

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 2400 OF 2004

Trimurti Pawan Pratishthan
Telkudgaon, Tq. Nevasa,
Dist. Ahmednagar,
Registered Charitable Trust
Through its Secretary
Shri Sharad Haribhau Ghadge,
Age – 44 yrs, Occ. : Agriculture,
R/o. Telkudgaon, Tq. Nevasa,
Dist. Ahmednagar.

... PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
The Dept. of School Education,
Mantralaya, Mumbai – 32.
2. The Director of Education,
Maharashtra State, Pune.
3. Dy. Director of Education,
Pune Division, Pune.
4. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar,
District : Ahmednagar.
5. Block Education Officer,
Panchayat Samiti, Newasa,
Dist. Ahmednagar.

... RESPONDENTS

...
Mr. Anand P. Bhandari, Advocate for Petitioner.
Mr. M. M. Nerlikar, APP for Respondents.
...

CORAM : **T. V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

RESERVED ON : 06th March, 2019.

PRONOUNCED ON : 25th March, 2019.

JUDGMENT: (Per T. V. Nalawade, J.)

. The petition is filed for relief of direction to the Respondent, Education Department of the State and the State Government to grant permission to the Petitioner, Education institution to start Marathi medium secondary school for standards Vth to Xth at village Ghogargaon Tahsil Newasa, District Ahmednagar from year 2000-2001. Relief is also claimed for quashing and setting aside communication made by the Respondent dated 11th January, 2002. By making amendment in the petition, direction is claimed to grant permission on “no grant basis” in place of “permanent no grant basis”. A direction was claimed for giving “grant-in-aid” during the pendency of the proceeding. As some events took place during the pendency of the proceeding, some more reliefs were claimed like direction to prevent the Respondents from granting permission to other persons including local MLA to start school of aforesaid standards at the same

place. Direction is also claimed to give equal treatment to the Petitioner institution by using same parameters, which were used for granting permission to local MLA for Sudamrao Mate Patil School at Gogalgaon.

2 It is the case of the Petitioner institution that in village Ghogargaon, there was school of Zilla Parishad for Ist to VIIth standards and around 300 students were receiving education in the said primary school. It is contended that there was no facility of secondary school starting from VIIIth standard and due to that the villagers of Ghogargaon were not sending their children to other villages like Belpipalgaon situated at a distance of 7 kilometers where there was a secondary school. It is contended that the Village Panchayat had requested the Petitioner institution to start secondary school for VIIIth standard in view of the aforesaid circumstances and fortunately on 27th March, 2000, the Education Officer of Zilla Parishad, Ahmednagar declared that in master plan there was a provision to create one such secondary school at Ghogargaon. In the said master plan, there were 129 similar villages where the different schools were to be started.

3 It is contended that the aforesaid master plan was published in daily newspapers and in response to that master plan, application was submitted by the Petitioner institution for getting permission for academic year 2000-01. It is contended that requisite documents were supplied alongwith the application, but due to the pressure of local MLA, permission was granted to the institution, which was under his control to start such school at Ghogargaon and that was communicated on 31st August, 2000. It is the contention of the Petitioner that the institution of MLA did not start such school at Ghogargaon and then by order of Respondents dated 15th September, 2000, the permission given in favour of MLA was amended and the permission was given to him to start the school at Gogalgaon. It is contended that nothing was informed to the Petitioner institution about the proposal submitted by it and so, the Petitioner was required to file Writ Petition No.2407 of 2001 on 14th June, 2001 for direction against the Respondents. It is contended that on 11th January, 2002, Respondent No.4 informed that the application of the Petitioner institution was rejected. It is contended that in the year 2002, permission was granted to as may as 13 educational institutions from

Ahmednagar district to start schools at different places even when those places were not included in master plan. It is contended that even when Ghogargaon was included in the master plan, permission was illegally refused. It is the contention of the Petitioner institution that there is discrimination and to some persons having influence over the Respondents, permission was granted. It is contended that the permissions were granted only to those institutions, which were under control of the political figures as their party was in power at the relevant time.

4 The Education Officer (Secondary) has filed affidavit dated 28th February, 2006 and he has denied the allegations of discrimination made by the Petitioner institution. The affidavit mainly contains matter with regard to the financial burden, which the State Government is facing due to policy of giving grant-in-aid and due to revision of pay scales of staff members of such schools from time to time. It is contended that due to problems, which the Government was facing, a decision was taken by the Cabinet of the State Government to grant permissions only on “permanent no grant basis” in future in the year 2001. It is contended that the decision was also

taken to review policy of giving grant-in-aid, reduce grant-in-aid gradually and abolish that policy completely by year 2004-05. It is contended that after abolition of the policy, the institutions were to be allowed to charge appropriate fees from the students and the institutions were to act on the basis of facilities given like EBC facilities.

5 It is contended that after taking aforesaid decision, Government Resolution was issued and the Government started granting permission on “permanent no grant basis”. It is contended that a drive was also started to find out bogus institutions and the institutions getting grant-in-aid by creating false record. It is contended that during this drive 560 bogus divisions were detected till May 2002 and then the Government decided to use the amount saved by cancelling 560 bogus sections to be utilized by giving permissions to 150 new secondary schools, which were run on “unaided basis” (not permanently unaided basis).

6 It is contended that for making assessment of the proposals made for permission, two committees were constituted viz.

one at State level and one at District level. It is contended that the authorities then realized that for the same place more than one proposals were recommended by the District level and State level committees for granting permission to schools and so again need was felt to properly scrutinize the proposals. It is contended that one more committee was then constituted to finalize the proposals for granting permission and accordingly, Government Resolution was issued on 4th August, 2002.

7 It is contended in the reply affidavit filed by the Education Officer that in Writ Petition No.1190 of 1998, the then learned Advocate General had made statement in the High Court that as per the Government policy for any institution, it was open to start school on “permanent no grant basis” and the Government would grant permissions to such institutions. It is also contended that the Government had prepared new bill for easy registration of new secondary schools on “permanent unaided basis” and power was to vest with the Education Officer, at District level. Thus, according to the Respondents, the scheme of granting permission on “permanent no grant basis” was prepared after considering all the pros and cons

and if other conditions were fulfilled like availability of infrastructure and capacity to run the school, granting of permission was to be a formal thing. It is contended that only in those cases, permission would have been refused if starting of new school would have jeopardized the previous school of the same local place.

8 In the reply affidavit, it was contended that any institution can give undertaking to run school on “permanent no grant basis” and then the permission can be given through the Deputy Director. In the additional affidavit filed for the Respondents on 11th July, 2017, it was informed that the Petitioner institution was granted permission to start secondary school for standards Vth to Xth from academic year 2005-06 on “permanent no grant basis” in view of the undertaking given by the Petitioner, institution and the Petitioner, institution was running such school at Ghogargaon. One more additional affidavit came to be filed on 21st September, 2017 in view of the amendment made in the petition and for giving reason as to why grant was not given. It is contended that permission was given to the Petitioner institution to run the school on “permanent no grant basis”.

9 In respect of the allegations made of discrimination, in reply affidavit, the Respondents have contended that the institution, which was run by MLA was granted permission on 31st August, 2000 from academic year 2000-01 for village Ghogargaon, the place for which there was application of the Petitioner and the proposal of the Petitioner was rejected as per the procedure. It is contended that without getting permission, the Petitioner had started conducting the classes unauthorizedly and then the MLA had requested the Government to change the place of permission granted in his favour and to make the place as Gogalgaon to avoid unhealthy competition. It is contended that the request of the MLA was accepted as Gogalgaon was also included in the master plan and the permission was given for new place by order dated 15th September, 2000 and the Government started giving grants to the institution of said MLA from 29th October, 2005. It is contended that initial permission was on “no grant basis” and as per the scheme of the Government, these schools were governed by Government Resolutions dated 17th February, 2004 and 11th October, 2000.

10 It is contended that subsequently the Government

changed the policy of not giving grant to the schools started on condition of “permanent no grant basis” and the word “permanent” was deleted by Government Resolution dated 20th July, 2009 from the permission. It is contended that by Government Resolution of 2009, the Government decided to give grant to those schools, which were sanctioned on permanent no grant basis. It is contended that as per this new scheme, permission is given to the Petitioner institution to start school from academic year 2005-06. It is contended that the Government is expected to ascertain the eligibility of such institutions to get grant-in-aid and such Government Resolutions were issued on 15th November, 2011 and 17th February, 2013. It is contended that after declaring eligibility of such schools to get grant-in-aid, the Government makes available the grant-in-aid as per its policy. It is contended that the school of Petitioner was declared first time eligible for receiving grant-in-aid by Government Resolution dated 1st July, 2016 and so the Petitioner institution is not entitled to get grant-in-aid on the basis of permission from academic year 2000-01. It is contended that in the year 2000, the district level committee had not recommended the proposal of the Petitioner for giving permission, but the school was started unauthorizedly and for that reason also the

grant cannot be given from the year 2000. It is contended that the school of aforesaid MLA is having better facilities and that can be also verified by the Court. Reasons are given for rejection of the proposal that the school was having building of only 1300 square feet having three rooms and that too was made available by the villagers on the basis of free of costs. It is contended that due to this and other circumstances, the permission was refused to the Petitioner.

