

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

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NANDIWADEKAR

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CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4932 OF 2023

WITH

INTERIM APPLICATION NO.7322 OF 2024

Pramod Sitaram Patil

One of the PTA member appointed for
the academic year 2022–2023

Aged about 45 years, Occ. Employee,
Having residential address at
Flat No. B-403, Krishna Apt,
Plot No. 10, Sector- 30,
Kamothe Panvel- 410206.

..Petitioner/Applicant**Versus**

1. **State of Maharashtra,**
Through the Secretary, School and
Education Department, Mantralaya,
Mumbai – 400 032.
2. **The Principle**
New Horizon Public School, Panvel
(NHPS, Panvel) Having add. at
Sec- 13, Khanda Colony,
Khanda Colony main road,
New Panvel (E) – 410206.
3. **The Chairman**
New Horizon Public School, Panvel
(NHPS, Panvel) Having add. at
Sec- 13, Khanda Colony,
Khanda Colony main road,
New Panvel (E) – 410206.
4. **The Education Officer**
(Pre-Primary, Primary, Secondary)
Raigad Zilla Parishad, Alibaug.

5. **CBSE Board, New Delhi**

Having official address at
Shiksha Kendra, 2, Community Centre,
Preet vihar, Delhi – 110092.

Having branch office at

RLM Business Park, SR. NO. 28/4/A,
Old Kharadi Mundava Road,
Opposite to Bollywood Multiplex,
Kharadi, Pune – 411014.

..Respondents

Mrs. Priyanka N. Patil a/w. Ms. Ashwini N. Sawant for the
Petitioner/Applicant.

Mr. N. C. Walimbe, Addl. G. P a/w. Mr. N. K. Rajpurohit, AGP for
Respondent-State.

Mr. Prateek Seksaria, Senior Counsel a/w. Mr. Amogh Singh, Mr. Nishant
Chotani, Mr. Nivit Srivastava, Ms. Sneha Patil, Ms. Vrinda Samdani i/by.
Maniar Srivastava Associates for Respondent Nos.2 & 3.

Ms. Aparajita R. Jha i/by. Mr. Rahul Kamerkar for Respondent No.5-
CBSE.

**CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.**

Date on which the Arguments were heard : 4th April 2024

Date on which the Judgment is pronounced : 10th April 2024

Judgment :- (Per Jitendra Jain, J.)

. **Rule.** Rule made returnable forthwith. Mr. Walimbe, learned
Additional Government Pleader waives service of notice for respondent-
State. Mr. Seksaria, learned senior counsel waives service of notice for
respondent nos.2 & 3. Ms. Jha, learned counsel waives service of notice
for respondent no.5. Heard finally by consent of the parties.

2. This petition is filed under Article 226 of the Constitution of India by the petitioner who claims to be one of the Parent-Teacher Association (PTA) Member appointed for the academic year 2022-23.

The petitioner seeks following reliefs :-

“aa. That this Hon'ble Court be pleased to set aside and quash the impugned Circulars dated 21st March 2024, bearing Nos. NHPSP/2023-2024/pre-primary:32, NHPSP/2023-2024/primary:64, and Circular dated 23rd March 2024, bearing Nos. NHPSP/2023-2024/Sec:90, NHPSP/2023-2024/Sec: 90, issued by the Respondent No. 02 and 03, respectively and direct Respondent Nos. 02 and 03, to follow Minutes of meeting dated 26th November 2022 and availed the text books, note books and stationery, in local market to the Public at large;

bb. That this Hon'ble Court be pleased to direct the Respondent Nos. 02 and 03, not to force the parents to purchase / order the book online from private vendor, i.e. Popular Books and his sister concern i.e. Samant Books;

c. That this Hon'ble Court be pleased to direct the Respondent Nos. 02 and 03, to start with NCERT Books from nursery to Xth, to avoid violations on the part of private vendors and high payments for the private publisher with unnecessary books;”

3. The grievance of the petitioner is that New Horizon Public School, Panvel has issued a Circular which requires that the student should purchased text books, note books, stationery, etc. from the vendors specified in the said Circular.

4. It is the submission of the petitioner that these vendors specified in the Circular issued by the School charge exorbitant prices for text books, note books, stationery, etc. compared to the books issued by NCERT. The petitioner further submitted that the School also does

not permit the use of second hand books. The petitioner has relied upon a Circular dated 19th April 2017 issued by the Central Board of Secondary Education which is addressed to all the CBSE affiliated schools and which directs the schools not to indulge in commercial activities by way of selling of text books, note books, stationery, uniforms, etc. and to adhere to the provisions of the Affiliation Bye-laws of the Board. The petitioner has shown us the comparative table of the charges of the books sold by the vendors prescribed and referred to in the Circular issued by the School and that of NCERT books. The petitioner submits that necessary directions be issued to the School not to compel the students to buy the books from a particular vendor of a particular author.

