

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

WRIT PETITION NO.8685 OF 2014

- 1) Madhukar Sikshan Prasarak Mandal
Khinala, Tq. Biloli, Dist.Nanded
Through its President -
Jayawant s/o Hullaji Gaikwad
Age: 61 Yrs., occu. Agril.
R/o Kinala, Tq. Biloli,
District Nanded.
 - 2) Jai Shankar Residential Handicap
School, Jalkot, Tq. Jalkot,
District Latur.
- PETITIONERS

VERSUS

- 1) The State of Maharashtra
Through Secretary,
Social Justice Special Assistance
Department, Maharashtra State,
Mantralaya, Mumbai.
 - 2) The Minister for Social Justice,
Maharashtra State, Mantralaya,
Mumbai.
 - 3) The Commissioner Handicap,
Welfare, Maharashtra State,
3, Church Road, Pune.
 - 4) Maharani Ahilyadevi Holkar
Samajik Bahuuddeshiya Seva
Bhavi Sanstha, Nerul,
New Mumbai.
Reg.No.MAH/592/2012/Thane
Om Gagangiri Plot No.A/86,
Sector 20, Nerur (West)
Navi Mumbai 400 706
Through its President -
Mahadeo Baba Pukale.
- RESPONDENTS

Mr.VD Salunke, Advocate for Petitioner/s
Mr.SK Tambe,AGP for Respondent Nos.1 to 3;
Mr.Sachin S.Deshmukh, Adv. For Respondent No.4.

CORAM : S.S.SHINDE &
P.R.BORA,JJ.

DATE OF RESERVING JUDGMENT :- 5th DECEMBER,2015.
DATE OF PRONOUNCING JUDGMENT 29th FEBRUARY, 2016.

JUDGMENT (PER:-P.R.BORA,J.)

1) Heard. Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties, the petition is taken up for final disposal at admission stage.

2) The petitioners have filed the present petition for quashment of orders dated 7.7.2012; 6.9.2014 and 12.9.2014. Petitioner No.1 is a registered trust duly registered under the provisions of Bombay Public Trusts Act, 1950. Petitioner No.2 is a school run by petitioner No.1-trust.

3) Petitioner No.1 had started petitioner No.2 school in the year 1992 and successfully run the same till the year 2012. The school was duly approved by the Government and was also receiving grant-in-aid

from the Government. In the year 1999, a license was received to run the said school and the said license was regularly renewed by the respondents till 31st March, 2011. The license issued by Respondent No.3 to run the petitioner no.2 school has been cancelled by Respondent No.3 vide order dated 7.7.2012. Before passing the aforesaid order, Respondent No.3 had issued notice dated 26.6.2012 to the petitioners. The notice dated 26.6.2012 was issued by Respondent No.3, relying on the report of District Social Welfare Officer, Zilla Parishad, Latur. The petitioners had submitted their reply to the said show cause notice on 30th June, 2012. Respondent No.3, however, was not convinced with the reply so filed by the petitioners and cancelled the registration of petitioner no.2 – school; vide order passed on 7.7.2012 w.e.f. 23rd October, 2011.

4) Being aggrieved by the order of cancellation passed by Respondent No.3, the petitioners preferred an appeal before the Hon'ble Minister for Social Justice, State of Maharashtra, Mumbai (Respondent No.2). It is the contention of the petitioners that the appeal so filed by them was rejected by the

Hon'ble Minister on 3.12.2013 without affording the petitioners appropriate opportunity of hearing. The petitioners had, therefore, filed Writ Petition No. 5473/2012 before this Court, whereupon the learned Division Bench of this Court quashed the order dated 3rd December, 2013 passed by the Hon'ble Minister and directed the Hon'ble Minister to hear the appeal afresh by extending due opportunity of hearing to the petitioners. Accordingly, the appeal was re-heard by the Hon'ble Minister. The Hon'ble Minister vide order dated 6.9.2014 rejected the appeal and confirmed the order dated 7.7.2012 passed by Respondent No.2. After dismissed of the appeal, Government Resolution dated 12.9.2014 came to be passed whereby petitioner No.2-school has been transferred to Respondent No.4. Aggrieved by the orders dated 7.7.2012, 6.9.2014 and 12.9.2014, the petitioners have invoked the jurisdiction of this Court and have prayed for quashment of the aforesaid three orders.

5) It is the contention of the petitioners that while dismissing the appeal filed by the petitioners, the Hon'ble Minister has not at all considered the

grounds raised by the petitioners in their memo of appeal. It is the further contention of the petitioners that vide Government Resolution dated 12th September, 2014, the respondents have illegally transferred petitioner No.2-school to Respondent No.4. According to the petitioners, Petitioner No.2-school could not have been transferred to Respondent No.4 in view of Clause 10 of the Government Resolution dated 24th January, 2014, which prescribes that the institution, to which non-functioning or closed down handicapped school receiving grant-in-aid is to be transferred, must be functioning for more than three years; whereas Respondent No.4 has not completed the said period of three years. It is the further contention of the petitioners that the petitioners were constrained to close down petitioner no.2 school for the reason that no grants were received to petitioner no.2-school from 2007-2008 and even salary grants were not paid to it for the year 2009-2010 and 2010-2011. It is the further contention of the petitioners that time and again, requests were made by the petitioners for release of the grants, however, no grants were released and in such circumstances, the petitioners were left with no

option, but to close down petitioner no.2-school. It is the further contention of the petitioners that Respondent No.3, at the first instance and Respondent No.2 thereafter completely ignored the fact that no grants were received to the petitioners for consecutive period of three years and that was the reason that the petitioners were compelled to close down the school. In the circumstances, according to the petitioners, the right step on the part of the respondents would have been to release the arrears of grants and not to cancel the license of the petitioner no.2-school. It is the further contention of the petitioner that after dismissing the appeal vide order dated 6.9.2014, making undue haste and without following due procedure and without observing the Rules and more particularly, the guidelines in Government Resolution dated 24.1.2014, order dated 12.9.2014 has been illegally passed thereby transferring petitioner no.2-school to Respondent no.4. The petitioners have, therefore, prayed for setting aside all the aforesaid three orders.

