

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

Writ Petition No. 9970 of 2012

District : Jalgaon

Mirai Bahuddeshiya Vikas Sanstha,
Through its Chairman,
Sharad Murlidhar Netkar,
Age : 37 years,
Occupation : Legal Practitioner,
R/o. Prabhudha Colony,
Station Road, Amalner,
District : Jalgaon.

.. Petitioner.

versus

1. The State of Maharashtra,
Through its Principal Secretary,
Tribal Development Department,
Mantralaya, Mumbai - 400 032.

2. The Commissioner,
Tribal Development,
Agra Road, Nashik.

3. The Additional Commissioner,
Tribal Development,
Agra Road, Nashik.

4. The Project Officer,
Integrated Tribal Development
Project, Yawal, Dist. : Jalgaon.

5. Gourav Bahuddeshiya Shikshan
Sanstha, Varora,
Taluka : Varora,
District : Chandrapur,
Through its Secretary.

.. Respondents.

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Mr. S.B. Talekar, Advocate, for the petitioner.

*Mr. S.G. Karlekar, Asst. Government Pleader, for
respondent nos.1 to 4.*

Mr. N.D. Khamborkar, Advocate, for respondent no.5.

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**CORAM : S.S. SHINDE &
SANGITRAO S.PATIL, JJ.**

**Date of reserving
the judgment : 15th April 2016.**

**Date of pronouncing
the judgment : 4th May 2016.**

JUDGMENT *(Per Sangitrao S. Patil, J.):*

Heard. Rule. Respondents waive service. By consent of the parties, Rule is made returnable forthwith and the petition is heard finally.

2. The petitioner (hereinafter referred to as "Transferee Institution") has challenged the vires of the Government Resolution bearing No. A.Aa.Sha.2009/Pra.Kra. 126/Ka.11, issued by the Department of Tribal Development, Government of Maharashtra, Mantralaya, Mumbai, on 14.09.2012, where under the Ashram School which was transferred to the

petitioner has been ordered to be re-transferred to respondent no.5 (**hereinafter referred to as "Original Institution"**) and the recognition of the Ashram School granted in favour of the Transferee Institution vide Government Resolution dated 04.03.2010 came to be withdrawn.

3. There is no dispute that the Ashram School run by the Original Institution at village Kawadshi (Bor). Taluka Varora, District Chandrapur, came to be de-recognized by respondent no.2 as per the order dated 27.02.2009, on the allegations that there was mismanagement of the Ashram School, there was no sufficient strength of the students, no adequate infrastructure was available, etc. The Original Institution preferred an appeal under Rule 2.19 of the Ashram School Code, against the order dated 27.02.2009 to the Secretary of the Tribal Development Department. Pursuant to the hearing of that appeal held on 12.05.2009, the Original Institution was given an opportunity to remove the deficiencies by September 2009, with a view to save the tribal

students from suffering the loss in their academic career as per the order dated 19.05.2009. The Original Institution did not remove the deficiencies within the given time. Therefore, respondent no.2 sent a letter dated 25.09.2009 and recommended that the Ashram School run by the Original Institution should be de-recognized permanently. Accordingly, the Ashram School run by the Original Institution came to be de-recognized and the Ashram School so de-recognized was ordered to be transferred to the Transferee Institution vide Government Resolution dated 04.03.2010.

4. The Government Resolution dated 04.03.2010 came to be stayed by respondent no.1 as per the order dated 28.05.2010. The said stay order was communicated to the Transferee Institution vide letter dated 01.06.2010. The President of the Transferee Institution made representations against the stay order before the Cabinet Minister as well as the Minister of State, Tribal Development Department, Government of Maharashtra, but it was of no avail.

Ultimately, the Transferee Institution received Government Resolution dated 14.09.2012 issued by respondent no.1 whereunder the Government Resolution dated 04.03.2010 came to be cancelled and the Ashram School was ordered to be re-transferred to the Original Institution for being run again subject to certain terms and conditions. It is this Resolution which has been challenged by the Transferee Institution by this Writ Petition.

5. The learned Counsel for the Transferee Institution submits that the stay order dated 28.05.2010 as well as the final order as contained in the Government Resolution dated 14.09.2012 have been passed behind the back of the Transferee Institution, without extending an opportunity of hearing. He submits that once the Ashram School was transferred to the Transferee Institution, as per the provisions contained in the Ashram School Code, the said school could not have been de-recognized without hearing the Transferee Institution. He submits that the decision to grant ex-parte stay on 28.05.2010 and the decision

to de-recognize the Ashram School allotted to the Transferee Institution and re-transferring it to Original Institution as per the Government Resolution dated 14.09.2012 are arbitrary, colourable, illegal and unconstitutional.

6. The learned Counsel for the Transferee Institution further submits that two more Ashram Schools were transferred by respondent no.1 from Kinala (Borli), Taluka : Umred, District : Nagpur to Sane Nagar, Amalner District : Jalgaon and from Devgaon, Taluka : Chandur (Railway), District : Amravati to Patharkheda, Taluka : Erandol, District : Jalgaon as per the Government Resolutions dated 04.03.2010. However, the said Ashram Schools have not been de-recognized by respondent no.1. This shows that the de-recognition of Ashram School of the Transferee Institution has been done with mala fide intention causing discrimination. He submits that as per Rule 2.23 of the Ashram School Code, once any Ashram School is de-recognized, the Institution, which was previously running that school, cannot be

considered again for grant of approval to run the said Ashram School. Such a school, subject to certain conditions, is liable to transferred to other self-serving instutiton or the Government itself may run the said school. According to him, in view of this provision, the Ashram School that was transferred to the Transferee Institution after being de-recognized due to the deficiencies noticed when it was being run by the Original Institution, was not liable to be again allotted to the Original Institution.

7. The learned Counsel for the transferee school further submits that after transfer of the Ashram School from the Original Institution to the Transferee Institution, the Transferee Institution invested a huge amount for the building and other infrastructure for running the same. The Transferee Institution was ready to absorb the teaching and non-teaching staff of the Original Institution. It was further ready to get the students of the said school migrated to village Bilkheda, Taluka : Dharangaon, District : Jalgaon. The Transferee Institution had

got sufficient number of students and they were being given all the facilities and proper education in the Ashram School run by the Transferee Institution. However, respondent no.1, after receiving a letter from Dr.Namdeorao Usendi, an M.L.A. from Gadchiroli, without hearing the Transferee Institution, abruptly and highhandedly issued Government Resolution dated 14.09.2012 directing transfer the Ashram School from the Transferee Institution to the Original Institution by cancelling the Government Resolution dated 04.03.2010.

8. Relying on the judgment in the case of ***Kalabharati Advertising Vs. Hemant Vimalnath Narichania, (2010) 9 SCC 437***, the learned Counsel appearing for the Transferee Institution submits that the act of respondent no.1 in taking review of its earlier order of de-recognizing Ashram School from the Original Institution is without any express statutory power. Therefore, the impugned Government Resolution dated 14.09.2012 is liable to be quashed and set aside.

9. Respondents 1 to 4 filed a common affidavit-in-reply through one Ashok s/o. Daulat Mali, Assistant Project Officer, Education, Integrated Tribal Development Project, Yawal, District : Jalgaon and denied the claims of the Transferee Institution. It is stated that the Ashram School that was run by the Transferee Institution has again been by respondent no.1 to the Original Institution. Therefore, there is no question of restoration of the said Ashram School to the Transferee Institution. It is stated that the Transferee Institution has filed this Writ Petition with mala fide intention to grab money from respondent no.1 in the form of grants. The Ashram School was transferred to the Transferee Institution on certain conditions. One of the conditions was to absorb the staff of the closed Ashram School. However, when the staff members or Teachers of the closed school attended village Bilkheda for joining the Ashram School, they were not allowed to join by the Transferee Institution. As such, the Transferee Institution committed breach of the condition of the Government Resolution dated

04.03.2010. It is further stated that there were many deficiencies in the Ashram School run by the Transferee Institution. Sufficient number of students were not present there. Necessary infrastructure was not available. The said Ashram School was not included in the Master Plan. The Ashram School run by the Transferee Institution was inspected by respondent no.4 wherein all the deficiencies noticed by him were mentioned.

