

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

WRIT PETITION NO. 5977 OF 2017

1. Khaja Bande Nawaz Educational and Social Welfare Society,
Through its Chairman,
Qazi Toufeeque Ahmed
Age 52 years, Occ. Service,
R/o. Plot No.6, N-12, CIDCO,
Near Himayat Baug, Aurangabad
Tq. & District Aurangabad.
2. Azeem Urdu Primary School,
Subzi Mandi, Paithan Gate, Aurangabad,
Through its Headmistress. ...Petitioners

Versus

1. The State of Maharashtra
Through the Principal Secretary
School Education Department,
Mantralaya, Mumbai
2. The Director of Education,
Maharashtra State, Pune.
3. The Deputy Director of Education,
Aurangabad Division, Aurangabad.
4. The Education Officer (Primary),
Zilla Parishad, Aurangabad. ... Respondents

Mr. S.S. Thombre, Advocate for the petitioners
Mr. A.S. Shinde, AGP for respondent/State
Smt. P.D. Patil with Mr. Deelip Patil Bankar, Advocate
for respondent No.4

WITH

WRIT PETITION NO. 6000 OF 2017

1. Khaja Bande Nawaz Educational and Social Welfare Society,
Through its Chairman,

Qazi Toufeeque Ahmed
 Age 52 years, Occ. Service,
 R/o. Plot No.6, N-12, CIDCO,
 Near Himayat Baug, Aurangabad
 Tq. & District Aurangabad.

2. Fatema Urdu Primary School,
 Bari Colony, Kiradpura, Aurangabad,
 Through its Headmistress.

...Petitioners

Versus

1. The State of Maharashtra
 Through the Principal Secretary
 School Education Department,
 Mantralaya, Mumbai
2. The Director of Education,
 Maharashtra State, Pune.
3. The Deputy Director of Education,
 Aurangabad Division, Aurangabad.
4. The Education Officer (Primary),
 Zilla Parishad, Aurangabad.

... Respondents

Mr. S.S. Thombre, Advocate for the petitioners
 Mr. R.B. Bagul, AGP for respondent/State
 Smt. P.D. Patil with Mr. Deelip Patil Bankar, Advocate
 for respondent No.4

**WITH
 WRIT PETITION NO. 6001 OF 2017**

1. Khaja Bande Nawaz Educational and
 Social Welfare Society,
 Through its Chairman,
 Qazi Toufeeque Ahmed
 Age 52 years, Occ. Service,
 R/o. Plot No.6, N-12, CIDCO,
 Near Himayat Baug, Aurangabad
 Tq. & District Aurangabad.
2. Azim Urdu Primary School,
 N-12, CIDCO, Aurangabad,

Through its Headmistress.

...Petitioners

Versus

1. The State of Maharashtra
Through the Principal Secretary
School Education Department,
Mantralaya, Mumbai
2. The Director of Education,
Maharashtra State, Pune.
3. The Deputy Director of Education,
Aurangabad Division, Aurangabad.
4. The Education Officer (Primary),
Zilla Parishad, Aurangabad.

... Respondents

Mr. S.S. Thombre, Advocate for the petitioners
Mr. G.O. Wattamwar, AGP for respondent/State
Smt. P.D. Patil with Mr. Deelip Patil Bankar, Advocate
for respondent No.4

WITH

WRIT PETITION NO. 6050 OF 2017

1. Khaja Bande Nawaz Educational and
Social Welfare Society,
Through its Chairman,
Qazi Toufeeque Ahmed
Age 52 years, Occ. Service,
R/o. Plot No.6, N-12, CIDCO,
Near Himayat Baug, Aurangabad
Tq. & District Aurangabad.
2. Dr. Zakir Hussain Urdu Primary School,
Shahbazar, Qaisar Colony, Aurangabad,
Through its Headmistress.

