

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

WRIT PETITION NO. 6579 OF 2015

Balvikas Sanstha Chalak and Karmachari
Sanghatana Maharashtra State,
through its President
Shivaji s/o Wamanrao Joshi,
Age : 49 Years, Occ: Social Worker,
R/o Tulja Bhawani Nagar,
New Railway Station Road, Latur. .. Petitioner

Versus

1. The State of Maharashtra
Through Secretary Women & Child,
Development Department,
Mantralay Mumbai.
2. The Commissioner of
Women & child Developmental
Commissionerate, 28th Ranicha Bag,
old Circuit house, Pune-1.
3. The State of Maharashtra,
Through secretary,
Revenue Department,
Mantralaya, Mumbai. .. Respondents

Shri Shrilant T. Veer, Advocate for the Petitioner.
Shri M. B. Bharaswadkar, A. G. P. for Respondent Nos. 1 to 3.

WRIT PETITION NO. 6526 OF 2015

Maharashtra Mahila Prashikshan Bal
Sadan, Balak Ashram, Balgruha
Swayansevi Sanstha Chalak Sangh

Latur, Tq. & Dist. Latur,
Through its President,
Ramdas S/o Jaisingrao Chavan,
Aged : 62 Years, Occu. : Agril.,
R/o Latur, Tq. & Dist. Latur.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary to the
Government of Maharashtra in
Women & Child Development
Department, Maharashtra State,
Mantralaya, Mumbai - 32.
2. The Desk Officer,
Women and Child Development
Department, Maharashtra State,
Mantralaya, Mumbai-32.
3. The Commissioner,
Women and Child Development,
Maharashtra State, Pune.
4. The Divisional Deputy Commissioner,
Women and Child Development,
Aurangabad Division,
Aurangabad.

.. Respondents

Shri N. P. Patil Jamalpurkar, Advocate for the Petitioner.
Shri M. B. Bharaswadkar, A. G. P. for Respondent Nos. 1 to 4.

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

Reserved for Judgment on : 01.03.2017

Judgment Pronounced on : 05.05.2017

JUDGMENT (Per S. V. Gangapurwala, J.) :-

. The petitioners in both these writ petitions are the State level associations of institutions which run Bal Sadans, Balak Ashram, Anathalay, etc. These institutions are run by the non governmental organizations (N.G.O.) through out the state. The petitioners initially assailed the circular dated 17.06.2015, which directs all the Divisional Commissioners of the Maharashtra State, the Commissioner for Woman and Child Development, Maharashtra State and the Special Executive Officer, Maharashtra State Integrated Child Protection Society to take immediate steps for conducting the re-inspection of all the Bal Gruhas in the State of Maharashtra. The petitioners also seek grant in aid. After filing of the writ petitions Government Resolution dated 13.07.2015 is issued, which prescribes guide lines for formation of inspection squad. The same is also assailed. The said Government Resolution also prescribes a marking system to be upon inspection of Balgruha. The same is also assailed.

2. Mr. N. P. Patil Jamalpurkar and Mr. S. T. Veer, the learned counsel for respective petitioners strenuously contend that, the circular dated 17.06.2015 thereby directing to constitute a committee consists of (1) Deputy Collector, (2) Deputy Chief Executive Officer of Zilla Parishad, (3) Tahsildar, (4) The representative of non governmental organization is illegal. The

same is not authenticated in the name of the Hon'ble Governor as expected by Article 116 of the Constitution. The Committee is not constituted in accordance with Rule 82 of the Juvenile Justice (Care and Protection) Rules 2002 (for short "Rules of 2002"). The rules specifically provide that, there shall be medical officer in such inspection squad while inspecting Balgruha. However, there is no place for medical officer as per the said circular. According to the learned counsel the inspection squad/committee is directed to inspect all Balgruhas functioning in the state. The Committee has been provided a chart of 200 marks for the allotment of the marks to the Balgruhas while inspecting the same, so as to decide its standard and according to marks gradation is directed to be made of the Balgruhas in A, B, C and D category. Only those Balgruhas included in A category will be provided grant in aid. Those who secure 100% marks are included in A category and from 80 to 99% marks is included in B category. It is stated that, those in B category will be given six months time to upgrade to A category and till that time grant in aid would be stayed and after re-inspection if said Balgruhas find place in 'A' category, the grant in aid of the said Balgruhas would be released. The Balgruhas which will secure C grade shall be given show cause notice as to why their permission should not be cancelled. The State Government thereafter issued another Government Resolution on 13.07.2015 and have made slight changes in Gradation of the Balgruhas. It has maintained the modality of giving the marks, however, it has laid down that

those Balgruhas, which will secure more than 90 per cent marks shall be included in A category and those securing from 80 to 89 per cent marks will be included in B category. Whereas those Balgruhas securing 70 to 79 per cent marks shall be included in C category. This was the only slight change made in the subsequent Government Resolution dated 13.07.2015.