6) Smt.Chaya Nagorao Gadekar, who is working as District Social Welfare Officer, Zilla Parishad,

Latur, has filed an affidavit in reply on behalf of Respondent Nos. 1 to 3. As contended in the said affidavit in reply, Respondent No.3 has rightly cancelled the license of petitioner no.2-school since petitioner no.1-trust has failed in properly running the said school. It is further contented that the District Social Welfare Officer had visited petitioner no.2-school on four occasions in the period between 23rd October, 2011 to 29th February, 2012 and on all four occasions, petitioner no.2-school was found to be non-functioning /closed. It is further contended that the reason stated by the petitioners for closing down the school that they had not received non-salary and salary grants, is unacceptable. It is further contended that it was the statutory obligation on the petitioners to run the school from their own funds till actual realization of the outstanding grants from the Government.

7) It is further contended that the petitioners themselves have consented for transfer of petitioner no.2-school to Respondent no.4 and as such, they are now estopped from taking any contrary plea and object

the order of such transfer vide Government Resolution dated 12th September, 2014. It has also been contended that the decision dated 7.7.2012, cancelling the license of petitioner no.2-school was accepted by the petitioners and that was the reason that they did not challenge the aforesaid order or file the appeal taking exception to the said order for the period of more than one year. It is further contended that the petitioners did not disclose any sufficient ground for occurrence of delay on their part in preferring the appeal against order dated 7.7.2012 and as such, on the ground of delay itself, the said appeal was liable to be dismissed.

8) It is further contended that the petitioners have falsely contended that first dismissal of the appeal, vide order passed by the Hon'ble Minister on 3.12.2013 was without affording opportunity of hearing to the petitioners. It is contended that despite repeated opportunities given, the petitioners remained absent on the given dates and in the circumstances, ultimately, the Hon'ble Minister passed order dated on 3.12.2013. It is further contended that there were complaints against the

petitioners from the employees of petitioner no.2-school and that was the additional reason for cancellation of the license and transfer of the petitioner no.2-school to Respondent no.4.

9) Shri Prashant Mahadeo Pukle has filed an affidavit in reply on behalf of Respondent No.4. Respondent no.4 has in toto denied the contentions raised in the petition. According to Respondent no.4, the petitioners have not approached the court with clean hands and have suppressed the material facts from the Court. Respondent No.4 has contended that the petitioners were duty bound to disclose, at the first instance that they had passed a Resolution dated 18.7.2012, thereby according their consent for transfer of petitioner no.2-school to Respondent no.4. It is further contended that by suppressing the material facts and more particularly, the aspect of consent given by them, the petitioners have secured the relief in writ petition No. 5473/2014 and have thereafter secured the interim relief in the present petition. According to Respondent No.4, on the sole ground that the petitioners have not disclosed the material facts, the petition deserves

to be dismissed in *limine*. It is further contended that Respondent No.4-institution has already commenced the school and has given admission to 32 children with disability in the said school at Sangli for the academic year 2015-2016. It is further contended that as provided in Government Resolution dated 12.9.2014, Respondent no.4-institution has absorbed all the employees of petitioner no.2-school and accordingly they all have resumed their duties at the school at Sangli. In the circumstances, according to Respondent no.4, it is now impermissible to reverse the situation. It is further contended that there were serious complaints of the employees of petitioner no.2 against the petitioners regarding improper administration and negligence of the office bearers of petitioner no.1-trust. Respondent No.4 has, also therefore, prayed for dismissal of the petition.

10) Shri V.D.Salunke, learned Counsel appearing for the petitioners vehemently submitted that the reasons cited in order dated 7.7.2012 passed by Respondent no.3, are wholly incorrect and unsustainable. According to learned Counsel, at the

time of hearing before Respondent no.3 before passing of the impugned order dated 7.7.2012, Shri Jaywant Gaikwad, President of petitioner no.1-trust had brought to the notice of Respondent no.3 that petitioner no.1-school had not received non-salary grants for the years 2007-2008; 2008-2009 and 2009-2010 and salary grants for the years 2009-2010 and 2010-2011. Learned Counsel further submitted that Shri Gaikwad had also submitted at the relevant time that if the arrears of the grants are released, the petitioners were ready to re-start the school from new academic year and had, therefore, prayed for not taking any action of cancellation of the license. Learned Counsel submitted that without considering the submissions made on behalf of the petitioners and without any fault on the part of the petitioners, Respondent No.3 cancelled the license of petitioner no.2-school vide order dated 7.7.2012.

11) Learned Counsel further submitted that though the petitioners had passed a resolution on 18.7.2012 in respect of giving consent for transfer of petitioner no.2-school to Respondent no.4, subsequently the said resolution was cancelled in the

meeting of the petitioner no.1-trust held on 15.8.2013. The learned Counsel submitted that the petitioners have not suppressed any fact from this court. Learned Counsel pointed out that the petitioners themselves have placed on record the resolution dated 18.7.2012 along with the present petition and have also placed on record the subsequent resolution dated 15.8.2013.

