

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

WRIT PETITION NO.151 OF 2015

1. Tagore Shikshan Samiti,
Ahmedpur, Tq. Ahmedpur,
Dist. Latur,
through its Secretary-
Dhondiraj s/o. Bhujangrao Lohare,
Age : 84 years, Occ. Social Work,
r/o. Ahmednagar, Tq. Ahmedpur,
Dist. Latur
2. Yashwant Primary School,
Phule Nagar, Ahmedpur,
Tq. Ahmedpur, Dist. Latur,
Through its Headmaster -
Ashok s/o. Sambhajirao Gangapure,
Age : 57 years, Occ. Service,
r/o. Ahmednagar, Tq. Ahmedpur,
Dist. Latur

..Petitioners

Vs.

1. The State of Maharashtra,
Through its Secretary,
School Education and Sports
Department, Mantralaya,
Extension Building,
Mumbai - 32
2. The Director of Education (Primary),
Maharashtra State, Pune
3. The Deputy Director of Education,
Latur Region, Latur
4. The Education Officer (Primary),
Zilla Parishad, Latur,
Dist. Latur

..Respondents

Mr.V.D.Gunale, Advocate for petitioners

Mr.V.S.Badakh, AGP for respondent nos.1 to 3

Mr.P.R.Tandale, Advocate for respondent no.4

CORAM : PRASANNA B. VARALE

AND

R.G. AVACHAT, JJ.

DATE : JUNE 06, 2019

ORAL JUDGMENT (PER PRASANNA B. VARALE, J.) :

Heard Mr.Gunale, learned Counsel for the petitioners, learned AGP for respondent nos.1 to 3 and Mr.Tandale, learned Counsel for respondent no.4.

2. Rule. Rule, made returnable forthwith. With the consent of learned Counsel for the parties, heard finally.

3. Petitioner no.1 is an educational institution imparting education in Ahmedpur Taluka, Dist. Latur, whereas, petitioner no.2 is a school run by petitioner no.1—Institution for primary classes. The petitioners raise challenge to the communication

dated 31.10.2014 addressed to petitioner no.2 by respondent no.4 – Education Officer (Primary), Zilla Parishad, Latur, whereby, petitioner no.2 is directed to close down the sectional schools within the stipulated period of seven days. It was further informed in the letter that those sectional schools being part of petitioner no.1 – institute, are in breach of [Right of Children to Free and Compulsory Education Act, 2009](#) (“the Act”, for short).

4. Mr.Gunale, learned Counsel for the petitioners in his extensive submissions, invites our attention to the documents placed on record. He also invites our attention to a judgment of this Court in the bunch of Writ Petitions namely, Writ Petition No.2748 of 1994 and other Writ Petitions, delivered by Division Bench of this Court (Coram: B.R.Gavai and S.V.Gangapurwala, JJ.). In that judgment, the Division Bench has adopted the view of the decision in Writ Petition No.3498 of 1991 and other Writ Petitions decided on 17.08.2002. Certain facts,

which would be necessary for consideration of the grievance in the petition, are summarised as follows:

5. Petitioner no.2 was permitted to run primary school for standards 1st and 2nd for the academic year 1971-72 at Ahmedpur, Dist. Latur by the order dated 18.09.1971 of the Education Officer, Zilla Parishad, Osmanabad. In view of the natural growth in the strength of the students, a proposal was submitted by petitioner no.2 to the Education Officer, Zilla Parishad, Osmanabad, for grant of additional division of the sectional schools. Accordingly by order dated 21.07.1982, the Education Officer granted permission to operate two additional divisions in the school for standard 2nd and 4th from academic session 1981-82, on certain conditions. By order dated 06.11.1981, the Education Officer again granted permission to petitioner no.2 to run additional division for 3rd standard from academic session 1981-82. Thereafter, by order dated 09.08.2011, the Education Officer (Primary) directed petitioner no.2 to absorb two more

divisions of standards 3rd and 4th on account of closure of these divisions in another school namely, Jijamata Primary School, Latur. Similar orders were passed on 03.06.2010 and 08.06.2010.

6. Learned Counsel for the petitioners Mr.Gunale, submitted that petitioner no.1 - Institution, by following the requisite rules/norms of the Act operating the field, appointed teachers and is catering the needs of the area by making necessary provisions in primary education. The copy of appointment orders are also placed on record. Mr.Gunale invited our attention to the approval granted to the appointments of the teachers by the Education Officer as well verification by the competent authorities in respect of strength of the students and other infrastructural facilities available in the petitioner no.2 - school. He invited our attention also to the inspection report of the Education Officer and submitted that attendance of the students in the school ranges from

76% to 96%. Thus, Mr.Gunale, learned Counsel, submits that is petitioner no.1 – Institution is running school with all positive response and also maintaining standard of education. He submits that the order impugned in the petition, is unsustainable as it fails to take into consideration the factual aspects of the matter and also the judicial pronouncements.

7. Mr.Tandale, learned Counsel for respondent no.4 – Education Officer (Primary), Zilla Parishad, Latur, though made attempt to support the order impugned in the petition, we are of the opinion that learned Counsel for the petitioners made out a case for allowing the petition partly.

8. It is not in dispute that the petitioners were permitted to operate certain divisions under the orders of the Education Officer dated 21.07.1982 and 06.11.1981 and subsequently the order of absorption was passed in the year 2010.

9. The judgment of the Division Bench in a group of Writ Petitions bearing Writ Petition No.3498 of 1991 and others delivered on 17.08.2002 deals with the issue of closure of sectional schools by Government Resolution Dated 20.12.1988. Considering the prevalent policy of the State Government, the Division Bench, vide order dated 17.08.2002, observed that the Government Resolution Dated 20.12.1988 or subsequent G.Rs. did not contemplate any action against the sectional schools, which were commenced prior to 20.12.1988. The Division Bench further observed that the revised policy of the State Government to regulate permission to sectional schools through G.R. Dated 20.12.1988 and subsequent policy not to entertain application vide G.R. Dated 20.07.1990 could not have been given retrospective effect, unless it is stated specifically. Resultantly, vide the judgment dated 17.08.2002, the group of Writ Petitions were allowed.

10. It may not be out of place to refer to the observations of the Division Bench that Government Resolution Dated 20.12.1988 or subsequent G.Rs. are not applicable to sectional schools, which commenced prior to 20.12.1988 and therefore, the sectional schools of the petitioners commenced prior to that date will not be affected by the G.R. Dated 20.12.1988 as well as 20.07.1990.

11. Considering the above fact situation, the reasonings assigned in the impugned order dated 31.10.2014, thereby directing the petitioners to close down sectional school within stipulated period of seven days, is unsustainable.

12. In view of the above, the sectional divisions started by petitioner no.2 - School and permitted by the Education Department prior to 20.12.1988 i.e. for academic years 1977, 1979, 1981 and 1982 only, are to be protected. Insofar as the additional divisions post year 1988, the State

Government and authorities of State Government would be at liberty to take appropriate decision in view of the policy framed by the State Government under the relevant Government Resolution or circulars.

13. The Writ Petition, thus, is partly allowed and disposed of. Rule is made partly absolute accordingly.

[R.G. AVACHAT, J.]

[PRASANNA B. VARALE, J.]

kbp