3. The learned counsel further submits that, for more than three years preceding to the letter dated 17.06.2013, the State has not released full grant in aid. The Balgruhas are run for the welfare of the children admitted in Balgruhas. As per Sec. 34 of the Juvenile Justice (Care and Protection of Children) Act, 2000, it is the responsibility of the State to establish children's home. However, it could not discharge its function and, therefore, it has taken the assistance of non governmental organizations to establish the children's home in every district for reception of child in need of care and protection. Time and again representation was made to release full grant in aid. The Balgruhas are run by the non governmental organizations with a wide object of taking care of the destitute children. The respondents be directed to release the full grant in aid.

4. The learned counsel for petitioners further submit that, the modalities of marks to be allotted pursuant to impugned G. R. to the Balgruhas for deciding its standard is not in accordance with the Rules and within the scope of the Balgruha. The clauses

specifically i. e. Clause Nos. 1(2), 4(1), 5(11), 8(3), 9(3)(4), 10(4), 11(3)(5), 12(5), 13(1)(2)(3), 16, 17 provided in the chart are not based within the scope of Balgruha and those clauses are not applicable to the Balgruhas. On the basis of said clauses deciding the standard of Balgruha is not legal, just and proper. According to the learned counsel 12 marks provided for clause -3(1), 3 marks provided for Clause No. 3(3), 3 marks provided for clause No. 6(1), 5 marks provided for clause No. 7(1) as such total 23 marks are based on the aid to be released by the State Government on time. The complexity laid down under the chart while inspection and for releasing the aid is unreasonable in the eye of law. It is pertinent to note that, 12 marks in the said Chart are for health of children, however, there is no place for the medical officer in the said inspection committee.

5. According to the learned counsel for petitioners, the affidavit is filed by the Government that, the Government is providing financial assistance to the N.G.O.'s in the form of grant in aid, but it does not mean that it has to provide 100% grant to them. The affidavit further states that, the N.G.O. are at liberty to raise funds at their level from donors and private contributions and utilize the same for the care and protection of the children. In fact, the State Government provides very meager grant in aid to the Balgruhas. Earlier it used to provide Rs. 635/- for meal and Rs. 315/- for other expenses like staff, rent, etc per student. From 01.01.2012 it has increased to Rs. 900/- for

meal and Rs. 315 for other expenses. Till today the optimum grants are not received. After releasing the grant in aid, the State can take inspection of the Balgruha by constituting proper committee in accordance with law. Unless the full grant in aid is paid, it is unreasonable to saddle the Balgruha with inspection and that too with such a strange committee with such modalities of marking. The marking system itself is faulty. The marks are given for providing the facilities, which under the Statute and the Rules, Balgruhas are not expected to provide. For all these reasons the circular dated 17.06.2015 and G. R. dated 13.07.2015 are required to be quashed and set aside.

6. The learned Assistant Government pleader for respondents submits that, pursuant to the Government Resolution dated 13.07.2015 and as per the provisions of Rule 82 and 83 of the Maharashtra Juvenile Justice (Care and Protection of Children) Rules 2002 (for short Maharashtra Rules of 2002), the Government has constituted a special squad to carry out inspection of Balgruhas rather than their own districts. The intention of the Government is to make a cross check for the said inspection to avoid bias and partial inspection. The Government has inherent powers to issue certain guidelines or impose certain terms and conditions to ensure proper care and protection of children in the Balgruhas.

7. The learned Assistant Government Pleader further

submits that, Government is providing financial assistance to these NGOs like the petitioners in terms of grant in aid. But it does not mean that, the Government is to provide 100% grants to them. On the contrary NGOs like the petitioners are at liberty to raise funds from donars and private contributions and utilize the same for the care and protection of children.

8. The learned A. G. P. further submits that, the Women and Child Development Department has issued G. R. dated 13.09.2013 for issuing the increased grants of Rs. 900/- from 01.01.2012 to the Balgruhas run by N.G.O. It was brought to the notice of the Government that certain N.G.O. are availing grants in respect of the same inmates twice, as such it was necessary to make available uniformed data of inmates. As per said G. R. the directions were given for installation of biometric machines and to upload the information of inmates on the website named Track Child of the Central Government. It was further stated that, unless the organizations get biometric machines functional and get the information of inmates uploaded on the Central Government's Website, increased grants should not be distributed. It was further stated in the said Government Resolution that, the District Collectors should inspect the organizations and the grants should be adjusted to only those organizations, who fulfill the norms mentioned in the Government Resolution dated 13.09.2013.

