

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4640 OF 2016

Azad Education Society, Miraj
Through its President

..Petitioner

Versus

The State of Maharashtra and others

..Respondents

Mr. A. G. Damle, Senior Counsel i/by Mr. R. M. Momin, Advocate for
the Petitioner.

Mrs. Rupali M. Shinde, AGP for Respondent No.1.

Mr. R. D. Rane, Advocate for Respondent No.2.

Mr. Sumit Kate i/by Mr. U. P. Warunjikar, Advocate for Respondent
No.3.

CORAM : B. R. GAVAI &
B. P. COLABAWALLA, JJ.
DATE : 12th DECEMBER, 2017

PC.

1] The Petitioner by way of present Petition challenges the
validity of the Government Resolution dated 23th August 2013, vide
which the State Government has provided the Teachers Eligibility Test as
a pre-condition for appointing the teachers in the schools.

2] Mr. A. G. Damle, learned senior counsel appearing on behalf
of the Petitioner submits that the said Government Resolution is violative
of Article 30 of the Constitution of India. It infringes the rights of the
minority institutions to administer the institutions according to their own

choice. He further submits that the said Government Resolution is issued in pursuance to the provisions contained in the Right to Education Act. It is submitted that when the said Act is not applicable to the minority institutions, the said Government Resolution would also not be applicable to the minority institutions.

3] Mr. R. D. Rane learned counsel appearing on behalf of Respondent No.2 – Zilla Parishad relying on the judgment of the Division Bench of this Court in Writ Petition No.9026 of 2014 alongwith companion matters decided on 15th December 2015 submits that the said Government Resolution in no way infringes rights of the minority institutions to administer affairs of institutions and as such there is no merit in the Petition.

4] We have perused the said Government Resolution. The said Government Resolution only provides that there shall be Teachers Eligibility Test conducted by the State Government. It further provides that only such of the teachers, who pass the said Teachers Eligibility Test, would be eligible to be appointed. We find that there is no force in the submissions of the learned counsel appearing on behalf of the Petitioner.

5] The Apex Court has consistently right from the judgment in

The Ahmedabad St. Xavier's College Society and another Vs. State of Gujarat and another reported in (1974) 1 SCC 717 held that though the State cannot interfere with the rights of the minority institutions to administer the institutions, however the State would always be empowered to provide minimum eligibility either with regard to the qualifications of the staff or the eligibility while admitting to the courses.

6] We find that the impugned Government Resolution only provides that there has to be eligibility test for the teachers applying for the teachers post. It appears that the said has been done, so that there should be uniformity in the eligibility towards the State for making teachers eligible to be appointed.

7] The said Government Resolution does not put any embargo on the rights of the minority institutions to appoint the staff of their own choice, but the teachers applying would have to be found eligible in the Teachers Eligibility Test.

8] Apart from that a similar issue arose before the Division Bench of this Court in Writ Petition No. 1164 of 2015. The Division Bench held that the schedule to the Teachers Eligibility Test as well as various Government Resolutions issued by the State Government with regard to

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the staff etc. do not infringe the rights of the minority institutions to administer according to their own choice. We find that applying the same analogy, no fault is found with the Government Resolution dated 23th August 2013. The Petition is without merit. The Petition is dismissed as such.

[B. P. COLABAWALLA, J.]

[B. R. GAVAI, J.]