

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

WRIT PETITION NO.8290 OF 2011

Kaushalyabai Rudrakanthwar
Sevabhavi Sanstha, Hadgaon, through
it's Secretary, Kerba s/o Dattatraya
Rudrakanthwar, Age 52 years, Occ.:
Agril., R/o.: Main Road, Hadgaon,
Tq.Hadgaon, Dist. Nanded.

...Petitioner.

Versus

- 1) The State of Maharashtra, through its Secretary, Social Justice & Special Assistance Department, Mantralaya, Mumbai -400 032.
- 2) The Commissioner of Welfare for Disabled Persons, M.S., Pune.
- 3) District Social Welfare Officer, Beed.
- 4) District Social Welfare Officer, Nanded.
- 5) District Social Welfare Officer, Yavatmal.
- 6) Rashtramata Samaj Kalyan Shikshan Prasarak Mandal, Phulubri, Tq. Manora, District Washim, through its President.
- 7) Saraswati Shaikshan Prasarak Mandal, Selmoh, Tq. Gangakhed, Dist. Parbhani, through, it's Secretary, Rajendra Govindrao Mundhe, Age : Major, Occ.: Agril., R/o.: Gokul Building, Suyog Colony, near Lokmanya Nagar, Parbhani, Tq. & Dist. Parbhani.

...Respondents.

Mr U.K.Awate, advocate h/f Mr. S.B.Talekar, advocate for petitioner.

Mr. S.K.Tambe, A.G.P. for respondents no.1 and 2

Mr. A.V.Hon, advocate h/f Mr. V.D.Hon, Senior Advocate advocate for respondent no.5

Mr. S.N.Suryawanshi, advocate h/f Mr. N.B.Suryawanshi Hon, advocate for respondent No.7

CORAM : SUNIL P. DESHMUKH

AND

SANGITRAO S. PATIL, JJ.

DATE : OCTOBER 03, 2017

ORAL JUDGMENT : (PER: SUNIL P.DESHMUKH, J.)

Rule. Rule made returnable forthwith and heard finally with consent of learned counsel for the parties.

2. The school run by respondent No.7 for physically handicapped persons at Parali - Vaijnath had been closed down with effect from 27-06-2001. The petitioner has been running a primary school at Islapur, Tal. Kinwat Dist. Nanded. Pursuant to policy of the State Government as reflected in Government Resolution dated 19-07-2003, the petitioner had applied to take over the school of respondent No.7 for running the same and to transfer it to Islapur, Tal. Kinwat. The secretary of petitioner had entered into an agreement with respondent No.7 on 12th

January, 2009.

3. Under a communication dated 12-02-2009, Ministry for Social Justice and Special Assistance had called for a report from Commissioner Handicap Welfare on 21 points referred to therein. District Social Welfare Officer, Zilla Parishad, Nanded - respondent No.4 and District Social Welfare Officer, Zilla Parishad, Beed - respondent No.3 had submitted their responses on 09-03-2009 on said points. The Commissioner of Welfare for Disabled Persons, Maharashtra State, Pune made a report to the Government for consideration under his communication dated 10/15th June, 2009.

4. According to petitioner, however, abruptly on 26th August, 2011, order impugned in present petition had been issued by respondent No.1. Petitioner is aggrieved by Government order 26-08-2011 issued by respondent No.1, where under, school for physically handicapped persons conducted by Saraswati Shikshan Prasarak Mandal - respondent no.7 has been transferred to Rashtramata Samaj Kalyan Shikshan Prasarak Mandal - respondent No.6.

5. The learned counsel for the petitioner submits that, there is no dispute on that the petitioner's proposal for transfer of closed down school at Parali Vaijinath Islapur was pending.

However, in the meantime, respondent no.6 purportedly has moved its proposal. While proposal of petitioner was sent for consideration and pending consideration, the proposal which is purportedly moved during the intervening period on behalf of respondent No.6 had been considered hastily with a view to favour respondent No.6.

6. He submits that there was no indication to petitioner whatsoever that the proposal of transfer of respondent No.7 was being heard. He submits that no hearing had been granted purposely to petitioner.

7. Learned counsel in support of his submissions, places reliance on a decision of Division Bench of this Court decided at Nagpur in the case of *Jeejau Shikshan Sanstha v/s. State of Maharashtra and others* in Writ Petition No.1261/2010, dated 17th February, 2011. According to the learned counsel, the material facts involved in the present matter are identical to the ones in cited case, wherein the High Court had considered that such exercise of power is arbitrary in a system governed by rule of law. Discretion conferred upon an executive authority is to be exercised cautiously. A decision should be made on known principles and a citizen should know where he stands. If a decision is taken without any guiding principles or without any

rule, it is impermissible.

8. Learned counsel purports to emphasize observations, as are appearing under paragraph no.15 thereof. In the said paragraph, it has been observed :

“The time has come to arrest this tendency till such time either legislature or the State Government do not come out with a well guided and transparent policy in the matter of change of management”.