11 It is not disputed that in village Ghogargaon at the relevant time there was no secondary school for VIIIth to Xth standards. This village was included in the master plan of the State Government for starting secondary school from academic year 2000-01. In this village there was a primary school of Zilla Parishad having divisions of Ist standard to VIIth standard. The Village Panchayat had requested the present Petitioner to start secondary school in this village from VIIIth standard and the villagers had made available one building to the Petitioner for starting secondary school in that building.

12 Application was given by the Petitioner on 10th April, 2000, within the time prescribed by the Respondents. The application was

given for permission to start secondary school for standard VIIIth to standard Xth from academic year 2000-01. It is not disputed that the local MLA had also applied for similar permission for Ghogargaon. On 31st August, 2000 permission was granted to the said MLA for starting secondary school in village Ghogargaon. It is not disputed that the MLA did not start such school in village Ghogargaon, but he filed application for amendment of his application and he changed the place to make the place as village Gogalgaon. Permission was given to MLA to start secondary school in village Gogalgaon on 15th September, 2000. Admittedly, nothing was informed to the Petitioner about the decision taken on the application given by the Petitioner. The Petitioner filed Writ Petition No.2407 of 2001 and only after giving of direction to take decision, it was informed to him vide communication dated 11th January, 2002 that the application of the Petitioner was rejected. Thus, on one hand, even when as per the procedure, the MLA had not given application for village Gogalgaon, permission was given to MLA for starting secondary school in village Gogalgaon on 15th September, 2000 and on the other hand, nothing was informed to the Petitioner about the decision taken on its application till the direction was given by this Court in that regard. In

reply affidavit, the officer of Respondents has informed that the educational institution of the MLA started getting grant-in-aid from 29th October, 2005 in respect of secondary school started at village Gogalgaon.

13 It is the contention of the Respondents that as per the Government Resolutions dated 11th October, 2000 and 17th February, 2004, the grants are released in favour of the school of MLA. No record is produced by the Respondents to show that the institution of MLA was having any infrastructure at Ghogargaon when the application was moved and similarly no record is produced to show that such infrastructure was available in village Gogalgaon for which subsequently the permission was given. There is specific allegation of discrimination made by the Petitioner. In view of the nature of allegation, it was necessary to show that the MLA was complying the conditions for both places like Ghogargaon and Gogalgaon. In strict sense, as per the procedure, permission could not have been granted to MLA for village Gogalgaon and it can be said that after starting of the term, permission came to be granted on 15th September, 2000. Such application could not have been considered by the Respondents

in ordinary course.

14 The defence / stand taken by Respondents in the present proceeding that the Petitioner institution was not having recommendation of District level committee and it was also not having infrastructure (sufficient space) is not probable in nature. In the present proceeding, for the same place, the Respondents offered permission on “permanent no grant basis” as per the policy expressed in Government Resolution of the year 2001. It needs to be observed that whether permission is to be granted on no grant basis, permanent no grant basis or grant basis, there cannot be compromise with the basis conditions, which need to be fulfilled by the institution for getting the permission. As already observed, the Village Panchayat had supported the present Petitioner for starting secondary school in village Ghogargaon, but the permission was granted to MLA and MLA could not start school there. It is clear that without scrutiny of the matter, permission was granted to MLA for village Gogalgaon. These circumstances are sufficient to infer that reason given in the present proceeding for rejection of the application of the Petitioner was not real reason and there is a clear probability that the Respondents

wanted to give permission to the institution of MLA and as there was influence of the MLA, the Petitioner institution did not get such permission.

