

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

WRIT PETITION NO. 8366 OF 2017

Vidhya Vikas Shikshan Prasarak Mandal,
Tugaon, Tq. & Dist. Osmanabad,
Sanchalit Shriman Dagduba Shingare Madhyamic Vidhyalay,
Sanja, Tq. & Dist. Osmanabad,
through its President,
Shri. Chandrakant S/o Pandhari Hajgude,
Age : 62 years, Occu. Social Work,
R/o. Tugaon, Tq. & Dist. Osmanabad. **Petitioner...**

Versus

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai-32.
2. The Director of Education,
Maharashtra State, Pune.
3. The Deputy Director of Education,
Latur Division, Latur.
4. The Education Officer (Primary),
Zilla Parishad, Osmanabad,
Dist. Osmanabad.

Respondents...

.....
Mr S. T. Veer, Advocate for the petitioner
Mrs M. A. Deshpande, AGP for respondent/State
.....

**CORAM : R. M. BORDE &
A. M. DHAVAL, JJ.**

DATE : 3RD AUGUST, 2017.

ORAL JUDGMENT (Per R. M. Borde, J.) :-

1. The petitioner is objecting to the order dt. 25.05.2017 passed by Education Officer (Primary), Zilla Parishad, Osmanabad, permitting the school operated by the Zilla Parishad at village Sanja, Tq. & Dist. Osmanabad, to operate 8th std. classes from the academic year 2017-18. The petitioner-Institution is running Shriman Dagdoba Shingare Secondary School at said village and has been permitted to impart education for 8th to 10th std. classes. The permission has been accorded since 2009 onwards. The petitioner submits that, the distance between the school operated by Zilla Parishad and the school conducted by the petitioner is approximately 1600 mtrs. There was a previous attempt on the part of the Local Authority i.e. Zilla Parishad to start 8th std. Classes, which was objected by the petitioner in the year 2014 and considering the objection raised by the petitioner, the local authority did not take any decision and did not start 8th std. class.

2. The petitioner submits that, the decision has been taken by Zilla Parishad behind its back without extending the petitioner an opportunity of hearing to start 8th std. Classes, which is likely to adversely affect the interest of the petitioner. It is contended that the

permission accorded to the Zilla Parishad is not in accordance with the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter shall be referred to as "Act of 2009"), and as such, it would be impermissible for the Zilla Parishad to start 8th std. classes. The petitioner also placed reliance on the Government Resolution dt. 02nd July, 2013, which provides for distance restrictions for operating an another school in the event of establishment of any other school by private management.

3. Certain provisions of the Act of 2009 and the rules framed by the State Government need to be taken into consideration for deciding the issue raised in the instant petition. 'Appropriate Government' is defined in Section 2(a) of the Act of 2009 as under:

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;

3. The definition of 'School' in Section 2(n) of the Act of 2009 reads as under:

*2(n) "**School**" means any recognised school imparting elementary education and includes-*

- (i) a school established, owned or controlled by the appropriate Government or a local authority;*
- (ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;*
- (iii) a school belonging to specified category; and*
- (iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;*

3. Whereas; Local Authority defined in sub-clause (h) of Section 2 of the Act of 2009 reads thus:-

2(h) "local authority" means a Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the school or

empowered by or under any law for the time being in force to function as a local authority in any city, town or village;

3. Section 3 of the Act of 2009 provides, that every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.

4. Section 6 of the Act of 2009 prescribes the duty of the appropriate Government and local authority to establish school, which reads as under : -

6. Duty of appropriate government and local authority to establish school.- For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.

5. Section 8 of the Act of 2009 provides for duties of appropriate Government, which reads as under:

8. Duties of appropriate Government.- The appropriate Government shall-

- (a) *provide free and compulsory elementary education to every child:*

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school.

