

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

WRIT PETITION NO.13044 OF 2017

Panchsheel Shikshan Prasarak,
Mandal, Kurund, Tal. Parner,
Distt. Ahmed Nagar,
through its Secretary,
Sharad Bapurao Gaikawad,
Age-43, Occu-Agriculture,
R/o – Shirur, Taluka Shirur,
District Pune.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through its Secretary,
Department of School Education,
Maharashtra State,
Mantralaya, Mumbai 400032.
2. The Commissioner of School Education
Maharashtra State, Pune.
3. The Deputy Director of School Education,
Pune Division, Pune.
4. The Education Officer of Primary & Secondary
Zilha Parishad, Ahmed Nagar,
5. The Chief Executive Officer,
Zilha Parishad, Ahmed Nagar,

... **Respondents**

...

Mr. Naseem R. Shaikh, Advocate for Petitioner
Mr. S.M.Ganachari, AGP for Respondents– State

...

**CORAM : PRASANNA B. VARALE &
MANGESH S. PATIL,JJ.**

DATE : 13/12/2018

PER COURT :-

Rule. Rule is made returnable forthwith. Heard learned counsel appearing for the parties. The Petition is taken up for final hearing with consent of the parties.

2] The petitioner is an educational institute. The basic prayers in the petition run as under :

“c] By way of issuance of writ of mandamus or any other appropriate writ, Respondent no.1 to 5, may kindly be directed to grant approval for the reserved post of in charge Head Master, lab assistant, teacher from Schedule tribe and caste from the year 2011.

d] By way of issuance of writ of mandamus or any other appropriate writ, Respondent no.1 to 5, may kindly be directed to apply norms for the mountainous area to be applied to the petitioner school.

e] By way of issuance of writ of mandamus or any other appropriate writ, Respondent no.1 to 5, may kindly be directed to add 5th to 7th std division for increasing strength of petitioner school.

f] By way of an ad interim order Respondent no.1 to 5 may kindly be directed to release grant in aid from the

year 2011 till today to the petitioner school.”

3] The counsel for petitioner in detail submissions submitted before us that the petitioner institution is duly registered and imparting education at a remote place. More particularly hilly/mountainous area of district Ahmednagar. Our attention was invited to communication placed on record dated 16/7/2005 to submit that Parner taluka of Ahmednagar district is included in hilly area. Then the learned counsel submitted that the petitioner was running the school from the year 2011 and the requisite staff was also appointed. The communication in respect of grant of approval to certain staff members is also placed on record.

4] The learned counsel for petitioner then submitted that initially the proposal of the petitioner was considered for the school to be run on permanent non grant basis. Then our attention was invited to the policy of the State Government under Government Resolution dated 15/11/2011 for grant of benefits of aid to the eligible schools. The Government Resolution refers to the assessment of school under various heads, such as the infrastructure of the school, various activities being carried out by the school. Then the Government Resolution refers to the phase wise grant in aid being provided to the eligible schools. The learned counsel for petitioner then invited our attention to communication dated 3/5/2014 to submit that the petitioner school was enlisted for providing grant in aid by phase wise manner. Then the learned counsel invited our

attention to various documents placed on record to submit that all the necessary steps are taken by the petitioner-institute so as to fill up the posts of teachers and providing the academic facilities as well infrastructural facilities to the students.

5] The learned counsel then submitted that inspite of various communications to the authorities of the State praying for release of grants, the State Government by communication dated 15/4/2017 informed the petitioner that the petitioner is entitled for only 20% of grant in aid and the salary bills for September 2016 under 20% grant in aid be submitted to the Educational Officer (Secondary). The submission of the learned counsel is that as per the Government policy, the petitioner institute is entitled to receive 100% grant in the year 2018 but the communication dated 15/4/2017 only provides 20% grant in aid to the petitioner institute in breach of its own decision. It was also submission of the learned counsel that at no point of time the petitioner institute is communicated that there are certain specific deficiencies and for non removal of these deficiencies, the petitioner institute would not be entitled to receive the phase wise grant in aid. Then our attention was invited to representation to the Education Officer dated 18/5/2017 placed on record at Exh.5. It is submitted in the representation that though the teaching and non teaching staff is working in the school right from 2014, though the petitioner institute is entitled to receive 100% grants, the petitioner institute is getting only 20% grants for no fault of the petitioner institute. The learned counsel then placed on record a statement issued on behalf of

the Directorate of Education dated 30/1/2014 to submit that the petitioner school had undergone exercise of scrutiny and the petitioner school received 90% marks out of 100 marks in the assessment. The document is taken on record and marked “X” for identification. Perusal of the document shows that on the assessment, the petitioner school received 48 marks out of 50 for the academic standards, 32 marks out of 35 marks for the infrastructural facilities, 3 marks out of 3 marks for the counseling sector. Thus it is submitted by the learned counsel for petitioner that the school being run by the petitioner institute is performing fairly well in all aspects and there is nothing to say that anything adverse against the petitioner institute. The learned counsel then placed on record an order passed by the Division Bench at Principal Seat dated 14/6/2016 to submit that in identical situation the institute was before this Court and a statement was made on behalf of the State through the incharge Education Officer and on the statement made by the Education Officer, the Petition was disposed of with direction to the State to release grant in aid to the petitioner within stipulated period. This order is also taken on record and marked “X-1” for identification. Thus, the learned counsel submitted that the petition be allowed.

