

(2014) 08 BOM CK 0102

In the Bombay High Court

Case No : Writ Petition No. 5747 of 2014, Civil Application No. 1636 of 2014 in
Writ Petition No. 5747 of 2014

Arun Shivaji Chavare

APPELLANT

Vs

Padmakar Rama Chavare

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Right of Children to Free and Compulsory Education Act, 2009 — Section 18, 19, 6

Citation : (2014) 5 ABR 466 : (2015) 1 ALLMR 550 : (2015) 4 BomCR 167 :
(2015) 1 MhLj 728

Hon'ble Judges : Anoop V. Mohta, J;A.A. Sayed, J

Bench : Division Bench

Advocate : I.M. Khairdi, B.D. Joshi and Virendra Pethe, Advocate for the
Appellant; Anand S. Kulkarni and S.S. Bhende, AGP, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Anoop V. Mohta, J.

Rule. Rule is made returnable forthwith.

1. Heard finally, by consent of the parties.

2. The Petitioner, who is resident of Ghanegaon, Taluka Barshi, District Solapur, has invoked Article 226 of the Constitution of India and also the provisions of The Right of Children to Free and Compulsory Education Act, 2009 (for short, "the Act") and The Right of Children to Free and Compulsory Education Rules, 2010 (for short, "the Rules") and prayed for direction against Respondent Nos. 2 to 6 to grant permission to start VI Standard Class of Zilla Parishad Prathamik (Primary) School at Ghanegaon and also prayed to quash and set aside the Government Resolution dated 2 July 2013 whereby, "Neighbourhood School" principle is reinforced and prayed to allow the Zilla Parishad Prathamik (Primary) School Ghanegaon to run VI Standard Class forthwith.

3. By Civil Application No. 1636 of 2014, Applicant-Intervener, an Educational Private Trust (for short, "the private trust"), running secondary school from V to X in Marathi medium which is approved/recognized receiving 100% grant in aid from the Government of Maharashtra, through its headmaster, has filed an Intervention Application opposing the above prayers by contending that the headmaster of the Zilla Parishad School (Respondent No. 1) is running the school illegally without any permission/recognition and if the Zilla Parishad (Local Authority) starts school from V Standard, that will result into unhealthy competition, apart from reduction of strength of their VI standard students and there will be loss to the Government Exchequer also.

4. Respondent Nos. 4 and 6-Director of Education, by affidavits dated 21 July 2014 and 30 July 2014, opposed the Petition and the prayers, so also Respondent Nos. 2, 3 and 5. In a way, they are supporting the case of the private trust.

5. The relevant Sections of the Act and Rules read and referred by the learned counsel appearing for the parties are as under:-

SECTIONS:-

"2.-Definitions.-In this Act, unless the context otherwise requires,-

.....

2 (f) "elementary education" means the education from first class to eighth class;

2 (h) "local authority" means a Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local authority in any city, town or village;"

2 (n) "school" means any recognised school imparting elementary education and includes-

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;"

"6. Duty of appropriate Government and local authority to establish school.-For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years

from the commencement of this Act."

"9. Duties of local authority.-Every local authority shall-

9 (b) ensure availability of a neighbourhood school as specified in section 6;"

"18. No school to be established without obtaining certificate of recognition.-

"(1) No school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed.

(2) The authority prescribed under Sub-Section (1) shall issue the certificate of recognition in such form, within such period, in such manner, and subject to such conditions, as may be prescribed;

Provided that no such recognition shall be granted to a school unless it fulfils norms and standards specified u/s 19.

RULES of 2010:-

15. Recognition to school.-(1) Every school, other than a school established, owned or controlled by the Central Government, appropriate Government or the local authority, established before the commencement of this Act shall make a self-declaration within a period of three months of the commencement of the Act, in Form 1 to the concerned District Education Officer regarding its compliance or otherwise with the norms and standards specified in the Schedule and fulfilment of the following conditions, namely:-

6. There is no denial that as per the Act, "the appropriate Government" and "Local Authority", in the present case, "Zilla Parishad, Solapur" (the Local Authority) are responsible to establish primary school within their area. It is the duty of the Local Authority to establish "school" within the area and/or limit of neighbourhood, where it is not so established. The submission that "where it is not established" means if there is already established private aided school, the Local Authority shall not be under obligation to establish such school, in our view, is unacceptable. The Local Authorities are under obligation to establish the school, if it is not established already by it. The Private schools, aided or unaided existing schools, who are imparting the education in question, cannot be the reason for the Local Authority not to establish the schools for I to VIII Standards.

7. The Local Authority school if not already established or functioning, the State or appropriate Government or Local Authority shall establish such school "where it is not established" by them. No certificate of recognition is required for such Local Authority/State School.

8. In the present case, Respondent No. 1 on 3 May 2014, requested to start VI Standard class in the interest of the students who have passed V Standard.

Respondent No. 1 informed that the Block Education Officer-Respondent No. 5 who is under control and supervision of Respondent No. 3, that since the standard VI Class is already in existence within a periphery of within 1 Km. of the Applicant-intervener, another Standard VI Class cannot be granted to Respondent No. 1 School which is a Local Authority School i.e. of Respondent No. 2. In the reply, Respondent No. 4 and 6, Deputy Director reiterated the same, mainly on the ground that there is one private aided school, Shobhatai Dilip Sopal (the private trust) having V to X Standard Classes within a distance of 300 meters, therefore, there is no question of extra division of the school for the same area. The Chief Executive Officer, Zilla Parishad Solapur, also never submitted such report for starting any such class in the local body-Zilla Parishad Solapur, school.

