**IN THE HIGH COURT OF BOMBAY**

Writ Petition Nos. 4493, 4495, 4903, 4904, 5496, 5626, 6573, 6582, 7348, 7454, 7455, 7456, 7457, 7472, 7473, 7474, 7478, 7480, 7485, 7486, 7488, 7489 , 7534, 7536, 7926, 7938, 7992, 7993, 7994, 7995, 7996, 7999, 8000, 8001, 8002, 8003, 8004, 8005, 8007, 8010, 8032, 8033, 8034, 8035, 8038, 8039, 8040, 8041, 8042, 8043, 8045, 8046, 8048, 8051, 8052, 8053, 8057, 8064, 8065, 8066, 8067, 8068, 8069, 8070, 8071, 8073, 8074, 8075, 8076, 8077, 8080, 8081, 8082, 8084, 8087, 8091, 8140, 8194, 8195 and 8199 of 2010

Decided On: 07.09.2010

Appellants: **Shri Sadguru Shikshan Prasarak Mandal through its President Sominath Shankar Bankar and Ors. etc. etc.**
**Vs.**
Respondent: **The State of Maharashtra through its Secretary, Department of Education, The Education Officer (Secondary), Zilla Parishad and The Director of Education and Ors. etc. etc.**

**Hon'ble Judges/Coram:**
Shrihari P. Davare and R.S. Mohite, JJ.

**JUDGMENT**

**R.S. Mohite, J.**

1. This is a batch of Writ Petitions challenging either the communications/orders issued by the State Government dated 4.6.2010 and/or consequent communications by the subordinate Education Officers to the petitioners, informing them that their applications/proposals seeking permission to open new Primary/Secondary Schools in Marathi Medium have been rejected.

2. Rule in all the petitions. By consent of learned Counsel for the parties, Rule is made returnable forthwith and the matters are taken up for final hearing at the admission stage itself. All these petitions are heard together and are being disposed of by common judgment as common issues are involved in all these petitions.

3. Shri N.B. Khandare, learned Government Pleader, states that the Government has filed an affidavit­ in­reply in Writ Petition No. 7472 of 2010 and since the issue involved in all the Writ Petitions is common, the said reply may be treated and read as reply in all other Writ Petitions.

4. All the petitions are filed by non minority institutions taking exception to the two communication dated 4.6.2010. The first communication dated 4.6.2010 bearing No. 2010/(405/10)/MASHI­1 issued by Under Secretary to the Government of Maharashtra, Department of School Education and Sports, is addressed to the Director of Education (Secondary and Higher Secondary, Maharashtra State, Pune, All Regional Deputy Directors (Education) and Education Officers (Secondary), Zilla Parishads.

5. By the said communication, rejections of all the pending applications/proposals by the petitioners and others seeking permission for starting Marathi Medium Secondary Schools has been informed to the aforesaid addressees. There is a general statement made that all pending proposals have been rejected after they have been individually examined. The communication further mentions that in the future, while granting permission to new schools, the population in the area, number of running schools, gross enrollment ratio, provisions in the Right to Education Act etc. will be taken into account and on this basis, the Government has decided to prepare a mapping of Secondary Schools and has commenced the process in this regard and the applications for permission to start the schools will be invited afresh, only after this process is completed. This communication pertains only to rejection of pending applications for permission to start the secondary schools.

6. The second communication dated 4.6.2010 bearing No. PRASHYANYA 1910/(388/10)PRASHI­3 is issued by Desk Officer, Department of School Education and Sports, Government of Maharashtra. It is addressed to the Director of Education (Secondary and Higher Secondary), Maharashtra State, Pune, All Regional Deputy Directors (Education) and all Education Officers (Primary), Zilla Parishads. By this communication, the addressees are informed that all pending applications seeking permission to start Primary Schools have been rejected in the same manner and for the same reasons. This communication is almost paramateria with the communication dated 4.6.2010 pertaining to Secondary Schools.

7. Based upon aforesaid two communications dated 4.6.2010, the Education Officers have communicated to the petitioner­institutions that their applications for grant of permission to open the school (whether Primary or Secondary) have been rejected.

8. A brief mention of the history of relevant facts which led to the issuance of the aforesaid two communications dated 4.6.2010 and consequent orders of the Education Officers, would be relevant.

