

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6851 OF 2013

1. Pushpabai w/o. Khobaji Barse,
Age : 30 years, Occ. Sarpanch,
2. Ganesh s/o. Anandrao Deshmukh,
Age : 29 years, Occ. Agri.,
3. Paraji s/o. Maroti Jabde,
Age : 31 years, Occ. Agri.,
4. Gangadhar s/o. Madhavrao Pogare,
Age : 30 years, Occ. Agri.,
5. Virbhadra s/o. Vithal Kotate
Age : 32 years, Occ. Agri.,
6. Sachin s/o. Subhashrao Shinde,
Age : 26 years, Occ. Agri.,
7. Rajshri w/o. Chakradhar More,
Age : 29 years, Occ. Agri.,
8. Bhimrao s/o. Uttamrao Pawar,
Age : 29 years, Occ. Agri.,
9. Amol s/o. Babarao Barse,
Age : 23 years, Occ. Agri.,
10. Madhukar s/o. Shivaji Barse,
Age : 45 years, Occ. Agri.,
11. Shankar s/o. Shivaji Barse,
Age : 40 years, Occ. Agri.,
12. Sunil s/o. Vithal More,
Age : 37, Occ. Agri.,
13. Vasantrao s/o. Vishwanath Bhalerao,
Age : 46 years, Occ. Agri.,
14. Baban s/o. Nagorao Hingmire,
Age : 38 years, Occ. Agri.

15. Dinaji s/o. Munjaji Barse,
Age : 38 years, Occ. Agri.
16. Sudam s/o. Yesaji Khandagale,
Age : 44 years, Occ. Agri.,
17. Dhondiba s/o. Vishwanath Barse,
Age : 48 years, Occ. Agri.
18. Ashok s/o. Nagorao Hingmire,
Age : 38 years, Occ. Agri.
19. Shankar s/o. Jayvantrao Barse,
Age : 42 years, Occ. Agri.
20. Balaji s/o. Narayan Godre,
Age : 45 years, Occ. Agri.

All r/o. Barasgaon,
Tq. Ardhapur, Dist. Nanded

PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai 400 032
2. The Director of Education,
(Secondary and Higher Secondary)
Maharashtra State, Pune
3. The Deputy Director of Education,
Latur Division, Latur
4. Education Officer (Primary),
Zilla Parishad, Nanded
5. Swargiya Krishnaji Patil Seva
Bhavi Sanstha, Jijamata Nagar,
Hingoli, Through its President -
Shri Jaiprakash Patil Goregaonkar,
Age : 57 years, occ. Agri.,
r/o. Barasgaon, Tq. Ardhapur,
Dist. Nanded

6. The Maharashtra Secondary and
Higher Secondary Education Board,
Latur Division, Latur
Through its Chairman),
Latur

RESPONDENTS

Mr.S.B.Talekar, Advocate instructed by Mr.N.E.Deshmukh,
Advocate for the Petitioners

Mr.S.B.Yawalkar, A.G.P. for respondent nos.1 to 3

Mrs.Yogita Kshirsagar, Advocate for respondent no.4

Mr.R.N.Dhorde, Senior Advocate i/b. Mr.R.B.Narwade-
Patil, Advocate for respondent no.5

**CORAM : S.V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

RESERVED ON : 13th APRIL, 2017

PRONOUNCED ON : 6th JUNE, 2017

JUDGMENT (PER : SANGITRAO S. PATIL, J.) :

Rule, returnable forthwith. With the consent
of the learned counsel for the contesting parties, heard
finally.

2. Petitioner No. 1 is the Sarpanch of village
Panchayat, Barasgaon, Taluka Ardhapur, District Nanded,
petitioner No. 2 is the Head Master, petitioner Nos. 3
to 5 are the Assistant Teachers, petitioner No. 6 is the
clerk, petitioner No. 7 is Laboratory Assistant and
petitioner Nos. 8 and 9 are peons working in Satya
Ganpati Secondary High School, Barasgaon. Petitioner

Nos. 10 to 20 are the parents of the students studying in 8th, 9th and 10th standards of the said school. The petitioners have challenged the order dated 1st July, 2013, passed by the School Education and Sports Department, Mantralaya, Mumbai whereby the abovenamed school has been allowed to be transferred from village Barasgaon District Nanded to village Sarkali, Taluka and District Hingoli.

