

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 35 OF 2009
[Arising out of SLP(C) No.12856/2008]

**ADMINISTRATIVE OFFICER, MUNICIPAL SCHOOL
BOARD, KAGAL**

.....APPELLANT(S)

Versus

**KAGAL TALUKA KALA KRIDA SHAIKSHANIK AND
SANSKRUTIK MANDAL & ORS.**

.....RESPONDENT(S)

ORDER

Leave granted.

2. The appellant is the Municipal School Board, Kagal, ('the Board', for short). Sant Rohidas Vidyamandir, the fourth respondent, is one of the schools run by the Board. The said school, which was running classes from first to fourth standards, started fifth standard classes (Standard V Division) from the session 2007-2008. The first respondent, which runs a secondary school (V Standard to X Standard) in the Zila Parishad area adjoining the municipal area, filed W.P. No.8261/2007 seeking a direction to the State of Maharashtra, the appellant and the Deputy Director of Education, Kolhapur Region to close down the V Standard started in the fourth respondent school and a further direction not to grant any recognition or permission to the fourth respondent school to start Standard V Division. They also sought an interim direction restraining the fourth

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respondent school from running or continuing the V Standard classes. The first respondent contended that starting of the V Standard classes by the fourth respondent school was unauthorised and illegal.

3. In the said writ petition, the High Court, while issuing rule on 8.4.2008 issued an interim direction to the fourth respondent to close down the V Standard and transfer the students of V Standard to other schools as per the desire of the students and their guardians, and issue school leaving certificates to the students to enable them to get admissions in other authorised schools. The Deputy Director of Education and the petitioner were also directed by way of interim order to ensure that the V Standard classes opened by the fourth respondent was closed down and the students were transferred to other schools. The said interim order is challenged by the appellant Board which runs the fourth respondent school.

4. We find that the High Court has virtually allowed the writ petition by the interim order, that too by an irreversible peremptory direction that the students be shifted to other schools. The students were not parties before the High Court and they have been asked to take school leaving certificates from the fourth respondent school and shift to other schools. Such a peremptory irreversible step should not normally have been granted by way of interim relief, unless

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extraordinary or special circumstances exist. We find that there are no such special circumstances.

5. Learned counsel for the first respondent submitted that the fourth respondent was one of the feeder schools for the first respondent school, and if the fourth respondent runs classes from V Standard onwards, their admission will be affected. This contention, we are afraid, is not sound. The question is not whether first respondent is affected, but whether fourth respondent was doing something which was illegal and whether the first respondent had any right to complain.

6. Primary education is defined in Section 2(15) of the Bombay Primary Education Act, 1947 as meaning education in such subjects and upto such standards, as may be determined by the State Government from time to time. Primary education, therefore, does not mean education from first to fourth standards only, as contended by the first respondent.

7. The State Government has, in its counter filed before the High Court, clearly stated that as per the provisions of the Mumbai Primary Education Rule 1949 the Primary Education Boards of Municipal Council are empowered to open standards as natural growth in the primary schools being run by them, that

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the Primary Education Board had opened the V Standard classes in the fourth respondent school in pursuance of such natural growth and that no permission was required to open V Standard classes as natural growth in schools run by Municipal Board. It was further categorically stated that the Board was authorised to open V Standard as natural growth in the fourth respondent school and that was not unauthorised or illegal. We may also refer to the Government Resolution dated 14.11.1979 of the State Government relied on by the first respondent itself which says that classes V to VII may either be annexed to secondary schools or to primary schools run by local bodies. If that is so, primary schools run by Boards, *prima facie*, can run classes V to VII. Be that as it may. All that we are pointing out is there was absolutely no basis for the High Court at the stage of admission of the writ petition filed by the first respondent to assume that the starting of V Standard by the fourth respondent school was unauthorised or illegal and direct closure by way of interim relief.

8. We, therefore, allow this appeal, set aside the interim order. The fourth respondent school run by the appellant can, therefore, have V, VI and VII Standards, subject to the final decision in the writ petition. We are told that the issue as to whether Standards V to VII can be part of primary

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schools, is causing considerable confusion in the State. In view of it, we request the High Court to dispose of the Writ Petition expeditiously.

**.....J.
(R.V. RAVEENDRAN)**

**New Delhi;
January 05, 2009.**

**.....J.
(J.M. PANCHAL)**