...Petitioners

Versus

1. The State of Maharashtra
Through the Principal Secretary
School Education Department,
Mantralaya, Mumbai

2. The Director of Education,
Maharashtra State, Pune.
3. The Deputy Director of Education,
Aurangabad Division, Aurangabad.
4. The Education Officer (Primary),
Zilla Parishad, Aurangabad. ... Respondents

Mr. S.S. Thombre, Advocate for the petitioners
Mr. C.S. Kulkarni, AGP for respondent/State
Smt. P.D. Patil with Mr. Deelip Patil Bankar, Advocate
for respondent No.4

**CORAM : PRASANNA B. VARALE
& S.M.GAVHANE, JJ.
DATED : 05.07.2018**

P.C. :-

Heard Mr.S.S. Thombre, learned counsel appearing for the petitioners, learned AGP appearing for respondent/State and Smt. P.D. Patil with Mr. Deelip Patil Bankar, learned counsel appearing for respondent No.4.

2. Petitioner No.1 is Education society running its school at various places in Aurangabad district. Our attention is invited to a certain issue by the competent authority with regard to the petitioner institute. Accordingly a minority institute status was granted to the petitioner institute. The identical issue is raised in this petitions. The submission is that the petitioner institute is running the classes from 1st to 7th standard in Urdu Medium and approval is also granted for running

these classes till 7th standard. By way of natural growth the students taking education in the petitioner's school would appear for the further classes namely for 8th and 9th standard. It is submitted before us that since year 2014, the petitioner institute is making request to the Education Officer (Primary) Zilla Parishad, Aurangabad for grant of approval to start 8th class. The necessary data is also supplied. The resolution is passed by the institute. It is submitted that similarly situated institutes are already granted the approval. The grievance of the petitioners is, in spite of repeated requests to the authority, more particularly, to the Education Officer, Zilla Parishad (Primary), Aurangabad, it failed to forward the proposal for approval of State Government. Reliance is placed on Government Resolution dated 10.03.2016. The learned counsel for the petitioners submits that if the proposals of the petitioners are forwarded to the State Government by the Education Officer, Zilla Parishad, Aurangabad at the earliest and if the State Government takes a decision on the proposal, it will facilitate to take a favourable decision on the proposal of the petitioners. It would facilitate the petitioners to admit the desirous students without any loss of the academic sessions.

3. Mr. Dilip Patil Bankar, learned counsel appearing for the respondent No.4 Zilla Parishad, Aurangabad by inviting our attention to communication dated 19.07.2017 placed on record alongwith the

affidavit filed by the Zilla Parishad submitted that in an enquiry it is revealed that in the radius of 3 Kms. from the school of the petitioner institute, there is already another school available for those students desirous of prosecuting their studies in 8th standard. This being condition which is prescribed in the Government Resolution dated 02.07.2013, the petitioner institute may not receive an approval from the State Government. This being an objection, the proposal of the petitioner institute is not forwarded to the State Government. Considering the matter placed on record the decision taking authority is the State Government. As per the circular, if the proposal is received by the State Government, the competent authority of the State Government shall decide the proposal on its own merits.

4. The Education Officer (Primary) of the Zilla Parishad, Aurangabad is certainly not the competent authority to take a decision on the aspect of grant of approval to the institute. The Education Officer, Zilla Parishad, Aurangabad may point out the deficiency or may raise some objection, but with some deficiencies and an objection, he will have to forward the proposal to the State Government for taking an appropriate decision. The Education Officer (Primary), Zilla Parishad, Aurangabad cannot exceed his jurisdiction and act as a decision taking authority. It would be beyond the powers of Education Officer (Primary), Zilla Parishad, Aurangabad.

5. Considering all these aspects we are of the

opinion that if the proposal is still pending with Education Officer (Primary), Zilla Parishad, Aurangabad, to forward the proposal to the State Government forthwith as early as possible and not later than two weeks from today. The Education Officer (Primary), Zilla Parishad, Aurangabad is at liberty to record his opinion on the proposal. If State Government receives the proposal forwarded by the Education Officer (Primary), Zilla Parishad, Aurangabad, to forward the proposal and to direct to the Education Officer (Primary) Maharashtra State, Pune within two weeks from today. The Director of Education if receives the proposal from Zilla Parishad, the Director to forward to the Education Department of the State of Maharashtra within two weeks and the competent authority of the State of Maharashtra to take decision on the proposal received from the Director of Education Officer (Primary), Zilla Parishad, Aurangabad within 8 weeks from the date he receives the proposal. The petitions are accordingly disposed of.

5. Parties to act upon authenticated copy of this order.

[S.M.GAVHANE, J.]

[PRASANNA B. VARALE, J.]