

(1)

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

**WRIT PETITION NO. 6913 OF 2018
WITH
CIVIL APPLICATION NO. 9384 OF 2018
IN
WRIT PETITION NO. 6913 OF 2018**

1. Saraswati w/o Tatya Dombale,
Age: 28 years, Occ: Household
and Sarpanch, R/o. Vanjarwadi,
Tal. Bhoom, Dist. Osmanabad.
2. Datta w/o Ramu Chormale,
Age: 34 years, Occ: Agri.,
R/o. Vanjarwadi, Tal. Bhoom,
Dist. Osmanabad. ..PETITIONERS

VERSUS

1. The State of Maharashtra
through the Secretary to the
School Education Department,
Mantralaya, Mumbai-32.
2. The Director of Education,
Maharashtra State, Pune,
Dist. Pune.
3. The Deputy Director of Education,
Latur Region Latur, Dist. Latur.
4. The Head Master,
Dr. Padamsinha Patil High School,
Vanjarwadi, Tal. Bhoom,
Dist. Osmanabad.
5. The Secretary, Banganga Public
Charitable Trust, Bhoom,
Tal. Bhoom, Dist. Osmanabad. ..RESPONDENTS

(2)

Mr Anant R. Devakate, Advocate for petitioners;
Mr S.M. Ganachari, A.G.P. for respondent Nos. 1 to 3;
Mr Nikhil S. Tekale, Advocate for respondent Nos. 4 and 5

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

DATE : 31st JULY, 2018

ORAL ORDER :

Heard Mr. Devkate, learned Counsel appearing for the petitioners.

2. The grievance of the petitioners is in the nature of challenge to the order passed by the State Government dated 14th June, 2018. By the said order, the State Government permitted respondent No.4 society/trust to transfer the secondary from a place Vanjarwadi, Taluka Bhoom, District Osmanabad to a place Devlali, Taluka Bhoom, District Osmanabad. Learned Counsel appearing for the petitioners vehemently submitted that the order impugned in the petition is

(3)

unsustainable.

3. Petitioner No.1 is Sarpanch of village Vanjarwadi, Taluka Bhoom, District Osmanabad, whereas petitioner No.2 is parent of ward i.e. daughter studying in 9th standard. Learned Counsel appearing for the petitioners submitted that respondent No. 5 trust/institute was running school at a place Vanjarwadi, Taluka Bhoom, District Osmanabad and suddenly said school is being transferred to a place Devlali, Taluka Bhoom, District Osmanabad causing disturbance in the academic career of the students.

4. Learned Counsel appearing for the petitioners, by inviting our attention to the copy of Government Resolution dated 31st July, 2013 placed on record at Exhibit-B, submitted that norms and procedure is stated in the said Government Resolution in the cases of effecting transfer of schools from one place to another place. He submitted that institute can seek transfer in

(4)

exceptional cases namely (i) if existing building of the school is in a dilapidated condition and it would be causing danger to the students who are taking education in the school, (ii) if existing building is inadequate to accommodate the students and institute is desirous to shift the school in a sufficient and adequate place and (iii) the institute is shifting school from rented premises to its own premises.

5. Learned Counsel appearing for the petitioners then submitted that pre-requisite condition are Nos. (i) to (viii) of clause-2 of the above referred Government Resolution dated 31st July, 2013. He submitted that out of these pre-requisite condition Nos. (ii)(iv)(vi)(vii) and (viii) are important pre-requisites. He submitted that village *gramsabha* scheduled on 18th June, 2018 passed a resolution of majority members opposing the transfer of the school. Learned Counsel also submitted that as there is no school available nearby pre-requisite No. (vii) of clause-2 is not

(5)

complied with. Learned Counsel also placed a heavy reliance on condition No. (ii) of the order dated 14th June, 2018. It was submitted that before permitting institute to shift school from one place to another, the authorities ought to have verify about consent of the parents whose wards were taking education in the school and such consent was not obtained. He also made an attempt to submit that permission to shift school from one place to another is only on consideration of a request made by a local representative.

6. The petition is opposed by learned A.G.P., by inviting our attention to the reply filed by the State as well as learned Counsel appearing for respondent Nos. 4 and 5. Learned A.G.P. submitted that there is a strict compliance of pre-requisites in the matter of shifting of the school as per Government Resolution dated 31st July, 2013. Learned A.G.P. then submitted that as per procedure laid down in the above referred Government Resolution, the Education Officer submitted his

(6)

report to Deputy Director of Education and that report, in turn, was submitted before the State Government for necessary approval and for passing appropriate orders. Our attention was invited to the proposal submitted by respondent No.4 trust, documents placed along with proposal, communication between Deputy Director of Education and Education Officer (Secondary) Osmanabad and communication between Deputy Director of Education, Latur Division and Principal Secretary of School Education and Sport Department.

7. On hearing rival submissions and on going through the material placed on record, we are of the opinion that the petition is pre-mature. Though learned Counsel for the petitioner made an attempt to submit before us that the transfer is effected in view of the letter issued by the local representative of people, as such, transfer is unsustainable, we are unable to accept the submission at the threshold for the reason that letter submitted by the local representative is

(7)

only making request to authority to consider the proposal on merit. Being a local representative, local representative was not prevented from considering the grievance of the people to whom he represents and submit before authority to take appropriate decision on the proposal on merit.

8. Now, insofar as other grounds raised by learned Counsel appearing for the petitioner are concerned, learned Counsel for the petitioner himself placed a heavy reliance on the pre-requisites of the resolution. As stated above, one of the pre-requisites is, the Education Officer has to submit his self speaking report to the Deputy Director of Education. In the present matter, communication placed on record shows that Deputy Director of Education informed the Education Officer to submit his self speaking report. The Education Officer, in turn, informed the Deputy Director by way of report that the proposal is received. It is then stated that a nearby school namely Bhagwanti Vidyalaya Handogri, Taluka Bhoom,

(8)

District Osmanabad was ready to accommodate the students of 8th to 10th Standard classes in that school. It is then stated that distance between existing school and place where institute is desirous of shifting school is 5 kms.

9. The copy of the proposal submitted by the institute, which is placed on record along with affidavit in reply of the State dated 5/3/2018-16/3/2018 shows that the institute submitted proposal on account of inadequate space available with the petitioners so as to provide infrastructural facilities to the students. It is stated that resolution is passed by the institute/trust to shift school at Devlali, wherein adequate and sufficient place is available so as to accommodate students and provide them all infrastructural facilities. It is also stated that the distance between these two places is less than 5 kms.

10. In the affidavit in reply of Deputy

(9)

Director of Education, it is stated that in the periphery of 3 kms. from village Vanjarwadi, there is another grant in aided secondary school is available namely Sanjay Vidyalaya Aarsoli, Tq. Bhoom. Thus, this statement takes care of complying with pre-requisites of accommodating students in another school. This fact is re-iterated in the affidavit in reply filed on behalf of respondent Nos. 4 and 5. It is stated in the reply at paragraph-9 that students at Vanjarwadi have taken admissions in other schools at village Arsuli, Hanungri and in Bhoom and these schools are not more than 3 kms from village Vanjarwadi. It is also stated that now academic session is already started and about 60 students have taken admission for 8th to 10th Standard classes and in such situation, the prayer of the petitioners to admit the students at Devlali i.e. place where the permission is granted to shift school from earlier place Vanjarwadi would jeopardize the interest of the students and students would only disturb academic session, if such re-transfer is permitted.

(10)

11. It will be useful to refer to clause (10) of the order dated 14th June, 2018 i.e. order impugned in the petition. Clause (1) of the order stats that if if any grievance is raised either before Regional Officer of the Education Department or before State Government in respect of transfer of the school and if it is complained of breach of certain conditions, in that case, the State Government on consideration of such complaint/grievance may take appropriate decision of cancellation of shifting. In view of this clause, we have put a specific query to learned Counsel for the petitioners that whether the petitioners had availed such remedy before approaching this Court, he submits that he is not aware whether the petitioners had availed such remedy.

12. In view of above referred facts and in view of clause (10) of the order dated 14th June, 2018, we are of the opinion that the petition is

(11)

pre-mature and the petitioners without exhausting remedy which is available to them in the order impugned itself approached this Court. Learned Counsel appearing for the petitioners submits that the petitioners be permitted to avail this remedy and raise grievance before the authority either Regional Education Officer or before the State Government as per clause (10) of the order.

13. Considering all these facts, we are of the opinion that the petition can be disposed of by permitting the petitioners to avail remedy in accordance with clause (10) of the order impugned i.e. Regional Authority of Education Department or to approach State Government, if till date, they have not availed such remedy. If such remedy is availed by the petitioners, Regional Authority of Education Department or competent State Authority to decide the grievance on its own merits as early as possible. If such remedy is availed by the petitioners, institute in whose favour the order of shifting is passed, be granted opportunity of

(12)

hearing, if such opportunity is claimed by the institute before the authority.

14. With above directions, the petition is accordingly disposed of.

15. In view of disposal of the petition, no orders are required to be passed in civil application. Civil Application is also disposed of.

(S. M. GAVHANE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

Tupe