12) Learned Counsel submitted that in the written submissions filed before Hon'ble Minister on 22.1.2014 also, the petitioners had referred to the resolution dated 18.7.2012 as well as 15.8.2013. Learned Counsel further submitted that the President of Respondent no.4-institution viz. Prashant Mahadev Pukle was previously serving in Mantralaya and by misusing acquaintances with the employees working in Mantralaya, he has got dismissed the appeal filed by the petitioners and also got issued the Government Resolution dated 2.9.2014 in favour of his own institution.

13) We have heard the learned Counsel for respective parties and perused the impugned orders

and the documents placed on record by the parties. Perusal of order dated 7.7.2012 reveals that Respondent no.3 has cancelled the license of petitioner no.2-school on the ground that in the visits made by the District Social Welfare Officer, Zilla Parishad, Latur, on about four occasions, petitioner no.2-school was found non-functioning and closed and further that the reasons assigned by the petitioners in justification of the closure of the school are unacceptable. Respondent No.3 has further observed that it was not appropriate on the part of the petitioners to close down the school on the ground of non release of the salary and non-salary grants by the Government. Respondent No.3 has further observed that from the reasons cited by the petitioners, he has reason to believe that petitioner no.1-trust is incompetent and ineligible for running petitioner no.2-school.

14) Prior to making the observations, as above, Respondent no.3 has recorded in brief, the respective submissions of Shri P.P.Vaidya – Assistant Advisor; District Social Welfare Officer, Zilla Parishad, Latur; Shri Jaywant Gaikwad – President of

petitioner no.1; Shri R.P.Gaikwad (Teacher); Shri U.G.Tidke and other 12 employees working in petitioner no.2-school. The fact that petitioner no.2-school was not functioning on the dates referred to in the report of the District Social Welfare Officer, has not been disputed by the petitioners. However, Shri Jaywant Gaikwad as well as Shri R.P.Gaikwad and U.G.Tidke and other 12 employees of petitioner no.2-school have specifically submitted that the petitioners have not received non-salary grants for the year 2007-2008; 2008-2009 and 2009-2010 and salary grants for the years 2009-2010, and 2010-2011. It was specifically submitted by Shri Jaywant Gaikwad and R.P.Gaikwad and others that since the employees of petitioner no.2-school had not received their salary for the period 21 months, they have not admitted the students in the said school. It was also stated by Shri Jaywant Gaikwad and the employees of the petitioner no.2-school that if the arrears of the salary and non-salary grants are released, they will re-start the school from the new academic session. They had also requested Respondent no.3 that in such circumstances, the license of petitioner no.2-school shall not be cancelled.

15) From the observations recorded by Respondent no.3 immediately after he has recorded the submissions of Shri Jaywant Gaikwad and Shri RP Gaikwad and others, it is however revealed that he was not satisfied with the explanation given by the petitioners as well as the employees of the petitioner no.2-school, and as we have noted earlier, Respondent no.3 has further observed that it was wholly inappropriate and unjustified on the part of the petitioners to close down the school on the ground that they have not received the salary and non-salary grants.

16) We, however, find it difficult to agree with the observations so made by Respondent no.3 and the order consequently passed by him, cancelling the license of petitioner no.2-school for the reasons as assigned in the said order. It is not the case that the petitioners took decision of closing down the school within few months of not receiving the salary and non-salary grants. Undisputedly, the petitioners had not received non-salary grants for the period of three years and salary grants for the period of two years. The specific contention of the petitioners

that the petitioner no.2-school had not received salary grants for the period of more than 21 months, has not been denied or disputed by the respondents. Even if the contention of Respondent no.3 that non-governmental organizations shall be financial strong enough so as to withstand in the situation of non-receiving the grants from the Government for some period is accepted, in no circumstances, it can be approved that even if they do not receive the grants for three years, they shall continue their activities.

17) The question arises when the Government has approved the petitioner no.2-school and has also approved the staff on the establishment of the said school, why Government shall not timely, at least within the reasonable period, pay salary grants as well as non-salary grants. It can be understood, if the arrears are of few months. But there cannot be any justification for not releasing/providing the grants for a long period of three years and ask the NGO to run the school. In such circumstances, according to us, the petitioners cannot be blamed, if they had taken a decision of not running the school

any further. It is quite evident that the petitioners were left with no other option except to take a decision not to run the school and close it down. It was an action in distress. For the said reason, Respondent No.3 has held the petitioners to be incompetent, incapable and ineligible to run petitioner no.2-school. The opinion so recorded by Respondent no.3 is disgusting and cannot be subscribed. Respondent No.3 has also noted that providing salary and non-salary grants is the function within the jurisdiction of the District Social Welfare Officer, Zilla Parishad, Latur. If that be so, Respondent No.3, ought to have first taken to task the said District Social Welfare Officer and ought to have known from him the reason for not releasing the grants for years together. In fact, it was the District Social Welfare Officer, who was supposed to justify the delay occurred in releasing the grants. It is ridiculous that the Officer, who according to Respondent no.3 was responsible for release of the salary and non-salary grants, recommended for closure of the petitioner no.2-school and Respondent no.3 accepted his recommendations.

18) In the above circumstances, the order dated 7.7.2012 passed by Respondent No.2 can not be sustained.

19) The petitioners challenged the aforesaid order by filing the appeal before the Hon'ble Minister for Social Justice at Mumbai. Much has been argued by the respondents that the appeal so filed by the petitioners was not liable to be considered and ought to have been rejected solely on the ground of delay caused in preferring the said appeal. It was also sought to be contended that the petitioners in the aforesaid appeal did not provide any reason for delay which was caused in preferring the said appeal and had also not prayed for condonation of the said delay. We have recorded the aforesaid objections raised by the respondents only for the purpose of rejecting the same. In view of the fact that the Hon'ble Minister did entertain the said appeal and also decided the same, now, there is no propriety in raising the objections, as aforesaid, that there was delay and further that the same was not explained and was not sought to be condoned.

20) It is the matter of record that the order passed on 3rd December, 2013 by the Hon'ble Minister, thereby rejecting the appeal filed by the petitioners, was challenged by the petitioners by filing WP No.5473/2014 (Madhukar Shikshan Prasarak Mandal, Khinala & Anr. Vs. The State of Maharashtra and Ors.) before this court. The Division Bench has allowed the said Writ Petition on the ground that before passing the impugned order, the Hon'ble Minister did not give the adequate opportunity to the petitioners to put forth their case. The Hon'ble Minister was directed by this Court to decide the appeal afresh within a period of four months from the date of the said order. Accordingly, the Hon'ble Minister decided the said appeal and vide order dated 6.9.2014 rejected the same and confirmed the order dated 7.7.2012 passed by Respondent No.2.

21) We have perused both the aforesaid orders; first dated 3.12.2013 and subsequent dated 6.9.2014. In none of the aforesaid orders, the Hon'ble Minister seems to have considered the contentions raised by the petitioners. In the order dated 7.7.2012, the submissions made on behalf of the petitioners are recorded. As we have noted herein before, it was the

precise contention of the petitioners that since they had not received non-salary as well as salary grants for the period of more than three years, they were compelled to take the decision to close down the school. In the appeal filed by the petitioners before the Hon'ble Minister also, a written submission dated 22.1.2014 was made by the petitioners, contending therein that they had not received the salary and non-salary grants for a considerable long period and that was the only reason that they were compelled to take the decision to close down the school. In the memo of appeal dated 23rd October, 2013 and in the written submissions dated 22.1.2014, it is specifically averred by the petitioners that since in the meantime they had received part payment towards arrears of non-salary and salary grants, they were willing to re-start the school from the academic year of 2014-2015 and in the circumstances, the petitioners had prayed for setting aside the order dated 7.7.2012 passed by Respondent No.2. In both the orders, the Hon'ble Minister has, however, not even referred to the aforesaid submissions and without assigning any cogent and sufficient reason has dismissed the appeal filed by

the petitioners. In the subsequent order passed on 6.9.2014 though there is a passing reference to the fact that the erstwhile employees of the petitioners' school had made representation against the president of petitioner No.1-trust as regards the injustice caused to them by the said president, no details are provided as to what sort of complaint was made by the said employees and whether any opportunity was given to the president of the petitioner No.1-trust to meet the allegations made against him. Moreover, in the order dated 7.7.2012 whereby the license to petitioner No.2-school came to be cancelled, there is no whisper about any complaint by the employees of petitioner No.2-school against the president of petitioner No.1-trust. The order dated 7.7.2012 does not disclose that the complaint made by the employees of petitioner No.2-school against the president of petitioner No.1-trust, is one of the reasons resulting in cancellation of the license. As such, the order passed by the Hon'ble Minister on 6.9.2014 also cannot be sustained and will have to be set aside.

22) It was sought to be contended by the learned Counsel appearing for Respondent No.4 that the order

dated 6.9.2014 passed by the Hon'ble Minister cannot be faulted on the ground that it does not contain the elaborate reasons. The learned Counsel, relying on the judgment of the Hon'ble Apex Court in the case of S.N.Mukherjee Vs. Union of India – (1990) 4 SCC 594, and more particularly para 34 thereof, submitted that when the Hon'ble Minister has confirmed the order appealed again and when the said order dated 7.7.2012 was a speaking order containing the reasons, it was not necessary for the Hon'ble Minister to again give the detailed reasoning.

23) There cannot be a quarrel with the conclusions recorded by the Hon'ble Apex court in the cited judgment. However, in the said judgment itself, in para 36 thereof, the Hon'ble Apex Court has recorded that, "the extent and nature of the reasons would depend on facts and circumstances of the particular case. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy." In the instant case, as we have already noted, Respondent No.3, while passing the order dated 7.7.2012, though has in earlier part

of the said order, recorded the submissions of the parties, has failed in considering the said submissions while arriving at the conclusion. In the circumstances, it cannot be accepted that the reasons recorded in the order dated 7.7.2012 are clear and explicit so as to infer that the authority concerned has given due consideration to the points in controversy. Respondent No.3 has utterly failed in considering the submissions made on behalf of the present petitioners in regard to non-receiving salary and non-salary grants, because of which according to them they were compelled to close down the school. In the appeal, the Hon'ble Minister also failed in considering the said submissions and has mechanically confirmed the order passed by the subordinate authority.

24) The next point, which falls for our consideration, is the correctness and legality of the Government Resolution dated 12.9.2014 whereby the petitioner No.2 school has been transferred to Respondent No.4. Our attention was invited by the learned Counsel for the petitioners to the Government Resolution dated 24th January, 2014, which pertains to

transfer of the non-functioning/closed schools for disables. The aforesaid Government Resolution prescribes certain terms and conditions for transfer and shifting of non-functioning/closed schools for disables to other institution at other place. Condition No.10 thereof reads as under,-

“बंद पडलेल्या अनुदानित अपंगाच्या विशेष शाळा/कर्मशालांचे हस्तांतरण करावयाची संस्था ही स्थापन होवून तीन वर्षांचा कालावधी पूर्ण झालेली असावी.”

