

SUPERSTAR EDUCATION SOCIETY

v.

STATE OF MAHARASHTRA & ORS.

(Civil Appeal No.1105 of 2008)

JANUARY 16, 2008

(K.G. BALAKRISHNAN, CJI, R.V. RAVEENDRAN AND
J.M. PANCHAL, JJ.)

Education/Educational Institutions:

Establishment of new Primary, Secondary and Higher Secondary Schools in State of Maharashtra – Bombay High Court in Gramvikas Shikshan Prasarak Mandal case suggesting guidelines and directing State Government to prepare a Master Plan for schools of Marathi medium and for granting permission to such schools during 2000-2010 – Delay in finalizing Master Plan – Aurangabad Bench of High Court permitting State Government to grant sanction to all types of Schools of English medium, non-English medium and Marathi medium for 2004-2005 and 2005-2006 on permanent non-grant basis – Government issuing Order dated 16.5.2006 granting permission for 1495 new schools on 'non-grant' basis subject to the conditions enumerated in the Order – Writ petition filed challenging the Government Order as violative of directions in Gramvikas Mandal* - Nagpur Bench of High Court quashing the Government Order – Held: On facts, the assumption that the Order dated 16.5.2006 violated the order in Gramvikas Mandal does not appear to be sound – The High Court has quashed the Order dated 16.5.2006 without even noticing that many of the schools which have been permitted under the said order, were English medium schools or non-Marathi schools or schools run by religious and linguistic minorities, which were not intended to be covered by the proposed Master Plan – It also failed to notice that any delay in drafting or finalizing the Master Plan cannot be a bar*

- A *for new schools being permitted, particularly in view of the subsequent orders of the Aurangabad bench – When the permission had been accorded and schools had started functioning on that basis, the High Court ought not to have quashed the permission granted to those 1495 schools, without*
- B *impleading the schools or without hearing them – It is the duty of the State Government to provide access to education – Unless new schools in the private sector are permitted it will not be possible for the State to discharge its constitutional obligation – Permission has been granted to 1495 new schools*
- C *under the Order dated 16.5.2006 on permanent no-grant basis without any financial commitment or liability on the part of the State Government, even in future, and at the same time ensuring that the schools follow the parameters and conditions prescribed by the Education Code, reserving liberty to the*
- D *authorities to take appropriate action, should there be any violation – The said order does not contravene any provision of law – The Government Order dated 16.5.2006 permitting new schools will, therefore, continue to be in force – However, it is made clear, if any school is found to have flouted or not fulfilled the parameters prescribed by the Education Code or*
- E *the conditions stipulated by the State Government in the Order dated 16.5.2006, the authorities concerned of the State Government will be at liberty to take appropriate action against the defaulting schools, including cancellation of the permission*
- F *– Objects of regulating permission for new private schools, enumerated – Impugned order set aside – Principles of natural justice – Practice and Procedure – Impleadment of necessary parties.*

G **Gramvikas Shikshan Prasarak Mandal vs. The State of Maharashtra & Ors. AIR 2000 Bombay 437 – referred to.*

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1105 of 2008.

H From the final Judgment and Order dated 7.7.2006 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in

W.P. No. 2897/2006.

WITH

C.A. Nos. 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1157, 1159, 1160, 1162, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178 and 1179 of 2008.

C.A. Sundram, Yashwant Das, Jaideep Gupta, Colin Gonsalves, M.N. Rao, Yashovant Das, Sanjay Sen, Rana S. Biswas, Shyam Dewan, Deepak Biswas, Mridul Chakravarty, Ruchika Rathi, Sarla Chandra, Vipin M. Benjamin, Vikas Padora, Jyoti Mendiratta, Hiren Dasan, Anupam Shah, Dharendra Kumar Mishra, Atul Y. Chitale, Suchitra A. Chitale, Dhruv Madan, Gagan Sanghi, Balmohan Vidhyamandir, M.Y. Deshmukh, Rameshwar Prasad Goyal, S.M. Jadhav, Satyajit A. Desai, Amol N. Suryawanshi, Anagha S. Desai, Vijay Kumar, Vishwajit Singh, S. Udaya Kumar Sagar, Bina Madhavan (Adv. for M/s. Lawyer's Knit & Co.), Sanjay Kharde, Chandan Ramamurthi, Venkateswara Rao Anumolu, Dilip Annasaheb Taaaur, Santosh Kumar Tripathi, Sudha Gupta, Vinay Navare, Sudhanshu S. Choudhari, Naresh Kumar, Uday B. Dube, Kuldip Singh, Bharat Sangal, S. Chatterjee, Anil K. Jha, D.M. Nargolkar, Anjani Kumar Jha, Sajjan K. Singh, Sangeeta Singh, Balraj Dewan, S.W.A. Qadri, Jubair Ahmad Khan, Udita Singh, L.R. Singh, Amol Chitale, Manik Karanjawala, S.S. Shinde, Asha Gopalan Nair, Manish Pitale, Chander Shekhar Ashri and V.N. Raghupathy for the appearing parties.

