/13, WP/3197/13, WP/3198/13, WP/3199/13, WP/3200/13, WP/3201/13, WP/3202/13, WP/3203/13, WP/3204/13, WP/3205/13, WP/3206/13, WP/3290/13, WP/3416/13, WP/3538/13, WP/3630/13, WP/3631/13, WP/3632/13, WP/5016/13.

Mr. Vishal Thadhani, AGP for the State-Respondents in WP/3538/13, WP/3630/13, WP/3631/13, WP/3632/13, WP/3633/13, WP/3634/13, WP/3635/13, WP/3636/13, WP/3637/13, WP/3638/13, WP/3640/13, WP/3641/13, WP/4551/14, WP/4552/14, WP/4553/14, WP/5015/13,



WP/5017/13, WP/5018/13.

Mr. Ramesh D. Rane, for the Respondent No. 4 in WP/3630/13, WP/3631/13, WP/3632/13, WP/3633/13, WP/3634/13, WP/3635/13, WP/3638/13, WP/3640/13, WP/3641/13, WP/3547/14.

....  
**CORAM: DR. MANJULA CHELLUR, C. J. AND**  
**M.S. SONAK, J.**  
**DATE : 19<sup>th</sup> SEPTEMBER, 2016**

**JUDGMENT .: ( PER M.S. SONAK, J.)**

1. Rule in each of these petitions. With the consent of and at the request of the learned counsel for the parties, rule is made returnable forthwith.
2. The challenge in this batch of petitions is to the alleged non-consideration and / or rejection of proposals submitted by the Petitioners for opening of English Medium Unaided Primary Schools in the State of Maharashtra.
3. By circular dated 28<sup>th</sup> May, 2010, the State invited proposals for commencement of English Medium Unaided Primary Schools at various locations within the State of Maharashtra. In pursuance of such circulars, advertisements, including advertisement dated 3<sup>rd</sup> June, 2010 was issued, inviting proposals as aforesaid.

4. The Petitioners submit that in the proposal forms so prescribed, there is no reference whatsoever to compliances under the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (“RTE”). It is, therefore, the case of the Petitioners that the proposals submitted by them are required to be considered and disposed of without insisting upon any compliance as prescribed under the RTE. Instead, the State of Maharashtra, has issued circular dated 30<sup>th</sup> August, 2013, virtually nullifying the circular dated 28<sup>th</sup> May, 2010 and the consequent invitation of proposals on the basis of circular dated 28<sup>th</sup> May, 2010.

5. The Petitioners, in some of the petitions have received specific communications informing them that the proposals submitted by them in pursuance of circular dated 28<sup>th</sup> May, 2010 stand rejected, in the light of the subsequent decision incorporated in the circular dated 30<sup>th</sup> August, 2013. Some of the Petitioners contended that they have received no response whatsoever to the proposals submitted by them in pursuance of circular dated 28<sup>th</sup> May, 2010. Accordingly, the Petitioners, in sum and

substance challenge the rejection / non-consideration of the proposals submitted by them in pursuance of circular dated 28<sup>th</sup> May, 2010.

6. Mr. S.S. Pakale, the learned counsel appearing for some of the Petitioners has submitted that since the advertisement dated 03<sup>rd</sup> June, 2010, and the circular dated 28<sup>th</sup> May, 2010 required the Petitioners to commence their primary school before 10<sup>th</sup> June, 2010, the Petitioners actually commenced the primary school, in anticipation that their proposals will be accepted. Mr. S.S. Pakale submitted that at this point of time, it would not be appropriate to require the Petitioners to discontinue such primary schools, particularly since the students enrolled therein, will suffer for no fault on their part.

7. Mr. N.V. Bandiwadekar and Mr. S. S. Pakale, the learned counsel for the Petitioners submitted that the proposals submitted by the Petitioners are required to be considered and disposed of strictly on the basis of the circular dated 28<sup>th</sup> May, 2010 and without any insistence upon compliances as prescribed under the RTE or for that matter the provisions of the

Maharashtra Self Finance Schools (Establishment and Regulation) Act, 2012 (“2012 Act”). The learned counsel for the Petitioners submitted that the rules under RTE were not in force on the date way the circular dated 28<sup>th</sup> May, 2010 was issued. Similarly, the 2012 Act was also not in force on the date when the circular dated 28<sup>th</sup> May, 2010 was issued. In case, the provisions of RTE and rules made thereunder or for that matter the provisions of the 2012 Act are made applicable to the proposals submitted by the Petitioners, then the same would amount to giving a retrospective effect to the provisions of RTE, rules made under RTE and the 2012 Act, which is clearly not permissible. The learned counsel for the Petitioners submitted that they have a vested right to have their proposals for opening of primary schools being considered in accordance with the circular dated 28<sup>th</sup> May, 2010 and there is no question of applying to such proposals, the provisions contain in RTE, RTE rules and the 2012, Act. For all these reasons, the Petitioners seek appropriate writ directing the Respondents authorities like the State Government and the Zilla Parishad to grant permissions for opening of English Medium Unaided Primary Schools at the locations indicated by the Petitioners in their respective proposals.

8. The learned counsel for the Petitioners also placed reliance upon the decision of the Division Bench of this court in *Sanvardhan Bahu-uddeshiya Sevabhani Sanstha Aurangabad, through its Secretary, Vijaykumar s/o. Vishnupant Mule Vs. The State of Maharashtra and Ors.*, Writ Petition No. 8287 of 2013 decided on 20<sup>th</sup> July, 2016 and pointed out that, in similar circumstances, the Division Bench of this court, after taking into consideration the position that at least two proposals were considered and accepted by the State Government, even though, such proposals did not comply with the provisions of RTE, issued directions for consideration of the proposals submitted by the Petitioners in the said petitions. The learned counsel for the Petitioners contended that the similar directions are liable to be issued in the present petitions as well.

9. On behalf of the State Government and the Zilla Parishad, the learned counsel contended that the petitions be dismissed as some of the Petitioners, even without waiting for any decision on the proposals submitted by them, in and high handed manner, proceeded to commence

primary schools. The learned counsel for the Respondents pointed out that such conduct on the part of the Petitioners dis-entitled them to any equitable reliefs under Article 226 and 227 of the Constitution of India.

10. That apart, the learned counsel for the Respondents submitted that on the date when the circular dated 28<sup>th</sup> May, 2010 was issued, the provisions of the RTE were already in force. They pointed out that the provisions of the RTE came in force on 1<sup>st</sup> April, 2010. Further, the learned counsel for the Respondents pointed out that even the 2012 Act makes reference to the provisions of RTE and the rules made under the RTE. The learned counsel for the Respondents submitted that the circular dated 28<sup>th</sup> May, 2010 had merely invited for proposals and such circular or even the submission of proposals in pursuance of such circular did not create any rights whatsoever in the Petitioners. In any case, upon realizing that the circular dated 28<sup>th</sup> May, 2010 was inconsistent with the provisions of the RTE, the State was entitled to issue the circular dated 30<sup>th</sup> August, 2013, clarifying the position that the proposals submitted in pursuance of circular dated 28<sup>th</sup> May, 2010 will not be considered and at the same time, offering

an option to the parties to submit proposals consistent with RTE and the 2012 Act. For these reasons, the learned counsel for the Respondents submitted that the Petitioners are dis-entitled to any reliefs in this petitions.

11. The rival contentions, now fall for our determination.

12. The circular dated 28<sup>th</sup> May, 2010 and the advertisements inviting proposals on the basis thereof appear to have been issued, without taking into consideration the provisions of RTE which had already come into force on 1<sup>st</sup> April, 2010. The circular and the advertisement had merely invited proposals from interested parties to set up English Medium Unaided Primary Schools. Such circulars or advertisement by themselves, created no rights whatsoever in the Petitioners. In any case, such circulars or advertisements created no vested rights in the Petitioners. Therefore, the contention that Petitioners proposals were necessarily required to be considered without insistence upon any compliances with the provisions of the RTE, cannot be accepted. The settled position in law that mere

circulars or executive instructions can neither abrogate nor supplant the provisions of a law, which in this case, is a central legislation i.e. the RTE.

13. The State Government, upon realizing that the circular dated 28<sup>th</sup> May, 2010 was inconsistent with the provisions of the RTE, by subsequent circular dated 30<sup>th</sup> August 2013 merely clarified that any proposals received in pursuance of the circular dated 28<sup>th</sup> May, 2010 will not be considered. However, liberty was granted to the parties to submit fresh proposals, which had to be consistent with the provisions of RTE and the rules made under the RTE. This does not amount to giving of any retrospective effect to the provisions of the RTE as contended by the Petitioners. In fact, RTE was already in force since 1<sup>st</sup> April, 2010, when the circular dated 28<sup>th</sup> May, 2010 was issued by the State Government.

14. The subsequent circular 30<sup>th</sup> August, 2013, which is the basis for rejection / non-consideration of the proposals submitted by the Petitioners, makes reference to the legal opinion from the law department, which is actually transcribed in the circular dated 30<sup>th</sup> August, 2013. The relevant



portion, as transcribed, reads thus :

*“It is the settled principle of law that after coming into force specific enactment, all the executive orders, government resolutions, circulars etc. the subject whereof is covered by such enactment stand automatically overruled, unless saving is provided under the enactment. So far present case is concerned the Maharashtra Self Financed School (Establishment & Regulation) Act, 2012 has come into force, wherein the subject of the Government Resolutions of the 2010 & 2012 has been covered. In view of this legal position, on coming into force the Maharashtra Self Financed School (Establishment & Regulation) Act, 2012, the G.Rs. Of 2010 & 2012 stood revoked and all the pending applications on which no action as per the earlier G.Rs. has been taken are required to be dealt with as per the provisions of the Act as there is no saving under the Act.”*

15. Independent of the aforesaid, even we are of the opinion that the circular dated 28<sup>th</sup> May, 2010, which was issued in ignorance of the provisions of the RTE or in any case, which invited proposals which were not, compliant with the provisions of RTE, neither created any rights in the Petitioners, nor can the Petitioners insist upon the enforcement of such circular dated 28<sup>th</sup> May, 2010. Issuance of any writ as applied for by the Petitioners, would virtually amount to issuance of a writ, which is contrary to the provisions of the RTE, not to mention the rules made under the RTE and the provisions of the 2012, Act. The writ jurisdiction, can obviously not be exercised in order to require the State to act contrary to the

provisions of law. The subsequent circular dated 30<sup>th</sup> August, 2013, merely acknowledges that there was a serious legal infirmity in the matter of issuance of the circular dated 28<sup>th</sup> May, 2010 and therefore, clarifies that any proposals submitted in pursuance of the circular dated 28<sup>th</sup> May, 2010 need not be considered or may be rejected.

16. In our opinion, this is neither a case of taking away of any rights of the Petitioners, much-less, the taking away of any vested rights of the Petitioners, nor is this any case of grant of impermissible retrospective effect to the provisions of the RTE. As noted earlier, the mere submission of a proposal in pursuance of a circular, which was itself inconsistent with the provisions of the RTE, creates no rights whatsoever in the Petitioners. Further, if the provisions of the RTE are perused, it is clear that even existing schools are required to comply with the norms and standards as prescribed therein.

17. Section 19 of the RTE reads thus:

***“19. Norms and standards for school: (1) No school shall be established , or recognized under section 18, unless it fulfills the***

*norms and standards specified in the Schedule.*

*(2) Where a school established before the commencement of this Act does not fulfill the norms and standards specified in the Schedule, it shall take steps to fulfill such norms and standards at its own expenses, within a period of three years from the date of such commencement.*

*(3) Where a school fails to fulfill the norms and standards within the period specified under sub-section (2), the authority prescribed under sub-section (1) of section 18 shall withdraw recognition granted to such school in the manner specified under sub-section (3) thereof.*

*(4) With effect from the date of withdrawal of recognition under sub-section (3), no school shall continue to function.*

*(5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.”*

18. From the aforesaid, it is clear that sub-section 1 of section 19 mandates that no school shall be established, or recognized under section 18, unless it fulfills the norms and standards specified in the Schedule. This provision came into force on 1<sup>st</sup> April, 2010. Accordingly, even the State had no authority to permit establishment or recognition of a school, unless, it fulfills the norms and standards specified in the schedule to the RTE. In

these circumstances, it is quite futile on the part of the Petitioners to contend that the State was bound to consider the proposals submitted by the Petitioners, notwithstanding that such proposals may not have been compliant with the norms and standards specified in the Schedule to the RTE.