Respondent No.4-trust, to which petitioner No.2-school has been transferred, vide Government Resolution dated 12.9.2014, is admittedly registered in the year 2012. It is thus evident that it has not completed the period of three years as envisaged in Condition No.10 of the Government Resolution dated 24th January, 2014, reproduced herein above. In the circumstances, it was impermissible for Respondent no.1 to transfer the petitioner No.2-school to Respondent No.4, vide the impugned Government Resolution.

25) It was sought to be canvassed by Shri Deshmukh, the learned counsel appearing for

Respondent No.4 that the requirements, as are mentioned in the Government Resolution dated 24th January, 2014 would not apply in the instant case, since the decision to transfer the petitioner No.2-school to Respondent No.4 was taken prior coming into effect of the said Government Resolution based on the report dated 20.9.2013 submitted by the Commissioner. We are, however, not convinced with the arguments so made. When the Government has laid down certain guidelines for transfer of the non-functioning/closed schools for disables, vide Government Resolution dated 24th January, 2014, there was no reason for Respondent No.1 to deviate from or to give go-bye to the said guidelines/terms and conditions while issuing Government Resolution dated 12.9.2014. Receiving report from the Commissioner is the part of the process for transfer of such school. The ultimate decision, however, was taken on 12.9.2014 and as such, Respondent No.1 was bound to observe the guidelines/terms and conditions incorporated in the Government Resolution dated 24th January, 2014. The Government Resolution dated 12.9.2014 issued in utter disregard of and without observing the stipulations in the Government Resolution dated 24th January, 2014,

thus, cannot be sustained.

26) Shri Deshmukh, the learned Counsel appearing for Respondent No.4, vehemently submitted that the petitioners are estopped from raising any objection either to the order dated 7.7.2012 whereby their license has been cancelled, or order dated 12.9.2014 whereby petitioner No.2-school has been transferred to Respondent No.4 and allowed to be shifted at Bandgaon, in view of the resolution passed by the petitioners in their meeting dated 18.7.2012, consenting for the transfer of petitioner No.2-school to Respondent No.4 and to shift the same in the district of Sangli.

. Shri Deshmukh further submitted that it was Shri Jaywant Hullaji Gaikwad, president of Respondent No.1-trust, who had taken all positive steps for transfer of petitioner No.2-school in favour of Respondent No.4 and that was the reason that the Government Resolution dated 12.9.2014 came to be issued. The learned Counsel further submitted that with some oblique motive and for some extraneous reasons, Shri Gaikwad resiled from his earlier stand and has come out with a case that the transfer of

petitioner No.2-school to Respondent No.4 is contrary to the rules and regulations framed for transfer and shifting of such school. The learned Counsel further submitted that passing of the Resolution on 18.7.2012 by the petitioners thereby according their consent to transfer the petitioner K.D.Sharma Vs. Steel Authority of India Ltd., and OrNo.2-school to respondent No.4, volumely indicates that they had accepted the decision dated 7.7.2012 whereby the license of petitioner No.2-school was cancelled.

27) The learned Counsel further submitted that not initiating any action for a considerable long period of more than 1½ years also indicates that the petitioners had no objection for transfer of petitioner no.2-school to respondent No.4. The learned Counsel further submitted that Shri Gaikwad, the president of petitioner No.1-trust, abruptly changed his stand and preferred the appeal before the Hon'ble Minister. The learned Counsel submitted that since the petitioners, vide the resolution passed on 18.7.2012 have already consented for transfer of the school, the Hon'ble Minister dismissed the appeal filed by the petitioners.

28) The learned Counsel further submitted that while obtaining the orders from this Court in Writ Petition No.5473/2014, the petitioners have suppressed the material fact that they had passed a resolution on 18.7.2012, whereby a consent was accorded to transfer of petitioner No.2-school to Respondent No.4. The learned Counsel submitted that had this fact been brought to the notice of the this court, perhaps no order, as has been passed by the Division Bench of this Court would have been passed. The learned Counsel submitted that on this count alone, the present petition needs to be rejected. Placing reliance on the judgment of the Hon'ble Apex Court in the case of K.D.Sharma Vs. Steel Authority of India Ltd., and Ors. reported at (2008) 12 SCC 481, the learned Counsel submitted that the present petitioners, who secured favourable order in the earlier petition by suppressing material facts from this court, are not entitled to claim any equitable relief from this Court.

29) The learned Counsel has placed on record the copy of the writ petition No.5473/2014 along with documents annexed thereto. It is true that in the

memo of the petition, it is not mentioned that some resolution was passed on 18.7.2012 and consent was accorded for transfer of the petitioner No.2-school in favour of respondent No.4. However, as has been pointed out by the learned Counsel for the petitioners, the petitioners had annexed with their petition the copy of explanation dated 22nd January, 2014 submitted by them before the Hon'ble Minister, which contains both the facts that of passing of the earlier resolution dated 18.07.2012 and the subsequent resolution dated 15.08.2013. As such, it is difficult to accept the contention raised by the respondent No.4 that, the petitioners have suppressed the fact of passing of resolution by them, according consent for transfer of petitioner No.2 school to respondent No.4.

