

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

WRIT PETITION NO. 9076 OF 2011

Karmamela Vidyarthi Vastigrah,
Wasmata, Tq. Wasmata Dist.
Hingoli, Through its Secretary,
Gautam s/o Dhonduji Bhise,
Age : 45 years, Occ.: Secretary,
R/o.: Kanergaon, Tq. Hingoli Dist.
Hingoli.

... Petitioner.

Versus

- 1) The State of Maharashtra,
Through its Secretary, Social
Welfare Department, Mantralaya,
Mumbai.
- 2) The Director, Social Welfare
Sanchanalaya, Maharashtra
State, Pune.
- 3) The Chief Executive Officer, Zilla
Parishad, Hingoli, Tq. & Dist.
Hingoli.
- 4) The Additional Chief Executive
Officer, Zilla Parishad, Hingoli,
Tq. & Dist. Hingoli.
- 5) The Social Welfare Officer, Zilla
Parishad, Hingoli, Tq. & Dist.
Hingoli.

...Respondents

Mr. B.S. Kudale, Advocate for petitioner
Mr. S.N. Moranpalle, Asst.Govt.Pleader for respondents No.1
and 2
Mr. V.M. Lomte, Advocate for respondents no.3 to 5.

CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.

DATE : 01-11-2017

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

1. After hearing learned counsel for the petitioner and the respondents, it appears that the petitioner is running hostel for Scheduled Caste students since 1968 in the name of 'Karmamela Vidhyarthi Vastigrah', having strength of 54 students.

2. Around August, 2000, a notice came to be issued to the institute i.e. petitioner seeking explanation on that the strength of student is less than sanctioned and food provided to the students had not been up to the prescribed norms and standards and residential arrangements had also been insufficient.

3. In response, petitioner had submitted explanation to respondent No.3 on 29-08-2000. Respondent No.3 had not been satisfied with the same and as such purported to reduce the sanctioned strength of students of petitioner - hostel from 54 to 24 under it's order dated 05-10-2000. With reference to the same, Chief Executive Officer - respondent No.3 by letter dated 14-12-2000 purportedly cancelled permission granted

to petitioner to run hostel.

4. The petitioner had filed appeal before the Government, challenging two orders of respondent No.3 dated 05-10-2000 and 14-12-2000. Under order dated 27-02-2002, the Honourable Minister, Social Welfare Department, allowed the appeal of petitioner and set aside orders taken exception to.

5. Thereafter, under the directions of respondents no.3 and 4, the arrangements of the hostel were examined by respondent no.5 in March, 2002 and he had submitted report that the deficiencies and objection had been removed and satisfactory arrangements had been made pursuant to decision in appeal, finding hostel running for academic year from 14-06-2001.

6. It appears that while decision in appeal rendered on 27-02-2002 had been communicated to petitioner, the date of forwarding communication is wrongly mentioned as 27-02-2001 which in fact, should have been 27-02-2002. As such, petitioner by representation dated 26-10-2005 sought correction of date of said communication to be 27-02-2002. The correction accordingly was made and communicated to the petitioner under letter dated 28-12-2006.

7. It appears that in January, 2007, respondent No.5 had revisited the petitioner hostel and found the arrangements to be satisfactory. A report accordingly of satisfaction had been submitted.

8. Petitioner had demanded release of grant for said hostel and for the purpose, had made representation in November, 2007, forwarding copy of the same to respondent no.3 and apprising him of aforesaid position. The Government issued letter (which is at page no.103) to respondent No.3 on 17-03-2010 for release of grant to petitioner – hostel from the year 2000 – 2001 in accordance with rules and regulations, declining the proposition that the hostel had not been recognized during 2002 – 2006.

9. In the meanwhile, it appears, a Government resolution had been issued on 31-08-2009 in respect of the scheme of providing grants to hostels for Scheduled Caste students and transferring the hostels to other institutions. It included present petitioner's hostel also, which was supposedly transferred to Dr. Babasaheb Ambedkar Vihar Prabhodhan Shikshan Prasarak Mandal, Jalna. However, before that, it appears, petitioner's hostel had been granted recognition and sanction for the year 2008 – 2009. It further

appears that the Government resolution dated 31-08-2009 had been withdrawn in respect of said hostels, including that of the petitioner under resolution dated 08-09-2010.