3. The learned counsel for the petitioners submits that there were sufficient number of students admitted in the above named school at village Barasgaon, which was being run by respondent No.5. There was no reason to transfer the said school from village Barasgaon to village Sarkali. The proposal to transfer the said school from village Barasgaon to village Sarkali was opposed by the petitioners as well as the School Committee of village Barasgaon. The Block Development Officer and the Education Officer (Secondary) also had expressed in clear terms that it was not in the interest of the students, their parents and the employees of the said school to transfer it from village Barasgaon to village Sarkali. A resolution was also passed by the

Village Panchayat, Barasgaon, requesting the Authorities not to transfer the said school from village Barasgaon. Despite the resistance from all these corners, respondent No.1 - the Secretary, to the Government of Maharashtra, School Education and Sports Department passed the impugned order granting permission to transfer the said school from village Barasgaon to village Sarkali.

4. The learned counsel submits that as per the terms of the impugned order, in the absence of the consent of the Education Committee of village Barasgaon, the school was not liable to be transferred. The school has been transferred at the distance of more than about 100 kms. from village Barasgaon which was not permissible under the Government Resolution dated 17th February, 2009, issued by the School Education and Sports Department. It is submitted that without giving a prior notice under section 13 of the Maharashtra Self Financed Schools (Establishment and Regulation) Act, 2012 ("the Act of 2012", for short) of not less than eighteen months, the impugned order transferring the school from village Barasgaon has been passed and

therefore, it is not sustainable. It is submitted that the impugned order would have the effect of causing a great inconvenience to the students studying in the said school at village Barasgaon.

5. The learned counsel for the petitioners further submits that the petitioners claimed interim relief in the present writ petition against the proposed transfer of the school from village Barasgaon and this Court was pleased to direct maintenance of status quo as prevailing on 29th August, 2013 as per the order of the even date. However, respondent No. 5 started another school at village Sarkali after passing of the status quo order by this Court. It is submitted that respondent No. 5 is running two schools, one at village Barasgaon and another at village Sarkali. There are sufficient number of students admitted in the school at village Barasgaon, who have been allowed to appear for S.S.C. Examination. The Government has released grant-in-aid for the school at village Barasgaon, as per the resolution dated 1st July, 2016. It is submitted that because of the impugned transfer order, the teaching and non-teaching staff working in the school at village

Barasgaon are not getting salary since 1st July, 2013. The learned counsel for the petitioners relies on the judgments in the cases of ***Jeevanjyoti Krida and Shikshan Prasarak Mandal Vs. State of Maharashtra and others 2012 (6) ALL MR 281*** and ***Jeejau Shikshan Sanstha, Nagpur Vs. State of Maharashtra and others 2011 (4) Mh.L.J. 352***, wherein the guidelines have been given for transfer of Management of Ashram Schools and ordinary Schools, respectively. The learned counsel submits that these guidelines have not been followed while passing the impugned order of transfer of the school from village Barasgaon. The learned counsel, therefore, prays that the impugned order of transfer of school may be set aside and the teaching and non-teaching staff of the school at village Barasgaon may be ordered to be paid salary with effect from 1st July, 2016.

6. Respondent No. 5 filed reply and additional reply on 16th October, 2016 and 28th September, 2016, respectively and strongly opposed the petition. Based on the contentions raised in these replies, the learned counsel for respondent No. 5 submits that the husband of petitioner No. 1 is a person of criminal antecedents. He

is involved in various criminal activities. He wanted to have control over the school that was being run by respondent No. 5 at village Barasgaon. Therefore, he prepared a false and fabricated proposal for transfer of the said school from respondent No. 5 to a trust namely Khobaji Patil Trust. In order to keep the said school under his control, he assaulted the President of respondent No. 5 namely Jaiprakash Patil. Petitioner No. 1 being the Sarpanch of village Barasgaon, was supporting her husband in these activities. Petitioner No. 1 and her husband created such circumstances which made it difficult for respondent No. 5 to run the school at village Barasgaon . Therefore, respondent No. 5 made a proposal for transfer of the school from village Barasgaon to village Sarkali where there was no school. He submits that there is a school available at village Yelegaon which is within the radius of 5 kms. from village Barasgaon. The proposal to transfer the school from village Barasgaon was supported by the Authorities concerned and was ultimately approved by the Government as per the impugned order. He submits that respondent No. 5 transferred the school from village Barasgaon to village Sarkali and started it there with effect from