9. The learned A. G. P. further submits that, at the time of receiving the permission to run the children homes, the N.G.O's have entered into the contract that, they will run the children home by arranging money by themselves through donations, etc.

10. The learned A. G. P. submits that, as per Rule 82 and 83 of the Maharashtra Rules of 2002, inherent powers vest with the State Government to constitute a committee for inspection of said Balgruhas. The Government disburses the grants as per the availability of funds. The Women and Child Development Department has forwarded the proposals for sanction of outstanding grants. The Finance Department returned the said proposal with certain queries. Due to said queries Women and Child Welfare Department has decided to work out entire scheme afresh, and therefore, issued G. R. dated 13.07.2015 for re-inspection of Balgruhas. There would be no undue hardship in re-inspection. As per the G. R. dated 13.07.2015, so also the provisions of Rule 82 and 83 Maharashtra Rules of 2002, the Government has constituted a special squad to carry out re-inspection of Balgruhas with the sole intention to make a cross check. The Government has prerogative powers to issue certain guidelines or to impose certain terms and conditions to ensure proper care and protection of children in the said Balgruhas. The gradation system enshrined in Government Resolution dated 13.07.2015 is already applicable to special schools and ashram schools under the Social Justice Department as well as normal

schools under the School Education Department. The N.G.O.'s running special schools and ashram schools under the Social Justice Department as well as normal schools under the School Education Department have no grudge about the said gradation system. It is only those schools who would be satisfying criteria would be entitled for the grant in aid. The marking system would assist in assessing Balgruhas. The balgruhas are meant for destitute children. The N.G.O.'s will have to maintain the standard and then only they would be entitled for the grant in aid. All these institutions coming under A category i. e. getting more than 90% marks would be entitled for grant in aid. Those getting marks from 80% to 89% will be in B category. They will be given six months time to upgrade themselves and thereafter will be considered for grant in aid and those in C category will not be entitled for grant in aid. However, will be liable for cancellation of their license as those institutions would not be taking proper care of the destitute children. The said marking system is not irrational. The institutions are required to take care and provide for the amenities and facilities under the Act and the grading system is also done accordingly.

11. We have considered the submissions canvassed by the learned counsel for respective parties.

12. The Juvenile Justice (Care and Protection of Children) Act 2000 was aimed at providing juvenile justice system for juveniles

in conflict with law and children in need of care and protection by adopting a child friendly approach in adjudication and disposition of matters in the best interest of children and for their rehabilitation keeping in view the developmental needs of the children. The said act was amended twice in the year 2006 and 2011 to address gaps in its implementation and make the law more child friendly. During the course of the implementation of the Act several issues arouse such as increased incidents of abuse of children in institutions, inadequate facilities, quality of care and rehabilitation measures in homes, responsibility and accountability of institutions, etc. have highlighted the need to review the existing law, as such the Juvenile Justice (Care and Protection of Children) Act 2015 (for Short "Act of 2015") is enacted. The Act of 2015 has come into effect from 15th day of January, 2016. It repeals the Act of 2000.

13. The Act of 2015 by virtue of Sec. 41 makes registration of child care institutions mandatory. Sec. 50 of the Act of 2015 suggests that the State Government may establish and maintain, in every district or group of districts, either by itself or through voluntary or non-governmental organizations, Children's Homes, which shall be registered as such, for the placement of children in need of care and protection for their care, treatment, education, training, development and rehabilitation. Sec. 50 of the Act of 2015 further lays down that, the State Government may by rules provide for the monitoring and management of Children Homes,

including the standards and the nature of services to be provided by them, based on individual care plans for each child. Sec. 53 of the Act of 2015 deals with rehabilitation and re-integration services in institutions registered under this Act and management thereof. Sec. 53 of the Act of 2015 reads thus.