15 In the present proceeding, the Respondents are trying to misuse the situation created by themselves by denying the permission to the Petitioner on the application given in the year 2000. Now the Respondents are contending that the grant-in-aid cannot be made available to the Petitioner institution as per the policy, which was in existence in the year 2000. In support of that contention, a copy of Cabinet decision of the State Government dated 24th November, 2001 is produced. The Cabinet had taken decision that in future for school education, permission for starting new schools by private institutions, permission was to be given on “permanent no grant basis”. Till the date of the decision, there was a policy to grant permission ordinarily on no grant basis. As per the previous scheme, for first four years, the school was not to get grant, but from the fifth academic year, the school was to get 20% grant and then every year the grant was to be increased by 20% and ultimately in the ninth academic year, the school could have claimed 100% grant. As per the previous policy, it

is contended by the Respondents that the MLA started getting 20% grant from 29th October, 2005 when till September 2000, there was no permission granted to him to start the school at Gogalgaon. If on the basis of application made in the year 2000 permission was granted to the Petitioner then in ordinary course the Petitioner would have become eligible to get grant of 20% from the year 2004-05.

16 It is not that the policy decision taken in Cabinet meeting on 24th November, 2001 was strictly and uniformly followed by the State Government. Information supplied by the Respondents in paragraph 7 and some portion of paragraph 8 of the affidavit dated 28th February, 2006 show that to more than 150 institutions, permission was granted *ex-post facto* for allowing them grants as per the previous policy. The relevant portion needs to be quoted and it is as under:

“7. In the meanwhile during the months November 2001 to January 2002, a campaign was taken up in the state as per directions of the Chief Secretary to verify actual information in the secondary schools. This measure was also part of the economic drive. This drive detected about 560 bogus sections in secondary

schools which would have claimed grain in aid in due course. The field officer were instructed to stop these bogus sections after giving a hearing to the concerned institution/schools. This would result in some saving in the funds available.

8. The decision to grant new school only on unaided basis as primarily taken because of the difficult financial condition of the State Government however the demand for secondary education continued to mount and it was felt that the saving effected in the education Sector should not get diverted to other sectors. The detection of 560 bogus sections meant that some savings in regard to these sections was going to be available in the education department. It was therefore, decided by the Government in the month of May, 2002 that the savings effected because of the detection of the bogus sections should be utilized for sanctioning about 150 new secondary schools on unaided basis (not permanently unaided basis) since each new school has three sections one each in VIII, IX, and X these 150 schools would have consumed saving of about 450 sections. The meaning saving were to be adjusted for bringing sections that have become eligible on grant-in-aid."

17 In paragraph 12 of the affidavit dated 28th February, 2006 filed by the Respondents, there is clear admission of the Respondents

that after the Cabinet decision of 24th November, 2001, the Respondents granted permission to more than 150 secondary schools on “no grant basis”. Relevant admission from paragraph 12 is as under:

“Permission granted to open new school at Kharvandi Tq. Nevasa Dis. Ahmednagar to Shanaishwar Gram Vikas Sanstha, Kharvandi Talk. Nevasa Dist. Ahmednagar to Shanaishwar Gramin Vikas Sanstha, Kharvandi on no grant basis is from the sanctioned quota of 150 schools as mentioned in para 8. The Govt. has included this school in the 150 schools that could be sanctioned against detected bogus sections. The schools at Dolsane and Rankhamb Tq. Sangamner Dist. Ahmednagar were also included in 150 schools as per proceedings of this Hon'ble Court dated 17/6/2002 in W.P. No.4677/99 and W.P. No.4378/99 and orders were issued on 21/6/2002. The copy of the order of this Hon'ble Court dated 17/6/2002 is annexed herewith and marked as EXHIBIT-R-4.”

18 In Writ Petition Nos.4677 and 4378 of 1999, this Court had made the order as follows:

“Mr.E.P.Savant learned Govt. Pleader tenders

apology and further makes a statement that 150 cases similar to that of petitioner are going to be considered by the Govt. for granting permission by giving grant-in-aid as per norms. Thus Mr.E.P.Savant, learned Govt. Pleader clarifies that the order granting the permission to open a school on permanently non-grant basis will be withdrawn and the permission by giving grant-in-aid as per the saving clause will be issued along with 150 similarly situated institutions and this exercise will be done within a period of one week from today. In view of this statement made by the learned Govt. Pleader, matter to stand over for one week. Personal attendance of the Secretary, who is present in the Court today, is exempted.”

