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

WRIT PETITION NO.3301 OF 2015

Shri Ganesh Shikshan Prasarak Mandal,
Latur, Tq. Latur, Dist. Latur
Through it's Treasurer Shri. Balaji Tulshiram
Nadarge, Age: 40 years, Occ. Service,
R/o. Vaibhav Nagar, Behind Shri Primary School,
Latur, Tq. & Dist. Latur

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Social Justice and Special Assistance
Department, Mantralaya Vistar Bhavan,
Shahid Bhagatsing Chowk,
Madam Kama Road, Mumbai-32
2. The Competent Authority
and Commissioner Handicapped Welfare,
Maharashtra State, Pune
3. The District Social Welfare Officer Grade-I,
Zilla Parishad, Latur, Dist. Latur

..RESPONDENTS

**WITH
WRIT PETITION NO.3302 OF 2015**

Tuljai Pratishthan Bahuuddeshiya Sanstha,
Pangaon, Tq. Kallam, Dist. Osmanabad,
Through it's Secretary-Shri Shahaji Narayan Chavan,
Age: 40 years, Occ. Service,
R/o. Laxminagar, Near Vidya Bhavan High School,
Kallam, Tq. Kallam, Dist. Osmanabad

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Social Justice and Special Assistance
Department, Mantralaya Vistar Bhavan,

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Shahid Bhagatsing Chowk,
Madam Kama Road, Mumbai-32

2. The Competent Authority
and Commissioner Handicapped Welfare,
Maharashtra State, Pune
3. The District Social Welfare Officer Grade-I,
Zilla Parishad, Osmanabad,
Dist. Osmanabad

..RESPONDENTS

WITH
WRIT PETITION NO.3303 OF 2015

Shri Ganesh Shikshan Prasarak Mandal,
Latur, Tq. Latur, Dist. Latur
Through it's Treasurer Shri. Balaji Tulshiram
Nadarge, Age: 40 years, Occ. Service,
R/o. Vaibhav Nagar, Behind Shri Primary School,
Latur, Tq. & Dist. Latur

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Through the Secretary,
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and Commissioner Handicapped Welfare,
Maharashtra State, Pune
3. The District Social Welfare Officer Grade-I,
Zilla Parishad, Osmanabad, Dist. Osmanabad

..RESPONDENTS

Mr Aniruddha A. Nimbalkar, Advocate for petitioners;
Mr G. O. Wattamwar, A.G.P. for respondents

**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 26th July, 2018

ORAL ORDER:

Since these petitions involve a common and identical issue, they are heard together and are being decided by this common order, with the consent of the parties.

2. The petitioners are the education institutes. Mr Nimbalkar, learned Counsel appearing on behalf of the petitioners submitted that the petitioners-institutes are registered under the Societies Registration Act as well as under the provisions of Bombay Public Trusts Act. He then submitted that the petitioners-institutes, with an intention and object to make provisions for education to the physically challenged (physically handicapped) students opened the schools in the area of Latur District.

3. By inviting our attention to the order dated 18th March, 1992 (Exh.C to Writ Petition No.3301 of 2015), learned Counsel for petitioners submitted that the petitioners-institutes were granted permission to run the schools, subject to the conditions that the petitioner will have to run the schools on no grant basis and that the petitioners should show the economical viability of the institutes and availability of all infrastructural facilities. By a common order, various institutes were permitted to run the residential schools. In the order dated 18th March 1992, the name of the petitioner-institute finds place at Sr. No.5. The approved strength of the students is 40.

4. In Writ Petition No.3302 of 2015, the petitioner-institute was granted approval to 25 students and these students were facing disability in the nature of deaf and dumb. In Writ Petition No.3303 of 2015, the strength of the students granted to the petitioner-institute was 25.