30) Further, we agree with the submission made by the learned Counsel for the petitioners that the main grievance raised in writ petition No.5473/2014 was that without giving any opportunity of hearing, the Hon'ble Minister had passed the order dated 03.12.2013 and as such it was not that relevant and necessary whether all earlier facts including that of

passing the resolution dated 18.07.2012 by the petitioners, were mentioned in the petition or not. Further, the argument advanced on behalf of the respondent No.4 that, the Hon'ble Minister rightly dismissed the appeal filed by petitioners since the petitioners themselves had passed resolution thereby according their consent to transfer the school, also cannot be accepted, in view of the fact that, the petitioners had subsequently passed the another resolution in their meeting held on 15.08.2013 and has thereby withdrawn the consent accorded by them vide resolution passed in the meeting dated 18.07.2012 and this fact was very well brought to the notice of the Hon'ble Minister by the petitioners. It is transpired from the affidavit in reply presented on behalf of respondent Nos. 1 to 3 that, the proposal was forwarded by respondent No.3 to respondent No.1 on 20.09.2013 recommending the transfer of petitioner No.2 school to respondent No.4. A copy of the said report, however, has not been filed on record either by the petitioners or by the respondents. In the affidavit in reply filed on behalf of respondent Nos. 1 to 3, nothing has been disclosed as to what were the considerations for

allowing the shifting of petitioner No.2 school from Jalkot, Dist. Latur to Bandgaon, Dist. Sangli, having distance of about 350 Kms. Respondent Nos. 1 to 3 have also not brought on record as to what procedure was followed for transfer and shifting of the petitioner No.2 school after its license in the name of the petitioner No.1 was cancelled, vide order dated 07.07.2012.

31) As provided under section 26 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short the said Act), it is mandatory for the Government and the local authorities to provide free education to the children with disabilities. Section 26 reads as under;

"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.

As provided in sub clause (c) of Section 26 reproduced herein above, the special schools are to be set up in such a manner that, children with disabilities living in any part of the country, can have access to such schools. In view of the provision as above if at all any such special school is to be transferred and shifted whatsoever may be the reason, it is to be necessarily shifted at such a place to which the children with disabilities admitted in the said school to be transferred, can have easily access. It is not stated either in the Government Resolution dated 12.09.2014 or in the affidavit in reply filed by the respondent Nos. 1 to 3 whether any arrangement was made for the further education of the children which were taking education in the petitioner No.2 school. According to us, while ordering the transfer and shifting of any such

school, in any eventuality, the prime consideration should be to the interest and welfare of the children with disabilities studying in such school. We regret to state that, in the instant case, neither the petitioners, nor the respondents have disclosed as to what has happened to the students who were studying in the petitioner No.2 school after its license has been cancelled. Such students probably could not have gone to District Sangli where the said school is directed to be shifted. It is further beyond pale of our understanding as to how any such school, the license to which was granted admittedly after having taken into consideration the need of the special children in the said area can be shifted out of the said area and that too at the distance of 350 Kms. The question arises, was it not possible for the respondents to explore the possibility whether any other organization can run such school, if not at the same place, in the nearby place within the distance of few kilo meters so that the special children, taking education in the subject school can conveniently continue their education in the same school at the transferred place. It appears unconscionable that, any such school can be permitted

to be shifted at the distance of 350 Kms. Respondent Nos. 1 to 3 have not disclosed whether they had invited applications from the eligible organizations/institutions to run the petitioner No.2-school, which was fully granted and if yes, how many applications/offers were received to them. Further, nothing has been brought on record by respondent Nos. 1 to 3 as to what were the special circumstances that the petitioner No.2 School has been transferred to respondent No.4 and is allowed to be shifted from Jalkot, Dist. Latur to Kumathe. Dist. Sangli at the distance of 350 Kms. It is quite evident that, before taking the decision of transfer and shifting of petitioner No.2 school from Jalkot, Dist. Latur to Kumathe, Dist. Sangli, the respondents had not taken into consideration the interest of the students taking education in the petitioner No.2 school.

32) Respondent No.4 has filed on record the report submitted by the Social Welfare Officer, Zilla Parishad, Latur on 21 points pertaining to the transfer and shifting of petitioner No.2-school. Vide point No.4 thereof the Social Welfare Officer

was required to inform as to what arrangement has been made for further education of the students taking education in petitioner No.2-school. The information provided by the Social Welfare officer in response to the said query is annoying. The Social Welfare Officer has informed that the students have been given in a custody of their parents along with Transfer Certificate. However, no further information has been made available as to what ultimately happened to the said students; whether they have been admitted to any other school or are deprived from taking any further education. We have purposely mentioned all the above facts to indicate as to how the aspect, which in fact requires to be prominently considered,, is lost sight of while allowing the transfer and shifting of such school.

33) It is surprising that the Government Resolution dated 24th January, 2015, which relates to transfer and shifting of the non-functioning and or closed down schools for special children, does not prescribe any restriction pertaining to the area or distance beyond which shifting of such school shall not be permitted.

34) In the case of Jijau Shikshan Sanstha Nagpur, Vs. State of Maharashtra and Ors., reported at 2011 (4) Mah.L.J. 352, the Division Bench of this Court had laid down the following modalities to be followed in the matter of change of management of the Secondary Schools, -

"(1) A public notice shall be published and displayed at appropriate and prominent newspapers in the concerned area at the cost of transferor or transferee society about the proposed change in the management of a grant-in-aid school and objections should be invited from all the interested persons including students, their parents, teaching and non-teaching staff, the citizens of the area and the other school, if it is going to adversely affect, may be because of transfer of one area to another.

(2) Enquiry shall be held about the reasons etc. for proposed change of management. The enquiry shall include independent report from Education Officer and Vigilance Section, to find out bona fides behind the proposal.

(3) All objections shall be heard by

the Deputy Director of Education who shall then pass a reasoned order which fact shall be made known by publication/display as stated in (1) above.

(4) Actual transfer/change of management shall not be allowed to take place for a period of thirty days from the date of publication about fact of passing of order and it should be preferably from the commencement of the new academic session subject to prior permission of the Charity Commissioner under section 36 of the BPT Act."

