

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

WRIT PETITIOIN NO. 8509 OF 2016

1. Walmiki Shikshan Prasarak Mandal,
Gavane Road, Parbhani,
Dist. Parbhani,
Through its Secretary
2. Shantabai Nakhate Vidyalaya
Kasapuri, Tq. Pathri, Dist. Parbhani
Through its Head Master

..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32.
2. The Director of Education
(Secondary & Higher Secondary),
Maharashtra State, Pune-1.
3. The Deputy Director of Education,
Aurangabad Region, Aurangabad.
4. The Education Officer (Secondary),
Zilla Parishad, Parbhani.

..RESPONDENTS

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Shri V.S. Panpatte, Advocate for the petitioners.
Shri P.K. Lakhotiya, AGP for Respondent/State.

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 06.02.2018
Pronounced on : 22.02.2018

JUDGMENT : (Per S.S.Shinde, J.):

. Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, heard finally.

2. The background facts for filing the present Petition, as disclosed in the memo, in brief are as under:

It is the case of the petitioners that, petitioner no.1 is an educational institution and has been running petitioner no.2 – secondary school having 5th to 10th standard. Respondent Nos.2 and 3 on 16th November, 1993 have granted permission to run petitioner no.2 school from the academic year 1993-1994 on no grant basis at village Kasapuri, Tq. Pathri. It is the case of the petitioners that, as per natural growth, the Respondents have also granted permission to

run 9th and 10th standard classes in petitioner no.2 – school from the academic year 1994-95 and 1995-96 respectively. Thereafter, due to increase of strength of students in 8th class, petitioner no.2 became eligible to get 2nd division as per natural growth, and accordingly, Respondent No.4 by order dated 16th March, 2001 granted permission to run 2nd division of 8th class from the year 2000-2001 on no grant basis. Thereafter, as per natural growth, petitioner no.2 – school also became eligible to get 2nd division of 9th class from the year 2001-02, and accordingly Respondent No.4 by order dated 5th November, 2004 granted permission to run 2nd division of 9th class from the year 2001-02 on no grant basis, and from the respective years petitioner no.2 – school is running two divisions of 8th and 9th classes.

3. It is the case of the petitioners

that, in due course, as per the policy of the State Government for sanction of grant-in-aid, 8th to 10th classes of petitioner no.2-school became eligible for getting grants in phases. Accordingly, Respondent No.4 by order dated 10th January, 2007 for the year 2006-07 sanctioned 40% and 60% grant-in-aid to all the classes including 8th to 10th standard of petitioner no.2 – school. Again Respondent No.4 by order dated 18th July, 2007 sanctioned 60% and 80% grant-in-aid for the year 2007-08. It is the case of the petitioners that, thereafter by order dated 28th July, 2008, Respondent No.4 sanctioned 80% grants for the year 2007-08 and 100% grants for the year 2008-09 to 2nd division of 8th class. So also by order dated 21st June, 2009, Respondent No.4 sanctioned 80% grants for the year 2007-08 and 100% grants for the year 2008-09 to 2nd division of 9th class. It is the case of the petitioners that, since two

divisions of 9th class were run by petitioner no.2 – school from the year 2001-02, the strength of students in 10th class has been increased in the year 2002-2003, and from that year the strength of students of 10th class is more than 70. Therefore, the 10th class of petitioner no.2 – school was also entitled to get 2nd division in view of natural growth on no grant basis from the year 2002-2003 itself, as per the policy of the State Government in view of the Government Resolution dated 30th April, 2001. It is the case of the petitioners that, in view of the above, the petitioners moved proposal before Respondent No.4 in the year 2003 itself, seeking permission to run 2nd division of 10th class and thereafter also made persuasion from time to time. However, Respondent Authorities did not consider the said proposal for grant of 2nd division in 10th class for years together.

In the meanwhile, the strength of students of 10th class of petitioner no.2 were increasing and from the year 2006-07 till the year 2012-13, strength of 10th class is more than 120, which is clear from staff sanction letters issued by Respondent No.4 every year. It is the case of the petitioners that, thereafter again petitioner no.2 moved proposal dated 18.09.2007 before Respondent No.4 for grant of 2nd division of 10th standard as per the natural growth. However, the said proposal has neither been responded nor considered.

