

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

WRIT PETITION NO.1891 OF 2020

Narendra S/o Ramkisan Dongre and ors.

-vs-

The State of Maharashtra, Thr. Its Secretary, Rural Development Dept. Mantralaya, Mumbai
and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri M. M. Sudame, Advocate for petitioner.
Shri N. R. Rode, Assistant Governing Pleader for respondent No.1.
Shri G. A. Sengar, Advocate for respondent Nos.2 and 3.
Shri A. J. Kadu, Advocate for respondent No.5.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE : June 30, 2022

P. C.

By this writ petition the petitioners have challenged the orders dated 22/07/2020 and 02/02/2022 by which the Education Officer (Primary) had directed closure of the Zilla Parishad Girls and Boys School at Pusla from continuing with the 8th standard class. The petitioner No.1 is the President of the school committee while the other petitioners are members of the school committee of the said Zilla Parishad Girls and Boys School Pusla. The respondent No.5-school is already running Class-5 to Class-10 at Pusla. It is the case of the petitioners that considering the need of having Class-8 at the Girls and Boys School at Pusla, on 07/07/2017 the Education Officer (Primary) permitted the Block Education Officer to start Class-8 temporarily on the condition that for the academic session 2017-2018 the arrangement with regard to teaching staff, class room etc. would be done by the Block Education Officer. On the basis

of such temporary permission granted on 07/07/2017 the Zilla Parishad school conducted Class-8 in the said academic year. It appears that there were some complaints made to the functioning of Class-8 at the respondent Nos.6 and 7 Zilla Parishad school. An enquiry was thus directed to the conducted in the matter and ultimately on 22/07/2020 the Education Officer (Primary) directed closure of Class-8 by ensuring that no loss was caused to the students thereby directing their absorption in the nearby school. The petitioners have thus challenged the said direction issued on 22/07/2020.

2. On 17/08/2020 while considering the writ petition, this Court prima facie found that there was no area restriction under the Right of Children to Free and Compulsory Education Rules, 2010 to permit opening of a similar school within the radius of 3 km. On that basis the order dated 22/07/2020 directing closure of Class-8 at the Zilla Parishad schools was stayed. Thereafter on 28/10/2020 after noting that the initial permission granted on 17/07/2017 to start Class-8 was on a temporary basis, the interim order dated 17/08/2020 was vacated.

During pendency of the writ petition on 02/02/2022 the Chief Executive Officer, Zilla Parishad Amravati passed an order in the light of resolution No.11 passed by the Standing Committee of the Zilla Parishad on 07/01/2022. It was resolved to declare the results of Class-8 at the Zilla Parishad schools for the academic session 2021-2022 and thereafter close down the said class. It was directed that from the academic session 2022-2023 the Zilla Parishad Girls and Boys School should not be

permitted to start Class-8. By amending the writ petition, this order dated 02/02/2022 is also under challenge.

3. Shri M. M. Sudame, learned counsel for the petitioners submitted that there was no restriction on the Zilla Parishad to conduct Class-8 at the respondent Nos.6 and 7 school. Referring to the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (for short, the Act of 2009) as well as the Rules of 2010, it was submitted that the restriction that there should be no other school within the radius of 3 km of an existing school was not applicable. On the contrary as per Rule 6(1) of the Rules of 2010, opening of a school in the neighbourhood was permissible. Inviting attention to the order passed in Writ Petition No.3893/2017 (*Shri Sant Sakubai Shikshan Sanstha and another vs. The Education Officer (Primary) Z.P. Wardha and ors*) dated 26/03/2018, it was submitted that the Chief Executive Officer was not justified in directing closure of Class-8 at the Zilla Parishad schools arrayed as respondent Nos.6 and 7. The students ought to have a choice in pursuing education at a school other than the respondent No.5 and since such permission had been granted earlier on 07/07/2017 said arrangement ought to be continued. The complaints as made were at the behest of respondent No.5 being a rival school and therefore the Zilla Parishad erred in directing closure of Class-8 from the academic session 2022-2023. He referred to the decision in *Society For Unaided Private Schools of Rajasthan vs. Union of India and another (2012) 6 SCC 1* in that regard. It was prayed that the impugned orders were liable to be set aside.

4. Shri G. A. Sengar, learned counsel for the Zilla Parishad referred to the affidavit in reply and submitted that the Chief Executive Officer considered the resolution passed by the Standing Committee along with various complaints made by the residents of the village for closing down Class-8 at the Zilla Parishad schools. He referred to the Government Resolution dated 19/09/2019 and submitted that the orders dated 22/07/2020 and 02/02/2022 had been passed in accordance therein. He also referred to various documents placed on record in that regard. Since initial permission granted was on a temporary basis, the same could not be converted into a full-fledged permission for the future.

