



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7214 OF 2024
WITH
CIVIL APPLICATION NO. 7991/2024 IN WP/7214/2024

- 1) Dnyansagar Education Society Latur,
Through its Secretary,
Mr. Shaikh Javed Hamidsaab,
Age 44 years, Occ. Service,
R/o. Ausa, Dist. Latur.
- 2) Rajeev Gandhi Vidyalaya Borgaon (kh)
Tq. Kalamb, Dist. Osmanabad,
Now Azad Madhyamik Vidyalaya at Jaynagar,
Malwati Road, Latur.
Through its Headmaster
Mr. Sasane Bhagwat Dhindiba,
Age 56 years, Occ. Service,
R/o. Shivajinagar, Murud,
Tq. & Dist. Latur.

... Petitioners

VERSUS

- 1) The State of Maharashtra,
Through the Secretary,
Department of School Education and
Sports, M.S. Mantralaya, Mumbai.
- 2) The Director of Education, Pune.
- 3) The Regional Deputy Director of Education,
Latur.
- 4) The Education Officer Secondary,
Zilla Parishad, Latur.
- 5) The Education Officer Secondary,
Zilla Parishad, Osmanabad.

... Respondents

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WITH

WRIT PETITION NO. 8145 OF 2024
WITH CA/8439/2024 IN WP/8145/2024

- 1) Shraddha d/o Yashwant Samudare,
Age Minor, Occ. Education,

Through legal guardian
Manisha h/o Yashwant Samudare,
Age 34 years, Occ. Agriculture,
R/o. Borgaoh (kh) Tq. Kallam, Dist.Osmanabad.

- 2) Sneha d/o Narayan Samudare,
age Minor Occ. Education,
Through legal guardian
Narayan s/o Nagnath Samudare,
Age 42 years, Occ. Agriculture,
R/o. Borgaoh (kh) Tq. Kallam
Dist. Osmanabad.
- 3) Vidya d/o Mahaling Hadade,
Age Minor, Occ. Educaiton,
Through legal guardian
Mahaling s/o Suhadev Hadade
Age 41 years, Occ. Agriculture,
R/o. Borgaoh (kh) Tq. Kallam
Dist. Osmanabad.
- 4) Diksha d/o Chandrakant Samudare,
Age Minor, Occ. Education,
Through legal guardian
Chandrakant s/o Baburao Samudare,
Age 43 years, Occ. Agriculture,
R/o. Borgaon (kh) Tq. Kallam, Dist.
Osmanabad.
- 5) Grampanchayat Office, Borgaon (kh)
Tq. Kallam, Dist. Osmanabad,
Through its Sarpanch
Ajay s/o Shahuraj Samudare,
Age 50 years, Occ. Sarpanch,
R/o. Borgaon (kh) Tq. Kallam, Dist.
Osmanabad.

... **Petitioners**

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
School Education and Sport Department
Mantralaya, Mumbai-32.
- 2) The Dy. Director of Education
Latur, Tq. & Dist. Latur.

- 3) The Education Officer (Secondary)
Zilla Parishad, Osmanabad,
Tq. & Dist. Osmanabad.
- 4) Dyansagar Education Society Latur,
Through its Secretary
Shaikh Javed Hamidsaab,
Age 44 years, Occ. Service,
R/o. AUSA, Tq. AUSA, Dist. Latur.
- 5) Rajiv Gandhi Vidyalaya Borgaon(kh)
Tq. Kallam, Dist. Osmanabad,
Now Azad Madhyamik Vidyalaya,
At Jaynagar, Malwati Road, Latur,
Tq. & Dist. Latur,
Through its Head Master

... Respondents

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Advocate for Petitioners in WP No. 8145/2024 : Mr. Ameya Sabnis h/f Mr.
E.S. Murge.

A.G.P. for Respondent nos. 1 to 3 in WP No. 8145/2024 & Respondent nos. 1
to 5 in WP 7214/2024 : Mr. R.S. Wani

Advocate for Petitioners in WP No. 7214/2024 : Mr. R.N. Dhorde, Senior
Advocate i/b Mr. Shaikh Tarek Mobin.

