

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7582 OF 2024

Janata Shikshan Sanstha And Ors.

...Petitioners

Versus

The State Of Maharashtra And Ors.

...Respondents

Mr. Utkarsha Desai i/b. Mr. Prashant Bhavake for the Petitioners.

Mr. S. H. Kankal, AGP for the Respondent Nos. 1 to 4

**CORAM : NITIN JAMDAR &
M. M. SATHAYE, JJ.**

DATED : 9 AUGUST 2024

P.C.:

. Heard learned counsel for the Petitioners and learned AGP for Respondents / State.

2. Petitioner No. 3 employee (Anjana Harishchandra Patil) working with Petitioner No. 2 Junior College run by Petitioner No. 1 Education Institute, are jointly challenging the order dated 5 September 2023 passed by Respondent No. 5-Education Officer (Secondary) Raigad Zilla Parishad, Alibag. By the said impugned order, Respondent No. 5 has rejected the approval for transfer of Petitioner No. 3 from un-aided to aided division on two grounds including that of stay granted under Government Circular dated 1 December 2022.

3. The learned counsel for the Petitioners has relied upon the judgment

of *Friends Social Circle, Akola & Ors. v/s State of Maharashtra*¹ to contend that the impugned Order is unsustainable so far as the objection based on said circular is concerned. Learned AGP was at pains to justify the impugned order but could not distinguish the facts of this case from the said Judgment relied. It is further submitted by learned Counsel for the Petitioners that the other ground in the impugned order is taken without any notice to them.

4. Perusal of the impugned order shows that one of the grounds on which the proposal is rejected is the Government Circular dated 1 December 2022. In the Judgment of *Friends Social Circle, Akola (supra)*, this Court has clearly held that Rule 41 A of the Maharashtra Employees Of Private Schools (Conditions Of Service) Rules, 1981 cannot be stayed by issuance of Government Circular and has set aside the said Government Circular to the extent it stays operation and Rule 41 A. Indeed this view has been consistently followed thereafter in number of decisions of this Court. In light thereof, the said ground in the impugned order cannot be sustained and it is set aside.

5. So far as the other ground stated in the impugned order is concerned, it is taken without any notice to Petitioners and had an opportunity been given, the Petitioners would have given appropriate and necessary explanation. It has resulted in a situation where factual inquiry about a ground of rejection is required to be done first time in this Court.

6. In light thereof, we direct that the impugned order will be treated as notice to Petitioners of the proposed ground/s for rejection. The proposal of

¹ 2023 SCC Online Bom 1503

the Petitioners is restored to file. Respondent No. 5-Education Officer is directed to send the proposal of Petitioners within a period of two weeks from today, to the appropriate authority as per Government Resolution dated 29 April 2024 (*the said GR* for short) for decision in accordance with law.

7. If there are any other grounds on which the Authority under the said GR intends to return or reject the proposal, he is directed to communicate the same to the Petitioners within a period of 2 weeks thereafter.

8. The Petitioners shall thereafter submit their explanation to the proposed grounds, along with supporting material including government resolutions, case laws / orders of this Court etc. if relied upon.

9. The Authority under the said GR is directed to decide the proposal of Petitioners thereafter within a period of 8 weeks, by dealing with the explanation given by the Educational Institute as also dealing with case law/orders of this Court, by passing a reasoned order, subject to other time bound directions. If the Authority proceeds to grant proposal as prayed, consequent benefits will follow.

10. We have not expressed any opinion on the Petitioners' proposal and the same shall be decided on its own merits in accordance with law.

11. Writ Petition is disposed of in the above terms. No costs.

(M. M. SATHAYE, J.)

(NITIN JAMDAR, J.)