

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3554/2017

(SIKH EDUCATION SOCIETY, NAGPUR **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri P.A. Abhyankar, counsel for the petitioner.
 Shri B.M. Lonare, A.G.P. for the R-1 to 3.
 Shri R.K. Srivastava, counsel for the R-4 to 77.
 Shri Y.B. Mandpe, counsel for the R-78.

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : FEBRUARY 28, 2018.

By this writ petition, the petitioner challenges the decision of the Hon'ble Minister for Education, dated 22.05.2017 informing the petitioner that it would not be permitted to close the school.

The petitioner-society is registered under the Cooperative Societies Act and is running Gurunanak Primary School and High School and Junior College in Bezonbagh, Nagpur. The petitioner-society decided to close the school due to financial constraints and various other reasons and hence, a notice was issued by the petitioner-society to the State Government as per Clause 7.5 of the Secondary School Code. The notice of closure, dated 21.07.2016, for closure of the school from academic session 2017-18 was duly served on the State Government. By the order dated 29.08.2016, the Deputy Director of Education asked the petitioner to continue to run the school for some time till they take a decision in respect of the transfer of the management. It is submitted that the petitioner was under an impression that the petitioner-society would not be running the school from the academic session 2017-18 but to the surprise of the petitioner, the

petitioner-society received the impugned communication dated 29.05.2017 that the petitioner would not be entitled to close the school. The order of the Hon'ble Minister for Education is challenged by the petitioner in the instant petition.

Shri Abhyankar, the learned counsel for the petitioner-society, submitted that in view of Clause 7.5 of the Secondary School Code, the management is only required to give an advance notice of one year about the closure of the school. It is submitted that the object of the condition of issuance of notice of one year is to enable the authority to take necessary steps for accommodating the students and for rehabilitating the employees in other schools. It is submitted that it would not be permissible for the education authorities to refuse permission for the closure of the school. It is submitted that prior permission for the closure of the school of any authority under the Code is not necessary. The learned counsel relied on the judgment of this Court reported in **2002(5) Mh.L.J. 149** (*Pujya Sane Guruji Vidya Prasarak Mandal Versus Prakash M. Patil*) in this regard.

Shri Lonare, the learned Assistant Government Pleader appearing for the respondent nos.1 to 3, does not dispute the position of law, as laid down by the judgment in the case of *Pujya Sane Guruji Vidya Prasarak Mandal* (supra). It is submitted that an appropriate order may be passed in the circumstances of the case.

Shri Srivastava, the learned counsel for the respondent nos.4 to 77 and Shri Mandpe, the learned counsel for the respondent no.78, submitted that the government was justified in refusing permission to the petitioner for closure of the school. It is submitted that if the school is closed, the respondent nos.4 to 78 would be adversely affected.

On a reading of the provisions of Clause 7.5 of the Secondary School Code and the judgment in the case of *Pujya Sane Guruji Vidya Prasarak Mandal* (supra), it appears that it was not necessary for the petitioners to seek permission for closure of the school and the respondent-authorities could not have asked the petitioner to continue running the school despite the expression of intention on the part of the petitioner to voluntarily close the school as per the provisions of Clause 7.5 of the Secondary School Code. The provisions of Clause 7.5 of the Secondary School Code read thus:-

7.5 *The management of the school, the partial or the total recognition to which has been withdrawn by the Deputy Director, may submit an appeal to the Director within thirty days from the date of receipt of the said order. The appeal shall be sent by registered post. Appeals received after the prescribed time limit will not be entertained. (The director or his representative not below the rank of the Joint Director of Education, may decide the appeal after giving hearing to the representatives of the management and his decision shall be final and binding on the management.)*

(No management shall close school or any of the recognised classes or make voluntary change in approved school subjects, which may result in any of its permanent staff being rendered surplus, without due notice to the Regional Deputy Director of Education, at least one academic term in advance, and act as per his decision. An appeal on the decision of the Deputy Director of Education in this case shall lie with Director of Education.)

It is apparent on a reading of Clause 7.5 that a management is entitled to close a school by serving a notice on the Regional Deputy Director of Education, one academic term in advance and act as per his decision. Clause 7.5 does not speak of a 'decision' of the education authorities either to grant or refuse to grant the permission for closure of the school. This Court had an occasion to deal with a similar issue in the case of *Pujya Sane Guruji Vidya Prasarak Mandal* (supra) and it is held by this Court in the aforesaid judgment that prior permission for closure of the school from any authority would not be necessary if the management desires for the voluntary closure of the school. Under Clause 7.5 of the Code, the management is only enjoined with a duty to serve a notice one academic term in advance, so that the education authorities get ample time for shifting the students in some other schools and absorbing the teachers and the staff working in the school of the said management to the other schools. It is observed by this Court in the aforesaid judgment that the 'decision' spoken of in Clause 7.5 is not regarding the propriety or correctness of the closure of the school but it relates only to the after effects of the closure of the school. The after effects pertain only to the student or the employees working in the school. We respectfully agree with the view expressed by this Court in the case of *Pujya Sane Guruji Vidya Prasarak Mandal* (supra) to hold that the Hon'ble Minister for Education was not empowered to pass an order refusing permission to the petitioner for the voluntary closure of the school. The order is clearly illegal and is liable to be set aside.

While holding so, we are not inclined to appreciate the submission made on behalf of the respondent nos.4 to 78 that the impugned order needs to be sustained as the respondent nos.4 to 78 would be adversely affected if the order is quashed and set aside. It is clear from Clause 7.5 of the Secondary School Code and the judgment in the case of *Pujya Sane Guruji Vidya Prasarak Mandal* (supra) that the teachers and the students in such a school would not be adversely affected as a duty is cast upon the education authorities to transfer the students to some other schools and also absorb the teachers in the other schools.

Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order is quashed and set aside.

Order accordingly. No costs.

JUDGE

JUDGE

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