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

WRIT PETITION NO.3753 OF 2018

1. Gaurav s/o Gajanan Muthkhede,
Age: 11 years, Occu: Education,
 2. Vaibhav s/o Gajanan Muthkhede,
Age: 11 years, Occu: Education,
Both : U/g of father
Gajanan s/o Kashinath Muthkhede,
Age: 33 years, Occu: Private service,
Present R/o: Punawale; Tq. Mulshi,
Dist. Pune
- ..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Education Department,
Mantralaya, Mumbai-32
 2. The Education Officer (Primary),
Zilla Parishad, Nanded,
Tq. & Dist. Nanded
 3. The Headmaster,
Veligtaon Primary School,
Canal Road, In front of D-Mart Mall,
Taroda (Kh.), Nanded,
Tq. & Dist. Nanded
- ..RESPONDENTS

Mr V. B. Dhage, Advocate for petitioners;
Mr A. S. Shinde, A.G.P. for respondent No.1;
Mr S. B. Pulkundwar, Advocate for respondent No.2;
Mr V. S. Kadam, Advocate for respondent No.3

**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 10th July, 2018

ORAL ORDER:

Heard Mr Dhage, learned Counsel for petitioners, learned A.G.P. for respondent No.1, Mr Pulkundwar, learned Counsel for respondent No.2 and Mr Kadam, learned Counsel for respondent No.3.

2. This petition is filed by two minor students through their natural guardian. The grievance of these petitioners is of non issuance of the transfer certificates (School Leaving Certificates).

3. Learned Counsel appearing on behalf of the petitioners submitted that petitioner No.1 - Gaurav Gajanan Muthkhede and petitioner No.2 – Vaibhav Gajanan Muthkhede were admitted in respondent No.3 – School. It is submitted that father of these petitioners – Gajanan Kashinath Muthkhede was engaged in some private job in Nanded. As the financial condition was weak, their family shifted to Pune. Gajanan Muthkhede wanted to search for better job at Pune so as to fulfill his family responsibility, including providing education to the petitioners.

4. It is further submitted by the learned Counsel for petitioners that though the father of the petitioners paid the necessary fees of petitioners Gaurav and Vaibhav, respondent No.3 in turn failed to issue any receipt to that effect. It is further submitted that due to shifting of the family from Nanded to Pune, Gajanan Muthkhede admitted his sons Gaurav and Vaibhav

(3)

in a school, being run by Pimpri Chinchwad Municipal Corporation. The petitioners were prosecuting their studies at Pimpri Chinchwad Corporation School. It is then submitted that though petitioners Gaurav and Vaibhav were admitted in Pimpri Chinchwad Corporation School, as per the requirement, Gajanan, father of the petitioners was in need of school leaving certificates. As such, an application was submitted to Pimpri Chinchwad Corporation School and in turn Pimpri Chinchwad Corporation School forwarded the request to respondent No.3 – School, by communication dated 17th June, 2017.

5. Our attention was also invited to another communication of very date i.e. 17th June, 2017. It is stated in that communication that though the petitioners Gaurav and Vaibhav are attending the Pimpri Chinchwad Corporation School from December 2016 regularly, the Pimpri Chinchwad Corporation School was unable to grant a formal admission to these students, but for non availability of the school leaving certificates. It is the allegation of the petitioners that respondent No.3 - School is withholding the school leaving certificates, inspite Gajanan, father of the petitioners paid all the education fees of Gaurav and Vaibhav to respondent No.3 – School. It is also submitted that withholding the school leaving certificates at the instance of respondent No.3 – School is an act of whims and fancies and having no valid reason, as such, the petitioners are before this Court with prayers, namely, prayer (B) and (D), which read thus:-

(4)

“B) Pending hearing and final disposal of this writ petition, directing the respondent No. 3 to issue transfer certificate of the petitioners and for that purpose issue necessary orders.

D) Issue writ of mandamus, or any other writ, order or direction in the nature writ of mandamus, directing the respondent No.2 to take appropriate action against the respondent no.3 school for not returning the transfer certificate of the petitioners and for that purpose issue necessary orders.”

6. It was also submitted by the learned Counsel for the petitioners that though petitioner Vaibhav was admitted as a student by granting benefit of Right to Education Act, 2009, respondent No.3 – School had insisted for payment of fees of even petitioner Vaibhav.

7. Mr Kadam, learned Counsel appearing on behalf of respondent No.3 - School vehemently opposed the contentions raised in the petition and submissions advanced by the learned Counsel for the petitioners. He invited our attention to affidavit-in-reply filed on behalf of respondent No.3 - School and the documents annexed to the reply. He admitted that the petitioners had also approached the learned District Consumer Redressal Forum, Nanded and the District Consumer Redressal Forum passed an ex-parte order. He then submitted that being aggrieved by the ex-parte order, passed by the District Consumer Redressal Forum, respondent No.3 -

(5)

School preferred an appeal before the learned Maharashtra State Consumer Dispute Redressal Commission and during the pendency of the present petition, an appeal preferred by respondent No.3 – School, is allowed.

