

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

WRIT PETITION NO.2292 OF 2017

1. Momin Education Society,
Mohalla Sayyadan, Nanded,
Tq. and Dist. Nanded.
(Through its Secretary)
2. Islahul Amal Girls High School,
Mohalla Sayyadan, Nanded,
Tq. and Dist. Nanded.
(Through its Headmaster) ... **PETITIONERS**

VERSUS

1. The State of Maharashtra,
Through Secretary,
School Education and Sports Department,
Mantralaya, Mumbai-32.
(Copy to be served on Govt.
Pleader, High Court of Judicature of
Bombay, Bench at Aurangabad)
2. The Deputy Director of Education,
Latur Division, Latur,
Tq. and Dist. Latur.
3. The Education Officer (Primary),
Zilla Parishad, Nanded,
Tq. and Dist. Nanded.
4. Sir Sayyad Urdu Primary School,
Mominpura, Nanded,
Tq. and Dist. Nanded.
(Through its Headmaster) ... **RESPONDENTS**

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Shri. V.J.Dhage, Advocate for petitioners
Shri. M.B.Bharaswadkar, A.G.P. for respondent No.1 & 2
Smt. Yogita Kshirsagar, Advocate for respondent No.3
Shri. M.G.Mustafa, Advocate for respondent No.4

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CORAM: ANOOP V. MOHTA AND
 SUNIL K. KOTWAL, JJ.

DATED: 13th June, 2017.

ORAL JUDGMENT (Per Anoop V. Mohta, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by consent of learned counsel for the parties, in view of the urgency expressed.

2. Petitioners, minority aided institutions, running only Girls school from 8th standard to 12th standard i.e. Secondary and High Secondary school at Mominpura, Nanded, have challenged Government Resolution dated 20.09.2016 to the extent of granting permission to respondent No.4 to start 8th standard on self finance basis.

3. The challenge was raised by relying on Government Resolution dated 02.07.2013 and 28.08.2015, whereby, as submitted, no same standard school within the radius of 3 kms. from the existing schools should be permitted to establish. The submission is also made referring to Section 19 of the Right of Children to Free and Compulsory Education Act, 2009 (Education Act) and Rule 6 of Right of Children to Free and Compulsory Education Rules 2010 (Education Rules) that the 8th standard is

available in adjacent petitioners' existing school. Therefore, such extension is contrary to the Act, as well as circulars, so referred above.

4. Respondent No.4 is aided school of Boys and Girls upto 1st to 7th standard (primary and higher primary). There is need in view of the Government Policy to extend 8th standard to schools having 1st to 7th standards, on self finance basis. By the impugned resolution / decision dated 20.09.2016, the State, has granted permission to more than 58 schools in Latur District.

5. The aim and object of the Education Act and the declared policies reflected in the Government resolutions, so read and referred by the parties, itself provide that the State is required to have uniform education system for all the standards. The State, accordingly, have been taking various steps, and amending policies, and education pattern, from time to time. All the concerned parties have been acting on it. The impugned Resolution, itself reflects that, in the whole Maharashtra, apart from other issues, such extensions of 8th standards have been granted by as per the requirement of the area / locality. The Resolution so read and referred and part of the record itself make position clear that the State is taking all steps revolving around the uniform education policies. We see no infirmity in taking such

decisions.

6. By passing the impugned order or taking the decision, the State has taken note of all the circulars and the decisions, including the circulars which petitioners have been relying upon opposing the permission granted to respondent No.4. The State has been trying to implement the policy decision to club or extent the classes from 1st to 5th standard and 6th to 8th standard and other classes so created under the circulars. We see there is no illegality and or any breach of provisions of the Act, Rules and the Circulars so relied upon. The State has granted such extension not only in favour of respondent No.4 irrespective of the distance between two schools even to many such schools. We see no reason and no case is made out to interfere with such a policy decision. In our view, such decision is well within the frame work of Law and the record.

7. The judgments so referred and relied upon by the counsel appearing for the petitioners, ***Shikshan Mandal, Through the Secretary Dr. R.G.Prabhune & ors. Vs. State of Maharashtra & ors., [2012 (2) Bom. C.R. 875]*** and ***Shridhar Shikshan Prasarak Mandal Vs. Sangola Taluka Shikshan Prasarak Mandal and others, 1995 (2) Mah LR 629***, are of no assistance as those judgments are in reference to

the provisions of Secondary School Code. The provisions of the Education Act and the Rules made thereunder, apart from the Government circulars so issued from time to time in every year / session, including the impugned one, are modified and different. Even if there is any conflict with regard to the aspect of granting such extension of 8th standard, though other schools having 8th standards are available, cannot be the reason to interfere with the State policies so reflected in the decision. The State is under obligation to take all necessary steps to bring uniform education system. There is no such illegality which needs to be interfered and disturb the order at the instance of petitioners, who are admittedly the competitor institutions, as contemplated under the provisions of Law and even otherwise.

8. The additional factor in the present case is that the petitioners Girls school cannot be compared with respondent No.4 minority co-education school. The permission is granted to respondent No.4 on self finance basis. There is no case made out by the petitioners to interfere with the policy decisions so taken by the State. There is no force in the contentions so raised by the learned counsel appearing for the petitioners that, there are as many as 8 to 10 more schools within the prescribed area within the vicinity of school of petitioners as well as if respondent No.4. The State has been taking steps to bring the uniform education

pattern to have continuity of education to children from 1st to 5th standards or from 6th to 8th standards as of one class.

9. The petitioner has challenged the circular by the Writ Petition dated 10.10.2016, and restricted it only to respondent No.4 and did not raise any issue with regard to the permissions so extended to other 58 such schools in the area, apart from such extensions have been granted to thousands such schools in other part of Maharashtra. This is also an additional factor, to reject the petition, as no case is made out to interfere with the education policy decisions. This Court in ***Arun Shivaji Chavare Vs. Padmakar Rama Chavare and others, [2015(1) All MR 550 : 2015(1) Mh.L.J.728 : 2015(4) Bom CR 167]***, in which one of us (Anoop V. Mohta, J.) has expressed as under ;

“Therefore, the Deputy Director and the Zilla Parishad and its officers including Education Officer and the Chief Executive Officer, in our view, is wrong in not continuing VI Standard course / class in the same school, which is admittedly running since long under the control and supervision of Local Authority for I to V Standards. The continuation of VI Standard in the same school, therefore, should not have been denied. No permission / recognition is necessary except certain formalities, for the record. The non-submission of report, on this wrong presumption, that a permission is required even for the Local Authority, created the situation, which is contrary to the law.”

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 non-aided 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 the Rules itself provides to relax such condition based upon the existing facts and figures.

The establishment is already there and so also the arrangement apart from 26 students for VI class standing in the school since June 2014. Therefore, such running establishment of Local Authority just cannot be stopped / closed by not continuing them to run the class in question with all the requisite facilities and amenities as required under the Act and Rules.

10. Petition is accordingly dismissed. No costs.

(SUNIL K. KOTWAL)
JUDGE

(ANOOP V. MOHTA)
JUDGE

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