

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

WRIT PETITION NO.8320 OF 2022

**NIZAMIA URDU PRIMARY SCHOOL THROUGH HEAD
MASTER SIDDIQUE SHAGUFA FAHEEM SIDDIQUE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND OTHERS**

...
Advocate for the Petitioner : Shri Kadam Vishant P.
AGP for Respondents 1 to 3 : Shri P.S. Patil
Advocate for Respondent 4 : Shri P.P. Dama
...

**CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.**

DATE :- 06th February, 2023

Per Court :-

1. On 29.08.2022, we had passed the following order :-
 - “1. Leave to correct the description of respondent No.4. Correction be carried out forthwith.
 2. The petitioner has put forth prayer clause A as under:-
 - “A) By issuing writ of mandamus or any appropriate writ, order or direction, under Article 226 of the Constitution of India this Hon’ble Court may kindly quash and set aside the impugned report dated 28.01.2022 and orders dated 10.03.2022 and 18.04.2022 as the Government resolution 28.08.2015 is not applicable to the petitioner.”
 3. Issue notice to the respondents, returnable on 03.10.2022. The learned AGP waives service of notice on behalf of respondent Nos.1, 2 and 3.
 4. Let the affidavits in reply be filed at least 10

- days prior to the returnable date in this matter.*
5. *All office objections to be removed on or before 14.09.2022, failing which, this petition shall stand dismissed without reference to the Court on 15.09.2022.”*

2. We have considered the submissions of the learned advocate for the petitioner and the learned AGP on behalf of respondent Nos.1 to 3.

3. In 2021, the present petitioner was before us in Writ Petition No.5937/2021 praying for a direction that the application tendered by the petitioner to the Government for seeking natural growth and grants for starting 6th to 7th standard school, which was pending since 2016, be decided. By the order dated 07.04.2021, this Court directed the appropriate authorities to take a decision.

4. We have perused the inspection report tendered by the Block Education Officer, Panchayat Samiti, Parbhani, dated 28.01.2022, which indicates as under :-

(a) There are 21 students in the first standard, 22 in the second standard, 23 in the third standard, 20 in the fourth standard and 21 in the fifth standard.

(b) Minimum size of the class room is 18x20 feet and maximum is 20x25 feet.

(c) The playground is only 40x50 feet (2000 square

feet).

(d) The compound wall does not exist and metal sheets are used as a compound.

(e) There is one firefighting extinguisher cylinder and one first aid kit.

(f) There is no English commode.

(g) There is no ramp.

(h) Two rooms are well constructed.

(i) The rooms used for the 4th and 5th standards are of tin sheets.

(j) The third standard students sit in the open space.

(k) There is electrification and light fitting and there are only two fans.

5. Considering the above report, less said the better. However, the learned advocate for the petitioner submits that the Management has commenced construction of some more classrooms and hence, he prays for permission for natural growth of the school upto the 8th standard and grants from the State.

6. The learned AGP has placed before us the communication received by him, dated 03.02.2023, from the Director of Education (Primary), Education Directorate, Pune, indicating that there are seven schools within 1 to 2 kilometers in

the periphery of the petitioner's school. Out of these seven schools, six are operated by the minority institutions and all are Urdu schools as like the petitioner's school. The copy of the communication dated 03.02.2023 is taken on record and marked as "X-1" for identification.

7. So also, the learned AGP has placed before us the judgment dated 20.09.2019 delivered by this Court at Nagpur in Writ Petition No.170/2017 filed by ***Swargiya Raghobaji Bachale Shikshan Prasarak Mandal vs. State of Maharashtra and others***, along with group of matters, wherein, it has been specifically held that seeking grant in aid from the Government is neither a fundamental right nor a statutory right. It depends upon the economic capacity of the State and hence, seeking grant in aid by way of a right, is unsustainable and it is solely within the discretion of the State.

8. Considering the above, we are of the view that unless appropriate infrastructural facilities are available and unless the students are imparted education in proper and good surroundings, with proper amenities, especially for the purposes of holding lectures, eating food, washrooms, etc. and such facilities that would make the students comfortable, the Government should not grant permission to any school, much less the permission for natural growth.

9. In view of the above and taking into account the fact that there are hardly any facilities made available to the students, who are presently taking education as noted in the report dated 28.01.2022, **this Writ Petition is dismissed.**

10. The competent authorities will now consider as to why the students of the third standard are sitting in the open and initiate an appropriate action against the petitioner school for making the students acquire education by sitting in open space, without basic infrastructural facilities. Such action should be taken within 60 days from today.

11. We make it clear that if the petitioner makes a fresh application for permission for natural growth, the same would not be entertained for the reason for which this petition has been dismissed. If infrastructural facilities are such that every classroom is well constructed with proper concrete slabs, electrification, proper ventilation, fans/coolers, proper separate washrooms for girls and boys and in proper numbers and unless there is a proper compound wall, the application should not be entertained. If all this is achieved, the appropriate authorities are at liberty to cause an inspection and if the report indicates that the application deserves to be considered, the same shall be strictly in accordance with the policy of the Government and on it's own merits. We clarify that we have not expressed any

opinion in favour of the petitioner, which would run counter to the policies of the Government.

kps (SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)