10. It is further stated in the affidavit-in-reply filed on behalf of respondent nos.1 to 4, that the Original Institution made representation through an M.L.A. of Gadchiroli Constituency whereon the then Chief Minister granted stay to the Resolution dated 04.03.2010 transferring the Ashram School to the Transferee Institution and directed to place the matter before him. Accordingly, respondent no.2 sent the report in respect of the Ashram School run by the Original Institution to the Chief Minister wherein it was mentioned that the Original Institution had complied with all the requirements pertaining to the

infrastructure for running the Ashram School. Considering that report, the Chief Minister ordered to cancel the Government Resolution dated 04.03.2010 and directed to restore the Ashram School to its original place for being run by the Original Institution vide Government Resolution dated 14.09.2012. The recognition given to the Transferee Institution to run the said Ashram School was cancelled under the same Government Resolution.

11. The learned Asst. Government Pleader appearing for the State relying on the affidavit-in-reply of respondent nos.1 to 4 submits that the Ashram School has been rightly de-recognized from the Transferee Institution and was rightly ordered to be re-transferred to the Original Institution. He denies that the stay order passed by the Chief Minister on 28.05.2010 as well as the impugned Government Resolution dated 14.09.2012 are arbitrary, illegal, unconstitutional or colourable. He supports the said Government Resolution and prays that the Writ Petition may be dismissed.

12. The learned Counsel appearing for respondent no.5 did not file any reply in writing. Relying on the judgment of this Court in the case of **Smt. Manisha Bhimraj Patil & others Vs. The State of Maharashtra & others, 2014(1) ALL MR 6**, wherein it is held that a de-recognized Ashram School at one place cannot be revived at other place, he submits that the de-recognized Ashram School of the Original Institution was not legally transferable to the Transferee Institution. According to him, the Transferee Institution has no right to file this petition. He further states that since the impugned Government Resolution has been passed at Mumbai, this Court has no jurisdiction to entertain the present Writ Petition.

13. Undisputedly, the Ashram School subject matter of this Writ Petition is governed by the Ashram School Code published by the Secretary, Tribal Development Department, State of Maharashtra, Mumbai, which is in force since the year 2006-07. As per

Rule 2.23 of the Ashram School Code, a de-recognized school can be transferred to any other self-serving Institution or the Government itself may run it as the Government Ashram School. As seen from the Government Resolution dated 04.03.2010 and the above referred undisputed factual position, because of certain deficiencies on the part of the Original Institution in running the Ashram School properly, the said Ashram School was de-recognized by respondent no.1 on the report of respondent no.2 and subsequently was transferred to the Transferee Institution. This act of transfer seems to be in consonance with Rule 2.23 of the Ashram School Code. It follows that the recognition to run the said Ashram School was granted in favour of the Transferee School as per the Government Resolution dated 04.03.2010. Therefore, if the said Ashram School was to be de-recognized for any reasons whatsoever, it was necessary for respondent no.2 to follow the provisions of Rule 2.16 of the Ashram School Code. As per the said Rule, when the recognition of any Ashram School is proposed to be cancelled, the

Commission should give full opportunity to the Institution running such school to furnish explanation. After giving such an opportunity, the concerned Institution should be informed the deficiencies in running the school and should be called upon to explain within the given time as to why the recognition of the Ashram School should not be withdrawn. As per Rule 2.17, if the Institution shows readiness to remove the deficiencies, the Commissioner should extend it a reasonable time for removal of the deficiencies. If the Commissioner is satisfied from the response of the Institution, then he may continue recognition of the Ashram School subject to certain conditions and instructions. If no positive response is received from the Institution, the Ashram School can be de-recognized.

14. As per Rule 2.19 of the Ashram School Code, if any Ashram School is de-recognized by the Commissioner, the Institution running that Ashram School previously would have right to file an appeal to the Secretary of the Tribal Development Department

within 30 days. The Secretary, in turn, would extend the Institution an opportunity of being heard and then record his verdict on the appeal.

15. It is evident from the facts of the present case, that before de-recognizing the Ashram School, that was transferred to the Transferee Institution, provisions of the Ashram School Code have not at all been followed. Respondent no.2 did not extend the Transferee Institution an opportunity of being heard, an opportunity to remove deficiencies, if any, and simply sent a report to respondent no.1. It is well settled that while functioning as an Authority to grant or take away any relief, the Authority discharging the administrative function has to follow the principles of natural justice. It was incumbent on the part of respondent no.2 to strictly follow the provisions of Rules 2.16 and 2.17, and extend the Transferee Institution, an opportunity of hearing before withdrawing recognition of the Ashram School that was allotted to it as per the Government Resolution dated 04.03.2010. The action taken by

respondent no.1 on the report of respondent no.2, de-recognizing the Ashram School that was allotted to the Transferee Institution is ex facie highhanded, arbitrary and unconstitutional. The decision recorded in the Government Resolution dated 14.09.2012 has been taken by respondent no.1 behind the back of the Transferee Institution by totally ignoring the principles of natural justice. If that be so, the impugned Government Resolution dated 14-09-2012, de-recognizing the Ashram School allotted to the Transferee Institution cannot be said to be legal, constitutional and sustainable.

16. Here reference may be made to the provisions of Rule 2.23 of the Ashram School Code, which, in Marathi, runs, as under :-

“2.23. स्वयंसेवी संस्थेमार्फत कार्यान्वित असलेल्या कोणत्याही शाळेची मान्यता एकदा काढून घेतल्यास त्या संस्थेचा मान्यतेसाठी पुन्हा विचार केला जाणार नाही व विभाग अशी शाळा, विभागाने निश्चित केलेल्या शर्तीच्या अधीन राहून इतर स्वयंसेवी संस्थेने हस्तांतरित करतील किंवा शासन ताब्यात घेवून शासकीय अश्रमशाळा म्हणून चालवेल.”

This provision prohibits allotment of the de-recognised Ashram School again to the same institution, which was running it prior to its de-recognition. The learned Counsel for the Transferee Institution submits that re-allotment of the Ashram School to the Original Institution after it was de-recognized and, that too, on the letter given by a M.L.A. from Gadchiroli, in total breach of the provisions of Rule 2.23 of the Code, is illegal and unsustainable. We find substance in this contention. The impugned Resolution does not at all refer to this Rule. It is not explained as to under what provision the de-recognised Ashram School has been re-allotted to the Original Institution by circumventing the provision contained in Rule 2.23 of the Ashram School Code.

17. The learned Counsel appearing for the Transferee Institution alleges that the Transferee Institution has been subjected to discrimination on the ground, that two other Ashram Schools which were transferred from Kinala (Borli), Taluka : Umred,

District : Nagpur to Shantai Bahu-uddeshiya Shaikshanik, Sanskrutik Va Krida Mandal, Sanenagar, Amalner, District : Jalgaon and from Devgaon, Taluka : Chandur (Railway), District : Amravati to Mahila Bahu-uddeshiya Vikas Sevabhavi Sanstha, Patharkheda, Taluka : Erandol, District : Jalgaon, vide Resolutions dated 04.03.2010, have kept undisturbed and only the Ashram School that was allotted to the Transferee Institution has been de-recognized and re-transferred to the Original Institution. We are not inclined to entertain this submission for reason that the above-referred two Institutions are not the parties to this Writ Petition. It is not possible to make any comment on the legality and correctness of the action of the Government to allow the said Institutions to run the Ashram Schools which were transferred to them, in the absence of the said Institutions as parties before this Court and without hearing them on the factual position in respect of their Ashram Schools.

