

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

**WRIT PETITION NO. 9121 OF 2018**

Principal / Secretary,  
School Managing Committee,  
Prathamik Ashram School Dhavalpuri,  
At : Dhavalpuri Taluka Parner,  
District : Ahmednagar.

**.... Petitioner**

**Versus**

1. State of Maharashtra  
Through its Education Department
2. The Maharashtra Prathamik Shikshan Parishad  
Mumbai, through its Project Director
3. District Committee,  
Maharashtra Prathamik Shikshan Parishad Ahmednagar  
through Chief Executive Officer,  
Having address at :  
Zilla Parishad At and Post and District Ahmednagar.
4. District Committee,  
Maharashtra Prathamik Shikshan Parishad  
Through it's Secretary and Education Officer (Primary)  
Having address at :  
Zilla Parishad At and Post and District Ahmednagar.
5. The Panchayat Samiti, Parner  
Through its Block Education Officer  
Having address at :  
Panchayat Samiti, At and  
Post Parner District Ahmednagar.

**..... Respondents**

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Shri. A. B. Gatne, Advocate for the petitioner

Shri. Kale, AGP for respondent No. 1

Shri. Deelip Patil Bankar, Advocate for respondent No. 2

.....

**CORAM : S. V. GANGAPURWALA  
AND  
A. M. DHAVAL, JJ.**

DATE OF RESERVING THE JUDGMENT : 02.05.2019.  
DATE OF PRONOUNCING THE JUDGMENT : 04.07.2019

**JUDGMENT [ PER A. M. DHAVAL, J. ] :-**

1. The petitioner, a Principal/Secretary of School Managing Committee (Prathamik Ashram Shala, Dhavalpuri, Tq. Parner) by this writ petition claims following reliefs.

(a) Quash letter of District Committee (Maharashtra Prathamik Shikshan Parishad, Nagar) to CEO, ZP dt. 26.02.2018 to the extent of rejecting the proposal of the petitioner of 388 migrated students for seasonal hostel facility.

(b) Writ of mandamus to direct the State and other respondents to pay and reimburse to the petitioner the expenses of seasonal hostel facility of 691 students presently residing in its hostel meant for migrated students.

(c) Writ of mandamus to the respondents to release the sanctioned amount of Rs. 15,45,836/- for 303 migrated students who enjoyed seasonal hostel facility with the petitioner and further direct to release the similar payment for remaining three months.

(d) D to H - other incidental reliefs.

2. Shri. A. B. Gatne, learned counsel for the petitioner argued that, as per Right of Children to Free and Compulsory Education, 2009 (hereinafter referred to as “Right to Education Act”), it is a policy of the State Government and the Central Government that not a single student between age group of 6 to 14 should drop out from the school. The problem was about parents who were migrating seasonally for earning their livelihood. The young children were accompanying their father and were remaining away from the school. Hence, the Government introduced 'Sarva Shiksha Abhiyan'. The Central Government provided Rs. 10,000/- per student and the State Government was to retain Rs. 1500/- for itself and pay the balance amount for the salary, honorarium of the employees and for providing food and other necessary facilities to the migrated students residing in seasonal hostel. The said scheme was implemented by the State through Maharashtra Prathamik Shikshan Parishad (MPSP). The scheme was also meant for children of persons who were constantly migrating from one place to another. The CEO, ZP was the monitoring authority and implementation was through the State Level and District Level Committees. Block Education Officer, Panchayat Samiti was monitoring the work at taluka level.

