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

WRIT PETITION NO.1044 OF 2019

Ekta Social Association,
A/P. Muru, Tq. Omerga,
Dist. Osmanabad
(Through its Secretary),
Khalil Rehmanasaab Sayyad,
Age: 44 years, Occu: Secretary,
R/o. Yenegur, Tq. Omerga
Dist. Osmanabad

..PETITIONER

VERSUS

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

..RESPONDENTS

Mr D. S. Mali, Advocate for petitioner;
Mr A. R. Kale, A.G.P. for respondent Nos.1 to 3

**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 24th January, 2019

ORAL ORDER:

Heard learned Counsel appearing on behalf of the petitioner.

2. The petitioner is a society and the petition is filed through the secretary, challenging the communication dated 4th August, 2015. By this communication, respondent No.2 - Director of Education (Primary) sought for a report from the Education Officer (Primary) Zilla Parishad, Osmanabad.

3. It is the submission of learned Counsel for the petitioner that the petitioner was desirous of opening Urdu medium school at a place Yenegur, Tq. Umerga, Dist. Osmanabad. Accordingly, a proposal was submitted in the year 2008-2009. As the proposal was pending before the authority for considerably long time and no decision was taken, the petitioner society approached this Court by filing Writ Petition No.7739 of 2011. Considering the policy of the State Government prevailing at the relevant time, the Division Bench disposed of the said petition with a direction to respondent No.4 Education Officer (Primary), Zilla Parishad, Osmanabad to apply his mind afresh to the proposal submitted by the petitioner and also consider the aspect of master plan or any other policy decision, Regulations and to take a decision on the proposal, as expeditiously as possible and in any case, by 31st December, 2012. The Division Bench also observed that, if necessary, an opportunity of hearing be granted to the petitioner.

4. Learned Counsel for the petitioner, by inviting our attention to the document placed on record at Exh.'B' submitted that the Education Officer (Primary) directed the Block Education Officer to visit the place and conduct inspection personally on the aspects, namely, whether all the infrastructural facilities including washrooms to the students are available, whether there is any other Urdu medium school in the radius of 5 Kms and to submit report to the Education Officer expeditiously. A reference was made to Writ Petition No.7739 of 2011 in the said communication. There is a communication placed on record at Exh.'C', whereby the Deputy Director of Education informed the Education Officer (Primary) to take appropriate steps immediately in view of the order of this Court in Writ Petition No.7739 of 2011.

5. On 9th July, 2014, the Deputy Director of Education informed Education Officer (Primary), Zilla Parishad to submit a afresh or modified proposal. On 7th August, 2014, the Education Officer (Primary) submitted a proposal with positive recommendations in favour of the petitioner. On 4th August, 2015, the Director of Education (Primary) raised objection to the proposal submitted to it and the objection is recorded in the words that without following necessary directions of the State Government, a proposal is submitted to the office of the Director of Education. The Education Officer is called upon to submit his explanatory report to the authority.

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6. The submission of learned Counsel for the petitioner is, because of the internal communications between the authorities, the proposal of the petitioner society is still pending and the Education Officer be directed to submit fresh proposal and in turn superior authority be directed to decide the same.

7. Normally, such prayer could not have been considered by us, but for the facts emerged from the perusal of the material, we refrain ourselves even to accept the proposal submitted by learned Counsel for the petitioner. The petitioner society is coming before this Court that there is compliance of all the deficiencies. The Education Officer (Primary) directed the Block Education Officer, Panchayat Samiti, Umerga, by communication dated 29th November, 2012 to visit the place and verify the aspects of availability of infrastructural facilities and the aspect of availability or non availability of other Urdu medium school in the radius of 5 kms.

8. Interestingly enough, the Education Officer, by communication dated 7th August, 2014 refers to certain deficiencies as well as reference to the report received by him, submitted by the Block Education Officer, which was called upon under his directions. It is again interesting to note that the Block Education Officer, in his report only refers to the aspect of non availability of another Urdu medium school in the radius of 6 km and then

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states that there is requirement of Urdu medium school in the area. The Education Officer, on this report records positive findings in favour of the petitioner with further reference to the provisions of Right to Education Act, 2009 and states that as there is no other Urdu medium school in the vicinity of 3 kms and in view of the orders of this Court, the proposal of the institute is recommended positively.

9. It seems that the authority at the level of Education Officer (Primary) only considered the aspect of availability or non availability of other Urdu medium school either in the radius of 6 kms or in the vicinity of 3 kms. There is nothing placed on record to satisfy this Court about the other important aspect which was also referred to in the order of the Education Officer (Primary), dated 29th November, 2012, namely, infrastructural facilities and particularly availability of washrooms for the boys and the girls taking education in primary schools. As this aspect is not at all considered, we see no reason to entertain the petition. We dismiss the petition.

10. The petitioner to submit all the material before respondent No.3 and 4 to show that the institute is having all the infrastructural facilities. Respondent No.4 - Education Officer (Primary), on receiving such material from the petitioner, to satisfy himself by visiting the place and by recording his satisfaction submit the report to respondent No.2 - Director of Education

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(Primary). On receiving the report from respondent No.4 - Education Officer (Primary), the Director of Education to take decision on the proposal of the petitioner institute, as early as possible and preferably within twelve weeks from the date of the order of this Court, needless to state by considering the prevailing policy of the State Government reflected in the Government Resolutions or Circulars.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)

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