



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

WRIT PETITION NO.5124/2022

**Gulam Nabi Azad Welfare Society, Amravati, thr.its President
Abdul Saleem Abdul Qalyum**

..VS..

**State of Mah., thr.Secretary, Department of School Education and Sports
Department, Mantralaya, Mumbai and ors**

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

Court's or Judge's Order

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Shri H.M.Bobade, Counsel for the Petitioner.
Shri J.B.Kasat, Counsel for Respondent No.3.
Shri Shahid M.Syed, Counsel for Respondent Nos.5 & 6.
Shri M.K.Pathan, Assistant Government Pleader for Respondent
Nos.1 & 2.

CORAM : AVINASH G.GHAROTE & URMILA JOSHI-PHALKE, JJ.

CLOSED ON : 24/08/2023

PRONOUNCED ON : 01/09/2023

1. Heard.

2. The challenge in the present petition is to the order dated 6.7.2022 issued by respondent No.1 - State of Maharashtra thereby allowing transfer of school run by 'Jiwan Jyoti Gramin Shikshan and Samaj Sudhar Society, Amravati (Minority Institution)' and 'J.J.Urdu Primary School, Hanuman Nagar, Amravati, Urdu Medium (Semi English) (Stds. 1 to 4)' to Plot No.25, Mugliapura, Paratwada, tahsil Achalpur, district Amravati.

3. The respondent No.5, is the Secretary, Jiwan Jyoti

Sanstha, Hanuman Nagar, Amravati and respondent No.6 is headmaster of J.J.Urdu Primary School Hanuman Nagar, Amravati. The respondent Nos.1 to 4 are State Machineries. The petitioner is the President of Gulam Nabi Azad Welfare Society which was running 'Maharashtra Urdu Purva Primary School' at Mugliapura, Paratwada, tahsil Achalpur, district Amravati since the year 1999 and the petitioner's school is minority school for Urdu Medium run by the petitioner society. The respondent No.5 - Secretary, Jiwan Jyoti Sanstha, Hanuman Nagar, Amravati, submitted a proposal for transfer of J.J.Urdu Primary School, Hanuman Nagar, Amravati to Achalpur at Mugliapura, Paratwada. The said proposal is accepted by the Education Officer (Primary) after spot inspection of proposed site. After the said proposal submitted by respondent No.5, the petitioner raised an objection on the ground that if proposal is accepted, it would lead to creation of unhealthy competition between these two schools i.e. the petitioner's school and newly transferred school of the respondents. The Education Officer (Primary) had not considered the said objection and illegally transferred the said school. The action of the Education Officer is illegal and arbitrary and liable to be set aside.

4. The petition is opposed by the respondent Nos.5 and 6 on the ground that the respondent No.5 is a public trust and

society registered under the Bombay Public Trusts Act. It has submitted a proposal to the respondent No.3 for transfer of primary school (Std.1 to 4) i.e. J.J.Urdu Primary School, Hanuman Nagar, Amravati to Mugliapura at Paratwada. After following the due procedure, the proposal of the transfer was allowed and the apprehension raised by the petitioner has no substance. Hence, the petition deserves to be dismissed.

5. On hearing both the sides and perusing relevant documents, it reveals that the respondent No.5 - Secretary of a public trust and society runs a primary school J.J.Urdu Primary School, Hanuman Nagar, Amravati. The Secretary has submitted proposal for transfer of the said school to Mugliapura, Paratwada, tahsil Achalpur, district Amravati. After receipt of the said proposal, the respondent No.3 directed the respondent No.4 - Block Education Officer to conduct a spot inspection. Accordingly, spot inspection was carried on 18.9.2020 and the Block Education Officer had submitted his report to the Education Officer i.e. respondent No.3. As there was no adversity found in the report of the the Block Education Officer, the Education Officer recommended proposal of the respondents to the respondent No.2 who is the Deputy Director of Education. The spot inspection report does not indicate any adversity against respondent Nos.5 and 6. Admittedly, respondent's

school is Semi English Unaided Minority School. Whereas, the petitioner school is Urdu Medium School i.e. Maharashtra Urdu Purva Primary School at Paratwada, tahsil Achalpur, district Amravati. The question of unhealthy competition would arise if two schools are equal. The said question will not arise amongst unequal school and the petitioner is running Urdu Medium School, the respondent is running Urdu Semi English School. The petitioner's school has been granted permission for one section for each class. As per the 'Sancha Manyata', total enrolled students in the petitioner school for the year 2020-2021 from Classes 1 to V is 380 and as per the mid-day meal report for the year 2021-22 issued by the Panchayat Samiti at Achalpur, total enrolled students in the petitioner school as on 30.9.2021 is 416 students. Thus, it is evident that the petitioner school is overburdened. Whereas, respondent No.6 school has total number of 53 students in Classes 1 to 4 in the year 2022-23. The children are entitled to receive the best education and for imparting quality education, choice has to be provided to the students. The petitioner nowhere stated exactly what prejudice would cause to the petitioner school due to the transfer of respondent No.6 school. Mere contention that it would affect his school strength or apprehension raised that transfer of the said school leads to creation of unhealthy

competition, is not sufficient. The petitioner has to substantiate his contention by making out specific case that what prejudice would cause to him by transfer of the said school. In fact, it appears from the impugned order that the Education Officer has considered the spot inspection report wherein no adversity is found against the respondent Nos.5 and 6 and, thereafter, the Education Officer forwarded the proposal which was accepted by the Government.

6. In view of the above, we could not find any illegality or adversity in the said order. Mere apprehension, that there would be an unhealthy competition, is not sufficient to entertain the petition and, therefore, the petition deserves to be dismissed. Accordingly, the petition is dismissed with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(AVINASH G.GHAROTE, J.)

!! BrWankhede !!