**THE JUVENILE JUSTICE (CARE AND PROTECTION OF
CHILDREN) ACT, 2015**

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53. Rehabilitation and re-integration services in institutions registered under this Act and management thereof.-- (1) The services that shall be provided, by the institutions registered under this Act in the process of rehabilitation and re-integration of children, shall be in such manner as may be prescribed, which may include—

(i) basic requirements such as food, shelter, clothing and medical attention as per the prescribed standards;

(ii) equipment such as wheel-chairs, prosthetic devices, hearing aids, braille kits, or any other suitable aids and appliances as required, for children with special needs;

(iii) appropriate education, including supplementary education, special education, and appropriate education for children with special needs:

Provided that for children between the age of six to fourteen years, the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009) shall apply;

(iv) skill development;

(v) occupational therapy and life skill education;

(vi) mental health interventions, including counselling specific to the need of the child;

(vii) recreational activities including sports and cultural activities;

(viii) legal aid where required;

(ix) referral services for education, vocational training, de-addiction, treatment of diseases where required;

(x) case management including preparation and follow up of individual care plan;

(xi) birth registration;

(xii) assistance for obtaining the proof of identity, where required; and

(xiii) any other service that may reasonably be provided in order to ensure the well-being of the child, either directly by the State Government, registered or fit individuals or institutions or through referral services.

(2) Every institution shall have a Management Committee, to be set up in a manner as may be prescribed, to manage the institution and monitor the progress of every child.

(3) The officer in-charge of every institution, housing children above six years of age, shall facilitate setting up of children's committees for participating in such activities as may be prescribed, for the safety and well-being of children in the institution.

14. Section 54 of the Act of 2015 requires the State Government to appoint inspection committees for the State and District as the case may be for all institutions registered or recognized to be fit under this Act. Sub Sec. 2 of Section 54 of the Act of 2015 requires the inspection committees to mandatorily conduct visits to all facilities housing children in the

area allocated atleast once in three months. The said team shall consist of not less than three members, of whom atleast one shall be a woman and one shall be a medical officer. The said committee is required to submit report of the findings of such visits to the District Child Protection Units. U/Sec. 55 of the Act of 2015, the Government may individually evaluate the functioning of the registered institutions through such persons or institutions as may be prescribed by that Government.

15. The Rules of 2002 were framed pursuant to the powers conferred by Sec. 68 of the Juvenile Justice (Care and Protection of Children) Act 2000. Section 110 under the Act of 2015 confers powers on the State Government to make rules to carry out the purpose of the Act. It appears that, the Maharashtra State has not framed its rules pursuant to powers conferred U/Sec. 110 of the Act of 2015 and relies on the Rules of 2002 framed under the Act of 2000. The model rules are framed by the Central Government namely the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. The proviso to Sec. 110 of the Act of 2015 states that, where any such model rules have been framed by the Central Government, they shall apply to the State *mutatis mutandis* until the rules in respect of that matter are made by the State Government. The model Rules 2016 provide for the manner of registration of child care institutions. The management and monitoring of child care institutions, fit facility, physical infrastructure, sanitation, hygiene, clothing, bedding,

etc. The infrastructure also includes providing of computer, telephone with inter-net facility, etc. The rules lay down the elaborate provision with regard to other aspects to be taken care of, for such children.

16. The Government Resolution dated 13.07.2015 assailed in the present petitions is prior to the introduction of the Act of 2015 and the model Rules of 2016. The same is referable to the Maharashtra Rules of 2002. The State now will have to formulate inspection committees as is required U/Sec. 54 of the Act of 2015. As on the date the impugned Government Resolution was issued, the Act of 2015 had not come into force and as such the G. R. dated 13.07.2015 was issued pursuant to the Maharashtra Rules of 2002. The Maharashtra Rules of 2002 were amended in the year 2011. As per the Maharashtra Rules of 2002, Rule 82 deals with inspection of such children homes. Rules 82 and 83 of the Maharashtra Rules of 2002 reads as under :

The Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002

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82. Inspection.--(1)[Deleted].

(2) The team shall also make suggestions for the improvement and development of the institution.

(3) [Deleted].

(4) Not less than three members shall carry

out the inspection visits.

(5) The Committee may visit the homes either by giving a prior intimation or by surprise.

(6) The Committee shall interact with the children during the visits to the institution, to determine their well being and uninhibited feed back.

(7) All concerned authorities shall take the follow up action on the findings and suggestion of the children.

(8) The inspection team shall be given an identity card.

83. Inspection of Institutions, monitoring and evaluation.-(1) The Inspection Committee shall only enter the premises of the homes for the purpose of inspection.

(2) During the institution rounds, the Inspecting Committee shall give every juvenile or child committed or remanded to its care an opportunity to make any complaint or application to him which such juvenile or child may wish to make.

(3) Every such inspection visit shall at the conclusion of his inspection, be noted in the inspection book of the institution or home as a proof that he has inspected it on a particular date.

(4) The Inspecting Committee shall furnish the report to the Commissioner and the State Advisory Board.

(5) Any place of safety in which a juvenile or child is kept shall be open to inspection.

