

Gaikwad RD

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 380 OF 2022**

Yateemkhana & Madrasa Anjuman Khairuk Islam ...Petitioners
Trust & Ors
Versus
State of Maharashtra & Ors ...Respondents

**Mr Mihir Desai, Senior Advocate, i/b, Rahul S Kadam, for the
Petitioners.**
Mr Amit Shastri AGP, for the Respondents/State.
**Mr Burhan Bukhari, with RM Hajare i/b, Sunil Sonawane, for
Respondent/MCGM.**
Mr Ajay Wani, Deputy Education Officer present in person.
Mr Irfan Shah, Education Inspector present in person.

**CORAM G.S. Patel &
Neela Gokhale, JJ.**
DATED: 8th February 2023

PC:-

1. Rule. Respondents waive service. Rule is made returnable forthwith. There are Affidavits in Reply .

2. The 1st Petitioner is a Public Charitable Trust registered under the Mumbai Public Trusts Act, 1950. It owns, manages and runs various schools, colleges and orphanages. One of these is the 2nd Petitioner Urdu Primary School for girls. The 1st Respondent is

the State of Maharashtra. The 2nd Respondent is a Grievance Redressal Committee (“**GRC**”) in the office of the Deputy Director of Education for Aided Private Primary Schools of the Municipal Corporation of Greater Mumbai (“**MCGM**”). The 3rd Respondent is the Deputy Education Officer. The 4th Respondent is the Administrative Officer of Aided Private Primary School in the Education Department, L-Ward, MCGM Education Department. The 5th Respondent is the MCGM itself.

3. The 1st Petitioner was established on 3rd November 1952. The 3rd Petitioner is an individual. The 2nd Petitioner i.e. the School is recognized as a minority school by the Respondents. There has been no termination or cessation of that recognition. As such, the 1st Petitioner is a religious and linguistic minority institution within the meaning of Article 30 of the Constitution of India.

4. This factual background of a minority status means that the right to select the head of the minority institution and to select and appoint the teaching and non-teaching staff is an essential part of the right to administer a minority educational institution.

5. The present Petition relates to the appointment of the 3rd Petitioner as a peon. A vacancy in that post occurred in the 2nd Petitioner’s school upon a previous non-teaching staff retiring by superannuation on 31st August 2013. To fill this vacancy, Petitioners Nos.1 and 2 began the process of recruitment. They wrote on 23rd October 2013 to the 4th Respondent for a No Objection Certificate

(NOC) to fill up that post and to ascertain the work load. There was no reply. To avoid disruption in the operation of the school, Petitioners Nos. 1 and 2 published an advertisement in the *Inquilab* Urdu newspaper on 19th May 2013 calling for candidates to apply for various posts. This post of a peon was one such. The 3rd Petitioner was duly qualified and eligible for appointment to the post of peon, was selected, and was appointed as a peon with the 2nd Petitioner School with effect from 1st January 2014. This appointment, though initially on a probation basis for three years, was against a clear vacancy. There is no question of the post not being sanctioned.

6. After the 3rd Petitioner was appointed, the Petitioners Nos.1 and 2 attempted to submit a proposal for approval of that appointment to the Respondent Authorities. These Authorities, the Petition says in paragraph 18, refused to even accept that proposal on the ground that the NOC was not obtained before recruitment.

7. Finally, on 20th December 2016, the Petitioners Nos.1 and 2 sent a proposal and asked the Respondents to approve the appointment of the 3rd Petitioner as a peon. That proposal explained the reason and circumstances in which the appointment of the 3rd Petitioner had come to be made.

8. To this proposal also there was no reply. The Petitioners filed Writ Petition No. 472 of 2015. This Court disposed of that petition by allowing it to be withdrawn with liberty to file afresh. That order is dated 2nd August 2018.

9. Thereafter the 3rd Respondent rejected the proposal submitted by the Respondents Nos. 1 and 2 on the sole ground that a “prior NOC” was not taken from Respondents Nos. 3 and 4. That order is dated 24th January 2019.