19 It is the case of the Petitioner that as the application was filed in the year 2000, it is entitled to get benefits of Government policy, which was in existence in the year 2000. The submission was made that there is such entitlement in view of the aforesaid benefits given by the State Government by making *ex post facto* orders and order made by this Court in Writ Petition Nos.4677 and 4378 of 1999. The submissions made in the present proceeding show that to the present Petitioner permission was granted to start secondary school on permanent no grant basis by order dated 3rd September, 2003, but

it was subject to condition that undertaking was to be given by the Petitioner that it would not claim grants. No such undertaking was given by the Petitioner. Submissions made show that as no undertaking was given, notice was given by the Respondents to the Petitioner to close down the school, which was already started by the present Petitioner. The record shows that as direction was given by the authority to close down the school, the Petitioner rushed to this Court in the present proceeding, which was pending and then on 1st March, 2006 this Court gave direction to the Petitioner to give undertaking of aforesaid nature. This Court, however, made it clear that the undertaking was to be subject to the decision of the present matter, without prejudice to the rights of the Petitioner. In view of the undertaking given by the Petitioner, new order to grant permission on permanent no grant basis was issued from academic year 2005-06. However, this permission was for standard Vth to standard Xth. Even staff was sanctioned in respect of these standards.

20 The initial application could have been for standard VIIIth to standard Xth and it can be said that subsequently application was given for standard Vth to standard VIIth. There was already a school of

Zilla Parishad for Ist to VIIth standards and so, in ordinary course permission could not have been given for Vth to VIIth standards, but the Petitioner is running school for standard Vth to standard Xth. The entitlement of the Petitioner needs to be considered separately in respect of two parts. As prior to the aforesaid Cabinet decision no application would have been allowed in respect of standard Vth to standard VIIth, in ordinary course, the policy of the Government as expressed in Cabinet decision of 2001 would become applicable for application filed in respect of Vth to VIIth standards.

21 A copy of Government Resolution dated 20th July, 2009 is produced on record and it shows that the Government took decision to delete word “permanent”, which was used in the past while granting permission as per the policy decision taken in the year 2001. This Government Resolution shows that the Government took decision that from the date of this Government Resolution, previous permissions, which were granted on permanent no grant basis were to be treated as permissions granted on “no grant basis”. Thus, the period, which was to be counted for considering the eligibility as per the previous

policy of the year 2000, was to be counted from the year 2009. Thus, all these institutions could have become eligible to get grant-in-aid from the year 2012-13. The Government Resolution of 2009 shows that only because the schools or divisions would become eligible to get grant-in-aid from the year 2012-13, they will not get vested right to get grant from that year and it was upto the Government to take decision as to when the grant would be made available. This Government Resolution shows that to ascertain as to whether the school had become eligible to get grant, assessment was to be made and for that committees were constituted.

22 The Government Resolution dated 1st July, 2016 shows that the Government declared that Vth to standard VIIth of Petitioner school were satisfying eligibility conditions to get grant-in-aid. However, in this Government Resolution it was made clear that such declaration would not give vested right to the Petitioner to get grant-in-aid from that year and it was upto the Government to decide as to when the grant would be given. In the Government Resolution of 2016, the Government also made it clear that it would not give grant with back effect, arrears.

23 There is copy of communication of the Education Officer (Secondary) dated 5th July, 2016 showing that for standard VIIIth to standard Xth of Petitioner school eligibility was declared. This communication shows that for both parts of the Petitioner school viz Vth to VIIth standards and VIIIth to Xth standards, staff was sanctioned.

24 Copy of communication dated 11th October, 2006 of the Education Officer (Secondary) with Marutrao Ghule Patil, education institution, Gogalgaon (School of MLA) shows that from the year 2006, 60% grant-in-aid was sanctioned. This shows that not from the year 2005 grant was made available, but from the year 2004 the grant was made available. The communication dated 23rd August, 2007 shows that it was made with the institution Sudamrao Mate Patil of Gogalgaon (apparently the same school of MLA, but having different name this time). It shows that 80% grant was sanctioned. The communication dated 1st September, 2008 again to Sudamrao Mate Patil, institution, secondary school, shows that from March 2008, 100% grant-in-aid was sanctioned. Thus, to the school of MLA to which permission was granted in the year 2000, grant was started

apparently from the year 2004-05. This Court has already observed that to more than 150 schools to which permission was granted after Cabinet decision of 2001, the benefit of Government Resolution of the year 2000 was given and those permissions were given as *ex post facto* permissions (permission granted with effect from 2000). The Petitioner institution was however, not given grant when to more than 150 institutions, the grant was given by giving *ex post facto* permissions.