Advocate for Respondent Nos. 4 & 5 in WP No. 8145/2024 : Mr. R.N.
Dhorde, Senior Advocate i/b Mr. Shaikh Tarek Mobin.

Advocate for Applicant in CA No. 8439/2024 : Mr. Sayyed Tousif Yasin

CORAM : **MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

RESERVED ON : **24.09.2024**
PRONOUNCED ON : **30.09.2024**

COMMON JUDGMENT : (MANGESH S. PATIL, J.)

Heard. Rue in both the matters. It is made returnable forthwith. The learned A.G.P. and the learned advocates for the respective respondents waive service. At the joint request of the parties, as the facts leading to filing of the petitions are the same, we are disposing of these petitions by this common judgment and order.

2. The first writ petition is filed by a Trust/education society. It is a

minority institute and was running the petitioner no. 2 school at location Borgaon (kh.) Tq. Kalamb, Dist. Dharashiv. As per the request of the petitioners, respondent no. 5-Education Officer, Zilla Parishad, Dharashiv, submitted a proposal to respondent no. 3-Regional Deputy Director of Education, Latur, for transfer of the school from the original place to a place at Jaynagar, Malwati road, Latur, by referring to the policy of the Government declared by government resolution dated 28.07.2021. Respondent no. 3 in turn forwarded the proposal vide communication dated 14.07.2023 to respondent no. 1-Secretary of Department of School Education and Sports. By the government resolution dated 05.03.2024, the government granted permission for shifting of the school, subject to certain conditions *inter alia* of strict obedience to the requisite Government decisions/circulars/orders, issued from time to time pertaining to the school, teaching and non teaching staff, salaries, students etc.

3. The order was communicated through respondent no. 3-Regional Deputy Director of Education, Latur, and respondent no. 5-Education Officer (Secondary), Zilla Parishad, Dharashiv, to the management. Accordingly the school was shifted to Jaynagar, Malwati Road, Latur. 24 students, which were taking education with respondent no. 2-school were admitted in Hanuman Vidyalaya, Ghargaon, Tq. Kalamb, District Dharashiv, 01 student was admitted in Swami Vivekanand Vidya Mandir Padoli, Tq. Kalamb, Dist. Dharashiv, 05 students were shifted to Ravindranath Tagore, International School, Shirala, Tq. & Dist. Latur, 05 other students were accommodated in Sunrise Child World Kond, Tq. & Dist. Dharashiv, 08 students were accommodated in Janta Vidya Mandir, Murud, Tq. & Dist. Latur, one student was admitted in Samaj Jagruti Prathamik Vidyalaya, Murud, Tq. & Dist. Latur, and one student was accommodated in Zilla Parishad, Prathamik Shala, Parunagar, Tq. & Dist. Latur.

4. However, by a communication dated 04.07.2024, respondent no. 5-Education Officer (Secondary), Zilla Parishad, Dharashiv informed petitioner

no. 2-headmaster of the school, observing that since it was reported that such shifting of the school was being objected by some students and their parents, and pursuant to the communication received from one M.L.A. of Dharashiv-Kalamb. Precisely referring to the stipulation while granting permission for transfer of school that it would be recalled/withdrawn, if some objection was received and the State Government reserved the right to recall the order of transfer. It was directed to resume the school at the original location and to submit the report by 05.07.2024. It is this communication, which is challenged by the management in Writ Petition No. 7214/2024.

5. By filing Civil Application No. 7991/2024 in that very petition, the petitioner-management and the school solicited direction to stay the effect and operation of the order under challenge.

6. The second writ petition bearing No. 8145/2024, is preferred by four students, through their respective guardians, who were studying with the school at the original location and the Grampanchayat of village Borgaon (Khurd), through its Sarpanch. By this petition, they are challenging the government resolution dated 05.03.2024, permitting transfer of the school from Borgaon (Khurd) to Jaynagar, Malwati road, Latur. They are also seeking a writ of mandamus directing to resume the functioning of the school from the original place.