Explanation.-The term "compulsory education" means obligation of the appropriate Government to-

- (i) *provide free elementary education to every child of the age of six to fourteen years; and*
- (ii) *ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years;*
- (b) *ensure availability of a neighbourhood school as specified in section 6;*
- (c) *ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not*

discriminated against and prevented from pursuing and completing elementary education on any grounds;

- (d) provide infrastructure including school building, teaching staff and learning equipment;*
- (e) provide special training facility specified in section 4;*
- (f) ensure and monitor admission, attendance and completion of elementary education by every child;*
- (g) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;*
- (h) ensure timely prescribing of curriculum and courses of study for elementary education; and*
- (i) provide training facility for teachers.*

6. Section 9 of the Act of 2009 provides for the duties of local authority, which reads thus:

9. Duties of local authority.-Every local authority shall-

- (a) provide free and compulsory elementary education to every child:*

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or

indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school;

- (b) ensure availability of a neighbourhood school as specified in section 6;*
- (c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;*
- (d) maintain records of children upto the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed;*
- (e) ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction;*
- (f) provide infrastructure including school building, teaching staff and learning material;*
- (g) provide special training facility specified in section 4;*
- (h) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;*

- (i) ensure timely prescribing of curriculum and courses of study for elementary education;*
- (j) provide training facility for teachers.*
- (k) ensure admission of children of migrant families,*
- (l) monitor functioning of schools within its jurisdiction;
and*
- (m) decide the academic calendar.*

7. Section 18 of the Act of 2009 provides for certificate of recognition and insofar as the schools operated by the appropriate Government or the local authority in the State, such schools are excluded from the requirement of obtaining certificate of recognition.

Said section reads thus:

18. No school to be established without obtaining certificate of recognition.-

- (1) No school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed.*

- (2) *The authority prescribed under sub-section (1) shall issue the certificate of recognition in such form, within such period, in such manner, and subject to such conditions, as may be prescribed.*

Provided that no such recognition shall be granted to a school unless it fulfills norms and standards specified under section 19.

- (3) *On the contravention of the conditions of recognition, the prescribed authority shall, by an order in writing, withdraw recognition.*

Provided that such order shall contain a direction as to which of the neighbourhood school, the children studying in the derecognised school, shall be admitted.

Provided further that no recognition shall be so withdrawn without giving an opportunity of being heard to such school, in such manner, as may be prescribed.

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

- (5) *Any person who establishes or runs a school without obtaining certificate of recognition, or continues to run a school after withdrawal of recognition, shall be liable to fine which may extend to one lakh rupees and in case of*

continuing contravention, to a fine of ten thousand rupees for each day during which such contravention continues.

8. The State Government has, in exercise of powers conferred by sub-section 1 & 2 of the Section 13 of the Right of Children to Free and Compulsory Education Act, 2009, framed rules called as 'the Maharashtra Right of Children to Free and Compulsory Education Rules, 2011' (in short "the Rules of 2011"). Part III of the Rules of 2011 provides for duties of State Government and Local Authority, whereas; Rule 4 of the Rules of 2011 provides for areas or limits for purposes of section 6, which reads as under:

4. ***Areas or limits for purposes of section 6.-(1) The State Government or the Local Authority, as the case may be, shall establish neighbourhood schools within the areas or 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 neighbourhood 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-VIII, a school shall be established as far as possible within a distance of three kilometers of the neighbourhood 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.*
- (2) *The State Government may suitably after the minimum distance specified in the sub-rule (1) in cases of hilly areas of 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 areas.*
- (3) *For children from small hamlets, as identified by the State Government or Local Authority, where no school exists within the area or limits of neighbourhood school specified under sub-rule (1) and for children falling within the purview of 4(1) (a), the State Government or Local Authority shall make adequate arrangements such as free transportation, residential facilities and other facilities, for providing elementary education in the school, in relaxation of the limits specified under sub-rule (1).*
- (4) *In areas of greater population density (urban and semi-urban areas) the State Government or the Local*

Authority shall establish more than one neighbourhood school, having regard to the number of children in the age group of 6 to 14 years in the said area.