10. The Petitioners went to the GRC and made an application on 4th January 2020. The matter was heard. The contesting Respondents appeared and filed replies. Further hearings took place. But on 10th August 2021, the GRC rejected the application. A copy of the order of 10th August 2021 is annexed at Exhibit “K”. The Petition assails the order of rejection of 24th January 2019 and the GRC order of 10th August 2021.

11. The impugned GRC order says that the application by the Petitioners is ‘erroneous’ because it relies on a policy that is no longer in force after the advent of the Right of Children to Free and Compulsory Education Act 2009. That was implemented with effect from 1st April 2010. Thus, according to the GRC there was no question of approving a proposal of non-teaching staff without a preceding NOC. Apart from pointing out that this question of a change of policy was something that the GRC came up with on its own, and was not a point canvassed by anybody, it is apparent that this point is wholly without substance. The impugned order entirely fails to appreciate that this is admittedly a minority institute and is recognized as such.

12. The present instructions by the MCGM Primary Education Department of 8th February 2023 to their Advocate is to say that

the MCGM does not in fact insist on a previous NOC at all. We note this statement. But we are now told that there will be an examination as to whether the 3rd Petitioner had the requisite qualifications and was eligible for appointment in the first place. From 2014-15 onwards, i.e., for the last 9 or 10 years nobody has questioned the eligibility of the 3rd Petitioner. The only eligibility condition seems to be that he must have passed his *9th Standard*. He possesses that qualification. More to the point, we note that the 3rd Petitioner has worked as a peon for the last 10 years.

13. Refusing permission at this stage will inevitably result in great injustice to the 3rd Petitioner. If his appointment is not approved, then, given the fact that the school receives aid, there is a distinct possibility of recovery proceedings against the 3rd Petitioner. In this, the 3rd Petitioner is himself blameless. There are no disciplinary proceedings against him and no one has found fault with the 3rd Petitioner on any ground whatsoever. Now that it is clear that for a minority institution the MCGM is not insisting on a prior NOC, we are unable to see why there ought to be any impediment in the grant of relief.

14. The prayers in the petition at page 31 are these:

- (a) That this Hon'ble Court under its Civil Appellate Extra Ordinary Writ Jurisdiction under Article 226 of the Constitution of India 1950 be pleased to quash and set aside the order dated 24th January 2019, and the confirmation order that is 10th August, 2021, passed by Respondent No. 2 - Grievance Redressal Committee, as same is not (maintainable) is not sustainable in law.

(b) That this Hon'ble Court under its Civil Appellate Extra Ordinary Writ Jurisdiction under Article 226 and 227 of Constitution of India 1950 in the nature of Mandamus and thereby direct the Respondent No. 3 & 4 that the proposal submitted by the Petitioners for Approval dt.20.12.2016, which is enclosed as EXHIBIT-E may be allowed and approval may be given to the Petitioner No.3 Mr. Khan Mohammed Umar Haroon Khan to post of peon in the Petitioner No.2 School from the date of his appointment i.e. from 01.01.2014 and consequently release the salary payable to Petitioner No.3 on such terms and conditions as this Hon'ble Court may deem fit and proper.

(c) That it be declared that the Petitioners have an right to choose and select Personnel/Staff -Teaching and NonTeaching of their own choice and are not bound to absorb any surplus staff sent by the Respondents and are not bound to obtain NOC from Respondent before filling up any Vacant Post.

15. In light of the discussion above, we make rule absolute in terms of prayer clauses (a) and (b). Mr. Desai states that the declaration sought in prayer clause (c) may be left open for an appropriate case. We accept this submission. We clarify that we have not made any pronouncement nor issued a declaration in larger terms in terms of prayer clause (c).

16. The writ petition is disposed of in these terms. The necessary formal order of approval is to be issued within one week of this order being uploaded. The amounts that are to be paid to 1st Petitioner or 2nd Petitioner for disbursement to the 3rd Petitioner from the date of his appointment i.e. 2014 are to be released by both the State

Government and by the MCGM in proportion to their respective shares by 1st March 2023.

17. List the matter on 8th March 2023 for compliance.

(Neela Gokhale, J)

(G. S. Patel, J)

(This order is modified by an order dated 14th February 2023 passed on a praecipe. Corrections are shown in bold and italics)

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