

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

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WRIT PETITION NO. 3818 of 2018

1) Jaibharat Mahila Sewa Sanstha
Through Joint Secretary
Om Nagar, Nagpur-24.

2) Ujjawal Uccha Prathmik Shala
Through its headmaster
Om Nagar, Nagpur-24.

..Petitioners

versus

1) State of Maharashtra
Through its Secretary
School Education and Sports Department
Mantralaya Extension, Mumbai-32.

2) The Education Department
Through its Commissioner (Primary)
Pune.

3) The Education Department
Through its Director (Primary)
Pune.

4) Deputy Director of Education
Nagpur Division, Nagpur

5) Education Officer (Primary)
Zilla Parishad, Nagpur.

..Respondents

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Mr.A.D. Mohagaonkar, Advocate for Petitioners
Mr. A.S.Fulzele, Additional Govt.Pleader for Respondent Nos.1 to 4
Mr Gopal Mishra, Advocate for Respondent No.5

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CORAM: SUNIL B.SHUKRE AND
G.A. SANAP,JJ.

DATED : 13th July, 2022.

ORAL JUDGMENT: (Per SUNIL B. SHUKRE, J.)

Rule. Rule, made returnable forthwith. Heard finally by consent.

2. The Petitioner No.1 -Society which runs petitioner no.2-school having 1 to 7th standard classes with due recognition since 1989-90 on one hundred per cent grant-in-aid basis was required to seek permission of the State in view of the changes brought out in educational pattern by the Right of Children to Free and Compulsory Education Act, 2009 (in short "RTE Act). By this RTE Act, the pattern of standards of school classes was changed. What was earlier to be primary education classes comprising of 1 to 7th standards was modified as follows :

- a) 1st standard class to 5th standard class .. **Lower Primary Education classes.**
- b) 6th to 8th standard classes .. **Higher Primary Education classes.**

3. These categories of classes were created as per the provisions made under the RTE Act, in particular Section 19 prescribing norms and standards for school and Section 25 laying down pupil-teacher ratio. Both these categories of classes are covered by the expression “elementary education” defined in Section 2 (f) of the RTE Act. Under Section 3 of the RTE Act every child of the age of 6 to 14 years, including a special child as mentioned in Section 3 (1) is conferred with the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education. Under Section 7 of the RTE Act, the entire responsibility for sharing financial and other burden incurred in providing free and compulsory elementary education to children between 6 and 14 years of age is concurrently placed upon the Central Government and the State Government. It is pertinent to mention here that the RTE Act has been enacted by the Parliament which came into force with effect from 26th August 2019 with the object of providing free and compulsory education to all children of the age of six to fourteen years and to implement the fundamental right of free and compulsory education of such children guaranteed under Article 21-A of the Constitution of India.

4. The above-referred provisions of law and also the nature of right of children to free and compulsory education, which is a

fundamental right guaranteed under Article 21 of the Constitution would show that all the children in schools taking elementary education i.e. education while studying in such classes 1 to 8th standards are entitled to be provided education at the expense of the State. It is, therefore, expected that the policy of the State Government must be of such a nature as it promotes the fundamental right of free and compulsory education of children of 6 to 14 years of age and does not violate any of the provisions of the RTE Act.

5. In the present case, however, by the impugned decision taken by Education Officer, the fundamental right guaranteed under Article 21-A of the Constitution and also the mandatory provisions of RTE Act have been violated. No one can dispute that 8th standard class is a class which imparts elementary education and is, therefore, covered under the definition of the expression “elementary education” prescribed in Section 2 (f) of the RTE Act. Therefore, the State Government cannot frame a policy of granting permission to the schools already running classes from 1 to 7th standards on 100 per cent grant-in-aid basis to start 8th standard class on the basis of self finance management under the provisions of Maharashtra Self Financed Schools (Establishment & Regulation) Act, 2012.

6. We are, therefore, of the of the view that the impugned decision is illegal and deserves to be quashed and set aside.

7. The learned AGP for Respondent Nos.1 to 4 submits that the impugned decision has been taken in consonance with the state policy as framed under the Government Resolution dated 19th September, 2017 in support. He invites our attention to the title of the GR which speaks about grant of permission for classes 5th standard and 8th standard on the basis of self-finance management. It is true that the GR dated 19th September 2017 is also questioned here for its legality and correctness and its title is as pointed out by the learned AGP. But consistent with the title of the GR, we find that no decision has been taken nor any resolution in that regard has been incorporated in the body of the GR dated 19th September, 2017. A careful perusal of this GR would show that it is silent upon the policy to be followed while granting permission to 5th standard class or 8th standard class, since the Government had taken a decision vide GR dated 28th August, 2015 to not grant permission to start these classes by natural growth. However an annexure is enclosed to this GR gives list of the schools which have been granted permission to start new classes of 6th or 8th standard on the principle of self finance management. It is not known as to on what basis such conditional permission to start new standard of classes 6th to 8th standard classes has been given on the principle of self-finance management. This annexure is certainly is not in line with the GR dated 19th September, 2017 nor does it get any authority to grant such conditional permission from the date, 19th September 2017.

Therefore, we are of the view that this principle of self-finance management cannot be pressed into service by the Education Officer while granting permission to petitioners to start new 8th standard class at least in case of Schools which run 1st to 7th standard classes on hundred percent grant-in-aid basis.

8. Learned AGP invites our attention to the reply filed by the State Government wherein reliance has been placed upon new policy issued by the State Government vide GR dated 19th September, 2019 wherein it is stated that while granting permission for adding new classes of 5th and 8th standards to schools, the State Government shall allow these applications only on the principle of self finance basis. Since this policy has come into force with effect from 19th September, 2019, would obviously have no application to the case of the petitioners which had sought permission to add new 8th standard class way back in the year 2016. Therefore, the State Government would not get any advantage from the new policy framed vide GR dated 19th September, 2019 in the present case. Of course, there would also be a question regarding validity of the new policy framed vide GR dated 19th September, 2019 but, this question having not been raised in this petition, it is not necessary for us to advert to the same.

9. We are of the view that the impugned decision of the Education Officer is illegal for the reasons stated herein-above and

it deserves to be quashed and set aside.

10. The petitioners have also challenged the legality and correctness of the GR dated 19th September, 2017, it being violative of the provisions made in the RTE Act. We do not think it necessary to set aside the GR as we have already found that there is no decision contained in this GR which goes against any of the provisions of the RTE Act although the annexure enclosed thereto appears to be not in consonance with the provisions of the RTE Act. But, the Annexure containing only the list of schools which have been granted permission to start either 5th standard or 8th standard classes on the principle of self finance management, cannot be considered to be something equivalent to resolution passed by the Government taking a decision as a matter of policy. As such, the prayer made in this regard needs no consideration by this court.

11. In the result, the Writ Petition is partly allowed. The impugned order dated 15.12.2017 passed by the Deputy Director of Education, Nagpur and dated 09.03.2018 passed by Education Officer (Pri) Zilla Parishad, Nagpur, both are hereby quashed and set aside. The State Government is directed to consider granting permission to the petitioner-school for adding 8th standard class on 100 per cent grant-in -aid basis, keeping in view the observations made herein-above. The decision in this regard shall be taken by the State Government within a period of four weeks from the date of

receipt of the order.

12. Rule accordingly. No costs.

[G.A. SANAP,J.]

[SUNIL B. SHUKRE, J.]

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