

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7486 OF 2014
WITH
CIVIL APPLICATION NO. 2959 OF 2015

Jagjahir Shikshan Prasarak Mandal,
House No. 96, Near Water Tank,
Chhatrapati Chowk, Nanded,
Tq. and Dist. Nanded,
through its Secretary.

... Petitioner

Versus

01. The State of Maharashtra
Through its Principal Secretary,
Department of Social Justice and
Special Assistance, Mantralaya,
Mumbai – 32.

02. The Commissioner for Welfare of
handicapped, Maharashtra State,
3 Church Road, Pune – 1.

03. District Social Welfare Officer,
Zilla Parishad, Parbhani.

04. Janata Raja Shikshan Prasarak Mandal,
Arni, Tq. & Dist. Yavatmal,
Through its Secretary.

... Respondents

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Advocate for Petitioner : Mr. V. D. Salunke h/f Mr. P.G. Rodge
AGP for Respondent Nos. 1 and 2 : Mr. K. J. Ghute Patil
Advocate for Respondent No. 3 : Mr. P. P. Dama
Advocate for Respondent No. 4 : Mr. H. T. Gaikwad
Advocate for Intervenor : Mr. P. G. Gunale
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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 8th JULY, 2015

ORAL JUDGMENT (PER S. V. GANGAPURWALA, J.) :-

1. Heard.

2. Rule. Rule returnable forthwith. By consent of parties, taken up for final hearing at admission stage.

3. Mr. Salunke, learned counsel for the petitioner submits that the petitioner is running various Educational Institutions including residential schools for handicapped and mentally retarded students. One Vidya Vardhini Shikshan Sanstha, Nanded was running Vidyaniketan Niwasi Apang Vidyalaya, Pawadewadi, Nanded on grant-in-aid basis. The same was closed down due to internal disputes. The registration of the said Vidyaniketan Niwasi Apang Vidyalaya, Pawadewadi, Nanded was cancelled on 31.05.2012. The petitioner submitted its proposal on 25.10.2013 to respondent No. 3 for handing over the closed Vidyaniketan Niwasi Apang Vidyalaya, Pawadewadi, Nanded and to shift the said school to Pethshivani, Taluka Palam, District Nanded. The learned counsel submits that even the staff members consented to the same. It is submitted that respondent No. 3, vide a detailed report, recommended the proposal of the petitioner to respondent No. 2. Respondent No. 2, by conducting hearing in respect of proposal of the petitioner, forwarded the proposal to respondent No. 1. It is submitted by the learned counsel that the Desk Officer of respondent No. 1 also prepared detailed notings on the proposal. The learned counsel submits that the Hon'ble Minister has intervened in the matter and has passed an

order that the said closed down Vidyaniketan Niwasi Apang Vidyalaya, Pawadewadi, Nanded be handed over to respondent No. 4 society. The learned counsel submits that respondent No. 4, at no material point of time, had submitted proposal for taking over of the said closed down Vidyaniketan Niwasi Apang Vidyalaya. As there was no proposal from respondent No. 4, no question arises for recommending the said proposal by any of the authorities. It is only because of the interference on the part of the Hon'ble Minister that the order is passed in favour of respondent No. 4. Not only that, thereafter, respondent No. 1, after issuing order of handing over the closed down school to respondent No. 4, by corrigendum, corrected the shifted place as Wadgaon Grampanchayat, Taluka and District Yevatmal. The only proposal was of the petitioner. There was no other proposal. Instead of considering the proposal of the petitioner on merits, because of political interference, the said school was handed over to respondent No. 4 which is illegal and without following any procedure of law.

4. Mr. Gaikwad, learned counsel for respondent No. 4 submits that the proposal of respondent No. 4 was validly considered. The order dated 04.03.2014 granting permission is self-explanatory. It lays down that the proposal of respondent No. 4 has been considered and subject to the terms and conditions enumerated in

the said order, the respondent No. 4 is handed over the said closed down institution. No illegality has been committed. The policy of the Government has been properly adhered.

5. We have heard the learned AGP also.

6. Mr. Gunale, the learned counsel for the intervenors states that the intervenors are the employees of the closed down institution. As yet, the School is not commenced at Wadgaon, District Yavatmal. The intervenors are the members of the staff of the closed down Vidyaniketan Niwasi Apang Vidyalaya.

7. We have considered the submissions canvassed by the learned counsel for the respective parties. Respondent Nos. 1 and 2 have filed affidavit in reply. The affidavit is sworn by the Social Welfare Officer, Block-A, Zilla Parishad, Nanded. Paragraph No. 2 of the said affidavit reads as under :

"2. It is submitted that, then the Hon'ble Minister Social Justice and Special Assistance Department, Mantralaya, Mumbai after obtaining the oral information from Sub-ordinate Officers made an endorsement that the Marathwada Region having larger Number of handicapped schools therefore, the school to be shifted at Arni, Dist. Yavatmal. And as per order of Hon'ble

Minister the Government Resolution dated 4th March, 2014 is passed and issued by the Government with following all the rules and regulations in this behalf and in the interest of Welfare of handicapped students. The said Government Resolution dated 4th March 2014 is already annexed to the petition at Exhibit-E."

8. In fact, by reading paragraph No. 2 of the affidavit in reply as quoted above, it is clear that the procedure to be followed has been given a ceremonial send-off by the authorities. It is stated in the affidavit that the Hon'ble Minister, Social Justice and Special Assistance Department, after obtaining oral information from the Sub-ordinate Officers, made an endorsement that the Marathwada Region is having large number of handicapped schools, therefore the school should be shifted at Arni, District Yavatmal, and as per order of the Hon'ble Minister, the Government Resolution dated 04.03.2014 is issued. The affidavit nowhere controverts the factual contentions raised by the petitioner in the writ petition stating that the permission is granted to the respondent No. 4 even without proposal being submitted.

9. Such a procedure is unheard of. In fact, the policy promulgated by the Government for shifting of Niwasi Apang Vidyalaya have to be satisfied. The authorities have to first satisfy that the proposal complies with all the legal requirements and then

the proposal is to be recommended to the Government. In the present case, the procedure has been followed more in breach. It is because the Hon'ble Minister endorsed that the school be given to respondent No. 4, it has been allotted to respondent No. 4 without any recommendations by the authorities at any material point of time.

10. In the light of the above, the impugned order dated 04.03.2014, allotting the closed down Vidyaniketan Niwasi Apang Vidyalaya, Pawadewadi, Nanded to respondent No. 4, is quashed and set aside. Respondent No. 1 shall take decision on the proposal received by it in respect of transfer of the Vidyaniketan Niwasi Apang Vidyalaya, Pawadewadi, Nanded, as per the recommendations received by it on its own merits and in accordance with law, expeditiously and preferably within a period of four (04) months.

11. Rule accordingly made absolute in above terms. Writ Petitions stands disposed. No costs.

12. In view of disposal of Writ Petition, the Civil Application No. 2959 of 2015 also stands disposed of.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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