

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6857 OF 2021

Vajeeha Khan Rizwan Khan
Pathan and others

Petitioners

versus

The State of Maharashtra & ors.

Respondents

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Mr. S.B. Khan, Advocate for the petitioners.

Mr. P.S. Patil, A.G.P. for respondent Nos. 1 and 2.

Mr. Anup D. Mane, Advocate holding for Mr. Amol S. Sawant,
Advocate for respondent No.3.

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**CORAM : C.V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 29 JUNE 2022

ORDER :

The short prayer in this petition is to direct the third respondent to issue transfer certificates (TCs) of the minor petitioner Nos.2 and 3, who are presently in the custody of petitioner No.1, who is their mother.

2. There is a matrimonial dispute between petitioner No.1 and the fourth respondent. Petitioner No.1 had shifted to her maternal home at Aurangabad from her matrimonial house at

Nandurbar alongwith the children and the children are provisionally admitted to the school at Aurangabad. This is subject to the production of the transfer certificates from respondent No. 3 School.

3. By an order dated 10 June 2022, this Court has noted that respondent No. 3 School was willing to issue transfer certificates in favour of the two children. It was, in these circumstances of the willingness shown by respondent No.3, that this Court had called upon respondent No.3 School to produce the transfer certificates. Learned Counsel for respondent No.3 has produced the transfer certificates of petitioner Nos.2 and 3 today, which, in our view, can be handed over to petitioner No. 1. We find that in such a case the interest of the minors is of paramount importance notwithstanding the *interse* dispute between petitioner No.1 and respondent No. 4.

4. Learned Counsel for respondent No. 4 submitted that respondent No. 3 school is not a State, and therefore, no writ can be issued against respondent No. 3. For this purpose reliance is placed on the order dated 8 October 2018 passed by the learned Single Judge of the High Court of Gujrat at Ahmedabad in Civil Application No.15641 of 2018. We do not propose to comment on the said issue or to record final opinion. As the respondent No.3 has already produced the transfer certificates, the same need to be handed over to the petitioners, so that the education of the petitioner Nos.2 and 3 is not hampered in any manner.

5. The learned Counsel for respondent No.4 has further submitted that an application filed by him under the Guardians and Wards Act seeking custody of the minor children, is pending before the competent Court.

6. Learned Counsel for respondent No.3 has submitted that there are certain arrears of the tuition fees of petitioner Nos.2 and 3. However, learned Counsel for respondent No. 4 has produced the receipts and according to him, the tuition fees have been paid. The copies of the receipts have been furnished to the learned Counsel for respondent No. 3, who may verify and then intimate respondent No.4 about arrears of tuition fees, if any. Subject to this, the writ petition is disposed of. The transfer certificates of petitioner Nos.2 and 3 be handed over to petitioner No.1.

7. We, however, make it clear that we have not examined the issue about the custody of the children which is said to be pending in a petition under Guardians and Wards Act, filed by respondent No.4 against petitioner o. 1. Rival contentions in the said petition are kept open.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.