5. Mr Nimbalkar, learned Counsel for the petitioners then submitted that the permission granted to the petitioners-institutes was continued. Our attention was invited to the order dated 28th April, 1995, which is placed on record at Exh'D'. Then he submitted that in the year 1995, the Act namely, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 came into force and the petitioners-institutes were also registered as per the provisions of the said Act. The registration certificate is placed on record at Exh'F' and it is submitted that the registration certificate issued by the competent authority was continued.

6. Mr Nimbalkar, learned Counsel, by inviting our attention to the documents placed on record submitted that the petitioner was granted registration certificate for admitting 40 students on grant basis and 10 students on permanent non-grant basis, as such, the petitioner-institute was granted permission to admit 50 students and the copy of the order dated 6th April, 2011 is placed on record. He then submitted that by grant of certificate dated 12th May, 2015, the registration of the petitioner-institute

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was renewed for the period from 1st April, 2014 to 31st March, 2019, i.e. for five years.

7. In Writ Petition No.3302 of 2015, initially the permission was granted for 25 students and subsequently, in view of the recommendation by the District Social Welfare Officer, the Commissioner granted an approval of 25 residential students on grant-in-aid basis and 25 residential students on non-grant basis.

8. In Writ Petition No.3303 of 2015, the petitioner-institute was initially granted intake capacity of 50 students and subsequently by communication dated 10th March, 1995, the intake capacity of the petitioner-institute was increased from 50 students to 75 students i.e. 50 students on grant basis and 25 students on permanent non-grant basis.

9. Mr Nimbalkar, learned Counsel then submitted that the petitioners-institutes were directed to submit the undertaking on affidavit/bond that the petitioners-institutes will not claim any grant-in-aid towards the additional or increased intake of the students. He then submitted that the petitioners-institutes, as per the directions of the State authorities, submitted the bond. The copies of the orders to that effect are placed on record. He then submitted that since year 2009, the petitioners-institutes approached the respondents - State authorities with a request to admit the increased strength

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of students to grants. He, by inviting our attention to the documents placed on record, submitted that the authorities, namely, the Social Welfare Officer, Group A, Zilla Parishad, Latur, submitted positive recommendations and in turn, the Commissioner, Handicapped Welfare (respondent No.2) also submitted a positive recommendation to respondent No.1, i.e. the Secretary, Social Justice & Special Assistance Deptt. He then, by inviting our attention to the documents, submitted that the authority conducted a surprise visit and inspection in the schools being run by the petitioner-institute. In the report, it was stated that out of 50 students 46 students were present in the school. It is also stated that the petitioner-institute is having a required number of trained teaching staff and the infrastructural facilities. Our attention was also invited to a document placed on record at Exh'M'. By way of this communication dated 14th August, 2014, the District Social Welfare Officer, Zilla Parishad, Latur had informed the Commissioner for Persons with Disability, Pune that the petitioner-institute had submitted its proposal in the year 2009. Then it was submitted that the proposal and the documents annexed to the proposal were not available with the State Government, as such, the petitioner-institute submitted a copy of the proposal along with requisite documents to the office of the Social Welfare Officer, Zilla Parishad. Then it is stated that a surprise inspection was carried out in the school being run by the petitioner-institute and the petitioner-institute obtained 92 marks out of 100 marks for assessment of gradation and on these higher marks obtained by the petitioner-institute, the

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petitioner-institute is placed in 'A' category or 'A' grade. Alongwith the communication, the District Social Welfare Officer forwarded a copy of the said communication to the petitioner-institute.