4. It is the case of the petitioners that, Respondent authorities did not consider the proposal of the petitioners for permission to run 2nd division of 10th standard in petitioner no.2 -school as per natural growth from the year 2002-03 on no grant

basis, as per the policy of the State Government existing during relevant period and the claim of the petitioners has been considered for grant of 2nd divisions for 8th and 9th classes. The Respondent authorities earlier did not consider the claim of the petitioners for years together for grant of 2nd division of 10th class as per natural growth from the year 2002-03 as per the policy then existing, namely, Government Resolution dated 30th April, 1991 and in the year 2012 only wrongly included the said additional division for permission with other schools and accordingly, respondent No.1 issued order/G.R. dated 16th August, 2012. Respondent No.4 by order dated 4th January, 2013 granted permission to run 2nd additional division of 10th standard from the year 2012-13, and that too on no grant basis, meaning thereby that from the year 2012-13.

5. Learned counsel appearing for the petitioners submits that, the impugned order dated 4th January, 2013 issued by Respondent No.4 is discriminatory, capricious and arbitrary, which has not only resulted injustice to the petitioners but also to the students of the said division and the teaching staff of said division, which is violative of Articles 14 and 21 of the Constitution of India, and hence, it is necessary to quash and set aside the order dated 4th January, 2013 issued by Respondent No.4, and it is necessary to direct the respondents to grant permission of 2nd division of 10th class in petitioner No.2 school from the year 2002-2003 on no grant basis and from the year 2010-2011 on 100% grant-in-aid.

6. Pursuant to the notices issued to the Respondents, Respondent No.4 has filed

the affidavit in reply. It is stated in the said affidavit in reply that, by communication dated 4th January, 2013, the office of the Education Officer has granted permission for additional divisions for 7th standard, 3rd division for 8th standard and second division for 10th standard from 2012-13 on no grant basis on certain terms and conditions. It is stated that, as per the Government Resolutions dated 18th October, 2000, 15th November, 2011, 16th March, 2012 and 16th August, 2012, the 100% grants to the unaided educational institutions is permissible after period of five years from the date of their eligibility for evaluation i.e. 20% for first year, 40% for second year, 60% for third year, 80% for fourth year and 100% for 5th year. Therefore, learned A.G.P. appearing for the Respondent/State, relying upon the averments in the affidavit in reply, submits that, the impugned decision is in

consonance with the policy of the State Government, and therefore, this Court may not entertain the Petition.

7. We have considered the submissions of learned counsel appearing for the petitioner and learned A.P.P. appearing for Respondent/State. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein, annexures thereto and the reply filed by Respondent No.4.

8. At this juncture, it would be apt to make reference to the factual aspects stated in para 4 of the Petition. It is stated in the said paragraph that, since two divisions of 9th class were run in petitioner no.2 – school from the year 2001-02, the strength of students in 10th class came to be increased in the year 2002-2003, and from that year the

strength of students of 10th class is more than 70. Therefore, the 10th class of petitioner no.2 – school was also entitled to get 2nd division in view of natural growth on no grant basis from the year 2002-2003 itself, as per the policy of the State Government by Government Resolution dated 30th April, 2001. It is the case of the petitioners that, therefore, the petitioners moved proposal before Respondent No.4 in the year 2003 itself seeking permission to run 2nd division of 10th class and thereafter also made persuasions from time to time. However, Respondent Authorities did not consider the said proposal for grant of 2nd division in 10th class for years together. In the meanwhile, the strength of 10th class of petitioner no.2 went on increasing and from the year 2006-07 till the year 2012-13, strength of 10th class is more than 120, which is clear from staff sanction letters issued by Respondent No.4

every year. It is the case of the petitioners that, thereafter again petitioner no.2 moved proposal dated 18.09.2007 before Respondent No.4 for grant of 2nd division of 10th standard as per the natural growth. However, the said proposal has neither been responded nor considered.

9. It appears that, the Respondent Authorities considered the proposal of the petitioners for permission to run second division of 10th standard in petitioner no.2 – school, however, by the impugned decision, the second division of 10th standard is approved since the academic year 2013.

10. In that view of the matter, keeping in view the aforementioned aspects, we direct Respondent No. 4 to reconsider the decision of granting additional division, keeping in view the gradual increase of the students for

10th standard for the academic year 2004-2005 and also keeping in view the relevant policy existing at the relevant time in the year 2004-2005, when the petitioners applied for additional divisions of the 10th standard. Such decision to be taken by Respondent No.4, as expeditiously as possible, however, preferably by the end of April, 2018 and communicate the said decision to the Director of Education, to the office of Respondent No.3 and the petitioners also.

11. The Petition is partly allowed and the same stands disposed of. Rule made absolute accordingly.

12. The parties shall act upon authenticated copy of this order.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE