

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO.3/2023

1. MORMUGAO PORT
TRUST EDUCATION
SOCIETY, Through Its
Treasurer Milind Laxman
Desai.

2. DEEPVIHAR PRIMARY
SCHOOL, Through its
Headmistress, with office at
Deepvihar Primary School,
Headland Sada, Mormugao,
Goa 403 804.

... PETITIONERS

Versus

1. MARIA ARAMITA VAS
2. MRS. ALVA SOCORRINHA
VAZ E BRAGANZA
3. JASMINA D'SOUZA,
4. MR PEDRO ANTONIO
CORRIA
5. MRS URMILA UMESH
GADKARI
6. MRS SUZY REBELLO
7. MRS MARIA TEREZA
FRIDA OZORIO

8. THE DIRECTOR OF
EDUCATION, With office at
Directorate of Education,
Porvorim, Bardez Goa.

... RESPONDENTS

Mr S. G. Desai, Senior Advocate with Ms S. Shelke, Advocate for the Review Petitioners.

Mr J. E. Coelho Pereira, Senior Advocate with Mr Vilas Pavithran, Advocate for the Respondents No.1 to 7.

Mr P. Arolkar, Additional Government Advocate for the State.

IN
WRIT PETITION NO.1937/2021 (F)

Mrs. Maria Aramita Vas
Wife of Arnaldo Andre Pelagio Dias,
H.No.95/2, Godinho Waddo,
Calata, South Goa, Goa 403 713. ... Petitioner

Versus

1. The Director of Education,
With office at Directorate of
Education, Porvorim, Bardez Goa.

2. Mormugao Port Trust Education Society,
A society registered under the
Societies Registration Act, 1860,
Through its Secretary,
With office at Mormugao Harbour,
Mormugao, Goa 403 804

3. Deepvihar Primary School,
Through its Headmistress,
With office at Deepvihar Primary School,
Headland Sada, Mormugao,
Goa 403 804. ... Respondents

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. B. Fernandes and Mr. Vilas Pavithran, Advocates for the Petitioner.

Mr. S. G. Desai, Senior Advocate with Ms. Shalaka Shelke and Mr. Tejas Rane, Advocates for Respondent Nos. 2 and 3.

Mr. P. Arolkar, Additional Government Advocate for the State.

WITH
WRIT PETITION NO.1938 OF 2021 (F)

Mrs. Alva Socorrinha Vaz E Braganza
Wife of Rui A. Braganza, Prime Royale, Flat No.23,
Near St. Threza School, Mangor Hill,
Vasco Da Gama, Goa 403 802. ...Petitioner

Versus

1. The Director of Education,
With office at Directorate of
Education, Porvorim, Bardez Goa.

2. Mormugao Port Trust Education Society,
A society registered under the
Societies Registration Act, 1860,
Through its Secretary,
With office at Mormugao Harbour,
Mormugao, Goa 403 804.

3. Deepvihar Primary School,
Through its Headmistress,
With office at Deepvihar Primary
School, Headland Sada, Mormugao,
Goa 403 804. ... Respondents

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. B. Fernandes
and Mr. Vilas Pavithran, Advocates for the Petitioner.
Mr. S. G. Desai, Senior Advocate with Ms. Shalaka Shelke and
Mr. Tejas Rane, Advocates for Respondent Nos. 2 and 3.
Mr. Tukaram Gawas, Addl. Government Advocate for the State.

WITH
WRIT PETITION NO.1939 OF 2021 (F)

Jasmina D'Souza,
Wife of Mafaldo Boaventura
Martins, 58 years of age,
House No.2/33/720/T/5/3, F-1,
New Adarsh Residency, Adarshnagar,

Near Salkar Colony, Chicalim, Mormugao,
South Goa, Goa 403 711.

...Petitioner

Versus

1. The Director of Education,
With office at Directorate of
Education, Porvorim, Bardez Goa.

2. Mormugao Port Trust Education Society,
A society registered under the
Societies Registration Act, 1860,
Thr. its Secretary, with office at
Mormugao Harbour,
Mormugao, Goa 403 804

3. Deepvihar Primary School,
Through its Headmistress, with office
at Deepvihar Primary School, Headland
Sada, Mormugao, Goa 403 804.

... Respondents

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. B. Fernandes
and Mr. Vilas Pavithran, Advocates for the Petitioner.
Mr. S. G. Desai, Senior Advocate with Ms. Shalaka Shelke and
Mr. Tejas Rane, Advocates for Respondent Nos. 2 and 3.
Mr. Tukaram Gawas, Additional Government Advocate for the
State.

WITH
WRIT PETITION NO.1940 OF 2021 (F)

Mr. Pedro Antonio Correia
Son of Joao Correia, 48 Years of age,
House No.493, Opposite Fernandes,
Near Maruti Temple, New Vaddem,
Vasco da Gama, Mormugao, South Goa.

