

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4556 of 2016

Kai. Hiranman Sonu Jat Shikshan and Samaj

Prasarak Mandal, Kulthe

Kulthe, Tq. & Dist. Dhule

through Its Director

Shri Sambhaji Shivaji Kavhad,

Age: 26 years, occu: Agriculture,

R/o Kulthe, Tq. & Dist. Dhule

Petitioner

Versus

1 The State of Maharashtra,
Through Secretary,
School Education & Sports Department,
Mantralaya, Mumbai 32

2 The Director of Education,
Directorate of Education,
Maharashtra State, Pune

3 The Divisional Deputy Director of Education,
Nashik Division, Nashik.

4 The Education Officer (Secondary)
Zilha Parishad, Dhule.

Respondents

Mr. N.B. Suryawanshi advocate for the petitioner

Mr. S.B. Joshi, Assistant Government Pleader for Respondents

CORAM : R.M. BORDE &

P.R. BORA, JJ

(Date : 22nd March, 2017.)

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Heard.

2 Rule. With the consent of the parties, petition is taken-up for final disposal at admission stage.

3 Petitioner is praying for quashing and setting aside the order dated 11.3.2016 passed by respondent No.1 State of Maharashtra and is also seeking further direction to the State to include village Kulte in the Master Plan, for establishing secondary school and permit the petitioner to start secondary school at village Kulthe. The petitioner is also praying for issuing direction to the State to include village Kulthe in Master Plan, prepared under the Right to Education Act for commencement of Primary and Secondary Schools and issue an advertisement, calling applications from willing private managements for commencement of secondary school in village Kulthe and to complete the exercise within stipulated period.

4 The petitioner is an institution registered under the Societies Registration Act. The petitioner contends that, village Kulthe which comes within the area of operation of the petitioner society, is a remote tribal village, situated in a basin having population of 3138

villagers. There is no primary and secondary school established by any private management in this village. It is revealed that there is a school operated by the Zilha Parishad, imparting education from 1st to 6th standard. The petitioner contends that, the State Government has prepared a Master Plan for the purpose of establishing of schools in the State. However, since the village Kulthe was not included in the Master Plan, petitioner tendered a request to the State Government for inclusion of village Kulthe in the Master Plan. However, the request of the petitioner was not considered. The petitioner, as such, was constrained to approach this Court by presenting Writ Petition No.1716 of 2013 which came to be disposed of by the Division Bench of this Court on 9.4.2013, directing the Director of Education to forward the report to the State Government, expeditiously, so as to facilitate the State Government to take decision in respect of inclusion of village Kulthe in the Master Plan. The State Government, however, did not consider the request, and as such the petitioner was required to approach this Court again by presenting Writ Petition No.5937/2014. This Court, while disposing of the said writ petition, has issued following directions as recorded in para Nos.3, 4 of the order, which read thus:-

" 3. We have considered the submissions canvassed by

the learned counsel for respective parties. It appears that, while passing the impugned order dated 12.5.2014 the State has not considered the peculiar facts existing in the present matter. There is no school at the distance of six and half kilometer. The village is situated under the deep valley i.e. it is village in basin. The same is tribal one. The petitioner already had about 270 students from Vth to Xth standards and considering location of the village in case there is excessive rain and water flows over the bridge, the students of the said village cannot go to nearby village. As it appears from the record the infrastructure is writ large. Over and above all these, the zilla parishad has also stated its inability to conduct Vth to Xth standard classes. All these aspects have not been considered while passing the impugned order. It would be appropriate for the Government to reconsider the said proposal which is submitted by the authorities for inclusion of village and to consider the case of the petitioner.

4 In the result, the impugned order is quashed and set aside. The respondent/State shall reconsider the proposal submitted by the petitioner and referred to it for inclusion of village Kulthe, considering the aforesaid aspects on its own merits within a period of six (6) months from today. The writ petition is disposed of. No costs. "

5 In spite of specific directions issued by this Court, taking into account the geographical situation of the village, as well as taking note of the fact that, the village is situated in remote area

surrounded by a tribal area, the State Government did not consider the request for including name of the village Kulthe in the Master Plan and rejected the same, which order is impugned in this petition.

6 In the impugned order passed by the State Government on 11.3.2016, it is recorded that, the population of the village is 1159 and as such, requirement in respect of population is not fulfilled. It is further recorded that, the State Government has taken a decision to cancel the Master Plan and as such, there arises no question for inclusion of the village in the Master Plan. Since the State Government has taken decision to cancel the Master Plan and to run the schools through Local Autonomous bodies, the petitioner does not have any concern with the issue.