The Order of the Court was delivered by

K.G. BALAKRISHNAN, CJI. Leave granted. Heard learned counsel for the appellants and learned counsel for the State of Maharashtra (Respondent Nos. 1, 2 and 3).

A 2. In the State of Maharashtra , there are three categories
of schools - Marathi Medium Schools, English Medium Schools,
other non- Marathi Medium Schools. Some schools in all three
categories are established by religious or linguistic minority
groups. Establish ment of new Primary, Secondary and Higher
B Secondary Schools are governed by respective Education
Codes.

3. In the year 2000 a Public Interest Litigation was filed in
the Bombay High Court complaining that large number of schools
were being started in the State without following any norms. A
C Division Bench of the Bombay High Court considered the matter
in *Gramvikas Shikshan Prasarak Mandal v. The State of
Maharashtra & Ors.* (AIR 2000 Bombay 437). By judgment
dated 11.4.2000, the High Court directed the State Government
to prepare a Master Plan, for granting permission to the Primary,
D Secondary and Higher Secondary Schools during 2000 - 2010
, by reviewing and updating the existing state policies and
schemes and by incorporating the guidelines suggested by the
High Court, in its judgment. The decision clarified that the master
plan will be only for Marathi Medium Schools. As regards English
E Medium Schools and other non- Marathi Medium Schools, no
directions were issued. It was also stated that schools
established by religious or linguistic minorities will not be
governed by the proposed Master Plan.

F 4. Due to several reasons, there was delay in finalizing the
master plan. On considering the reasons assigned by the State
Government, the Aurangabad Bench permitted sanctioning of
all types of schools including Marathi Medium of Schools for
2004 - 2005 and 2005 - 2006 on permanent unaided basis
even though the Master Plan was not ready.

G 5. In regard to the year 2005 - 2006, the State Government
considered more than 3000 applications and the proposals/
recom mend ations by the District Level Committees in regard
to such applications, and granted permission for 1495 new
H Higher Secondary classes/ schools by order dated 16.5.2006

on 'no- grant basis'. Such permission was granted subject to the following conditions : A

(i) No financial assistance would be provided to any of the newly approved Higher Secondary classes even in future.

(ii) The Higher Secondary Schools should scrupulously follow the orders issued by the Government from time to time, as also the provisions of Secondary School Code and Maharashtra Employees of Private Schools (Conditions of Services) Act, 1977 and the 1981 Rules framed thereunder. B C

(iii) The School administrations should not charge any fee from students in excess of the fees approved by the Government.

(iv) The school administrations should maintain adequate and sufficient financial position. D

(v) The Schools should display prominently a Board stating '*Higher Secondary School with permission on permanent no-grant basis*' and also state in their letterheads '*School on permanent no- grant basis*'. E

(vi) The societies running the schools should furnish affidavits confirming that they are ready to run the Higher Secondary classes on permanent no-grant basis and such affidavits shall be permanently maintained. F

In pursuance of such permission, the Higher Secondary classes were commenced and were being conducted.

6. When matters stood thus, the fourth respondent (*Maharashtra Rajya Shikshan Sansthan Mahamandal*) filed a Public Interest Litigation (W.P. No. 2897/2006) before the Nagpur Bench challenging the order dated 16.5.2006 on the ground that grant of permission to 1495 schools violated the direction issued by the High Court in *Gramvikas Mandal* (*supra*) for preparation of a master plan. None of the 1495 schools which were granted permission, were impleaded as parties to the writ H

A petition. It was contended that the decision rendered in Gramvikas Mandal required finalization of a Master Plan before granting permission for starting new schools and in the absence of a Master Plan, grant of permission to start new schools was illegal. The High Court by its judgment dated 7.7.2006, allowed the said writ petition at the stage of admission itself, and quashed the Government Order dated 16.5.2006, on the ground that grant of permission for new schools by the State Government, without preparing the Master Plan and without fixing any yearwise quota for new schools, was in breach of the procedure prescribed in the case of *Gramvikas Mandal*, and therefore, illegal. Aggrieved by the order of the Division Bench, several institutions which had been granted permission under the order dated 16.5.2006 have filed these appeals by special leave.