9. He therefore, urges to allow to shift the school from Parali Vaijinath to Islapur, Tq. Kinwat Dist. Nanded or petitioner be allowed to run the same at Parali Vaijinath transferring the same to the petitioner.

10. Learned A.G.P., Mr. S.K. Tambe for the respondent/State contends that the State Authority has to take ultimate decision in the matters of transfer of closed down schools, as would be appearing in the Government Resolution dated 19th July, 2003 annexed to the writ petition. He also tenders across a Resolution dated 19th July, 2003 as well as corrigendum to the same dated 4th December, 2003. He submits that pursuant to the corrigendaum, it is for the State Government to take final decision in respect of the transfer of school. While the proposal submitted by the Respondent No.6 was found to be proper, it has been accepted and it is not the case wherein the proposal

of the petitioner had not been considered, as would appear from the impugned order. He refers to impugned order wherein, it has been stated that after hearing all the concerned and taking into account the reports by respondents no.3 and 5, decision has been taken to transfer respondent No.7's school to respondent No.6 on the conditions as referred to. Thus, according to learned A.G.P., all the requisite compliances have taken place before the decision has been taken. He submits that report from respondents no.3 and 5 have been considered and accordingly the decision has been taken based on the merits involved. Learned Asstt.Govt.Pleader further refers that the Government has come out with a new policy decision under its resolution dated 16th September, 2017. He therefore, submits that respondent No.6 has been running school for over 7 years and in such circumstances, the impugned order ought not be set aside.

11. Learned counsel Mr. Hon submits that respondent No.6 had applied for transfer of school after coming to know about the closure of school in the year 2001. Accordingly, it's case was recommended by respondents no.3 and 5 and accepted by respondent no.1. All the procedure as had been required under the prevailing policy, had taken place. Hearing had been granted to respondents as emerging from recommendation

dated 08-09-2010 annexed to the petition at Exh. R-1. Having regard to merits of the claim, the case has been considered.

12. He submits the petitioner had not appeared during course of hearing. In any case, the respondent no.6 cannot be faulted with for decision taken in it's favour. After hearing having being granted, impugned decision has been taken. Respondent No.6 has been running the school for about 7 years during such period, many developments have been taken place.

13. After hearing the learned counsel for the parties, it emerges that, there is no dispute about that the petitioner had requested for taking over and transfer of Respondent no. 7 school and reports in its respect had been made by respondents no.3 and 4 which has been called for by respondent No.1.

14. It appears that respondent no.6 had made a proposal during pendency of proposal by petitioner. It appears that respondent no.2 had sent the proposals to the State Government. It does not appear that notice had been given to the petitioner about hearing in respect of its proposal. As a matter of fact respondent no.6 purports to refer to proposal of the petitioner pending for transfer of respondent No.7 school to it. It appears that request of petitioner had been sent to the

State Government before that of respondent no.6. It further emerges that in the petitioner's case report has been made in the territory of 10 k.m., there has been no school for handicapped persons. In Nanded district there are 4832 students. Impugned order refers to submission of respondent no.6 that there is no school for handicapped persons within the territory of 10 k.m. from the place where school was to be transferred in Yavatmal district. It does not appear that respective requirements and the claims of petitioner and those of respondent no.6 were compared by respondent no.1. Perusal of the affidavit in reply on behalf of respondents no. 2 and 3 does not reflect upon as to why the proposal of the respondent no.6 is accepted and that of the petitioner is not accepted. Reference, however, has been made to that appropriate orders from the Government had not been received in respect of the petitioner and in the meanwhile, respondent no.6 had applied and the Government had passed the orders.

15. While, it is undisputed that the proposal of petitioner had been pending and hearing is contemplated as would be gathered from the response filed by the respondents, it appears that respondents No.2 and 6 were granted hearing leaving out petitioner. Position emerges that petitioner had never been called for hearing. The impugned order thus,

apparently has been passed in breach of principles of natural justice and tends to be arbitrary and capricious. There is no plausible reason given as to why petitioner had not been called for hearing why its proposal was not considered. There is also no reason given as to why proposal of Respondent No.6 was decided.

16. In the circumstances, the order has been rendered untenable. The impugned order as such, is set aside. Writ Petition is allowed accordingly.

17. The matter is remanded to respondent no.1 to decide the proposals of the petitioner and respondent no.6 afresh by following due procedure and affording hearing to the parties.

18. In the meanwhile, initially, this Court had directed to maintain status-quo and it further appears that status-quo continued to operate during pendency of the writ petition. It appears that Respondent no.6 had been running the school accordingly. As such status quo to continue till the decision is taken by respondent no.1.

19. It is expected that the decision would be taken within a period of 3 months.

20. Learned counsel for the appearing parties upon taking

instructions state that parties shall appear before the State Government on 27th November, 2017 and from then onwards, it is expected that decision would be taken with a period of three months.

21. Rule is accordingly made absolute.

[SANGITRAO S. PATIL, J.] [SUNIL P. DESHMUKH, J.]

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