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

WRIT PETITION NO.5920 OF 2006

1. Vinayak Shikshan Prasarak Mandal,
At Nalegaon, Tq. Chakur, Dist. Latur,
Through its President
Suryakant s/o Narsingrao Chavan,
Age: 48 years, Occu: Agri.,
At Nalegaon, Tq. Chakur, Dist. Latur
 2. Kai. Narsingrao Chavan Primary School,
At Nalegaon, Tq. Chakur, Dist. Latur,
its Headmaster-
Savita d/o Shivajirao Shinde,
Age: Major, Occu: Service,
R/o Nalegaon, Tq. Chakur, Dist. Latur
- ..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Department of School Education,
Maharashtra State, Mantralaya,
Mumbai
 2. The Deputy Director of Education,
Latur Division, Latur
 3. The Education Officer (Primary),
Zilla Parisad, Latur,
Dist. Latur
 4. Ramrao s/o Baburao Budre,
Age: 45 years, Occu: Agri. &
Sarpanch of Village Panchayat,
Nalegaon, Tq. Chakur, Dist. Latur
- ..RESPONDENTS

Mr V. D. Gunale, Advocate for petitioners;
Mr R. B. Bagul, A.G.P. for respondent Nos.1 & 2;
Mr V. D. Hon, Senior Advocate for respondent No.3

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

DATE : 12th June, 2018

JUDGMENT:

Heard Mr Gunale, learned Counsel appearing for the petitioners, learned A.G.P. for respondent Nos.1 and 2 and learned Counsel for respondent No.3. None appears for respondent No.4.

2. The petitioner is an educational institute, imparting education to the students of primary classes in area known as Nalegaon, Tq. Chakur, Dist. Latur.

3. Mr Gunale learned Counsel for the petitioners invited our attention to the documents placed on record alongwith the petition. It was submitted by him that the petitioner was interested in starting a school for primary classes, as such, approached the Education Department seeking permission from it. He invited our attention to the documents placed on record at Exh.B. By way of communication dated 19th June, 2004, the Education Officer (Primary), Latur permitted the petitioner to start school for the primary classes from the year 2000 in marathi medium, subject to the condition that the institute will not be permitted to change the medium of instructions.

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4. Mr Gunale, learned Counsel submitted that on receiving the permission, the petitioner started the school by making necessary arrangements for infrastructure of the school and by appointing the required teaching and non-teaching staff. He then invited our attention to the reports placed on record to submit that periodical inspection was carried out by the Education authorities. He then submitted that in view of inspection report, the Education Officer found no serious faults and has given certain suggestions in the report. He submitted that the Education Officer, in his report, recorded that the school is running satisfactorily. He then submitted that due to some political rivalry, the political opponent of the petitioner started making ill fated complaints against the petitioners and was creating hindrances in the smooth administration being run by the petitioners. As an attempt to oppose to the petitioner, the petition was also filed in this Court at the instance of respondent No.4. He invited our attention to the document i.e. Exh.E to submit that respondent No.4 though filed writ petition in this Court, sought withdrawal of the said petition. He submitted that the present petitioner was respondent No.4 in Writ Petition No.3695 of 2005 and it was submitted before this Court that as per the submission of the petitioner before this Court, the communication dated 19th August, 2005 was not genuine one and the withdrawal of the petition was opposed. The Division Bench of this Court thought it fit not to dilate on the controversial submissions. Resultantly, the petitioner was permitted to withdraw the petition and the same was disposed of as withdrawn.

5. Mr Gunale, learned Counsel invited our attention to the communication dated 2nd March, 2006. The communication was at the instance of respondent No.3 to respondent No.2. He submitted that respondent No.3 on his own assumption and presumption, communicated to respondent No.2 that there were directions issued by the Division Bench of this Court, while disposing of Writ Petition No.3695 of 2005. Respondent No.3 then sought for guidance and submitted communication for appropriate decision to respondent No.2. He then, by inviting our attention to the communication dated 3rd April, 2006, impugned in the present petition, submitted that though the petitioner was running the school at a place i.e. Nalegaon on a permission granted by the Education Officer, respondent No.3, again on an erroneous impression, observed that the petitioner failed to shift its school at Nalegaon, Tq. Chakur in view of the affidavit and refused to grant permission to run classes for 5th standard. Mr Gunale submitted that the Education Officer also referred to certain facts which were clearly in contrast to the record in communication dated 2nd March, 2006. He submitted that the Education Officer i.e. respondent No.3, on his own, treated the matter as if the matter is of serious consequences and complication when there was nothing of that sort. He submitted that the petitioner was left with no choice but to challenge the order dated 3rd April, 2006, passed by the Education Officer by filing the present petition.

