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

WRIT PETITION NO.3076 OF 2005

Shri Bhausahab Maharaj Shikshan
Prasarak Mandal, Wasunde ...
Tq. Parner, Dist. Ahmednagar,
Through its President
Shri Appasaheb Abasaheb Shelke,
Age 50 years, Occu. Social work,
R/o Wasunde, Tq. Parner,
District Ahmednagar PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Education Department,
Maharashtra State, 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,
Maharashtra State, Pune.
3. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar,
District Ahmednagar
4. Jaimalhar Shikshan Prasarak Mandal,
Pimpalgaon Rotha, Tq. Parne,
District Ahmednagar, through its
Secretary/ President ... RESPONDENTS

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Shri P.S. Dighe, Advocate holding for
Shri V.R. Dhorde, Advocate for petitioner
Shri M.M. Nerlikar, A.G.P. for respondents No.1 to 3
Shri A.S. Bajaj, Advocate for respondent No.4
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((2))

CORAM: T.V. NALAWADE AND
 SUNIL K. KOTWAL, JJ.

DATED : 6th APRIL, 2018.

JUDGMENT (PER SUNIL K. KOTWAL, J.)

1. By invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner, registered Trust, has sought declaration that, permission dated 25.1.2002, granted to respondent No.4 by respondent No.1 to 3 to run school at Pimpalgaon Rotha is illegal and arbitrary, with other consequential reliefs. Respondent No.4 is also registered Trust. Respondent No.1 is the State of Maharashtra. Respondent No.2 is Deputy Director of Education and respondent No.3 is Education Officer (Secondary), Zilla Parishad, Ahmednagar.

2. Learned counsel for the petitioner submitted that, respondent No.4 is running unauthorized school at village Pimpalgaon Rotha, Taluka Parner, where the petitioner is running Marathi Medium 8th to 10th Standard school since 1989-1990 on no grant basis with the permission of respondent No.2 Deputy Director. The school run by petitioner is by name Shri Khandeshwar Vidyalaya, and since March 1995, 100% grant has been awarded to this school. Next contention of learned counsel for the petitioner is that, due to unauthorized school started by

respondent No.4 for 8th to 10th Standard from academic year 1996-1997 at village Pimpalgaon Rotha, unhealthy competition has been created and it has adversely affected the strength of the students in the petitioner school. Even parents of the students who are taking education in the school of petitioner have given applications to the petitioner demanding School Leaving Certificates from petitioner. He pointed out that, despite several repeated complaints by petitioner to respondent No.1 to 3 and other concerned authorities, no action was taken against the respondent No.4 school. He pointed out that, subsequently, the respondent No.2 arbitrarily and illegally granted permission to the respondent No.4 for running 8th to 10th Standard on no grant basis and, therefore, the petitioner was constrained to file this petition for relief to close down unauthorized school run by respondent No.4 and to cancel the illegal permission granted by respondent No.2.

3. In reply, learned Advocate for respondent No.4 school submitted that the petition suffers from delay and laches as the petitioner is challenging the permission granted by respondent No.2 on 4.4.2001 by filing this petition in the year 2005. Next objection raised by learned counsel for respondent No.4 is that, the petitioner has suppressed material facts from this Court that 5 schools run by petitioner in Parner Taluka were suddenly raided

and inspected on 1.12.1995 by special team of Education Department and due to irregularities and deficiencies noticed by that team on 9.1.1996, respondent No.2 Deputy Director served show-cause-notice to the petitioner Trust and other 6 schools in Parner Taluka. Even the non-salary grants of those schools were withheld by Deputy Director, Pune as penalty to the said schools. Learned counsel for the respondent has drawn attention of this Court towards copy of news item published on 1.12.1995 as well as the copy of show-cause-notice dated 9.1.1996 (Exhibit R-2).

4. Next contention of learned counsel for respondent is that, as the school run by the petitioner could not give proper performance in the village and as there was insufficient staff and infrastructure in the petitioner's school, as per request of the villagers in the year 1996, the respondent No.4 applied for permission for the year 1997-1998, which was ultimately granted in the year 2001 w.e.f. 2000-2001 by Government letter dated 4.4.2001. Learned counsel for respondent No.4 submitted that, therefore, the school run by respondent No.4 in the said village is not unauthorized school. He pointed out that, on 11.10.2001, Planning Department of Collector Office, Ahmednagar sanctioned Computer Set to respondent No.4 school and respondent No.2 has given final approval to the respondent No.4 school by letter dated 25.1.2002 on the basis of recommendation of respondent

No.3. After taking inspection of the school of respondent No.4 by respondent No.3 and after considering the said inspection report, the respondent No.2 has granted the approval since June 2000 to respondent No.4 school by his letter dated 22.4.2002.

