

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.2836/2014

Motiramji Dhawale Shikshan Prasarak Mandal, Kadoli and another Vs. State of
Maharashtra and others.

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	<u>Court's or Judge's Orders.</u>
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Shri P.N. Shende, Advocate for the petitioners.
Shri Kankale, AGP for the respondents.

**CORAM : B.P. Dharmadhikari &
A.P. Bhangale, JJ.**
DATE : February 20, 2015.

Controversy is required to be looked into in the background
of two earlier orders of this Court.

First order passed by this Court on 4/1/2013 in Writ Petition
No.4333/2011 reads as under:-

“01] *Heard finally with consent by making rule
returnable forthwith.*

02] *The petitioner-establishment was sanctioned an
Ashram School at mouze Kamangad, Taluka Dhanora, District
Gadchiroli. However, because of Naxalites problem, the
management sought permission to transfer the same to
Kurkheda i.e. a Tahasil place. The State Government on*

01/06/2010 granted that permission. On 16/06/2011, a condition of obtaining 'No Objection Certificate' of Grampanchayat was also relaxed by the State Government. Accordingly, the petitioner-establishment started functioning at Kurkheda. On 30/07/2011, the Commissioner Tribal Development i.e. respondent no.2 by the impugned order restrained the petitioner from transferring the establishment. No reason, as such, has been assigned for such restraint.

03] The petitioner approached this Court and this Court has on 08/09/2011 granted ad interim relief in terms of prayer clause (iv) of the petition. The school of the petitioner is still functioning.

04] According to learned Counsel Mr. Shingane, impugned order being unreasoned, is unsustainable. In addition, he submits that the competent authority to permit such transfer is the State Government and that order could not have been set at knot by a sub-ordinate officer like respondent no.2.

05] Learned Assistant Government Pleader is relying upon the reply-affidavit filed on behalf of respondent no.2 to urge that school sanctioned to the petitioner was after considering the need of students at place Kamangad and being residential Ashram School, its shifting to a place which is about 125 kms away from Kamangad is unsustainable. He further states that villagers of Kamangad have also opposed

such transfer of school. Respondent no.1-State of Maharashtra still not filed any reply. Learned Assistant Government Pleader is, therefore, seeking time of three weeks to obtain appropriate instructions from respondent no.1 in this respect.

06] In this situation, we find that interest of justice can be met with by directing respondent no.1 to apply its mind to entire issue/controversy in time bound fashion.

07] Accordingly, we direct the petitioner to make appropriate representation to respondent no.1 within four weeks from today. If such representation is made, respondent no.1 shall hear the petition and all concerned within further period of four weeks and take necessary decision in the matter in any case by 30th of April, 2013. Interim order granted by this court on 08/09/2011 shall remained in force till the end of educational session 2012-13 and thereafter the fate of petitioner-establishment shall be governed by a fresh decision to be taken by respondent no.1, as directed above.

Petition is thus partly allowed. No costs."

Thereafter, the petitioners approached this Court again in Writ Petition No.2888/2013 and it was disposed of on 8th January, 2014 with the following order:-

"Heard respective counsel.

Advocate Shri Shende submits upon instructions that petitioners are ready and willing to restart their school at Kamangad. The petitioners presently are running a school initially sanctioned at Kamangad at Kurkheda because of permission given to them on 16.06.2011. The school at Kamangad is accordingly transferred by them to Kurkheda and they started it from 1.7.2011. The permission to transfer was recalled on 30.7.2011. The said order was questioned before this Court and this court stayed the said order and hence petitioners are presently running the school originally sanctioned to them but at Kurkheda. Advocate Shende also states that students have been admitted.

Shri Kankale, learned Assistant Government Pleader appearing for respondent nos. 1 to 3 states that the residents of Kamangad need a school and hence permission given to petitioner to shift the same was cancelled as it was not in accordance with policy. Looking to the need of school, the State Government has started a Government Ashram School at Kamangad. He points out that school initially run by petitioner itself has now been designated as Government Ashram School and it is also functioning.

In view of statement made by Advocate Shende that petitioner is ready to discontinue school at Kurkheda and resume functioning of school at Kamangad, w.e.f in it

necessary to direct petitioner to make appropriate application in this respect communicating said readiness and willingness to respondent no.1. If such application is made within period of two weeks from today, respondent no.1 shall look into said application on its own merit within further period of two months. We are imposing this time limit only to see that if the Government finds it necessary to handover the Ashram School at Kamangad back to petitioner, petitioner should be in a position to resume its control in next academic year.

Similarly, education of students admitted at Kurkheda also cannot be permitted to suffer, hence we permit petition to continue with the school at Kurkheda till 30.04.2014. The State Government is also free to find out need of school at Kurkheda, considering the fact that students are already admitted and are taking education, this exercise shall also be completed within the period stipulated above.

With these directions and observations we dispose of petition. No costs”.

One of us (Shri B.P. Dharmadhikari, J) is party to both these orders.

The State Government now in reply-affidavit has pointed out certain lacunae and deficiencies which were noticed earlier when school of petitioner was going on in naxalite area i..e. Kamangad. Petitioners

were never noticed about those lacunae and they were not given any opportunity to point out their stand in defence. The lacunae were not used against them when they were permitted to transfer the Ashram School from village Kamangad to Kurkheda.

As such, it appears that grounds not earlier pressed into service to deny Ashram School to the petitioners are now for the first time invoked in reply-affidavit before this Court.

Reply-affidavit also shows that there is no need of Ashram School at Kurkheda. The petitioners were given Ashram School at Kamangad considering the need felt therefor in naxalite area. Presently the State Government itself is running that school in Kamangad. Hence, now issue is, whether School being run by the State Government should be handed over back to petitioners.

The petitioners got Ashram School at Kamangad with Government permission and then transferred it to Kurkheda also with the Government permission. In this situation, it cannot be held at fault for not running Ashram School at Kamangad. Considering the lacunae/deficiencies pointed out in reply-affidavit, we are inclined to give petitioners an opportunity to place its submissions before respondent no.1 regarding the same.

The petitioners shall accordingly make suitable

representation pointing out its defence in relation to those lacunae and deficiencies within a period four weeks from today. Respondent no.1 shall then hear the petitioners and find out feasibility or need of handing over the school back to the petitioners at village Kamangad.

We direct the petitioners to appear before respondent no.1 for such hearing on 6th April, 2015. After hearing, suitable decision shall be taken by respondent no.1 by 15th May, 2015.

Writ Petition is thus partly allowed and disposed of. No costs.

JUDGE

JUDGE

Ambulkar