6] The learned AGP opposed the petition and prayed for some time on the ground that instructions are awaited. By order dated 24/10/2018, we have referred to the earlier orders passed by this Court and also to a submission of the learned counsel that the State Government declared the list of the schools which are

entitled for receiving the benefit of removal of word “permanent” and then granted further benefit that these schools would put to the grant in aid benefit. The petitioner institute finds place in the list of such schools at Sr.No.87. A perusal of the chart refers to the due renewal of the school. It would be useful to refer unfeatured school being run by the petitioner is also having a code number issued by the SSC board which is referred to in communication “X-1”. In order dated 24/10/2018, the petition was opposed by the learned AGP relying on the affidavit in reply. The grounds for opposition to the petition were raised relying on Government Resolution dated 19/9/2016. It was submitted before us by the learned AGP that the school would be admissible for the benefit of phase wise manner for grant in aid, subject to complying the condition and the petitioner institute would not be entitled for the benefit as the petitioner institute is a school being run in hilly area. It was also a ground of objection that the school is not complying with requisite number of students. We have specifically observed in our order dated 24/10/2018 that there was no such material placed before us by way of any data or by way of any inspection report to show that the strength of the students in the school of petitioner is less than what is required as per Government Resolution. At the request of the learned AGP, time was granted to submit material if any with the State Government to show that the petitioner institute is having less number of students than required. Though this order is passed on 24/10/2018 till date, no such material is placed on record by way of any additional affidavit in reply or by way of any communication addressed to the office of

Government Pleader.

7] Today the learned AGP again prayed for time. We rejected the prayer for grant of time for the simple reason that sufficient time was granted to the State Government to come with material before this Court in support of the contentions raised to oppose the petition but it was the choice of the respondent authorities of not approaching this Court with any supportive material and for this choice of the respondent authorities, we are not inclined to keep the petition pending in this Court for further period.

8] Now coming to the opposition raised in the affidavit in reply, it is firstly stated that the petitioner school is not running in mountainous area as contended by the petitioner. Now this statement is clearly in ignorance of a material placed on record alongwith Petition, issued by State authorities informing that the part of Parner taluka in which the petitioner school is being run is included in hilly area. Then again statement is made that there is no requisite strength of students to which at the cost of repetition we state that there is no supportive material in the form of any inspection carried out by the respondent authorities. On the contrary as we have already referred to a document placed on record issued by the Directorate of Education to show that in the assessment of the school, the school received 90 out of 100 marks and there is a merit in the submission of the learned counsel that this assessment clearly shows that the school is doing fairly well in all aspects i.e. academic aspects or infrastructural aspects and the other extra curricular activities.

9] Considering these facts, we are of the opinion that the learned counsel for petitioner has made out a case for allowing the petition in terms of prayer clause “B”. In so far as the other prayers are concerned, these prayers are in respect of grant of approval to the additional post and grant of approval to the additional divisions. If such a proposal is submitted by the petitioner institute with requisite material, the authorities may decide the proposal on its merits. The institute similarly situated with the petitioner which is entitled for the benefit of grant in aid and the same benefit is granted to other educational institute.

10] We are constrained to make certain observations in view of the affidavit in reply filed on behalf of the State. As stated above, a reference is made to the Government Resolution dated 19/9/2016. There cannot be any dispute on a proposition that the State Government is empowered to grant the benefit subject to certain conditions assessing the status of the educational institute and its financial viability or other aspects. The Government Resolution dated 19/9/2016 refers to Condition No.5 which states that this Condition No.5 relates to the strength of students and then it states that if the strength of students is less than 20 students of the last class in a school situated in hilly and remote area, such school will not be entitled to receive any aid from the Government and such school would be treated as self-financed schools. It is not in dispute that while granting the benefit in nature of finance, the strength of students would be a material factor but at the same time the State Government or its

authorities may not treat this aspect as the only decisive material factor in case of the schools which are situated in hilly mountainous and remote areas. If the State Government is granting finance to the schools which are imparting education to the students studying in primary level, middle school level or high school level and the schools are situated in hilly mountainous and remote areas. The State Government and its authorities are also expected to consider the peculiar geographical condition to these schools and as they are situated in hilly and remote areas and denying the benefit to such schools raising this condition as the wholesome condition and the only material condition would frustrate the object of providing financial assistance to the schools which are situated in remote hilly mountainous areas and in turn it would prevent such students who are desirous to prosecute studies at primary, middle and high school levels because of the condition if looked mechanically by the State or the authorities of the State.

11] We direct the respondent State Government to release grant in aid to the petitioner as expeditiously as possible and not later than four weeks from the date of receipt of this order.

12] Writ Petition is partly allowed. Rule is made absolute in above terms.

(MANGESH S. PATIL,J.) (PRASANNA B. VARALE,J.)

umg/