

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

**WRIT PETITION NO. 10984 OF 2015**

Maharashtra Education Society

Through its President

.. **Petitioner**

**Versus**

The State of Maharashtra and others.. **Respondents**

Mr. R. J. Godbole, Advocate for the Petitioner.

Mrs. M. A. Deshpande, Addl. G. P. for Respondent  
Nos. 1 and 3.

Respondent No. 2 – served.

**CORAM: S. V. GANGAPURWALA &**  
**S. M. GAVHANE, JJ.**

**DATE: 12<sup>th</sup> September, 2018**

**PER COURT :**

1. The present petitioner had initially applied for starting Urdu medium secondary school from 8<sup>th</sup> to 10<sup>th</sup> standard in the year – 2008.

2. The learned Advocate for the petitioner submits that some of the Institutions that had applied for permission to start Urdu medium secondary school were granted permission on 27<sup>th</sup> August, 2009. The proposal of the petitioner was rejected under order dated 26<sup>th</sup> February, 2010. The

petitioner approached this Court by filing Writ Petition No. 4689 of 2010. This Court allowed the writ petition observing that the premise on which the permission was negatived was erroneous. The school from 1<sup>st</sup> to 7<sup>th</sup> standard existed in the vicinity where the petitioner had applied for permission to start 8<sup>th</sup> to 10<sup>th</sup> standard. This Court under order dated 12<sup>th</sup> August, 2010 in Writ Petition No. 4689 of 2010 directed the respondent – State to decide the proposal of the petitioner afresh by taking into consideration the existence of Zilla Parishad school at Village – Khasgaon. The learned Advocate states that, thereafter again the respondent rejected proposal of the petitioner under order dated 8<sup>th</sup> November, 2010 on the ground that the mapping of new schools is being made and after preparation of the perspective plan only the decision would be taken. The petitioner again approached by filing Writ Petition No. 741 of 2011. This Court set aside the said order and directed the respondents to re-apply their mind on

the proposal of the petitioner in accordance with law within three months. The proposal is again rejected on the ground that the school at Village - Khasgaon is not in the perspective plan.

3. Learned Advocate for the petitioner further submits that this Court under order dated 3<sup>rd</sup> October, 2013 in Writ Petition No. 741 of 2011 directed the respondents to consider the position as existing when the first order rejecting the proposal of the petitioner was passed. This Court only allowed respondents to consider if any other schools in the vicinity have come up apart from that the respondents were directed to consider the position as prevailing when the first order was passed rejecting the proposal of the petitioner i.e. 26<sup>th</sup> February, 2010. The learned Advocate submits that the other institutions who had applied along with the petitioner were granted permission on non-grant basis, and subsequently that are brought on grant-in-aid. The petitioner – institution is discriminated. The ground on which

the first order was passed rejecting the proposal of the petitioner was found to be erroneous by this Court. This Court in the subsequent order had instructed the respondents to consider the position as prevailing when the first order was passed. In view of that, the respondents could not now have rejected the proposal on the ground that Village – Khasgaon is not in the perspective plan. The same would be contrary to the order passed by this Court in Writ Petition No. 741 of 2011 dated 3<sup>rd</sup> October, 2013.

4. The learned Advocate further submits that there are not many students for Urdu medium. The respondents cannot deny the permission to the petitioner to start Urdu medium school on non-grant basis. The Education Officer has also communicated that within the vicinity of 10 Kms. of Village – Khasgaon there is no other secondary school from 8<sup>th</sup> to 10<sup>th</sup> standard. The said aspect has also not been considered.

5. The rights of the petitioner cannot be denied on such grounds.

6. The learned Additional Government Pleader submits that the policy as is prevailing will have to be considered. The perspective plan has been prepared. In the perspective plan the Village – Khasgaon where the petitioner has given proposal to start Urdu medium 8<sup>th</sup> to 10<sup>th</sup> standard school is not provided. According to the learned Addl.G.P. the petitioner can be granted permission on self finance basis.

7. We have considered the submissions canvassed by the learned Advocate for the petitioner and the learned Additional Government Pleader.

8. It appears that this Court had set aside the first order rejecting the proposal of the petitioner for starting 8<sup>th</sup> to 10<sup>th</sup> standard Urdu medium secondary school on the ground that the reasons mentioned is erroneous. Thereafter again the proposal was rejected. This court in Writ

Petition No. 741 of 2011 under order dated 3<sup>rd</sup>

October, 2013 observed thus -

"...

6] *Impact of perspective plan can be looked into by respondents while evaluating the proposal. Pendency of challenge before the larger bench cannot be a reason to frustrate the consideration in terms of the orders passed by this court dated 12<sup>th</sup> August, 2010 and to continue the injustice suffered by petitioner.*

7] *This court had directed reconsideration after noticing that similarly placed institutes were permitted to open schools and their requests were granted. Had petitioner been granted permission alongwith those institutions, it is apparent that subsequent development could not have come in its way. Hence, we direct the respondents to consider the entitlement of the petitioner in terms of the order dated 12<sup>th</sup> August, 2010 in accordance with the position prevailing when the proposal of the petitioner was first rejected. However, if thereafter any other schools in vicinity have come up, impact of those schools on proposal of the petitioner also needs to be looked into because those other schools are not parties before this Court and their existence cannot be jeopardized because of our orders."*

9. This Court directed the respondent to consider the position prevailing when the proposal of the petitioner was first rejected. It also allowed the respondents to consider the impact of the perspective plan while evaluating the

proposal. The order rejecting the proposal of the petitioner records that 100 places have been located in the perspective plan for giving permission for starting Urdu medium school. As per Circular dated 13.08.2014 Village – Khasgaon where the petitioner has sought permission to open the new Urdu medium school does not find place in the said perspective plan. If the said place would have found place in the perspective plan, no doubt, the petitioner could have claimed its right to start the Urdu medium school at Village – Khasgaon on non- grant basis. However, in the present perspective plan Urdu Medium school at village – Khasgaon is not provided. This Court under order dated 3<sup>rd</sup> October, 2013 in Writ Petition No. 741 of 2011 allowed the respondents to consider the impact of the perspective plan while evaluating the proposal of the petitioner. In the perspective plan the place where the petitioner sought permission to start the Urdu medium 8<sup>th</sup> to 10<sup>th</sup> standard secondary school does

not find place. In view of that, the claim of the petitioner could not be considered. We cannot allow permission against the policy and against the perspective plan. It is stated that if the petitioner wants to start the school at the place which is not in the perspective plan, then the petitioner's case can be considered for granting permission on self finance basis.

10. In the light of aforesaid discussion, no relief can be granted to the petitioner. Writ Petition, as such, is disposed of. No costs.

11. If the petitioner wants his proposal to be considered on self finance basis, then the petitioner may apply to the respondents to consider the same proposal which is submitted earlier on self finance basis and same shall be considered by the authorities on its own merits.

**[S. M. GAVHANE, J.]**

**[S. V. GANGAPURWALA, J.]**