35) It is further significant to note that in pursuance of the directions, as above, given by the Division Bench of this Court, vide Government Resolution dated 17th February, 2012, the State Government has amended Rules 12.1 to 12.5 of the Secondary School Code. In Rule 12.6, which has been inserted vide the aforesaid Government Resolution, the procedure to be followed in change of management has been provided. Clause (a) thereof is more relevant, which reads thus, -

"१२.६ शाळा व्यवस्थापन बदलाबाबत खालील कार्यपद्धतीचा अवलंब करावा.

(अ) धर्मादाय आयुक्त व विभागीय शिक्षण उपसंचालकांकडून पुर्वपरवानगी मिळाल्यानंतर व्यवस्थापन बदल प्रक्रियेत समाविष्ट होणाऱ्या दोन्ही शैक्षणिक संस्थानी (व्यवस्थापन बदलास इच्छुक शैक्षणिक संस्था व व्यवस्थापन ताब्यात घेणारी शैक्षणिक संस्था) स्वखर्चाने संबंधित जिल्ह्यांतील सर्वाधिक खपाच्या दोन मराठी वर्तमानपत्रात व राज्य स्तरावर खप असणाऱ्या एका मराठी वर्तमानपत्रात उक्त व्यवस्थापन बदलाबाबत जाहीर प्रसिध्दी दयावी. शाळा परिसरातील नागरीक, संबंधित शाळेचे विद्यार्थी व त्यांचे पालक, संबंधित शाळेचे शिक्षक/शिक्षकेतर कर्मचारी, परिसरातील इतर शाळा यांनी उक्त व्यवस्थापन बदलाबाबत आपल्या हरकती व सुचना संबंधित विभागीय शिक्षण उपसंचालक कार्यालयाकडे वर्तमानपत्रात जाहीर प्रसिध्द झाल्याच्या दिनांकापासुन पंधरा दिवसांचे आत पोहचतील अशा रितीने पाठवाव्यात."

36) We have come across one more resolution dated 31st July, 2013 issued by the School Education and Sports Department of the State Government in respect of shifting of the primary, secondary and higher secondary schools from one place to another. Clause 2 of the said Resolution prescribes the compliance of the following aspects before according permission to shift the school, -

"(२) स्थलांतराची परवानगी देण्यापुर्वी खालील बाबींची पूर्तता होणे आवश्यक राहिल .

(i) अपवादात्मक परिस्थितीबाबत संबंधित सक्षम अधिकारी यांचा दाखला.

(ii) ज्या ठिकाणी शाळा स्थलांतरित करावयाची आहे ती जागा पुर्वीच्या जागेपासुन प्राथमिक, उच्च प्राथमिक, माध्यमिक व उच्च माध्यमिक शाळेकरिता अनुक्रमे १, ३, ५ व १० कि.मी. पेक्षा जास्त अंतरावर असु नये.

(iii) ज्या नवीन ठिकाणी शाळा स्थलांतरित करावयाची आहे तेथे इमारत (स्वतःची किंवा भाड्याची) व ईतर सर्व बाबी बालकांचा मोफत व सक्तीच्या शिक्षणाचा हक्क अधिनियम २००६ च्या निकषाप्रमाणे असणे आवश्यक राहिल.

(iv) शाळेतील शिक्षक-शिक्षकेतर कर्मचाऱ्यांना (कायम व तात्पुरत्या सेवेतील) स्थलांतरित ठिकाणी सामावून घ्यावे लागेल. तसेच शिक्षक-शिक्षकेतर कर्मचाऱ्यांची कोणतीही पदवाढ मान्य केली जाणार नाही व कर्मचारी अतिरिक्त ठरल्यास त्यांना संरक्षण असणार नाही.

(v) शाळेस पटसंख्या/सरासरी हजेरी यांमध्ये कोणतीही सुट दिली जाणार नाही.

(vi) स्थलांतराची परवानगी दिल्यानंतर त्याबाबतच्या अटी व शर्ती संस्था पूर्ण करित नसल्याचे कॅव्हाही निदर्शनास आल्यास किंवा चुकीची माहिती सादर केल्याचे निष्पन्न झाल्यास स्थलांतराचे आदेश रद्द करण्यात येतील.

(vii) स्थलांतरापूर्वीचे ठिकाणी विद्यार्थ्यांची शिक्षणाची सोय झाली आहे याची खात्री करणे आवश्यक आहे.

(viii) अनुदानित शाळा स्थलांतरित होत असल्यास स्थलांतरापूर्वीच्या ठिकाणी अन्य अनुदानित शाळा उपलब्ध असावी.

37) The guidelines, as aforesaid, in respect of the transfer and shifting of the primary and secondary schools can be followed in the matters of transfer and shifting of the schools established under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. We, therefore, direct that the modalities as are incorporated in the Government Resolutions dated 31st July, 2013 and 17th February, 2012, referred to herein above, shall also be followed in the cases of transfer and shifting of the schools for special children established under the

provisions of the Act of 1995.

38) For the reasons recorded herein above, issuance of the Government Resolution dated 12th September, 2014, according to us, was the arbitrary exercise of powers by the respondent Nos. 1 to 3. The respondent Nos. 1 to 3 have totally overlooked the interest of the students, who were studying in petitioner No.2-school at Jalkot and the mental agony which would be suffered by the parents of the said children because of the shifting of the school at the distance of about 350 kms. The State Government should not have taken the impugned decision of permitting transfer and shifting of petitioner No.2-school at the distance of around 350 kms from the existing place. In the circumstances, in no case, the decision of allowing the transfer and shifting of petitioner No.2-school at Kumathe District Sangli, vide Government Resolution dated 12th September, 2014 in favour of respondent No.4 can be sustained.

