

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

**WRIT PETITION NO.4346 OF 2009
WITH CIVIL APPLICATION NO.2249 OF 2010**

Ravisut Vyayam and Shikshan ... **Petitioner**
Prabodhan Sanstha, Indira
Smriti, Bhoiwada, Milk Corner,
Aurangabad, Through its
President Shri B. P. Salve

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Social Justice and Special
Assistance Department,
Mantralaya, Mumbai
2. Director of Social Welfare,
Maharashtra State, Pune
3. The Divisional Social Welfare
Officer, Aurangabad Division,
Aurangabad.
4. District Social Welfare
Officer, Aurangabad.
5. Shivam Bahuuddeshiya Sevabhavi
Mandal, Ghusurtanda, Taluka
Kannda, Dist. Aurangabad,
Through its President Namdeo
Soma Chavan.
6. Chagan S/o Balaji Pawar,
Age 51 yrs.Occ.Service,
Presently working as a
Asstt.Teacher in Primary
Ashram School, With Resp.No.6
at Chapner, Tq.Kannad,
Dist. Aurangabad.
7. Pradeep S/o Vidnyan Borde,
Age 51 yrs. Occ.Service,
Presently working as a
Asstt.Teacher, In Primary

School, With Resp.No.6 at
Chapner, Tq.Kannad,
Dist.Aurangabad.

8. Smt.Anita Narayan Suradkar,
Age 37 Yrs.Occ.Service,
Presently working as Cook
In Primary Ashram School,
With Resp.No.6 at Chapner,
Tq.Kannad, Dist.Aurangabad.
9. Smt.Radhabai Harishchandra
Rathod,
Age 50 Yrs.Occ.Service
Presently working as Cook
In Primary Ashram School,
With Resp.No.6 at Chapner,
Tq.Kannad, Dist.Aurangabad.
10. Suresh S/o Tanaji Jamdade,
Age 49 yrs.Occu.Service
Presently working as Kamathi
In Primary Ashram School,
With Resp.No.6 at Chapner,
Tq.Kannad, Dist.Aurangabad. **Respondents** ...

Mr. V. D. Sapkal, Advocate for the petitioner,
Mrs. M.A. Deshpande, Addl. G. P. for respondents 1 to 4
Mr. V. J. Dixit, Senior Advocate instructed by Mr. V.
B. Garud, Advocate for respondent No.5
Mr. M. P. Gude, Advocate for respondent Nos. 6 to 10.

WITH

WIRT PETITION NO.2871 OF 2009

1. Pradeep s/o Vidnyan Borde,
Age: 50 Years, Occ. Service,
presently working as Assistant
Teacher in Primary Ashram
School, Chapaner, Taluka-Kannad,
Dist. Aurangabad.
2. Ravindra s/o Tulsiram Gavai,
Age: 51 Years, Occ. Service,
presently working as Assistant
Teacher in Primary Ashram
School, chapaner, Taluka-Kannad,
Dist. Aurangabad.

3. Chagan s/o Balaji Pawar,
Age: 50 Years, Occ. Service,
presently working as Assistant
Teacher in Primary Ashram
School, chapaner, Taluka-Kannad,
Dist. Aurangabad.
4. Himmatsingh s/o Bharatsingh
Girase,
Age: 40 Years, Occ. Service,
presently working as Assistant
Teacher in Primary Ashram
School, Chapaner, Taluka-Kannad,
Dist. Aurangabad.
5. Navalsing s/o Tarasing Rajput,
Age: 40 Years, Occ. Service,
presently working as Assistant
Teacher in Primary Ashram
School, chapaner, Taluka-Kannad,
Dist. Aurangabad.
6. Smt. Vimal Anandrao More,
Age: 38 Years, Occ. Service,
presently working as Assistant
Teacher in Primary Ashram
School, chapaner, Taluka-Kannad,
Dist. Aurangabad.
7. Chandrakant s/o Sampatrao Sable,
Age: 38 Years, Occ. Service,
presently working as Hostel
Superintendent, Primary Ashram
School, Chapaner, Taluka-Kannad,
Dist. Aurangabad.
8. Sow. Radhabai Harischandra
Rathod,
Age: 50 Years, Occ. Service,
presently working as Cook in
Primary Ashram School, Chapaner,
Taluka-Kannad, Dist. Aurangabad.
9. Sow. Anita Narayan Suradkar,
Age: 37 Years, Occ. Service,

presently working as Cook in
Primary Ashram School, chapaner,
Taluka-Kannad, Dist. Aurangabad.

