



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

22 WRIT PETITION NO. 9375 OF 2024

SBOA PUBLIC SCHOOL THROUGH ITS ASSOCIATE SECRETARY
VERSUS
THE STATE OF MAHARASHTRA THROUGH
ITS SECRETARY AND OTHERS

...
Advocate for petitioner : Mr. Milind Madhu Joshi
Addl. GP for the respondent – State : Mr. A.R. Kale
Advocate for respondent no. 3 : Mr. S.C. Swami h/f. Mr. S.R. Erande
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 2 SEPTEMBER 2024

PC :

The petition raises a peculiar issue.

2. The petitioner is a private aided school threatened with an action for not accommodating the students sent under 25% quota under the RTE Act. However, it is being pointed out that the state government had added proviso to rule 4(5) expressly stipulating that if there is school of local authority in the vicinity of an unaided school, no student shall be sent to the private unaided school. The date of amendment was 09-02-2024. The petitioner admitted students to its maximum strength in the current academic year.

3. By the judgment and order dated 19-07-2024 in Public Interest Litigation no. 61 of 2024 (***Akhil Bharatiya Samajwadi***

Adhyapak Sabha & Ors. Vs. State of Maharashtra and others) with connected PILs and writ petitions, the proviso added by way of amendment has been held be ultra vires of the RTE Act and Article 21-A of the Constitution of India.

4. Issue notice returnable on 23-09-2024.

5. Learned AGP waives service for respondents no. 1 and 2 and Mr. Swami h/f. Mr. Erande waives service for respondent no. 3.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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