

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9949 OF 2019

Anjuman Tarakki-E-Talim, Kharda's
Anglo Urdu High School,
Jamkhekd, Tal. Jamkhed,
Dist. Ahmednagar through its President
Mr. Kazi Sayyad Mansoor Haji Usman Quadri

Versus

The State of Maharashtra and others.

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Mr. Anand P. Bhandari, Advocate for Petitioners
Mr. A.D. Aghav, Advocate for respondents No. 4 and 5
Mr. S.B. Yawalkar, AGP for respondents No.1 and 2.

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**CORAM : SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ.**

DATE : 15th JANUARY, 2021

ORDER [PER ABHAY AHUJA, JJ] :-

By an order passed today, we have dismissed the writ petition for reasons to follow. We are accordingly setting out the reasons as under.

2] By this petition filed under Article 226 of the Constitution of India, the Petitioner trust is seeking directions to the respondents No. 1 to 5, to close VIIIth Class in the respondents' No. 7 and 8 schools and to transfer the students to the Petitioner school on the ground that establishment of VIIIth standard by the

Zilla Parishad School will result in unhealthy competition.

3] The petitioner is a registered educational trust imparting Urdu education and is running school by the name "Anglo Urdu School", Jamkhed, Taluka Jamkhed, District Ahmednagar and is also receiving grants-in-aid. The said school is imparting Urdu medium education to students pursuant to permission granted in the year 1987.

4] The Petitioner submits that for the last 30 years till the year 2017, the Petitioner and the Zilla Parishad schools including respondents No.7 and 8 have existed without any dispute. However, from the year 2017, the Zilla Parishad school has allegedly started VIIIth class. The petitioner submits that, the Zilla Parishad schools have not complied with Government Resolution dated 29.6.2013, which lays down the parameters regarding infrastructural facilities to be made available in the school submitting that it has spent huge amount on infrastructural facilities, whereas, the Zilla Parishad School is operating VIIIth Class without any facilities. It is also contended that in view of clause 3.2(1) of the Secondary School Code, 1999 a primary school cannot open VIIIth class in the area adjacent to a neighbouring school which may result in unhealthy competition and the teachers of the Petitioner will be rendered surplus. However, except for making these bald allegations, the petitioner has not been able to substantiate or demonstrate as to

how the said Government Resolution or provisions of Secondary School Code of 1999 have been violated.

5] Mr. Anand Bhandari, learned counsel appearing on behalf of Petitioner Trust draws our attention to Section 6 of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter, "the RTE Act") and submits that it is only where a school is not established in the neighbourhood that the appropriate Government and the local authorities shall establish a school in that area. To appreciate this argument Section 6 the RTE Act is quoted as under :-

"6. Duty of appropriate Government and local authority to establish school :-

For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act."

6] We are afraid, we are unable to agree with the interpretation canvassed by Mr. Bhandari. From a bare reading of the Section we observe that the Section mandates the appropriate Government or the local authority to establish a school in every neighbourhood where such a school is not established by the appropriate Government or the local authority. Even the Notes on Clauses with reference to the above Section 6 of the RTE Act, provides for establishment of a school in every neighbourhood. Not only that, a cursory look at the statement of objects and reasons to

the RTE Act would make it clear that the RTE Act is a social welfare legislation. The objective of this legislation is to implement the Directive Principles of State Policy enshrined in the Constitution, which lays down that the State shall provide free and compulsory education to all children up to the age of 14 years. Article 21-A which has been inserted by the Constitution (86th amendment) Act, 2002, provides for free and compulsory education to all children in the age group of 6 to 14 years as a fundamental right. It is to achieve this object that the RTE Act has been enacted and with that in mind, Section 6 of the RTE Act has to be read. The said section mandates the appropriate Government and the local authority, i.e. the Zilla Parishad in this case, to establish a school within the area or limits of neighbourhood where it is not so established within a period of 3 years from the commencement of the Act. It is not that, as the learned counsel for petitioner has submitted that only where a school is not established that the appropriate government is duty bound to do, suggesting that, when the petitioner has its school in the local area, the Government or local authority is not so mandated. That, in our view, would be a very fallacious interpretation of the section, which would completely defeat the very objective of the RTE Act, to provide free and compulsory education to students from disadvantaged groups and weaker sections. Section 6 mandates the appropriate government and the local authority to establish school where such a school is