(a) On 30.08.2017, the Education Officer invited proposals for starting seasonal hostel schools for period of 01.10.2017 to

31.03.2018. The petitioner submitted proposal on 06.09.2017 for 717 students. The Chairman of Zilla Parishad and Verification Committee visited the school on 29.09.2017 and 22.12.2017, respectively and held that, 691 students were getting the benefit and the petitioner was eligible for the benefits. The Chairman, Zilla Parishad forwarded the proposal with approval. Respondent No. 3 on 26.02.2018 approved the said proposal only to the extent of 388 students, while the proposal for remaining students was rejected. [In fact, the letter dt. 26.02.2018 approved grants for 303 students (for three months) and rejected it for 388 students.] The rejection of 388 students was as per sub-clause 4.1 and clause 4 of GR dt. 02.09.2016. This was intimated by letter dt. 21.03.2018. On 06.03.2018, respondent No. 3 appointed another committee for verification and Education & Development Officer visited the premises and submitted its report on 29.03.2018. On 11.04.2018, another High Power Committee was appointed for actual ground verification. It submitted its report dt. 11.04.2018 admitting that the petitioner was providing all the requisite facilities as mandated by the Government circulars for 717 students. On 23.05.2018, Zilla Parishad reported that it had sought guidance from respondent No.2/MPSP which was final authority. Respondent No. 2 has not taken any decision, hence, this writ petition on 31.07.2018. Shri. Gatne, learned counsel for the

petitioner submitted that the petitioner has dismissed from service one Raosaheb Narayan Sangle. He and at his instance, Sarpanch and MLA also made complaints. The petitioner had provided food, residence and other facilities to the children of NT, who were migrating from place to place for earning their livelihood. The petitioner has complied with all the provisions of the circular. The respondents have wrongly rejected the proposals. Similarly situated schools were however granted grants, which is violative of Article 14. The contention that, the said facility was not available for private residential ashram schools is violative of Article 14. Time and again the various authorities have visited and inspected the facilities provided by the petitioner to the students. The petitioner claimed that though the students were admitted from June, they were children of persons regularly migrating from place to place. The petitioner has borne their expenses for the period from June to September and have claimed reimbursement of their expenses for the period October to March only. Village Dhavalpuri and its adjoining area from Parner taluka is drought affected and hilly area and having no transport facility. There is no residential school in Parner taluka providing hostel facility and infrastructural facility. The school of Zilla Parishad at Laman Tanda was unable to provide infrastructural facility for residence. The ground for rejection that the facility was

meant only for local students and the students from other talukas and districts could not have been accommodated by the petitioner is violative of article 14. The final authority MPSP has already approved grants for three months for 303 students. The contention that, private aided schools are not entitled to run seasonal hostels is contrary to the scheme. Reading the circulars harmoniously, it discloses that there is also no substance in the defence that, hostel facility was primary responsibility of local bodies when there was no school of any local body. The private institute would be entitled to run the hostel. The petitioner had provided biometric facility and has maintained children of poor persons migrating for their livelihood from the year 2007. Management of the Public Trust made request in writing to the School Managing Committee to run the hostel facility for the said students. The petitioner bears the expenses from June - September. Various authorities have approved the work of the petitioner of providing seasonal hostel facility to 691 students. Hence, the petition be allowed.

3. Per contra, ld. advocate Mr Bankar Patil for the respondent No. 2 submits that, there were several complaints from MLA, Sarpanch and private persons against the misuse of the scheme by the petitioner. He relied on the Government documents of the original scheme of 2012 17.07.2015, 01.10.2015, 02.09.2016,

26.10.2018 and 31.10.2018. He submitted that, the scheme was meant only for children of seasonally migrating parents. The object was to retain children of such migrating people at their original school and providing them food and other facilities at their original place. The scheme was to be implemented through School Managing Committee of the Primary School of local body. The financial assistance for implementing such scheme of seasonal hostels comes from consolidated funds of Union of India and the State Government. It must be used only in lawful manner. The petitioner had admitted students not only from Dhavalpuri and surrounding area but even from other talukas and other districts. They were not the children of seasonally migrating persons. They were admitted in the school in June and were continued even after the scheme was over i.e. in April - 2018. They are not migrated students but imported students. The scheme was to be implemented by schools of local bodies. In case of students migrating to Dhavalpuri, they were supposed to produce Education Guarantee Card to be issued to the parents. Most of the students were not from Dhavalpuri and surrounding area. There was mis-utilization of public funds. The scheme of transparency provided that, there will be direct beneficiary transfer to the students to retain them in the same village. Their residential arrangement was to be made either at their relatives or in their own house or in the school of

Zilla Parishad of the local authority. In the visit dt. 22.12.2017, 691 students were found but many of them were imported students. The visit dt. 28.03.2018 shows that, there were 291 students on the roll out of which 259 were present. The scheme was applicable to non-residential schools. The petitioner is a residential Ashram School meant for 160 students. The report of Block Education Officer shows that, the petitioner avoided to give information and pressurized the Inquiry Committee. The report dt. 29.03.2018 shows that, there was no biometric system installed. It must be installed in presence of responsible officer of Zilla Parishad or Panchayat Samiti. The Gram Panchayat report shows that, no migration was recorded by Gram Panchayat.

4. Shri. Aghav, learned counsel for respondents No. 3 to 5 and Shri. Kale, learned Asst. Government Pleader argued on the same lines as per the arguments of advocate Shri. Bankar Patil.

5. We have carefully heard the arguments advanced before us.

6. The factual matrix may be stated as follows:

(a) On 30.08.2017, the Education Officer (Primary), Zilla Parishad, Nagar invited proposals from Block Development Officer, Panchayat Samiti for establishment of Seasonal Rest House for the children of migrated parents as per Circular dt. 09.12.2016 and 16.06.2017.

(b) On 06.09.2017, the petitioner submitted proposal for 447 boys and 270 girls. It was accompanied with undertaking of the President and recommendation of Regional Centre (Kendra Pramukh). Jagannath Khamkar of Education Department of Panchayat Samiti submitted report dt. 29.09.2017 that, he had verified about migration by personally meeting some families and has also verified the infrastructure with regard to residence, adjoining area, drinking water facility and other facilities. The report of BDO to the Education Officer dt. 22.12.2017 shows that, as per Biometric system, 691 students were found in the seasonal residential hostel of the petitioner. They were provided with good infrastructure like Toilet, Bathroom, Drinking Water, Water for Bath and provision for food. 36 cooks, assistants and 36 managers were appointed. It was shown that, the students were residing in Rest Hostel from June-July. Many students were not from Dhavalpuri and some of them were from other districts. Their parents were regularly migrating. The petitioner borne the expenses of students from July to August.

(c) On 26.02.2018, the CEO, ZP, Nagar approved expenses of Rs. 15,45,836/- for 303 students for a period of three months. Meanwhile, there were several complaints from MLA Vijay Auti, Panchayat Samiti Member–Tarabai Chaudhari, Member of Public - Raosaheb Sangle, Sarpanch of Dhavalpuri and the news were flashed in the newspaper about attempt made by petitioner to earn grants by showing bogus students in the seasonal hostel. There were some complaints of FIR for outraging modesty against Mr. Kazi, the Secretary of the petitioner. This resulted into departmental enquiries from time to time. BDO reported that, the Headmaster of the petitioner was not cooperating in the inquiry and several

discrepancies were found in the work of the petitioner. The petitioner made several representations for releasing the grants for all 691 students for the entire period of six months. The CEO sought guidance from Director, State Project, MPSP, Mumbai. Meanwhile, on 18.04.2018, the Sarpanch reported to the Grampanchayat that there was no migration of any person from Dhavalpuri. The report of BDO to MPSP dt. 29.03.2018 shows several objections for disentitling the petitioner of the grants.

- (i) The scheme is not applicable to Residential Ashram School.
- (ii) The scheme is not applicable to private school.
- (iii) The scheme is meant for students from the same area where they were schooling when their parents migrated mid-term.
- (iv) Since the petitioner-Ashram School is residential school, the scheme is not applicable to them.
- (v) The scheme is not meant for imported students from other talukas and districts. There are ashram schools receiving grant-in-aid at other places. It was wrong on the part of the petitioner to admit them in its hostel. The scheme is meant for parents seasonally migrating after Deewali. The petitioner was entertaining the students for residential hostels right from 1<sup>st</sup> June and they were continued even in the month of April. Many students were coming to the school from their residence. No Biometric facility was found in the seasonal Residential Hostel.

