

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

WRIT PETITION NO. 3531 OF 2023

(Umar Khan s/o Mohsin Khan, through its Natural Guardian Mohsin Khan Vs. State of Maharashtra & Ors.)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri S.P Bhandarkar with Shri Manish Shukla, Advocate for the petitioner.
Ms S.S. Jachak, Assistant Government Pleader for respondent Nos. 1 and 2.
Shri Sheikh Majid, Advocate for respondent Nos. 3 and 4.
Ms Radhika Bajaj, Advocate for respondent No.5.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : JULY 6, 2023

The petitioner seeks to raise a challenge to the action of respondent No.5 – Sandipani High School in rejecting the application for admission of the petitioner to Class I under 25% reservation quota as provided under the Right of Children to Free and Compulsory Education Act, 2009 (for short “Act of 2009”).

2] As per the provisions of Section 12(1)(c) of the Act of 2009, children belonging to the weaker section and disadvantaged group in the neighbourhood to the extent of 25% are eligible for being admitted in Class I. The petitioner sought admission of his minor son under the said quota. The application made by the petitioner along with various documents as well as the rent agreement dated 23/3/2018 came to be examined by the Authorities and on that basis, a communication was issued by the Block Education Officer to the School that the minor child was admitted through the online portal. Subsequently, however, it was informed on the portal that since the address proof submitted by the petitioner was not found to be valid, the admission of the minor came to be cancelled. Being aggrieved, the cancellation of admission is under challenge.

3] The learned Counsel for the petitioner submitted that having verified all the requisite documents, the Block Education Officer acknowledged the admission of the minor through the online portal. This was done on 11/5/2023. However, the School without any authority of law issued a communication to the Block Education Officer on 16/5/2023 and made a request for re-examining the said documents. On the request made by the School, a Committee was

constituted and it is stated to have visited the premises indicated in the application on 19/5/2023 and then submitted a report that the petitioner was not residing at the given address. Relying upon the Circular dated 28/2/2023 and especially Clause 10 thereof, it was submitted that the School had no authority whatsoever to seek verification of the documents after the admission of the minor was approved by the Block Education Officer. It was further submitted that the rent agreement clearly indicated the correct address where the petitioner was residing and hence merely on the basis of inquiries made in the vicinity, it could not have been held that the petitioner was not residing at the given address. Placing reliance on the judgment of the High Court of Delhi in *Shahnaz Khatoon & Ors. Vs. GD Goenka Public School [Cont. Case (C) No. 83/2022 decided on 31/5/2023 and 1/6/2023]*, it was submitted that since the petitioner belonged to the weaker section and disadvantaged group, his minor child was entitled to be admitted at respondent No.5 – School.

4] The learned Counsel appearing for respondent No.4 – Block Education Officer relied upon the affidavit-in-reply and submitted that initial verification of documents would not mean that all information given therein was liable to be accepted. Referring to Clause 2 of the Circular dated 28/2/2023, it was pointed out that when a rent agreement was relied, it was subject to verification by the Authorities. On the communication issued by the School, such verification was carried out and the Enquiry Committee found that the petitioner was not residing at the given address. Since admission was sought under Section 12(1) (c) of the Act of 2009, it was necessary to comply with the statutory requirements and no admission could be granted disregarding the statutory provisions.

5] The learned Counsel appearing for respondent No.5, in addition, submitted that it was justified in seeking verification of the address mentioned in the form submitted by the petitioner. Based on the information that the petitioner was not residing at the given address and his residence was beyond the distance prescribed in that regard, it was submitted that the cancellation of admission of the minor was for non-fulfillment of the required criteria. She also invited attention to the Aadhaar Card of the minor child to indicate the address

stated therein which was different from what was mentioned in the rent agreement.

6] On hearing the learned Counsel for the parties and after perusing the documents on record, we find that though the documents submitted initially by the petitioner were verified by the Block Education Officer, it was evident that the petitioner and his minor child were not residing in the neighbourhood as defined by Section 2(m) of the Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 (for short “Rules of 2011”). The term “neighbourhood school” has been defined to mean a school within a distance of one kilometer of the neighbourhood having minimum of 20 children in the age group of 6 to 11. As per the Circular dated 28/2/2023, the place of residence indicated by an applicant was liable to be verified. It has been specifically provided that the address given in the rent agreement was subject to verification and if it was found that the family was not residing at the address given, the admission was liable to be cancelled. The Block Education Officer on 17/5/2023 directed the concerned Committee as constituted to visit the address mentioned in the application form. The same was done by the said Committee on 19/5/2023 and it found that the petitioner was not residing at the given address. The address mentioned in the application form was “110 Amma Manjil, c/o Yunus Bhai Gore, Hazari Pahad, Nagpur”. It is not disputed that the address given is at a distance beyond the prescribed limits under the Rules of 2011 from the School in question. While on one hand, the Committee constituted submitted its report on 19/5/2023, the petitioner seeks to rely upon an affidavit dated 24/6/2023 of the son of Mohd. Yunus that the petitioner was residing at the address mentioned in the application form. We find that this is a disputed question of fact and it cannot be conclusively held in writ jurisdiction that the petitioner does reside at the given address. On the other hand, the documents produced by the School which were submitted along with the application form indicate a different address than the one mentioned in the application form.

7] It is thus clear that in accordance with Clause 2 of the Circular dated 28/2/2023, the Block Education Officer verified the address that was stated in the application form and based on the report of the Committee as constituted

cancelled the admission on being satisfied that the family was not residing therein. There is no uncontroverted material on record to hold that the petitioner resides at the address given in the application form and hence the admission was not liable to be cancelled. In these disputed facts, the ratio of the decision relied upon by the learned Counsel for the petitioner cannot be applied to the facts of the present case.

8] The Writ Petition therefore stands dismissed with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)

SUMIT