19. Reference to sub-section 2 of section 19 of the RTE would indicate even the schools established before the commencement of RTE, who do not fulfill the norms and standards specified in the Schedule, are required to take steps to fulfill such norms and standards at its own expenses, within a period of three years from the date of commencement of the RTE. Sub-section 3 of Section 19 further provides that where a school fails to fulfill the norms and standards within the period specified under sub-section 2, the authority prescribed under sub-section 1 of section 18, shall withdraw recognition granted to such school in the manner specified under sub-section 3 thereof. Sub-section 4 of section 19 provides that with effect from the date of withdrawal of recognition under sub-section 3, no school shall continue to function. Sub-section 5 of section 19, makes the legislative

intent quite clear by providing that any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

20. If the provisions of the RTE, including, in particular, the provisions contain in section 19 of the RTE are taken into consideration, we are obviously unable to find any merit in the Petitioners contentions that the State, in the present case, is purporting to give any retrospective effect to the provisions of the RTE. The State, in the present case, is only seeking to implement the provisions of RTE, which in any case, the State is bound to. At the behest of the Petitioners, who rely upon the circular dated 28<sup>th</sup> May, 2010, which was itself, contrary to the provisions of the RTE, there is no question grant of any writ against the State, which will virtually have the effect of directing the State to act contrary to the provisions of the RTE.

21. In *Laxmibai Shantaram Doke Samjavikas Pratishthan and Anr.*

**Vs. State of Maharashtra<sup>1</sup>**, the Division Bench of this court has rejected the challenge that until and unless the school is established and starts functioning, the compliances mandated by Section 18 or 19 of the RTE cannot be insisted upon by the State. The Division Bench has observed that such a contention “*Springs from the wrong reading of the provisions*”. In paragraph 18, the Division Bench as proceeded to observe as follows:

*“18. The challenge that unless and until the School is established and starts functioning first, the compliances mandated by section 19 or 18 of 2009 Act cannot be made or examined springs from the wrong reading of the provisions. It is not dispute that said Act also applies to existing Schools. The schools already operating are given time of three years to achieve compliance with this mandate. When section 18 and 19 are read together, it becomes clear that Schools already established cannot continue to function after the stipulated time limit allowed to report compliance. New Schools not established and coming up for the first time are under obligation to comply from day one i.e. they cannot be established unless and until they prepare to fulfill the obligations cast by the schedule. Words establish and function therefore govern different contingencies. Section 2 defines school to mean any recognized school imparting elementary education and thus when section 19 of 2009 Act gives such school time of three years to achieve compliance, it is obvious that section 2 envisages existing legal recognition i.e. under other law and from some other agency or authority. Said recognition and existence of a school therefore has to be valid in the eyes of law. In other words, an unauthorized or illegal School cannot claim entitlement to said breathing period.....”*

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<sup>1</sup> 2013 (1) Mh.L.J. 538

22. In *Sanvardhan Bahu-uddeshiya Sevakbahi (Supra)*, the Division Bench of this court had merely directed the State Government to consider the proposals of the Petitioners in accordance with law. This was on the basis of the Petitioners contention that two proposals submitted by Shri Sakharan Maharaj English High School and Mukund Madhav Vidyalyaya, Golap from Washim and Ratnagiri respectively, had been favorably considered by the State Government. We may note that the attention of the learned bench was not invited by the parties to the provisions contained in RTE and consequently, there is no reference to the provisions the RTE, in the order dated 20<sup>th</sup> July, 2016. Besides, the learned Division Bench, has not issued any directions to the State Government to grant the Petitioners approval / permission to commence primary school, even though, such proposal may not have been compliant with the provisions of the RTE. Accordingly, we are enable to accept the contention of the Petitioners that the decision in the case of *Sanvardhan Bahu-uddeshiya Sevakbahi Sanstha (Supra)* either assists the Petitioners or that we should, in these matters, adopt the course which was adopted by the learned Division Bench and remand the matters to the State Government for consideration of the

Petitioners proposals. Such submission, in our opinion, is based upon incorrect interpretation of the order dated 20<sup>th</sup> July, 2016.

23. The learned counsel for the Petitioners however submitted that since the State Government has favorably considered the proposals of Shri Sakharam Maharaj English School and Mukund Madhav Vidyalaya notwithstanding the fact that such proposals may have not been compliant with the norms and standards prescribed under RTE, the State is bound, by the principle of equality, to even consider the proposals of the Petitioners. The learned counsel for the Petitioners submit that failure to consider the Petitioners proposals, would amount to discrimination, which is prohibited by Article 14 of the Constitution of India.

