

BEFORE THE MAHARASHTRA STATE COMMISSION
FOR PROTECTION OF CHILD RIGHTS

Under the section 32 (3) of the Right to Education Act, 2009

Case No. 248/2016-17

Bhavan BP Vidya Mandir
and Bharatiya Vidya Bhavan -- Petitioner

v/s

Mangesh Maind -- Respondent no 1
Municipal Corporation Committee -- Respondent no 2

Background:

This matter has been filed by the petitioner against the order passed by the Municipal Corporation Committee who is the Respondent no.2 directing the petitioner to admit the son of Respondent no .1. In the appeal contended by the petitioner that the child of the Respondent no. 1 was admitted under the free ship scheme of the Right to Education Act, 2009 (hereinafter referred to as RTE Act) on the basis of his income. However , in one application filed by respondent no 1 the income has been shown as Rs. 80000 per annum while in another

the monthly income was shown as Rs 21000 . It is also contended that the Respondent no 1 while applying for application under general category has shown income more than 1 lakh and under reserve category has shown Rs.80000/- per annum. Therefore, the petitioner rejected the application of respondent no.1 When the respondent no 1 approached the Respondent no 2 ; he had decided the case without applying his mind and directed the petitioner to admit the child of Respondent no.1 under the free ship scheme. The petitioner has rejected 12 applications on the ground as stated by the petitioner in the matter of respondent no.1 and thus requested the Maharashtra Commission for Protection of Child Rights (Hereinafter referred to as the Commission) to set aside the order dated 30.8.2016 passed by Respondent no.2 and requested the Commission to pass injunction order dated 30.8.2016 for effect and operation.

The Commission listed the matter, issued the notices, called the parties on date 21/10/2016, Dt.11/11/2016, Dt. 16/01/2017, Dt.20/1/2017, Dt.14/06/2017, Dt.3/11/2017, Dt.30/11/2017.

2. The Respondent no 2 did not appear however the Respondent no 1 filed the reply refuting the charges raised by the petitioner in the matter . The rejoinder was filed by the petitioner raising the same issue as raised in the original petition. The Respondent no.1 has also requested the Commission to reject this application . During the time of hearing the advocate appearing for the petitioner was asked to clarify the issue on the certificate issued by the Tehsildar who is the

application about the income. The income is decided on the basis of certificate. If the petitioner has any grievance he has to first approach the competent authority who has given the mandate to decide the case against the order of Tehsildar. The advocate requested the Commission to provide them with time so that the petitioner can approach the appellat authority against the order passed by the tehsildar. Sufficient time has been granted however the petitioner failed to produce the copy of any order against the certificate issued by Tehsildar. Thus, the income certificate as produced by the Respondentno.1 and on that basis decision taken by Respondent 2 directing the petitioner to grant admission to the child of Respondent 1 under the freeship scheme is maintainable.

3. Relevant Legal provisions

1. Sub Sec 1 (c) of Section 12, Section 3 of RTE act and rule made there under called Maharashtra free and Compulsory Education rule 2011 Allotment of seats under 25% quota, rule 2013 notification dated Dec 2013 and April 2014 regarding the decision on the local and appellat authority, sec 32 (2) and 32 (3) of the RTE Act, are applicable in this matter.

During the hearing, the learned advocate on behalf of petitioner cited the Hon'ble Supreme Court 's ruling in the **Ishwar Co-op Hsg Society v/s Parmanand Sharma 2010 (14) SC 213**. Raising the issue that in the said matter the Supreme Court has said that, in case of submission of contrary documents the person shall lose their personal rights however in this matter this citation is not applicable

as issue is clear that the tehsildar has issued certificate which shows that the Respondent no 1 is under the category of weaker sections of the society.

5. On the basis of the submissions made by the parties, relevant provisions of the law and documents produced, following question arise for consideration :

1. Whether the petitioner's appeal is maintainable?

After going through the record it appears that the petitioner's appeal not maintainable

6. Culminating all the relevant documents, legal provisions, submissions of the parties, on the basis of the contentions; the order of the commission is as follows:

1. The appeal is rejected.

2. The order passed by Respondent no 2 is confirmed with direction to the Respondent no.2 to ensure the admission of the child of Respondent no 1 in the school run by the petitioner.

By order and seal of the Commission.

sd/-
Shri.Pravin Ghughe
Chairperson,

sd/-
Shri.A.N.Tripathi
(I.F.S)
Member Secretary

sd/-
Ms. Swarda Kelkar)
Member

sd/-
(Dr.Shalini Karad)
Member

sd/-
(Shri.Santosh Shinde)
Member

sd/-
(Smt. Asma Shaikh)
Member

Maharashtra State Commission for Protection of Child Rights

Date: 06/02/2018

Place: Mumbai