- (5) The Local Authority shall designate a neighbourhood school for every settlement or area and shall make this information known to the public.*
- (6) In respect of children with disabilities (as defined in Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), which prevent them from accessing the school the State Government or Local Authority having regard to their number shall make appropriate and safe transportation arrangements for them to attend the school and complete elementary education.*
- (7)(a) The Government or the Local Authority shall ensure that no child is barred from going to school for any reason and that there is no hindrance to his or her completing the elementary education on the ground of linguistic, social or cultural differences;*
- (b) the migratory children shall be enrolled in a school if the school having appropriate medium of instruction is available in that neighbourhood school;*
- (c) if the appropriate medium of instructions is not available in the neighbourhood school then, the*

transportation facilities for attending the school, or a seasonal residential hostel and other facilities shall be provided by the Local Authority.

9. The duties of State Government and Local Authority for purposes of sections 8 and 9 are provided in Rule 5, which reads as under:

5. ***Duties of State Government and Local Authority for purposes of section 8 and 9.***-(1) *A child attending a school of the State Government or local authority referred to in sub- clause (I) of clause (n) of section 2, a child attending a school referred to in sub-clause (ii) of clause (n) of section 2 in pursuance of clause (b) of sub section (1) of section 12, and a child attending a school referred in sub-clause (iii) and (iv) of clause (n) of section 2 in pursuance of clause (c) of sub-section (1) of section 12 shall be entitled to free text books, writing materials and uniforms :*

Provided that a child with disabilities shall also be provided free special learning and support material.

Explanation. – *In respect of the child admitted in pursuance of clause (b) of sub-section (1) of section 12 and child admitted in pursuance clause (c) of sub-section (1) of section 12, the responsibility of providing the free entitlement shall be of the school referred to in sub-clause (ii) of clause (n) of section 2 and and sub-clause (iii) and (iv) of clause (n) of section 2, respectively :*

Provided that, nothing in this rule shall be construed as restriction on the Government to declare these and any additional entitlements to any further specified group or all children, by issuing necessary Government Resolution.

- (3) The Government and the Local Authority shall undertake school mapping to be carried out by the officers notified by the Government, in this behalf for the purpose of establishing a neighbourhood 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 of school, within one year of the appointed date and every year and thereafter.*
- (4) The State Government or the Local Authority shall ensure that no child is subjected to caste, class, religious or gender abuse in the school.*
- (5) For the purpose of the clause (c) of section 8 and clause (c) of section 9, the State Government or the Local Authority, as the case may be, shall take strict measures to ensure that no child belonging from disadvantaged group or weaker section or a deprived section shall face*

discrimination or be segregated in class, during mid-day meals, on the playground, at common drinking facilities or while using common toilet facilities and in the cleaning of toilets or classrooms.

10. On consideration of Section 6 of the Act of 2009, it would be clear that it is a primary duty of the appropriate Government and the local authority to enforce the provisions of the Act and it shall be the duty of the local authority to establish within such area or limits of neighbourhood as may be prescribed a school where it is not so established within a period of three years from the commencement of the Act. It is thus the primary responsibility of the local authority to enforce the provisions of the Act and to impart primary education. It shall also be the duty of the local authority to provide free and compulsory elementary education to every child and to ensure availability of a neighbourhood school as specified in Section 6 of the Act of 2009. The State Government is bound to impart primary education to a child between 6 to 14 years and it shall be the responsibility of the local authority to make available the facility of education to the children by establishing neighbourhood school imparting education from 1st to 8th std. The Act also provides for pre-primary education, however, in the instant petition we are not concerned with the issue of providing for pre-primary education to the students. Since it is a primary duty of the local authority to

establish a school, the act itself makes a distinction so far as the school operated by the local authority or the appropriate Government and the schools established by the private management. Section 18 of the Act of 2009 provides that no school shall be established without obtaining certificate of recognition by any other entity except the local authority and appropriate Government. The exception has been provided for since the act puts a primary responsibility on the appropriate Government and the local authority to enforce the provisions of Act of 2009.