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6. Mr Gunale, learned Counsel then submitted that while issuing notice to the respondents, by an order dated 13th October, 2006, the Division Bench of this Court was pleased to grant ad-interim stay to the communication dated 3rd April, 2006, which is impugned in the present petition. He then submitted that on 30th July, 2010, this Court was pleased to record the submission of the learned Counsel, that the institute is running the school and imparting the education to the students upto 7th standard. The Division Bench was pleased to refer to the earlier orders and Rule was granted and interim relief was continued by the said order dated 30th July, 2010. He submitted that by an order dated 30th July, 2010, the petitioner has also received the permission to run the classes upto 10th class and petitioner is running the school at a place, namely, Nalegaon from 1st standard to 10th standard. Mr Gunale then submitted that the communication dated 3rd April, 2006, forwarded by the Education Officer is wholly unsustainable and same be quashed.

7. Learned Counsel appearing for respondent No.3 though made an attempt to submit before this Court that the petitioner sought for permission to start the school at a place, namely, Industrial area, Nalegaon, he had not shifted the school to the said place. As such, the communication dated 3rd April, 2006 was forwarded by the Education Officer. He opposes the petition.

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8. Having heard rival submissions of the learned Counsel appearing on behalf of the respective parties, we have gone through the material. We have referred to the material to which our attention is invited by Mr Gunale, learned Counsel for the petitioners. On perusal of the material placed on record, we find considerable merit in the submission of Mr Gunale, learned Counsel for petitioners. The Division Bench of this Court, by an order dated 8th September, 2005, permitted the petitioner to withdraw the writ petition. The petition was dismissed accordingly in view of the permission sought for withdrawal. There is nothing in the order of the Division Bench of this Court in respect of issuing directions to the department in view of the affidavit filed by respondent No.3. We fail to understand that if that is the situation, how respondent No.3, in his communication dated 2nd March, 2006 sought guidance from respondent No.2 submitting that there were certain directions of this Court while disposing of the writ petition.

9. Mr Gunale, learned Counsel was also justified in submitting that the communication dated 3rd April, 2006 is not in consonance with the record and the Education Officer, for the reasons best known to him stated that the petitioner was to start the school in an area, namely, Industrial area at Nalegaon. He invited our attention to the permission granted to the petitioner which is placed on record at Exh.B. The place where the petitioner wanted to start school at Nalegaon, Tq. Chakur and there is no reference to the place as Industrial area, Nalegaon. If this communication is

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under the signature of Education Officer (Primary), we are unable to understand how the Education Officer states in his communication that the petitioner sought permission to start the school at a place, namely, Industrial area inspite of such permission and the petitioner has failed to shift his school to that area, namely, Industrial area, Nalegaon. Mr Gunale was also justified in submitting that the communication forwarded by respondent No.3 is nothing but his own assumption and presumption and on erroneous reading of the record. It is not disputed by the learned A.G.P. as well as the learned Counsel appearing for respondent No.3 that at present, petitioner is running the school for classes from 1st standard to 10th standard. It is also not disputed that all the infrastructure is made available by the petitioner in the school. The documents placed on record by the Education Officer show that all the requisite compliance is done by the petitioner in the school, namely, infrastructure and staff.

10. Considering all these facts, we are of the clear opinion that the impugned communication in the petition is clearly unsustainable. Resultantly, the petition needs to be allowed and is allowed accordingly. The communication dated 3rd April, 2006, impugned in the petition is hereby quashed and set aside. Rule made absolute accordingly.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)