7. In both these petitions, the respondent-Deputy Director of Education, Latur Region, Latur, has filed separate affidavits in reply taking the same stand. He has not disputed the facts but has taken a stand that the decision for granting permission for shifting of the school would not result in causing any hardship to any student. He has named couple of schools, which are located within 3 km from the original place of the school, wherein the petitioner-students can be accommodated. He has further stated that already academic year has begun and 159 students have already been

admitted in the school at Latur. The Education Officer having tried to convince the Sarpanch and the parents of the students to admit their wards in the nearby schools. He has also admitted about the Education Officer having forwarded a proposal for cancellation of permission in the wake of objections being raised by these petitioners, students and the Sarpanch, and he himself having submitted further proposal to the State Government on 08.07.2024.

8. The students and the Sarpanch, who have filed a separate petition have not been arrayed as respondents in the petition of the management and the school.

9. The management and the headmaster of the school have opposed the petition of the students and Sarpanch by filling an affidavit. They allege that the Sarpanch is puppet in the hands of the local M.L.A. and has been instrumental in obstructing functioning of the school being run at the original place. The petition of the students together with Sarpanch being politically motivated, it may not be entertained. It is also their stand that due to the problems being created in smooth operation of the school, it adversely affected in reduction in students strength thereby rendering a teacher surplus in the year 2013. Being a minority institute, it was finding difficult to run the school at the original place and had requested for permission for shifting it. It is further stand that the government resolution dated 31.07.2013, is not applicable to the institute being a minority institute and is not regulated by that government resolution. Reference is made to the decision of a division bench at Nagpur in Writ Petition No. 2395/2014, decided on 05.05.2015. There can be no restriction much less with reference to the distance between the original location and the location to which the school is sought to be shifted. There are several schools in the vicinity of the original place of the school at Borgaon (Kh). Except 20 students, all other students, who were taking education at the original location, have taken admissions/ accommodated suitably in the nearby schools, and causing any

obstruction at this stage would result in complications. These remaining 20 students can conveniently be accommodated and the issue can be sorted out without hindrance to anybody.

10. We have considered the rival submissions and perused the papers including the affidavits in reply, rejoinder filed by the petitioner, students and Sarpanch and the surrejoinder filed by the management and the school.

11. There is no dispute about the fact that the management was granted permission to run the school at Borgaon (Kh), Tq. Kalamb, District Dharashiv. If the stand of the management and even the submission of the learned A.G.P. by pointing out that the management being a minority institute would not be bound by the government resolution dated 31.07.2013, whereby modalities and parameters have been laid down while considering the requests of the management for shifting of the location of the schools and even though that government resolution has been held by a division bench at Nagpur to be not applicable to the minority institute, even the subsequent government resolution dated 28.07.2021, touching the same aspects and precisely issued in supersession *inter alia* of government resolution dated 31.07.2013, would rather make the case of the petitioner-management vulnerable. Being a minority institute, if these government resolutions are held to be not applicable to it, then it would be imperative for the management to demonstrate as to how and under which regulation or law it is seeking permission for shifting of the school from one location to the other.

12. The issue before us is as to if, being a minority institute, the management running a school can shift the location of the school from one place to other as per its wish and undeterred by any regulation and monitoring. We are of the considered view that such a stand of the management would be self-contradictory to its right to seek transfer/shifting of the school. Saying that it is not regulated by the government regulation

being a minority institute would be antithesis to its claim for grant of permission to such shifting.

13. Obviously, we cannot go into the practical difficulties for the management in running the school at the original location. There may be genuine reasons as well, for making a request for grant of permission for shifting the school. However, the issue would be, if at all, as is being requested, permission is to be granted can that happen in an unbridled manner. Even if the government resolutions dated 31.07.2013 and 28.07.2021 are held to be not applicable, still, the petitioner-management is not taking exception to the permission granted to it subject to the conditions imposed in the government resolution dated 05.03.2024. This permission is granted subject to certain conditions including that the management would follow all the rules, regulations and orders issued by the State Government *inter alia* in respect of teaching and non teaching staff and even the students. By not taking exception to such conditional permission, it has subjected itself to the regulation including the one dated 28.07.2021, which *inter alia* prescribes various conditions in respect of permissions to be granted for shifting of location of the schools. Therefore, indirectly, by suffering the order granting permission conditionally, the management cannot seek to take exception from the stipulations contained in government resolution dated 28.07.2021.

