

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

WRIT PETITION NO. 8242 OF 2018

THE HEAD MASTER MILLIYA PRATHMIK SHALA URDU AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. C.V. Thombre, Advocate for the petitioners
Mr. S.S. Dande, AGP for the respondent/State

**CORAM : PRASANNA B. VARALE
& S.M.GAVHANE, JJ.
DATED : 24.07.2018**

P.C. :-

Heard Mr.C.V. Thombre, learned counsel appearing for the petitioners and Mr.S.S. Dande, learned AGP appearing for the respondent/State.

2. These petitioners are the Head Masters of various schools being run by different education institutes or the managements. The challenge is raised in the petition to the notice issued on 08.06.2018. Initially it was an attempt of the learned counsel Mr. Thombre to submit before this Court that issuance of such notice itself is unsustainable, in view of the judicial pronouncement of this Court. Subsequently Mr. Thombre on instructions submitted that in response to this notice the petitioners have submitted their replies to respondent No. 2 i.e. The Education Officer (Primary), Zilla Parishad, Beed. Thus Mr. Thombre then submitted that the respondent-authorities be permitted to consider the reply/replies filed by the petitioners and then may take appropriate action.

3. Mr. Thombre, learned counsel submitted that

copies are supplied to the counsel appearing for the respondent No.2. Mr. V.M. Chale waives notice for respondent No. 2 and Mr.S.S. Dande, learned AGP waives notice for respondent No. 1. On this backgdrop, it will be useful to refer to the notice issued to these petitioners. These notices are placed on record collectively at Exh. "B". The perusal of the notices shows that there is reference of Public Interest Litigation No.18 of 2012 and 31 of 2012 and it is stated that the directions are issued by this Court from time to time in the Public Interest Litigation. Then the communication further refers a tabular chart of the name of the school UDAISE number of this school. The strength of the school in year 2011 is on record. The strength of the students actually verified. Then it is referred to UDIASE number and deduction of strength of students year wise. Then the notice states that as per the tabular chart, it reveals that there is a consistence decrease in number of strength of students; whereas notices have shown more number of students on record. It is then stated that the institutes are also asked for additional division showing the increase in the strength of students. Then it is stated that by such record these institutes submitted the request to the State Government for additional teaching staff and the other financial help from the state, as such, for the meals, uniforms, stationary, books of the syllabus, tuition fees, scholarship etc. Then communication states that this attempt of showing the increase in the number of strength to obtain the Government grants and benefits is in breach of various provisions of the School Code and breach of the provisions of the Right to Education Act.

Then in the notice it was directed to submit his reply within stipulated period of 15 days and then it was informed that if such reply is not within stipulated period, the authority may take further appropriate action in the matter.

4. Mr. Thombre in his submission invited our attention to the judgment of this Court reported in 2014(2) All MR 605 in the case of Mahila Vikas Mandal, Aurangabad & Ors. Vs. The State of Maharashtra & Ors. The legality and validity of Government resolution dated 02.05.2012 was challenged before this Court. The Division Bench of this Court in his detailed judgment while considering the provisions of the Bombay Primary Education Act. The Bombay Primary Education Act qua the Constitution of India was placed to observe thus:

"48. In the instant matter, as has been concluded by process of reasoning recorded above, that the directives issued by the State Government under the Government Resolution dated 02.05.2012 are found to be contradictory with the provisions of law and the Rules framed thereunder, those are required to be quashed and set aside. At the same time, it is specifically clarified that powers of the State Government to initiate criminal prosecution against the management of the private schools, Head Master, teachers and other employees, is not taken away and in the event, it is found that the private managements or its employees have indulged in the activities which amounts to an offence under the provisions of the Indian Penal Code or any other enactment, it would be open for the State Government to initiate prosecution against such managements and the employees concerned. However, the Managements and the employees cannot be prosecuted and charged with commission of

offence merely because during special drive, attendance of the students in the school was found to be less than 50%. The management as well as employees of the schools, if are suspected to be guilty of fabricating the record or indulging in any unlawful activities and are responsible for creating false record to demonstrate inflated strength of students in school with a view to extract inadmissible financial gain, they can be prosecuted by taking recourse to the provisions of the Indian Penal Code.

49. We are of the view that the directives issued by the State Government contained in Government Resolution dated 02.05.2012, issued by the State Government in clauses 1.2, 1.3, 1.4, 1.5, 1.6 and 1.7 needs to be quashed and set aside and are accordingly quashed and set aside."

5. The Government Resolution dated 02.05.2012 also placed on record.

6. Though the learned counsel Mr. Thombre initially submitted that in view of the judgment of the Division Bench of this Court, issuance of notice is unsustainable, as the Division Bench was pleased to quash and set aside clauses 1.2, 1.3, 1.4, 1.5, 1.6 and 1.7 of the resolution. We are unable to accept submission of the learned counsel. If the said clauses which are quashed and set aside and struck down by the Division Bench of this Court, read co-jointly with the observation of the Division Bench, it clearly shows that the clauses No. 1.4, 1.5, 1.6 and 1.7 were about initiation of action against the teaching staff. Clauses 1.2 and 1.3 were in respect of concerning fixing of staff pattern in Primary and Secondary School and its prerequisite is 15th July students attendance and clause

1.3 was the notice to be issued to the school for cancellation of their approval recognition wherein the attendance of student is less than 20%. Clause 1.5 is about the accommodation of the teachers who are declared surplus in the other schools. Now it can be safely state that by quashing and set aside its clauses, the Division Bench took into consideration the interest of the teachers and prevented the State to initiate criminal action against the teaching staff and the other and also prevented to initiate departmental action against the officers or the subordinate staff. By no stretch imagination it can be stated that while quashing and setting aside these clauses, this Court wanted to cause any prejudice to the students or by the judgment and order, The Division Bench has prevented the State Government to exercise its powers to take appropriate steps when it is brought to the notice of the authority that the institute by playing mischief is indulging in the act of jeopardising the interest of the students community at large. The notice clearly states that on assessment the state authority found that there was a consistent decrease in the strength of students; whereas the institutes by showing large number of students on paper obtained various benefits from the State Government.

7. Clause 4 of the notice clearly states that action would be initiated. The notice though states that action would be initiated against noticy of the school, the notice then is granted an opportunity submit reply within stipulated period. In fact situation in view of the judgment of the Division Bench and more particularly

in view of quashing the clauses 1.2, 1.3, 1.4, 1.5, 1.6 and 1.7 of the Government Resolution dated 02.05.2012, the teaching staff would be protected and if the State Government finds that the reply submitted to it is not satisfactory enough, the State Government may initiate action against the institute or the management of the institute. Thus the notice by itself is not a coercive action against the noticy. We are of the opinion that by the said notice, the authorities are giving an opportunity of hearing to these petitioners.

8. The learned counsel Mr. Thombre submitted that the petitioners have submitted their reply to the authorities in response to the notice. The authorities have not taken any decision till date. Considering this fact situation, we are of the opinion that the petition is premature petition. The petition can be disposed of at the admission stage itself with the only direction that if the respondent No.2 has received the reply to the notice issued to this petitioners, the respondent No.2 to take appropriate steps as expeditiously as possible. The respondent No.2 is permitted to grant personal hearing if the petitioners made such request before the respondent No.2 within one week from today. With these directions, the petition is disposed of.

[S.M. GAVHANE, J.]

[PRASANNA B. VARALE, J.]