...Petitioner

Versus

1. The Director of Education,
With office at Directorate of
Education, Porvorim, Bardez Goa.

2. Mormugao Port Trust Education Society,
A society registered under the
Societies Registration Act, 1860,
Through its Secretary,
With office at Mormugao Harbour,
Mormugao, Goa 403 804

3. Deepvihar Primary School,
Through its Headmistress,
With office at Deepvihar Primary School,
Headland Sada, Mormugao,
Goa 403 804.

...Respondents

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. B. Fernandes
and Mr. Vilas Pavithran, Advocates for the Petitioner.
Mr. S. G. Desai, Senior Advocate with Ms. Shalaka Shelke and
Mr. Tejas Rane, Advocates for Respondent Nos. 2 and 3.
Mr. Shubham Priolkar, Addl. Govt. Advocate for the State.

WITH
WRIT PETITION NO.1941 OF 2021 (F)

Mrs. Urmila Umesh Gadkari,
Wife of Umesh Gadkari,
House No.12, Ward No.2,
Near St. Xavier Church Harbour
Mormugao, Goa.

...Petitioner

Versus

1. The Director of Education,
With office at Directorate of
Education, Porvorim, Bardez Goa.

2. Mormugao Port Trust Education Society,
A society registered under the
Societies Registration Act, 1860,
Through its Secretary,
With office at Mormugao Harbour,
Mormugao, Goa 403 804

3. Deepvihar Primary School,
Through its Headmistress,
With office at Deepvihar Primary School,
Headland Sada, Mormugao,
Goa 403 804.

...Respondents

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. B. Fernandes
and Mr. Vilas Pavithran, Advocates for the Petitioner.
Mr. S. G. Desai, Senior Advocate with Ms. Shalaka Shelke and
Mr. Tejas Rane, Advocates for Respondent Nos. 2 and 3.
Mr. S. P. Munj, Additional Government Advocate for the State.

WITH
WRIT PETITION NO.1942 OF 2021 (F)

Mrs. Suzy Rebello
Wife of Lourenco Rebello,
123/1, Major Bunder, Mormugao,
Vasco-da-Gama, S O
South Goa, Goa 403 802.

...Petitioner

Versus

1. The Director of Education,
With office at Directorate of
Education, Porvorim, Bardez Goa.

2. Mormugao Port Trust Education Society,
A society registered under the
Societies Registration Act, 1860,
Through its Secretary,
With office at Mormugao Harbour,
Mormugao, Goa 403 804.

3. Deepvihar Primary School,
Through its Headmistress,
With office at Deepvihar Primary School,
Headland Sada, Mormugao,
Goa 403 804.

...Respondents

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. B. Fernandes and Mr. Vilas Pavithran, Advocates for the Petitioner.
Mr. S. G. Desai, Senior Advocate with Ms. Shalaka Shelke and Mr. Tejas Rane, Advocates for Respondent Nos. 2 and 3.
Mr. Neehal Vernekar, Addl. Government Advocate for the State.

WITH
WRIT PETITION NO.1943 OF 2021 (F)

Mrs. Maria Tereza Frida Ozorio
Wife of Francsico Sebastiao Fernandes,
Near Railway Station, H.No.7B Butem,
Cansaulim, South Goa, Goa 403712. ...Petitioner

Versus

1. The Director of Education,
With office at Directorate of
Education, Porvorim, Bardez Goa.

2. Mormugao Port Trust Education Society,
A society registered under the
Societies Registration Act, 1860,
Through its Secretary,
With office at Mormugao Harbour,
Mormugao, Goa 403 804

3. Deepvihar Primary School,
Through its Headmistress,
With office at Deepvihar Primary School,
Headland Sada, Mormugao,
Goa 403 804. ...Respondents

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. B. Fernandes and Mr. Vilas Pavithran, Advocates for the Petitioner.
Mr. S. G. Desai, Senior Advocate with Ms. Shalaka Shelke and Mr. Tejas Rane, Advocates for Respondent Nos. 2 and 3.
Mr. Geetesh Shetye, Addl. Government Advocate for the State.

**CORAM: M. S. SONAK &
VALMIKI SA MENEZES, JJ.**

DATED: 27th March 2023

ORAL ORDER:

1. Heard Mr S. G. Desai, learned Senior Advocate who appears along with Ms S. Shelke for the review petitioners, Mr Coelho Pereira, learned Senior Advocate who appears with Mr Vilas Pavithran for private respondents no.1 to 7 (original petitioners) and Mr P. Arolkar, learned Additional Government Advocate for the State.

2. These petitions seek a review of our common judgment and order dated 22.09.2022 allowing Writ Petitions instituted by the employees of the petitioner school and directing the petitioner school to comply with the mandate of the proviso to Section 13 of the Goa School Education Act, and Rules made thereunder.

3. Mr Dessai, however, submits that there are some errors apparent on the face of the record, and therefore, the judgment and order must be reviewed. He further refers to a subsequent development under which the Mormugao Port Authority (MPA), which used to fund the operations of the said school earlier, has refused to fund the operations.

4. Mr Dessai points out that the crucial issue, in this case, was whether the petitioner school was a "recognized school" under Section 5 of the said Act. He submits that there is no document to evidence such recognition. He submits that this Court has misinterpreted Rule 36 of the said Rules, and even the inferences drawn by this Court from the circumstances of the case are erroneous. He pointed out that Rule 36 of the said Rules applies "subject to the provisions of these Rules". He submits that most of the provisions of the said Rules were not complied with for recognition, and therefore, no benefit of Rule 36 could have been given in this case. Mr Desai pointed out that this Court has not correctly construed the communication dated 12.04.1984 and the document annexed to this letter. Therefore, the observations in para 35 of the judgment and the order in which review is applied are vitiated by errors apparent on the face of the record.

5. Mr Dessai pointed out that no material was on record to sustain the inferences in paragraphs 40, 41, 42 and 43 of the judgment and order. He pointed out that the Court has erroneously raised such inferences, and all these are good grounds for review. Mr Dessai relied upon *S. Madhusudhan Reddy vs V. Narayana Reddy & Ors. - 2022 SCC OnLine SC 1034* and *Board of Control for Cricket In India & Anr. v/s. Netaji*

Cricket Club and Ors. - (2005) 4 SCC 741 in support of the review petition.

6. Mr Dessai also pointed out that the subsequent communications from the MPA are sufficient to review the judgment and order.

7. In this case, the Petitioner had instituted a Special Leave Petition before the Hon'ble Supreme Court of India to challenge the orders under review. This was disposed of by order dated 17.01.2023, which reads as follows:-

"Upon hearing the counsel the Court made the following
O R D E R

Upon our expressing reservations in entertaining these petitions, learned counsel for the petitioners seeks permission to withdraw with liberty for the petitioners in taking recourse to other appropriate proceedings in accordance with law, including filing of a review petition before the High Court.

Taking note of the submissions so made, permission granted.

The petitions are dismissed as withdrawn with liberty as prayed.

Having regard to the circumstances of the case, we also leave it open for the petitioners to challenge the order

impugned as also the order passed in review petition, if the occasion so arises and if so advised.

All pending applications stand disposed of."

8. The contentions now raised by Mr Desai were even earlier raised by him. We considered these contentions and several others in detail in our judgment and order dated 22.09.2022. Therefore, in our opinion, this review petition is nothing but an attempt to re-argue the matter. That is impermissible, and there can be no review based upon re-arguments.

9. The crucial issue, in this case, was whether the petitioner school was recognized for the various provisions of the said Act and Rules made thereunder. This Court was conscious and recorded that there was no express letter of recognition because the procedures before coming into force of the said Act were unclear regarding the issue of such a specific letter. However, this Court has considered several documents placed on record by not only the original petitioners and the review petitioners but more particularly by the Government authorities who were, in the first place, concerned with the issue of recognition. Based upon such documents, inferences have been drawn.

10. Even the communication dated 12.04.1984 has been considered along with several other communications/documents which the parties produced on record. Furthermore, the effect of the various provisions of the said Act and Rules has also been considered.

11. The so-called subsequent development in which the MPA allegedly declined to offer further finances is entirely irrelevant, and based upon the same, no case is made out for review. In terms of the proviso to Section 13 of the said Act, if the scales of any pay and allowances, pension, gratuity, provident fund and other prescribed benefits of employees of any recognized private school are less than those of the employees of the corresponding status in the schools run by the Government, the Director shall direct, in writing, the managing committee of such school to bring the same up to the level of those of the employees of the corresponding status in schools run by the Government. Further, failure to comply with such direction shall be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of Section 5 shall apply accordingly. Accordingly, after concluding that the petitioner school was indeed a recognized school, directions have been given to comply with the mandate of Section 13 of the said Act. This

mandate is not dependent upon the Petitioner obtaining such finances from the MPA.

12. We have considered the decisions the learned Senior Advocate relied upon concerning the parameters of review jurisdiction. The parameters of review jurisdiction are fairly well settled. In this case, such parameters have not been fulfilled. There are no errors apparent on the face of the record. The subsequent development is also not sufficient to exercise our review jurisdiction.

13. For all the above reasons, we dismiss this review petition.

14. There shall be no order for costs.

VALMIKI SA MENEZES

M. S. SONAK, J.

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