**IN THE HIGH COURT OF BOMBAY (NAGPUR BENCH)**

Writ Petition No. 5208 of 2008

Decided On: 04.08.2010

Appellants: **Anil S/o Panjabrao Nahate and Gajanan S/o Sahebrao Rede**
**Vs.**
Respondent: **The State of Maharashtra through its Secretary, Ministry of School Education and Sports,Deputy Director of Education, Amravati Division, The Education Officer (Secondary) and Yashoda Bahu Uddeshiya Shikshan Prasarak Mandal through its Secretary, Sanjay Ramdasji Bodkhe**

**Hon'ble Judges/Coram:**
D.B. Bhosale and P.B. Varale, JJ.

**JUDGMENT**

**D.B. Bhosale, J.**

1. Heard learned Counsel for the parties.

2. The parents of the students, who were studying in Standard VIII and IX in the School at Jalgaon Nahate, Tahsil Akot, District Akola run by respondent No. 4 - Yashoda Bahu Uddeshiya Shikshan Prasarak Mandal (for short, "the Management") have challenged the communication/order dated 13/10/2008 issued by respondent No. 2 - Deputy Director of Education, Amravati Division, Amravati whereby the decision to shift the School at Jalgaon Nahate to Akot, District Akola has been maintained/confirmed by the State Government.

3. Respondent No. 4 - Management in 2001 had made an application/proposal in the prescribed form for starting a Secondary School at village-Jalgaon Nahate. Since the village Jalgaon Nahate was included in the Master plan, the State Government, after following the due procedure, allowed the proposal submitted by the respondent Management. The respondent Management accordingly opened the School at Jalgaon Nahate in the academic session 2002-03 and since then, till it was shifted to Akot in the academic session 2008-09, were running it at Jalgaon Nahate. According to the petitioners, the respondent Management, behind the back of the villagers, submitted a proposal for shifting their School from Jalgaon Nahate to Akot on the ground that in future, they would not get sufficient number of students in the School if it is not shifted. The proposal was processed and ultimately the State Government granted permission for shifting the School as prayed vide order dated 17/10/2007. By the time this order was communicated to the Management, students in the 8th Standard for the academic session 2008-09 were admitted in the school at Jalgaon Nahate itself. On 29/7/2008, i.e. after commencement of the academic session 2008-09, the Management shifted their School to Akot without giving any intimation either to the students or their parents from Jalgaon Nahate. It appears that the petitioners and other villagers came to know about the order allowing the respondent Management to shift the School only when they actually started the process of shifting the School to Akot. There is no dispute that when the School was shifted, it had more than hundred students, who were residents of the villages Jalgaon Nahate and Wadai Satwai.

4. The villagers immediately made representation signed not only by Sarpanch and members of the Gram Panchayat, but by almost all adult members in the village addressed to the Education Officer (Secondary), Zilla Parishad, Akola with copies thereof to all concerned including the Chief Minister and Education Minister requesting them to re-consider/review their decision of allowing the respondent Management to shift their School from Jalgaon Nahate to Akot. In the representation, they stated that Akot is 10 kms. away from Jalgaon Nahate and that would cause tremendous inconvenience not only to the students, but also to the parents, which ultimately would result in depriving the students at village Jalgaon Nahate from continuing/taking education. They also mentioned the facts and figures, which would indicate that the information given by the respondent Management so also in the reports prepared at the lower level, recommending the shifting, were misleading.

5. The State Government, on the representation made by the villagers including the petitioners, cancelled/reviewed their decision to shift the School, dated 17/10/2007 and communicated the said decision vide letter dated 22/8/2008. This decision/order was also communicated to the respondent Management vide letter/order dated 3/9/2008 issued by the Education Officer. Despite this order/communication, the respondent Management did not shift the School back to Jalgaon Nahate and continued to run it at Akot. The Education Officer, therefore, vide communication dated 5/9/2008 issued reminder to the respondent Management requesting them to shift their School back to Jalgaon Nahate and submit compliance report. Still there were no movements on the part of the respondent Management, which forced the Education Officer to issue notice dated 8/9/2008 asking them to show cause as to why action should not be taken against them for not starting the School at Jalgaon Nahate. The explanation was also sought as to why the respondent Management should not be held guilty for the loss caused to the students. Despite all this, the respondent Management did not shift back to Jalgaon Nahate.