18. The contention of the learned Asst.

Government Pleader that the Ashram School run by the Transferee Institution was inspected by respondent no.3 and a number of deficiencies were noticed during that inspection, has no relevance for deciding this Writ Petition. It is not the case of respondent nos.1 to 4 that the Ashram School allotted to the Transferee Institution has been de-recognized because of the said deficiencies and that the Transferee Institution had been given an opportunity of hearing as contemplated in Rules 2.16 and 2.17 of the Ashram School Code, before de-recognizing the school allotted to it. Therefore, the above-said contention needs to be simply ignored.

19. The learned Counsel appearing for respondent no.5 submits that in view of the law laid down by this Court in the case of **Smt. Manisha Bhimraj Patil & others** (supra), the de-recognized Ashram School cannot be allotted to any other Society and, therefore, the Transferee Institution has no locus standi to file this Writ Petition. As per the provisions of Rule 2.23 of the Ashram School Code, the Government has

powers to transfer the de-recognized school to some other self-serving Institution or the Government itself can run it as the Government Ashram School. In the case of **Smt. Manisha Bhimraj Patil & others** (supra), the provisions of Rule 2.23 were not under consideration of the Court. Therefore, this judgment would be of no help to respondent no.5 to contend that the Ashram School subject matter of the present Writ Petition was not liable to be transferred to the Transferee Institution.

20. The learned Counsel for respondent no.5 further submits that this Court also has no jurisdiction to decide the present petition since the order of the de-recognition has been passed at Mumbai and the Principal Seat of the High Court at Mumbai would have jurisdiction to entertain and try this Writ Petition. We are not inclined to accept this contention since the Transferee Institution was running the Ashram School at Bilkheda, Taluka : Amalner, District : Jalgaon from where it is de-recognized, the cause of action for filing the

Writ Petition can be said to have arisen within the local limits of jurisdiction of this Court. Therefore, this Court has jurisdiction to entertain the present Writ Petition.

21. We are of the considered view that the Transferee Institution should have been given an opportunity of hearing by respondent no.2 in view of the provisions of Rules 2.16 and 2.17 of the Ashram School Code. Passing of the Government Resolution dated 14.09.2015 without giving an opportunity of being heard to the petitioner, would be arbitrary, unreasonable and unconstitutional. Therefore, the said Government Resolution is liable to be quashed and set aside.

22. We are not oblivious of the fact that after setting aside the Government Resolution dated 14.09.2015, the students and staff members of the Original Institution are likely to face some problems. However, since this mess has been created by the respondent authorities, they are bound to take

care of those students and staff members and save them from any kind of hardship, until respondent no.2 takes final decision in the matter after hearing the petitioner. In order to decide the matter finally and effectually, we are of the view that before taking final decision in the matter, respondent no.2 should hear the Original Institution as well.

23. In the above circumstances, we pass the following order :-

1) Government Resolution dated 14.09.2012 is quashed and set aside.

2) Respondent no.2 shall extend the petitioner (i.e. Transferee Institution) and respondent no.5 (i.e. Original Institution) necessary opportunity of hearing before taking any decision about de-recognising the Ashram School that was allotted to the petitioner vide Government Resolution dated 04.03.2010, in view of Rules 2.16 and 2.17 of the Ashram School Code.

3) Respondent no.2 shall complete the hearing and record his decision within eight weeks from today.

4) Respondent no.2 shall take appropriate decision considering the merits of the claims of the rival Institutions, the provisions of Ashram School Code, the relevant circulars/resolutions, the Government policy, convenience/inconvenience of the Institution, students, staff members and all the relevant factors.

5) We make it clear that we have not expressed any opinion on the merits of the claims of the rival Institutions.

24. With the above directions, Rule is made absolute. The Writ Petition stands disposed of. No costs.

(SANGITRAO S. PATIL)
JUDGE

(S.S. SHINDE)
JUDGE