7 The reason recorded in the impugned order, so far as the population is concerned, appears to be without application of mind to the record i.e. census data. As per the census data, the population of the village is 3113. The authorities are still relying upon the earlier census figures, without taking a note of increase in the population. As has been stated in the instant petition and more specifically recorded in the order passed by this Court in Writ Petition No. 5937/2014, the village is situated in a deep

valley and during rainy season in the event of excessive rain fall, the flow of water reaches above the bridge, disconnecting the contact of villagers with other part of the area in the district. The students studying in the schools hailing from the village are required to cross the bridge so as to reach the school, which is approximately at a distance of more than five kilometers. There is no proper road, infrastructure for reaching the village. The village itself is situated in the deep valley. Though the State Government has objected to the contention raised by the petitioner that, the village falls within the tribal area, it cannot be disputed that, considering the geographical situation of the village, it shall have to be termed as difficult terrain. So also there cannot be a dispute that, the student population in the village is sufficient to establish a school, imparting education up to 10th standard. It is contended by the State Government that, since the State Government has decided to abandon the Master Plan, the request made by the petitioner cannot be considered.

8 So far as the issue of providing facility of education for the students in the village is concerned, it is contended that, the State would instruct the Zilha Parishad to operate 7th and 8th standards from 2017-2018 and 2018-2019 onwards. It is also contended that, the State has adopted a policy to permit operation of the

schools on '*self-finance*' basis under the Maharashtra Right of Children to Free & Compulsory Education (Manner of Reservation of Seats for admission, and Child belonging to Weaker Section) Rules, 2012. It is contended that, under the Said Act of 2012, the State has sanctioned 3600 schools in the State. The petitioner was also permitted to operate a school on '*self finance*' basis in 2013 at village Kulthe. However, it failed to establish the school. It is also brought to our notice that, there is proper infrastructure available with Zilha Parishad so as to set up a primary school for 7th and 8th standards as well as for establishing a secondary school imparting education for 9th and 10th standards.

9 It does appear that, the petitioner has suppressed the fact in respect of grant of permission to operate school on '*self-finance*' basis. The petitioner has not only failed to disclose this aspect while presenting the instant petition but also there is failure on the part of the petitioner to disclose this aspect while presenting Writ Petition No.5937/2014. The State Government also did not bring this aspect to the notice of the Division Bench of this Court while afore said writ petition was disposed of.

10 So far as the petitioner is concerned, we are of the opinion that, the request of the petitioner for grant of permission to

establish a school at village, need not be considered. The petitioner is guilty of suppression of the facts and as such, request made by the petitioner, in the instant petition does not deserve consideration. However, larger issue in respect of providing educational facility to the students in the village, need to be addressed, in the light of provisions of Right of Children to Free & Compulsory Education Act, 2009.

11 The stand taken by the State Government is quite intriguing. The State Government has conveniently neglected it's responsibility cast under the provisions of the Act of 2009. It shall have to be appreciated that, it is an obligation of the State to provide educational facilities to the students residing in inaccessible area. The State, cannot avoid it's responsibility of establishing schools and more particularly in villages which are situated in difficult terrain and because of the geographical areas. It is not a matter of controversy that, the village Kulthe is situated in basin and students of tender age, in order to avail of the facility of education, are required to travel a long distance of about 5 kilometers. During monsoon season, they are required to cross the bridge which occasionally gets submerged under the water. The State Government and the officers dealing with the subject

are expected to be sensitive to the problem and shall take appropriate decision in the interests of students.

12 Section 6 of the Act of 2009 mandates the Appropriate Government and the local authority to establish, within such area or limits of neighborhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of the Act. The provisions of the Act 2009 are enforced since 1.4.2010 and as such, it is the statutory responsibility of the Appropriate Government to establish school within the prescribed geographical limits and before lapsing of time frame laid down under section 6 of the Act of 2009.

