

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

**WRIT PETITION NO. 4237 OF 2017**

(Kamlesh s/o Rajendra Gangotri & Ors. vs. J.K. Education Society thr. its Director & Ors.)

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders or directions  
and Registrar's Orders.

Court's or Judge's orders.

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**CORAM : B.P. DHARMADHIKARI &  
ROHIT B. DEO, JJ.  
JULY 17, 2017.**

Heard Shri V.P. Thakre, learned counsel for the petitioners, Shri Rohit Joshi, learned counsel for respondent Nos. 1 & 2 and Mrs. Bodade, learned counsel for respondent No. 3.

2. It is not in dispute that the Wards of the petitioners were admitted in the School of Respondent No. 1 at Civil Lines, Nagpur, under Right of Children to Free and Compulsory Education Act, 2009, (hereinafter referred to as 2009 Act) in 25% quota. They completed their education till 5<sup>th</sup> standard in the year 2016. As they cleared 4<sup>th</sup> standard, then Respondent No. 1 gave them admission in 5<sup>th</sup> standard in their School at Koradi Road, Nagpur. That School is Respondent No. 2, before us. Respondent No. 3 – Education Officer has by communication dated 23.06.2017 objected to these admissions.

3. Shri Thakre, learned counsel submits that the Wards have already put in more than one year at Koradi

School. He accepts that the School at Koradi cannot be viewed as a School in neighbourhood or extended neighbourhood but then as the admissions were taken in the School of Respondent No. 1 at Civil Lines, Nagpur, admissions have been rightly done, as has been done of general category students.

4. Shri Joshi, learned counsel is seeking time as he wants to place on record some material and the instructions in that respect are awaited.

5. As this Court declined to adjourn the matter, he points out that Respondent No. 3 and, therefore, the State Government may decline reimbursement towards fees of Wards of the petitioners in future.

6. Mrs. Bodade, learned counsel, points out that under 2009 Act, emphasis is on admission and education in the School in neighbourhood or extended neighbourhood. Here, the School at Civil Lines, Nagpur, constituted a separate and distinct unit. School at Koradi, which runs classes from 5<sup>th</sup> standard onwards, therefore, is a distinct entity and it cannot be mistaken with School at Civil Lines.

7. Our attention is also invited to clarification in this respect as contained in Government Resolution dated 10.01.2017, particularly clause 16.

8. In brief reply, Shri Joshi, learned counsel,

clarifies that Respondent No. 2 has also got classes from 1<sup>st</sup> to 10<sup>th</sup> standard.

9. A perusal of clause 16 of Government Resolution dated 10.01.2017 shows that when higher classes are located in a different building which is located in the vicinity, admissions given earlier can be continued further without subjecting the students to fresh admission process. However, this clause does not specifically stipulate that if such School is not located in the vicinity, the management is prohibited from continuing admissions in higher standards in a School located at some distance.

10. In facts before us, Respondent No. 3 – Education Officer has not pointed out that in 2016, for filling in 25% seats in Respondent No. 2 – School in 5<sup>th</sup> standard, any admission process was undertaken and students admitted therein were allocated to Respondent No. 2 – School. It is not the case of Respondent No. 3 that Respondent No. 2 then refused to admit such students.

11. In this situation, when 25% vacancies are required to be reserved by Respondent No. 2 in 5<sup>th</sup> standard and accordingly Wards of the petitioners were already admitted in Primary School in different area in 25% quota are allowed to prosecute their studies against those seats like other general category students, we find the impugned communication unsustainable.

12. Not only this, the impugned communication has come after the students have put in about one year of their education with respondent No. 2 – School. Even on this count, communication is unsustainable. Accordingly, we quash and set aside the communication dated 23.06.2017 and similar communication dated 22.05.2017 issued by Respondent No. 3 to the respective petitioners.

13. The Wards of the petitioners are entitled to prosecute their studies as 25% category students in Respondent No. 2 – School and the management is also entitled to reimbursement of fees as per law against their education.

14. With this clarification and directions, we allow this writ petition and dispose it of. However, in the facts and circumstances of the case, there shall be no order as to costs.

**JUDGE**

**JUDGE**

\*GS.