9. Vide a Circular dated 29.4.2008, which was also published by public notice, the Government of Maharashtra had invited applications from various Educational institutions for the purpose of starting Primary, Secondary and Higher Secondary Schools on a permanent no grant­in­aid basis as per the then existing policy. A Cabinet Sub­committee comprising of the Chief Minister, Deputy Chief Minister, Minister (School Education) and State Minister (School Education) was constituted for the purpose of examining proposals to be received. In all, 7840 proposals were received by the Government for grant of permission to start the schools in response to the said circular dated 29.4.2008 As per then existing procedure, two committees, namely, District Level Committee and the State Level Committee were supposed to scrutinize the proposals and forward the same to the Government with their remarks and recommendations for being placed before the cabinet sub committee for appropriate decision. Accordingly, the cabinet sub committee took a decision on such proposals which was reflected in the Government Resolutions dated 27.7.2009, 24.8.2009 and 27.8.2009. In so far as the proposals for opening of Primary and Secondary Schools (Marathi Medium) are concerned, the Government, in its cabinet meeting dated 16.6.2009, had decided not to grant any permission until the need of the schools and the locations were identified and a master plan in that regard is prepared. As at the relevant time, the policy in existence was that such school shall be permitted to be opened only on a permanent non­grant basis, the Government decided to delete the word "permanent" with a view to bring all permanent non grant basis schools, except English medium schools, on grant­in­aid basis in a phased manner as enumerated in the government policy.

10. The institutions/managements aggrieved by the aforesaid government decision, approached this Court by filing different Writ Petitions. The said batch of writ petitions, headed by Writ Petition No. 345 of 2010 (Asha Seva Bhavi Sanstha v. State of Maharashtra) came to be heard by Division Bench of this Court on 23.3.2010 and judgment was reserved on that day. The judgment was delivered on 8.4.2010.

11. On 1.4.2010, i.e. before pronouncement of judgment in aforesaid batch of writ petitions on 8.4.2010, a new enactment i.e. "The Right of Children to Free and Compulsory Education Act, 2009" was brought into force. The judgment delivered on 8.4.2010 also took into account provisions of the said Act. After exhaustive discussion and consideration of legal provisions, the Division Bench of this Court reached several conclusions which were enumerated in paragraphs 82 of its judgment, which are as follows:

82. To sum up, we conclude that;

(a) Right to establish an educational institution of its choice on permanent no grant basis, is a fundamental right guaranteed to all the citizens within the meaning of Article 19(1)(g) of the Constitution of India.

(b) That fundamental right, however, cannot be confused with the right to ask for recognition of the School.

(c) The proposals for recognitions of the school to be established by the private management on "permanent no grant basis and not receiving any other aid whatsoever" from the Government, will henceforth have to fulfill the conditions specified, amongst others, in Sections 12, 19, 25 read with Schedule of the Act of 2009 and of the Rule 3.2 of the Code (for Secondary/Higher Secondary School) or Rule 107 of Rules 1949 (for Primary School), as the case may be, and also in the recognition order itself.

(d) Indeed, it will be open to the State to impose strictest terms and conditions including, inter­alia, mentioned by us in Paragraph 67 above, fulfilment whereof can be made precondition for grant of recognition and continuation thereof, by the private schools to be established and run on no grant­in­aid basis and without receiving any other aid whatsoever from the Government. The terms and conditions, however, will have to be reasonable restrictions and in the interests of the general public.

(e) The unaided Schools so established and recognised will be obliged to admit specified percentage of children in the neighbourhood belonging to weaker section and dis­advantaged group and provide free and compulsory elementary education to them till its completion, as per the mandate of Section 12(1)(c) of the Act of 2009.

(f) The unaided schools, however, would be entitled only for reimbursement of the expenditure incurred by it to the extent of per­child­expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed, in terms of Section 12(2) of the Act of 2009.

(g) These unaided schools after grant of recognition cannot stake claim for grants in aid, or any other kind of aid from the Government, at a later point of time, as a matter of right.