6. The Deputy Director of Education, Amravati Division, Amravati, by the impugned communication dated 13/10/2008 informed the Education Officer that the earlier order dated 17/10/2007 allowing the respondent Management to shift their School from Jalgaon Nahate to Akot has been confirmed/maintained by the State Government. This order was passed by the State Government without giving an opportunity of hearing to the Sarpanch of the village and/or the petitioners on whose representation the earlier decision, allowing to shift, was cancelled vide order dated 22.8.2008. It appears that the decision/order dated 13.10.2008 was taken/issued by the Hon'ble Minister after conducting hearing in his Chamber on 11.9.2008. Shri Sirpurkar, learned Counsel for the petitioners, submitted that the three villagers, who were before the Hon'ble Minister on 11/9/2008, were not authorized to represent the villagers. He further submitted that the petitioners and/or the Sarpanch were not given notice of the hearing.

7. The Chapter II of the Secondary Schools Code deals with recognition, organization and management of Schools. It provides the instructions, guidelines and orders in respect of starting a new School, conditions of recognition, provisional and permanent recognition, power to grant recognition and withdrawal of recognition. Rule 7.6 in Chapter II of the Code provides that the Management cannot shift any School run by it from its existing location to any other location for any reason without prior written permission of the Government. It further states that if the Management shifts the School without prior permission of the Government, recognition of such School shall automatically stand withdrawn on the ground of such unauthorized shifting.

8. We have heard learned Counsel for the parties for quite sometime and perused the original record placed before us by the learned Assistant Government Pleader. It appears that the respondent-Management, as provided for under Rule 7.6 of the Secondary Schools Code, submitted their proposal for shifting of their School from Jalgaon Nahate to Akot sometime in 2007. We have seen the original proposal from the record produced before us. It was submitted with 16 supporting documents. Insofar as the query, which the Institution was expected to answer with supporting documents, in respect of the distance between the existing School and the place where they proposed to shift, was kept blank. Though the proposal was submitted in 2007, they had submitted the information about the number of students admitted in VIII, IX and X Standards only for the academic session 2006-07.

9. The respondent-Management sought shifting of the School mainly on the ground that at the relevant time, they did not have sufficient number of students in the School and in future, they would face problem of maintaining sufficient strength of students in their School. All the concerned, right from the Education Officer, recommended the shifting stating that the distance between Jalgaon Nahate and Akot is hardly 3 kms. and in future the School would face problem of maintaining sufficient strength of students. Shri Sirpurkar submitted that while doing so, it is apparent, it was not examined as to how gradually number of students in the School at Jalgaon Nahate increased from 2002-03. The School was started in 2002-03 when in VIII Standard, hardly 19 students took admission and that was increased from 19 to 59 in 2008-09. The total number of students in the School in the academic session 2002-03 were 19, whereas in the academic session 2008-09, the total number of students were 184. The School was shifted to Akot in the midst of the academic session 2008-09 when admissions for all the three Classes, namely, VIII, IX and X Standards were complete at the village Jalgaon Nahate itself.

10. There is no dispute that the students, who were admitted in the School were not only from village Jalgaon Nahate, but were also from neighbouring villages, which are hardly 1 or 2 kms. away from Jalgaon Nahate. At the relevant time, there were good number of students in the School from the village Wadai Satwai, which is hardly 1-1 1/2 kms. away from Jalgaon Nahate. After the School was shifted in the midst of the academic session 2008-09, we are informed, in the academic session 2009-10, the number of students in the School at Akot from Jalgaon Nahate and Wadai Satwai was drastically reduced and in the present academic session (2010-11), there are hardly 8 students studying in the School at Akot from these two villages. These facts and figures, according to Shri Sirpurkar, learned Counsel for the petitioners, clearly demonstrate that the students from Jalgaon Nahate have either given up their education or are attending some other Schools and it is causing tremendous inconvenience to them. Unfortunately, the Government has not placed before us the facts and figures to show as to what happened to the students, who were studying in the School when the decision to shift the School was taken by the State Government.

11. Shri Sirpurkar, learned Counsel for the petitioners, invited our attention to the reports/notings made by the concerned Officers, recommending shifting of the School and submitted that the State Government was misled by the concerned Officers. He submitted that it was mentioned in the report/notings that Akot, where the Institution intended to shift the School from Jalgaon Nahate is hardly 3 kms. away, which was factually incorrect. He submitted that the distance between Jalgaon Nahate and Akot is about 10 kms. This has not been disputed before us either by the learned Additional Government Pleader or by Shri Ghare, learned Counsel for respondent No. 4. Shri Sirpurkar submitted that though some efforts were made by the Institution to provide transport to the students at Jalgaon Nahate for going to Akot, but it was just an eye wash. It did not work at all. That apart, a mini-bus engaged by the Management was not sufficient to accommodate more than hundred students, who were actually studying at the relevant time, from Jalgaon Nahate. From the minutes of the meeting held in the chamber of the Minister on 11.9.2008, it appears that the alleged arrangements of transport made by the Institution impressed the Minister, which prompted him to confirm/maintain the order of shifting of the School from Jalgaon Nahate to Akot. It was further submitted that when shifting was sought, the Institution had given undertaking that they would shift their School at Barde plot, Akot, but in fact, they established the School at some other place in Akot to which there is no explanation on record.

