

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

**Writ Petition No.11227 of 2016
With
Civil Application No.16533 of 2016
With
Civil Application No.842 of 2017
With
Civil Application No.2246 of 2017**

Pandurang Bahuuddeshiya Sevabhavi
Sanstha, Barhali, Taluka Mukhed,
District Nanded
And 79 Others. .. **Petitioners.**

Versus

The State of Maharashtra
And Others. .. **Respondents.**

Shri. N.P. Patil Jamalpurkar, Advocate, for
petitioners.

Shri. P.V. Mandlik, Senior Counsel with Shri.
A.R. Kale, Assistant Government Pleader, for
respondent Nos.1 to 3.

With

Writ Petition No.11221 of 2016

Magas Samaj Seva Mandal,
Devtala, Taluka AUSA,
District Latur And 21 Others. .. **Petitioners.**

Versus

The State of Maharashtra
And Others. .. **Respondents.**

Shri. N.P. Patil Jamalpurkar, Advocate, for
petitioners.

Shri. P.V. Mandlik, Senior Counsel with Shri.
A.R. Kale, Assistant Government Pleader, for
respondent Nos.1 to 3.

With

Writ Petition No.11245 of 2016

Sarvangin Manav Vikas Sanstha, Latur
And 66 Others. .. **Petitioners.**

Versus

The State of Maharashtra
And Others. .. **Respondents.**

Shri. V.J. Dixit, Senior Counsel, instructed by
Shri. Sushant V. Dixit, Advocate for petitioners

Shri. P.V. Mandlik, Senior Counsel with Shri.
A.R. Kale, Assistant Government Pleader, for
respondent Nos.1 to 10.

Writ Petition No.11246 of 2016

Kau. Matoshri Parvatidevi Seva
Sahakari Sanstha Ltd.
And 21 Others. .. **Petitioners.**

Versus

The State of Maharashtra
And Others. .. **Respondents.**

Shri. M.S. Deshmukh, Advocate for petitioners.

Shri. P.V. Mandlik, Senior Counsel with Shri.
A.R. Kale, Assistant Government Pleader, for
respondent Nos.1 to 3.

With

Writ Petition No.12836 of 2016

Marathwada Yuva Mitra Mandal,
Chavanwadi, Taluka Mukhed,
District Nanded
And 6 Others. .. **Petitioners.**

Versus

The State of Maharashtra
And Others. .. **Respondents.**

Shri. N.P. Patil Jamalpurkar, Advocate, for
petitioners.

Shri. P.V. Mandlik, Senior Counsel with Shri.
A.R. Kale, Assistant Government Pleader, for
respondent Nos.1 to 3.

With

Writ Petition No.12 of 2017

Samaj Prabhodhan Shikshan Mandal,
Sakanpur, Taluka Mukhed,
District Nanded
And 6 Others. .. **Petitioners.**

Versus

The State of Maharashtra
And Others.

.. **Respondents.**

Shri. N.P. Patil Jamalpurkar, Advocate, for
petitioners.

Shri. P.V. Mandlik, Senior Counsel with Shri.
A.R. Kale, Assistant Government Pleader, for
respondent Nos.1 to 3.

With

Writ Petition No.146 of 2017

Bhagwan Shrikrishan Shikshan
Prasarak Mandal, Darephal,
Taluka Basmat, District Hingoli... **Petitioner.**

Versus

The State of Maharashtra
And Others.

.. **Respondents.**

Shri. S.B. Ghatol-Patil, Advocate for petitioner.

Shri. P.V. Mandlik, Senior Counsel with Shri.
A.R. Kale, Assistant Government Pleader, for
respondent Nos.1 to 4.

With

Writ Petition No.1434 of 2017

Shri. Guru Mauli Bahuddeshiya
Sevabhavi Sanstha, Beed
And two others.

... **Petitioners.**

Versus

The State of Maharashtra
And Others.

.. **Respondents.**

Shri. Sushant V. Dixit, Advocate for petitioners.

Shri. P.V. Mandlik, Senior Counsel with Shri.
A.R. Kale, Assistant Government Pleader, for
respondent Nos.1 to 5.

