

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

WRIT PETITION NO.6955/2015

Sadbhavna Bahuuddeshiya Sanstha, Bothli, through its President
Subhashchandra Govindrao Chakole and another

..Vs..

The State of Maharashtra, through its Principal Secretary, Tribal Development
Department, Mantralaya, Mumbai and others

Office Notes, Office Memorandum of Cora,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.S. Parsodkar, counsel for the petitioners.
Shri P.S. Tembhare, A.G.P. for respondent Nos.1 to 5.
Shri S.K. Bhandarkar, counsel for the intervenors.

CORAM : B.R. GAVAI AND V.M. DESHPANDE, JJ.

DATED : 25.11.2016.

1. The petitioners have approached this Court being aggrieved by the order passed by the State Government dated 26th November, 2015 thereby dismissing the appeal filed by the present petitioners.

2. The petitioner No.1 is running the petitioner No.2 Ashram School. The petitioners are receiving grants-in-aid from the State Government for running the said Ashram School.

3. It appears that the respondent No.5 had noticed various shortcomings in the functioning of the said Ashram School as such a notice came to be issued to the petitioners on 5th March, 2012. The petitioners submitted their explanation before the respondent No.3. The respondent No.3 after noticing the submission of the

petitioners found that the explanation was not acceptable and as such passed the order dated 7th June, 2013 thereby cancelling the approval granted in favour of the said Ashram School and further directed the respondent No.5 to absorb the students in some other Ashram School. Being aggrieved thereby an appeal came to be preferred before the respondent No.2. In the said appeal, initially, an order of stay was passed by the respondent No.2, however, by the order dated 8th July, 2014 the appeal came to be dismissed. Being aggrieved thereby a writ petition was filed before this Court being Writ Petition No.4095/2014.

4. In the said writ petition a contention was raised on behalf of the petitioners that an enquiry in the matter of removal of deficiencies by the petitioner-Institution was conducted by respondents behind the back of the petitioners. It was further contended that the inspection report of the Project Officer, Integral Tribal Development Project was also not supplied to the petitioners. This Court, therefore, found that the order passed by the Appellate Authority i.e. the Hon'ble Minister was not sustainable and as such on 23rd December, 2014 passed the following order:

“(1) The impugned order of the Hon'ble Minister dated 08/07/2014 would not be acted upon.

(2) The undated report of the Project Officer would not be acted upon and the Project Officer would re-inspect the ashram school of the

petitioner on 02/02/2015 and prepare a report to point out whether the deficiencies in the ashram school are cured by the petitioner or not.

(3) The Project Officer would prepare a fresh report and submit the same to the Hon'ble Minister for Tribal Development after serving a copy of the report on the petitioner-Institution.

(4) The Hon'ble Minister would then hear and decide the appeal on merits in accordance with law after ensuring that the petitioner is served with a notice of hearing of the appeal.

(5) There would be no order as to costs."

5. However, the Hon'ble Minister again by the impugned order has dismissed the appeal and hence the present petition.

6. Shri Parsodkar, learned counsel appearing on behalf of the petitioners submits that the Hon'ble Minister has utterly failed to take into consideration the relevant factors. He submits that though the Right of Children to Free and Compulsory Education Act, 2009 notify a strength of 30 students per class, the calculation is done by the Hon'ble Minister on the basis of 60 students per class. He submits that the order dated 26th November, 2015 is passed by the Hon'ble Minister only on this ground and as such not sustainable in law. He further submits that the other grounds which are found in the affidavit cannot be taken into consideration in view of the law laid down by the Hon'ble Supreme Court

in the case of *Mohinder Singh Gill and another V/s. The Chief Election Commissioner, New Delhi and others* reported in **AIR 1978 SC 851** and in the case of *Commissioner of Police, Bombay V/s. Gordhandas Bhanji* reported in **AIR 1952 SC 16**. Shri Parsodkar further submitted that when this Court had directed a fresh inspection to be carried out and the same was directed to be considered by the Hon'ble Minister and when the said inspection was favorable to the petitioners, there was no justification for the Hon'ble Minister to pass the impugned order.

7. Shri Tembhare, learned A.G.P. appearing on behalf of the State submits that the order is passed by the Hon'ble Minister after taking into consideration all the relevant factors and as such there is no merit in the petition.

8. Shri S.K. Bhandarkar, learned counsel appearing on behalf of the intervenors also supports the impugned order. He submits that the Management has indulged into various illegal activities and has indulged into harassing the staff and as such no interference is warranted.

9. It appears from the record of this case that the Division Bench of this Court vide order dated 18th October, 2016 had directed the respondent No.5 to again inspect the Ashram School and submit the report about

this school. Accordingly, an affidavit is filed by the respondent No.5 along with the report of the inspection carried out by the said Authority.

10. With the assistance of the learned counsel for the parties we have scrutinized the entire evidence on record. No doubt, in the inspection which was carried out by the respondent No.5 as per the direction of this Court, the inspecting committee has found that there are certain improvements and the said inspecting committee had recommended for giving one chance to the petitioners so as to make improvements. However, the said report cannot be said to be binding on the Hon'ble Minister. We find that though inspecting committee has made certain recommendations, the perusal of the said report would reveal that there are various deficiencies in the said Ashram School. The report of the said committee itself would reveal that though 101 resident students are shown to have been admitted in the said Ashram School only 54 students were found present while inspection was carried out. It was further revealed that though 112 non-resident students were shown to have been admitted only 6 were found to be present when the inspection was carried out.

11. It could thus be seen that against the strength of 213 students only 60 students were found in the school. It can thus be seen that 153 students were absent when the inspection was carried out. Not only

this but the Hon'ble Minister has also taken into consideration the other factors like not granting permanency to the Teachers, not making payment to the teachers, the internal quarrels between the staff, the rectification not being carried out in the period granted. It can thus be seen that the contention of the petitioners that the appeal is decided only on the ground of strength of the students, in view of what has been stated in the order, cannot be accepted.

It can further be seen that the inspection report itself shows that there is no compound wall to the said Ashram School. The said report would reveal that on the three sides of the said Ashram School i.e. eastern, western and southern side there is only a fencing of barbed wire which is also interrupted at various places. It can further be found that on the northern side there is not even fencing of barbed wire.

12. We could have very well dismissed the petition on the ground that no error or perversity is noticed in the impugned order. No doubt, Shri Parsodkar, the learned counsel for the petitioners, is right in contending that what is not found in the earlier report cannot be submitted by an affidavit in the light of law laid down in the case of *Mohinder Sing Gill and another V/s. The Chief Election Commissioner, New Delhi and others* (cited supra) and in the case of *Commissioner of Police, Bombay V/s. Gordhandas Bhanji* (cited supra). However, it is to be noted that the earlier Bench of this

Court itself directed the inspection to be carried out.

13. This Court cannot ignore the fact that in the recent times it is reported in the newspapers that in many Ashram Schools atrocities are committed on the girl inmates. We ask a question to ourself as to whether permitting such a school where there is no security and compelling the inmates to continue to reside there at the cost of their security would be in the public interest or not.

14. As observed hereinabove, we are of the view that even ignoring the inspection report submitted by the respondent No.5 as per the direction of this Court, the petition deserves to be dismissed. However, the perusal of the said report of the inspection carried out in pursuance of the orders passed by this Court would reveal that there are various deficiencies in the said Ashram School. The inspecting committee has found that the Ashram School does not have the sufficient number of bedding, plates and glasses. It has further been found that in the store room there is no sufficient storage of the food-grains. It has further been found that the accommodation for the students as per norms 40 Sq. Ft. per student is also not available. It has further been found that there are desk and benches for the students from 8th to 10th class but there are no desk and benches for the students of 5th to 7th class. The present report also shows that there is no compound wall and the barbed

fencing is only on the three sides i.e. eastern, western and southern side. It can thus be seen that even after giving time, the said Ashram School has not taken steps to ensure that the students in the school reside in a safe atmosphere.

15. However, since the career of number of students is at stake we had directed the Project Officer to remain personally present in the Court. Ms. Shubhangi Narayan Sapkal, the present incumbent in the office of respondent No.5, assures the Court that all the students, who are studying in the said Ashram School, would be accommodated in other Ashram Schools within a period of 30 days from today. We, therefore, find that the interest of the students is taken care of.

16. In that view of the matter, we find no merit in the petition. The writ petition is, therefore, **dismissed**.

17. At this stage, Shri Parsodkar, learned counsel for the petitioners prays to keep this order in abeyance for a period of 8 weeks.

Taking into consideration the glaring deficiencies which we have noticed in the order, we do not find that the case is made out for continuation of interim protection. Hence, the same is **rejected**.

JUDGE

JUDGE