

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

WRIT PETITION NO.9458 OF 2013

- 1] Radhabai w/o. Vitthal Sawant,
Age 40 Years, Occu. Household,
R/o. Badnapur, Taluka Badnapur,
District Jalna
- 2] Shaikh Budhan Shaikh Dagadu,
Age 55 Years, Occu. Business,
R/o. as above
- 3] Prayagbai w/o. Bhagwan Dhakane,
Age 58 Years, Occu. Household,
R/o. Kandari, Taluka Badnapur,
District Jalna
- 4] Mahadeo s/o. Shrimant Dhakane,
Age 40 Years, Occu. Agril.
R/o. as above.
- 5] Babasaheb s/o. Dajiba Bodkhe,
Age 40 Years, Occu. Agril.
R/o. as above.
- 6] Babanrao s/o. Tukaram Gite,
Age 49 years, Occu. Agril.
R/o. Akola, Taluka Badnapur,
District Jalna
- 7] Samsherkhan Noorkhan Pathan,
Age 42 Years, Occu. Agril.
R/o. as above.
- 8] Raju s/o. Baburao Salunke,
Age 32 Years, Occu. Agril.
R/o. Badnapur, Taluka Badnapur,
District Jalna

- 9] Manikrao s/o. Bhaurao Dabhade,
Age 67 Years, Occu. Agril.
R/o. Dhopteshwar, Tq. Badnapur,
District Jalna.
- 10] Kailas s/o. Bhaurao Unage,
Age 42 Years, Occu. Agril.
R/o. Badnapur, Tq. Badnapur,
District Jalna.
- 11] Baliram s/o. Pandurang Kanke,
Age 51 Years, Occu. Agril.
R/o. Dawalwadi, Taluka Badnapur,
District Jalna.
- 12] Rameshwar s/o. Trimbak Pawar,
Age 42 Years, Occu. Agril.
R/o. Matrewadi, Tq. Badnapur,
District Jalna.
- 13] Raghunath s/o. Mitthu Wagh,
Age 50 Years, Occu. Agril.
R/o. Akole, Taluka Badnapur,
District Jalna.
- 14] Siddheshwar s/o. Tatyarao Dhakane,
Age 40 years, Occu. Agril.
R/o. Kandari, Taluka Badnapur,
District Jalna.
- 15] Tulshiram s/o. Karbhari Dhakane,
Age 35 Years, Occu. Agril.
R/o. as above

[In view of the order passed by this Court on 08.04.2014, the petitioners have been permitted to withdraw themselves from the Petition. However, the cause in the Petition has been continued by appointing Advocate Mr. V.D. Sapkal as *amicus curiae*]

PETITIONERS

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Department of Social Justice
And Special Assistance,
Extension Building, Mantralaya,
Mumbai 400 032.

Copy to be served on Govt.
Pleader, High Court of Bombay,
Bench at Aurangabad

- 2] The Commissioner for the
Persons with Disabilities,
Maharashtra State, Pune
- 3] The District Social Welfare Officer,
Zilla Parishad, Jalna.
- 4] Rajmata Bahu Uddeshiya Seva Bhavi
Sanstha Beed, through its
President

RESPONDENTS

...
Mr.V.D.Sapkal, Advocate, [appointed as *amicus curiae*], for
the petitioners
Mr.A.V.Deshmukh, AGP for the Respondent Nos. 1 and 2
Mr. S.S.Thombre, Advocate for the Respondent No.4
Respondent No.3 – served.

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WITH WRIT PETITION NO.3612 OF 2014

- 1] Atul s/o. Gorakh Kale,
Age 30 Years, Occu. Service,
R/o. Beed, Tq. and Dist. Beed
- 2] Vijay s/o. Sandeepan Nande,
Age 28 Years, Occu. Service
R/o. Beed, Tq. and Dist. Beed
- 3] Pramod s/o. Ramrao Kulkarni,
Age 38 Years, Occu. Service,
R/o. Beed, Tq. and Dist. Beed

- 4] Maharudra s/o. Babasaheb Vairagal,
Age 30 Years, Occu. Service,
R/o. Beed, Tq. and Dist. Beed
- 5] Kanta Piraji Gaikwad,
Age 40 Years, Occu. Service,
R/o. Beed, Tq. and Dist. Beed
- 6] Arjun s/o. Asaram Nande,
Age 27 Years, Occu. Service,
R/o. Beed, Tq. and Dist. Beed

PETITIONERS**VERSUS**

- 1] The State of Maharashtra,
Through the Secretary,
In the Department of Social Justice
& Special Assistance,
Extension Building, Mantralaya,
Mumbai – 32.