**Coram: T.V. NALAWADE &
SANGITRAO S. PATIL, JJ.**

Date: 2 March 2017

ORDER:

1) The petitioners from all the petitions are registered under the Public Trusts Act and it is their case that they are Non Government Organizations (NGOs) and as such on non profit basis they are running Balgruhas / Balsadans / Balakashrams / children Homes at various places. On the basis of permission and recognition given by the State Government to them, they were receiving grant-in-aid. They have challenged Government Resolution dated 1-10-2016 issued by

the Women and Child Development Department Government of Maharashtra. Due to the Government Resolution there will be verification of the record of the petitioners and only after inspection and verification a decision will be taken on the entitlement of the petitioners to get the grant. On the basis of that verification and inspection further decision can be made like cancellation of permissions.

2) It is the case of the petitioners that in the past the district authority had made inspection and had verified the record for consideration of release of the grant-in-aid and in accordance with that verification the Divisional Deputy Commissioner, Women and Child Development Aurangabad had made order to release the grants in favour of the petitioners. It is the contention of the petitioners that the record whatever they have maintained was in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act 2000 and

the new directions of verification and inspection show that more record will be inspected. Another submission is made like repealing of the rules made under the Act of 2000 due to coming into force of the the Juvenile Justice (Care and Protection of Children) Act 2015 and due to that such inspection or verification is not possible. On the other hand, the learned Senior Counsel Shri. P.V. Mandlik for the respondents submitted that as the Government is giving grant-in-aid the Government has every power to verify as to whether the petitioners are entitled to get the grant-in-aid as per the rules which were already framed for giving such aid and to see as to whether necessary record in support of the claims is available. The learned Senior Counsel submitted that when at the Principal Seat petitions were filed by some institutions of that area and the re-assessment / revaluation was challenged, this Court held that the Government has the power to make such re-assessment/revaluation as grant-in-aid was given

to them and as they are claiming grant-in-aid. Learned Senior Counsel submitted that this Court also observed that it is the duty of the State to ensure that the grant-in-aid is released only to deserving and eligible institutions. (**Writ Petition No.5811 of 2016 - Jai Tuljabhavani Bahu Samajsevi Sanstha vs. The State of Maharashtra** decided at the Principal Seat on 31-1-2017). The learned Senior Counsel further submitted that, this Court (Aurangabad Bench) had also observed in the judgment and order dated 27-6-2016 in **Writ Petition No.11237/2015 (Shobhana Shikshan Sanstha and Others v. State of Maharashtra)** with connected writ petitions that the State Government was expected to look into the subject and give directions to the concerned Department to ensure the disbursement of the amount as per the entitlement of those petitioners after verifying the original record maintained by the concerned authorities and the record of the petitioners. This exercise was to be done within 12 weeks from the date of the

order. At the Principal Seat the time of one year is given for such exercise from 31-1-2017.

3) Learned Senior Counsel Shri. V.J. Dixit for the petitioners in Writ Petition No. 11245 of 2016 argued some technical points like absence of rules for doing such exercise. The learned Senior Counsel Shri. Dixit submitted that the provisions of the Act, 2000 and the Rules framed under the said Act, 2000 came to be repealed when the Act, 2015 came into force. He submitted that in view of these circumstances, the provisions of the previous Act, 2000 or the Rules framed thereunder cannot be considered against the petitioners. The learned Senior Counsel further submitted that as the rules are not framed under the new Act of 2015, the respondent Government is not entitled to do re-verification of the things or re-inspection of the things. He placed reliance on the observations made by the Apex Court in the following three cases.

- (1) **AIR 1984 SC 1130 (Ajoy Kumar Banerjee v. Union of India);**
- (2) **AIR 1986 SC 515 (Indian Express Newspapers (Bombay) Pvt. Ltd. vs. Union of India;**
- (3) **AIR 2005 SC 3401 (State of Rajasthan v. Basant Nahata).**

The learned Senior Counsel for the petitioners placed reliance on some observations made by the Apex Court in the case report as **AIR 1970 SC 385 (Income Tax Officer, Alleppey vs. M.C. Ponnose)** and submitted that if at all any rules are made in future, those rules or the procedure will be prospective in nature and that cannot be used against the present petitioners.