(6) The occupier or manager of such place of safe custody shall give every facility to the inspecting committee and the others as stated above who visits the juvenile or child for the purpose of making inquiries into his case.

(7) Any registered medical practitioner empowered in this behalf by Government may visit any institution or home, a fit person or fit institution at any time with or without notice in order to report to the Superintendent and the

Competent Authority on the health of the Juvenile/child and the sanitary condition of the institution.

(8) [Deleted].

(9) [Deleted].

(10) The industrial, technical, agricultural or other vocational training classes run by the institutions shall be inspected by the Director of Employment and Director of Training or by an officer authorized by him in this behalf or by any officer of the Agricultural or other Departments concerned, as the case may be, and he shall forward the inspection report to the Competent Authority.

17. The rules does lay down the constitution of the inspection team. It states that, the team carrying out the inspection shall not consists of less than three members. Rule 83 deals with monitoring and evaluation. The grievance of the petitioners appears to be in respect of Committee constituted and the nature of marks to be given as per Rules 82 and 83 of the Maharashtra Rules of 2002. The State Government is competent to constitute the Committee which should not be less than three members. The Committee constituted is of four members as per the State Government and one is also representative of the non governmental organization. The marks are given for assessment and evaluation of Balgruhas. There has to be some standard to assess and evaluate. The marking system would be a safe system for evaluating and assessing the functioning and working of the Balgruhas. The marks prescribed are certainly in respect of the items which are required to be provided by the Balgruhas. There should not be any objection of the institutions in respect of

marks to be allotted. The objection with regard to Clause 4.1 does not appear to be proper. Six marks are allotted for bed sheets, carpets, blankets. Under clause 5.11 marks are allotted for the necessary staff as per the staffing pattern. Clause 7.3 provides marks for separate medical case sheet for every individual which is also necessary. One of the objection is marks being allotted for training given to the inmates such as computer, etc. and for providing separate teaching apart from school to the students. The same, in fact, is required to be done by the institutions. Two marks are awarded for holding annual gathering or for taking children to picnic under clause 10.4. Even the petitioners are objecting for the marks being awarded for appointment of councillors. The same is for well being of inmates. The another objection of the petitioners is marks being allotted for the steps being taken by the institutions for rehabilitation and preparing the programme for rehabilitation and steps taken to implement it. So also the steps taken by the institution for giving children below 12 years in adoption. The said marks are only for the efforts taken by the institution. The institution is supposed to do that. The children home are established with specific object and for those children who are found to be in conflict with law and children in need of care and protection, these institutions are required to cater to their basic needs through proper care, protection, development, treatment, social, re-integration by adopting a child friendly approach.

18. Considering the above, it cannot be said that, the marks allotted under the different heads are alien to the purpose and object of the Act and Rules. The same appears to be in consonance with and in furtherance of the object of the Act and Rules. The petitioners should not have any room to make a grievance of the same.

19. The standard adopted for giving grant in aid to the institution appears to be reasonable and proper. Those institutions getting more than 90% of marks are to be held eligible for grant in aid and those getting percentage between 80% to 89% are given six months time to clear the deficiencies, upgrade themselves and upon upgrading themselves, they will again be entitled for the grants. Those institutions getting less than 80% marks are categorized in category C and their registration would be cancelled. The contention of the petitioners that, one more opportunity be given to them cannot be accepted. These institutions in category C would not be taking proper care of the children and would be lacking in providing basic facilities and amenities. Leniency cannot be shown to such institutions, more particularly when it deals with providing care to the destitute children. The contentions of petitioners as such cannot be accepted.

20. As far as question of grants is concerned, the State has filed an affidavit stating that, earlier grants are paid and the

present grants would be paid depending upon the inspection being conducted. The State would consider that deserving non governmental organizations are shouldering the responsibility of the State in running the children home and those deserving institutions should be given the grants, so that they would be in a position to effectively advance the facilities to the inmates. The State has not denied to pay grants to them, however, as contended by it, upon inspection being done, the grants would be paid. We hope and trust that, the Government will take decision in respect of payment of grants to the deserving institutions expeditiously and the same shall be paid expeditiously.

21. As observed above, the Act of 2002 has been repealed by the Act of 2015. The model Rules of 2016 have been framed by the Central Government. The State of Maharashtra has not framed any Rules under the Act of 2015. The Government Resolution impugned is prior to the enforcement of Act of 2015 and Model Rules of 2016. The State Government shall consider formation of inspection team as per Sec. 54 of the Act of 2015.

22. The writ petitions accordingly stand disposed of with aforesaid observations. No costs.

Sd/-

[K. L. WADANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]