10. Mr Nimbalkar, learned Counsel vehemently submitted that the petitioners-institutes are doing a very satisfactory work in the education field. The petitioners-institutes are having all infrastructural facilities and apart from the academic activities, the petitioners-institutes are also taking active interest in the activities of social awareness and upliftment of the physically handicapped persons. He, by inviting our attention to the documents placed on record further submitted that the petitioner-institute is also conducting awareness camp and workshops at frequent intervals. He further submitted by inviting our attention to the documents placed on record that in all periodical inspections, the authorities found that the petitioners-institutes were running the schools satisfactorily and were having all the requisite facilities. He then submitted that the petitioner, by way of a social obligation, made attempts to provide better medical assistance to the students, who were facing physical disabilities and some of such students have undergone surgeries and these surgeries helped the students positively in curing certain physical problems. Certain documents are also placed on record to submit that the petitioner-institute, with the help of some non-governmental organization, held health camps and in the said health camps, patients were operated and to some patients caliper, etc. were provided. He

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then submitted that the petitioner-institute was taking a keen interest in providing all requisite facilities to the students and maintaining the educational standard of the institutes along with the requisite infrastructural facilities, as such, was reasonably expecting that the State Government would grant approval to the proposal submitted by the petitioner-institute.

11. Learned Counsel further submitted that inspite of repeated correspondence and representations, no heed is paid to the proposals submitted by the petitioners-institutes by respondent State of Maharashtra and more particularly respondent No.1 i.e. the Secretary, Social Justice & Special Assistance Deptt. He then submitted that when the petitioners were repeatedly requesting to the State authorities for grant of approval to their proposals, the other similarly circumstanced institutes who have submitted their proposals, received positive orders from the State Government. Our attention was invited to the documents placed on record at page 70. By the said communication, the State Government allowed the proposals of the institute, namely, Shramik Shikshan Bahuuddeshiya Sanstha, Horti, Tq. Tuljapur, District Osmanabad, which was running a school, namely, Babasaheb Ambedkar Asthivyang Niwasi Vidyalaya, Horti. It is informed that the State Government in its decision has admitted additional 25 students to grants. He further submitted that the petitioner-institute was before the State since year 2009, and when the petitioner-institute obtained 'A' Grade in assessment, the proposal of the petitioner-institute is kept undecided and

the authorities are sitting idle over the said proposal for years together, whereas the proposals of the similarly circumstanced institutes were allowed by the State Government and these acts of the State Government, without there being any rational, is clearly an act of discrimination and as such, same is not sustainable.

12. Mr Nimbalkar, learned Counsel for the petitioners then invited our attention to the document placed on record and marked 'X' for identification and submitted that recently, by communication dated 14th June, 2018, the State Government allowed the proposals of five institutes and the increased strength of students was admitted to grants. He also invited our attention to another document i.e. a communication dated 15th June, 2018, whereby two schools, namely, Apang Niwasi Vidyalaya, Bag Pimpalgaon Camp, Taluka Georai, being run by the institute, namely, Shri Sant Gajanan Maharaj Sevabhavi Sanstha and Apang Niwasi Vidyalaya, Phulambri, Tq. Phulambri, Dist. Aurangabad being run by institute, namely Shiv sharda Gramvikas Mandal, Tandulwadi, Taluka Bhoom, Dist. Osmanabad are informed that their proposals are allowed and those schools were admitted to grants.

13. Learned Counsel also invited our attention to the Government Resolution dated 2nd July, 2016, copy whereof same is placed on record at Exh'T'. Perusal of the said Government Resolution shows that in the year

2001, while granting permission to open new schools, the State Government had decided to grant such permission on 'permanent no grant' basis and except English medium schools, 2000 primary schools and 2000 secondary schools were permitted to be run on 'permanent no grant' basis. Then it is stated that there was a consistent request and demand from the various schools of the institutes and the Representatives of the People to admit these students to grants. Considering the request and the demand, the State Government decided to remove the word "permanent" insofar as the primary and secondary schools are concerned, except English medium schools. He then submitted that the State Government, as such, is applying a yardstick to grant proposals of the educational institutes admitting them to grants, then such yardstick must be uniformly applied and the State Government by applying a yardstick to some institutes and not applying to another institutes, is giving discriminatory treatment to similarly circumstanced institutes. He also invited our attention to the judgment and order passed at the Principal Seat of this Court in Public Interest Litigation No.182 of 2010. The perusal of the said judgment and order shows that the Division Bench at the Principal Seat took up the cause of pathetic condition of children home and then in its detailed judgment, the Division Bench issued various directions. Clause (n) of the said directions reads thus:-

