

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

WRIT PETITION NO. 3480 OF 2008

Adiwasi Magaswargiya Vikas
Shikshan Prasarak Mandal,
Kalamnuri, District Hingoli.
Through its President
Amrutrao s/o Shankarrao Dukare
(Bothikar)
Age : 46 yrs, occu.: social worker
R/o Limbi, Taluka Kalamnuri,
District Hingoli.

Petitioner.

Versus

1. The State of Maharashtra
Through the Secretary
Tribal Development Department,
Maharashtra State, Mantralaya,
Mumbai - 32.

(Copy to be served on G.P.
High Court of Bombay, Bench
at Aurangabad.

2. The Commissioner Integrated
Tribal Development Department,
Mantralaya State Nashik.
3. The Project Officer,
Integrated Tribal Development
Department, Project Kinwat,
Taluka Kinwat, Dist. Nanded.

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4. Shri Sadguru Datta Dharmik
and Parmatharik Trust, Indoor
Through its President
R/o Sajanpuri, Tal. Khamgaon,
District Buldana.

Respondents.

Mr. G.K. Salve, Advocate for the petitioner
Mr. Y.G. Gujrathi, A.G.P. for respondent Nos.1to3.
Mr. V.D. Salunke, Advocate for respondent No. 4.

CORAM : **R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

Dated : 14-09-2017.

ORAL JUDGMENT (PER R.D. DHANUKA, J.) :

1. By this Writ Petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 07.08.2007 and the order dated 10.04.2008 issued by Adiwasi Vikas Mantralaya i.e. respondent No.1, thereby derecognising the school of the petitioner and transferring the Management and School to the respondent No.4-Shri Sadguru Datta Dharmik and Parmarthik Trust, Indoor.

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2. Some of the relevant facts for the purpose of deciding this Writ Petition are as under.

3. The petitioner had submitted a proposal to the respondent No.1 to run a Primary School at village Limbi. On 10.08.1987, respondent No.1 granted permission to run Ashram School at village Limbi. It is the case of the petitioner that the petitioner thereafter started running the said school which was inspected by the Authority from time to time. On 12.09.1994, a show-cause notice was issued by the respondent No.1 to the petitioner alleging certain deficiencies on the part of the petitioner in running the said Ashram School. The petitioner responded to the said show cause notice. On 22.08.1995 the respondent No.1 cancelled the recognition of the Primary Ashram School run by the petitioner.

4. The petitioner, therefore, filed a Writ

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Petition (No. 4562 of 1995) challenging the said order dated 22.08.1995. During the pendency of the said Writ Petition, the respondent No.1 issued a show cause notice on 22.07.2003. The petitioner responded to the said show cause notice. The said Writ Petition No.4562 of 1995 came to be decided by this Court on 01.08.2003 after noticing that the show cause notice was given to the petitioner during pendency of the said Writ Petition, the petitioner was directed to reply to the said show cause notice and the concerned officer was directed to take appropriate action in that regard.

5. It is the case of the petitioner that the petitioner, however, could not remove all the deficiencies due to shortage of water and for want of grant-in-aid issued by respondent No.1 to the petitioner. The petitioner once again impugned the order dated 11.03.2005 passed by respondent No.2. On 26.06.2006 this Court disposed of the said Writ Petition No. 5398 of 2005 directing

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respondent Nos.2 and 3 to cause inspection of the Primary Ashram School of the petitioner and made it clear that if it was found that the petitioner had removed all the deficiencies, then the School be reconsidered for grant of recognition. The said petition was made absolute in those terms.

6. Pursuant to the said order passed by this Court, the respondent No.1 deputed an Inspector to make inspection of the School of the petitioner. The said Inspector submitted report dated 05.02.2007 pointing out the various deficiencies. It is the case of the petitioner that by the said report, the said Inspector made recommendation to the respondent No.1 to grant permission to the petitioner to continue the School for another period of 2 years on certain terms and conditions.

7. It is the case of the petitioner that inspite of the said recommendation made by the Inspector, the respondent No.1 once again

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derecognised the petitioner's School by passing an order dated 07.08.2007 without considering the inspection report dated 05.02.2007 and withdrew the recognition of the School run by the petitioner.

8. It is the case of the petitioner that the State Government thereafter took a decision on 31.08.2005 not to grant further permission to open Ashram School to any party. Respondent No.4 had independently made an application for permission to start new School. It is the case of the petitioner that the respondent No.1, instead of withdrawing the said order of recognition, passed an order on 10.04.2008 thereby transferring the Management of the School run by the petitioner to respondent No.4 in a different District. Being aggrieved by the order dated 07.08.2007 and order dated 10.04.2008, petitioner preferred this Writ Petition for a writ of certiorari for quashing and setting aside the orders dated 07.08.2007 and 10.04.2008.

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9. Learned Counsel for the petitioner invited our attention to various annexures to the Writ Petition and would submit that in view of the respondent No.1 not having issued any grant-in-aid for the period of more than 10 years and due to various unavoidable circumstances, the petitioner could not remove all the deficiencies pointed out by the respondent No.1. He submits that though the Inspector, who was deputed pursuant to the order passed by this Court in Writ Petition filed by the petitioner which came to be allowed, made recommendation to give opportunity to the petitioner to continue the said School for a period of two years, the respondent No.1 ignored the said report submitted in favour of the petitioner and once again derecognised the School run by the petitioner.

10. It is submitted by the learned Counsel that there is no provision in the Ashram School Code permitting respondent No.1 to transfer the Management and School run by the Ashram School to

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any other School run by any other Management. He submits that the School which was run by the petitioner has been illegally transferred depriving the tribal students who were being provided education by the petitioner in the said School from last several years.

11. It is submitted by the learned Counsel for the petitioner that in so far as the financial capacity and ability of respondent No.4 to run the School is concerned, the petitioner does not dispute this fact. He further submits that if the grant-in-aid would have been granted by the respondent No.1 to the petitioner, the petitioner also would have removed all the deficiencies pointed out by the respondent No.1.

12. In support of his submission that the respondent no.1 could not have passed the order of transfer of Management and School to respondent No.4 without there being any provision in the

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Ashram School Code, the learned Counsel placed reliance on the Judgment delivered by Division Bench of this Court in the case of **Jeevanjyoti Krida and Shikshan Prasarak Mandal Versus State of Maharashtra and others [2012 (6) ALL MR 281]** and in particular paragraphs 10 to 12 thereof.

13. Mr. Gujrathi, learned A.G.P. for respondent Nos. 1 to 3 on the other hand invited our attention to various averments made in the reply affidavit filed by respondent Nos.1 to 3. He submits that the opportunities were granted to the petitioner by respondent No.1 to remove all the deficiencies pointed out by the respondent Nos.1 to 3 from time to time. However, the petitioner could not remove all such deficiencies. He invited our attention to Clauses 3.22 and 3.23 of Ashram School Code and would submit that the respondent No.1 having derecognised the petitioner, the petitioner could not have applied for continuation of the permission to run the School. He submits that under Clause 3.23 of the

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said Ashram School Code, the State Government has been empowered to transfer the management of such derecognised School and the School or to run the said School itself.

14. Learned A.G.P. distinguished the judgment of this Court in the case of **Jeevanjyoti Krida and Shikshan Prasarak Mandal** (supra) relied upon by the petitioner on the ground that the relevant provisions of the Ashram School Code and more particularly Clause 3.22 and 3.23 thereby permitting the Government to transfer the Management and School to another School was not brought to the notice of this Court at the time of hearing of the said matter.

15. It is submitted by learned A.G.P. that the petitioner could not have impugned both the orders i.e. dated 07.08.2007 and 10.04.2008 in the same Writ Petition. He also submits that the petition is barred by delay and laches.

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16. Learned A.G.P. further submits that the permission was duly granted in favour of the respondent No.4 of transfer of Management as well as School which is being run properly by the respondent No.4. There are no complaints as on today against the respondent No.4 in running the said School and Management transferred by the impugned order.

17. Mr. V.D. Salunke, learned Counsel for respondent No.4 invited our attention to various annexures to the detailed affidavit-in-reply filed by respondent No.4 on 10.02.2008 and also to the additional affidavit filed on 07.04.2014. He submits that the respondent No.4 has spent more than Fifteen Crore Rupees on starting the School transferred by respondent No.1 in favour of respondent No.4. There are more than 650 students taking education in the said School transferred to the respondent No.4. Learned Counsel invited our attention to several annexures annexed to the said affidavit-in-reply to show that majority of

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students who are taking education in the said School belong to Pardhi community and others are belonging to other tribal majority from Buldana District.

18. It is submitted that ultramodern facilities are provided by respondent No.4 in the said School to the students. In support of this submission learned Counsel invited our attention to the various photographs annexed to the affidavit-in-reply to indicate that solar water system, water cooler, water purifier, computer lab, school bus and other facilities are provided to the students. The students have also been provided with sports material and library facilities. He submits that respondent No.4 Institution has undertaken large number of educational projects in several States of this Country.

19. It is submitted that inspite of several

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opportunities granted by the respondent No.1 to the petitioner to remove deficiencies, the petitioner was unable to remove the said deficiencies. Learned Counsel placed reliance on Clauses 3.22 and 3.23 of Ashram School Code in support of his submission that the School of the petitioner has been derecognised by respondent No.1 and the petitioner has thus no *locus* to challenge the order of transfer issued by respondent No.1. He also submits that the petition is barred by delay and laches. He submits that after hearing the respondent No.4 and other respondents, this Court was pleased to vacate the interim order earlier passed in favour of the petitioner.

20. It is submitted by learned Counsel that the balance of convenience is in favour of respondent No.4. Respondent No.4 having spent substantial amount in constructing the School building and to carry out expansion by spending substantial amount by respondent No.4 itself, this

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Court cannot interfere with the impugned orders passed by respondent No.1 at this stage.

