

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION (L) NO.1063 OF 2021
IN
WRIT PETITION (L) NO.2331 OF 2019**

Rao Educational Trust } **Applicant**

In the matter between		
Manju Ramesh Jaiswal	}	Petitioner
And		
State of Maharashtra and Ors.	}	Respondents

**WITH
WRIT PETITION (L) NO. 2331 OF 2019**

Manju Ramesh Jaiswal	}	Petitioner
Versus		
State of Maharashtra and Ors.	}	Respondents

WITH
INTERIM APPLICATION (L) NO.9969 OF 2020
WITH
INTERIM APPLICATION (L) NO.2333 OF 2020
WITH
INTERIM APPLICATION (L) NO.2 OF 2021
WITH
INTERIM APPLICATION (L) NO.508 OF 2021
WITH
INTERIM APPLICATION (L) NO.514 OF 2021
WITH
INTERIM APPLICATION (L) NO.1282 OF 2021
WITH
INTERIM APPLICATION (L) NO.1281 OF 2021
WITH
INTERIM APPLICATION (L) NO.1283 OF 2021
WITH
INTERIM APPLICATION (L) NO.1284 OF 2021

Mr.S.C.Naidu with Dr.Ramesh Asawa, Mr.Aniketh Poojari, Mr.Sudesh Naidu i/b. Mr.Aditya Hegde for the applicant.

Mr.A.Y.Sakhare with Mr.Chirag Shah, Mr.Rohan Mirpury and Mr.Raj Adhia i/b. Mr.Jayesh Patel for the petitioner.

Ms.Geeta Shastri-Additional Government Pleader for the State.

Mr.Kiran Gandhi i/b. M/s.Little and Co. for respondent no.9.

Mr.Ashish Kamat with Mr.Vishesh Malviya, Ms.Kinjal Shah and Ms.Pooja Vasandani i/b. M/s.Rashmikant and Partners for respondent no.6.

Dr.Birendra Saraf-Senior Advocate i/b.Mr.Rahul Soman for the proposed intervener.

**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE :- JANUARY 15, 2021

ORAL JUDGMENT:

1. Interim Application (L) No.1063 of 2021 is on Board today. The prayers therein read as follows:-

"a) That the ex-parte ad-interim order dated 29th December, 2020 and continued vide further orders dated 31st December, 2020 and continued with modification vide order dated 4th January, 2021 be recalled and vacated.

b) In the alternate the order dated 4th January 2021 be varied, modified or revised and Respondent Board be directed to forthwith allot and communicate the Provisional Index and Code numbers to each of the five Colleges of the Applicant and to act upon the said Index Number and Code Number for accepting the forms of students studying in Std. XII of the said five colleges;

c) That in exercise of its extra ordinary jurisdiction direct the Respondent Board to communicate index & code number to each college of the applicant and thereafter accept examination forms with prescribed fees of all eligible students for appearing in A.Y. 2020-21 HSC Board Exams or in the alternate accept all examination forms of all eligible students studying in the five colleges of the Applicants for A.Y. 2020-21 alongwith prescribed examination fee through any other recognized colleges;

d) The Respondent Board be directed to allot Seat Number, Identity Card, Hall Ticket, etc. to facilitate students studying in Std. XII (5 colleges of Applicant) to appear and give HSC Board Exam A.Y. 2020-21."

2. Appearing in support of the application, Mr.Naidu, learned advocate for the applicant (the respondent no.5 in the writ petition) has challenged the *locus standi* of the petitioner to invoke the writ jurisdiction. In addition, he has also submitted that the writ petition stood rejected for non-compliance with office directions for removal of objections; yet, the petitioner obtained orders in such disposed of writ petition by filing interim applications. It has also been submitted by him that the writ petition is a "cut, copy and paste" of Public Interest Litigation (L) No.69 of 2018, which stood dismissed by reason of an order dated 16th October

2019 owing to the PIL petitioner not removing the objections.

3. Having heard Mr.Naidu, we had called upon Mr.Sakhare, learned senior counsel for the petitioner to satisfy us that she had/has the necessary *locus standi* to present this writ petition.

