

**BASAVRAJ
GURAPPA
PATIL**

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2294 OF 2022

Salma Adamjiwala & Ors.

..... Petitioners

Vs.

State of Maharashtra & Ors.

..... Respondents

Mr. Bhavin Gada a/w. Mr. Deep Gangar I/b. Ms. Monica Jagtap for the Petitioners

Mr. Kedar Dighe, AGP for Respondent Nos.2 and 7

Mr. Sagar Patil for the Municipal Corporation

Dr. Milind Sathe, Senior Advocate with Dr. Birendra Saraf, Senior Advocate with Mr. Gaurav Srivastav, Mr. Kushan Ainmin, Mr. S. K. Srivastav and Ms. Mittal N. Nor and Ms. Manorama Mohanty I/b. S. K. Srivastav & Co. for Respondent Nos.4 and 5

Mr. Satyanarayana Hegde I/b. Ms. Niyati Jambulakar for Respondent No.6

**CORAM: S.V.GANGAPURWALA &
S.M.MODAK, JJ.**

**RESERVED ON : 12th JULY 2022
PRONOUNCED ON : 11th AUGUST 2022**

P.C. (PER : S.V. GANGAPURWALA,J.)

1 The Petitioners seek multifarious reliefs. The Petitioners seek declaration that Respondent No.4 is governed by the provisions of the Right of Children to Free and Compulsory Education Act 2009 (**Act of 2009**) and the Rules made thereunder. The Petitioners further seek declaration that Respondent No.4 is not a Gujarati linguistic minority institution and/or to cancel minority status if any

issued in favour of Respondent Nos.5 and / or 6. The Petitioners further seek directions against Respondent No.4 to admit the children of the Petitioners in their respective grades in Respondent No.4 school. The Petitioners further seek direction that Respondent Nos.2 and 3 shall take appropriate action and issue appropriate orders against Respondent Nos.4 and 5 for breach of the order dated 21st October 2020 and for not performing its duties. The Petitioners further seek direction that the Education Department of Respondent No.3 shall take over the Management of the primary section of Respondent No.4 and to conduct and manage the same.

2 The learned Counsel for the Petitioners strenuously contended that the Petitioners are the parents of the children interested in taking admission in Respondent No.4 school run by Respondent No.5 in various grades. Respondent No.5 is bent upon to close down Respondent No.4 school. Respondent No.5 took over the Management of Respondent No.4 school from Respondent No.6. The primary section of Respondent No.4 is unaided, whereas, secondary section is aided. There are about 250 students in each grade from grades I to IX. After Respondent No.5 took over the Management of Respondent No.4-school prior to 2-3 years, Respondent No.5 has discontinued senior nursery and junior nursery in Respondent No.4. It has also discontinued all girls schools few years ago on the pretext

that new girls school shall be started where the medium of instructions will be English. However, Respondent No.4 never started the girls school. Respondent No.5 Management reduced the number of intake of students in each grades in Respondent No.4 - school, more particularly, all the primary sections. In such scenario, the local Municipal Corporator had issued a letter dated 12th February 2020 to the Dy. Education Officer intimating about the closure of the girls school and starting of some business oriented classes as well as commercial nursery. A request was made to start the girls school in English medium in the ensuing year. No English medium school is available in the vicinity for the girls. The Corporator also issued another letter with the Administration. Respondent No.4 is reluctant to admit students. They do not issue admission forms to needy students. It is with an ulterior motive to minimize the students and gradually to close down the school.

3 The Petitioners had approached Respondent No.4 for the purpose of admission of their children but the staff of Respondent No.4 denied to consider to admit the Petitioners' children. Petitioners had no option but to approach a public representative. The public representative had taken up the cause bringing to the notice of the Education Department, the act of Respondent Nos.4 and 5 gradually reducing the intake of the students. The security guard

was not permitting the Petitioners to enter the premises of Respondent No.4. On or about 16th June 2021, the Officer of Respondent No.3 issued a letter to Respondent No.4 asking them to disclose the on-line and off-line admission procedure adopted by them and submit report within seven days. On 22nd June 2021, a joint meeting was held between the Hon'ble Education Minister, a Public Representative, the Officers of Respondent No.3 and a Representative of Respondent No.4. In the said meeting, Respondent No.4 emphasized that they are not refusing admissions or closing the school and that there are only 2-3 new applications for admission. Directions were given by the Hon'ble Education Minister to the Officers to visit Respondent No.4 - School. Respondent No.4 had kept a drop box to invite Applications. More than 30 Applications were made for grade-I. Respondent No.3, under letter dated 28th July 2021 intimated Respondent No.4 that they had received around 70 Applications for admission in Respondent No.4 school. Respondent No.4 was directed to take decision on the Applications for admission. A request was made once again to carry out necessary enquiry.

4 It is further submitted that the Petitioners and other persons had carried out peaceful dharna. Respondent No.4 and 5 filed a suit before the City Civil Court, Dindoshi against the public

representative and some others, *inter alia* seeking permanent injunction restraining the defendants i.e. the public representatives and others obstructing the egress and ingress of teachers, staffs and employees of Respondent No.4 and holding any demonstration, dharna, sloganeering within the radius of 200 mtrs.

5 The transfer of school, more particularly, aided section to Respondent No.5 was subject to certain terms and conditions, such as new institution to follow the State Government Act, Rules, Orders and Directions. If complaints are received by the State Government of its Education Department or its Divisional Concerned Officer receive any complaint pertaining to the transfer of management or violation of the terms and conditions imposed while granting approval of the Management, then the transfer of the Management shall stand cancelled.

6 The school is sought to be shut down under the nose of Respondent Nos. 2 and 3 still Respondent No.2 and 3 are not taking action against Respondent Nos.4 and 5. The Respondent Nos.4 and 5 erroneously contending that there are other schools but there is no school in the vicinity of 5 to 6 km.

7 The learned Counsel for the Petitioners submits that the Primary Education Grant-in-Aid Code for Approved Primary School

in Greater Mumbai contemplates that the change of Management has to happen with the permission of the Education Department – Respondent No.3. In the present case, no such permission has been obtained from Respondent No.3. The learned Counsel submits that Respondent Nos.4 and 5 cannot be linguistic minority institution. Section 12 of the National Commission for Minority Education Institutions Act, 2004 (**NCMEI Act**) empowers the Authority to cancel the minority status in the circumstances enumerated therein. The minority status of Respondent Nos.4 and 5 is liable to be cancelled. Respondent Nos.4 and 5 failed to admit the minority students. They are not admitting the students either from minority as well as the general community. Respondent Nos.4 and 5 are misusing its minority status, if any, accorded to it. It is also misusing the provisions of Article 30(1) of the Constitution of India. The conduct of not admitting the students should entail the cancellation of certificate issued in favour of the Respondents.

8 The learned Counsel for the Petitioners relies on the Apex Court judgment in the case of ***Sk. Mohd. Rafique Vs. Managing Committee, Contai Rahamania High Madrasah and Ors.***¹ to contend that whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilisation

1 (2020) 6 SCC 689

of the grant-in-aid by education institution can be imposed. The minority institution cannot establish educational institution only for the benefit of their community. The learned Advocate further relies on the judgment of the apex court in the case of ***T.M.A. Pai Foundation and Ors. Vs. State of Karnataka & Ors.***² The Apex Court, in the said case had observed that the admissions to the aided institutions, whether awarded to the minority or non-minority students, cannot be at the absolute sweet will and pleasure of the Management of the educational institutions.

