



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2235 OF 2024

1. Nalanda Vidyarjan Shikshan Sanstha
Nanded, Tq. And Dist. Nanded
Through its Secretary -
Yashwant s/o Kishanrao Biradar,
Age: 42 years, Occu.: Service,
R/o. Yenki, Tq. Udgir,
District Latur.
2. The Headmaster,
Mukundraj Primary School,
Ardhapur, Tq. Ardhapur,
District Nanded.

.. PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32.
2. The Under Secretary,
School Education & Sports Department,
Mantralaya, Mumbai-32.
3. The Commissioner of Education,
Maharashtra State, Pune.
4. The Director of Education (Primary),
Maharashtra State, Pune.
5. The Deputy Director of Education,
Latur Region, Latur.
6. The Chief Executive Officer,
Zilla Parishad, Nanded,
District Nanded.
7. The Education Officer (Primary)
Zilla Parishad, Nanded,
District Nanded.

.. RESPONDENTS

...
Mr. D. S. Mali, Advocate for the petitioners.
Mr. N. S. Tekale, AGP for respondent Nos.1 to 3 and 5.
Mr. S. B. Pulkundwar, Advocate for respondent Nos.6 and 7.
...

**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

DATE : 12th MARCH, 2024.

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :-

. Rule. Rule made returnable forthwith. Heard learned Advocate for the appearing parties finally by consent.

2. Present petition has been filed by the petitioners for following reliefs :-

"B] By issuing writ of mandamus or any other writ, order or direction, this Hon'ble Court may be pleased quashed and set aside the order passed by Desk Officer, School Education Sports Department Mantralaya, Mumbai dated 17.11.2021 thereby refused permission to re-recognition/re-grant to petitioner No.2 School.

C] By issuing writ of mandamus or any other writ, order or direction, this Hon'ble Court may be pleased to direct the respondent authority i.e. respondent No.1 and 2 to re-grant or re-recognized the petitioner No.2 School as soon as possible prior to academic year 2022-2023.

D] By issuing writ of mandamus or any other writ, order or direction, direct to State Government to issue remaining grant-in-aid to the school of petitioner No.2 with re-recognition from the academic year 2022-2023."

2. Heard learned Advocate Mr. D. S. Mali for the petitioners, learned AGP Mr. N. S. Tekale for respondent Nos.1 to 3 and 5 and learned Advocate Mr. S. B. Pulkundwar for respondent Nos.6 and 7.

3. The facts which are on record, pleaded by the petitioner are that petitioner No.2 School was run by petitioner No.1. Petitioner No.2 School was for the 1st standard to 5th standard at Ardhapur, District Nanded. The school was recognized by respondent No.1 from the year 1987-1988 by order dated 27.07.1987. The grant-in-aid that was accorded was 25% from the month of March, 1991. Respondent No.7 had carried out inspection in the year 1990-1991 in respect of petitioner No.2 School and thereafter issued show-cause notice. Petitioner No.2 had given explanation, however, for the irregularities in the school, the Chief Executive Officer of the Zilla Parishad withdrawn the recognition of various primary schools from Nanded district in the year 1991. About 35 primary schools were de-recognized. The petitioners had then approached this Court by filing Writ Petition No.2095 of 1991, which came to be disposed of on 27.02.1992 by giving directions. Enquiry committee of single member was appointed to make enquiry and submit report. After the report was submitted on 09.07.2022 and it was opined that on conditions the order of de-recognition can be withdrawn, the petitioners state that respondent Nos.6 and 7 have never issued any specific notice for recovery of

money against petitioner No.2. Respondent No.1 has granted re-recognition to some of those schools between 2014 to 2016 and even recently as those schools had approached respondent No.1 for re-recognition, the petitioners had then approached for re-recognition by filing application on 12.06.2020 and the reminders thereafter. Respondent No.7 had then directed Block Education Officer to carry out the inspection. Accordingly, the said authority had inspected petitioner No.2 School on 14.02.2001. Positive report was submitted. The petitioners were ready to fulfill the terms and conditions as imposed by the one man committee. Respondent No.4 had forwarded the report, however, respondent Nos.1 to 3 are not taking cognizance and, therefore, the present petition has been filed.

4. The first and the foremost fact which the petitioners wanted to contend is that as they were ready and willing to abide by the terms or follow the terms imposed by one man committee and there are positive recommendations, the State ought to have re-recognized the school. Here, the petitioner No.2 has given his designation as the Headmaster of a de-recognized school. The de-recognition was of the year 1991. Under the said circumstance, there could not have been the post as stated in the title of the petition. No person can be allowed to hold the post of a de-recognized school. It is absolutely not possible that any activity would have been carried out after 1991 in the said

de-recognized school, but we are surprised to note the inspection report dated 14.02.2001 on which the petitioners want to rely, wherein it has been stated that for 1st to 4th standard, there were 127 students present out of 161 students. If 10 years prior to the said report dated 14.02.2001 the school was de-recognized, how there could have been presensee of 127 students in the school. There is absolutely no explanation in the petition to that effect as to how the school was being still run after its de-recognition. At the cost of repetition, therefore, we say that neither there could have been students, nor the Headmaster to a de-recognized school.

5. The petitioner with other schools had approached this Court in Writ Petition No.2095 of 1991, which came to be decided on 27.02.1992. It appears that settlement was arrived at and one man committee was appointed to find out whether the schools have been guilty of various irregularities and malpractices as alleged in the show-cause notices, however, we find that in the settlement itself, which is recorded by this Court, in Clause No.12 (ii) it was stated that, "the schools whose recognition is withdrawn by the impugned orders shall not run the primary schools till they obtain recognitions in accordance with law." This was the settlement and petitioners ought to have acted in view of the said settlement, but as aforesaid, there is still a post of Headmaster and when the concerned officer visited the school in 2001,

there were 127 students of the primary school. Therefore, the petitioners themselves have acted in derogation to the settlement before recognition could be accorded to it as per the law.

6. Another fact to be noted is that there appears to be delay and laches on the part of the petitioners to approach this Court for the aforesaid reliefs. The report of the one man committee was given on 09.07.1992, but petitioners made the application in the year 2000 i.e. after eight years. No doubt, we are taking note of the fact that the petitioners had approached this Court by filing Writ Petition No.13169 of 2021 as respondent No.1 was not taking decision. This Court by order dated 30.11.2021 had then asked respondent No.1 to consider the proposal for grant of re-recognition to petitioner No.2 within a period of six months. Present petition then came to be filed on 10.03.2022, but it appears that it came to be dismissed in default and there was delay of 462 days in restoration of the writ petition. By order dated 24.01.2024, the said application came to be allowed by condoning the delay. Thus, when the report was submitted in the year 1992, the first application was filed by the petitioner in the year 2000, merely by giving applications after applications, the time will not run afresh. The petitioner ultimately approached this Court in the year 2021. The lethargy on the part of the petitioners is required to be considered.

7. Another fact to be noted is that the re-recognition cannot be as of right. The petitioners appear to be running the school without recognition and it is evident from the inspection report, which the petitioners want to rely. Therefore, the petition deserves to be dismissed at the threshold, when in the settlement which was recorded by this Court in the earlier writ petition in the year 1992 it is stated that they will not run the primary school till the recognition is accorded as per procedure.

8. Learned Advocate for the petitioners relied on the decisions in **Bir Bajrang Kumar Vs. State of Bihar and others, [AIR 1987 SC 1345]** and **Pharmacy Council of India Vs. Rajeev College of Pharmacy and others, [(2023) 3 SCC 502]**. We are mentioning these authorities, as they have been given, but certainly the facts are different and the law laid down is not applicable to the facts before this Court. To run a school cannot be considered as absolute right to the petitioners under Article 19(1)(g) of the Constitution of India, which gives right to practise any profession or to carry on any occupation, trade or business. In **Pharmacy Council of India (Supra)** and other catena of judgments also, it has been so held that the said Article 19(1)(g) of Constitution of India is subject to restrictions and as aforesaid in the settlement before this Court, the petitioners had restricted their so called right that they will not run the school, but they are running the

school.

9. We can also take further note that respondent No.2 had given communication to the Secretary, Education Department on 12.06.2020 that the Education Officer has not inspected the school for giving grants and the school has not received grants, because of which the teachers and employees working in the school are starved. He therefore prays that the grants should be released. This letter is totally in violation of the settlement/order passed by this Court on 27.02.1992 in Writ Petition No.2095 of 1991. Therefore, at the threshold the writ petition deserves to be dismissed by imposing heavy cost. Further, from this letter as well as the designation petitioner No.2 is carrying, we are of the opinion that though the school is de-recognized, yet it is still run and, therefore, steps are required to be taken to close it down completely so that it should not damage the future of the students or the prospective students. We, therefore, direct the Education Officer (Primary), Zilla Parishad, Nanded, to see that the petitioner No.2 School is not operational in all respects, however, while doing so, he may note that if there are students who are taking education in petitioner No.2 School, then they should not get disturbed during this academic year, but at any cost he should see that there are no admissions and no functioning of petitioner No.2 School from the next academic year.

10. The Writ Petition therefore stands dismissed with cost of Rs.50,000/- to be deposited in this Court by petitioner No.1 within a period of three weeks from today.

11. The Education Officer (Primary), Zilla Parishad, Nanded, in view of the directions given in paragraph No.9, should file his first report within a period of four weeks to this Court.

12. Rule is discharged.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm