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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 7708 OF 2014

The President,
Shri Pragat Vignesh Mandal and Anr. ... Petitioners.

V/s.

State of Maharashtra and Ors. ... Respondents.

Mr. S.A. Rajeshirke for the Petitioner.

Mr. M.M. Pabale, AGP for Respondents 1 to 4.

***CORAM : PRADEEP NANDRAJOG, C.J. &
N.M. JAMDAR, J.***

DATE : 10 JUNE 2019.

P.C. :-

Heard learned Counsel for the parties. Case of the Petitioners is that the first Petitioner, a Charitable Trust, has established the second Petitioner - school in a triable area in the State of Maharashtra. The school is an un-aided school. Permission granted by the Education Department was for classes 8th to 10th.

Pleading that there was no school in the area where education could be imparted from the 5th standard to the 7th standard and that the children in the area who desired to study from 5th standard onwards till the 7th standard have to go to a school which was 3 km. away. The Petitioners sought approval to commence education in its school from 5th standard onwards. It is pleaded that the application submitted by the Petitioners was processed by the third Respondent i.e. the Deputy Director of Education resulting in the third Respondent passing an order on 25 July 2011. The said order records that the Petitioners have the requisite infrastructure to impart education from the 5th standard onwards. It is pleaded that a member of the legislative council representing teachers constituency made a similar recommendation. The grievance is to the fact that the third Respondent, while according approval as per the order dated 25 July 2011 made a recommendation to the State of Maharashtra to grant the necessary approval. Case pleaded by the Petitioners is that the third Respondent was the Competent Authority to accord the approval and thus once having found that

the infrastructure was available, the third Respondent ought to have granted the necessary sanction and not made a recommendation to the first Respondent to grant the necessary approval.

2. On aforesaid pleadings prayer made is to direct the third Respondent to grant the necessary approval.

3. In the counter affidavit filed it is pleaded that there was in existence a school established by the Zilla Parishad in the area to impart education from the 1st standard to the 4th standard and that as per decision taken and notified by the Government Resolution dated 2 July 2013, schools imparting primary education from the 1st to the 4th standard were automatically sanctioned entitlement to impart education till the 5th standard.

4. Thus, it is pleaded that under no circumstances could be the Petitioner be granted approval to impart education for the 5th standard.

5. The counter affidavit does not state any reason as to why at the middle level commencing from the 6th standard to the 7th standard approval was not granted to the Petitioners.

6. From the rival pleadings of the parties and the documents on record it emerges that as per Government Resolution dated 2 July 2013, schools having classes from the 1st to the 4th standard became entitled to impart education till the 5th standard and thus the decision taken by the third Respondent on 25 July 2011, which preceded with the Government Resolution dated 2 July 2013 cannot be said to be illegal. But, the effect of the Government Resolution would be that from the year 2013 only such schools would be entitled to impart education at the 5th standard which had classes from the 1st standard to the 4th standard.

7. However, the response being silent as to why the Petitioners are not entitled to impart education from 6th standard till the 7th standard, noting that the Petitioners have the permission to

impart education from the 8th to the 10th standard, we dispose of the Petition directing that from the next academic year the Petitioners would not induct any student in the 5th standard or the 6th and the 7th standards we direct the State Government to consider the recommendations made by the third Respondent on 25 July 2011 and keeping in view the fact that the said Respondent has noted adequacy in the infrastructure available pass the necessary orders.

8. Should the order be against the Petitioners, the Petitioners would be entitled to challenge the same.

N.M. JAMDAR, J.

CHIEF JUSTICE