

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6352 OF 2019
[@ SPECIAL LEAVE PETITION (C) NO. 9135 OF 2018]

DAATA MINORITY EDUCATIONAL AND WELFARE
ORGANIZATION & ANR.

Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA & ORS.

Respondent(s)

O R D E R

1. Heard the learned counsel for the parties.
2. Leave granted.
3. The school in question is a minority school and has applied for approval of Classes 6th and 7th. The same came to be declined vide order dated 12.09.2016 passed by the Education Officer (Primary), Zilla Parishad, Akola in view of the Government Resolution dated 28.08.2015 and 10.03.2016, permission cannot be granted on the ground of natural growth. The proposal was returned back.
4. Another communication of Deputy Director of Education, Amravati Division, Amravati, dated 28.10.2016 has been placed on record with respect to the same subject matter addressed to the Society. It indicates that with respect to the division of

standards 6th and 7th to Khwaza Gharib Nawaz Primary School run by Datta Minority Educational and Welfare Organisation, the proposal is required to be submitted with the clear cut opinion of Education Officer (Primary), Zilla Parishad, Akola and hence, it was returned.

5. The perusal of the Government Resolution indicates that there is shortage of the schools in rural areas and other areas also. The facts have been mentioned in Paragraph 1, the relevant portion of which is extracted hereunder :-

"1. As per the Government Resolution dated 2nd July, 2013 decision is taken that to the school of 1st to 4th standard and to the school of 1st to 7th standard class of 8th is to be joined. Accordingly, 12,027 schools have become 1st to 5th and 5,789 schools have become 1st to 8th. In spite of that as per U-DISE of 2014-2015 in the State there are 84,198 schools having 4th class whereas there are 55,584 schools having 5th class wherein there is shortage of 28,614. In rural area this shortage is 26,798. With the exception of certain big places at other places there is possibility that the students are not getting education of 5th standard within distance of 1 km.

In the same way school of 13,228 rural areas where there is only 7th standard there is possibility that students are not getting primary education within distance of 3 km. With a view to ensure that implementation of Act of Right of Education should be made strictly in the State....."

6. It is also mentioned that during the forthcoming period, in case of Classes 1st to 5th, 6th to 8th and 9th to 10th, there would not be any natural growth, but at the same time, this Court has observed in its Judgment dated 12.04.2012 passed in *Society for Unaided Private Schools of Rajasthan Vs. Union of India and Another*, reported in (2012) 6 SCC 1 at Paragraphs 21 and 22 as under :-

"21. By virtue of the 2009 Act, all schools established prior to the commencement of the said Act are thus obliged to fulfill the norms and standards specified inter alia in Sections 25, 26 and the Schedule of that Act..... The State is also expected to first weed out those schools which are non-performing, or under-performing or non-compliance schools and upon closure of such schools, the students and the teaching and non-teaching staff thereof should be transferred to the neighbourhood school. The provision is meant not only to strengthen the latter

school by adequate number of students but to consolidate and to impart quality education due to the addition of teaching staff.

22. Needless to observe, that if there is inadequate response to the government funded school, it is but appropriate that either the divisions thereof or the school itself be closed and the students and staff of such schools be transferred to a neighbourhood school by resorting to Section 18(3) of the 2009 Act. Only after taking such decisions could the School Development Plan represent the correct position regarding the need of government aided schools in every locality across the State. Besides, it will ensure proper and meaningful utilization of public funds. In absence of such exercise, the end result would be that on account of existing non-performing or under-performing or non-compliance schools, the School Development Plan would not reckon that locality for establishment of another school."

7. It is apparent from the aforesaid that on the basis of need, permission can be given to start the particular standards, including 6th and 7th standards. Thus, we direct the respondents to consider the matter on need basis as expeditiously as possible.

In case there is any deficiency on the part of the appellant(s) or any information is required, that may be obtained within a month and within another one month thereafter, a decision be taken in the matter.

8. Needless to observe that since the school is situated in a slum area, the approach of the authority has to be positive rather than negative, particularly when the school is running 1st to 5th and 8th to 12th standards.

9. In view of the aforesaid discussion, the impugned order passed by the High Court is set aside and the appeal is allowed to the aforesaid extent. No costs.

.....J.
[ARUN MISHRA]

.....J.
[SURYA KANT]

New Delhi;
AUGUST 16, 2019.

ITEM NO.41

COURT NO.4

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 9135/2018

(Arising out of impugned final judgment and order dated 16-01-2018 in WP No. 327/2017 passed by the High Court Of Judicature At Bombay At Nagpur)

DAATA MINORITY EDUCATION AND WELFARE ORGANIZATION & ANR.

Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA & ORS.

Respondent(s)

(IA No. 50584/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)(IA No. 65910/2018 - EXEMPTION FROM FILING O.T.)

(IA No. 58785/2018 - EXEMPTION FROM FILING O.T.)

(IA No. 55093/2018 - EXEMPTION FROM FILING O.T.)

(IA No. 65909/2018 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

(IA No. 58784/2018 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

(IA No. 55091/2018 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 16-08-2019 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE SURYA KANT

For Petitioner(s) Mr. Satyajit A. Desai, Adv.
Ms. Anagha S. Desai, AOR

For Respondent(s) Mr. Nishant Ramakantrao Katneshwarkar, AOR
Mr. Anoop Kandari, Adv.

Mr. Preshit Vilas Surshe, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed

of.

(JAYANT KUMAR ARORA)
COURT MASTER

(JAGDISH CHANDER)
BRANCH OFFICER

(Signed order is placed on the file)