13 Appropriate Government is defined under section 2-A of the Act, which reads thus:

" 2(a)"Appropriate Government" means -

- i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union Territory, having no legislature, the Central Government;
- ii) in relation to a school, other than the school referred to in sub-clause (i) established within the territory of

- A) a State, the State Government
- B) A Union territory having legislature, the Government of that Union territory"

14 Section 8 casts an obligation on the Appropriate Government to provide free and compulsory education to every child and ensure availability of neighborhood school, in consonance with section 6. The State Government has framed Rules Viz. The Maharashtra Right of Children to Free & Compulsory Education Rules, 2011, in exercise of powers conferred in sub-sections 1 and 2 of Section 38 of the Act of 2009. Rule 4 casts obligation on the State to establish neighborhood schools within the area and the limits to meet the following criteria, namely:-

(a) In respect of children in Classes I - V, a school shall be established as far as possible within a distance of one kilometer of the neighborhood and has a minimum of 20 children in the age group of 6 to 11 years available and willing for enrollment in that school; and

(b) In respect of children in classes VI - VII, a school shall be established as far as possible within a distance of three kilometers of the neighborhood and which has not less than 20 children in class 5th of

the feeding primary schools, taken together, available and willing for enrollment in that school.

Sub-rule 2 of Rule 4 provides that, the State may suitably alter the minimum distance specified in sub-rule (1) in cases of hilly areas or areas that are not easily accessible and make available the schools run by the Government or Local Authority for the children having no facility of further elementary education in their schools in such area.

15 The State is under obligation under Rule 5(3) to undertake school-mapping to be carried out by the officers notified by the Government, in that behalf, for the purpose of establishing a neighborhood school and shall conduct a survey to identify and obtain statistical information about all children in the area including children, living in remote areas, children with disabilities, children belonging to disadvantaged groups, children of weaker sections of society, out-of-school children, as well as, children who have dropped out school, within one year of the appointed date and every year and thereafter.

16 Although it is stated that the State has taken a decision to abandon Master Plan, it has not been stated as to whether the State has complied with it's obligation of undertaking school-

mapping which is expected to be carried out by the officers notified by the Government, for the purpose of establishing a neighborhood school and whether the State has conducted a survey to identify and obtain statistical information about all children in the area including children, living in remote areas, children with disabilities, children belonging to disadvantaged groups, children of weaker sections of society, out-of-school children, as well as, children who have dropped out of school. The State does not appear to have conducted such a survey. It has not been brought to our notice that the mandate of sub rule 3 of Rule 5 has been complied with.

17 So far as the instant matter is concerned, it has not been disputed that, the facility of education for 7th and 8th standards at village Kulthe, is not available although the village is situated in a basin and is not easily accessible. It is also not disputed on behalf of the State that, the facility of education is available for 7th and 8th standards and above in a School situated at a distance of 5.5 kilometers. As such, there is non-compliance of statutory obligation cast on the State Government in terms of provisions of the Act as well as in view of Rule 4(b) of the Maharashtra Right of Children to Free & Compulsory Education

Rules, 2011.

18 The State is under obligation to provide educational facility in schools up to 6th to 8th standard and establish school within a distance of 3 kilometers. It was obligatory on the part of the State to take a into consideration geographical situation of the village and in view of Rule 4(2) of the Rules ought to have provided educational facility to the students of village Kulthe. Although it is informed to us that the State has abandoned the Master Plan, it has not been stated whether the State has performed its obligation of undertaking school-mapping and conducted a survey to identify and obtain statistical information about the children living in remote areas, children with disabilities, children belonging to disadvantaged groups, children of weaker sections of society, as well as, children who have dropped out of school as provided under Rule 5(3) of the Rules 2011.

19 In view of the reasons recorded above, we issue following directions:-

(I) The Respondent No.1 State shall ensure establishment of a school with a view to providing facility of primary education i.e. 7th and 8th standard at village Kulthe during the next academic year

i.e. 2017-2018;

(II) The State Government is directed, if not already undertaken, to undertake school mapping to be carried out by the officers notified by the Government for the purpose of establishing a neighborhood schools in the State and shall conduct a survey to identify and obtain statistical information about all children in the areas, including children, living in remote areas, children with disabilities, children belonging to disadvantaged groups, children of weaker sections of society, out-of-school children, as well as, children who have dropped out school as expeditiously as possible and preferably within one year from today;

(III) If such exercise of school mapping is already undertaken, the State shall conduct same exercise for the current year or at least for the year 2017-2018 as required under sub-rule 3 of Rule 5 of the Maharashtra Right of Children to Free & Compulsory Education Rules, 2011.

(IV) The State shall publish the information gathered during survey, on the website immediately after conclusion of the survey.

20 Rule is made absolute in above terms.

21 The Respondent State shall pay a nominal costs of Rs.5,000/- within a period of four weeks from today, for not adhering to the provisions of law and for not putting before the Court correct information and exhibiting casual approach in the matter.

(P.R. BORA, J)

(R.M. BORDE, J)

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