

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3116 OF 2023

1. Shree Swami Samarth Education Trust
Nandurbar, District Nandurbar
PTR No.5670 (Nandurbar)
Through its Trustees
2. Atulkumar Shivabhai Sawliya
President of the Trust
Age 42 years, Occ. Service
R/o. 35, Dwarkesh Nagri,
Near Gopinath Society
Mota Warcha, Surat (Gujarat)
3. Subhash Bhukan Sawle
Vice President
Age 58 years, Occ. Business,
R/o. 49, Madhyamik Shikshan Society
Nandurbar, District Nandurbar
4. Dinesh Prabhakar Jondhale
Secretary of the Trust
Age 40 years, Occ. Service
R/o. Sarswati Colony, Taloda Road,
Nandurbar, District Nandurbar
5. Dinesh Subhash Sawle
Member of the Trust
Age 29 years, Occ. Business
R/o. 49, Madhyamik Shikshan Society
Nandurbar, District Nandurbar
6. Dineshbhai Narayanbhai Bhuwa
Member of the Trust
R/o. 53 years, Occ. Business
R/o. 161, Chamunda Nagar Society
Near Sita Nagri Choukdi,
Punagam, Surat (Gujarat)
7. Piyush Maganbhai Lunagariya
Member of the Trust
Age 34 years, Occ. Business
R/o. 204, near Park view Vastu Pujan
Yogi Chowk, Punagam
Surat (Gujarat)

8. Mrs. Preeti Dinesh Jondhale
Member of the Trust
Age 34 years, Occ. Household
R/o. Sarswati Colony,
Taloda Road, Nandurbar
District Nandurbar.

... Petitioners

Versus

The Joint Charity Commissioner
Nashik Division, Nashik.

... Respondent

...
Advocate for Petitioners : Mr. V.D. Hon, Sr. Advocate i/b
Mr. A.V Hon
AGP for Respondent – State : Mr. R.B. Bagul

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 24th APRIL, 2023

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

2. Petitioners are aggrieved by the order dated 30/01/2023, passed by the Joint Charity Commissioner, Nashik Division, Nashik, in Application No.40/2021, filed by the petitioners under Section 36A(3) of the Maharashtra Public Trusts Act, 1950.

3. Petitioner No.1 is a registered Trust with an object to educate tribal and rural young boys and girls from remote area of Nandurbar district and petitioner Nos.2 to 8 are it's trustees. Petitioner No.1 Trust (for short 'Trust') sought permission of Education Department for starting school at Nandurbar. The letter

of intent was issued by the Government to the Trust on 11/01/2022, thereby permitting petitioners to start CBSE English Medium School from 1st to 12th standards in all branches, on self finance basis, on certain conditions. One of the conditions is that within 18 months from the date of letter of intent, the Trust has to approach regional authority of the district for recognition of the school. Petitioner Trust will have to give all the basic amenities and facilities including classrooms, toilets, drinking water facility, offices of principal and employees, library, laboratory, etc.

4. Pursuant to the said letter of intent, petitioner Trust applied to the Zilla Parishad, Nandurbar for recognition. By communication dated 06/02/2013, the Member Secretary, Regional Authority and Project Deputy Education Officer (Secondary), Zilla Parishad, Nandurbar, has informed petitioner Trust that the proposal of petitioner Trust for starting new school is recommended to the Divisional Deputy Director of Education.

5. For complying condition of infrastructure, the Trust purchased land and for construction of building approached Central Bank of India seeking loan of Rs.5 Crores. The Trust offered school property, so also, personal properties of the trustees towards security. All the trustees have given personal guarantee to the said loan facility. Bank released initial installment of Rs.2 Crores.

Accordingly, Trust started construction of school building, which is partly completed. Thereafter, the Trust approached Joint Charity Commissioner for permission to avail remaining loan of Rs.3 Crores, the same is rejected. Hence, the present petition.

6. Heard learned Senior Advocate for petitioners, learned Additional Government Pleader for respondent. Perused the writ petition memo, annexures thereto and the impugned order.

7. Learned Additional Government Pleader has strenuously opposed the petition and supported the impugned order.

8. Admittedly, the school of the Trust is a self finance school. It appears from application filed by petitioners before the respondent that total cost of construction is more than Rs.10 Crores, out of which trustees are raising funds of more than Rs.5 Crores and loan of Rs.5 Crores is to be availed. Bank after considering proposal has sanctioned loan of Rs.5 Crores to the petitioners, out of which Rs.2 Crores is already disbursed by the bank. Photographs placed on record by the petitioners show that building construction is partly complete and the Trust has commenced classes in the portion where construction is complete.

9. Respondent by the impugned order has rejected permission mainly on the ground that as per the audit report of the

Trust for financial year 2020-2021, income and expenditure of the Trust was only Rs.32,760/-. The audit report of the year 2021-2022 is not placed on record. The Trust has failed to place on record anything to show that proposal for starting school is filed by the Trust before Government. It is also observed that, if tomorrow the permission is refused by the Government or if permission is belatedly granted, then the Trust will have to bear burden of interest on loan amount, which will not be in the interest of the Trust.

10. Approach of respondent in rejecting application filed by the Trust is erroneous and the same is against the interest of Trust. Impugned order reflects non-application of mind on the part of respondent, as respondent has ignored that as per the letter of intent, petitioner has to complete infrastructure within 18 months from the date of it's issuance i.e. 11/01/2022 and the regional authority has already recommended proposal of the Trust to start CBSE English Medium School from 1st to 12th standard in all streams, on self finance basis. Respondent has lost sight of the fact that Bank after verifying feasibility of the loan proposal of Trust and after taking collateral security and personal guarantee of petitioner trustees has sanctioned loan of Rs.5 Crores, out of which Rs.2 Crores is already disbursed. The said amount is utilized by the Trust

for construction of school building. The Trust has already started conducting classes in the portion where construction is complete. It is against the interest of Trust to stop construction of building halfway. How to recover loan amount is the lookout of bank and that could not be the ground for respondent to reject the permission to petitioners. Impugned order, therefore, cannot be sustained.

11. In the result, writ petition is allowed in terms of prayer clause 'B'. Order dated 30/01/2023, passed by the Joint Charity Commissioner, Nashik Division, Nashik, in Application No.40/2021, is hereby quashed and set aside. Application No.40/2021 is allowed. Rule is made absolute.

(NITIN B. SURYAWANSHI, J.)