

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8472 OF 2019

Rajesh s/o Dagadu More and Ors. ...Petitioners

Versus

The State of Maharashtra and Ors. ...Respondents

Mr A.D. Shinde, Advocate for Petitioners
Mrs M.A. Deshpande, Addl. G.P. for Respondent Nos. 1 to 3

WITH
WRIT PETITION NO. 7546 OF 2019

Kaluram s/o Dadabhau Khude and Ors. ...Petitioners

Versus

The State of Maharashtra and Ors. ...Respondents

Mr G.A. Kulkarni, Advocate for Petitioners
Mrs M.A. Deshpande, Addl. G.P. for Respondent Nos. 1 to 3
Mr V.S. Bedre, Advocate for Respondent No. 3
Mr C.D. Fernandes, Advocate for Respondent No. 5

**CORAM : S.V. GANGAPURWALA
AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 17th FEBRUARY, 2020

PER COURT :

1. In both these writ petitions, the petitioners assail the orders passed by the Commissioner, Ahmednagar Municipal Corporation for transferring the students of 8 to 10th Std. to other schools.

2. Mr Shinde and Mr Kulkarni, the learned Counsel for the petitioners strenuously contend that the closure of the school on the part of the respondent-local authority is *mala fide*. It is when the teachers were agitating their right to get the salary as per the pay scale, the respondent-Corporation took decision to close down the school. The learned counsel submits that the Government at the time of granting permission to the respondent-Corporation to run 8 to 10th Std. has specifically observed that the Corporation will have to bear the expenses and it will not be funded by the Government, still, the Corporation started 8 to 10th Std. in their school. The Corporation is a local authority. It is an instrumentality of the State Government. It should aid in implementing the policy of the State Government. The learned Counsel further submits that all the teachers have now crossed upper age limit to get employment in other schools. The learned Counsel further submits that the wards of the petitioners were admitted in the school run by the respondent-Corporation. They are from economically weaker sections of the Society. Under compelled circumstances, the petitioners had to get their wards admitted in another school. It is not possible to pay hefty fees in other private schools. The learned Counsel relies on Article 14 and 43 of the Constitution of India to buttress submission that the instrumentality of the State cannot act in an irresponsible manner and that they have to further the cause of the economically weaker sections of the society.

3. Mr Bedre, the learned Counsel for the respondent-Corporation submits that the Corporation is not in a position to bear the expenses of the payment of salaries of the teachers as per 6th Pay Commission as directed by this Court. The same is not viable. The Corporation had no option but to close down the school. The wards of the petitioners have taken the transfer certificate and are admitted in other schools.

4. We had asked the learned Counsel for the teachers to show the statutory provisions and/or the executive instructions by virtue of which the respondent is under obligation to run 8 to 10th Std. The petitioners could not lay their hands on any statutory mandate or executive instructions to that effect. .

5. The local authority has to run on the funds it has at its disposal. For running 8 to 10th Std., the Corporation is not given any grant from the Government. It is also imperative for the Corporation to pay salaries to the employees as per the pay scale applicable.

6. We can appreciate the contention of the petitioners as against the State Government for furthering the cause enshrined in the directive principles of State Policy. The directive principles of State Policy are to implement the concept of welfare State. However, the petition is not against the state Government but against the Corporation dissuading them from the closure of the

school. The Corporation has taken the plea of non viability to run 8 to 10th Std.

7. It is also not the case of the petitioners that the procedure for closure has not been adhered to.

8. In absence of statutory mandate against the Corporation to run the secondary school and in absence of any averments with regard to non-adherence to the procedure for the closure, it would not be possible to direct the Corporation to continue with 8 to 10th Std. However, it is for the Corporation to consider its viability and feasibility to run 8 to 10th Std and so as to further the cause of the economically weaker sections of the society.

9. With the aforesaid observations, the writ petitions are disposed of. No costs.

[SHRIKANT D. KULKARNI, J.] [S.V. GANGAPURWALA, J.]

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