

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

WRIT PETITION NO. 10690 OF 2015

Shri Navnath Devsthan Seva Mandal
Trust through its Trustee Member
Baburao Bhau Patil Khalkar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri. C. K. Shinde, Advocate for the Petitioner.
Shri. R.B. Bagul, A.G.P. for Respondent Nos.1 and 2.
Shri. S. T. Shelke, Advocate for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

DATE : 09th JANUARY, 2017.

PER COURT :

. Mr. Shinde, the learned counsel for the petitioner submits that, after filing of present petition, the petitioner has been granted permission to start VIIIth standard, however on self finance basis. Initially, when the petition was filed, the permission was not granted. The learned counsel submits that, the Government Resolution dated 20th September, 2016 by virtue

of which, the permission is granted, is bad in law. The petitioner is already running Ist to VIIth standards on grant in aid basis and IXth to XIIth standards on self finance basis. The VIIIth standard comes under elementary education, even as per the Right of Children to Free and Compulsory Education Act (for short " R.T.E. Act"). According to the learned counsel even as per the Maharashtra Self Finance School (Establishment and Regulation) Act 2012 (for short "Act of 2012") the up-gradation of school means up-gradation of recognized primary school to upper primary school, upper primary school to secondary school or secondary school to higher secondary school. In the present case, it is not case of up-gradation of primary school as Ist to VIIIth standards come within the purview of primary school. According to the learned counsel, even as per the Secondary School Code by natural growth permission is required to be granted. Such permission ought to have been granted on no grant basis initially as per the policy.

2. The learned Assistant Government Pleader submits that, the permission is granted considering the facts that the VIIIth standard was to be commenced by the petitioner afresh. The petitioner is granted permission to run IXth to XIIth standards on

self finance basis only. For the first time permission is granted to the petitioner to run VIIIth standard on 11/07/2016. The same is legal and valid.

3. We have considered the submissions canvassed by the learned counsel for respective parties.

4. It is not disputed that, the petitioner is running Ist to VIIth standards on grant in aid basis and so also running the IXth to XIIth standards on self finance basis. The petitioner subsequently applied for starting VIIIth standard. After filing of present petition, permission has been granted to start VIIIth standard and run on self finance basis. The respondents have promulgated the act namely the Maharashtra Self Finance Schools (Establishment and Regulation) Act 2012.

5. In view of the provisions of the R.T.E. Act, Ist to VIIIth standards come within the purview of elementary education that is primary school. The Government Resolution dated 28/08/2015 is applicable in the present case. As per the said Government Resolution and more particularly clause 2.9.2, the schools will not be entitled to have fresh standards by natural growth. The

Apex Court in a case of State of Orissa and another Vs. Ashwini Kumar Dash and others reported in (1998) 3 SCC 613 has observed that grant in aid cannot be claimed as of right.

6. Be that as it may, the permission has already been granted to the petitioner to start school on self finance basis. The same does not appear to be in derogation to Government Resolution dated 28/08/2015 and the provisions of the Act of 2012.

7. In view of the said Government Resolution, this Court cannot come to the aid of the petitioner. The petitioner, if, so desire may report to the Government in regard to its grievance.

8. In view of the above, the writ petition is disposed of. No costs.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]