

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

WRIT PETITION NO. 275 OF 2020

Veerbhadra Bahu-Uddeshiya Sanstha,
Varvand, Taluka-Mehkar, District -
Buldhana, (A Society registered under
the Bombay Public Trusts Act, 1950)
through its Secretary -
Mrs. Smita Vilas Deshmukh,
Varvand, Taluka-Mehkar, District -
Buldhana.

.... **PETITIONER**

VERSUS

State of Maharashtra,
through its Secretary, School Education
and Department of Sports,
Mumbai – 400 032.

.... **RESPONDENT**

Mr. C.B. Dharmadhikari, Counsel for the petitioner,
Mr. N.S. Rao, Assistant Government Pleader for the respondent.

CORAM : ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATED : 9th MARCH, 2023

ORAL JUDGMENT : (PER : R.B. DEO, J.)

Heard. **Rule.** Rule made returnable forthwith with consent of
the parties.

2. The grievance in the petition as originally framed was that the
Government Resolution dated 02-3-2017 is illegal and that the State be

directed to issue the Letter of Intent (LOI) to the petitioner-institution to open Marathi Medium Secondary School in Warvand, Tahsil-Mehkar, District-Buldhana by sanctioning the proposal dated 15-4-2013 submitted by the institution and on the basis of the evaluation done on 01-7-2015.

3. The petition is amended to incorporate challenge to the communication dated 18-6-2019 whereby the petitioner is informed that if an appropriate proposal is submitted under the provisions of the Maharashtra Self-Financed Schools (Establishment and Regulation) Act, 2012 (Act of 2012), the proposal shall be considered on its merit.

4. According to the petitioner, on 29-4-2008 the State Government invited applications for establishing Marathi Middle School/s pursuant to which the petitioner preferred an application. However, the process was cancelled by the State Government on the premise that a master plan shall have to be set in place. The petitioner contends that an affidavit was filed by the State Government in Writ Petition 345/2010 at the Aurangabad Bench that the master plan shall be preferred and advertisement issued on the basis thereof.

5. The petitioner claims to have preferred an application dated

15-4-2013 furtherance to an advertisement issued by the State Government on 14-15th March, 2013. The petitioner further contends that the Government Resolution dated 05-12-2012 was challenged in Writ Petition 1566/2013 to the extent of Clauses - 1 and 3 of Schedule-D to the Government Resolution and the High Court allowed the petition partly by upholding the validity of Clause – 1 while striking down Clause – 3. In view of the said decision of the High Court, the Government issued Government Resolution dated 25-11-2013. The petitioner claims that the Government Resolution dated 25-11-2013 was not in consonance with the decision of the High Court.

6. The petitioner further contends that in the meanwhile the Aurangabad Bench decided Writ Petition 2056/2014 by order dated 01-4-2015. According to the petitioner, the view taken in the said decision is that the marking or evaluation would have to be done prospectively and that the conditions incorporated in the Government Resolution dated 25-11-2013 shall not apply to the advertisement issued prior to the issuance of the said Government Resolution.

7. The petitioner claims that the evaluation result published on 01-7-2015 reveals that the petitioner-institution secured highest marks and its case was recommended by the committee. The petitioner

claims that the refusal of the State Government to issue the LOI is patently illegal.

8. It may be noted that the petitioner approached this Court earlier and secured an order that the proposal pending be considered. Since the proposal is rejected, the present petition is filed.

9. The State has filed an affidavit-in-response dated 12-10-2022. We may extract the relevant averments in the said affidavit-in-response.

“4. It is most humbly submits that the Government of Maharashtra prepared a comprehensive plan for Marathi medium primary, upper primary and secondary school vide Government Resolution dated 14-6-2012 and accordingly has issued Government Resolution dated 05-12-2012 regarding grant of permission to start new school on non grant in aid basis at the places fixed in comprehensive plan. By which the directions are issued to the Director of Education (Secondary & Higher Secondary) to publish advertisement in leading local newspapers within 15 days from the date of said Government Resolution. Vide this advertisement the interested managements were invited to submit application online in the prescribed format along with the attached documents. In the present case the petitioner has applied for permission to start new school according to the Government Resolution dated 05-12-2012. The copy of the Government Resolution dated 05-12-2012 is annexed herewith and marked as Annexure-R-1 for kind perusal of this Hon’ble Court. In the meanwhile the Self Finance Schools (Establishment and Regulation) Act, 2012 has been implemented in the state prescribing a detailed procedure for granting permission to start new schools, upgradation of existing school in the State. After the implementation of this Self Finance Act the Government was deliberating as to whether to continues with the earlier policy as formulated vide Government Resolution dated 05-12-2012

or to grant permission as provided under Self Finance Act. Accordingly with the approval State Cabinet in its meeting dated 15-11-2016, the Government has taken a conscious decision to close the earlier policy of Government Resolution dated 15-12-2012 and to grant permissions under Self Finance Act. Accordingly vide Government Resolution dated 02-3-2017 it was provided to stop the process initiated under Government Resolution dated 05-12-2012 and fresh approvals can be granted as per the revised policy as provided under Self Finance Act.

5. *It is further submitted that at present there is provision for granting permission to new schools as per Maharashtra Self-Financed Schools (Establishment and Regulation) Act, 2012 and according to this Act, if the management of Marathi Secondary School submits the proposal for permission to start new school, the proposal will be decided by the Government on merit. The said fact has been informed by the Government to the petitioner vide communication dated 18-6-2019. The copy of the communication dated 18-6-2019 is annexed herewith and marked as **Annexure R-2** for kind perusal of this Hon'ble Court."*

10. Having heard the learned Counsel for the petitioner Mr. C.B. Dharmadhikari and the learned Assistant Government Pleader Mr. N.S. Rao, we do not find any reason to interfere with the policy decision of the State Government in exercise of writ jurisdiction.

11. There is no gainsaying and in fairness to Mr. C.B. Dharmadhikari he does not even argue that the petitioner has a vested right as such to Letter of Intent. The right to establish an educational institution will be subject to the extant policy. In the present case, we find that a statutory regime is holding the field since the Act of 2012 came into force with

effect from 04-1-2013.

12. The petitioner is entitled to prefer an application under the provisions of the Act of 2012, and as is also assured by the State Government, if such an application is preferred, the same is bound to be considered on its own merit.

13. We do not find that the petitioner has demonstrated any right to insist that the proposal dated 15-4-2013 be considered, and that the petitioner need not apply under the provisions of the Act of 2012. We have noted from the affidavit-in-response that as on the date of the submission of the proposal dated 15-4-2013 the Act of 2012 had already come into effect. If that be so, the proposal submitted by the petitioner-institution could have been considered only on the touchstone of the provisions of the Act of 2012 and not the earlier Government Resolution dated 15-12-2012. This position to us appears to be quite plain. Even if we assume, as is argued by Mr. C.B. Dharmadhikari that the proposal preferred by the management was considered by the State Government and evaluation done notwithstanding the coming into force the Act of 2012, in our considered view, the aberration or deviation does not create any corresponding right in favour of the petitioner to insist that the

provisions of the Act of 2012 be brushed under the carpet. The State Government has asserted in the affidavit-in-response that it was in view of the coming into force of the Act of 2012 that a conscious decision was taken not to implement the policy under the Government Resolution dated 15-12-2012. We do not find any infirmity in the approach of the State Government, as a matter of principle.

14. Mr. C.B. Dharmadhikari would invite our attention to the decision of the *Asha Seva Bhavi Sanstha v. State of Maharashtra and others, 2010 SCC OnLine Bom.544* and in particular to the observations in Clause (1) of paragraph 83, which we may extract.

“(1) The impugned decision of the State reflected in the Government Resolution dated 20th July, 2009 to cancel all the proposals for permission to start “marathi medium” schools by issuing one executive fiat or blanket order on the premise that such proposals can be considered only after the enforcement of the perspective plan, is illegal and unconstitutional being discriminatory and arbitrary and also suffers from the vice of non-application of mind.”

15. The other decision pressed in service is *Sadguru Shikshan Prasarak Mandal v. State of Maharashtra and others, 2010 SCC OnLine Bom. 1315* which follows *Asha Seva Bhavi Sanstha*. We find the reliance on one of the aforesaid two decisions is absolutely misconceived. The decisions are rendered in the context of the

executive instructions policy in force and as on the date of the decision the statutory regime was not in place.

16. We find no substance in any of the contentions in the petition.

17. The petition is dismissed with no order as to costs.

(Mrs. Vrushali V. Joshi, J.)

(Rohit B. Deo, J.)

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