

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.231 OF 2013

Mumbai Pradesh Arya Vidya Sabha .. Petitioner.
v/s.
Election Commission of India & Others .. Respondents.

Mr. Dilip G. Bagwe, for the Petitioner.
Ms. Geeta Shahstri, Addl. G. P. for the Respondent-State.
Mr. Pradeep Rajgopal and Ms. Drishti Shah, for the Respondent- Election
Commission of India.

**CORAM: A.S.OKA &
M.S.SANKLECHA, JJ.**
DATE : 12th APRIL, 2019.

P.C:-

This Petition under Article 226 of the Constitution of India, filed by an Institution which runs private schools and college at Ghatkopar, Mumbai. Some of these Schools/Colleges are aided and some are unaided schools/ Colleges. The Petitioner seeks a declaration that Section 29 of The Representation of the People Act, 1950 (1950 Act) and Section 159 of The Representation of the People Act, 1951 (1951 Act) will have no application in the case of Petitioner's aided and unaided Schools and Colleges.

2 This Petition relates to aided and unaided schools and college.

3 We first take up the prayer for declaration that Section 29 of the 1950 Act would have no application in respect of aided and unaided Schools and Colleges. We have today passed an order in the of Shikshan Mandal, Goregaon v/s. Election Commission of India (Writ Petition No.1841 of 2009) holding that Section 29 of the 1950 Act will not apply in case of aided Schools as they are not local authority. The above decision though rendered in the context of the aided schools, would equally apply to unaided schools and colleges. Thus, we declare the Section 29 of the 1950 Act can not govern both unaided and aided Schools and Colleges of the Petitioner.

4 We then take up the prayer for declaration that Section 159 of the 1951 Act will not apply in case of unaided Schools/ Colleges. In fact in Unaided School Forum v/s. Election Commission of India in Writ Petition No. 3093 of 2019 decided on 3rd April, 2019, the Election Commission had instructed its counsel to state before the Court that provisions of Section 159 of 1951 Act will not apply to private unaided schools. This position would hold good in respect of the Petitioners unaided Schools and Colleges.

5 We next take up the prayer for declaration that Section 159 of the 1951 Act will not apply in case of aided Schools and Colleges. In fact, in the order passed today in Shikshan Mandal, Goregaon (supra), Mr. Rajgopal, the learned Counsel appearing for the Election Commission had stated that the Respondent- Election Commission of India would requisition the staff of private aided Schools (both teaching and non-teaching) for only three days training and only for two days at the time of election i.e. one day prior to polling day and on the polling day itself. It was also submitted that so far as training is concerned, it would be the

endeavor of the Commission to call the staff of the Petitioners for training on non-working days as far as possible. The above statement made by Mr. Rajgopal on behalf of the Respondent No.1 – Election Commission of India would equally apply to the present Petition to the extent it relates to private aided Schools/ Colleges.

6 Therefore, for the reasons recorded herein above, we pass the following order:-

- (a) It is declared that Section 29 of the 1950 Act does not empower the Respondent - Election Commission of India and its Officers to requisition staff of the Petitioners Schools/ Colleges (aided and unaided) for preparation and/or revision of electoral rolls as already held by us in Shikshan Mandal (supra);
- (b) The statement made by Mr.Rajgopal in Unaided School Forum (supra) on 3rd April, 2019 that Section 159 of the 1951 Act has no application to private unaided schools would equally apply in the case of the Petitioner to the extent of the unaided schools/college; and
- (c) Section 159 of the 1951 Act would apply so far as private aided school/college are concerned as held by us in Shikshan Mandal, Goregaon (Supra) on the basis of a statement made on behalf of the Election Commission of India that the staff (teaching and non-teaching) will be requisitioned for a definite and specified period i.e. 3 days training and 2 days at the time of polling. This would equally apply in case of the Petitioner.

7 Accordingly, Petition is allowed in the above terms.

(M.S.SANKLECHA,J.)

(A.S.OKA,J.)