10. Sow. Raubai Wamanrao Bagul, ... **Petitioners**
Age: 52 Years, Occ. Service,
presently working as Cook in
Primary Ashram School, Chapaner,
Taluka-Kannad, Dist. Aurangabad.
11. Suresh s/o Tanaji Jamdhade,
Age: 40 Years, Occ. Service,
presently working as Kamathi in
Primary Ashram School, Chapaner,
Taluka-Kannad, Dist. Aurangabad.

VERSUS

1. The State of Maharashtra,
Through its Social Justice and
Special Assistance Department,
Mantralaya, Mumbai
2. The Director of Social Welfare,
Maharashtrta State, Pune.
3. The Divisional Social Welfare
Officer, Aurangabad Division,
Aurangabad.
4. The District Special Social
Welfare Officer, Aurangabad
5. Ravisut Vyayam Va Shikshan
Prabodhan sanstha, Aurangabad,
Through its President-
Bhimcharan Anandrao More
Age 48 years, Occu: Social work,
R/o Mill Corner, Bhoiwada,
Aurangabad.
6. Shivam Bahuuddeshiya Sevabhavi
Mandal, Ghusur Tanda, Taluka
Kannad, District Aurangabad,
Through its President, Namdeo

Soma Chavan r/o Kannad, Taluka
Kannad, District Aurangabad.

7. Shri Namdeo Soma Chavan, ... **Respondents**
Age 52 years, Occu: Service and
President of Shivam Bahuuddeshiya
Sevabhavi Mandal, Ghosur Tanda,
Taluka Kannad, District
Aurangabad.

Mr. P. M. Gaikwad, Advocate for the petitioner,
Mrs. M.A. Deshpande, Addl. G. P. for respondents 1 to 4
Mr. V. J. Dixit, Senior Advocate instructed by Mr. V.
B. Garud, Advocate for respondent No.6 and 7
Mr. M. V. Salunke h/for Mr. V. D. Salunke, Advocate
for respondent No.5.

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

RESERVED ON : 9th March, 2017

PRNOUNCED ON : 31st March, 2017

JUDGMENT:

1. **JUDGMENT (Per K. L. Wadane, J.):**

2. Government Resolution dated 1st March, 2009
transferring Primary Ashram School, Chapaner, Taluka
Kannad, run by Ravisut Vyayam and Shikshan Prabodhan
Sanstha (Petitioner in WP No.4346/2009 and Respondent
No.5 in WP No.2871/2009, hereinafter refereed to as the
Petitioner Ravisut Society) to Shivam Bahuuddeshiya
Sevabhavi Mandal, Ghosur Tanda Taluka Kannad (Respondent
No.5 in WP No.4346/09 and Respondent No.6 in WP
No.2871/2009, hereinafter refereed to as the Respondent
Shivam Society) is challenged in the above writ

petitions. Writ Petition No. 4346/2009 is filed by the Petitioner Ravisut Society whereas, Writ Petition No.2871/2009 is filed by the permanent employees appointed in the Primary Ashram School, Chapaner (hereinafter referred to as the 'petitioner employees'). As such both the petitions are heard together.

3. It is the contention of the petitioner in Writ Petition No. 4346 of 2009 that the Petitioner Ravisuit Society is registered under the provisions of the Societies Registration Act as well as Bombay Public Trust Act. The petitioner society is running primary Ashram School at Chapaner, Taluka Kannad and employed entire staff including Assistant Teacher, Hostel Superintendent, Cook, and Kamathi. The petitioner Society is receiving grant for running the Ashram schools.

4. On 01.12.2005, the petitioner Ravisut society had passed a Resolution and decided to transfer its Ashram School, Chapaner to the Respondent Shivam Society. Accordingly, a proposal was sent to the Social Welfare Officer, Aurangabad for transfer of the Ashram School on 13.02.2006. Such resolution was

passed because the petitioner Society was facing some difficulty to run the Ashram School. However, subsequently, the difficulties being faced by the petitioner were resolved by the villagers and leaders of the village and on 01.03.2006, the petitioner society passed another resolution whereby earlier resolutions dated 01.12.2005 came to be cancelled and accordingly communication was made to the Respondent Shivam Society and copies of the same were forwarded to respondent Nos. 2, 3 authorities and the Hon'ble Minister of the concerned Department. It was requested to the authorities concerned that no action be taken for transfer of the Ashram School to the Respondent Shivam Society. As nothing was communicated to the petitioner Society by the Authorities, the petitioner society was under impression and belief that the proposal itself is cancelled and the appropriate authority would not take any decision for transfer of the Ashram Schools.

5. On 01.08.2007, the Government took a decision that if somebody wants to transfer a Ashram School to any other School, then no grant will be provided to such Ashram School for three years. Subsequently, on 01.03.2009, the Government passed the impugned

resolution, referring to decision of transfer dated 01.12.2005 taken by the petitioner society, and decided to transfer the Primary Ashram School, Chapaner to the respondent Society at Ghusurtanda. Further decision is taken by the Government that from the date of transfer, the Government grants are not payable. Being aggrieved with the aforesaid Government the petitioner society has filed present writ petition No.4346/2016.

6. It is the contentions of the petitioners employees in Writ Petition No. 2871/2009 that they are the permanent employees of the Ashram School run by the petitioner Ravisut society and they have been appointed by following due process of law, prior to 10 years. They have challenged the same Government Resolution dated 01.03.2009 on the ground that transfer of the Ashram school by the Government was without the consent and without hearing the petitioner employees and no provision of the MEPS Act or the Rules supports such transfer. It is further contended that both the Societies i.e. petitioner Ravisut society and Respondent Shivam Society are registered under the provisions of the Registration of Societies Act as well as Bombay Public Trust Act and

no order is passed by the Charity Commissioner to transfer one society to another society.

7. Affidavit in reply is filed on behalf of respondent Nos. 1 to 4 Authorities. It is contended that transfer of the Ashram School is as per the request and the resolution passed by the petitioner society and subsequent cancellation of such resolution was not communicated to the respondents nor they have knowledge about the same.

8. Chairman of the respondent Shivam Society Mr. Namdeo Chavan has filled affidavit and opposed the petition and disputed the authority of the present petitioner society to file writ petition. According to the Respondent Society, the trustees of the petitioner Ravisut society have taken conscious decision to transfer the Ashram School and forwarded the proposal and accordingly respondents 1 to 4 authorities have taken decision to transfer the school in the interest of students. No documentary evidence is produced on record to show that subsequent resolution cancelling the earlier resolution was communicated to respondent Nos. 1 to 4.

9. In the affidavit in rejoinder, the petitioner

society has stated that the respondent Shivam Society has manipulated some documents and disputing the case of the petitioner society.

10. We have heard Mr. V. D. Sapkal and Mr. M. V. Salunke Advocate for the petitioner Ravisut Society, Mrs. M.A. Deshpande, learned Addl. G. P. for respondents 1 to 4 State authorities in both the petitions, Mr V. J. Dixit, learned Senior Advocate for respondent Shivam Society, Mr. M. P. Gude, Advocate for respondent Nos. 6 to 10 in WP 4346 and Mr. P. M. Gaikwad, Advocate for the petitioner employees.