"(n) By way of interim measure, till the Government takes a final decision on the issue of substantial increase in the

grant, we direct the State Government to pay grant at the rate of Rs.2,000/ per head per month to the MDC Homes and the grant of Rs.1,500/ per head per month to the other Children's Homes. We also propose to direct the State Government to pay grant of Rs.500/ per head per month towards administration expenses. The grant shall be released with effect from 1st April 2017."

14. Thus, it was the submission of Mr Nimbalkar, learned Counsel for petitioners-institute that even considering the directions of the Division Bench at the Principal Seat of this Court, the State Government must take care of the finances being made available for the students, who are facing physical disabilities and are kept in the children home . He then submitted that on the backdrop of these directions, the State Government ought to have decided the proposals submitted by the petitioners-institutes expeditiously and without there being any delay. He then invited our attention to the Government Resolution dated 19th July, 2003, copy whereof is placed on record and marked as "X-1". The perusal of the said Government Resolution shows that the State Government decided to admit the schools to grants, which have received the certificate from the competent authority and the schools which are started prior to 30th September, 2002 and are being run till date of issuance of the said Government Resolution. It is also stated that those schools which have been granted registration and have completed

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two years after grant of registration, these schools also be considered for admitting them to grants. It would be useful and relevant for our purposes to refer to the statement in the said Government Resolution at page 5 and same reads thus:

"वरीलप्रमाणे आयुक्त, अपंग कल्याण, पुणे यांनी शासन निर्णय दि. १९/७/२०१३ मधील यादीनुसार ज्या अपंगांच्या विशेष शाळा/कर्मशाळांना विना अनुदान तत्वावर नोंदणी प्रमाणपत्र देवून दोन वर्षांचा कालावधी पूर्ण झालेला आहे व तपासणीअंती त्या अ व ब वर्गात आहेत अशा एकूण १२६ विशेष शाळा/कर्मशाळा शासनाच्या अटी व शर्ती पूर्ण करित असल्यामुळे शासन धोरणानुसार अनुदान तत्वावर आणण्यास पात्र आहेत"

15. Those schools, which have completed two years after registration certificate and have undergone the scrutiny by way of inspection and have been granted 'A' Grade, to be treated as the institutes entitled for admission to the grants. Learned Counsel then submitted that even as per the decision of the State Government, the petitioner institute is complying the requisite criteria for admitting the institutes school to grants.

16. Per contra, learned A.G.P. while opposing the petitions, invited our attention to the affidavit-in-reply filed by the State. Perusal of the record shows that two affidavits-in-reply are filed by the State. First affidavit-in-reply is filed on 22nd September, 2016, whereas the second affidavit-in-

reply is filed on 17th April, 2017. The State Government in its first affidavit-in-reply takes a stand by stating that vide letter dated 10th August, 2016, respondent No.2 i.e. the Commissioner for the Persons with Disabilities, has sent a letter to the Government setting out therein certain facts and circumstances that as per aforesaid letter dated 04.03.2015, it will take certain period to formulate a State Policy after taking into consideration the necessity for grant of additional strength of students in each of the districts and grand-in-aid required thereof.