14. Once having reached such a conclusion, when the impugned order granting permission does not even whisper about the circumstances which prompted the State Government to grant permission, except with a bald statement mentioning that due to non availability of infrastructure facilities, the permission was being granted would be clearly arbitrary and capricious. The decision clearly suffers from the vice of being a lopsided one whereby the State Government has, for the reasons best known to it, clearly overlooked the parameters under which the permission is to be granted for shifting of the location.

15. The impugned order does not indicate and does not even give particulars as to how it was satisfied that the infrastructural facilities at the original location were not sufficient, when admittedly the school was being run at the same location for years together, and was imparting education up to 10th standard. There is no reference to any care having been taken by the government to ascertain or solicit information as to how the students were sought to be accommodated, whether any other granted school was available in the proximity of the original location etc., which are some of the parameters contained in government resolution dated 28.07.2021.

16. In view of such state of affairs, when, admittedly, at least there are 20 students who have even now been not accommodated elsewhere, the stand of the respondents that they can be accommodated now would be clearly an after thought.

17. Even if it is being pointed out as to how cancelling the permission at this stage would create complications, in our considered view, that cannot be a reason to justify the illegality. Though by a communication of the Education Officer (Secondary) being impugned by the management dated 04.07.2024, calling upon the headmaster to resume the school at the original location was sought to be objected by the management and by the order dated 12.07.2024, the operation of the communication dated 04.07.2024, was stayed till the next date i.e. 07.08.2024, the interim relief was never extended. Meaning thereby that the management and the headmaster were under obligation and the Education Officer was bound to enforce his direction to the management of resuming the school at the original location. It would not lie in the mouth of the management now to demonstrate as to how recalling the permission granted for shifting of the school would result in complications. It is nobody's case that any of the students, who were taking education in the school at the original location has been willingly admitted to the school at the new location.

18. As is the stand of the management and even the Deputy Director of Education that many students have taken admission in some other schools, resumption of the school at the original location, will not result in causing any inconvenience to those students. We, therefore, are of the firm view that this Court cannot be a part of an illegality on the specious plea of inconvenience and complications.

19. In the light of above, the permission granted to the management for shifting of the school being arbitrary and illegal and having been passed without following any regulation and without even considering the welfare of the students, who were actually taking education at the original location, would not be sustainable in law. Simultaneously, even the management cannot object the communication dated 04.07.2024, issued by the Education Officer, directing the headmaster to resume the school at the original location.

20. The Writ Petition No. 7214/2024 is dismissed.

21. The Writ Petition No. 8145/2024 is allowed.

22. The Government decision granting permission dated 05.03.2024, is quashed and set aside. The respondents, State and its officer of the Education Department and the management and the headmaster shall take suitable steps immediately for resuming the operation of the school at the original location.

23. Rule in Writ Petition No. 7214/2024 is discharged.

24. Rule in Writ petition No. 8145/2024 is made absolute in above terms.

25. Pending Civil Application is disposed of.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

26. After pronouncement of the judgment the learned advocate for the Management seeks stay to the operation of the judgment and order to enable it to approach the Supreme Court.

27. For the reasons, which we have already spelt out in anticipation of such a request, as is discussed in paragraph Nos. 16 to 19, the request is rejected.

28. By way of Civil Application No.7991/2024 in Writ Petition No.7214/2024, the Management has prayed that since pursuant to the permission granted for shifting of the location, necessary directions be given to respondent No.5 – Education Officer in the light of the communication dated 04.07.2024, issued by respondent No.4, not to pay salaries to the teaching and none teaching staff of the school till the further order. The Civil Application is disposed of keeping open the issue.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-