9 According to the learned Counsel even the Act of 2009 mandates the minority institution to admit students within the local vicinity. Respondent Nos.4 and 5 have failed to administer the educational institutions in accordance with the provisions of the Act of 2009 so also the City of Mumbai Primary Education Act 1920. In such scenario, it is bounden duty of the Education Department to take over the Management of Respondent No.4 and to run the school. Respondent No.5 cannot, at its sweet will, run the institution by transgressing the provisions of law. The learned Counsel submits that the education is a subject where people at large are interested. If the educational institution is not adhering to the provisions of the Statute and the Rules, then such educational institution, even if it is

² (2002) 8 SCC 481

a minority institution, is amenable to the writ jurisdiction of the Court under Article 226 of the Constitution of India.

10 The learned senior Advocate for Respondent Nos.4 and 5 submits that the Writ Petition is not maintainable. The learned senior Advocate refers to the order passed by this Court dated 6th January 2022 (Coram : Nitin Jamdar & Amit B. Borkar, JJ), wherein it is observed that in fact, nothing remains for adjudication in the Writ Petition.

11 The learned Senior Advocate refers to the judgment of the apex court in the case of *Pramati Educational and Cultural Trust (Registered) & Ors. Vs. Union of India & Ors.*³ to submit that the Act of 2009 is not applicable to minority institution. The Petitioners do not have fundamental right to get their students admitted in Respondent No.4 school. The learned senior advocate submits that some of the Petitioners' students have been given admissions in Respondent No.4 school. It is further submitted that the petition is a politically motivated. The Petition is filed at the behest of Meher Mohsin Hyder, who is a Municipal Corporator. The Petitioners are supported by Ex-Member of Parliament. The Petitioners are illegally threatening the Management of Respondent No.4 school to admit students. Respondent Nos.4 and 5 had to file a suit seeking

injunction against them. The Petitioners, along with the representative of the political party, broke the lock of the gate and illegally barged and trespassed in the school premises and vandalized and broke wooden material. Several complaints were required to be lodged. The Civil Court also granted injunction restraining the persons from obstructing the ingress and egress within the radius of 200 mtr. The academic year has commenced. The complaint and subject matter of the present petition is in respect of Respondent No.4 - primary school. The provisions of the Maharashtra Educational Institution (Transfer of Management Act 1971) are not applicable. The said Act is applicable only to the schools imparting secondary education and include the Junior College for training teachers. The primary section is not aided by the Municipal Corporation or by the State Government. It is further submitted by the learned senior Advocate that Respondent No.4 school had planned to expand the educational activities on the said lease plot and had to commence taking steps to modernize, expand and enhance educational facilities which included introducing ICSE and other curriculms of instruction and to utilize fully the FSI available on the land on which the School stands. To meet the aims and object of Respondent No.5, Respondent No.5 was required to demolish the existing school building which was very old and not in

good condition in order to modernize the same and provide a suitable educational environment to the students. The reconstruction of the said building would be completed in phases, which may spread over the years. Respondent No.5, therefore, decided not to admit new students but to continue the existing students without disturbing them by reaccommodating them to other part of the said property. The building is very old and is required to be demolished for the safety of the students and the staff. Respondent No.5 was, therefore, not issuing admission forms to anyone seeking new admissions. The letter dated 17th August 2021 issued by the Education Department is illegal. The Education Department of Respondent No.3 has issued the said letter under political pressure and on erroneous basis of Right to Education Act. The children of the Petitioners are learning at other schools. The Corporation is not concerned with the secondary division and the primary division is unaided, as such the Education Department of Respondent No.3 does not have jurisdiction to direct Respondent Nos.4 and 5 to admit the students. It is incorrect to state on the part of the Petitioners that 28 seats are vacant in standard VI. There are only 4 vacant seats in standard VI. No student was denied admission to standard VI. There is no vacancy in standard V, VII and X.

12 We have considered the submissions. The coordinate Bench (Coram : Nitin Jamdar and Amit B.Borkar, JJ) on 6 January 2022, after hearing the parties, passed the following order:

“This Petition is filed for various reliefs. Main ones are, First, a declaration that Respondent No. 4 is governed by the Right of Children to Free and Compulsory Education Act, 2009 and the Rules made thereunder. Second, a writ of mandamus for a declaration that Respondent No. 4 is not a Gujarati linguistic minority institution, and cancel the status. Third, a writ of mandamus directing Respondent No. 4 to admit the children of the Petitioners in their respective Grades in Respondent No. 4.