Shri A. J. Kadu, learned counsel for the respondent No.5 also opposed the contentions urged on behalf of the petitioners. He questioned their locus to file the writ petition since it was not shown how the petitioners were aggrieved. It was submitted that the impugned action was taken pursuant to various complaints of parents in the locality. The respondent No.5-school was conducting classes 5 to 8 by imparting education of a high standard. The initial permission granted to the Zilla Parishad schools on 07/07/2017 being of a temporary nature, there was no right with the petitioners to contend that Class-8 there should continue even after the end of that academic session. He thus submitted that the Chief Executive Officer was justified in directing closure of Class-8 at the respondent Nos.6 and 7 schools from academic session 2022-2023.

Shri N. R. Rode, learned Assistant Governing Pleader for respondent No.1 submitted to the orders of the Court.

5. We have heard the learned counsel for the parties and we have perused the documents on record. It is undisputed that the respondent No.5 school is being run at Pusla and has been imparting education to students of Class-5 to 8. On 07/07/2017 permission was granted to the respondent Nos.6 and 7 to conduct Class-8 on a temporary basis for the academic session 2017-2018. After this permission was granted on 07/07/2017 there has been no further order either extending such permission or granting any fresh permission. Thereafter there were complaints made for continuation of Class-8 at the respondent Nos.6 and 7 schools. Such complaints were made to the Education Officer (Secondary) and hence to consider the same, hearing was conducted by the Education Officer (Primary) on 07/07/2020. It was found by the Education Officer (Primary) that the rule with regard to the distance to be maintained while starting a new class had not been violated. On that ground Class-8 was directed to be closed down.

6. Notwithstanding the objection to the locus of the petitioners, we find that Class-8 at the Zilla Parishad schools was permitted to be started on a temporary basis for academic session 2017-2018. Despite that the said Class continued till academic session 2019-2020. In absence of any specific permission for continuation of such class, it could not have in fact continued after that academic session. There was no separate order passed by the Education Officer (Primary) granting any fresh permission. The matter was under consideration and complaints made were also being considered. By taking into consideration the Government Resolution dated 19/09/2019

and especially Clause-3 thereof, the closure of Class-8 had been directed in the light of the restriction of 3 km.

7. In the subsequent academic year 2020-2021 Class-8 continued by virtue of the interim order passed on 17/08/2020. That order was then vacated on 28/10/2020. Despite that, Class-8 was still being run. Thereafter on 02/02/2022 the Chief Executive Officer directed closure of Class-8 from academic session 2022-2023. It was noted that though the stay was vacated on 28/10/2020 such Class was still being conducted. It is for that reason that the Chief Executive Officer directed the said Class not to function from the next academic session.

It is thus clear from the record that the initial permission granted was on temporary basis for academic session 2017-2018. Thereafter there has neither been any review of the situation nor examination of the fact as to whether there was any need for permitting Class-8 at the respondent Nos.6 and 7 of the Zilla Parishad schools. Though the interim order permitting such class to function was vacated on 28/10/2020 instructions at Class-8 were being imparted even in the subsequent academic year. Thus in absence of regular permission to start Class-8 at the respondent Nos.6 and 7 schools, continuation of Class-8 on temporary basis is not justified. For that reason the order dated 02/02/2022 appears to be justified and thus it does not require to be interfered with.

8. Insofar as the initial order dated 22/07/2020 is concerned, the same has been passed in the context of Governing Resolution dated 19/09/2019. As per clause 3 of

that resolution Class-8 is permissible for being attached to any other Zilla Parishad school or a school run by a local authority within the radius of 3 km. It is however to be noted that the initial permission granted on 07/07/2017 was on a temporary basis and it did not confer a continuing right to conduct Class-8 in the subsequent academic years. Since permission was granted on temporary basis, the matter was required to be examined after the end of that academic session especially by considering the need of conducting Class-8 in the subsequent academic year. In this backdrop therefore we do not find that any right accrued in favour of respondent Nos.6 and 7 to continue Class-8 in the subsequent academic year. It is seen that the Standing Committee of the Zilla Parishad had resolved in its meeting on 07/01/2022 to close down Class-8 at the said Zilla Parishad schools. That resolution is also not under challenge. In these facts therefore, we do not find any justification on the part of the petitioners to urge that despite expiry of temporary period, the respondent Nos.6 and 7 should be permitted to continue conducting Class-8. The ratio of the decision in *Society for Unaided Private Schools of Rajasthan* (supra) cannot be applied to the case in hand in these peculiar facts. Similarly, it is not necessary to examine the contention with regard to permissibility to open Class-8 within the distance of three kilometers from the respondent No.5 school.

The interests of justice would thus be met by permitting respondent Nos.6 and 7 to take appropriate steps if they intend to start Class-8 at their schools on permanent basis by satisfying the legal requirements. If such steps are taken by the said school, the request for starting Class-8 on a regular basis is liable

to be considered in accordance with the prevailing law. For the present we do not find that any relief can be granted to the petitioners.

With aforesaid observations, the writ petition stands dismissed with no order as to costs. Pending civil applications are also disposed of.

(Urmila Joshi-Phalke, J.)

(A. S. Chandurkar, J.)

Asmita