4. Mr.Sakhare, by referring to the pleadings, has sought to contend that the petitioner in fact has the *locus standi* and therefore, being satisfied, a coordinate Bench of this Court issued Rule on 14th October 2019; not only that, other coordinate Benches also found merit in the cause espoused by the petitioner resulting in an order dated 28th January 2020 being passed, whereby the State Government was restrained from granting approvals/permissions in respect of opening of junior colleges in violation of the relevant law, i.e., the Maharashtra Self-Financed Schools (Establishment and Regulation) Act, 2012 (hereafter "the Act", for short). Not only that, the Government had made an application in the pending writ petition seeking permission to consider applications that were pending having regard to introduction of appropriate rules framed under the Act and an order on such application was passed on 2nd November 2020 granting liberty to the State Government to consider such applications in accordance with the rules.

5. Based thereon, it is the submission of Mr.Sakhare that the writ petition is maintainable and as such, ought to be taken to its logical conclusion not on the basis of any technical

objection that might have been raised by Mr.Naidu or on the ground that the petitioner lacks the *locus standi* to present it, but strictly on the merits of the cause touching immense public interest; if necessary, by converting the writ petition into a 'Public Interest Litigation'.

6. The main prayers in the writ petition read as follows:

"(a) That this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, thereby calling for the records and proceedings relating to the permissions and sanctions granted to the Respondent No.4 to 8 for setting up the school/Junior Colleges and after examining the legality, validity and propriety thereof, the said permissions and sanctions be quashed and set aside;

(b) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other Writ or order or direction under Article 226 of the Constitution of India directing the Respondent No.1, 2 and 3 to strictly without any deviation whatsoever to follow the procedure as mandated under the provisions of Maharashtra Self-Financed Schools (Establishment and Regulation) Act, 2012 in granting approval / recognition to school/Junior Colleges and/or Schools;

(c) That this Hon'ble Court be pleased to appoint independent Court Commissioner and the Respondent No.3 and/or any other person to visit the Junior Colleges established by the Respondent No.4 to 8 and file necessary report to this Hon'ble Court."

7. Having heard Mr.Sakhare and Mr.Naidu and on perusal of the materials placed before the Court, we are of the

considered opinion that the petitioner has approached the Court with a veil on her face to hide her identity. In para 1 of the writ petition, the petitioner has described herself as a trustee of Kausalya Shringare Education Trust. However, the petitioner conveniently did not disclose that on the date she presented the writ petition before the Court, i.e. 8th August 2019, she was also the treasurer of Nirmala Education Society, a trust engaged in education as the respondent no.5 in the writ petition, on whose behalf Mr.Naidu has contended with vehemence that both, Nirmala Education Society and the respondent no.5, are competitors in trade and that the writ petition has been presented before the court by the petitioner ostensibly to enable Nirmala Education Society steal a march over the respondent no.5. According to Mr.Naidu, if the students admitted in the institutions run by the respondent no.5 are disabled from appearing in the ensuing examination, they may choose to secure admission in the junior colleges run by Nirmala Education Society.

8. Although we are not inclined to examine this submission of Mr.Naidu, as a matter of fact what pains us is the conduct of the petitioner in not disclosing in the writ petition her association with Nirmala Education Society. We also have a doubt whether the petitioner has come with bonafide disclosure of her identity.

9. Apart from the above, what we find is that the writ petition is almost a mirror reflection of the contents of Public Interest Litigation (L) No.69 of 2018, which was pending on

the file of this Court when this writ petition came to be presented, with minor changes here and there. Interestingly, by referring to certain circumstances, Mr.Naidu has sought to establish a nexus between the litigant in the PIL petition and Nirmala Education Society. However, we need not examine that aspect of the matter, for, the writ petition having been copied from the aforesaid PIL petition does not contain a single pleading as to how the petitioner's legal right was infringed leading her to approach the writ court for redress. As has been submitted by Mr.Naidu and examined by us, the writ petition having repeated the contents of the PIL petition and the PIL petitioner not being under any compulsion to disclose in the petition how his personal right has been affected, the writ petition (drafted by an advocate borrowing inspiration from the PIL petition as Mr. Sakhare would persuade to believe) does not contain any pleading with regard to affectation of the right of the petitioner by reason of mushrooming of junior colleges in the State of Maharashtra without compliance with the Act and the Rules and without the State Government taking appropriate steps to check such mushrooming.

10. Mr.Naidu has referred to us the decisions of the Supreme Court in **The Nagar Rice and Flour Mills and Ors. vs. N.Teekappa Gowda and Bros. and Ors.**, reported in AIR 1971 SC 246, **Jasbhai Motibhai Desai vs. Roshan Kumar and Ors.** reported in AIR 1976 SC 578 and **K.D.Sharma vs. Steel Authority of India Limited and Ors.**, reported in (2008) 12 SCC 481 and submitted that the petitioner being

the face of Nirmala Education Society and Nirmala Education Society having a business interest in ensuring that the respondent no.5 is pushed out of business, the writ petition should be immediately dismissed.

11. The decisions in **Nagar Rice and Flour Mills** (supra) and **Jasbhai Motibhai Desai** (supra) are authorities for the proposition that a rival in trade cannot question setting up of a business even if there is statutory violation. Even if Nirmala Education Society had presented the petition with full particulars, the law laid down in **Nagar Rice and Flour Mills** (supra) and **Jasbhai Motibhai Desai** (supra) would have been squarely applicable for nipping the challenge in the bud by this Court. We shall assume, for all effective purposes and intents, that this is a writ petition at the instance of Nirmala Education Society trying to stall the respondent no.5 from running its junior colleges and on such premise, the ratio *decidendi* in **Nagar Rice and Flour Mills** (supra) and **Jasbhai Motibhai Desai** (supra) would squarely apply. Assuming that this writ petition is not to be regarded as one at the instance of Nirmala Education Society but at the instance of the petitioner in her personal capacity, the decision of the Supreme Court in the case of **Mani Subrat Jain etc. vs. State of Haryana and Ors.** reported in AIR 1977 276 would be attracted. The Supreme Court observed that it is elementary, though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a

mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. No case of such nature is set up in this writ petition by referring to the personal right of the petitioner which has been affected. The decision in **K.D.Sharma** (supra) reminds us that whenever an individual invokes the jurisdiction of the Court by making false statement or concealing material facts or by misleading the Court, in such case, the Court should dismiss the writ petition at the threshold without consideration of the merit of the claim. We see no reason not to apply the ratio of the said decision here.

12. The cause, otherwise espoused by the petitioner, is of immense significance for the students' community of the State of Maharashtra. None of the respondents, at the relevant time, had raised objection to the maintainability of the writ petition and therefore, the coordinate Bench considering the writ petition on 14th October 2019 proceeded to issue Rule and thereafter made appropriate interim orders considering the gravity of the allegations that were levelled. Indeed, a good cause had led to an order being passed by the coordinate Bench, which ultimately culminated in framing of the Rules under the Act, which were long overdue. The larger purpose of introduction of the Rules under the Act has, thus, been served. However, we cannot lose sight of the fact that howsoever good a cause may have been set up for invocation of the writ jurisdiction, the golden rule is that the party approaching the Court must approach it with clean hands. We

have no doubt in our mind that this writ petition, which is at the instance of an individual, did not deserve even an order for issuance of Rule, had the entire facts and circumstances been brought to the notice of the coordinate Bench when it was first moved.

13. The other prayer of Mr. Sakhare to convert the writ petition into a PIL petition has to be rejected since the petitioner has a personal interest to push out the respondent no.5 from the trade. Her bona fides would be in question in the first place and the basic foundation of the PIL petition in peril. We, therefore, reject the prayer.

14. For the reasons aforesaid, we dismiss the writ petition and discharge the Rule. There shall be no order as to costs.

15. Since the writ petition itself stands dismissed on the ground of lack of locus standi and omission to disclose material facts, all pending applications stand disposed of without any order. Interim order, if any, stands vacated forthwith.

16. Before parting, in the interest of the students' community, we wish to remind the State Government that mushrooming of schools/junior colleges in violation of the statutory enactments/rules is not what the people of Maharashtra would like to have and, therefore, it is incumbent on the Government to keep a strict vigil on all such institutions which have been allowed to operate observing the statutory requirements in the breach. If indeed the State has

to honour its obligations as enshrined in Part IV of the Constitution, it is the need of hour that the State cracks the whip on errant officers conniving with persons responsible for operating schools/junior colleges in breach of the statute.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)