5. Learned counsel for respondent No.4 pointed out that, petitioner has misled this Court by placing on record the census of Pimpalgaon Rotha village only whereas the students from surrounding villages like Karegaon, Akkalwadi, Khandobawadi, Jagtapwadi, Wadgaon Dariya, Gargundi etc., having population around 5000, can provide required students to the two secondary schools.

6. Learned counsel for respondent No.4 pointed out that, after considering the good performance of respondent No.4 school, even Education Department has accorded year to year sanction to the divisions of Standards 8th to 10th and also sanction to the teaching and non-teaching staff of respondent No.4 school. Our attention was drawn towards sanction order since 2001 to 3.8.2005, passed by the Education Officer (Exhibit R-10). He submitted that, as none of the villager has any complaint against respondent No.4 school and as there is no unhealthy competition due to availability of sufficient students for two schools in the said village, no relief can be granted to the petitioner.

7. With the help of learned counsel for both the parties, we have gone through various documents placed on record by both the parties. This Court has noticed that, on 9.1.1996, the show-cause-notice was given to petitioner school i.e. Khandeshwar Vidyalaya, Pimpalgaon Rotha by the respondent No.2 and it was pointed out that, proper school building was not available to the petitioner school. Even no book was found in the school library. There was no separate Laboratory. For want of sufficient furniture, other required articles and even toilets as well as for want of proper maintenance of record of the school including daily register, the explanation was called from petitioner school as to why non-salary grants for the years 1995 to 1997 should not be withheld. Regarding the surprise inspection of the petitioner's school, even news item was published in the local newspaper "Samachar" in the edition dated 10.12.1995. Record shows that, the Block Education Officer, Panhayat Samiti, Parner issued notice to the petitioner school on 14.7.1993 for unauthorisedly running 5th Standard Class without necessary permission from the authorities. The petitioner was prevented from running such class. Thus, more than sufficient material is placed on record by respondent No.4, which indicates that, the petitioner itself was warned by the Education Department for its illegal activities in the area. It appears that, as the school run by petitioner is without having any facilities and

good teaching staff, the strength of the students in the petitioner school has lowered down. Therefore, for its own inefficiency, the petitioner school cannot blame the respondent No.4 school on the ground of unhealthy competition. On the other hand, the certificate issued by Tahsildar, Parner indicates that, the population of village Pimpalgaon Rotha and surrounding villages is definitely sufficient to provide sufficient students to the petitioner school as well as to the school run by respondent No.4. Therefore, there is no possibility of creation of unhealthy competition due to the permission granted by respondent No.2 to respondent No.4 for running 8th to 10th Standard school in the village Pimpalgaon Rotha.

8. The material placed on record by respondent No.4 clearly indicates that, due to good performance given by respondent No.4 school, additional classes are sanctioned by Education Department to the respondent No.4 school and even staff is sanctioned by respondent No.3. Obviously, respondent No.4 school is progressive school. Thus, we do not find any arbitrariness or illegality in the permission dated 25.1.2002 granted to the respondent No.4 school w.e.f. June 2000 for running school on non grant basis. By filing affidavit, even Education Officer has supported the claim of respondent No.4 school regarding the sufficient population in the village and

surrounding villages to provide proper feeding of students to the petitioner school as well as respondent school. In the circumstances, after careful consideration of the submissions of learned counsel for both the parties and documents placed on record, we are fully satisfied that no case is made out by petitioner to show that the permission granted by respondent No.2 to respondent No.4 school is arbitrary or illegal. The petition also suffers due to delay and laches as the impugned order is challenged after lapse of more than two years. So also, as the petitioner itself was indulged in illegal activities in the past and as it has suppressed material facts from this Court, extraordinary jurisdiction of this Court cannot be invoked in favour of the petitioner.

9. This petition being devoid of merits, deserves to be dismissed. Hence we pass the following order :

ORDER

Writ Petition is dismissed. Rule is discharged.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

fmp/