Copy to be served on Govt.
Pleader, High Court of Bombay,
Bench at Aurangabad

- 2] The Commissioner for the
Persons with Disabilities,
Maharashtra State, Pune
- 3] The District Social Welfare Officer,
Zilla Parishad, Jalna.
- 4] Rajmata Bahu-Uddeshiya Sevabhavi
Sanstha, Beed, through its President
- 5] The District Social Welfare Officer,
Zilla Parishad, Beed

RESPONDENTS

...
Mr. A.N.Irpatgire, Advocate for the Petitioners
Mr. A.V.Deshmukh, AGP for respondent No.5
Mr. D.P.Munde, Adv.h/f. Mr. V.D.Salunke, for Applicant in
Civil Application No.12099/2015 in Writ Petition No.
3612/2014.

...

**CORAM: S.S.SHINDE &
A.M.BADAR, JJ.**

Reserved on : 14.10.2015
Pronounced on: 23.10.2015

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard.

2] Rule. Rule made returnable forthwith, and heard with the consent of the parties.

3] Both these Writ Petitions take exception to the order / Government Resolution dated 30th May, 2013 issued by the Social Justice and Special Assistance Department, Government of Maharashtra, Mantralaya, Mumbai, thereby granting permission in favour of respondent No.4 for shifting the residential school for Handicapped, Dumb, Deaf and Mentally affected students from Badnapur, District Jalna to village Ghoti, Taluka Kinwat, District Nanded.

4] Writ Petition No.9458/2013, is filed by the parents of those students, who are taking education in the residential school for Handicapped, Dumb, Deaf and Mentally affected. It appears that, the said Writ Petition was listed for hearing on 8th April, 2014, when the learned counsel Mr.N.P.Patil Jamalpurkar, appearing for the

petitioners informed this Court that, the petitioners are not willing to continue with the Petition, since according to them, the grievance raised in the Petition is redressed. However, this Court permitted the petitioners to withdraw from the Petition, however, observed that, the Writ Petition shall be continued by appointing *amicus curiae*. Accordingly, Advocate Mr.V.D.Sapkal, is appointed as *amicus curiae* to address the Court. Another Writ Petition No.3612/2014 is filed by the employees of the said School.

Background facts leading for filing the Petitions, as disclosed in the Memo of Petitions, are as under:

5] It is the case of the petitioners that, one Education Society, namely Dnyanesh Jan Kalyan Seva Bhavi Sanstha, Dharur, District Beed, was running the residential school for Handicapped, Dumb, Deaf and Mentally affected students at Dharur, District Beed. The said school was closed, and therefore, same was transferred to the respondent No.4 Education Society by the State Government under order dated 4th August, 2008, and the order dated 5th February, 2009. As per the said orders, the State Government and Commissioner i.e. the respondent Nos.1 and 2 have directed the respondent No.4 Society to

start the residential school for handicapped, dumb and deaf and mentally affected students at Badnapur, District Jalna. The Commissioner, under order dated 5th February, 2009, has granted Registration Certificate in favour of the respondent No.4 Society to run residential school with intake capacity of 80 students at Badnapur. The petitioners have placed on record copies of order dated 5th February, 2009 issued by the respondent No.2 and the Registration Certificate issued in favour of the respondent No.4 showing permission to run the school at Badnapur.

6] It is further the case of the petitioners that, the State Government, under order dated 28th August, 2009, sanctioned grant-in-aid in favour of the respondent No.4 Society, for running the residential school for Handicapped, Dumb, Deaf and Mentally affected students at Badnapur. The petitioners have placed on record copy of order dated 28th August, 2009, issued by the State Government, thereby sanctioning grant-in-aid in favour of the respondent No.4. It is further the case of the petitioners that, the respondent No.4 Society running the said residential school at Badnapur in whole equipped building, and provided all the facilities to all Handicapped, Dumb, Deaf and Mentally

affected students. The respondent No.3 District Social Welfare Officer, Jalna, has also under orders dated 28.12.2011 and 29.03.2012 given approval to the teaching and non-teaching staff working in the said residential school at Badnapur. The petitioners have placed on record copies of the orders dated 28th December, 2011 and 29th March, 2012 issued by the respondent No.3 District Social Welfare Officer, Jalna, thereby granting approval to the teaching and non-teaching staff.

7] It is further the case of the petitioners that, the residential school at Badnapur was running smoothly and because of starting of the said school run by the respondent No.4 society, the Handicapped, Dumb, Deaf and mentally affected students are getting opportunity of prosecuting their studies. Therefore, the number of such students are admitted in the said School from Badnapur Taluka and adjoining Talukas of Jalna District. There was demand from the people of Badnapur Taluka to have residential school for Handicapped, Dumb and Deaf and mentally affected students, and considering the said demand, the State Government has granted permission in favour of the respondent No.4 Society to start such school

at Badnapur. The children of the petitioners are admitted in the said School at Badnapur, and they are taking education. For teaching the children, those who are Handicapped, Dumb and Deaf and mentally affected special skillful teachers are required.

8] It is further the case of the petitioners that, in the month of December, 2012, the management of the respondent No.4 Society informed the parents of the students that, they are going to shift the school in Beed District, and assurance had been given that, all the students would continue at transferred place. For the said proposal of the respondent No.4 Society, there was objection from the parents of the students, more particularly from the petitioners. Without inviting objection from the parents of the students, the State Government granted permission in favour of the respondent No.4 to shift the residential school for Handicapped, Dumb and Deaf and mentally affected students from Badnapur, District Jalna to Warwanti, Taluka and District Beed, under the order dated 23rd January, 2013. The petitioners have placed on record copy of order dated 23rd January, 2013 issued by the State Government, thereby granting permission to shift the

residential School from Badnapur, District Jalna to Warwanti, Taluka and District Beed.

9] It is further the case of the petitioners that, even though the State Government granted permission in favour of the respondent No.4 for shifting the residential school from Badnapur, District Jalna to Warvanti, Taluka and District Beed, it was not implemented by the respondent No.4 Society. It is further the case of the petitioners that, surprisingly, the State Government under order dated 30th May, 2013, directed the respondent No.4 Society to shift the residential School from Badnapur, District Jalna to village Ghoti, Taluka Kinwat, District Nanded. The petitioners have placed on record copy of the impugned order dated 30th May, 2013, issued by the State Government, thereby authorizing the respondent No.4 Society to shift the residential School for Handicapped, Dumb and Deaf and mentally affected students from Badnapur, District Jalna to village Ghoti, Taluka Kinwat, District Nanded. Hence this Writ Petition.

10] The learned counsel Mr.V.D.Sapkal, and the learned counsel appearing for the petitioners in Writ Petition No.3612/2014, made the following submissions:

11] The action of the State Government in issuing the impugned orders dated 23rd January, 2013 and 30th May, 2013 are illegal. If the impugned orders are implemented, then the great inconvenience and hardship would be caused to the students, taking education in the said School at Badnapur. The majority of the students are from Badnapur Taluka. The State Government, without considering all these problem and hardships, going to be caused to the students, illegally issued order dated 30th May, 2013. The State Government, after considering the demand from the people at Badnapur Taluka, has granted permission in favour of the respondent No.4 Society to start and run the residential School for Handicapped, Dumb and Deaf and mentally affected students at Badnapur. In fact, no such residential school is required to be shifted from Jalna District, more particularly from Badnapur Taluka, because the strength of students is increasing day by day, and therefore, the action of the State Government in issuing the impugned order, is against the policy framed by the Government, relating to start residential school for Handicapped, Dumb and Deaf and mentally affected students.

12] It is further the case of the petitioners that, this Court was pleased to entertain Writ Petition No.6092/2012 filed by the parents from village Aurad [Shahajani], Taluka Nilanga, District Latur, having similar challenge and the Division Bench of this Court, keeping in view the interest of the students, those who are taking education at Aurad [Shahajani], directed the respondents therein to close down the Schools at transferred place, and further observed that, if the respondent Institution wishes to run the Schools, it can do so at Aurad [Shahajani]. The learned counsel appearing for the petitioners invited our attention to the observations made in the said order. It is further submitted that, the State Government, without calling objections, without giving opportunity of hearing to the parents, and employees at Badnapur, has issued order contrary to the Government Policy, and the principles laid down by the Bombay High Court in the case of *Jeejau Shikshan Sanstha Vs. State of Maharashtra and others*¹. It is further submitted that, the respondent No.4 has not paid salary to the employees working in the School at Badnapur and the School is shifted from Badnapur to Warwanti, Taluka and District Beed. It is further submitted that, the impugned

1 2011 [6] Bom.C.R. 97

order, granting transfer of the school from Badnapur to other place, is without assigning any reasons in the impugned order, thereby frustrating the basic object behind granting permission to run the residential school for Handicapped, Dumb and Deaf and Mentally affected students. It is submitted that, the petitioners have no objection if the State Government grants new School at Warvanti or at Ghoti. It is submitted that, the impugned order is passed in breach of principles of natural justice. It is submitted that, before the impugned order was passed, it is not known that, for such decision whether there was approval from the Cabinet or not. It is further submitted that, in spite of requirement of the School at Badnapur, the school is transferred in other District. Therefore, relying upon the pleadings in the Petitions, grounds taken therein, and annexure thereto, the learned counsel appearing for the petitioners submit that, Petitions deserve to be allowed.

13] In Writ Petition No.9458/2013, the respondent Nos. 1 and 2 have filed affidavit-in-reply. The learned AGP appearing for the respondent – State, relying upon the averments in the affidavit-in-reply made following submissions:

14] It is submitted that, the disputed school is of residential in nature and the respondent No.4 has undertaken to give admission to the petitioners, providing all residential facilities to them, therefore, mentally retarded disabled students may not affect thereby. It is further submitted that, at the time of issuing the Government Resolution dated 30.05.2013, by mistake it remained to withdraw the earlier Government Resolution dated 23.01.2013, which permitted the management to shift the said special school at Warvanti, Taluka and District Beed. Now the said Government Resolution dated 23.01.2013 withdrawn by the Government by issuing Government Resolution dated 13.01.2015. It is further submitted that, the Government also issued another Government Resolution dated 07.08.2014, and thereby granted a special school at Badnapur, Taluka Badnapur, District Jalna, namely Kai. S.Y.Jagtap Guruji Shikshan Sanstha, Vairag, Taluka Barshi, District Solapur Sanchlit Matimand Niwashi Vidyalaya and the said special school is residential in nature, therefore, no inconvenience or hardship would be caused to the students, which are admitted in the disputed special school. It is further argued that, the impugned order i.e. Government Resolution dated

30.05.2013 is in accordance with the Government Policy, and therefore, Petition may be rejected.

15] The learned counsel appearing for the respondent No.4, relying upon the averments made in the affidavit-in-reply made following submissions:

16] Initially, 15 petitioners have filed the present Writ Petition by stating that, there children are taking education in the residential school for handicapped, deaf and dumb at Badnapur, but subsequently, in view of the fact that, the school which was run by Kai. S.V.Jagtap Guruji Shikshan Sanstha, Vairag, Tal. Barshi, District Solapur is transferred and started at Badnapur by the Government *vide* its order dated 07.08.2014, and therefore, the petitioners' grievance is redressed. Therefore, they made a statement that, they are seeking permission to withdraw the Writ Petition, and they are permitted to withdraw from the Petition, but in view of the order passed by this Court on 08.04.2014, the present Petition is continued. It is further submitted that, when the State Government, by its order dated 30.05.2014 granted permission to shift the residential school from Badnapur, District Jalna to village Ghoti, Taluka Kinwat, District Nanded, and in pursuant to

that, the respondent No.4 is running a School at that place from May, 2013. After aforesaid permission, the Competent Authority, as per Section 50 of the Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act, 1995, has granted Certificate of Registration, and therefore, both these Petitions are liable to be rejected.

17] It is further submitted that, as the School was already shifted, the District Social Welfare Officer, Zilla Parishad, Nanded has inspected the School on 18.10.2013 at village Ghoti. The respondent No.4 has placed on record copy of inspection report dated 18.10.2013 conducted by the District Social Welfare Officer, Zilla Parishad, Nanded with the affidavit-in-reply. It is further submitted that, the District Social Welfare Officer submitted a report, vide its letter dated 18.10.2013 itself, to the Commissioner i.e. respondent No.2, who gave 79 marks out of 100 and granted 'A' Grade, and therefore, recommended for granting renewal of the license of the respondent No.4. The learned counsel invited our attention to the inspection report dated 18.10.2013, which is placed on record with the affidavit-in-reply.