5. Per contra, the respondent nos.2 and 3 have raised a preliminary objection on the maintainability of the writ petition. The said respondents submit that a New Horizon Public School, Panvel is a Private Unaided Minority Linguistic Educational Institution run by the Public Charitable Trust. The petitioner submits that the petitioner has not impleaded the Trust and/or its trustees in the present petition but has made the Principal and Chairman of the School as parties. The respondents submit that on this count itself, the petition requires to be dismissed. The respondents further submitted that it is a settled position

of law that a Private Unaided Minority Linguistic Educational Institution is neither a State under Article 12 of the Constitution of India nor does it render any public duty and therefore, a writ is not maintainable, and moreover in this case, since the Trust/School/ Trustees are not made parties, the petition is not maintainable. Respondent nos.2 and 3 further submitted that they are individuals and no writ can lie against the individuals. The amended reliefs sought are also against the respondent nos.2 and 3 and therefore, this Court should dismiss the petition as it is not maintainable. The respondents have also relied upon various decisions in support of its submissions. The petitioner has further contended that the present writ petition is filed by only one parent when there are more than 4700 students in School. Therefore, even on this count, the present petition should not be entertained. The respondent nos.2 & 3 further submitted that for the academic year 2024-25 around 98.5% students have already purchased the books and therefore, even on this count, the grievance of the petitioner should not be entertained. The respondents further submitted that the Google Form submitted across the bar should not be entertained in support of the submission of the petitioner that there are many parents who are aggrieved by the said Circular issued by the School. The respondent nos.2 & 3 has further submitted that it is prerogative of the school as to how the education has to be imparted to the students and since it is the

decision of the school who are the best person to judge which books should be required for educating the students, this Court cannot sit in judgment over such a policy decision of the institution. The respondent nos.2 and 3, therefore, submitted that even on this count, the petition should not be entertained.

6. We have heard the learned counsel for the petitioner and the respondents and the learned senior counsel for respondent nos.2 and 3 and with their assistance have perused the documents annexed to the petition.

Analysis and Conclusions :-

7. In our view, the present writ petition does not deserve to be entertained for the following reasons:-

(i) The present petition is filed seeking relief against respondent nos.2 and 3 without impleading the trust and its trustees who own and run the school. No relief is sought against respondent nos.1, 4 and 5. Therefore, on this ground itself on account of non-joinder of necessary party, the present petition cannot be entertained.

(ii) Secondly, the present petition is filed by only one individual, although there was around more than 4,700 students studying in the

school. The petitioner in its petition has only stated that he was a member of PTA for the year 2022-23. There is no averment made in the petition as to what is the locus of the petitioner for the academic year 2024-25. No details of the petitioner's child/children taking education at the respondent no.2-school have been given. Therefore, even on this ground, the petition cannot be entertained.

(iii) The petitioner in the course of the hearing has tendered a google form to contend that there are many parents who are effected by the impugned communication/circular issued by the school. On a perusal of the said google form, it cannot be ascertained whether the responses given by the people have agreed to join the present petitioner. The said google form also does not bring out that the people whose views were sought were people who were affected by the impugned circular/communication. We fail to understand as to why if many parents are aggrieved then they did not join the present petitioner in espousing their grievance in the present petition. We cannot take the google form at its face value and, therefore, even on this count, the petitioner cannot be said to represent other students of the school.

(iv) The respondent nos.2 and 3 have contended that around more than 98.5% students have already purchased the books for the academic

year 2024-25 and the academic year has already started from 1st April 2024. Therefore, even on this count, we are of the view that the present petition cannot be entertained.

(v) No grievance has been shown to have been made with the respondent no.4-Education Officer with regard to the impugned Circulars for the academic year 2024-25. Insofar as, respondent nos.2 and 3's contention that a writ is not maintainable against a Private Unaided Educational Institution, we do not express our opinion on the same in the present matter, but leave it to be adjudicated in appropriate case moreso since in the present petition the said institution is not made a party. Therefore, we are not dealing with the decisions relied upon by respondent nos.2 and 3 in the present judgment.

(vi) We are also not expressing any opinion on the impugned circular/communication and the grievance raised by the petitioner on exorbitant charges charged on the books.

(vii) The petitioner has placed heavy reliance on the Circular dated 19th April 2017 issued by CBSE which is an advisory to its affiliated school not to indulge in commercial activities by way of selling of books, stationary, etc. Insofar as the said Circular is concerned, same

was the subject matter of challenge before the Delhi High Court in the case of *Association of School Vendors & Ors. Vs. Central Board of Secondary Education & Ors.* in Writ Petition (C) No.7414 of 2017 and Delhi High Court in paragraph 49 has quashed the said Circular. Therefore, as of today, the said Circular does not exist and even on this count, the present writ petition cannot be entertained.

8. In view of above, the petition is dismissed with no order as to costs. Pending interim application is also disposed of.

(JITENDRA JAIN, J.)

(A. S. CHANDURKAR, J.)

This judgment is modified as per speaking order dated 22nd April 2024.