

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3193 OF 2015

Shri.Bhairavnath Education Society

Unware & Anr.

...Petitioners

V/s.

The State of Maharashtra & Ors.

...Respondents

Mr.V.S. Talkute for the Petitioners.

Mrs.S.D. Vays 'B' Panel Counsel for the Respondent-State.

**CORAM : S.C. DHARMADHIKARI &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 21st NOVEMBER 2018

P.C.:

1. Heard Mr.Talkute, appearing for the petitioners. We do not think that we can entertain this petition on a vague and general pleading to the effect that there is an existing Zilla Parishad School which has added 8th Standard to the existing 1st to 7th standards and that 8th standard is sanctioned or granted unauthorizedly and illegally. There is no question of the Zilla Parishad seeking recognition for there was an existing school. If the school was to be upgraded to secondary division or section or to the standard, namely, 8th standard, all that was required was to obtain permission or approval for that up-gradation from the Competent Authority.

The petitioners say nothing about that but claim that because the Zilla Parishad says that it has passed a resolution in a meeting, then, that resolution and all details in relation to that meeting should be provided to them. Though the petitioners assert that the school as also this 8th standard is unauthorized and illegal, there is no reason to accept such an argument. We do not think that the State Government is obliged to answer the petitioners' allegations for the petitioners are not certain about the factum of recognition at all. In the grounds in the writ petition, we find very curious pleading at page 9 ground number (C). The petitioners say that the respondent No.4 replied to it that there is *ex post facto* recognition granted to the 5th respondent to run the 8th standard. Then the petitioners say in ground (D) that even otherwise the purported *ex post facto* sanction allegedly given in the meeting dated 03.12.2014 is illegal and contrary to the provisions of the Act and Rules. We are surprised as to which is the Act and what are the rules thereunder which have been violated for there is no indication in regard thereto in the original petition.

3. In the amended petition, reference is made to the Right of Children to Free and Compulsory Education Act, 2009. As is the long title of the Act, it deals with free and compulsory education

and a right in that behalf. That right accrues from the constitution itself. Article-21A has been inserted in the constitution so as to confer a right on a citizen/child between 6 to 14 years of age and that is free and compulsory education. To give effect to that right this law has been enacted. To our mind, 7th and 8th standard division or class to which the student, who was admitted on attaining the age of six years has to continue his education till his attaining the age of 14 years. Therefore, we do not find that this Act would be an Act which can be referred by the petitioners for that Act says, and in the clearest terms, that the Right of child to free and compulsory education needs to be carried into effect. Chapter-III onwards, after enunciating this right, says that special provisions have to be made for children not admitted and who have not completed elementary education, such children have right of transfer to other school. Then there is a duty of appropriate Government and local authority to establish school and sharing of financial and other responsibilities. Duties of Appropriate Government are enlisted and there are duties equally of Local Authority, parents and guardian. Appropriate government is also obliged to provide for pre-school education. Chapter-IV of this Act sets out the responsibilities of schools and teachers. By Section 15, there cannot be any denial of admission and no child admitted in the school shall be held back in any class

or expelled from school till the completion of the elementary education. It is very clear that Mr.Talkute relies upon Section 18 of this law which states that no school can be established without obtaining certificate of recognition. However, we do not find that this matter can be tested on the touchstone of this provision. There are no pleadings to that effect for this provision says that no school other than a school established, owned or controlled by the appropriate government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed. Thus, the local authority having been defined in Section 2 Clause (h) to mean a Municipal Corporation or Municipal Council or Zilla Parishad, Nagar Panchayat or Panchayat, the provisions invoked are inapplicable to it. Finding that this law and the rules framed thereunder are of no assistance to the petitioners all the more we are not inclined to entertain this petition. It is dismissed but without any order as to costs.

(SMT.BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI,J.)