18] It is further submitted that, respondent No.2, *vide* its order dated 03.03.2014, was pleased to grant renewal from 01.04.2013 to 31.03.2016 for a period of 3 Years for the intake capacity of 80 students and now since last May, 2013, the respondent No.4 is running the School at shifted place. It is further submitted that, after transferring the School, the account was opened in the name of Headmaster, Matimand Niwasi Vidyalaya, Ghoti with the State Bank of Hyderabad at village Gokunda, Taluka Kinwat, District Nanded, *vide* its Account No. 62338153180. Immediately, after shifting of the School, all the employees of the respondent No.4 have joined at the transferred place and they have withdrawn the salary up to December, 2013. It is further submitted that, the petitioners in Writ Petition No.3612/2014, had also joined at transferred place. As this School was already shifted in May, 2013, and from May, 2013 to December, 2013, the petitioners in Writ Petition No.3612/2014 have received the salary at the transferred place and they have suppressed this material facts from this Court, in fact, the petitioners in Writ Petition No.3612/2014 ought to have disclosed this fact in their Petition when they approached before this Court, and therefore, the Petition is required to be dismissed on

the ground of suppression of material facts from this Court. As the petitioners in Writ Petition No.3612/2014 have not come with clean hands before this Court, therefore, Writ Petition is liable to be dismissed as the respondent No.4 had already absorbed them, and therefore, as per the service conditions, they are required to work on shifted place as respondent No.4 has already allowed the petitioners to join and they have joined and withdrawn the salary. The learned counsel appearing for the respondent No.4 invited our attention to the copies of the record in respect of salary and the joining reports. It is further submitted that, though this Court had passed an interim order on 25.11.2013 but prior to that, the School was already shifted and since May, 2013 the respondent No.4 is running the School at transferred place.

19] It is further submitted that, even the Block Education Officer, Panchayat Samiti, Himayatnagar, has also inspected the School on 31.03.2015. The respondent No.4 has also placed on record copy of Certificate along with the inspection report by the Block Education Officer, Panchayat Samiti, Himayatnagar, dated 31.03.2015. It is further submitted that, on 09.07.2015, the District Social

Welfare Officer, Nanded, inspected the School. It is further submitted that, since May, 2013, the respondent No.4 is running the School and even the Tahsil Officer, Nanded had also provided wheat 8 quintal, Rice 4 quintal for the academic year 2015-16 and the Tahsildar has released the said food grains to the School in pursuant to the application filed by the Superintendent of School. It is further submitted that, as far as inconvenience caused to the students at Badnapur is concerned, their grievance is redressed as there is already School, which is shifted and running vide its order dated 07.08.2014. It is further submitted that, as per the order dated 4th August, 2008, the School, which was run by Dnyanesh Jankalyan Sevabhavi Sanstha at Dharur was closed because of the non-granting the registration. Therefore, the said School was transferred to Badnapur, vide its order dated 05.02.2009 and to that effect registration was also granted by the Competent Authorities and the same school is transferred to Ghoti, Taluka Kinwat, District Nanded.

20] It is further submitted that, as there was no School at Ghoti, Taluka Kinwat, District Nanded, as Kinwat Taluka is naxalite area, and therefore, as there was no any

School available in the vicinity of Ghoti. Therefore, the Government vide its order dated 13.05.2013 has granted permission to shift the said School to village Ghoti and on the basis of that, in May, 2013 itself the School was shifted there. It is further submitted that, the Government vide its Resolution dated 09.07.2003 and as per the added clause No.5, as per the Resolution dated 04.12.2003, the School is transferred from Badnapur, the Government has acted as per the Resolution. Copies of the Government Resolution dated 09.07.2003 along with corrigendum dated 04.12.2003 are placed on record. It is further submitted that, now the Government has framed the policy vide its Resolution dated 24.01.2014, but as herein this case, the order is dated 13.05.2013, and therefore, the Resolution dated 23.01.2014 is not applicable to the present case. It is further submitted that, already there is one School at Badnapur, which was shifted by the Government vide its order dated 7th August, 2014, and therefore, there is no any inconvenience to the students at Badnapur and more particularly, there is need of the School at Ghoti as there is no School in the vicinity. The said school is in the nexalite area, and therefore, as per the Government Policy, the School is transferred vide its order dated 30th May, 2013.

Therefore, relying upon the averments made in the affidavit-in-reply and annexure placed on record with the said affidavit-in-reply, the learned counsel appearing for the respondent No.4 submits that, the Petitions are devoid of any merits, hence same may be dismissed.

21] We have given careful consideration to the submissions of the learned counsel appearing for the petitioners, the learned AGP appearing for the Respondent Nos.1 and 2, and the learned counsel appearing for the respondent No. 4. With their able assistance, we have carefully perused the pleadings in the Petition, and grounds taken therein, annexure thereto, and the affidavit-in-reply filed by the respondent Nos.1 and 2, and the affidavit-in-reply filed by the respondent No.4 and annexure thereto.

22] Upon careful perusal of the contents of Exhibit-D Page No.32 i.e. the Government Resolution dated 23rd January, 2013, issued by the Social Justice and Special Assistance Department, Government of Maharashtra, Mantralaya, Mumbai. It appears that, decision was taken to transfer the School run by the respondent No.4 for Handicapped, Dumb, Deaf and Mentally affected category, from Badnapur to Warvanti, Taluka and District

Beed. Upon careful perusal of the contents of the said Government Resolution, no reasons are mentioned why the Government has taken such decision to transfer the School from Badnapur to Warvanti, Taluka and District Beed. Upon careful perusal of the affidavit-in-reply filed by the respondent Nos.1 and 2, there are no averments which would disclose the reasons for transfer of the School from Badnapur to Warvanti, Taluka and District Beed. When the State Government takes a decision to transfer the School from one place to another certainly there should be some reasons for such transfer from one place to another. As already observed, no single reason has been assigned, either in the afore-mentioned Government Resolution, or in the affidavit-in-reply. It is not stated either in the Government Resolution dated 23rd January, 2013, or in the affidavit-in-reply that, what will happen to the students, who are studying in the School at Badnapur. It is also not stated that, what will happen to the employees of the School at Badnapur. The contents of Government Resolution dated 23rd January, 2013, and also affidavit-in-reply filed by the respondent Nos.1 and 2, are totally silent about what weighed with the State Government to take decision to transfer the School run by the respondent No.4

from Badnapur to Warvanti, Taluka and District Beed. We have carefully perused the contents of the impugned order / Government Resolution dated 30th May, 2013, issued by the Social Justice and Special Assistance Department. In the said impugned Resolution also, no any reasons are assigned by the State Government, why Government felt it necessary to transfer the School from Badnapur, District Jalna to village Ghoti, Taluka Kinwat, District Nanded.

23] Upon careful perusal of the reference in the said Government Resolution, there is no reference to the Government Resolution dated 23rd January, 2013, by which the earlier School at Badnapur was transferred from Badnapur to Warvanti, Taluka and District Beed. Upon careful perusal of the contents of impugned Resolution / order, averments in the affidavit-in-reply filed by the respondent Nos.1 and 2, and also averments in the affidavit-in-reply filed by the respondent No.4, it is abundantly clear that, before taking decision of transfer of the School from Badnapur to Ghoti, Taluka Kinwat, District Nanded, the respondent Nos. 1 and 2, as a matter of fact, has taken into consideration the interest of students, who are from Handicapped, Dumb, Deaf and Mentally challenge

category, and also employees working in the said School, and also objection raised by the parents of such students, who are studying at Badnapur. It was incumbent, rather obligation of the State Government to apply its mind before taking decision of transfer of the school from Badnapur to Warvanti or Ghoti and to make conscious application of mind, keeping in view, the interest of the students, studying in the school at Badnapur, and also the employees, and parents of those students. Since the School itself was set up to teach students from Handicapped, Dumb, Deaf and Mentally challenged students categories, decision of shifting of such school itself in the first place was unjustified, that too, without assigning any reasons. Even to think of asking the students from the Handicapped, Dumb, Deaf and Mentally challenged categories to shift from Badnapur to even 5 kilo meters, would cause great inconvenience and injustice to those students, and also mental agony to their parents.

24] The statement of objects and reasons for establishing schools for the afore-mentioned categories and bringing the special Act i.e. The Persons with Disabilities [Equal, Opportunities, Protection of Rights and Full

participation] Act, 1995, are as under:

“The meeting to launch the Asian and Pacific Decade of the Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asian and Pacific Region, held at Beijing on 1st to 5th December, 1992 adopted the proclamation on the Full Participation and Equality of People with Disabilities in the Asia and the Pacific region. India is a signatory to the said proclamation and it is necessary to enact a suitable legislation to provide for the following:-

(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training employment and rehabilitation of persons with disabilities;

(ii) to create barrier free environment for persons with disabilities;

(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis, non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down a strategies for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and

(vi) to make special provision for the integration of persons with disabilities into the social mainstream.

