

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 624 OF 2021

Ashish Patel)
Father of Master Rasesh Patel)
Shiv Tapi B Wing, 3/33 HG Road,)
Gamdevi, Mumbai 400 007) **Petitioner**

VERSUS

1. Edubridge International School)
Wadilal A Patel Marg,)
Grant Road East, Mumbai 400 007)
(through the Principal))

2. Chankya Gyan Kendra,)
301 B-Wing, Poonam Chambers,)
Shiv Sagar Estate, Dr. Annie Besant Road))
Worli, Mumbai – 400 018)
(thro' the Chairman))

3. The State of Maharashtra,)
through Deputy Director of Education))
Mumbai Region, having office at)
Jawahar Bal Bhavan,)
Netaji Subhash Road, Charni Road,))
Mumbai 400 004)

4. The Education Inspector,)
Mumbai South Zone, E-Vita,)
Impress Bldg., G.D.Ambekar Road,))
Parel Village, Parel, Mumbai 400 012)) **Respondents**

Mr.C.R.Sadasivan, a/w. Mr.Anup Dhannawat for the Petitioner.

Mr.Pradeep Bakhru, a/w. Ms.Upasana Vasu i/b. M/s.Wadia Ghandy & Co. for the Respondent nos. 1 and 2.

Mr.Milind More, Additional Government Pleader for the State – Respondent nos. 3 and 4.

**CORAM: R. D. DHANUKA AND
R.I.CHAGLA, JJ.
DATE : 5th AUGUST, 2021
(THROUGH VIDEO CONFERENCE)**

JUDGMENT (PER R.D.DHANUKA, J) :-

Rule. Learned A.G.P. waives service for the respondent nos. 3 and 4. Mr.Bakhru, learned counsel for the respondent nos. 1 and 2 waives service. By consent of parties, writ petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for an order and directions against the respondent nos. 1 and 2 to forthwith grant admission to his son, Master Rasesh Ashish Patel as per the allotment letter issued to the petitioner by the competent authorities under the Right to Education Act, 2009 in Standard I during the academic year 2020-21 or 2021-22.

3. The petitioner's son was issued a certificate of disability of persons with autism by Nair Hospital on 16th October, 2018. Sometime in the year 2019, he petitioner applied for online admission of his son under the Right to Education Act, 2009.

4. On 10th April, 2019, the respondent nos. 3 and 4 issued a letter of allotment under the provisions of Right to Education Act, 2009

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thereby granting admission to the petitioner in the respondent no.1 school for the 1st standard English Medium. It was clearly provided that the applicant was to verify the documents before the committee between 11th April, 2019 to 26th April, 2019. It is the case of the petitioner that the competent authority vide letter dated 11th April, 2019 informed the respondent no.1 school directing the said school to grant admission to the petitioner under the provisions of Right to Education Act, 2009 in the said school after verifying the documents submitted before the committee.

5. The petitioner made a representation to the Maharashtra State Commission for Protection of Child Rights. Vide letter dated 14th October, 2019, the Maharashtra State Commission for Protection of Child Rights addressed a letter to the Education Inspector inviting his attention to the provisions of Right to Education Act, 2009 and directing the local Grievance Settlement Committee for redressal of the complaint at the local level.

6. The petitioner thereafter made a representation to the Education Department vide letter dated 19th August, 2019 informing that though the petitioner had visited the respondent no.1 school in the month of August 2019, the Administrative Officer of the school refused to grant

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admission to the petitioner inspite of the letter of allotment issued by the authority. The petitioner thus filed this writ petition.

7. Mr.Sadasivan, learned counsel for the petitioner invited our attention to various documents annexed to the petition and would submit that the respondent no.1 had included its name on the portal under the Right to Education Act, 2009 and based on the name having appeared on the portal, the competent authority had directed the respondent no.1 to grant admission to the petitioner under the 25% reservation under the Right to Education Act, 2009 as far back as on 10th April, 2019. He submits that though the petitioner had approached the respondent no.1 school, no admission was granted to the son of the petitioner by the respondent no.1.

8. It is submitted that the directives issued by the Education Officer to grant admission under the 25% quota under the provisions of Right to Education Act, 2009 is binding on the respondent no.1.

9. Mr.Bakhru, learned counsel for the respondent no.1 on the other hand would submit that the petitioner is not entitled to be admitted in the respondent no.1 school on the ground that the respondent no.1 being a minority unaided educational institution managed by the

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respondent no.2 which is a public charitable trust. He submits that the respondent no.2 had applied to the Government of Maharashtra, Minorities Development Department under the provisions of the National Commission for Minority Educational Institutions Act, 2004 for the status of Minority Educational Institution within the meaning of section 2(g) of the said Act. The Government of Maharashtra has conferred the respondent no.2 with the status of the minority educational institution within the meaning of section 2(g) of the said Act vide certificate dated 17th February, 2020.

10. It is submitted by the learned counsel that the provisions of Right to Education Act, 2009 does not apply to the minority educational institution under the provisions of the National Commission for Minority Educational Institutions Act, 2004. It is submitted that though the State of Maharashtra had granted certificate in favour of the respondent no.2 granting status of minority educational institution on 17th February, 2020, the said status would relate back to the date of incorporation of the said institute. In support of this submission, learned counsel invited our attention to the paragraph (6) of the affidavit in reply and would rely upon the authorities cited therein.

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11. A perusal of the record indicates that the respondent no.2 has been granted certificate of 'minority educational institution' within the meaning of section 2(g) of the National Commission for Minority Educational Institutions Act, 2004 on 17th February, 2020. It is not in dispute that the respondent nos.1 and 2 were issued a letter in favour of the petitioner for granting admission to the son of the petitioner in the respondent no.1 school much prior to the date of such certificate dated 17th February, 2020. The respondent nos. 1 and 2 were thus required to comply with the said directives issued by the competent authority within the time prescribed therein which was much prior to the said date of the said certificate issued in favour of the respondent no.2 institute under the provisions of National Commission for Minority Educational Institutions Act, 2004.

12. The respondent nos. 1 and 2 having committed default in not complying with the directives issued by the Education Department before the date of obtaining such certificate dated 17th February, 2020 cannot be allowed to now urge that such certificate having been issued subsequently, the default already committed by them stood condoned.

13. Upon raising a query upon the learned counsel for the respondent nos. 1 and 2 whether any other students had been admitted

by the respondent nos. 1 and 2 prior to the date of obtaining such certificate dated 17th February, 2020 under the provisions of the Right to Education Act, 2009, learned counsel fairly on instructions states that four students were admitted prior to 17th February, 2020 based on the directives issued by the Education Department under the provisions of the Right to Education Act, 2009.

14. Upon raising further query with the learned counsel that if the respondent nos. 1 and 2 would have complied with the directives issued by the competent authority prior to the date of 17th February, 2020 for the academic year 2019-20 as directed by the Education Department, whether the respondent nos. 1 and 2 could have cancelled the admission of the son of the petitioner. learned counsel for the respondent nos. 1 and 2 could not dispute that the respondent nos. 1 and 2 could not have cancelled the admission once granted to the petitioner on the ground of minority status granted subsequently.

15. In our view, the respondent nos. 1 and 2 cannot be allowed to take advantage of such certificate obtained after committing default in complying with the directives which were already issued much prior to the date of such certificate. The disobedience of the directives issued by the Education Department cannot be condoned by obtaining

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certificate as minority education institution subsequently.

16. Insofar as submission of the learned counsel for the respondent nos. 1 and 2 that the name of the respondent no.1 was included on the portal by the authority on the premise that the respondent no.2 was not conferred with any such minority status at that point of time is concerned, we are inclined to accept the submission made by the learned counsel for the petitioner that the name of the respondent no.1 was included on the portal not by the Education Department but by the respondent no.1 on its own.

17. A perusal of the medical certificate annexed by the petitioner at page 21 indicates that the recommendations made by the Department of Psychiatry is that the son of the petitioner should continue in a regular school with various further advise.

18. We accordingly direct the respondent nos. 1 and 2 to comply with the directives issued by the Education Department on 11th April, 2019 annexed at page 25 read with letter dated 10th April, 2019 and to grant admission to the son of the petitioner, Master Rasesh Ashish Patel in the respondent no.1 school within one week from today on the petitioner complying with the other legal requisitions, if any.

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19. Learned counsel for the respondent nos. 1 and 2 prays for stay of the operation of this order. Application for stay is rejected.

20. Writ petition is disposed of in the aforesaid terms. Rule is made absolute in the aforesaid terms. No order as to costs.

21. The parties to act on the authenticated copy of this order.

[R.I.CHAGLA, J.]

[R. D. DHANUKA, J.]