24. The aforesaid contention is only stated to be rejected. In the first place, there are neither any proper pleadings nor is there any material to accept that the proposals of Shri Sakharam Maharaj English High School and Mukund Madhav Vidyalaya, Golap came to be favorably considered by the State Government, notwithstanding that such proposals did not comply



with the norms and standards prescribed under RTE. Secondly, even assuming this is so, the Petitioners cannot insist upon any equality of illegalities. It is well settled that Article 14 of the Constitution of India cannot be invoked by a party to require the State to breach the provisions of law or to act contrary to law, merely because in some other case, the State may have done so. Accordingly, we see no merit in the contention of the Petitioners that the State has breached the equality principles as guaranteed by Article 14 of the Constitution of India.

25. In *State of Kerala & Ors. Vs. K. Prasad & Anr*<sup>2</sup>. to Supreme Court has held that Article 14 of the Constitution embodies a guarantee against arbitrariness but it does not assume uniformity in erroneous actions or decisions. The guarantee of equality being a positive concept, cannot be enforced in a negative manner. If an illegality or irregularity has been committed in favour of an individual or even a group of individuals, other, through falling in the same category, cannot invoke the jurisdiction of the writ courts for enforcement of the same irregularity on the reasoning that the similar benefit has been denied to them. Any direction for enforcement

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<sup>2</sup> (2007) 7 SCC 140

of such claim shall tantamount to perpetuating an illegality, which cannot be permitted. A claim based on equality clause has to be just and legal. An order made in favour of a person in violation of the prescribed procedure cannot form a legal premise for any other person to claim parity with the said illegal or irregular order. A judicial forum cannot be used to perpetuate the illegalities.

26. In *State of Bihar Vs. Upendra Narayan Singh & Ors.*<sup>3</sup> to Supreme Court has held that it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by citizen or a court in a negative manner. If a illegality or irregularity has been committed in favour any individual or group of individuals or a wrong order has been passed by judicial forum, other cannot invoked the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing wrong order.

27. The learned counsel for the Petitioners submitted that some of the Petitioners whom their represent are “Minority” institutions and therefore,

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<sup>3</sup> (2009) 5 SCC 65

there is no question applying the provisions of RTE to them. There is no material placed on record to substantiate which of the Petitioners are indeed Minority Institutions and whether, such institutions have been recognized as Minority Institutions by the Competent Authority. In these circumstances, we are enable to entertain such contention in the present batch of petitions. However, we may note that we have, in case of Federation of Linguistic & Religious Minority Education Institutions & Ors. Vs. State of Maharashtra & Ors. Writ Petition No. 1595 of 2014 and some other connected matters made an order on 19<sup>th</sup> September, 2016, dealing with rights of Minority Educational Institutions to establish English Medium Primary School. In case, any of the Petitioners are indeed Minority Institutions, recognized as such, it would be permissible to such institutions to point out to the State Government that their proposals have to be considered in accordance with the decision of this court in Writ Petition No. 1595 of 2014. In the said decision, we have, basically made reference to the decision of the Hon'ble Supreme Court in the case of ***Pramati Educational and Cultural Trust (Registered) & Ors. Vs. Union of India and Others***<sup>4</sup>.

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4 (2014) 8 SSC 1

28. We are also unable to appreciate any contention on the basis of equity or hardships. Some of the Petitioners, have proceeded to commence with English Medium Primary School, even before, their proposals would be considered by the State on the specious plea that the circular dated 25<sup>th</sup> May, 2010 or the advertisement dated 3<sup>rd</sup> June, 2010, required such Petitioners to commence the school on or before 10<sup>th</sup> June, 2010. We have perused the circular dated 25<sup>th</sup> May, 2010 and advertisement dated 3<sup>rd</sup> June, 2010 upon which reliance was placed by Mr. S. S. Pakale in support of such submissions. We are however unable to read anything in the circular and the advertisement, which even remotely suggests that the schools had to be commenced by 10<sup>th</sup> June, 2010 and that too, without obtaining approvals. All that the advertisement states is that the proposals had to be submitted by 10<sup>th</sup> June, 2010. Even, a very strained interpretation of the circular or the advertisement hardly supports such contention put forth by Mr. S.S. Pakale. In fact, the Petitioners, who have chosen to commence primary school, even without awaiting and decision upon the proposals submitted by them, have acted in and high handed and

illegal manner. Such Petitioners can neither claim any equities nor can they complain about any hardships to the students on the basis of such illegal and high handed acts. Such Petitioners cannot claim any entitlement to continue the primary school which they may have established. Accordingly, it will be open to the State, as also, the authorities constituted under the RTE or the 2012 Act to take necessary action as permissible under the law. There is no question of such Petitioners seeking an indulgence from the writ court in order to perpetuate their high handed and illegal actions. In fact, if such Petitioners / institutions desire that their proposals be reconsidered in light of the provision contained in the RTE and the 2012 Act, such Petitioners will have to first discontinue with the primary schools, which they have illegally and high handedly commenced.