10. In aforesaid situation, learned counsel for petitioner submits that there is no reason whatsoever to detain the release of grant in aid for having run the hostel for the period i.e. 2002 – 2008 as prayed. He submits that the petitioner hostel had been running since 1968 and in the circumstances, such a notice purportedly withdrawing/ cancelling its recognition on the ground of inadequate strength of students is not sustainable. In appeal, before State, the notice had been set aside under order dated 27-02-2002 referred to above and the earlier position had been maintained. Recommendatory directions were issued to respondent no.3 to release grant to petitioner's hostel for the academic years 2000 – 2001 to 2007 - 2008. He submits that there is no impediment for doing so nor there is much financial burden to be borne independently by Zilla Parishad since it is receiving grants from the State Government. Therefore, he prayed to consider the request and allow the writ petition.

11. Learned counsel for respondents no.3 to 5 submits

that while Government Resolution dated 31-08-2009 had been issued, the intention was to close down the hostel of the petitioner and others and transfer those to other institutions. It is under these circumstances, petitioner - hostel had been transferred to other institution at Jalna. This being the position, the demand for release of grant for the period asked for under prayer clause B of Writ Petition is improper. He submits that government resolution dated 31-08-2009 refers to closure of the hostels and as such shall have overriding effect over the decision in appeal by State.

12. For aforesaid purpose, he purports to refer to and rely on decision of this court in the case of *Rashmi Ramesh Pahudkar vs. Asha Vasant Kumar Annchan and others, 2007(6) Mh.L.J.; 763* referring to paragraph 14, thereof, reading thus;

"It has been considered by the Division Bench and upon the different background on application in the present matter that while normally under the rules business and/or authentication, Notification is always signed by a person competent to issue the notification under the rules after it has been received the assent of the Governor. The provision for authentication has to be made by rules pertaining to business of Government under Articles 166(2) orders and other instruments set out therein require to be authenticated and in the second government resolution have been authenticated anything to contrary to

said government resolution would be of no effect”.

13. While it was emphasized by respondents that Government Resolution dated 31-08-2009 speaks of transfer of hostels including that of petitioner to other institutes, it is to be appreciated that petitioner's contention has been that the hostel has been running since 1968 and thus was not required to be transferred to other institute and is entitled to continue to receive grants legitimately. In view of this position, implementation of resolution dated 31-08-2009 has been withdrawn under subsequent Government Resolution dated 08-09-2010, since it was found that quite a few hostels, including the petitioner's hostel had been running properly. This position of recall or withdrawal of operation of Government Resolution dated 31-08-2009 has also been adverted to in Government Resolution dated 08-09-2010. In the circumstances, it does not appear that reliance placed by respondents on the Government Resolution dated 31-08-2009 can carry forward the case for respondents no.3 to 5.

14. Learned counsel for respondents no.3 to 5 has also placed reliance on the decision in the case of *Boriwali Education Society, Mumbai and another V/s. Municipal Corporation of Greater Bombay and another, 2014(2) Mh.L.J.,*

769; wherein, the court had

“In these circumstances, we are of the opinion that it is not reasonably possible to resolve such contentions and disputed questions of fact in a summary jurisdiction under Article 226 of the Constitution of India”.

15. In the present matter, although respondents no.3 to 5 purport to contend that disputed questions of facts have been raised in the petition, however, since the petitioner's hostel has been running since 1968 albeit the Government Resolution dated 31-08-2009 refers to that hostel had been closed and not running, it appears proceedings had taken place in the year 2000 - 2001 and in appeal before the State Government, the decision of respondent no.3 has been set aside and reports have also been made about satisfaction by respondent No.5 twice during 2002 and 2007 on behalf of finding that the hostel is being run satisfactorily and is possessed of arrangements. No particular material worth credence has been placed on record by respondents supporting the case for closure of hostel of petitioner during the period from 2001 - 2007. Perusal of Government Resolution dated 08-09-2010 shows that under the same, Government Resolution dated 31-08-2009 closing down hostels has been withdrawn. It does not appear that the

submissions on behalf of respondents no.3 and 5 about disputed questions of facts having been raised in Writ Petition carries any substance. Although, it has been contended by respondents no.3 to 5 that some criminal proceedings have been lodged for misappropriation, however, it appears that the matter has been still pending.

16. Having regard to aforesaid, it appears that the demand under the writ petition for grant in aid to petitioner's hostel cannot be detained for any reasons as have been purportedly contended on behalf of respondents No.3 to 5, in the absence of any credible supporting material being placed on record.

17. In the circumstances, we deem it fit and appropriate to allow the writ petition subject to certain conditions.

18. Writ Petition is allowed in terms of prayer Clause (B). The grant in aid for the period under prayer Clause (B) is allowed subject to ascertainment of the position of the strength of students and expenditure incurred.

19. Rule is accordingly made absolute in aforesaid terms.

20. It is expected that the exercise will be carried out expeditiously since almost 10 years have lapsed after period for which the relief has been sought in the Writ Petition.

21. Writ Petition is disposed of.

[SANGITRAO S. PATIL]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

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