21. A perusal of the record clearly indicates that the respondent No.1 had passed an order of derecognition of the School of the petitioner on more than one occasion. Though this Court had granted opportunities to the petitioner to remove deficiencies from time to time, the petitioner could not remove those deficiencies. A perusal of the averment made by the petitioner and in particularly paragraphs 15 to 19, clearly indicates that even after giving opportunity to the petitioner, the petitioner could not remove all the deficiencies. It is the case of the petitioner that the petitioner could remove only 90% of the deficiencies. In our view, since the petitioner could not remove all the deficiencies inspite of several opportunities granted by respondent No.1, which deficiencies would have affected the students at large in the petitioner School, the respondent No.1 in these circumstances

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was justified in derecognising the petitioner School by passing the order dated 07.08.2007. Even today the learned Counsel for the petitioner is not able to satisfy before this Court that the petitioner was in a position to remove all the deficiencies pointed out by the respondent No.1 from time to time.

22. In so far as the impugned order dated 10.04.2008 passed by respondent No.1 thereby transferring the Management and School run by the petitioner to respondent No. 4 is concerned, though the learned Counsel for the petitioner initially raised an issue that the said impugned order dated 10.04.2008 was without any powers described under the provisions of Ashram School Code, when the attention of the learned Counsel was invited to Clause 3.23 of Ashram School Code, the learned Counsel fairly admitted that the said power of transfer of Management and School vests with the respondent No.1.

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23. In so far as judgment delivered by Division Bench of this Court in case of **Jeevanjyoti Krida and Shikshan Prasarak Mandal Versus State of Maharashtra and others** (supra) relied upon by learned Counsel for the petitioner is concerned, a perusal of the said judgment clearly indicates that the powers vested in respondent No.1 to transfer the Management and School to another Institute prescribed under Clause 3.22 read with Clause 3.23 of Ashram School Code were not brought to the notice of the Division Bench of this Court. In our view, the said judgment is clearly distinguishable in facts of the case and would not assist the case of the petitioner.

24. Mr. Salve, the learned Counsel for the petitioner fairly did not dispute the capacity and ability of respondent No.4 to run the School transferred by respondent No.1 in favour of respondent No.4. Be that it may be, a perusal of the record produced by respondent No.4 by filing

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detailed affidavit before this Court for perusal, clearly indicates that all ultramodern facilities are provided by respondent No.4 to the large number of students admitted by respondent No. 4 after transfer of the Management and School pursuant to the impugned orders. On the other hand, the petitioner could not remove all the deficiencies inspite of several opportunities granted by respondent No.1. The respondent No.4 has spent substantial amount on construction of the building and for providing various ultramodern facilities to the students which cannot be overlooked by this Court while considering the challenge to the impugned orders in this petition. In our view, any interference with the impugned orders passed by respondent No.1 at this stage would definitely cause inconvenience not only to the respondent No.4, but also large number of students who are taking education in the School run by respondent No.4. In our view, balance of convenience is in favour of the respondent No.4.

25. In so far as the issue of *locus* of the petitioner raised by learned A.G.P. and Mr. V.D. Salunke, learned Counsel for respondent No.4 is concerned, in our view since the order of derecognition dated 07.08.2007 passed by respondent No.1 was the subject-matter of challenge in this petition, the petitioner could challenge the order dated 10.04.2008 issued by respondent No.1 thereby transferring the Management of School to respondent No.4. If this Court would have taken a view that the order dated 07.08.2007 derecognising the School of the petitioner was illegal, this Court would have considered the subsequent order dated 10.04.2008 issued by respondent No.1 transferring the Management and School of the petitioner to respondent No.4. We are, therefore, of the view that there is no merit in this objection raised by respondent Nos.1 to 3 on one hand and respondent No.4.

26. In so far as the issue of delay raised by respondent Nos.1 to 3 on one hand and respondent No.4 is concerned, in our view, both the learned Counsel are right in their submission that during the period of more than one year's delay the respondent No.4 has already taken steps to start said School and has spent substantial amount. We are, thus, not inclined to interfere with the impugned orders also on the ground of delay and laches on the part of the petitioner which are not explained by the petitioner in this petition. In our view, Clauses 3.22 and 3.23 clearly vest powers in respondent No.1 to transfer the Management as well as School if the conditions described in those provisions are not satisfied by the School who was granted permission to run such Ashram School under the provisions of Ashram School Code or to run the School itself. In these circumstances, we do not find any infirmity with the order dated 10.04.2008 passed by the respondent No.1 transferring Management and School run by the petitioner to respondent No.4. In our

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view, there is no merit in the petition and thus we pass the following order.

ORDER

- (i) Writ Petition No. 3480 of 2008 is dismissed.
- (ii) Rule is discharged.
- (iii) No order as to costs.

(**SUNIL K. KOTWAL**)
JUDGE

(**R.D. DHANUKA**)
JUDGE

vdd/