

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD.**

**SUO MOTO PUBLIC INTEREST LITIGATION ST. NO. 21063 OF 2018**

The Registrar (Judicial),  
High Court of Judicature at Bombay,  
Bench at Aurangabad, Aurangabad.

Petitioner...

**Versus**

The State of Maharashtra & Ors.

Respondent...

.....  
Mrs Rashmi Kulkarni, Advocate for the petitioner  
Mr A. B. Girase, GP for the State  
.....

**CORAM : R. M. BORDE &  
A. M. DHAVAL, JJ.**

**DATE : 19<sup>TH</sup> JULY, 2018.**

**PER COURT:-**

1. Article 21-A inserted by the Constitution (Eighty-Sixth Amendment) Act, 2002 provides for free and compulsory education of all children in age group of six to fourteen years as a Fundamental Right exercisable in such manner as the State may, by law, determine. The Parliament, considering the crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all which has been accepted since inception of our Republic, as an object, has enacted the Right of Children to Free and Compulsory Education Act,

2009 (hereinafter referred to as "Right to Education Act"). The act has been enforced since 01.04.2010. Section 6 of the Right to Education Act provides, that for carrying out the provisions of the act the appropriate Government and the local authorities shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the date of commencement of this act. Section 7 of the Right to Education Act provides, that the Central Government and the State Government have been entrusted with the concurrent responsibilities for providing funds for carrying out the provisions of this Act. The duties of the appropriate Government have been prescribed in Section 8(a), which includes providing (i) free elementary education to every child of age of six to fourteen years; (ii) ensure compulsory admission, attendance and completion of elementary education by every child of age of six to fourteen years; (b) ensure availability of a neighbourhood school as specified in Section 6, and (c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds; (d) provide infrastructure including school building, teaching staff and learning equipment; (e) provide special training facility specified in Section 4; (f) ensure and monitor admission, attendance and completion of elementary education by every child; (g) ensure good

quality elementary education conforming to the standards and norms specified in the Schedule; (h) ensure timely prescribing of curriculum and courses of study for elementary education; and (i) provide training facility for teachers.

2. Section 9 of the Right to Education Act provides, that every local authority shall provide free and compulsory elementary education to every child. Section 9(b) of the Right to Education Act further provides, to ensure availability of a neighbourhood school as specified in Section 6 and to provide infrastructure including school building, teaching staff and learning material as specified in Section 9(f) of the Right to Education Act. The appropriate Government is also duty bound to provide for pre-school education as specified in Section 11 of Right to Education Act. Norms and standards have been laid down in Section 9 of the said Act.

3. There are rules framed by the State Government under the rule making powers provided under the Right to Education Act.

4. The reports published on 16.07.2018 in daily newspaper 'Divya Marathi' and news item published in daily newspaper 'Sakal' on 18.07.2018, persuade us to take cognizance of the issue as regards provisions of infrastructure in the schools being operated by the Local

Authorities. As defined under sub-section (h) of Section 2 of the Right to Education Act, 'Local Authority' means a municipal Corporation or Municipal Council or Zilla Parishad or Nagar Panchayat or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local authority in any city, town or village. Zilla parishad and Municipal Corporation are local authorities within the meaning of provisions of Right to Education Act, 2009.

5. It is not a matter of controversy that, Zilla Parishad, Aurangabad, operates number of schools and the report published in the newspaper 'Divya Marathi' relates to infrastructure i.e. School Buildings required to be provided to 331 schools in the district. It is reported that, the condition of schools operated by Zilla Parishad in District is not at all satisfactory and has acquired quite a dangerous proportion. It is also quite unsafe for the children to attend such schools, which do not have the proper infrastructure and the education is imparted in dilapidated buildings. It is also reported that, the number of class-rooms provided are also not in proportion with the students' strength of the school. Similarly, it has been reported in the daily newspaper 'Daily Sakal' that the school operated by the Zilla Parishad at village 'Banoti' in Soygaon taluka, does not

have a own building, although the school is being operated since last about 60 years. The photographs published indicate a very pathetic condition of the school buildings.

6. As has been recorded above, it is one of the duties of the local authority, as provided u/s 9(f) of the Right to Education Act, to provide proper infrastructure including school building, teaching staff and learning material. It is also the duty of the appropriate Government to provide for the infrastructure including school building, teaching staff and learning equipments as provided in sub-clause (d) of Section 8 of the Right to Education Act. The Local Authorities or the State Government cannot be permitted to canvass financial constraints as an excuse for not providing the proper infrastructure to the school. The constitutional duty to be performed by the Local Authorities and the State Government of imparting free and compulsory education to the students, cannot be avoided under any pretext. It shall also be the duty of the State Government to ensure providing for proper infrastructure and the adequate educational facilities for the students between age group of six to fourteen years. It is a general perception, that the schools imparting training in the local language do not possess the adequate infrastructure including school building and the trained teaching faculty. There is a need for the State Government and the Local

Authority to look into this aspect and share their responsibility in carrying out the provisions of the Act of 2009.

7. In the circumstances, we call upon the Principal Secretary of the School Education Department of the State, the Director of Education, the Principal Secretary of the Rural Development Department and the Principal Secretary of Urban Development Department, to place before us the data in respect of availability of school infrastructure for the schools operated by the Local Authorities in the State. It shall also be pointed out, as to what are the deficiencies as regards infrastructure with particular reference to School Buildings. It shall also be informed, whether the schools operated by the local authorities have number of class rooms in proportion with the number of students admitted in the school, whether the buildings are owned by the Local Authorities or are taken on rent and the age of the building. The issue as regards structural stability and condition of buildings shall also be addressed and necessary information in that regard shall also be placed before this Court. So far as the issue of adequate number of teachers in proportion with the students admitted in the school is concerned, the data in that regard shall also be placed before this Court. It shall also be informed that, as to what steps are being taken for providing the education material including free text books to the students attending

the schools operated by the local authorities. Necessary information shall be furnished together with the affidavit by the concerned respondents within six weeks from today.

8. Issue notice to the respondents, returnable on 30.08.2018.
9. Counsel - Mrs. Rashmi S. Kulkarni is appointed as *amicus curiae* to assist the Court. Mrs Kulkarni may present the petition within two weeks from today.

**[ A. M. DHAVALA ]**  
**JUDGE**

**[ R. M. BORDE ]**  
**JUDGE**

Punde