(h) Initially provisional recognition shall be granted to the unaided private Secondary/Higher Secondary School, if it fulfils the conditions specified in Act of 2009 and Rule 3.2 of the Code for grant of recognition, as provided in Rule 4.1 of the Secondary Schools Code; and recognition shall be granted to unaided private primary school, if it fulfills the conditions specified in Act of 2009 and Rule 107 of the Rules of 1949, as provided in Section 39 of the Act of 1947 read with Rule 107 of the Rules of 1949.

(i) It will be open to the Government to consider to amend the opening part of Rule 107(1) of the Rules of 1949 so as to make it consistent with Section 18 of the Act of 2009 as also to provide for the regime of issuance of provisional recognition to even primary Schools in the first place as per the mechanism provided in Rule 4.1 of the Code.

(j) The pre­existence of a perspective plan or inclusion of the location in the perspective plan or School Development Plan, as the case may be, for considering the proposals for recognition of the "private unaided schools"­ on permanent no grant­in­aid basis or not receiving any other aid form the Government whatsoever, cannot be a condition precedent.

(k) The perspective plan or School Development Plan will be relevant and ought to be insisted upon only in relation to proposals for establishment of schools on "grant­in­aid basis or receiving any other aid" from the Government.

(l) The impugned decision of the State reflected in the Government Resolution dated 20th July, 2009 to cancel all the proposals for permission to start "Marathi medium" schools by issuing one executive fiat or blanket order on the premise that such proposals can be considered only after the enforcement of the perspective plan, is illegal and unconstitutional being discriminatory and arbitrary and also suffers from the vice of non­application of mind.

(m) We further hold that the provisions of the Secondary Schools Code relating to permission under Rules 2.1 to 2.14 of the Code and Rule 106 of the Rules of 1949 to start a school would apply only to the proposals for establishing a school on "grant­in­aid basis or receiving any other aid" from the Government. However, even after grant of permission, such school shall not function or run until the grant of recognition, as per Section 18 of the Act of 2009. Only on this interpretation the constitutional validity of the abovesaid provisions and the opening part of Rule 107(1) of the Rules of 1949 can be saved.

(n) We also hold that the State shall forthwith consider the proposals of all the private institutions "for grant of recognition" for Marathi medium School on permanent no grant in aid basis and not receiving any other aid from the Government whatsoever, in the given locality on its own merits and in accordance with law.

(o) That be done expeditiously and the decision so taken be communicated to the concerned Management, in any case, not later than 31st May, 2010, so that, if recognition were to be granted, the concerned School can commence at the beginning of the academic year 2010­2011, from June, 2010.

(p) We have also made some broad suggestions in Paragraph 62, as to the factors to be considered and remedial measures taken before finalizing the perspective plan or School Development plan. We hope and trust that the Government would consider the same in right earnest.

(q) We therefore allow these Petitions on the above terms.

12. In paragraph 83 of the said judgment, the Division Bench made Rule absolute in all the petitions and directed the State Government to examine every individual proposal of the concerned private management "for recognition" of Marathi medium school on permanent no grant basis and without receiving any other aid from the Government on its own merits, in accordance with law.

13. In pursuance of the directions given by Division Bench in the aforesaid judgment, the Government of Maharashtra reconsidered all the applications/proposals and passed orders of rejections of applications seeking permission to start primary and Secondary schools in Marathi Medium which were communicated to the Director of Education (Secondary and Higher Secondary, Maharashtra State, Pune, All Regional Deputy Directors (Education) vide two communications dated 4.6.2010 referred to hereinabove. Consequent thereto, these rejections were further communicated by the subordinate officers, namely, the Education Officers to the concerned institutions­managements.

14. We have heard learned Counsel for the parties at length. Although it does appear that the earlier Division Bench judgment took into account the provisions of the Right of Children to Free and Compulsory Education Act, 2009 which came into force after the judgment was reserved by the Division Bench referred to hereinabove, the learned Counsel for all the parties stated that they have no grievance as regards conclusions/directions as contained in paragraph 82 of the said judgment.

15. Since there is controversy about the directions given in the above referred judgment of the Division Bench and since the State has contended that it has implemented the said directions by taking decisions on each application/ proposal individually and communicated the same by the two communications/orders both dated 4.6.2010 to all the concerned officers in the Education Department, the only two questions which are required to be addressed are;

(1) Whether the directions given by the Division Bench of this Court in the batch of writ petitions headed by Writ Petition No. 345 of 2010 (Asha Seva Bhavi Sanstha v. State of Maharashtra), have been properly complied with or not by the State Government before issuing the two communications dated 4.6.2010 ?