4) The learned Senior Counsel Shri. P.V. Mandlik for the respondents submitted that in the previous Act, 2000 there were specific provisions showing the powers of the State and the authority created by the State to do the inspection and to verify the things. He submitted that even if those provisions are ignored, the fact remains that if the Government is giving grant-in-aid to

such institutions for particular purpose, it is not only right of the Government but it is the duty of the Government to see that the public funds are utilized for the same purpose and properly. The learned Senior Counsel further submitted that the petitioners are claiming the grants in respect of the period when the provisions of the previous Act, 2000 were in force i.e. for the years 2013-2014 and 2014-2015 and due to this circumstance also it cannot be said that the inspection cannot be done again or the things cannot be verified again. The learned Senior Counsel drew attention of this Court to the provisions of Section 68 of the Act 2000 to give powers to the State to make rules and he drew attention of this Court to various rules framed under that provision which include the provisions of physical infrastructure and amenities. Various files and registers which need to be maintained as per the rules and some specific provision like provision of rule 63 providing for inspection, rule 64 providing for

social audit, provision of rule 67 requiring institution to maintain particular registrars etc. are relied upon by the respondent. The learned Senior Counsel submitted that the rules also show that the State Government can grant certificate of recognition under sections 8, 9, 34, 37, 41 and 44 of the Act only after verifying the provisions made in the organization for boarding, lodging, general health, educational facility, vocational training, treatment services etc. and it is the duty of the Government to see that the organization complies with the standards with regard to the institution, standards or service as laid down under the Act and the Rules and also maintains the record. There is force in the submissions made by the learned Senior Counsel for the respondent. When in the present matter the petitioners are claiming grants in respect of the period 2013-2014 and 2014-2015 they cannot say that the provisions of the old Act, 2000 cannot be used against them. Further, due to the circumstance that it is the question

of releasing the grants-in-aid it is not open to the petitioners to say that the Government cannot again inspect the institution and verify the things. There is no force in the submissions made by the learned Senior Counsel for the petitioners that there are no enabling provisions for doing the inspection again and verification of the things.

5) One more strange submission was made for the petitioners. It was submitted that the list of registers and record given for verification contains many items which pertain to the record to be maintained under the Trusts Act and the record to be maintained under the Income Tax Act and so these things cannot be verified by the respondents. This submission is not at all acceptable. This Court holds that the aforesaid provisions make it necessary to see the other record though that record may be connected with the requirements given under the Trusts Act and the Income Tax Act. The record needs to be used

as evidence on particular items and so it cannot be said that the record not mentioned specifically under the Act of 2000 and the Rules, 2007 cannot be inspected by the respondents.

6) The submission was made by the learned Senior Counsel for the petitioners that once the audit was done by the Government Department, second audit cannot be permitted. The counsel for the petitioners submitted that in the past the officers of the Government had made inspection and the record was verified and then decision was taken to see that the grant needs to be released and so this decision cannot be changed. On this point, there is affidavit of the respondent which is to the effect that many irregularities were found in the functioning of such organizations. In many cases it was noticed that even when there was not a single child in the institution, grant-in-aid was given, false record of utilization of grant-in-aid was made. Discrepancies were found in respect of number of children shown on record

and the children who were found actually present in the premises of the institution.

7) A strange submission was made for the petitioners that in the months of May and June the children were sent to the relatives and so they were not present there. Most of the children are orphans and due to that they are kept in such organizations. This submission and the objection to the another inspection and another verification are sufficient to infer that these institutions are not ready with the record which needs to be inspected. These institutions are expected to give undertaking to the Government for getting registration, permission that they will be taking care of the children even if they are not getting grants. Though such undertakings are given, there are instances of starvation and death of the children in such organizations. The submissions made show that there is clear possibility of creation of false record for getting only the grant which is more than hundred

crore of rupees. Unfortunately, as per the policy, more than 60% amount has been already released and the matters involve only the remaining amount. In view of these circumstances this Court holds that it is necessary to do inspection and verification of the record again. There is clear possibility that in the past, things were not done properly by the officers of the Government. Due to these circumstances appropriate action also needs to be taken against these officers. The Government has now started taking steps to see that discipline is brought in the said institutions and care of the interest of the children is taken. This Court expects that the Government takes such steps to reach to the logical conclusion and action is taken against all those who are found guilty. Action is also expected like cancellation of the registration or permission. The submission made shows that in many cases such actions are already taken. Due to these circumstances this Court holds that it is not possible to interfere in the

matter and give direction to the Government to release the grants in favour of the petitioners. In the result, all the petitions stand dismissed. Pending civil applications are disposed of.

Sd/-
(SANGITRAO S. PATIL, J.)

Sd/-
(T.V. NALAWADE, J.)

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