

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO.741 OF 2018***

1. Bhausaheb Bandodkar Shikshan Saunstha,
a Society registered under the Societies
Registration Act, 1860, having its registered
office at Dharbandora, Goa,
through its member Shri P.R.Nadkarni,
major of age,
Indian National, having
office at the above address.
 2. Shri Vaman Khandeparkar
major of age,
resident of
H-No.100, Bazar Vada,
Mollem, Goa.
member of the Respondent no.1-Society ...Petitioners
- Versus
1. State of Goa.
through its Chief Secretary,
having office at Secretariat,
Porvorim, Goa.
 2. The Director,
Directorate of Education,
Government of Goa, Porvorim,
Goa.
 3. The Deputy Director of Education (PLG),
having office at Directorate of Education,

Government of Goa, Porvorim,
Goa.

4. Sahyadri Dudh Sagar Education Society,
having office at Mollem,
Dharbandora, Goa, through its
Chairman Shri Vinay Dinu
Tendulkar, major of age, Indian
National, having office at the above
address.

5. Shri Vinay D. Tendulkar,
major of age, Indian National,
r/o S-1, 9/12/30(5), Khandeparkar
Apartment, Khadpabandh, Ponda,
Goa-403401.

.... Respondents

Mr. Nitin Sardesai, Senior Advocate with Ms. Gautami Kamat,
Advocate for the Petitioners.

Mr. Pravin Faldesai, Additional Government Advocate for the
respondent nos. 1 to 3.

Mr. S.R.Rivankar with Mr. Rama Rivankar, Advocates for respondent
nos.4 & 5.

***Coram : R.M. Borde &
Prithviraj K. Chavan, JJ.***

Date : 04 December 2018.

Oral Judgment (Per R.M.Borde, J.) :

Heard the learned counsel for the respective parties.

2. Rule. Rule is made returnable forthwith. With consent of parties, Petition is heard finally at the stage of admission. The learned counsel appearing for the respective respondents waive notice.

3. The petitioner no.1-Institution is praying for quashment of the decision communicated by the State Government under letter dated 13.7.2017 along with the minutes recorded on 9.10.2017. The petitioner no.1-Institution tendered an application seeking permission to open Higher Secondary School. It is the contention of the petitioners that though the claim of the petitioner-Institution is superior in merit instead of considering the application tendered by the petitioner-Institution, respondent no.4 has been accorded permission to open school. The petitioner-Institution on an earlier occasion objected to rejection of the proposal of institution dated 2.6.2015 by presenting Writ Petition bearing No.849/2015. The petition was considered by the Division Bench of this Court and by an order dated 18.7.2016 certain directions were issued. By the said order, respondent no.2—the Director of Education was directed to decide the application presented by the petitioners on 25.11.2014 afresh in the light of the observations made in the judgment. The permission accorded to respondent no.4 - Institution was directed to be made, subject to the decision on the application tendered by the

petitioners for grant of permission to open the school. The relevant observations are made in paragraph 12 of the judgment delivered by the Division Bench of this Court those are as noted below:

“12. In the present case, the record clearly reveals that as far as the respondent no. 4 is concerned, the directions issued by this Court have not all been complied with. Besides that, we find that, there are reports by the ADEI one dated 22/2/2015 which infact suggests that permission should be granted. No doubt the feasibility report which was submitted through the Director of Education was dated 10.3.2015. The observations in the report had to be made known to the petitioners before the concerned respondent takes a final decision on such application. Without going into the merits of the rival contentions, we find that the impugned order dated 22.4.2015 cannot be sustained for gross breaches of the principles of natural justice. Needless to say that the impugned order deserves to be set aside. Considering that presently a permission has been granted to the respondent no.4 to start a Higher Secondary School and it is brought to our notice that the school is functioning from the academic year 2015-16 in order not to jeopardised the interest of the student, we find it appropriate to make the order dated 2.6.2015 granting permission to the respondent no.4 subject to the decision which may be taken by the Director on the application filed by the petitioner in November, 2014 a fresh

in the light of the observations made herein above. The respondent no.2 herein shall consider the application without being influenced by the grant of permission to the respondent no.4 and in the light of the observations made herein above. As far as the challenge to the subsequent permission granted to the respondent no.4, we do not like to go into that aspect at this stage considering the view we proposed to take as herein above. All the contentions with that regard are left open.”

4. Instead of considering the issue raised by the petitioners, the Director of Education has proceeded to consider fresh application tendered by the petitioners on 13.7.2017 making an identical request and the petitioners have been communicated that the proposal made by them has been turned down since there is no need to open new Higher Secondary School during the academic year on account of availability of less number of students. It is further recorded that Higher Secondary Schools which are operating are sufficient to meet the needs of the locality. The order further records that since the infrastructure available with the petitioner-Institution also does not meet the requirement for grant of permission, application tendered by institution cannot be considered favourably.

5. The learned counsel appearing for the petitioners contends that the application has not been dealt with by the Director in the light of the observations made in the judgment and more particularly the observations made in paragraph 12. The learned Additional Government Advocate contends that since the petitioner-Institution has tendered fresh application, the same was considered. The prayer made in the subsequent application is also the identical as in the case of the earlier application.

6. The Director is expected to decide the issue as regards grant of permission in favour of the petitioner-Institution on consideration of the application tendered by the petitioner-Institution on 25.11.2014. The Director is also expected to apply his mind to the record of the case and judge the relative merits of both the proposals and take a fresh decision within the frame work of the relevant Regulations and the Policy prescribed by the State Government. It needs to be recorded that the order passed by the Director on 13.7.2017 does not reflect the application of mind to the record of the case. There are no proper reasons recorded for turning down the proposal tendered by the petitioner-Institution and for favouring the proposal tendered by respondent no.4. The issue as regards the grant of permission in favour of the petitioner-Institution on considering

the proposal tendered on 25.11.2014 needs to be dealt with in accordance with the directions issued by the Division Bench of this Court while disposing of Writ Petition No.849/2015 and more particularly the observations made by this Court in paragraph 12 recorded as above and in accordance with the law and relevant Regulations governing in the field as well as merits of the proposals of the petitioners.

7. For the reasons recorded as above, the Writ Petition deserves to be allowed and the same is accordingly allowed. The order impugned in this petition passed by the Director on 13.7.2017 is quashed and set aside and the concerned Authority is directed to decide the application tendered by the petitioner-Institution on 25.11.2014 for grant of permission to open Higher Secondary School, in the light of the observations made in the judgment recorded by the Division Bench of this Court in Writ Petition No.849/2015 as expeditiously as possible and preferably within a period of three months from today and is accordingly directed.

8. Since, we have directed the Director to reconsider the issue, the prayer clauses (b) and (c) recorded in the Writ Petition need not be considered.

9. Rule is made absolute accordingly to the extent as specified as above. There shall be no order as to costs.

Prithviraj K. Chavan, J.

R.M. Borde, J.