29. In the context establishment of unrecognized educational institutions, the Supreme Court in the case of ***State of Maharashtra Vs. Vikas Sahebrao Roundale & Ors.***<sup>5</sup> has disapproved extension of any indulgence, on the basis of misplaced sympathies.

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5 (1992) 4 SCC 435

30. In *N.M. Nageshwaramma V. State of A.P.*<sup>6</sup>, the Supreme Court held that the private institutions unauthorisedly established were invariably ill-housed, ill-staffed and ill-equipped. If the Government is directed to permit the students admitted into those institutions, to appear in the examination, we will practically be encouraging and condoning the establishment of unauthorised institutions. It is not appropriate that the jurisdiction of the court either under Article 32 or Article 226 of the Constitution should be frittered away for such a purpose. So the request to permit the students who had training in unrecognised schools was deprecated by the Court.

31. In *A.P. Christians Medical Educational Society V. Govt. of A.P.*<sup>7</sup> when fervent request with all persuasion by the senior counsel, Shri. K.K. Venugopal, to permit the students admitted in unrecognised and unauthorised institution to pursue balance course was made, the Supreme Court noted thus: (SCC p. 678, para 10)

*“We do not think that we can possibly accede to the request made... on behalf of the students. Any directions of the nature sought for... would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its*

6 1986 Supp SCC 166: AIR 1986 SC 1188

7 (1986) 2 SCC 667: AIR 1986 SC 1490

*existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws.”*

The request to permit the students to appear in the examination and to accommodate them elsewhere to enable them to prosecute further study was negated by this Court.

32. In *All Bihar Christian Schools Association v. State of Bihar*<sup>8</sup> this Court, when the ill-equipped and mismanaged schools were taken over by an Act whose validity was challenged on the anvil of Article 30 of the Constitution, the Supreme Court held that even the minority institutions are subject to statutory regulations and establishment and maintenance of such an educational institution should be in conformity with the statute and the State is entitled to regulate the establishment of the educational institutions and the admission of the students in those educational institutions. It was held that the educational institutions of the minorities have no right to maladministration. Any rule or direction issued by the Government to prevent maladministration would be valid.

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<sup>8</sup> (1988) 1 SCC 206; (1988) 2 SCR 49

33. In *State of T.N. v. St. Joseph Teachers Training Institute*<sup>9</sup> the High Court of Madras while dismissing the writ petitions filed by unauthorised educational institutions, gave direction to admit the students for the examination. The Supreme Court held that the direction of admitting students of unauthorised educational institutions and thus seeking direction for permitting the students to appear at the examination has been looked with disfavour by this Court. It was held that since the students of unrecognised institutions were legally not entitled to appear at the examination conducted by the Educational Department of the Government, the High Court acted in violation of law in granting permission to such students for appearing at the public examination. Accordingly the appeal was allowed and the direction issued was set aside.

34. In *Students of Dattatraya Adhyapak Vidyalya v. State of Maharashtra*,<sup>10</sup> the Supreme Court held thus:

*“We are coming across cases of this type very often where allegations are made that innocent students are admitted into unrecognised schools and are made to suffer. Some courts out of*

<sup>9</sup> (1991) 3 SCC 87; JT 1991 (2) SC 343

<sup>10</sup> SLP (C) No. 2067 of 1991, decided on 19-2-1991



*compassion occasionally interfere to relieve the hardships. We find that the result of this situation is total indiscipline in the filed of regulation.”*

35. We however clarify that the Petitioners will be entitled to submit fresh proposals for opening of English Medium Unaided Primary Schools within a period of two months from today. Such proposals may be considered by the State Government and / or the Competent Authority within a period of three months from the date of the receipt thereof on their own merits and in accordance with law. Needless to add that the State and / or the Competent Authority, in considering such proposals, shall give due regard to the provisions of the RTE, the rules made under RTE and the 2012, Act.

36. With liberty as aforesaid, Rule is discharged in each of these petitions. Interim orders, if any, stand vacated. There shall be no order as to costs.

***CHIEF JUSTICE***

***(M.S. SONAK, J.)***