25 In reply affidavit, some reasons are given by the Respondents for rejection of the permission in respect of proposal of the year 2000 like inadequacy of space and absence of recommendation of District level committee. This Court has gone through the record of recommendation and the record shows that the District level committee had not recommended the permission for reasons like the institution was running unauthorizedly a D.Ed college and the institution had filed the writ petition against the Government. The record shows that undertaking was given by the institution with regard to required space and there was a record produced to show that the institution was having amount of rupees ten lakh. Thus,

apparently, the reason given for rejection of permission cannot sustain in law. Further, there is aforesaid background to such rejection.

26 There are two assessment reports in respect of two parts of the school of Petitioner. The assessment report of the committee created under Government Resolution of 2009 in respect of standard Vth to standard VIIth for the year 2013-14 shows that for total three divisions, there were 62 students. The report shows that no backlog in respect of reservation was filled in teaching staff. The report was given by the committee that due to presence of backlog, the institution was not eligible to get grant. The assessment report in respect of standard VIIIth to standard Xth, given for the year 2012-13 shows that the committee gave 75 marks to the Petitioner and reported that the school was eligible to get grants. There was backlog of reserved posts, but the committee observed that the vacant posts were there and so backlog can be filled by using vacant post as per the Government Resolution dated 16th July, 2013 of the State Government. With affidavit dated 21st July, 2018, the Petitioner has produced photographs of the present campus of the school. The photographs show that the school has big campus, big playground,

separate hostel for girls of the size 6200 square feet, canteen-cum-mess facility, separate rooms for use as offices of Headmaster and staff, separate room for library, multipurpose hall (apparently a big class room proposed as multipurpose hall), computer lab, physics and chemistry lab, separate lab for zoology and botany, water purification system for drinking water, two school buses and many buildings for classes.

27 In view of the aforesaid circumstances, this Court holds that permission could have been granted to the Petitioner, school for starting secondary school for standard VIIIth to standard Xth from the year 2000-01, but due to discrimination such permission was not given. Permission on permanent no grant basis was given in the year 2003 for VIIIth to Xth standards though it was subject to condition of giving of undertaking that the institution would not demand grants. In view of these circumstances and the record and other circumstances like giving of permission on no grant basis to more than 150 similar schools after Cabinet decision of 2001, it can be said that the permission ought to have been given to the Petitioner on no grant basis for VIIIth to Xth standards from the year 2000-01. Though such

inference is possible, there is no record to show that the classes of VIIIth to Xth standards were actually started in the year 2000-01. There is some record of inspection of VIIth standard. Though it can be said that the blame for not starting VIIIth standard to Xth standard school goes to Respondents, the fact remains that apparently classes of those standards were not started as there is no such record for the year 2000-01. Even if it is presumed that a division of VIIth standard was started in the year 2000-01, due to natural growth in the year 2003-04, the Petitioner institution could have started a division of VIIIth standard. The circumstance that in the year 2003 permission on permanent no grant basis was given also needs to be kept in mind. Thus, technically, it needs to be presumed that the permission was granted as it ought to have been granted from the academic year 2000-01. As the classes of VIIIth to Xth standards were started from the year 2003-04 as per the record, from the year 2007-08 grant of 20% ought to have been started in favour of Petitioner institution for VIIIth to Xth standards. By way of repetition, this Court is mentioning that MLA got grant from the year 2004-05 as per the record.

to VIIth standards classes are concerned, this Court holds that the Government Resolution dated 20th July, 2009, 15th November, 2011, 16th July, 2013 and 1st July, 2016 need to be applied in respect of this part of the school. As already observed, the Government declared that this part of the school had become eligible only after declaration made in Government Resolution dated 1st July, 2016.

