

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CW NO. 58 OF 2020

1. Ahle Sunnat Jamatul Muslamin,
A Society registered under the
Societies registration Act, 1860,
under No, 65/Goa/98
Through its General Secretary
Mr. Shaikh Sulaiman Karol,
Havingoffice at Pilliem,
Dharbandoda, Goa.

2. Kum. Ziya Kausar,
Minor of age 11 years, student,
through her Natural Guardian
Shri Shaikh Ishityak Ahmad,
President of the Parents Teacher
Association of Taleem Primary School
Aged 36years, Private Service
r/o Opposite Taleem Primary School,
Pilliem, Dharbandoda, Goa. Petitioners

V e r s u s

1. State of Goa,
Through its Chief Secretary,
Secretariat Building,
Porvorim, Bardez, Goa.

2. The Directorate of Education,
Through Director of Education,
State of Goa,
Alto Porvorim, Bardez, Goa.

3. The Deputy Director of Education (ACAD)
The Directorate of Education,
State of Goa,
Alto Porvorim, Bardez, Goa. Respondents

Mr. Vallabh Pangam, Advocate for the Petitioners.

Mr. D. Pangam, Advocate General with Ms. Maria Correia, Additional Government Advocate for the Respondents.

Coram :- M. S. SONAK &
M. S. JAWALKAR, JJ.

Date : 11th August, 2020

ORAL JUDGMENT (*Per M. S. Sonak, J*)

1. Heard Mr. Vallabh Pangam, the learned Counsel for the petitioners and Mr. D. Pangam, the learned Advocate General for the respondents.

2. Rule. The Rule is made returnable forthwith at the request of and with the consent of the learned Counsel for the parties. The learned Additional Government Advocate waives service on behalf of the respondents.

3. The petitioners claim to be a school/institution which is entitled to protection under Article 30 of the Constitution of India.

4. The petitioners, applied for opening of Middle School, since the petitioner, has already established and is operating a primary school in the Village of Pillien, Dharbondara, Goa. This application was, however, rejected by the Director of Education, who is the competent authority, vide order dated 15.05.2020. Hence, the present petition.

5. The impugned order dated 15.05.2020 reads as follows :

“In this regard, I am directed to inform you that your proposal has been examined and it is to inform that there is strong objection from Two(02) close-by Aided High School. If permission is granted to your High School it will lead to unhealthy competition and may result in closure of existing High school. Further, existing nearby High school can accommodate more students as such there is no need of additional school as it will adversely affect their enrollment. Besides, A.D. E. I. has pointed out certain shortcomings in the Feasibility Report i.e proposed school does not have its own playground facility. Hence the proposal for opening High School in Urdu Medium is rejected.”

6. From the aforesaid impugned order, it is evident that the rejection of permission to start a middle school is broadly on the following grounds :-

(a) that such permission will result in unhealthy competition with the existing nearby schools; and

(b) that the petitioners' existing school does not have its own playground.

7. The affidavit filed in support of this petition by the Director of Education, however, does not appear to stress much upon the two reasons stated in the impugned order but rather, the emphasis is on the alleged lack of infrastructure in the existing school. Even the learned Advocate General pointed out that the existing school lacks the infrastructure and, therefore, it may not be feasible to commence a middle school with the existing infrastructure.

8. Mr. Vallabh Pangam, the learned Counsel for the petitioners, points out to the material placed by the petitioners on record in relation to infrastructure. He points out that in the first place, the inspection report by

the official of the Directorate of Education, which is to be found at page 54, does not say that there is any appreciable lack of infrastructure but, rather, recommends the grant of permission. In any case, he points out that now arrangements have been done to have a playground. He pointed out that the new construction in the neighbourhood is completed and the petitioners have made arrangements to use the portion of these premises as well. He refers to the plan and Leave and License Agreements which have been placed on record by the petitioners, more particularly with the affidavit in rejoinder. He maintains that even the existing structure has sufficient infrastructure, particularly now that there is a library and laboratory in place.

9. Having heard the rival contentions, we are satisfied that the impugned order dated 15.05.2020 warrants interference in the peculiar facts and circumstances of the present case.

10. Without going into the issue as to whether the principle in the case of *Mohinder Singh Gill & anr. vs. The Chief Election Commissioner,*

New Delhi & Ors. (1978) 1 SCC 405, applies to a situation of the present nature, we find that the first reason contained in the impugned order i.e. unhealthy competition, is not a legal or valid reason to deny permission to the petitioner to start a middle school. This is because at least, *prima facie*, the petitioners are entitled to the protection of Article 30 of the Constitution of India. Secondly, the petitioners wish to open a middle school in continuation of the existing primary school in Urdu medium. The nearby school to which reference is made, is admittedly, an English medium school and, in any case, a school which is not in Urdu medium. Therefore, the first reason in the impugned order is quite unsustainable and the impugned order warrants interference.

11. Insofar as the issue of playground is concerned, Mr. Vallabh Pangam, the learned Counsel, submits that now arrangements have been made insofar as the playground is concerned. While we appreciate the necessity of having a proper playground, this requirement should be considered pragmatically just as this condition is considered quite pragmatically by this very Directorate of Education when it comes to grant of permission to several

schools. Therefore, the impugned order in its entirety warrants interference and we have no hesitation to quash and set aside the same.

12. On the issue of infrastructure, we feel that the inspection report placed on record at page 54 to a certain extent supports the case of the petitioners. Besides, we now find that the petitioners have placed alongwith the affidavit in rejoinder, substantial material on the issue of infrastructure. Now that we have set aside the impugned order, we feel that it is only appropriate that the Director of Education re-examines and re-considers the petitioners' application for permission to start a middle school afresh and, in accordance with law. For this purpose, the Director of Education may take into consideration the material placed in this petition as regards infrastructure. The Director is also required to take into consideration the report as submitted by its own officials with regards to the infrastructure in the existing school. A fresh decision will have to be taken by taking into

account all these aspects. In particular, the Directorate of Education will have to look into the issue of availability of library and laboratory space.

13. At the same time, we feel that all these aspects will have to be considered by the Director in a pragmatic and no doubt in a bonafide manner. We have no doubt that there will be bonafides in the exercise of the duties by the Director. We only say this because the matter will have to be examined from the perspective that at least, *prima facie*, the petitioners have protection of Article 30 of the Constitution of India. We do not think that there are too many Urdu medium schools in the State of Goa and if, there is already a primary school in Urdu medium, the Director will have to keep in mind the interest of the students as well as the students may wish to pursue further education in Urdu medium. We are sure that all these aspects will be taken into consideration by the Director while disposing off the petitioners' application afresh in accordance with law.

14. Further, in the peculiar facts and circumstances of the present case, we are constrained to direct the Director of Education to complete this exercise

of re-consideration and communication of its decision as expeditiously as possible and, in any case, within a period of two weeks from today. The Director or any official from the Directorate may also consider inspecting the existing school as well as the additional infrastructure which the petitioners say is now available. Such inspection can be held in the presence of representatives of the petitioners. The Director may also consider granting a personal hearing or opportunity to make written submissions to the petitioners. All this will assist the Director in arriving at a proper decision in accordance with law.

15. The Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

16. All concerned to act on the basis of an authenticated copy of this order.

M. S. JAWALKAR

M. S. SONAK, J.

arp/*