- (vi) There was no cleanliness and basic infrastructural facilities of any quality at the petitioner.

7. In view of this, the grants sanctioned to the petitioner of Rs. 15,45,837/- was returned. Education Officer (Primary), Zilla Parishad, submitted its report dt.02.05.2018. It observed that, the auctions were held and goods were purchased of the lowest tenderer. The provision for food, nashta, stationery and provisional articles were purchased in consultation with school management committee. The Biometric facility was found by the Committee. It held that, seasonal residential hostel was to run by schools of Local authorities. The assessment of migration was done by the petitioner and not by school of local authority. The said fact could not be verified as the period of school was over. The rooms were provided with teen sheet roof with no fan facility. There were 160 students in Primary Ashram School and they were not shown as beneficiaries. By letter dt. 15.05.2018, BDO informed the Education Officer that the scheme was meant for non-residents school.

8. It is necessary to consider the scheme as disclosed from the various government circulars.

On 17.06.2010, the Government Resolution of the State disclosed the policy of providing free and compulsory primary

education to all children between the age group of 6 to 14 years. Their management was to be looked after by Village Education Committee, Ward Education Committee and by School Committee in case of private schools. The constitution of the committee was provided by the Government Resolution. It consisted of 12-16 members of which 75% were from parents or guardians of the students with due representation to weaker section and to the parents of children from each division. The school management committee was to be supervised and monitored by local authority. The object was to bring all the students not taking education into the main stream and continue to give them education upto 8<sup>th</sup> std. This GR is silent regarding the scheme about seasonal hostel.

On 06/.../2012, MPSP introduced the seasonal residential hostel scheme. It was meant for students studying in between 1 to 8<sup>th</sup> std., and was for six months. It was meant for children of persons migrating from the village. The residential hostel was to be provided for such children of migrated persons so that they can continue with their education in the same village. It provided that, if the parents were not ready to send their children for residing in the hostel those children were to be provided with food and tuition classes. The scheme was also applicable to the children of migrating people if they were studying in private schools receiving grant-in-aid. One

Superintendent and one Assistant was to be provided for the hostel and the tuitions were to be taken for such students from 7:00 pm to 9:00 pm by paying honorarium of Rs. 1500/- for the teacher working as Superintendent and Assistant. Besides, there was employment of one cook on temporary basis. The scheme was to be supervised and monitored by committee consisting of seven members including Collector, CEO, Divisional Dy. Director of Education, Principal (ITI), Education Officer (Primary) and (Secondary). The scheme made provision of Rs. 9300/- for each student as per the details given therein.

9. The scheme provided that, in case some children were migrating along with their parents, they should be admitted mid-term in the regular schools and if it was not possible due to long distance, there should be arrangement of special teacher from regular school on temporary basis for providing education to the students in the village. No grants were meant for Seasonal School.

10. As per GR dt. 22.10.2012, if the parents of the children were frequently migrating from place to place, those students be admitted in seasonal Residential School.

11. The Circular dt. 17.07.2015 issued by MPSP disclosed target of 51018 such children in the State. This seasonal residential

hostel facility was to be provided at the original place where the children were taking education and the facility was for the period from October to March. The responsibility to run such seasonal residential hostel was of School Management Committee of Local Authority. Clause 9 lays down that, such facility should be provided by the school management of the local authority. **Clause 10** specifically provides that, privately managed schools should not be allowed in any circumstances to run seasonal residential hostels. The funds were provided for providing provisional articles like soap, oil, hair oil, clothing soap, tooth powder, mirror, comb etc. The facility of building, electricity fans, furniture, potable water facility for bath, and toilet was to be provided by school management committee for the said purpose. The provisions was made of Rs. 8200/- for per student. There was close verification and monitoring by the various authorities. The circular makes it clear that, seasonal residential hostel was not meant for students migrating along with their parents to a particular place. The anxiety is to provide them education by admitting them in a regular school or by providing basic education to them at their place by temporary appointment of teachers. The students migrating along with their parents and residing with their parents were not meant to be beneficiaries of the residential school.

12. The GR dt. 01.10.2015 is on the same lines. It provides that, in case of students migrating along with their parents, they should be provided with Education Guarantee Card and at the place of migration those students were entitled for mid-day meal and dinner on the basis of such Education Guarantee Card. Such Guarantee Cards were to be provided to the Headmaster of the School.

13. Circular dt. 02.09.2016 of MPSP also makes it clear that the scheme of Seasonally Residential Hostel was meant for the children of persons migrating after Dasara or Deewali for labour work like Brick Kiln or for sugarcane cutting or for any other reason. Those students who were not migrating along with their parents were to be provided with seasonal residential hostel facility. The students migrating along with their parents were not to be provided with such facility. For the year 2016-17, financial provision was made for 7606 students for residential hostel and provision for Rs. 8500/- for 71851 children in the State.

14. Clause 4.6 makes it clear that, the management of such hostel was to be done by school local authority. Migrated students were supposed to bring Education Guarantee Card which was to be

produced before the Headmaster. In case of migrated persons working in the factory, the factory was to provide four rooms for the students. The brick kiln owner was supposed to provide transport facility to its workers. They were to be admitted in the nearest regular school. Same is the case with Sugarcane cutter labourers and labourers working in mine construction business and shepherds.

**Rule 5.2.2** shows that, the residence arrangement was to be made of all such students in one building of the school. The circular also provides that, if the students were willing to reside with their relatives or in their own house when their parents are migrated, they should be provided with other facilities except the residence. Such facility was to be provided to the students for both the Government Schools as well as privately managed schools. The provision does not provide for running of a seasonal residential hostel by private school. **Rule 5.3.5** makes Biometric System mandatory.

15. The circular of Maharashtra Primary Education Council dt.16.06.2017 was the latest circular before this Writ Petition filed by the petitioner. It also makes clear that, the scheme for providing seasonal residential hostel was with intention to see that the students of migrated persons continue in the same school in the same village and they do not migrate with their parents. For the year 2017-18, provision for seasonal residential hostel was introduced for 6730

students in the State whereas; provision for non-residential hostel was made for 64012 students at the rate of Rs. 10000/- per student per six months. For Ahmednagar, 682 students were shown for seasonally residential facility. Parner is one of the talukas of Ahmednagar and Dhavalpuri is small village from Parner. The petitioners are claiming seasonal residential facility benefits for 717 students at Dhavalpuri alone. The subsequent circulars dt. 31.07.2018 and 26.10.2018 would not be applicable to the facts of the present case.

16. On carefully considering the various circulars and the arguments of learned advocates, we find that the right to free and compulsory education is now a fundamental right under Article 21-A, from 2009. However, the implementation of the said scheme and taking various steps for implementation is within the realm of Government Policy of making provision for children of persons migrating seasonally for earning their livelihood. The Government took a policy decision to prevent drop out of the students out of mid-term seasonal migration of their parents by providing financial assistance to such students in the form of break-fast, mid-day and night meals and other provisional articles so that they can continue to study in the same school in the same village even when their parents are temporarily migrated out of the village. The scheme is not meant

for children of persons for migrating from May to May. It is obvious that, in their case, the children can reside with their parents at various places where they would migrate and they can take education in such schools.

17. It is obvious that, if the children are provided with residential facility in the school and the school is getting grant in aid from the Government, no separate seasonal residential facility is required to be given for such students. It is thus reasonable and rational that, such scheme is not applicable for residential schools receiving grant-in-aid.

18. The main part of the scheme is to see that the students continue to study in the original school from the same village even after migration of their parents. No such facility is required to be given to the students migrating along with their parents. In case of such students, the scheme provides for making education available in the regular school or by appointment of teacher in particular villages situated away from the regular schools. The facility of financial assistance is given to the students for not residing with their parents. If the students are residing with their parents either in the village of their origin or non-migrated place, they have not been provided with

facility of seasonal residential hostel. This facility is not based on economical condition of the parents. The distinction of providing the facility for students residing at their original place on migration of their parents and the students migrating along with their parents is reasonable and rational. In case of students of earlier category, they are provided with financial assistance for food and provisional articles. The residence facility is optional. They can stay in their own house when their parents are migrated or they can reside with their relatives and if both the things are not possible, they can be accommodated in the school building itself. The scheme is not meant for creating separate residential hostels for such students. The local authority has to take care of providing residential facility in the school along with facilities of potable water, fan, electricity, toilets and bathrooms. The scheme was not meant for private persons to run hostels and accommodate students therein and to claim the grants under the scheme for each such student. In case of students migrating with their parents, the provisions is made only for admitting them in regular school mid-term or to provide them education at their convenient place by deputation of a teacher.

19. No doubt, there are some persons who are migrating frequently and their children cannot go on changing their schools from time to time. Such students can be also admitted in the

seasonally residential Hostels but their admission will be for period of only six months and they will have to produce Education Guarantee Card from their original school.

20. In the present case, the petitioner totally misunderstood the scheme and assumed it as per its own convenience. The petitioner assumed that, they can admit any number of students from any place for providing residential facilities under the claim that the parents of these children are regularly migrating. The inquiry revealed that, some students were coming from the same village from their own house. The inquiry also revealed that, many students were admitted from other talukas like Shrirampur, Sangamner, Newasa etc. As per the scheme, if the parents of such students residing in other talukas were migrating, there provision was to be made for residence in those taluka places and not at some other place. Besides, the petitioner is a residential school whereas the scheme was applicable for non-residential school. The petitioner was not claiming that the scheme was floated by them for their own students on account of migration of their parents. There were 160 sanctioned strength of students of the school and the school was getting grants for their residence. In such case, the scheme was totally non applicable to the petitioner. The scheme is meant for children who were suffering from migration of their parents seasonally and not for the entire year.

In the present case, the petitioner had admitted the students right from June to April and the petitioner claims that they were bearing the expenses of these students from June to September and in April – 2018. This was contrary to the scheme. The petitioner was not entitled to interpret the scheme as per their own convenience. The scheme was applicable only for seasonal migration and not for the persons who were migrating for the entire year.

21. In the light of these facts, we hold that the children who were provided with residential facility by the petitioner were not eligible as beneficiary of the scheme. The petitioner was not entitled to provide residential facility to them. The children from other places coming to Dhavalpuri were not entitled for benefits of the scheme.

22. In the light of these facts, in the writ jurisdiction, we do not wish to enter into the disputed question of facts as to whether there was Biometric system properly enforced or not and whether the facilities provided were upto the mark or not. It is, however, necessary to record that the essential condition of production of Education Guarantee Card from the original school was not complied.

23. Unfortunately, the various authorities implementing the scheme did not properly understand who can be the beneficiaries

under the scheme. They verified other facilities in the visits to the school, but they did not consider whether the students admitted were eligible to get the benefits of the scheme or not. They also did not consider as to whether the petitioner was eligible to provide such residential facility and, therefore, there was grant of Rs.15,45,836/- to the petitioner which was subsequently withdrawn. The grant itself was contrary to the scheme. In the light of these facts, we find no force in the challenge to the orders of the respondents declining to grant the benefits to the petitioner.

24. If such benefits are wrongly given to any other institute, the respondents may take appropriate decision in that regard but there cannot be any equality in the matter of illegalities. Hence, there is no question of violation of Article 14 of the Constitution.

25. Hence, the petition is dismissed. Rule is discharged. No order as to costs.

[ A. M. DHAVALA ]  
JUDGE

[ S. V. GANGAPURWALA ]  
JUDGE