(2) Whether any further directions, in addition to the directions in the said case of Asha Seva Bhavi Sanstha (supra) judgment of the Division Bench, are required to be given ?

16. On the first aspect of the matter i.e. as to whether the the two communications dated 4.6.2010 are in compliance with the directions of the Division Bench of this Court, lengthy arguments were advanced.

17. However, it is not necessary to go into those submissions as the learned Govt. Pleader Shri Khandare has stated, on instructions, that the two circulars/communications dated 4.6.2010 pertaining to the Secondary School and Primary School respectively stand withdrawn by the Government. This would necessary mean that all consequent communications/ orders issued by the subordinate education authorities to the various educational institutions / managements based upon the said two communications dated 4.6.210 also stand withdrawn. Therefore, once the said two communications dated 4.6.2010 are withdrawn, the applications made by the educational institutions/managements would automatically be revived. The sole question that needs consideration is as to how these applications are to be dealt with.

18. It is noticed that in Clause (h) of paragraph 82 of the judgment of Division Bench which is quoted hereinabove, it is directed that the grant of provisional recognition, as provided in Rule 4.1 of the Secondary Schools Code, is to be considered. For the purpose of convenience, said Clause (h), which would be the first step that the State Govt. will have to take on the pending applications, is again reproduced hereinbelow.

(h) Initially provisional recognition shall be granted to the unaided private Secondary/Higher Secondary School, if it fulfils the conditions specified in Act of 2009 and Rule 3.2 of the Code for grant of recognition, as provided in Rule 4.1 of the Secondary Schools Code; and recognition shall be granted to unaided private primary school, if it fulfills the conditions specified in Act of 2009 and Rule 107 of the Rules of 1949, as provided in Section 39 of the Act of 1947 read with Rule 107 of the Rules of 1949.

19. It is seen that, all the applications made by the petitioners are for opening either a primary or secondary school of Marathi Medium on a no grant­in­aid basis. The Division Bench in aforesaid judgment has observed that such institutions will also not be entitled to claim any aid or grant from the government in future, as a matter of right. The Division Bench has also observed that pre­existence of perspective plan or inclusion of the location in the perspective plan or School Development Plan, as the case may be, for considering the proposal for recognition of the "private unaided schools"­ on permanent no grant­ in­aid basis or not receiving any other aid from the Government whatsoever, cannot be a condition precedent for consideration of the proposal. It is also seen that insofar as applying for provisional recognition is concerned, no particular form is prescribed under the Secondary Schools Code. It is noticed that in the case of Asha Seva Bhavi Sanstha (supra), the State Govt. was directed to forthwith consider the proposals of the private institutions "for grant of recognition" for Marathi medium School on permanent no grant­in­aid basis and not receiving any other aid from the Government whatsoever, in the given locality on its own merits and in accordance with law.

20. In the circumstances, we direct as follows:

(a) The State Government shall treat the applications made by the different petitioners in these writ petitions, as applications for grant of provisional recognition to be considered in accordance with Clause (h) of paragraph 82 of the judgment of Division Bench in Asha Seva Bhavi Sanstha (supra). It is, however, made clear that such requirements, which apply only to pre­existing and running schools, will not be applicable to the applications of the petitioners which are for grant of provisional recognition to a new school. It is also further clarified that till provisional recognition is granted, the school will not actually be started.

(b) Petitioners will be at liberty to provide further information, if they so desire, to the Secretary (School Education) within a period of four weeks from today and within six weeks thereafter, the State Government will have liberty to issue requisitions calling for any information that may be desired by it. Such requisitions, if received, will be replied to by the petitioners within a period of four weeks thereafter and then the pending applications will be disposed of on or before 31.3.2011.

(c) The decisions on the applications of the institutions/managements will be taken by the State Government on an individual basis and such decisions will be communicated to the respective petitioners. In case applications / proposals are rejected, specific reasons for such rejections will be given and communicated to the concerned petitioners.

21. Rule is made absolute in all writ petitions in aforesaid terms. All writ petitions stand disposed of, accordingly.