11. The Rules framed by the State Government also are in consonance with the provisions of the Act. Rule 4 of the Rules of 2011 makes it mandatory for the State Government or the local authority to establish neighbourhood schools within the areas or limits to meet the criteria provided in the said rule. Sub-rule (7)(a) of Rule 4 puts a responsibility on the Government or the local authority to ensure that no child is barred from going to school for any reason and there is no hindrance to his or her completing the elementary education on the ground of linguistic, social or cultural differences. Rule 5 provides that, it shall be the duty of the State Government and Local Authority to ensure availability of free text books, writing material and uniforms to the children. Sub-rule 3 of

Rule 5 of the Rules 2011 framed by the State Government puts responsibility on the Government and the local authority to undertake school mapping for the purpose of establishing a neighbourhood school and to 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 of school, within one year from the appointed date and every year and thereafter. It is also the responsibility of the State Government and the local authority to take strict measures to ensure that no child from disadvantaged group or weaker section or a deprived section shall face discrimination or be segregated in class, during mid-day meals, on the playground, at common drinking facilities or while using common toilet facilities and in the cleaning of toilets or classrooms as provided in sub-rule (5) of Rule 5 of Rules 2011.

12. On survey of the provisions of the Act as well as the Rules, it does appear that there is a reasonable classification made in respect of the schools operated by the State Government and the local authority on one hand and the private management on the other

hand. As has been stated above, it is the primary responsibility of the State Government and the local authority to ensure strict enforcement of the provisions of Act 2009 for advancement of the children between age group 6 to 14 years and to provide for free and compulsory education to the children in the aforesaid age group in the State by establishing a neighbourhood school.

13. It needs to be noted that, in view of Section 18 of the Act of 2009, the school established in the area controlled by the appropriate Government or the local authority shall not require certificate of recognition to establish or function any school. The local authority is however under an obligation to establish a school to provide primary education in the village. The existence of other private school may be a factor which the local authority or its officer or the appropriate Government may take note thereof, however, that itself shall not an impediment for establishing a school by local authority as has been rightly observed by the Division Bench of this Court in the matter of Arun Shivaji Chavare & Ors. Versus Padmakar Rama Chavare & ors. reported in 2015(4) Bom.C.R. 167. In para 11 of the said Judgment, it is observed as under:

11. *The submission, referring to the concept "neighbourhood" defined and reproduced above, cannot*

be read to overlook the specific provisions of the Act which mandate the Local Authorities to establish School within the area. This "neighbourhood school" concept, can in no way be read to mean that every local body should not comply with the mandate of the Act to establish their school within the prescribed area if, there are already private aided and/or nonaided school, is nothing but wrong interpretation of the provisions of the Act and Rules, specifically when the Act and Rules itself provide "the State Government or the Local authority, as the case may be, shall establish neighbourhood school within the areas or limits having a minimum of 20 children". The Act and Rules itself provides to relax such condition based upon the existing facts and figures.

14. Thus, there can be no impediment for the local authority to establish a school or to start classes in the wake of existence of such a school in the neighbourhood operated by the private management. The objection raised by the petitioner in the instant petition based upon the Resolution issued by the Government on 02nd July, 2013, does not hold good in view of the provisions of the Act and reasons referred to above.

15. The counsel appearing for the petitioner placing reliance on Section 5 of the Act of 2009 contends that, where in a school, there is no provision for completion of elementary education, a child shall

have a right to seek transfer of any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2, for completing his or her elementary education.

16. The right of the child taking elementary education as specified in Section 5 is no way affected by establishment of a school or additional class by the local authority. The argument based on Section 5 of the act does not deserve consideration.

17. For the reasons recorded above, no interference is called for. Petition being devoid of substance, stands dismissed.

[A. M. DHAVALE]
JUDGE

[R. M. BORDE]
JUDGE

sgp