8. Mr Kadam, learned Counsel for respondent No.3 then invited our attention to the provisions of Secondary School Code, 2015. He then submitted that the procedure is formulated in the Secondary School Code for considering the issue of leaving certificate. He then invited our attention to the procedure under Rule 28 of the Secondary School Code, which reads thus:-

“28. Every application for a leaving certificate shall be made in writing by the parent or guardian. A candidate who is a major, however, can apply himself/herself. School should issue leaving certificates without unnecessary delay.”

9. Mr Kadam, learned Counsel then invited our attention to Rule 29.1 and 29.2 of the Secondary School Code. He submitted that it is the requirement in the Secondary School Code that every such application seeking leaving certificate be made in writing by the parents or the guardian and in case, if the candidate is major, he also can apply for school leaving certificate which should be issued without unnecessary delay. He then submitted that father of the petitioners never submitted any application for issuance of school leaving certificates, but it was only the communication

(6)

by the Pimpri Chinchwad Corporation School, which is relied on heavily by the petitioners, without even applying to first step for granting of school leaving certificates. He then submitted that respondent No.3 – School enjoys the refusal of issuance of school leaving certificate under Rules 29.1 and 29.2 of the Secondary School Code on the valid grounds, namely, non payment of fees and other dues and rustication by the Director under Rule 34 of the Secondary School Code. In the present matter, the ground (ii) of the Rule 29.1 of the Secondary School Code, namely, the rustication by the Director under Rule 34 is not applicable and the only first ground is applicable, is the submission of Mr Kadam.

10. Mr Kadam, learned Counsel then invited our attention to the extract of the Attendance Register and submitted that petitioner No.1 Gaurav was attending the school till December 2016 and thereafter he never attended respondent No.3 – School. He then fairly admitted that insofar as petitioner No.2 Vaibhav is concerned, his admission was by grant of benefit under the Right to Education Act. He then submitted that selection of such students is not the discretion of the institute but as per the procedure, the parents apply to the Education Officer and then Education Officer, on considering the application, if allowed the application, forward the student to the institute. He then invited our attention to the documents placed on record along with affidavit-in-reply i.e. Ex.R-II. Perusal of this document shows that Gajanan, father of the petitioners submitted an application with his endorsement and

(7)

there is counter signature of Principal of respondent No.3 – School on the said application.

11. Mr Kadam, learned Counsel, thus, submitted that if petitioners approach respondent No.3 by submitting an application for issuance of school leaving certificates along with the compliance of fees of petitioner Gaurav, respondent No.3 – School will issue the necessary school leaving certificates on receipt of such application. Similarly, the petitioners will have to submit an application for issuance of school leaving certificates in respect of petitioner No.2 Vaibhav without any payment of fees, as Vaibhav was admitted by grant of benefit under Right to Education Act. He then invited our attention to the tabular statement annexed to affidavit-in-reply and submitted that insofar as petitioner Gaurav is concerned, the compliance of fees is for two academic sessions i.e. for the years 2015-2016 and 2016-2017. He then submitted that for each academic year, fees payable is Rs.20,000/- and as such, in total, the compliance of the fees is Rs.40,000/-

12. Learned Counsel for the petitioners though vehemently submitted that petitioner Gaurav was admitted in Pimpri Chinchwad Corporation School for the academic session 2016-2017 and there is also communication dated 17th June, 2017 to the effect that petitioner Gaurav was prosecuting his studies in that school from the year 2016, the petitioners may not be fastened the liability of payment of fees for the academic year 2016-2017 and they may only be directed to pay the fees for academic year 2015-2016.

13. We are unable to accept submission of learned Counsel for the petitioners for the reason that the Attendance Register clearly shows that petitioner Gaurav attended respondent No.3 – School till December 2016 and it also reflected from document, on which the petitioners themselves rely i.e. communication dated 17th June, 2017. In the said communication, it is informed by the Pimpri Chinchwad Corporation School that both these petitioners are attending the school from December 2016, meaning thereby petitioner Gaurav was prosecuting his studies in respondent No.3 – School till 27th December, 2016 and thereafter he was admitted in Pimpri Chinchwad Corporation School from 28th December, 2016.

14. Considering these facts, in our opinion, the petition can be disposed of with following directions :-

(i) The petitioners to submit an application alongwith the fees for petitioner Gaurav on or before 4th August, 2018 to respondent No.3 – School for issuance of school leaving certificates for petitioners Gaurav Gajanan Muthkhede and Vaibhav Gajanan Muthkhede.

(ii) Gajanan Kashinath Muthkhede, father of the petitioners to pay fees of academic session year 2015-2016 to the tune of Rs.20,000/- and pay the partial fees of academic year 2016-2017 i.e. Rs.10,000/-,

(9)

as petitioner Gaurav attended school till December 2016. Thus, the petitioners to deposit in total Rs.30,000/- for the academic years 2015-2016 and 2016-2017 in case of petitioner Gaurav Gajanan Muthkhede.

(iii) On receiving such application, respondent No.3 – School to issue school leaving certificates, as expeditiously as possible and not later than two weeks from the date of receipt of such application by the petitioners.

Writ Petition is disposed of with above referred directions.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)

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