

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

WRIT PETITION NO. 3164 OF 2009

The Eastern English Academy ... Petitioners

Vs

1 Sharada Shikshan Prasarak Mandal & Ors ... Respondents

***WITH
WRIT PETITION NO. 2004 OF 2009***

The Eastern English Academy ... Petitioners

Vs

1 Sharada Shikshan Prasarak Mandal & Ors ... Respondents

Mr. Dilip Bodake with Mr. V.N. Tayade for the Petitioners .

Mr. S.S. Pachpor, AGP, for the Respondent Nos.3 to 6- State.

Ms. Manisha Devkar with Mr. Shankar Katkar i/b Kiran Kumar Pakale for the Respondent Nos.1 and 2.

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

MONDAY, 03RD DECEMBER, 2018

P.C. :

1 By this writ petition, the petitioners are seeking the following reliefs :

i. That this Hon'ble Court may be pleased to issue writ of mandamus or in the nature of mandamus or any other direction and thereby direct Respondent Nos.3 to 5 to withdraw the order of recognition dated 19/7/2001 granted to Respondent No.2 school.

Or in the alternative

ii. This Hon'ble Court may be pleased to call for the record and proceedings in respect of order dated 19/7/2001 passed by Respondent No.3 thereby granting recognition to the Respondent No.2 school and after considering the legality, validity and propriety of aforesaid order dated 19/7/2001 passed by Respondent No.3 bearing Outward No.Mah/Secondary School/1000(587/2000)/Second -1 School Education Department, Mantralaya be pleased to quash and set aside the aforesaid impugned order dated 19/7/2001.

iii. This Hon'ble Court may be pleased to issue writ of mandamus or

iv. in the nature of mandamus or any other writ or direction and thereby direct the Respondent No.3 to 5 to consider the compilation of representations, filed by the Petitioners and further direct the Respondent Nos.3 to 5 to quash permission in respect of Respondent No.2 school for acting against and in violation of provisions of Secondary School Code and terms and conditions granting recognition.

v. That during the pendency and final disposal of this

Writ Petition the impugned order of recognition dated 19/7/2001 be kept suspended.

vi. interim prayers in terms of prayer clause [c].”

2 We are informed that routinely the authorities consider the request and allow Managements of Educational Institutions to transfer schools from one village to another.

3 The correctness of such a claim is in issue.

4 The first petitioner is an Educational Institution and on the own showing of the petitioners, it is registered as a Public Charitable Trust. It is running the second petitioner school.

5 However, it is claiming that a permission / recognition granted to the respondent No.2 and not taking any action against the respondent No.2 is one of the reliefs claimed.

6 The petitioner claims that the second petitioner is running as a school and recognised as such since 1984.

7 The first respondent is also an Educational Institution, but it is claimed that it is illegally running the second respondent school from 1997.

8 The Education Officer (Secondary), Zilla Parishad, Kolhapur and the Deputy Director of Education, Kolhapur Region, Kolhapur - respondent Nos.5 and 6 are the officers of the State Government and working under the Directorate of Education. It is their action or inaction which is the foundation for the reliefs in terms of the afore reproduced prayers. The petitioner No.2 says that the second respondent was earlier running a school at village Narewadi by name Narewadi High School and that is under a Group Grampanchayat of Date-Narewadi-Balebhat villages. These are also backward areas. Attempts are made by the Institutions to impart quality education. It is claimed that the petitioners are making sincere efforts with the help of the employees to impart education and, at one stage, the respondent Nos.3 to 6 were impressed by the performance of the petitioner No.2 and released the grant in its favour. The petitioner-school is imparting education from Standards V to X.

9 Then, in the year 1992, two societies came to be established and they commenced their illegal activities, obstructing the petitioners in running their school. The local politicians also were involved. There were threats administered and all such activities resulted in an unhealthy atmosphere. It is claimed that the Committee Member of respondent No.1 is a member of the Legislative Assembly and was politically influential. The petitioners sought protection against such illegal activities, but eventually decided to shift their school from Narewadi to village Date in the same Group Grampanchayat and another school to village Kadalage Budruk Taluka Chandgad District Kolhapur. They made an application on 25th January, 1993, in that regard.

10 In the meanwhile, there was a civil dispute and a Civil Suit bearing No.79 of 1996 claiming permanent injunction against the first respondent restraining it from causing obstruction or hindrances in the running of the school by the petitioner No.1 came to be decreed. It is claimed that respondent Nos.3 and 4 granted a permission to shift the petitioner No.2-school on 24th September, 1997. Thereafter, the petitioners claim

that their performance has improved and is exemplary. The shifting resulted in the percentage of passing going up.

11 Then came the action of de-recognition of the petitioner No.2 on 20th August, 1997, and it is alleged that when the school was allowed to be shifted from one village to another, such a school could not have been de-recognised. Then, there are references to a Civil Suit challenging this order / de-recognition of 20th August, 1997. The reference is made to Civil Suit No. 110 of 1999 and an interim injunction granted therein.

12 It is stated that the interference and obstruction continued even after shifting and what the complaint is that the other or rival society started respondent No.2-school in village Date, but there was no permission or recognition granted to it.

13 Hence, representations were made so as to take note and cognizance of this obstruction or interference but no cognizance has been taken thereof. Then it is claimed that the respondent Nos.3 and 4 granted recognition to respondent No.2 school with retrospective effect from 2000-2001. That order is

dated 30th August, 2002.

14 Thereafter, the writ petition proceeds to allege as to how the activities of the rival societies has resulted in an adverse impact on the functioning of the petitioner-school. There is a violation of law in the field and despite there being an interim protection in favour of the petitioners, the authorities, by their inaction, are allowing the illegal activities of the respondent Nos.1 and 2 to be perpetuated further. That is how the recognition is challenged and even the inaction.

15 There is one more petition being Civil Writ Petition No. 610 of 2009 which is stated to be involving a common issue and controversy.

16 On such petition and with the aforesaid reliefs being claimed, we inquired with Mr. Bodake as to how a writ petition would lie and against what order. Though Mr. Bodake would argue that the petitioners are seeking a permission to shift their school, on the own showing of the petitioner, such shifting has already taken place. Then it is argued that it is the illegal

permission or authority to run a school granted in favour of the respondent No.1 which is put in issue and equally the recognition to that school granted on 30th August, 2002.

17 We do not find anything in law which would enable us to allow the petitioners to shift their school and in the manner they please. Nobody can say that he or she wants to shift the entire Management and administration of a school from one village to another at a time and on occasion convenient to such person. These persons cannot at their own sweet will and fancy set up a school, close it down or commence it in some other village or locality. This is not their fiefdom. The authorities are exercising powers under statutes and we do not find anything in the Grant-in-Code which would permit the petitioners to claim the relief of shifting of the school for the provision relied upon does not enable the authorities to permit such a course. The grant-in-aid Code and particularly the Rule 12.2 therein does not permit the authorities to grant any such permission.

18 The other relief that the recognition of 30th August, 2002 is under challenge and that be considered fails to

impress us for the simple reason that this petition is brought in this Court on 17th January, 2009. Prior thereto, there is a Civil Suit and in which there was a decree in favour of the petitioners allegedly. Why that decree was not put in execution and if the activities of the respondent Nos.1 and 2 are considered to be an obstruction or hindrance in the smooth functioning of the petitioner No.2-school with the Group Grampanchayat is unclear to us and has not been explained. Then, there is another Suit filed in which the very same relief has been claimed challenging the Resolution of 20th August, 1997 de-recognising the petitioner No.2-school. Therein, it is stated that there was an interim order. We do not know the fate of that Suit and why that interim order has not been then put in execution. If the petitioner No.2 is allegedly de-recognised and thereafter followed the action of a recognition in favour of the respondent No.2, then, as before, on such disputed issues when Civil Suits were brought, the petitioners have failed to explain as to why a writ petition was instituted in this Court. There is no foundation for claiming the relief in law.

19 We have carefully perused the writ petition and all the

annexures and what we find is that this is a clear attempt to settle political disputes and battles by utilising the platform of this Court. Surely, writ jurisdiction is not meant to settle such issues nor is a case made out of unhealthy competition or adverse impact on the education and that its quality will suffer immensely if such disputes continue. That is not even the projection in the writ petition.

20 These petitions are, therefore, a gross abuse of the process of law and we decline to adjourn the matter at the request of Mr. Bodake.

21 Both the petitions are, therefore, dismissed. There will be no order as to costs.

SMT. BHARATI H. DANGRE, J.

S.C. DHARMADHIKARI, J.