29 The learned AGP submitted that the Petitioner institution, first part, standards Vth to VIIth, was not complying the conditions laid down in Government Resolution dated 19th September, 2016 and 9th May, 2018. Record is produced and submission is made that in the last standard, VIIth standard, strength of the students was less than 30 and so the part of the school having classes of standards Vth to VIIth standards is not entitled to get grant from 1st April, 2018 as per the Government Resolution dated 9th May, 2018. Copy of communication made by the Education Officer (Secondary) dated 5th January, 2019 in that regard is produced. This Court has carefully gone through the aforesaid Government Resolutions to ascertain the eligibility of the classes of standards Vth to VIIth. As many as 580 secondary schools were covered by these Government Resolutions and 1551 divisions

were held eligible to get grants under these Government Resolutions and so it cannot be said that the policy expressed in these Government Resolutions cannot be applied against the classes of standards Vth to VIIth of the school of Petitioner. The record of the school, self assessment prepared by the Headmaster and the record of the authority is seen by this Court. In the year 2016-17, there were 12 students in Vth standard, 18 students in VIth standard and 22 students in VIIth standard. In the year 2017-18, there were 20 students in Vth standard, 19 students in VIth standard and 22 students in VIIth standard. For the year 2018-19, there were 24 students in Vth standard, 22 students in VIth standard and 31 students in VIIth standard. Thus, if as per the contentions of the Petitioner from the year 2018-19 it satisfied the conditions for eligibility in respect of Vth to VIIth standards then these divisions also need to be considered by the Respondents for grant of Government aid from that year.

30 The learned counsel for Petitioner placed reliance on the observations made by this Court in the recently decided case viz **Writ Petition No.563 of 2015**, (*Aadarsh Shikshan Prasarak Mandal, Osmanabad and another Vs. The State of Maharashtra and others*)

decided on 21st February, 2019. The facts of this case were little bit different and this Court was considering the entitlement to get grants in respect of additional divisions and those divisions had become available due to natural growth. There were also allegations of discrimination, but in those cases there were reports of the officers like Education Officer and Deputy Director of Education in favour of the institution that those divisions were eligible to get grant-in-aid.

31 The learned AGP placed reliance on the observations made by the Apex Court in the case reported as **AIR 1973 Supreme Court 588**, (*The State of Maharashtra and others Vs. Lok Shikshan Sanstha and others*). The Apex Court has observed that the order of the educational authority of refusal to start education institution cannot be struck down by the High Court without considering the reasons given by such authority. There cannot be dispute over this proposition. Relevant facts of the present case are already quoted. When there is discrimination like in the present matter, the Court needs to step in.

32 In other case reported as **AIR 2000 Bombay 437**,

(Gramvikas Shikshan Prasarak Mandal Vs. The State of Maharashtra and others), the High Court observed that if the permission is rejected on the ground that the institution had conducted classes unauthorizedly then the Court may not interference in that matter. There cannot be dispute over this proposition. The facts of the present matter are different and they are already discussed. The facts of the reported case show that the classes were already started and after starting of the classes, application for permission was filed. There was a question of career of the students of Xth standard and due to conduct of the institution, there was possibility of affecting the career of those students. The facts of other reported case like **2004 (3) Bom.C.R. 723**, *(Keraleeya Samajam & others Vs. State of Maharashtra & others)* were also different. The observations made in **Writ Petition No.563 of 2015**, *(Aadarsh Shikshan Prasarak Mandal, Osmanabad and another Vs. The State of Maharashtra and others)* were referred. The relevant observations are at paragraphs 40 to 42 and they are as under:

“40. The learned Special Counsel specifically harped on the entitlement of the State Government to take policy decision in the matter like present one. He

submitted that the institution like petitioner has no fundamental or Constitutional right and even the statutory right or legal right is not there and so, this Court is not expected to interfere in the matter. He placed reliance on the observations which were used by this Court in the case reported as **2004 (2) Mh.L.J. 171 [Keraleeya Samajam and Ors. Vs. State of Maharashtra and Ors.]**. The matter was with regard to the grant in aid claimed by the secondary school. The application was made for seeking grant in aid. This Court referred the observations made by the Apex Court in the case reported as **(2002) 8 SCC 481 [T.M.S. Pai Foundation and Ors. Vs. State of Karnataka]** and specifically para Nos. 140, 141 and 142 were considered by this Court and they are as under :-

“140. We have now to address the question of whether Article 30 gives a right to ask for a grant or aid from the State, and secondly, if it does not get aid, to examine to what extent its autonomy in administration, specifically in the matter of admission to the educational institution established by the community, can be curtailed or regulated.

141. The grant of aid is not a constitutional imperative. Article 337 only gives the right to assistance by way of grant to the Anglo Indian community for a specified period of time. If no

aid is granted to anyone, Article 30 (1) would not justify a demand for aid, and it cannot be said that the absence of aid makes the right under Article 30 (1) illusory. The founding fathers have not incorporated the right to grants in Article 30, whereas they have done so under Article 337, what then, is the meaning, scope and effect of Article 30 (2)? Article 30 (2) only means what it states viz., that a minority institution shall not be discriminated against where aid to educational institutions is granted. In other words the State cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. If, however, aid were denied on the ground that the educational institution is under the management of a minority, then such a denial

would be completely invalid.

