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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL/ APPELLATE JURISDICTION

WRIT PETITION NO.3093 OF 2019
WITH
O.S. WRIT PETITION NO.572 OF 2017

Unaided Schools Forum	... Petitioner
Vs.	
State Election Commissioner and Ors.	... Respondents

WP/3093/2019

Mr. Mihir Desai, Senior Advocate I/b. Mr. Swaraj Sanjay Jadhav for the Petitioner.

Mr. Mayur Jadhav I/b. Mr. Sachindra B. Shetye for the Respondent No.1.

Mr. Y.S. Khochare, AGP for the Respondent Nos.2, 3 and 9.

Mr. Pradeep Rajagopal a/w Ms. Drishti Shah for the Respondent No.10.

WP/572/2017

Mr. Mihir Desai, Senior Counsel a/w Mr. Swaraj Sanjay Jadhav for the Petitioner.

Mr. Pradeep Rajgopal and Ms. Dristi Shah for the Respondent No.1.

Mr. Rajiv Chavan, Senior Counsel a/w Mr. M.S. Bharadwaj for the Respondent - UOI.

Ms. Geeta Shastri, Addl. G.P. for the Respondent – State.

CORAM : A.S.OKA AND
M.S. SANKLECHA, JJ.

DATE : 3rd APRIL 2019.

P.C. :

1 Today, the petitions were fixed for final disposal. The learned counsel appearing for the Election Commission of India states that the provisions of section 159 of the Representation of People Act, 1951 and in

particular, sub-section (2) thereof will not apply to the Private Unaided Schools. He, therefore, states that the requisitions issued which are subject matter of challenge in these petitions to Private Unaided Schools will be withdrawn. We accept the said statement.

2 There was some controversy whether section 26 of the Representation of People Act, 1951 will enable the authorities to requisition the services of teaching and non-teaching staff of private unaided schools. In the case of *Election Commission of India vs. State Bank of India Staff Association*¹, the Apex Court held that section 26 of the said Act of 1951 is not a source of power at all to requisition the services of employees other than the Government employees.

3 As far as the first statement made by the learned counsel appearing for the Election Commission of India is concerned, the same is in terms of the law laid down by the Apex Court in the case of *Election Commission of India vs. St. Mary's School and Ors.*². In view of the facts that the aforesaid statement made on instructions is well supported by the legal position as laid down by the Apex Court, it is not necessary to entertain these petitions and accordingly, the petitions are disposed of.

(M.S. SANKLECHA, J.)

(A.S.OKA, J.)

1 1995 SCC Supl. (2) 13

2 AIR 2008 SC 655