

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION No. 1655 OF 2022.

Gramin Vikas Shikshan Sanstha,
Churmura.

....

Petitioner.

VERSUS

1.State of Maharashtra
and others.

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Respondents.

Mr.A. Parchure, Advocate for the Petitioner.
Ms.Shamsi Haider, A.G.P. for Respondent Nos.1 to 4.

**CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.**

DATE : 18 APRIL 2022.

P.C.

By this petition the Petitioner has challenged the order dated 18 January 2022 passed by the Respondent – State granting permission to Respondent No.6 – Zilla Parishad High School at Mohali, Tahsil Dhanora, District Gadchiroli to open higher secondary classes.

2. The Petitioner is a Society registered under the Societies Registration Act and Bombay Public Trust Act. It runs three

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educational institutions in District Gadchiroli. Respondent Zilla Parishad in its meeting on 3 June 2020 passed a resolution to start a junior college in its school run at Mohali. According to the Petitioner, the same is within the periphery of 5 kms to the school run by the Petitioner at Rangi, Tahsil Dhanora, District Gadchiroli.

3. The permission was granted to Zilla Parishad by the Deputy Director of Education, Nagpur on 24 August 2020. The Petitioner had objected to opening of the institution by the Zilla Parishad and Respondent No.4 Deputy Director of Education on 19 October 2020 cancelled his own order. Thereafter by the impugned order the permission was granted in favour of Respondent No.6.

4. The Petitioner has challenged this decision of Respondents permitting higher secondary school and classes at Zilla Parishad School at Mohali on various grounds. The main contention of the Petitioner is that such permission to open higher secondary classes within 5 kms. of the Petitioners' school would lead to unhealthy competition. We had adjourned the petition to enable the Petitioner to place the position of law which prohibits opening of a new school on the ground urged by the Petitioner.

5. The Petitioner has relied solely on the Government Resolution dated 14 June 2012 and contends that it would be clear from this Resolution that there is an embargo on opening the school within 5 kms. of the existing school, and that opening of such school should be on need based.

6. Firstly, the Petitioner, is an aided school which receives grants from the public exchequer. The school run by the Zilla Parishad, a public authority would stand on different footing. To prohibit Respondent No.6 School from conducting higher secondary classes, there has to be a specific stipulation in that regard. Perusal of the Government Resolution dated 14 June 2012 does not show that there is such express prohibition. The Resolution dated 14 June 2012 refers that under Right to Education Act the primary object of which is to provide education. It is in this context, it is stated that whenever there is no school within 3 kms. for primary and 5 kms. for secondary and higher secondary school, school should be opened. From this we are not able to cull out a negative mandate as sought to be put forth by the Petitioner.

7. As stated above, the opening of a government school run by the Zilla Parishad and an aided school are not on same pedestal. Opening of a Government school cannot be *ipso facto* considered as unhealthy competition. If better facilities are provided by the Petitioner, there would not be any such competition. Unless a positive mandate is shown to us, the writ as sought for by the Petitioner cannot be granted.

8. In the light of above, Writ Petition cannot be entertained. The same is rejected.