142. The implication of Article 30(2) is also that it recognises that the minority nature of the institution should continue, notwithstanding the grant of aid. In other words, when a grant is given to all institutions for imparting secular education, a minority institution is also entitled to receive it, subject to the fulfilment of the requisite criteria, and the State gives the grant knowing that a linguistic or minority educational institution will also receive the same. Of course, the State cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature or character of the recipient educational institution."

41. Though the ratio of *pai* foundation case is in respect of minority institution, it shows that discrimination cannot be allowed. There cannot be any dispute over the law laid down by the Apex Court in aforesaid matter. In that case, State had come with the specific defence that there was paucity of funds and it was also contended that the State cannot be compelled to give grant in aid to each and every school and there was circumstance that many schools had accepted sanction on permanent no grant basis. This aspect of running institution on permanent no grant basis is no

more available as Government itself has come with the policy that the schemes which were applicable in the past like year 2000 will be applicable to the schools which were sanctioned on permanent no grant basis and the word 'permanent' used in previous policy is deleted. In any case, present school was receiving grant in aid when additional divisions were sanctioned and when additional divisions had become available due to natural growth.

42. The learned Special Counsel for respondents placed reliance on the observations made by Madras High Court in the case reported as **AIR 2007 MADRAS 52 [Maria Grace Rural School, Venkatarayapuram Vs. Government of Tamil Nadu and Ors.]**. At para 45 the observations are as under :-

“45. With regard to the contention relating to the violation of Articles 30 (1) and (2) of the Constitution it is the definite case of the State that it has in no way infringed the right of minorities to establish and administer educational institutions of their choice under Article 30 (1). As rightly argued by the learned Advocate General, it is not correct to say that the right to establish and administer educational institution of their choice includes the right to receive grant-in-aid for such establishment and administration as it would amount to reading too

much into the provision. Grant-in-aid is an economic concept that would always depend upon the subjective satisfaction, financial stability and resources as well as the discretion of the State Government. It is also a matter of policy decision within the domain of the executive and not a matter of principle to be laid down by the legislature.”

33 There is no dispute over the propositions made above. It is already observed that for doing favour to MLA, who could have influenced the Respondents, permission was initially refused to the Petitioner and when there was opportunity to correct the mistake and when *ex post facto* (permission granted with effect from 2000) permission was granted to more than 150 schools, no permission was given to the Petitioner. The observations made by the Madras High Court, which are referred in aforesaid case also cannot be disputed. To take care of the requirements, conditions, which can be found in the Secondary School Code and also the aforesaid Government Resolutions, subject to some conditions, the relief can be granted in the present matter. In the result, the following order is passed:

ORDER

- I. The petition is partly allowed.
- II. Direction is given to the Respondents to grant permission on the basis of proposal made in the year 2000 on “no grant basis” for VIIIth to Xth standards school of the Petitioner. The grants are to be made available to this part of the school from the year 2007-08. The grants be made available only after strict scrutiny in respect of procedure followed for recruitment, the posts actually filled as against the permanent posts, which had become available and grant is to be released only in respect of those posts, which were filled as per the roster point system of the State Government. If any post is filled from open category, when the post was meant for socially reserved class, no grant is to be given in respect of that post. Thus, it is to be ascertained that the reservation policy was strictly followed before releasing of the grants. The

process of ascertaining that the aforesaid things were followed is to be completed within three months from the date of this judgment and thereafter, within three months the grants are to be released for the period starting from 2007-08.

III. In respect of Vth to VIIth standards, grants to be paid only after the conditions of all the aforesaid Government Resolutions including the Government Resolution dated 9th May, 2018 are fulfilled and the grants can be made available from the date of satisfying those conditions.

IV. The communication under challenge like direction given to give undertaking that the Petitioner institution would not demand grant, directions given to close down the school are hereby set aside. The order subsequently made like giving grants only from the year 2018 for VIIIth to Xth standards is also set aside as the grants are to be given from the

year 2007-08 for standards VIIIth to Xth.

V. Rule is made absolute in aforesaid terms.

[SUNIL K. KOTWAL, J.]

[T. V. NALAWADE, J.]

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