

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8666 OF 2017

1. Navjivan Sevabhavi Sanstha
Jamal Nagar, AUSA, Tq. AUSA,
Dist. Latur,
Through its Secretary.
2. Shri. Chakradhar Primary School
Sarola Road, AUSA,
Tq. AUSA, Dist. Latur,
Through its Head Master .. Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32.
2. The Education Officer (Primary),
Zilla Parishad, Latur.
3. Deputy Director of Education,
Latur Division, Latur. .. Respondents

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Mr. V. S. Panpatte, Advocate for petitioners.
Mr. A. R. Kale, AGP for respondent No.1 and 3 - State.
Mr. U. B. Bondar, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 13-10-2022

JUDGMENT :- [Per Smt. Vibha Kankanwadi, J.]

. Rule. Rule made returnable forthwith. Heard learned
Advocates for the parties finally, by consent.

2. By invoking the constitutional powers of this Court under Article 226 of the Constitution of India, the petitioner prays for issuance of writ directing respondent No.2 - Education Officer to modify the sanctioned strength of teaching staff in view of the Government Resolution dated 28.08.2015 and to maintain it under pupil-teacher ratio as per the provisions under the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the "RCE Act").

3. Heard learned Advocate Mr. V. S. Panpatte for the petitioner, learned AGP Mr. A. R. Kale for respondent Nos.1 and 3 and learned Advocate Mr. U. B. Bondar for respondent No.2.

4. The petitioner No.1 is a Society and petitioner No.2 is the Primary School run by petitioner No.1. The classes from 1st to 5th standard are conducted in the said school and since June, 2014, petitioner No.2 is receiving 100% grant-in-aid. Respondent No.2 had sanctioned the teaching staff to petitioner No.2 - School, but it has not been modified since 2012-2013 to 2016-2017. In fact, the petitioners are recognized as religious linguistic minority institution from the year 2013-2014 and the certificate to that effect has been granted by the competent authority on 29.11.2013. There was an institution by name Chakradhar Shikshan Sanstha, Waka, Tq. Kandhar, Dist. Nanded prior to 1990. The said institution applied to

the Government for shifting petitioner No.2 - School from Nandigram Society, Nanded to Sarola Road, AUSA, Dist. Latur. The Government gave permission on 03.08.2012 for such shifting. Respondent No.2 by letter dated 07.08.2012 communicated the said decision. Thereafter, petitioner No.1 - Society applied for handing over petitioner No.2 - School to it and respondent No.1-State by order dated 01.11.2013 granted the said permission. Communication to that effect has been received on 21.11.2013. Respondent No.2 had also by order dated 04.11.2016 granted permission to run 5th standard class in Petitioner No.2 - School from the academic year 2014-2015. The petitioner No.1 - Society by following due procedure obtained fresh permission vide order dated 25.08.2016 as per Section 18 of the RCE Act to run petitioner No.2 - School. The strength of the students went on increasing year after year. The petitioner is relying upon the provisions of Section 25(1) read with Schedule of the RCE Act as well as Government Resolution dated 28.08.2015 as to what should be the strength of teaching staff. The chart thereof has been given. It is then stated that since the said sanction strength has not been modified, it should be modified and the salary of the teaching staff of petitioner No.2 - School be released for the year 2014-2015 to 2016-2017.

5. Affidavit-in-reply has been given by the Director of Education (Primary) Shri. Dattatray Govind Jagtap for the respondents. Most of the facts are undisputed and the fact that the strength of the students in Petitioner No.2 - School is increasing is also not disputed. It is then contended that the provisions of Government Resolution dated 28.08.2015 cannot be given retrospective effect. Moreover, the petitioner is claiming additional posts collectively for 1st to 7th standard and when the further divisions for 6th to 8th standard are on self finance basis from the academic year 2015-2016, those cannot be granted as prayed. The additional division for class-V was sanctioned to the petitioner institute due to natural growth. It is then stated that respondent No.2 by order dated 16.03.2018 has also sanctioned additional two posts for primary section on non grant basis with effect from 2013-2014. It is also stated that the additional post should be filled only after ascertaining whether there are any surplus teachers available and by taking no objection for filling up of the posts. It is also stated that the State of Maharashtra, while considering the procedure of sanctioning of additional posts based on increased strength of students, cannot ignore the list of surplus teachers within the State of Maharashtra.

6. Affidavit in rejoinder has also been filed by the petitioners wherein it has been stated that there were already classes from 1st

to 5th standard in petitioner No.2 - School in the year 2014-2015 and though the divisions for 6th and 7th standard are shown to have been sanctioned on self finance basis for the academic year 2015-2016, the provisions of Maharashtra Self-Financed Schools (Establishment and Regulation) Act, 2012 are not applicable to those classes, as those divisions cannot be said to be upgradation of the school. This Court in Writ Petition No.11541 of 2016 by order dated 25.03.2019 has observed that the sanction of additional post cannot be brought within the purview of up-gradation of school or establishing a new school and the sanction of additional posts would depend upon the increase in the strength of students and in view of the increased in strength of students if the institution seeks sanction of increased posts, then the Self Finance Act, 2012 will not apply.

7. It is to be noted that most of the facts are not disputed. The strength of the students in petitioner No.2 - School increased and it can be seen that there was verification of the strength also by respondent No.2 periodically. The students were found to be attending the school. In 2012-2013, there were about 167 students in four divisions of 1st to 4th standard and then it increased to 180 in the year 2013-2014. Further, it increased to 225 in 2014-2015. The Government Resolution dated 28.08.2015 provides that if the

Primary School is for the 1st to 5th standard, then if students strength is 60, then there should be two teachers and for increase of further 30 students there should be one additional teacher. For headmaster, it provides that if the students strength is 150 onwards, then the post of headmaster would be sanctioned. Further Rule 2.9.2 states that in future there will not be a natural growth for 1st to 5th standard, 6th to 8th standard or 9th to 10th standard. Therefore, taking into consideration the said Government Resolution, the respondents are duty bound to provide adequate strength of the teachers. It should be based on the figures those have been given and ascertained by respondent No.2. Here, we are not concerned with the natural growth of the class as the figure of 167, 180 and 225 for the year between 2012 to 2015 is in respect of 1st to 5th standard. If we consider the data of the teaching and non teaching staff for petitioner No.2 - School for the year 2015, then it is the same i.e. four teachers which was there earlier also and it is also inclusive of headmaster, which is not appropriate in view of Section 25(1) read with Schedule of RCE Act as well as Government Resolution dated 28.08.2015. The petition was filed in the year 2017 and the admissions thereafter are also required to be taken note of and, therefore, the petition deserves to be partly allowed to direct respondent No.2 to modify the strength of teaching staff. Since 2012 till today, taking into consideration the

admissions on grant-in-aid basis and if at all salary deserves to be released to the teaching staff of respondent No.2 on the basis of these revised staffing pattern, then it should be released for the year 2014-2015 to 2016-2017. Hence, the following order is passed :-

ORDER

- i) The Writ Petition stands partly allowed.
- ii) Respondent No.2 to modify the strength of the teaching staff sanctioned to petitioner No.2 - School from 2012-2013 till today as per the provisions of Section 25(1) read with Schedule to RCE Act and also the Government Resolution dated 28.08.2015 on grant-in-aid basis. Such order be issued within a period of two months from today and if need arises, the salary be released to such teaching staff of petitioner No.2 - School for the year 2014-2015 to 2016-2017.
- iii) Rule is made absolute in the above terms.
- iv) No order as to costs.

[Y. G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm