

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No. 4863 of 2004

- 1) Ramkisan s/o Sahebrao Poul,
Age 30 years,
Occupation : Agriculture,
R/o Village Khandali,
Taluka Ahmedpur, Dist. Latur.
- 2) Suresh s/o Shankarrao Poul,
Age 32 years,
Occupation : Agriculture,
R/o Village Khandali,
Taluka Ahmedpur, Dist. Latur. .. **Petitioners.**

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai - 32.
- 2) The Director of Education,
Central Building, Pune.
- 3) Deputy Director of Education,
Latur Division, Latur.
- 4) The Education Officer (Primary)
Zilla Parishad, Latur.
- 5) Pandit Jawaharlal Nehru Education
Society, Khandali, Tq. Ahmedpur,
Through its Secretary,
Sikandar Chand Pasha,
Age 45 years,
Occupation: Contractor,
R/o Kauwa, Taluka & Dist. Latur.

- 6) Shantiniketan Primary School
Khandali, Taluka Ahmedpur,
District Latur,
Through its Head Master,
Shri Itpar s/o Sunil Gangadhar
Age 34 years,
Occupation: Service,
R/o Khandali, Taluka Ahmedpur,
District Latur.

.. Respondents.

Shri. P.D. Bachate, Advocate, for petitioners.

Mrs. P.V. Diggikar, Assistant Government Pleader, for
respondent Nos.1 to 3.

Shri. A.V. Hon, Advocate, holding for Shri. V.D. Hon,
Senior Counsel, for respondent No.4.

Shri. B.B. Daiphale, Advocate, holding for Shri. N.P. Patil
Jamalpurkar, Advocate, for respondent Nos.5 and 6.

**Coram: T.V. NALWADE &
SANGITRAO S PATIL, JJ.**

Date: 20 June 2017.

ORAL JUDGMENT : (Per T.V. Nalwade, J.)

- 1) The present petition is filed to challenge the
order made by the State Government by which the school,
respondent No.6, run by respondent No.5-institution is
transferred from village Khandali, Tahsil Ahmedpur,

District Latur to Latur City. The learned counsel for the petitioners and the learned Assistant Government Pleader are heard.

2) Respondent No.6, primary school was started in village Khandali in the year 1990 and it started getting grants phase-wise from 1993-94. In the year 2000 the institution started getting 100% grant for this school.

3) It is the case of the petitioners, who are residents of village Khandali and according to whom, their issues were studying in respondent No.6 school, that this school was popular and it was doing well in the village. It is their case that due to transfer of this school, the students of this village have lost opportunity to receive primary education,

4) It is the case of the petitioners that though the school was run in a shed and there was no playground available, the villagers were willing to provide space for playground and funds for construction of school building. It is their case that the respondent-institution was

interested in shifting the school to other station and so it was not taking steps to make available the facilities. It is contended that ultimately by joining hands with the officers of the Government, respondent No.5 obtained order of transfer of the school to Latur city. It is the case of the petitioners that neither the villagers nor the staff members have given consent for such transfer and necessary procedure was not followed. It is contended that the Gram Sabha of the village in resolution dated 8-6-2004 had opposed the transfer of the school but the resolution was not considered and the transfer was made against the interest of the villagers. It is contended that ultimately, by order dated 9/17 June 2004 the Deputy Director of Education had granted permission to transfer the school to Latur and so the petitioners were required to rush to the Court. The petition came to be filed on 29-6-2004. By making amendments in the petition more particulars are given and more reliefs are claimed like relief of setting aside the order made by the Education Officer which is consequential one.