29th July, 2013. Accordingly, a report was given to the Education Officer on 5th August, 2013. Thereafter, status quo order came to be passed by this Court on 29th August, 2013. He submits that after transfer of the school run by respondent No. 5 from village Barasgaon to village Sarkali, there was no question of running the said school at village Barasgaon. However, petitioner No. 1, with the help of her husband and his supporters, illegally started running school at village Barasgaon, which has no recognition of the School Education Department. He submits that after transfer of the school from village Barasgaon, respondent No. 5 issued letter on 6th August, 2013 to the Head Master of the school at village Barasgaon calling upon him to join the school at village Sarkali alongwith other teaching and non-teaching staff within a period of seven days. A public notice also was issued to that effect in "Daily Prajawani", Dated on 11th September, 2013. However, none of them attended the school at Sarkali for getting absorbed. He submits that the school has been legally transferred from village Barasgaon to village Sarkali. No prejudice has been caused to the students of village Barasgaon since they are having another school available

at a short distance from village Barasgaon. The learned counsel submits that the Govt. Resolution dated 17th February, 2009 prescribing that the school should not be allowed to be transferred at a place which is at a distance of more than 10 kms., has been superseded by the Govt. Resolution dated 9th June, 2010 which does not prescribe any limit as to the distance. He submits that the Government has considered the merits of the proposal submitted by respondent No. 5 for transfer of the school from village Barasgaon to village Sarkali and rightly accorded sanction for the said transfer. He submits that respondent No. 5 is not at all running any school at village Barasgaon. He, therefore, submits that the writ petition may be dismissed.

7. The learned A.G.P. filed affidavit of the Deputy Education Officer (Secondary), Zilla Parishad, Nanded (respondent No. 4) and supported the impugned order of transfer of the school. He submits that there is a school at village Yelegaon which is within 5 kms. from village Barasgaon and therefore, no inconvenience would be caused to the students of village Barasgaon because of the transfer of the school to village

Sarkali. He also states that respondent No. 5 is running the school at village Sarkali as per the impugned order since before passing of the status quo order by this Court.

8. The Government Resolution dated 9th June, 2010 issued by the School Education and Sports Department, Government of Maharashtra supersedes the earlier Government Resolution dated 17th February, 2009. Naturally, the transfer of the school would be governed by the Government Resolution dated 9th June, 2010. The policy decision of the Government regulating transfer of the schools has been given in the Government Resolution dated 9th June, 2010. Since there is a specific policy decision taken by the Government for transfer of the schools, the judgments cited by the learned counsel for the petitioners, containing the guidelines for transfer of the Management of the Aashram Schools and ordinary schools, respectively, would be of no help to the petitioners. The same Management i.e. respondent No.5, which was running a school at village Barasgaon, has got transferred the said school to village Sarkali as per the guidelines given in the Government Resolution dated

9th June, 2010. Since the Government Resolution dated 17th February, 2009 has been superseded, the guidelines given in the Government Resolution, including the condition prescribing maximum distance of 10 kms. from the place from where the school is proposed to be transferred, would not be in force. Therefore, the contention of the learned counsel for the petitioners that the school has been transferred at a distance of 100 kms. from village Barasgaon and therefore, the said transfer is illegal, cannot be accepted.