7. Though notice was issued to the respondents and served, the writ petitioner in the PIL (*Maharashtra Rajya Shikshan Sansthan Mahamandal*) has not entered appearance. Though the State and its authorities did not challenge the order of the High Court, they supported the appellants and contended before us that the order dated 16.5.2006 was validly made. It was submitted that the Secondary Education Code governed the starting of Secondary and Higher Secondary schools; and that permission was granted to 1495 schools by order dated 16.5.2006, only after the District Level Committees recommended grant of permission to those schools, after verifying that the applicants fulfilled the requirements of the Education Code; that all permissions were on 'permanent no-grant basis' without any financial assistance and appropriate conditions were imposed to ensure that the schools were properly run; that the decision in *Gramvikas Mandal* (*supra*) required the master plan to be prepared only for Marathi medium schools and not for English medium or other Non-Marathi Medium schools and schools run by religious and linguistic minorities; that the High Court had set aside the order dated 16.5.2006 in regard to all 1495 schools, even though it related to a large number of schools which were not required to be

covered by the master plan; and that the High Court had ignored the fact that its Aurangabad Bench had permitted the State Government to sanction schools on permanent unaided basis, even without the master plan, for the years 2004 - 2005 and 2005 - 2006 . It was also contended that the High Court could not have quashed the permission granted to the 1495 schools, without hearing them and without impleading them as parties to the writ petition.

8. The object of regulating permissions for new private schools are: (i) to ensure that they have the requisite infrastructure, (ii) to avoid unhealthy competition among educational institutions; (iii) to subject the private institutions seeking entry in the field of education to such restrictions and regulatory requirements, so as to maintain standards of education; (iv) to promote and safeguard the interests of students, teachers and education; and (v) to provide access to basic education to all sections of society, in particular the poorer and weaker sections; and (vi) to avoid concentration of schools only in certain areas and to ensure that they are evenly spread so as to cater to the requirements of different areas and regions and to all section of society.

9. While the decision of the Bombay High Court in *Gramvikas Mandal* directed the formulation of a Master Plan by incorporating the suggestions made by the court, it does not bar the grant of permission to schools, before the Master Plan was finalized. At all events, the proposed Master Plan is not intended to apply to English medium schools, non- Marathi schools and schools run by religious and linguistic minorities. We are also informed that the State Government has already constituted a Committee under the chairmanship of Director of Education (Secondary & Higher Secondary) Maharashtra on 24.7.2006 for preparing a Master Plan.

10. A perusal of the order dated 16.5.2006 shows that the permission has been granted only after the proposals/ applications were evaluated by the District Level Committees/

- A State Level Committee and necessary recommendations were made by such committees. It is evident from the counter affidavit filed by the State of Maharashtra that these Committees evaluate the proposals for schools by taking note of all the relevant aspects including : place (situation) of the proposed school - whether
- B urban, rural, tribal, non- tribal etc., population at the place of proposed school, number of primary/secondary schools within a radius of 5 kms from the proposed school, and their distance to the proposed school, the enrolment figures relating to 7th and 8th standards within a 5 kms area, distance from the similar
- C existing schools within a 5 kms radius, the built- up area of school, availability of facilities like sport ground, separate toilets for boys and girls, infrastructure like furniture (benches and tables), library, educational study material, financial position of the proposed school etc. It is also seen that for 2004 - 2005 and 2005 - 2006
- D the Aurangabad Bench of the High Court permitted the State Government to grant permission to schools on permanent unaided basis.

11. It is the duty of the State Government to provide access for education. Unless new schools in the private sector are

E permitted it will not be possible for the State to discharge its constitutional obligation. Permission has been granted to 1495 new schools under the order dated 16.5.2006 on permanent no-grant basis without any financial commitment or liability on the part of the State Government, even in future, and at the same

F time ensuring that the schools follow the parameters and conditions prescribed by the Education Code, reserving liberty to the authorities to take appropriate action, should there be any violation. The said order does not contravene any provision of law. It was not even the case of the writ petitioner that the

G schools permitted did not fulfil the conditions and requirements relating to such schools.

12. The High Court has quashed the order dated 16.5.2006 without even noticing that many of the schools which have been permitted under the said order, were English medium

H schools or non- Marathi schools or schools run by religious and

linguistic minorities, which were not intended to be covered by the proposed Master Plan. It also failed to notice that any delay in drafting or finalizing the Master Plan cannot be a bar for new schools being permitted, particularly in view of the subsequent orders of the Aurangabad Bench. When the permission had been accorded and schools had started functioning on that basis, the High Court ought not to have quashed the permission granted to those 1495 schools, without impleading the Schools or without hearing them. On the facts and circumstances, the assumption that the order dated 16.5.2006 violated the order in *Gramvikas Mandal* does not appear to be sound. Even if the High Court wanted implementation of the decision in *Gramvikas Mandal*, it ought to have directed that the Master Plan should be prepared within a time bound schedule rather than quashing the permission granted to 1495 schools thereby denying access to a large number of students aspiring for higher secondary education.

13. We therefore allow these appeals, set aside the judgment of the High Court. The government order dated 16.5.2006 permitting new schools will, therefore, continue to be in force. We however make it clear that if any school is found to have flouted or not fulfilled the parameters prescribed by the Education Code or the conditions stipulated by the State Government in the order dated 16.5.2006, the concerned authorities of the State Government will be at liberty to take appropriate action against the defaulting schools, including cancellation of the permission. Appeals are disposed of accordingly. Parties to bear their respective costs.

R.P.

Appeals disposed of.

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