2. As regards the first relief is concerned, the learned Counsel for the Petitioner had to accept that this relief already stands concluded by the law laid down by the Supreme Court.

3. As regards prayer for a declaration that the Respondent No. 4 is not a linguistic minority, and the corresponding prayer for cancellation of the minority status, prima facie, this challenge is available before the Minorities Commission.

4. As regards the prayer clause (c) that a mandamus be issued directing Respondent No. 4 to admit the children of the Petitioners in the Respondent No. 4 school is concerned, to a query as to what is the legal right of the Petitioners upon which a mandamus can be issued to the Respondent No. 4, the learned Counsel addressed at length but could not show any legal right. He firstly relied upon the provisions of Section 15 of the Right of Children to Free and Compulsory Education Act, 2009, but this position is tied up with prayer clause (a).

5. It is at this stage the learned Counsel for the Petitioner, after arguing the matter states that, some time may be granted to demonstrate the legal right. We do not approve of this, as for such a basic queries time is being sought, especially when the Petition is pending since September 2021. Unless the Petitioners demonstrate their basic right that can be enforced against the Respondent No. 4, it is needless for us to launch in an roving inquiry as to the affairs of the Respondent No. 4, as

this is not a Public Interest Litigation. It is only because the learned Counsel repeatedly appealed to us to give time to demonstrate the legal right of the Petitioners, that out of sheer indulgence we are constrained to defer the hearing. At the same time, we also take note of the replies filed wherein a stand is taken that the Petition is not a bona fide Petition.

6. We have been informed that the children of the Petitioners are already taking education in some other schools. Thus, while we defer the hearing of this Petition to 3 February 2022, there will be no ad-interim order.”

13 Respondent No.4 is a minority institution. In view of the judgment of the apex court in the case of ***Pramati Educational and Cultural Trust (supra)***, the Right to Education Act would not be applicable to the minority institution.

14 As far as relief of the Petitioners that Respondent No.4 be declared, as not a Gujarati Linguistic Minority Institution and to cancel the status, said relief can be obtained before the Minority Commission and under the provisions of the National Commission of Minority Education Act 2004. The primary section of Respondent No.4 is unaided and is run by the Linguistic Minority Institution. The apex Court in the case of ***TMA Pai Foundation (supra)*** had observed that, the right of minority includes the right to determine the procedure and method of admission in selection of students which must be fair and transparent and based on merit for professional and higher education colleges. It is further observed in the said judgment that right to admit students being an essential

facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State Government may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. Of course, the said judgment was in respect of the higher education.

15 Be that as it may, the apex court, in the case of *Pramati Educational and Cultural Trust (supra)* has held that the Right to Education Act would not apply to the minority institution.

16 Whether the institution is functioning in accordance with law or whether the provisions of the Statute or Rules are violated, the same has to be considered by the Education Department supervising the said school. If any default is committed by the educational institutions, it is for the competent education department to consider the grievances. Right to Education is a fundamental right qua Article 21-A of the Constitution only to the extent of primary education i.e. from standard I to VIII. However, the Right to Education Act qua right of admission is held not to apply to the minority institution in case of *Pramati Educational and Cultural Trust (supra)*. In the writ jurisdiction it would not be possible to make an enquiry and judge the genuineness of the submissions of the Petitioners and the

Respondents. So far as the secondary division is concerned, that is aided one. It would be appropriate if the Petitioners approach the competent Government Body, who has supervisory control over the aided school. It would not be possible in writ jurisdiction to embark upon the disputed questions of allegations and counter allegations made against them.

17 With the aforesaid observations, the Writ Petition, as such is disposed of. No costs.

(S.M.MODAK,J.)

(S.V. GANGAPURWALA, J.)