5) One officer from the Education Department of the State Government has filed reply-affidavit and the aforesaid contentions made by the petitioners are denied. It is contended that as per census of the year 1991 population of the village was 3068 and as there was already one Zilla Parishad school in this village, shifting of the respondent No.6, school has not affected the rights of the people there to get primary education. It is contended that the transfer was made subject to conditions that the students who were admitted in respondent No.6 school were accommodated in Zilla Parishad school of the village and they were actually accommodated. It is contended that there were hardly 129 students in Class 1 to Class 4 standards in this school. It is contended that the proposal for transfer of the school was made by the Education Officer after making inquiry. It is contended that there were no basic amenities in the school and due to that students were not attracted to the school and the strength of the students was not sufficient for running the school. It is contended that in view of these circumstances and on the basis of report of the Education Officer, the Deputy Director of Education had recommended to the

Government for transfer of the school and accordingly permission came to be granted. The conditions which were imposed for transfer of the school are quoted in the reply affidavit. It is contended that the transfer was made well before starting of the academic year 2004-2005 i.e. on 8-6-2004 and so there was no harassment to anybody due to the transfer of the school. Similar contentions are made in reply filed by respondent Nos.5 and 6 and it is further contended that there were at least four primary schools in the village and so transfer of the present school has not affected the right to get primary education. It is also contended that it is the responsibility of the Zilla Parishad to see that primary education is given and there was school of Zilla Parishad in the village where the students were accommodated.

6) It is not specifically contended in the petition that the order of transfer was communicated by officer below the rank of Secretary in the Government. But such argument was advanced. There is correspondence to show that on the basis of order made by the Government the Deputy Director had written to the Education Officer and

then the Education Officer had written to the school with regard to the transfer. Further there is reply-affidavit of the Government to the effect that necessary inquiry was made and as per the proposal made by the Education Officer and the recommendation made by the Deputy Director, the order was made. In ordinary course the Court is expected to presume that necessary procedure in that regard was followed. It can be said that under some Government policy the decision of transfer of the school was taken though there are no rules in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act in this regard. Nothing was brought to the notice of the Court by the learned counsel for the petitioners to show that procedure given in the policy decision was not followed. When there was the power with the Government to make such order, the order cannot be called as perverse and there are aforesaid circumstances showing that the right to get primary education is not affected due to transfer of the school. The learned counsel for the petitioners drew attention of this Court to show some discrepancy in the dates mentioned on the report of the Education Officer and the other correspondence but

that discrepancy cannot change the decision of the matter as the other record shows that inquiry was made in the year 2003 and the order was made in June 2004. The Zilla Parishad had given no objection to such transfer and to that effect the learned counsel for the Zilla Parishad has made the submissions.

7) The petitioners themselves have admitted that there were no basic amenities. The school was being run in a shed even when there were four classes viz. standard 1 to standard 4 and there was no playground for the students. The school was admittedly started in the year 1990 and till the year 2004 such facilities did not become available and it can be said that due to shortage of funds further steps were not taken. The Government had started giving 100% grants and so it was necessary for the institution to see that infrastructure for the school was made available. It can be said that due to aforesaid circumstances the institution must have moved for transfer of the school. The report of the Education Officer shows that the teachers had given consent for transfer of the school. There is no reason to disbelieve the record to

the effect that necessary inquiry was made. The new school had actually started at Latur and the students were admitted. More than 13 years have passed since the aforesaid incident. It is not the case of the petitioners that due to the transfer, anybody had taken steps to start one more school or anything was done by the villagers for having one more school after transfer of respondent No.6-school. Such circumstances cannot be ignored.

8) Learned counsel for the petitioners placed reliance on some observations made by this Court in the case reported as **2013(1) Bom. C.R. 725 (Jeevanjyoti Krida & Shikshan Prasarak Mandal v. State of Maharashtra)**. The facts of this case were totally different and so the observations made in that case by this Court are of no use in the present matter. On the point of competency of the authority to make order of transfer the case reported as **2001(3) Mh.L.J. 339 (Mohansingh Tanwani v. State of Maharashtra)** was cited. The facts of this reported case were also different. In the present matter this Court had expressed that the Court was ready to call the original file from the Government if the learned

counsel for petitioners was giving up other objections. The learned counsel submitted that he has no intention to see the file and so such order was not made. It is already observed that there is presumption that necessary procedure was followed. In view of these circumstances, this Court holds that it is not possible to interfere in the order under challenge. In the result, the petition stands dismissed. Rule is discharged.

Sd/-
(SANGITRAO S PATIL, J.)

Sd/-
(T.V. NALAWADE, J.)

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