not established by the appropriate government or local authority. It does not refer to the establishment of a school by Trust such as the petitioner. In this context it would also be relevant to quote Rule 4 of the Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 which prescribe the areas or limits for the purposes of Section 6 of the RTE Act, which reads thus :-

“4. Areas or limits for the purposes of Section 6 :-

(1) The State Government or the Local Authority, as the case may be, shall establish neighbourhood schools within the areas or limits to meet the following criteria, namely, :-

(a) In respect of children in Classes from I to V, a school shall be established as far as possible within a distance of one kilometer of the neighbourhood and has a minimum of 20 children in the age group of 6 to 11 years available and willing for enrolment in that school; and

(b) In respect of children in Classes from VI to VIII, a school shall be established as far as possible within a distance of three kilometers of the neighbourhood and which has not less than 20 children in class 5th of the feeding primary schools, taken together, available and willing for enrolment in that school,

(2) The State Government may suitably alter the minimum distance specified in sub-rule(1) in cases of hilly areas or areas that are not easily accessible and make available the schools run by the Government or Local Authority for the children having no facility of further elementary education in their schools in such areas.

(3) For children from small hamlets, as identified by the appropriate Government or the local authority, where no school exists within the area or limits of neighbourhood specified under sub-rule(1) and for children falling within the purview of 4(1)(a), the State Government or the local authority shall make adequate arrangements, such as free transportation, residential facilities and other facilities, for providing elementary education in the school, in relaxation of the area or limits specified under sub-rule(1)

(4) In areas of greater population density (urban and semi-urban areas) the State Government or the local authority shall establish more than one neighbourhood school having regard to the number of children in the age group of 6-14 years in the said area.

(5) The Local authority shall designate a neighbourhood school for every settlement or area and shall make this information known to the public.

(6) In respect of children with disabilities (as defined in Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) which prevent them from accessing the School the State Government or the Local authority having regard to their number shall make appropriate and safe transportation arrangements for them to attend the school and complete elementary education.

(7) (a) The State Government or the Local authority shall ensure that no child is barred from going to school for any reason and that there is no hindrance to his or her completing the elementary education on the ground of linguistic, social or cultural differences;

(b) The migratory children shall be enrolled in a school if the school having appropriate medium of instruction is available in that neighbourhood school

(c) If the appropriate medium of instructions is not available in the neighbourhood school then, the transportation facilities for attending the school, or a seasonal residential hostel and other facilities shall be provided by the Local Authority.”

7] Mr. Bhandari has also drawn our attention to the decision of this court in the case of **“Gramvikas Shikshan Prasarak Mandal Vs. State of Maharashtra and others”** (Writ Petition No.1773 of 2000 dated 11th April, 2000) in support of his case. He has taken us through the following paragraphs of the said decision :-

“7. Apart from the provisions of the Code, the State Government has issued Government Resolutions dated 27th July 1992 and 3rd June, 1998 governing the grant of permissions for starting new schools or for the renewal of existing permissions. Copies of those Resolutions have been placed on the record in a compilation tendered by the learned Advocate General. The Government Resolution dated 27th July, 1992 provides that Government has in December, 1991 prepared a master plan for secondary schools and, places in the State where secondary schools were necessary have been included in the plan. The G.R, provides that in the case of villages having a pre-secondary school (a primary school upto the VIIth standard) the population should be at least 1000. In a pre-secondary school, the muster roll strength of students of the VIIth standard should be 25 (15 in the case of hilly or adivasi areas or for a linguistic minority). The case for establishing a secondary school could be considered only where pre-secondary school exists in the village and where there is no secondary school within a radius of 5 kilometres. In urban areas there should be one secondary school for a population of 10,000. Some of the provisions of these Government Resolutions have been adverted to by us for the purpose of considering the broad policy frame work already in place

governing the establishment and opening of new schools.