9. As seen from the documents produced on record, respondent No. 5 sent a proposal to the Deputy Director of Education for transfer of the school from village Barasgaon to village Sarkali on the ground that petitioner No. 1 and her husband made it difficult to run the school at village Barasgaon. Initially, as per the letter dated 20th August, 2011, the Education Officer did not support the proposal for transfer of the school from village Barasgaon. However, in the subsequent letter dated 8th February, 2013, the Education Officer informed the Deputy Director of Education that it has become difficult to run the school at village Barasgaon

and therefore, he recommended that the school be transferred from village Barasgaon to village Sarkali. After receiving that report, the Deputy Director of Education recommended to the Director of Education for transfer of the school from village Barasgaon as per letter dated 11th March, 2013. The Director of Education, in turn, sent the proposal for transfer of the school to the Secretary, School Education and Sports Department, Mantralaya, Mumbai for taking decision. Accordingly, the decision was taken by the Secretary as per the impugned order to transfer the school from village Barasgaon to village Sarkali. It seems that the procedure prescribed in the Government Resolution dated 9th June, 2010 for transfer of the school from village Barasgaon to village Sarkali has been duly followed.

10. There are a number of documents produced on record to show that the school was immediately transferred from village Barasgaon to village Sarkali and it actually started functioning at village Sarkali with effect from 29th July, 2013. The said fact was reported by respondent No. 5 to the Education Officer as per letter dated 5th August, 2013. As such, the school

started functioning at village Sarkali prior to passing of the order of status quo on 29th August, 2013.

11. The learned counsel for the petitioners pointed out to term No. 4 mentioned in the impugned order whereunder it was necessary to obtain consent of the Guardians/Education Committee for transfer of the school. He submits that there is decision of the Education Committee dated 28th July, 2011 opposing the proposed transfer of the school from village Barasgaon. The learned counsel for respondent No. 5 submits that the said resolution has been passed under the pressure of petitioner No.1 – Sarpanch and her husband, who were bent upon to grab the school. He submits that the said resolution is fabricated one. We are not inclined to enter into this factual controversy. In case this condition was not fulfilled by respondent No. 5, it was open to the Education Committee of village Barasgaon to raise a grievance before the Director of Education and seek necessary action against respondent No. 5. However, nothing of that sort seems to have been done by the Education Committee. In the circumstances, in the absence of any finding of the Director of Education

about non-compliance of this condition by respondent No. 5, we are not inclined to attach any importance to this contention of the learned counsel for the petitioners to find fault with the impugned order.

12. Respondent No. 5 has produced the letters issued to the teaching and non-teaching staff attached to the school at Barasgaon, calling upon them to join at the school at village Sarkali. If the said teaching and non-teaching staff did not attend the school at village Sarkali in response to the said letters, the petitioners cannot claim that the condition in respect of the absorption of the teaching and non-teaching staff attached to the school at village Barasgaon was fulfilled by respondent No.5.

13. The petitioners have produced certain documents showing that the school still is being run at village Barasgaon. It is the contention of the petitioners that respondent No. 5 is running the said school at Barasgaon. This fact has been flatly denied by respondent No. 5. When respondent No. 5 itself has come with a specific case that after the impugned transfer order, it is not running any school at village

Barasgaon, the school, if any, that is being run at village Barasgaon, cannot be said to have been recognized by the School Education Department of the Government of Maharashtra. Therefore, the teaching as well as non-teaching staff attached to such unauthorised school cannot claim salary from either respondent No. 5 or the Government.

14. The impugned order has been issued by the Secretary, School Education and Sports Department, Government of Maharashtra. As such, respondent No. 5 has got transferred the school from village Barasgaon to village Sarkali with prior permission of the Government as required under Rule 7.6 of the Secondary Schools Code. Since the said school was not a self-financed school, the provisions of Section 13 of the Act of 2012, would not be applicable to its transfer. The transfer of the said school would be governed by Rule 7.6 of the Secondary Schools Code and the Government Resolution dated 9th June, 2010.

15. We do not find any fault in the impugned order of transfer of school from village Barasgaon to village

Sarkali. If the petitioners had any grievance against respondent No. 5 for non-compliance of any of the terms of the transfer order, it was necessary for them to approach the Director of Education for necessary relief/s. Nothing of that sort has been done by the petitioners. The school is being run smoothly at village Sarkali since the year 2013. The school has been validly transferred from village Barasgaon to village Sarkali. We do not find any substance in the Writ Petition. Hence, we pas the following order:-

- (i) The Writ Petition is dismissed.
- (ii) The Rule is discharged.
- (iii) No costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**S.V. GANGAPURWALA**]
JUDGE

npj/wp6851-2013