

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

Writ Petition No.5241 of 2013

Shri. Bhageshwar Gramin Sevabhavi
Sanstha Limited, Taradgavhan,
Taluka Georai, District Beed.

.. Petitioner.

Versus

The State of Maharashtra
And Others.

.. Respondents.

Shri. S.S. Thombre, Advocate, for petitioner.

Shri. R.V. Dasalkar, Assistant Government Pleader, for
respondent Nos.1 to 5.

Miss Pradnya Talekar, Advocate holding for Shri. S.B.
Talekar, Advocate, for respondent Nos.7 and 8.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date: 5 APRIL 2018

ORDER (Per T.V. Nalawade, J.):

1) The petition is filed under Article 226 of the Constitution of India for the relief of quashing and setting aside the order of transfer of one school made on 3-8-2012 by respondent authority in favour of respondent Nos.7 and 8. Both the sides are heard.

2) The petitioner is an institution and it is running a school at Chaklamba, Tahsil Georai, District Beed since 1999. One school which was being run by respondent No.7 and 8 at Mahartakli, Tahsil Georai is transferred under the impugned order to Chaklamba and the order came to be passed in the year 2012. It is the case of the petitioner that it is running a school at the same place and there is one school of the Zilla Parishad already in existence at Chaklamba since 1965 and these circumstances are not appreciated by the authorities. It is contended that at Mahartakli there was sufficient strength in the school of respondent Nos.7 and 8 but the school is transferred to Chaklamba where there will be unhealthy competition due to the school of respondent Nos.7 and 8. It is also contended that proper procedure was not followed for transfer of this school. On these grounds the aforesaid relief is claimed.

3) The proceeding is opposed by all the respondents. Respondent Nos.7 and 8 have filed reply affidavit and they have contended that the new place is situated at a distance of hardly 7 kilometers from the old

place and at the new place most of the students who have taken admissions are from other places and not from Chaklamba. It was submitted, when a query was made, that all the students who were studying in the school of respondent Nos.7 and 8 at Mahartakli are still with respondent Nos.7 and 8 - institution at Chaklamba and no inconvenience is caused to those students. It is contended that out of 228 students, 220 students are coming from villages Kasarwadi, Hivarwadi, Mahandula, Mahandula Tanda, Dhumegaon, Mahartakli and Rashulabad and those places are situated within a radius of 4 to 7 kilometers. It is contended that when the school was at Mahartakli this distance was more and so the change of the place was in favour of the students.

4) It is the case of respondent Nos.7 and 8 that due to transfer of the school to Chaklamba the strength of the students from the school of the petitioner is not reduced and further the petitioner cannot have grievance of such nature. It is contended that there are better facilities with respondent Nos.7 and 8 - institution at Chaklamba that is also one reason for transfer of the

school from Mahartakli to Chaklamba. It is contended that the local bodies of both the places have given no objection for such transfer and the population of Chaklamba is more than 10000. It is contended that the school of respondent Nos.7 and 8 is attracting students of other places mentioned above and so the schools which are already in existence at Chaklamba will not get affected due to the school of the respondent Nos.7 and 8. It is contended that, proper procedure was followed and the authorities have considered the *pros and cons* of such transfer and only after that permission has been granted in favour of respondent Nos.7 and 8. It is contended that subsequently the petitioner took some steps to see that the respondents are harassed and the petitioner institution has backing of political persons. Lastly it is contended that out of 228 students receiving education in the school of respondent Nos.7 and 8 there are 117 students of Muslim community and the institution is run by the minority community, the community professing Islamic religion.

5) This Court had not granted interim relief in favour of the petitioners. The proceeding was filed in the

year 2013 and we are in the year 2018. There is no data with the petitioner to show that the strength of its school has come down since the transfer of the school of respondent Nos.7 and 8 to Chaklamba.

6) Learned counsel for the petitioner mainly relied on some interim orders made by this Court in some proceedings. One such interim order made by this Court in Writ Petition No.6711/2012 was taken up to Supreme Court but the Supreme Court refused to interfere in the interim order. Learned counsel submitted that proper procedure was not followed in that case and due to that such orders were made and in the present proceeding also the proper procedure was not followed. This Court has no hesitation to make observation that such interim orders cannot be used when the Court is deciding the matter itself. On merits, the case needs to be made out by the petitioner for getting the relief. Reliance is placed on the decision given by this Court in other case like Writ Petition No.2889/2000 but the facts of that case were totally different and in that matter the permission sought was already rejected but that circumstance was not

considered at the time of granting the permission which was under challenge in the proceeding. There was also point of unhealthy competition.

7) In the present matter there is record to show that after making of the application for transfer necessary enquiry was made and the authority at every level made recommendation for transfer of the school to Chaklamba. In the proposal there was specific mention that respondent Nos.7 and 8 - institution wanted to shift the school as in the radius of 5 kilometers from Chaklamba there was big population of Muslim community and the respondent-institution was minority institution of that community and it wanted to see that the institution gives benefit to the persons of that area. The authority at every level verified the things and the fact that the persons of Muslim community were high in number in aforesaid radius of the place where the school was to be shifted and it had better facility at Chaklamba are considered. On the basis of those recommendations permission came to be granted subject to usual conditions. There is nothing with the petitioner to show that inconvenience was caused to

the students and on the other hand there is submission made by learned counsel for respondent Nos.7 and 8 that all the students who were with respondent Nos.7 and 8 institution remained with it even after shifting of the school to Chaklamba.

8) The record produced shows that on 17-7-2008 certificate of minority status came to be issued in favour of respondent Nos.7 and 8. They have obtained the certificate of minority religious group. After that the school was transferred from the previous institution which was running the school at Mahartakli. Thus when respondent Nos.7 and 8 got permission to run the school, it was a minority institution. From the years 2008 to 2012 the school was run at Mahartakli by respondent Nos.7 and 8 and the record in that regard is produced. The record shows that in some classes like Class 5th and Class 6th the strength of the students was meagre like 20 and 24 and for Class 7th there was one division but no admission was there in this Class. The total strength was around 160 when the school was at Mahartakli. The record is also produced of other school like the school of the petitioner

for the year 2012-2013 and it shows that there were 257 students in the school of the petitioner. It is already observed that there is nothing with the petitioner to show that this strength came down after starting of the school by respondent Nos.7 and 8 at Chaklamba. In the table the particulars of the students who have obtained admission in the school of respondent Nos.7 and 8 are given and they show that hardly 8 students from Chaklamba have taken admission in the school of respondent Nos.7 and 8 and all other students are from the other places. Most of the students are coming from other villages. It is not disputed that majority of the students of the school run by respondent Nos.7 and 8 at Chaklamba are from Muslim community. These circumstances cannot be ignored by the Court in view of the provisions of Articles 29 and 30 of the Constitution of India and special privileges given to the minority institutions. In view of the aforesaid data it needs to be accepted that at Chaklamba respondent Nos.7 and 8 is able to achieve its object for which the institution is formed.

9) The submissions made show that the point of unhealthy competition is no more a valid point due to the reason of the policy decision of the State Government. Now, anybody can start schools at the place where there are already schools and the State Government grants permissions by ignoring the possibility of unhealthy competition. The State wants to see that the fittest survives and the students get better education. Due to these circumstances, this Court holds that interference in the decision taken by the respondent authority of transfer of the school is not possible. In the result, the petition stands dismissed.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

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