9. It is relevant to note that Section 18, as reproduced above, made it very clear that the school established in the area controlled by the appropriate Government or Local Authority shall not require certificate of recognition to establish or function any school from the Authority. The Respondents, Zilla Parishad being Local Authority required no certificate of recognition from anybody. Therefore, the Deputy Director and the Zilla Parishad and its officers including Education Officer and the Chief Executive Officer, in our view, is wrong in not continuing VI Standard course/class in the same school, which is admittedly running since long under the control and supervision of Local Authority for I to V Standards. The continuation of VI Standard in the same school, therefore, should not have been denied. No permission/recognition is necessary except certain formalities, for the record. The non-submission of report, on this wrong presumption, that a permission is required even for the Local Authority, created the situation, which is contrary to the law.

10. The Respondent-Local Authority is under obligation to establish their school to provide primary education in the area. The existence of other private aided school may be a factor which the Local Authority and/or its officer continue to take note of. But, to say that the Chief Executive Officer, Zilla Parishad never applied and/or sought permission/recognition and therefore, there is no question of grant to start such VI Standard class mainly on the ground of existence of same class in private aided school, in our view, is unacceptable. If no permission is required, the Chief Executive Officer and/or the Education Officer and the formalities of submitting the report and/or non filing of any Application to start VI Standard class by the Local Authority itself, as sought to be contended, is unacceptable reason to discontinue the class in question in Local Authority school.

11. The submission, referring to the concept "neighbourhood" defined and reproduced above, cannot be read to overlook the specific provisions of the Act which mandate the Local Authorities to establish School within the area. This "neighbourhood school" concept, can in no way be read to mean that every local body should not comply with the mandate of the Act to establish their school within the prescribed area if, there are already private aided and/or non-aided school, is nothing but wrong interpretation of the provisions of the Act and Rules,

specifically when the Act and Rules itself provide "the State Government or the Local authority, as the case may be, shall establish neighbourhood school within the areas or limits having a minimum of 20 children". The Act and the Rules itself provides to relax such condition based upon the existing facts and figures.

12. In the present case, there is no dispute that Respondent No. 1 School has 26 students for VI standard and the Respondent private aided school have 24 students for VI standards. The submission of unhealthy competition, even if any, specifically when the Respondent-State and/or the Local Authority themselves failed to continue VI Standard school in the establishment available on wrong interpretation of the provisions of Act and Rules, though the Local Authority required no permission, and no correct report submitted by the Chief Officer and therefore, not granted any permission, is unacceptable.

13. If the students are available and willing for enrollment in School of Respondent No. 1, the other submission of the Petitioner, as well as, the private trust including of favoritism to private trust are not necessary to deal with in view of above legal position and obligation of public body (Local Authority).

14. Respondent No. 1 School itself had more than 20 students in Class V, therefore, to continue them in the same school for the next standard i.e. VI class should have been the approach rather than refusing to continue to run the classes for VI standard. The approach, therefore, of Respondent Authorities was wrong and that in our view, required to be corrected forthwith. The establishment is already there and so also the arrangement apart from 26 students for VI class standing in the school since June 2014. Therefore, such running establishment of Local Authority just cannot be stopped/closed by not continuing them to run the class in question with all the requisite facilities and amenities as required under the Act and Rules. The Respondents are under obligation to run the school, subject to requisite facilities and amenities. Therefore, there is no substance in the submission that the Zilla Parishad is given permission to start VI standard, a wrong message will be conveyed to other primary schools in the State of Maharashtra seeking permission to start new primary school/classes within vicinity of prescribed distance of 3 Kilometers where already a school is in existence, as we are dealing with the basic obligation of Zilla Parishad to establish such school in the area. On the contrary, the submission of Respondent Nos. 2 to 6 if accepted, then in every such matters Local Authority will not establish their school on the ground that there are primary aided or non-aided school or classes within the vicinity of prescribed distance of 1/3 Kilometers are in existence. The Rules itself provides and permits the Government/Local Bodies based upon the need and necessity to relax the conditions in the interest of students at large to achieve the purpose and object of the Act. No Government Circular be read in isolation by overlooking the provisions of the respective statute if it is arising out of it. All the concerned must act in timely manner. In the present case, there is no justification to deal with other challenges, as we are convinced that a case is made out for the reliefs, but

in following terms, as we are concerned also with the students and their future study in such school.

15. Therefore, taking overall view of the matter, we are inclined to pass the following order:-

ORDER

- a) Respondent Nos. 2 to 6 are directed to provide the requisite facilities, amenities and additional staff, if required, to continue VI standard class in already established Zilla Parishad Prathamik (Primary) School Ghanegaon, Taluka Barshi, District Solapur.
- b) The concerned Respondents to act accordingly and complete the formalities, even if any, without further delay and permit to function continuously VI standard class in the Zilla Parishad School, as prescribed under the law.
- c) The Petition is accordingly partly allowed with liberty.
- d) The Civil Application filed by the private trust-intervener is also disposed of accordingly.
- e) There shall be no order as to costs.