2. Accordingly, it is proposed to provide inter alia for the constitution of Co-ordination Committees and Executive Committees at the Central and State levels to carry out the various functions assigned to them. Within the limits of their economic capacity and development the appropriate Governments and the local authorities will have to undertake various measures for the prevention and early detection of disabilities, creation of barrier free environment, provision for rehabilitation services, etc. The Bill also provides for education, employment and vocational training, reservation in identified posts, research and manpower development, establishment of homes for persons with severe disabilities, etc. For effective implementation of the provisions of the Bill, appointment of the Chief Commissioner for persons with disabilities at the Central level and Commissioners for persons with disabilities at the State level clothed with powers to monitor the funds disbursed by the Central and State Governments and also to take steps to safeguard the rights of the persons with disabilities is also envisaged.

3. The Bill seeks to achieve the above objects."

When the State Government takes a decision to transfer the School from one place to another place, even in the absence of any procedure to that effect, it is the duty of the State Government to find out, what happens to the students, studying at the place from which the School is being shifted to some other place, and in the facts of the present case, it was the duty of the respondent Nos.1, 2 and 3, to consider the interest of the students, studying in the School at Badnapur. Upon perusal of the impugned Government Resolution, neither it takes into consideration the interest of the students studying at Badnapur, nor anything is mentioned about the absorption of the employees working in the said School.

25] The provisions of Section 26 of the Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act, 1995, makes it mandatory to the Appropriate Governments and the local authorities to provide children with disabilities, free education. Section 26 of the Act, reads thus:

26. Appropriate Governments and local authorities to provide children with disabilities, free education, etc. - The

appropriate Governments and the local authorities shall -

- (a) ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years.*
- (b) endeavour to promote the integration of students with disabilities in the normal schools;*
- (c) promote setting up of special schools in Government and private sector for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to such schools;*
- (d) endeavour to equip the special schools for children with disabilities with vocational training facilities.*

26] The provisions of Section 29 makes it obligatory to the Appropriate Governments to set up teachers' training institutions to develop trained manpower for schools for children with disabilities. Section 29 of the Act reads thus:

29. Appropriate Governments to set up teachers' training institutions to develop trained manpower for schools for children with disabilities. - The appropriate Governments shall set up adequate

number of teachers' training institutions and assist the national institutes and other voluntary organisations to develop teachers' training programmes specialising in disabilities so that requisite trained manpower is available for special schools and integrated schools for children with disabilities.

27] The provisions of Section 30 makes it obligatory to the Appropriate Governments to prepare a comprehensive education scheme providing for transport facilities, supply of books, etc. to the students, and the provisions of Section 31 mandates educational institutions to provide amanuensis to students with visual handicap. Upon conjoint reading of the provisions of Sections 26 to 31, it is abundantly clear that, the Appropriate Governments and the local authorities are bound to provide children with disabilities free education, and also trained teachers, transport facilities, supply of books, etc. In view of the statement of object and reasons, and the provisions of Sections 26 to 31, the State Government and the local authorities were under obligation to continue the school at Badnapur. If they wanted to close the School at Badnapur, there should have been compelling reasons disclosed for such transfer of the school from Badnapur to other places.

However, it appears that, the object to be achieved by the Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act, 1995, and also to provide free education with the facilities, including trained teachers has been defeated by arbitrary exercise of powers by the respondent State Government, by granting permission to shift / transfer the school from Badnapur to Ghoti, without assigning any reasons. Impugned decision is without taking into consideration the interest of the students, studying in the School at Badnapur.