39) The next question arises as to what will be the fate of the students with disabilities, who have taken admission in the school, allegedly started by

Respondent No.4 at village Kumathe Tq. Tasgaon District Sangli. As has been contended by Respondent No.4, 32 students have been admitted in the said school. It is the further contention of Respondent No.4 that almost all the employees of petitioner No.2-school have been absorbed by them and they have already resumed at the transferred place. As is revealing from the documents filed on record by Respondent No.4, the school has been started at village Kumathe Tq. Tasgaon District Sangli w.e.f. 15th June, 2015. It is the further contention of Respondent No.4 that at the relevant time, Respondent No.4 was not aware of the order passed by this Court in the present matter on 25th September, 2014, granting status quo with regard to the transfer of the petitioner No.2-school.

40) We do not wish to enter into the controversy whether at the relevant time, Respondent No.4 was aware or not about the status quo order passed by this Court on 25th September, 2014. However, Respondent Nos. 1 to 3 had certainly become aware of the said order of status quo since the learned AGP has waived notices for the said respondents on 25th

September, 2014 itself and the order of status quo was passed by the Court in his presence.

41) It was incumbent on the part of Respondent Nos. 1 to 3 and more particularly Respondent No.3 to inform Respondent No.4 about the order passed by this Court on 25th September, 2014 whereby this Court had directed the respondents to maintain status quo with regard to the transfer of the subject school. In view of the order so passed, Respondent No.3 ought to have informed Respondent No.4 not to proceed further towards the establishment of the school at village Kumathe and ought to have asked Respondent No.4 to wait till decision of the present petition or any further order by this Court revoking the order of status quo or otherwise. No concrete material is placed on record by Respondent No.4 as to when and how it got knowledge of the order of status quo passed by this Court on 25th September, 2014. Respondent No.4 has also not disclosed whether the steps taken by it towards starting of the school at village Kumathe were with the concurrence and knowledge of Respondent No.3 and/or his subordinate officers at District Sangli.

42) In the affidavit in reply filed on behalf of Respondent Nos. 1 to 3 also, nothing is mentioned whether they had informed Respondent No.4 about the order passed by this Court on 25th September, 2014 directing status quo to be maintained with regard to the transfer of the subject school. Since the order of status quo was passed by this court within thirteen days of issuance of the Government Resolution dated 12.9.2014, had Respondent No.3 informed Respondent No.4 that this Court had directed to maintain status quo as regards the transfer of the subject school, probably Respondent No.4 would not have proceeded further. However, if the facts would be otherwise, it can only be said that Respondent No.4 has incurred the risk at its own in setting the school at the transferred school at the transferred place despite the order of status quo. Of course, this is a matter in between Respondent No.4 and Respondent Nos. 1 to 3 and Respondent No.4 would be at liberty to get redressed its grievance, if any, by resorting to appropriate remedy. However, on this ground, the Government Resolution dated 12th September, 2014 cannot be legalized.

43) For the reasons recorded as above, we are inclined to allow the present petition. Hence, following order, -

ORDER

i) The order dated 7th July, 2012 passed by Respondent No.3; the order dated 6th September, 2014 passed by Respondent No.2 and Government Resolution dated 12th September, 2014, are quashed and set aside;

ii) Respondent Nos. 1 to 3 are directed to allow petitioner No.1-trust to re-start petitioner No.2-school at its original place, i.e. village Jalkot Tq. Jalkot, District Latur from the academic year 2016-2017 and renew the Certificate of Registration under the provisions of the Act of 1995 subject to the necessary compliances to be made by petitioner No.1.

iii) Petitioner No.1 shall allow all of its previous employees, who may be willing, to resume the services with petitioner No.2-school.

iv) Rule is made absolute in above terms.

sd/-
(P.R.BORA)
JUDGE

sd/-
(S.S.SHINDE)
JUDGE

Later on :

44) At this stage, the learned counsel appearing for Respondent No.4 has prayed for staying the effect of the order passed by this Court for next eight weeks. The learned counsel submitted that Respondent No.4 has already started the school at the transferred place and has also admitted 32 children with disability in the said school.

45 We are, however, not inclined to accept the request so made for the reason that after issuance of the Government Resolution dated 12.09.2014, on the basis of which, Respondent No.4 is claiming to have started the school at village Kumathe, Dist. Sangli, was immediately challenged by the present petitioner by filing the present Writ Petition and on 25.09.2014 i.e. within 13 days of issuance of the aforesaid Government Resolution, the status-quo was directed to be maintained by this Court with regard to the transfer of the subject school. Though it is the contention of the learned Counsel appearing for Respondent No.4 that, Respondent No.4 was not aware of the order of status-quo passed by this Court on 25.09.2014, Respondent Nos.1 to 3 had certainly become aware of the order of status-quo, since the same was passed in their presence. As we have discussed in the body of the judgment, nothing has been further brought on record by Respondent No.4 whether the further acts undertaken by Respondent No.4, pertaining to creation of infrastructure for the school and making admissions of the children with

disability in the said school, were with concurrence of or under intimation to Respondent Nos.1 to 3 - Authorities. Though Respondent No.4 is claiming to have started the school in June, 2015, admittedly the Certificate of Registration has not been issued in his favour.

For the reasons stated above, the request for staying the effect of the judgment and order passed by this Court today for eight weeks stands rejected.

Sd/-
(P.R.BORA)
JUDGE

sd/-
(S.S.SHINDE)
JUDGE

bdv/

fldr 11.1.16..