

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11541 OF 2016
WITH CA/4198/2019 IN WP/11541/2016 WITH WP/11536/2016 WITH
CA/4199/2019 IN WP/11550/2016 WITH WP/11537/2016 WITH
WP/11550/2016

PARBHANI EDUCATION SOCIETY PARBHANI THROUGH IT'S PRESIDENT
MOHAMMAD ABDUL RASHEED ENGINEER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr.A.B.Tele, Mr.V.D.Sapkal, Sr.Counsel h/f Mr.S.R.Sapkal, Advocate for
the petitioner.

Mr.S.B.Yawalkar, AGP for State/respondent No.1.

Mr.B.A.Shinde, Advocate for respondent No.2.

(CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, JJ)

DATE : JULY 6, 2021

PER COURT :

1. CA No.4199/2019 in WP No.11550/2016 was with reference to dispensing with the presence of an Officer of the Education Department. The same does not survive and, therefore, stands disposed off.

2. We have perused the detailed order passed by this Court on 25/03/2019 wherein this Court had come to a prima facie conclusion

that the Self Finance Act, 2012 would not apply in the cases of creation of additional posts in the existing schools. We have also perused the judgment delivered by this Court at the Principal Seat dated 15/12/2015 in Writ Petitions No.9020/2014 filed by **Sindhudurg Zilla Shikshan Sanstha Chalak Mandal Vs. Union of India [2016(1) AIR Bombay Reporter 801]**, vide which the challenge to the Constitutional validity of the Right of Children to Free and Compulsory Education Act (In short, RTE Act) was rejected and it was concluded that the State Government shall proceed as per its circulars and take effective steps to achieve the constitutional and RTE Act objects.

3. The learned Senior Advocate Mr.Sapkale submits that it is a strange situation wherein existing schools are subsequently placed under the provisions of Self Finance Act, 2012, completely in opposition to the provisions of the RTE Act. He also does not rule out the possibility of new entrants in the education arena to commence schools under the Self Finance Act and who are actually to be governed by the RTE Act. This is likely to put financial pressure on the State Government. But, this situation could be the creation of the Government itself.

4. Prima facie, we apprehend that there could be existing schools who have acquired the permission from the Government to operate such schools/educational institutions through Self Finance and such schools, subsequently, would raise a demand for the benefits of RTE Act by citing the law applicable. Thus, this could be a 'Modus-Operandi', which will create a vicious cycle.

5. The State of Maharashtra has entered an affidavit in these cases wherein a clear stand, which would precisely and specifically deal with the issues in these petitions, has not been taken. The State was, therefore, directed to qualify as a matter of general policy in this regard. Mr.Yawakar, the learned AGP submits that he would take instructions from the State Government, especially in the light of the judgment delivered by this Court in Sindhu Durg Zilla (supra).

6. We are of the view that respondent No.1 needs to make a statement as to whether it intends to discontinue the policy of granting permissions to open new schools or divisions under the Self Finance Act, 2012 which would not prevail over the RTE Act. The State also needs to take a clear stand in view of Section 25 of the

RTE Act and Rule 22 of the Right of Children to Free and Compulsory Education Rules, 2010 (RTE Rules) with regard to maintaining the Pupil-Teacher ratio. We expect the State Government to make this statement so as to eliminate the possibility of granting permission to private stake holders to start new schools under the Self Finance Act and subsequently grant coverage under the RTE Act, which is likely to create financial pressure on the State Government. Ultimately, the tax payers money is at stake.

7. Let an affidavit in view of the above be filed in this Court on or before 22/07/2021. Stand over to 27/07/2021.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)