8. In formulating appropriate norms and standards for the establishment of new primary and secondary schools in the State, certain basic considerations have to be borne in mind. These considerations include the following:

1. The first and foremost is the need for ensuring the spread of primary and secondary education to all parts of the socio economic strata and in all geographical areas of the state. Areas of under development; areas which are geographically inaccessible such as the hilly areas; areas of adivasi habitation and other socially and educationally backward areas need special priority and emphasis. These areas have to be identified by the State Government in terms of a master plan which will be valid for a period of ten years. Once formulated, the master plan should be scrupulously adhered to unless new problems require a change in a master plan that was originally formulated.

2. In granting permissions for setting up new primary, secondary and higher secondary schools, due and proper emphasis has to be given to the existence of requisite infrastructure. The spread of education has to be consistent with the maintenance of basic facilities required in terms of infrastructure, including a properly qualified and equipped teaching staff. Unrecognised schools with little or no infrastructure and with a lack of qualified teaching staff cannot be permitted and the State would be justified in dealing with such institutions with strictness.

3. Applications for the establishment of new schools ought to be processed and decided by a body of experts in a transparent and objective manner. The policy which has been submitted for our consideration by the learned Advocate General accepts this principle. The same which is being formulated by the State Government in the present case contemplates District and State Level Committees consisting of experts in the area and nominees of the Vice-Chancellor or the Chancellors as the case may be. Reasons, brief as they may be, should be given by the Committees for granting or rejecting applications for establishment of schools.

4. In determining whether a new school should be permitted care has to be taken to ensure that unhealthy competition between educational institutions is avoided.

5. In order to discourage the practice of establishing unauthorised institutions, the policy stipulates that no unauthorised institution shall be considered by the Government from the year 2000-2001 for the grant of permission unless the institution concerned undertakes that it shall not admit any student in the absence of permission by the Government.

6. The fundamental principle that has to be borne in mind is that provision of primary education is a constitutionally protected fundamental right. The State has a constitutional duty to provide, within the limits of its economic capacity and development the right to education. As the Supreme Court held in Unnikrishnan's case, the need for private institutions to impart education has come into being because of the limitation on the resources of the State to provide education for the society at large. The Supreme Court held as follows :

"The private educational institutions merely supplement the effort of the State in educating the people, as explained above. It is not an independent activity. It is an activity supplemental to the principal activity carried on by the State. No private educational institution can survive or subsist without recognition and/or affiliation. The bodies which grant recognition and/or affiliation are the authorities of the State. In such a situation, it is obligatory---in the interest of general public--upon the authority granting recognition or affiliation to insist upon such conditions as are appropriate to ensure not only education of requisite standard but also fairness and equal treatment in the matter of admission of students. Since the recognising/ affiliating authority is the State, it is under an obligation to impose such conditions as part of its duty enjoined upon it by [Article 14](#) of the Constitution. It cannot allow itself or its power and privilege to be used unfairly. The incidents attaching to the main activity attach to supplemental activity as well." (At. P. 755) Private institutions which enter the arena of providing education, perform the role of supplementing the function of the State. The establishment and functioning of those institutions must therefore be subject to regulation by the State to secure the interest of the students and teachers, of those who are taught and those who teach. Recognition is a means of ensuring that the students of the institution can appear at examinations conducted by the State and be conferred with qualifications granted by the State and its authorities. The State also has a vital interest in the proper functioning of schools because a significant proportion of them do receive grants in aid from the State.

7. These considerations underline the need to ensure that decision of the Government on whether or not to permit the establishment of new educational institution must be transparent, objective and fair. The norms on the basis of which those decisions are arrived at should be certain and definite. The investigation of whether those norms are fulfilled must be carried out by academic experts within the Government, with the assistance of experts outside. In this manner, the process of establishing new schools in the State must meet the requirements of fair and non discriminatory treatment. [Article 14](#) of the Constitution mandates that Governmental decisions be guided by reason and informed by public interest, The need for this is all the greater, where the right in question is the right to receive education, a part of which the right to primary education until the age of fourteen, is a fundamental right under [Article 21](#) of the Constitution.

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8] While we are in respectful agreement with the aforesaid observations of this Court, we are unable to fathom as to how the above observations would assist the Petitioner's case. This was a case, where in view of the grievances raised in successive writ

petitions this court has suggested that there was a need for the State to formulate a comprehensive policy in regard to setting up of primary or secondary schools in the State of Maharashtra. While highlighting the importance of right to education, this court in paragraph 5 emphasized how the right to education has received primary importance in the constitutional set up after independence. Paragraph 5 of the said decision authored by Honourable Justice Dr. D.Y. Chandrachud (as His Lordship then was) is worth quoting, which reads thus :-

“5. The right to education has received primary importance in the Constitutional set up after independence. The provisions of the Constitution recognise the significance and importance of education. Judicial decisions have elaborated upon the scope and ambit of the right to education. [Article 41](#) of the Constitution which is part of the Directive Principles of State Policy enunciates that the State shall, within the limits of its economic capacity and development, make effective provisions for the right to education. [Article 45](#) provides that "the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years". [Article 45](#) recognises that every child shall, upto the age of fourteen have the right to receive education. The right to education is indeed so basic and so fundamental that it has, subject to the qualification to which we shall presently advert, been construed to be a part of the right to life under [Article 21](#) of the Constitution. The right to life under [Article 21](#), it is well settled, includes all those faculties and means by which life becomes meaningful. Life, for the purposes of [Article 21](#) lies beyond the realm of a bare physical existence. That right, by the process of a creative judicial interpretation encompassed the right to privacy, to a speedy trial, to public health, to information, to the means of communication to inaccessible areas and to a clean environment; these are a few of the areas to which the right to life has extended. In the contemporary society of today, there can be no doubt about the fact that education is the key to meaningful human existence. In one sense, perhaps basic, education is the source of the acquisition of knowledge and the means to secure information about the course of human affairs. In another sense, perhaps even more fundamental, education in its true sense is a means to the development of human personality. In the complex and highly specialised age that modern societies are tending to imbibe, education is a source of opportunity, of work, livelihood and gainful avocation. The Supreme Court recognised the primary importance of education in its landmark judgment in [Unnikrishnan v. State of Andhra Pradesh](#), . The Supreme Court held that education until the attainment of the age of fourteen is a fundamental right under [Article 21](#) of the Constitution. Recognising the importance of receiving education in the life of every child in our society, the Supreme Court upheld the fundamental right of every child to receive education until the age of fourteen. The Supreme Court held as follows :

"The citizens of this country have a fundamental right to education. The said right flows from [Article 21](#). This right is, however, into an absolute right.

Its content and parameters have to be determined in the light of Articles 45 and 41. In other words every child/citizen of this country has a right to free education, until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State."

Education has thus a position of prime importance in the Constitutional scheme of a just and fair society. The position of importance that education has in the constitutional set up has found acceptance, affirmation and elaboration in judgments of the Supreme Court. There is a significant need to spread education in a society such as ours where poverty, underdevelopment and social disability have to be overcome by making available the benefit of education to the widest strata of society. In the State of Maharashtra, it has been estimated that nearly 11,000 habitations are without a primary education facility. The levels of literacy in States such as Kerala have been substantially improved with the rapid spread of primary education. The importance of the spread of primary education is hence an intrinsic part of State policy designed to ensure the reach of education to the population at large. The primary duty to ensure the spread of education is one that the Constitution requires the State to perform. Yet, there is a constitutional recognition on the limitations of the State - both in terms of resources and capacity - in performing this rule. Consequently, the Supreme Court recognised a fundamental right to receive education until the age of fourteen, in Unnikrishnan's case. The Court recognised that the role of private institutions is important in order to supplement the role of the State in achieving the spread of education. The necessary consequence is that private institutions would, when they seek to enter the field of education, be subject to the same restrictions and regulatory requirements as would apply to the State as dispenser of education. In seeking recognition and in certain cases, financial assistance from the State, private managements of educational institutions are liable to be regulated by the State to ensure that the interests of students, of teachers and the course of education are promoted."

9] By the said decision, this Court, while considering the policy and scheme formulated by the State Government, made certain suggestions and directed the State Government to constitute District Level and State Level Committees for the purpose of considering applications for establishing schools. In our view, it is this and other such decisions which would possibly have necessitated the RTE Act which came to be enacted in 2009.

10] However, in all fairness, Mr. Bhandari has also handed over to us a copy of the decision of this court in Writ Petition No.

4200 of 2017 (Antar Bharti Shikshan Sanstha Biloli through its President Vs. The State of Maharashtra and others), where, in a similar case, this court has turned down the request of the petitioner therein to close down classes 6th and 7th run by the Zilla Parishad school. This Court, after considering the provisions of the RTE Act, has observed in para.13 and 14 as under :-

“13. Bare reading of the provision would show that pre-requisite for obtaining permission or approval to run a school is for those schools which have been run by private institute because an exception is carved out in the provision itself to these schools being run, being established and controlled by the appropriate Government or local authority. It is not in dispute that the school in which 5th and 8th std classes are being run by the local authority Zilla Parishad. On the back drop of this provision petitioner of is the Act making and the factual submissions that aspect if the because of the classes of 5th to 8th std run in the Zilla Parishad school, the petitioner is put to financial losses and as such, the classes being run by the Zilla Parishad be closed down is not only unacceptable submission but is illogical and irrational submission. If the students taking education in 5th to 8th std classes are having a choice available to take the education in Zilla Parishad school or a private school, the students may exercise their choice. Merely because the petitioner institute private institute is put to financial loss cannot be a ground to force upon the students to take the education only in class being run by petitioner's school. Such a direction would be unacceptable.

14. We are unable to accept the submissions of Mr. Panpatte, learned counsel appearing for the petitioner for one more reasons. The petitioner is seeking closure of 5th to 8th std classes being run by the Zilla Parishad in the said village Arjapur. If such closure is permitted, it would lead to monopoly of the petitioner institute for running 5th to 8th classes. The creation of monopoly by one institute certainly cannot be an object under the Right to Education Act.”

11] In view of the above discussion, we do not deem it appropriate to entertain this petition. We are, rather surprised that the petitioner trust has cited grounds such as establishment of VIIIth standard by the Zilla Parishad School to result in unhealthy

competition to file this petition under Article 226 of the Constitution of India. Where is the question of unhealthy competition ? In fact, the Zilla Parishad is acting in accordance with the mandate of the RTE Act. On the contrary, this petition is an attempt to defeat the very object of the RTE Act to monopolize elementary education which cannot be permitted. There is no substance in the case. In our view, even otherwise, in the circumstances, the petitioner has no locus to approach this court.

12] Before parting, we would like to give one piece of advice to litigants like the petitioner that is to avoid such litigation and to focus on providing good quality education and facilities to the students studying in its schools and contribute to the goal of universal elementary education, rather than attempting to monopolize the noble cause of education which would defeat the entire objective of the RTE Act.

13] We have accordingly dismissed the petition. However, there shall be no orders as to costs.

(ABHAY AHUJA)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

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