28] In that view of the matter, we are of the considered view that, issuance of impugned Government Resolution dated 30th May, 2013, was the classic example of arbitrary and colourable exercise of powers by the respondent Nos.1 and 2. The respondent Nos.1 and 2, have totally ignored the interest of the students from Handicapped, Dumb, Deaf and Mentally challenge categories, studying at Badnapur, and mental agony which would be suffered by the parents of the said children, if School is shifted. The State Government should not have taken decision of transfer of the School, that too, without assigning any reason except stating that, there is a need of

School for the students from Handicapped, Dumb, Deaf and Mentally affected students at Ghoti, Taluka Kinwat, District Nanded. It would have been different matter, if the State Government had taken a decision to grant one more School at Ghoti, keeping in view the object to have more schools for the students from the afore-mentioned categories, in that case the petitioners had no any objection for such act of the State Government. However, in total disregard to the interest of the students, studying in the School at Badnapur, the employee serving therein, and the parents of such Handicapped, Dumb, Deaf and Mentally challenge students, the impugned decision of the State Government, is without application of mind and arbitrary.

29] The learned AGP appearing for the respondent Nos.1 and 2, and the learned counsel appearing for the respondent Nos.4 were at pains to submit that, the State Government has granted permission to transfer special school at Badnapur namely; Kai. S.Y.Jagtap Guruji Shikshan Sanstha, Vairag, Taluka Barshi, District Solapur, and therefore, no inconvenience or hardship would be caused to the students at Badnapur. The fact that, the School was needed at Badnapur, and according to the respondent Nos.

1 and 2 and the respondent No.4, now afore-mentioned School is transferred from Solapur District to Badnapur, that by itself, shows that, the School was needed at Badnapur, and the State Government should not have permitted transfer of the School from Badnapur to Warvanti or Ghoti. Merely because, now there is one School at Badnapur, would not make the impugned Government decision legal. The impugned Government Resolution / decision of allowing to transfer of the school from Badnapur to Ghoti, Taluka Kinwat, District Nanded, as already observed, was without application of mind by the State Government, and the said decision was arbitrary, illegal and such illegality and arbitrariness cannot be permitted to be perpetuated, because of the subsequent transfer of School at Badnapur.

30] In that view of the matter, we are of the considered view that, the impugned Government Resolution dated 30th May, 2013 / decision / order, allowing to transfer the School, was arbitrary exercise of power by the State Government without application of mind, and therefore, same deserves to be quashed and set aside.

31] The learned counsel appearing for the

respondent No.4 argued that, as a matter of fact the School is transferred at Ghoti, Taluka Kinwat, District Nanded, and thereafter, transfer is granted, the license is also issued, and the permission is granted to run the said School till March, 2016. Therefore, keeping in view the interest of the students, studying at Ghoti, Taluka Kinwat, District Nanded, this Court may not entertain Petitions since there is no challenge by the petitioners for granting approvals subsequent to the transfer of the School, and also license in favour of the respondent No.4. We cannot accept such argument for the simple reason that, if the impugned decision itself is a result of arbitrary exercise of powers, subsequent steps / actions / decisions on the basis of impugned Government Resolution, as a sequel will have to be treated illegal, once the impugned Government Resolution dated 30th May, 2013 is quashed and set aside.

32] In the light of discussion in the foregoing paragraphs, the impugned Government Resolution dated 30th May, 2013, is quashed and set aside. The State Government is directed to make alternate arrangement for the students studying in the School at Ghoti, Taluka Kinwat, District Nanded, with effect from 1st April, 2016 onwards for

their further studies, and also absorption of employees, who were working in the School at Badnapur in accordance with law. The school shifted at Ghoti, Taluka Kinwat, District Nanded run by the respondent No.4 shall be closed down from 1st April, 2016, and the respondent Nos.1 and 2 shall ensure that, under any circumstance no renewal after 1st April, 2016 be granted in favour of the respondent No.4 to run the School at Ghoti. The respondent Nos. 1 and 2, and their sub-ordinates are directed not to renew the permission of the School at Ghoti, once the period of renewal i.e. 1st April, 2013 to 31st March, 2016 comes to an end. If the respondent No.4 wishes to run School at Badnapur, it can be done only with permission of the State Government. While considering such prayer, the State Government shall keep in view the fact that, already one School is transferred at Badnapur and also other relevant factors, we leave it to the respondent Nos.1 and 2 to take such appropriate decision in accordance with law.

33] Petitions are allowed to the above extent. Rule is made absolute in above terms. Civil Application No. 12099/2015 is also disposed of.

34] We express word of gratitude to the learned counsel Mr. V.D.Sapkal, appointed as *amicus curiae*, for rendering able assistance to this Court for reaching to the proper conclusion. We quantify his fees Rs.10,000/-.

Sd/-

[A.M.BADAR]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE

DDC

Authenticated copy

Dinesh D. Chaudhari
Assistant