12. Shri Sirpurkar further contended that the facts and figures mentioned in respect of the population of village were also misleading. The concerned Officers had conveniently ignored and/or did not mention the population of Wadai Satwai and other villages from where students were admitted in the School at Jalgaon Nahate. He further contended that Akot is a Taluka Headquarter, which has sufficient number of Primary/Secondary Schools and Junior Colleges and shifting of the School from Akot back to Jalgaon Nahate would not cause any inconvenience to the students at Akot.

13. Article 21-A of the Constitution of India came into existence in 2002 whereby the Parliament did not merely affirm the right to education, the amending Act placed the right to education within the Constitution's set of fundamental rights. Article 21-A, which reads as follows, places one obligation primarily on the State:

21-A: Right to education - The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

Article 51-A(k), which reads as follows, places burden squarely on the parents:

51-A - Fundamental duties - It shall be the duty of every citizen of India-

(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

The Supreme Court in Avinash Mehrotra v. Union of India and Ors.   : (2009)6 SCC 398, after considering these two Articles, in paragraph 33 has observed thus:

The Constitution directs both burdens to achieve one end: the compulsory education of children, free from the fetters of cost, parental obstruction, or State inaction. The two Articles also balance the relative burdens on parents and the State. Parents sacrifice for the education of their children, by sending them to school for hours of the day, but only with a commensurate sacrifice of the State's resources. The right to education, then, is more than a human or fundamental right. It is a reciprocal agreement between the State and the family, and it places an affirmative burden on all participants in our civil society.

14. The Supreme Court in this case after considering Articles 21-A and 51-A(k) has dealt with the scope and meaning of "education". It has observed that the Constitution provides meaning to the word 'education' beyond its dictionary meaning. Education remains essential to the life of the individual, as much as health and dignity, and the State must provide it, comprehensively and completely, in order to satisfy its highest duty to citizens. Educating a child requires more than a teacher and a blackboard, or a classroom and a book. The right to education requires that a child study in a quality school, and a quality school certainly should pose no threat to a child's safety.

15. Inspired by Article 21-A of the Constitution of India, which has treated education to all children of the age of six to fourteen years as a fundamental right, read with Article 51-A(k), the Right of Children to Free and Compulsory Education Act, 2009 (for short, "the Act of 2009") has been enacted and it has come into force on 1/4/2010. The provisions of this Act provide that every child of the age of 6 to 14 years shall have a right to free and compulsory education in a "neighbourhood School" till completion of elementary education and that no child shall be liable to pay any kind of fee or charges or expenses, which may prevent him/her from pursuing and completing the elementary education. Section 6 of the Act of 2009 imposes obligation on the appropriate Government and Local Authority to establish a School within such areas or limits of neighbourhood, as may be prescribed, where it is not so established, within a period of three years from commencement of the Act.

16. Keeping in view the observations made by the Supreme Court in Avinash Mehrotra's case and the provisions of Articles 21-A and 51-A(k) of the Constitution of India in particular so also the provisions of the Act of 2009, it is clear that the State must provide education to all children in all places. Unlike other fundamental rights, the right to education places a burden not only on the State, but also on the parents or guardian of any child and on the child himself/herself.

The State Government is expected to keep in view the provisions of Articles 21-A and 51-A of the Constitution of India so also the provisions of the Act of 2009 while dealing with the proposal for establishing/starting a new School or for shifting the established School, that it is established/shifted within such area where no School is so established. Convenience and need of the children for whom the School is being established/shifted should be the paramount consideration while dealing with such proposals and not the desire and convenience of Institutions/Managements.

17. Having regard to the facts of the present case and considering the material on record, we are satisfied that the village Jalgaon Nahate so also the neighbouring villages must have to have at least one Secondary School and the State Government is obligated to establish it at Jalgaon Nahate for benefit of the children in these villages. We hope and trust that the State Government, in the present case, after remand, will undoubtedly bear in mind the observations made in this judgment while considering the proposal of respondent No. 4 afresh, seeking permission to shift their School from Jalgaon Nahate to Akot.