11. On perusal of the record, it appears that the petitioner society was unable to run the Ashram School at Chapaner due to some difficulties. Therefore, vide resolution dated 01.03.2006, it has decided to transfer the Ashram School to the respondent Shivam Society. It was further resolved that till the Government sanctions the transfer of Ashram School, the petitioner society was to manage the Ashram School. Proposal was sent to the Social Welfare Officer alongwith consent letters of the employees and it was pending before the Government for its consideration. In the meantime, difficulties faced by the petitioner society were

resolved with the help of villagers and village leaders and therefore, the petitioner Society passed another resolution dated 01.03.2006 stating that since difficulties are resolved and till then the Government has not transferred the Ashram School to respondent Shivam Society, it was unanimously decided to cancel the earlier resolution dated 01.12.2005. Further, it reveals that copies of such resolutions were sent to the respondents by Under Posting Certificate (UPC) and copies of such UPC are placed on record at Exh.R-1.

12. Respondent Shivam Society has opposed the petitions, however, it is not made clear, how it is related to the Ashram School run by the petitioner society. Merely because some resolutions are passed by the Government, transferring the Ashram school run by the Petitioner society, the respondent Shivam Society is opposing the writ petitions.

13. Looking to the contents of the impugned GR dated 01.03.2009, it reveals that the Ashram School, Chapaner run by the petitioner society is transferred merely on the ground of request of the petitioner society. No doubt, the Government is authorized to transfer one

Ashram School to any other Ashram School on the grounds mentioned in clause Nos. 2 to 7 of Government Resolution dated 01.08.2007.

14. The resolution by which it was decided to transfer the Ashram school is subsequently withdrawn by the petitioner society. The only stand taken by respondents 1 to 4 authorities is that the Government has passed the impugned resolution as per the request of the petitioner society and no communication was received from the petitioner society about cancelling of the earlier decision for transfer of the Ashram school. Copies of the UPC receipts forwarding the subsequent resolution are placed on record. From which, it can be presumed that the copies of the subsequent resolution passed by the petitioner society were received the addressee/respondents authorities. In such circumstances, the Government ought not have transferred the Ashram School of the Petitioner society to the Respondent Shivam Society, that too without hearing and without intimation to the petitioners.

15. The petitioners in Writ Petition No.2871 of 2009, employees of the Ashram School have specifically stated that before the transfer of the Ashram School,

no opportunity of being heard was given to them. Further, it is the case of these petitioners employees that the petitioner Ravisut Society has taken signatures of the petitioners employees on blank stamp papers and possibility of misuse of such stamp papers cannot be ruled out. Such contention of the petitioner employees has not been denied by the petitioner Ravisut society.

16. It reveals from the record that the petitioner in Writ Petition No. 2871/2009 are the employees of Ashram School, Chapaner run by the petitioner -Ravisut Society. It is seen from the record that both the Societies i.e. Petitioner Ravisut society and Respondent Shivam Society are registered under the Provisions of the Registration of Societies Act as well as Bombay Public Trust Act. The petitioners have assailed the Government resolution on the ground that upon transfer of the Ashram School, the Government is not giving grant to such school for three years. Therefore, it would be very difficult to maintain the service conditions of the petitioners employees.

17. According to the petitioners employees, transfer of the Ashram school was without notice to

the petitioners employees. The petitioners employees have disputed their consent to transfer the Ashram school, for which there is no reply by the petitioner Ravisut society.

18. The resolution to transfer the Ashram school dated 01.12.2005 passed by the petitioner society was subsequently withdrawn by resolution dated 01.03.2006, which was communicated to the respondent authorities. However, it appears that due to miscommunication or non communication, the Government has passed the impugned resolution behind back of the petitioners Society. Furthermore, the impugned Government resolution was passed without giving notice to the permanent employees of the Ashram School and the petitioner Ravisut Society.

19. In view of the above discussion, both the writ petitions are allowed.

20. The impugned Government Resolution dated 01.03.2009 is quashed and set aside.

21. The Respondent Authority shall take decision about transfer of the Ashram School afresh after hearing the concerned parties, in accordance with law,

expeditiously, preferably within six months from the date of order.

22. Rule is made absolute in the aforesaid terms. No costs.

23. In view of disposal of the writ petitions, pending civil application also stand disposed of.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC