

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

WRIT PETITION NO. 7751/2019

1. Jijamata Shikshan Prasarak Sanstha,
Through its President Pandurang Tukaramji Thakre,
Aged about 64 years.
2. Jijamata Convent School, Through its Headmaster
Sanjay Ajabrao Chavhan, Aged about 47 years.

Both R/o At Post Ansing, Tq. and Dist. Washim.

PETITIONERS

.....VERSUS.....

1. State of Maharashtra, Through its Principal
Secretary, The Revenue and Forest Department,
Mantralaya, Mumbai – 32.
2. Sub Divisional Officer, Washim,
Tq. & Dist. Washim.
3. The Collector, Washim, Tq. & Dist. Washim.
4. The Tahsildar, Washim, Tq. & Dist. Washim.
5. Education Officer, Washim,
Tq. & Dist. Washim.

RESPONDENTS

Shri R.L. Khapre, Senior Advocate with A.P. Thakre, counsel for the petitioners.
Ms N.P. Mehta, Assistant Government Pleader for the respondent nos.1 to 4.
Shri Amol Deshpande, counsel for the respondent no.5.

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

DATE ON WHICH ARGUMENTS WERE HEARD : JANUARY 20, 2023

DATE ON WHICH JUDGMENT IS PRONOUNCED : FEBRUARY 03, 2023.

JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
counsel for the parties.

2. The challenge raised in this writ petition is to the communication dated 29.07.2019 that has been issued by the Education Officer (Primary), Zilla Parishad, Washim refusing to reimburse the tuition fees under Section 12(2) of the Right of Children to Free and Compulsory Education Act, 2009 (for short, 'the Act of 2009') to the school run by the petitioners.

3. The facts relevant for considering the challenge as raised by the petitioners is that according to the petitioners it purchased Government land admeasuring 0.81 HR land at Mouza Ansing, Taluka and District Washim from Survey No.82/2 at its market price. Based on the report of the Sub-Divisional Officer dated 13.06.1990 by which the market price of Survey No.82/2 came to be determined, the first petitioner-Education Society purchased the said land at the market price of Rs.18,010/-. The order of the Collector in that regard is dated 30.11.1992 and the first petitioner executed the possession receipt on 14.12.1992. Under the provisions of Section 12(2) of the Act of 2009 it is the case of the petitioners that it is entitled to receive reimbursement of the tuition fees to the extent of 25% admissions made by it in the light of the directions issued on 30.01.2019 by the School Education and Sports Department. Such benefit of reimbursement is not admissible to those schools who have received Government lands either at a discounted price or free of cost. Since it is the case of the petitioners that they have paid

the market value of the said land they cannot be deprived of the benefit of reimbursement as has been done by issuing communication dated 29.07.2019 by the first respondent. Being aggrieved, the said communication is under challenge.

4. Shri R.L. Khapre, learned Senior Advocate for the petitioners referred to the manner in which the aforesaid 0.81 HR land was purchased by the first petitioner. By following the procedure prescribed by the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 the Sub-Divisional Officer by his report dated 13.06.1990 determined the market price of 0.81 HR land at Rs.16,146/-. Based on its report, it is submitted that the Collector issued an order of allotment of the said land on 05.11.1992. In view of the Circular dated 01.07.1985 the market price of the said land was fixed at Rs.18,010/- and by paying that amount the necessary documents conferring title on the first petitioner – Education Society came to be executed. From the Academic Year 2014-15 the school had granted 25% admissions without charging any fees in view of the provisions of Section 12 of the Act of 2009 and as the land on which the school was being run was purchased by the Society at its market price it was entitled to be reimbursed the said amount of tuition fees as per Section 12(2) of the Act of 2009. Without considering the manner in which the said land was purchased by the first petitioner –

Education Society at its market price, the Education Officer (Primary) had held the school not entitled to such reimbursement. Only by stating that the school had received Government land such entitlement had been turned down. It was thus submitted that on a proper consideration of the relevant documents it was clear that the school was entitled to reimbursement of the tuition fees under Section 12(2) of the Act of 2009.

5. Shri Amol Deshpande, learned counsel appearing for the fifth respondent – Education Officer (Primary) supported the impugned communication. According to him in the light of the policy of the State Government as reflected in the communication dated 30.01.2019 the schools receiving Government land at concessional rates or without paying any revenue charges were not entitled to reimbursement of tuition fees under Section 12(2) of the Act of 2009. The documents on which the first petitioner – Education Society was relying clearly indicated that the land was received by it at a concessional rate and hence the Education Officer (Primary) rightly held the school to be not entitled for such reimbursement. The impugned communication therefore did not call for any interference.

Ms N.P. Mehta, learned Assistant Government Pleader for the respondent nos.1 to 4 supported the action taken by the fifth respondent.

6. We have heard the learned counsel for the parties and we have perused the documents on record. The impugned communication dated 29.07.2019 holds the school not entitled to reimbursement of 25% tuition fees for the reason that the school was granted Government land. Except this reason that the school was granted Government land, the Education Officer (Primary) has not taken into consideration the true purport of the instructions issued by the School Education and Sports Department on 30.01.2019. Perusal of these instructions clearly indicates that it is only if the school has been granted Government land at a concessional rate or Government land is leased at a concessional lease amount that such school would not be entitled to reimbursement of 25% tuition fees. The instructions issued do not *prima-facie* indicate that an institution is precluded from seeking reimbursement of tuition fees because it has been allotted Government land. It is only when Government land is allotted at a concessional rate that the school is deprived of claiming reimbursement. The impugned communication thus has been issued by the Education Officer (Primary) without adverting to the vital aspect as to whether the school received the land at a concessional rate or not. On this short ground the impugned communication dated 29.07.2019 would be required to be quashed with a further direction to the said Authority to re-consider the matter in the light of the instructions dated 30.01.2019.

7. It was strenuously urged by the learned Senior Advocate for the petitioners that the documents on record and especially the report of the Sub-Divisional Officer dated 13.06.1990 clearly indicate that the market price of the land at the relevant period was Rs.16,146/-. When the order of allotment was issued, its market price was Rs.18,010/- that was duly paid by the petitioners. The land was thus not purchased/allotted at any concessional rate. It was thus submitted that on the basis of aforesaid the petitioners be held entitled to reimbursement of 25% tuition fees.

We however find that the Education Officer (Primary) posed a wrong question to itself and proceeded to refuse to grant reimbursement to the school only on the ground that the school had received Government land. It would therefore be necessary for the Education Officer (Primary) to re-consider the matter and arrive at a conclusion as to whether 0.81 HR land was allotted to the petitioner on 05.11.1992 at a concessional price or at its market price. We have therefore not gone into that aspect of the matter which is primarily required to be considered by the Education Officer (Primary).

8. Hence for aforesaid reasons the impugned communication dated 29.07.2019 is set aside. The Education Officer (Primary) is directed to re-consider the claim of the petitioners for reimbursement of 25% tuition fees after considering the Circulars dated 08.02.1983 and 01.07.1985 as well as the directions issued by the School Education and Sports Department, Maharashtra State on 30.01.2019. To enable such consideration the petitioners through their authorized representative shall appear before the Education Officer (Primary) on 08.02.2023 and place before him all relevant documents that they seek to rely upon in that regard. The Education Officer (Primary) shall examine the said documents and take a decision on such claim on its own merits within a period of four weeks from that date.

9. The writ petition is partly allowed in aforesaid terms. Rule accordingly. No costs.

(MRS.VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

APTE