18. All the three orders in the present case (dated 17/10/2007, 22/8/2008 and 13/10/2008) were issued by the State Government without hearing all the concerned. We are satisfied that all the three orders suffer from non-application of mind and hence, deserve to be set aside. Learned Counsel for the parties have fairly consented for setting aside all the three orders and for remand of the matter to the State Government for considering the proposal submitted by the respondent-Management for seeking permission to shift to Akot afresh. Shri Ghare, learned Counsel for respondent No. 4, submitted that till their proposal is considered and decided afresh by the State Government, they may be allowed to continue to run their School at Akot. In the facts and circumstances of the case, we find the prayer of Shri Ghare reasonable.

19. Respondent No. 4 - management has placed on record the affidavit dated 4.8.2010 of Sanjay Ramdasji Bodkhe, Secretary of respondent No. 4 - Institute, giving an undertaking to shift the school to Jalgaon Nahate if their proposal is rejected by the State Government on merits prior to questioning the order passed by the Hon'ble Minister. We have taken the said affidavit on record and marked 'X' for identification. Shri Ghare, learned Counsel, on instructions submitted that he will place on record a fresh affidavit of the Secretary giving the undertaking, as given in the affidavit dated 4.8.2010, along with resolution passed by the Management authorising the Secretary to file such affidavit/undertaking in this Court. We allow him to do so on or before 5.8.2010. We accept the undertaking given by respondent No. 4 in the affidavit dated 4.8.2010, so also in the affidavit that will be filed by the Secretary on 5.8.2010.

20. Shri Ghare, learned Counsel for respondent No. 4, further submits that as per the new policy of the Government, there is no requirement of Master plan for starting new school and in view thereof they may be permitted to request the Government to allow them to start school at Jalgaon Nahate without disturbing the school at Akot. We are not expressing any opinion on this submission of Shri Ghare, and at the same time we are not preventing respondent No. 4 from making such request to the State Government. We are satisfied that one secondary school is necessary at village Jalgaon Nahate and the State Government is under obligation to provide it and see to it that it starts from the next academic session (2011-2012).

21. The learned Counsel for the parties, in the facts and circumstances of the case, have consented for the following order and we are satisfied that it will meet the ends of justice:

(i) The order/communication dated 13/10/2008, issued by respondent No. 2 - Deputy Director of Education, Amravati Division, Amravati, is quashed and set aside. Similarly, the orders/communications, dated17/10/2007 and 22/8/2008, issued by the State Government, are also set aside.

(ii) The State Government shall consider the proposal bearing outward No. Q-120/2007 (Annexure-IV to the writ petition and page No. 17 of the original file/record produced for our perusal by the learned Addl. G.P.) submitted by respondent No. 4, seeking permission to shift their school from Jalgaon-Nahate to Akot, afresh, after giving an opportunity of hearing to the petitioners, representatives of the Gram Panchayats of Jalgaon-Nahate and Wadai Satwai and also, if the Government find it necessary, to the representatives of Lohari, Nevori, Chinchkhed and Pimpalkhuta Gram Panchayats, along with respondent No. 4 Management. The State Government shall pass orders on the proposal made by respondent No. 4 institution for shifting the school, without taking into consideration the strength of the students now available in their School at Akot and also without considering that the students from Akot, presently studying in their School, would suffer inconvenience. In other words, the State Government, while considering the proposal of the respondent-Management, shall take into consideration the facts and figures so also the other relevant material, as on the date when the proposal was made.

(iii) The State Government shall decide the proposal, as aforementioned, as expeditiously as possible and preferably before the end of December 2010 and shall communicate its decision to all concerned, immediately thereafter.

(iv) If the decision of the State Government is adverse to respondent No. 4 - Institution, as stated by respondent No. 4 in their affidavit dated 4/8/2010 and the affidavit to be filed on 5.8.2010, they will first shift their school at the end of this academic session (2010-11) to Jalgaon-Nahate and start the same from the next academic session (2011-12) and then, if they so desire, will challenge the order passed by the State Government in appropriate proceedings. The undertaking given by the Secretary of respondent No. 4 - Institution to that effect in the affidavits is accepted.

(v) If the order passed by the State Government is adverse to respondent No. 4 and after, in pursuance thereof, they shift their school to Jalgaon Nahate, the Deputy Director of Education, Amravati Division, Amravati shall accommodate all the students, who are presently taking education in their school at Akot, to other schools in Akot and see to it that no inconvenience is caused to them.

22. We hope and trust that the State Government shall pass orders keeping in view the observations made in this judgment and in the judgment of the Supreme Court in Avinash Mehrotra's case.

23. In the result, rule is made absolute in above terms. No costs.