Then, in paragraph 8 of the first affidavit-in-reply it is stated thus :-

"8. I say and submit that it is observed by the Rehabilitation Council of India in its handbook namely "STATUS OF DISABILITY IN INDIA-2012" that students of locomotor disabilities are being forced to take admission in special school rather than in normal school. It is further observed by it that the Central government is running a scheme of Sarva Shiksha Abhiyan, whereby the students suffering from physical ailment, they may take benefits of Integrated Education as under the said scheme, the Central Government is providing assistive devices to them like, crutches, callipers, etc. considering their basic requirements with bonafide intention to stimulate them for better education. Furthermore, the students having locomotor

disabilities are having normal intellectuality like normal children. In other words, this physical ailment is not causing adverse to their intellectual ability. Therefore those students are having locomotor disabilities; they can take benefits of integrated education under scheme of Sarva shiksha Abhiyan. Hence, those students are having locomotor disabilities if forced to take special education in special school, this will cause disadvantages to them though they are having normal intelligence comparing to normal children. I say and submit that this principle can be applied in case of claim of the petitioner in WP/3301/2015 and WP/3303/2015 and therefore if the grants requisitioned by the petitioner, it may affect the very purpose of the Sarva Shiksha Abhiyan and likely to affect Social, Educational as well as cultural development of said students with locomotor disabilities. Moreover there is likely to create duplication of such kind of scheme."

17. In the affidavit-in-reply filed on 17th April, 2017, it is stated that the affidavit-in-reply is filed in response to the order dated 27th March, 2017 of the Division Bench of this Court.

18. In view of the submissions of the learned A.G.P., he was directed to take instructions and file affidavit. It may be useful to refer the directions of

the Division Bench of this Court in the order dated 27th March, 2017, passed in the present petitions, referred to in paragraph 5, which read thus :-

"5. Learned A.G.P. shall take instructions on the following aspects:

- (i) Inspection done in respect of the petitioner institute.
- (ii) Whether any scholarship is being paid to the students of the petitioner school, studying on no grant basis.
- (iii) The decision proposed to be taken in respect of the students on no grant basis of the petitioner institute."

19. It is interesting to note that though the lengthy clarification is submitted by way of affidavit-in-reply, it hardly supports the stand of the State Government. On the points of inspection, it is stated that earlier the inspection was conducted, subsequently, due to summer vacation, the inspection was not possible and the exercise of inspection would be undertaken after reopening of the schools. Insofar as the second point is concerned about the scholarship being paid to the students by the petitioners-institutes setting on no-grant basis, again lengthy reply is submitted giving procedure, etc. and the convenient stand is taken that it was the responsibility of the petitioners-institutes and as the petitioners-institutes failed to comply with the responsibilities, the scholarship is not paid to the students. Then, in Clause (3) of the first affidavit-in-reply it is stated on behalf of respondent Nos. 1 and 2 that ".....and as the disabled students studying in this category, have alternate alternate source of grants

such as scholarship it need not to sanction grant in aid to the petitioner institutions for those students".

20. Learned A.G.P. also placed heavy reliance on the judgment of the Division Bench of this Court at Nagpur in Writ Petition No.2758 of 2015, dated 24th July, 2017.

21. On considering the rival submissions of the learned Counsel which are referred to in detail by us in the earlier part of the order, and by considering the documents placed on record and the replies filed by the State Government, we are of the clear opinion that the State failed to show any satisfactory reasons for not considering the proposals of the petitioners, which are pending before it for considerably long period. As stated above, on the cost of repetition, we state that the petitioners-institutes are having certificate of registration. The petitioners-institutes have been granted initially intake capacity of a particular number of students and then the petitioners-institutes were permitted additional strength of students, but these additional strength of students was not admitted to grants. As such, the petitioners-institutes were consistently before the State Government for decision on their proposals.

22. We fail to understand how the State Government can support its action when the material placed on record clearly shows that similarly circumstanced institutes, who were before the State Government with the

proposals to admit the schools and to sanction strength of students to grants and their proposals were positively considered by the State Government, and the orders were passed by the State Government, then in that situation, how it will lie in the mouth of the State Government that the State Government can give the discriminatory treatment by applying the same yardstick to similarly situated institutes. A stand taken by the State Government in the affidavit-in-reply referring to the State policy in view of certain handbook published by Rehabilitation Council of India on the title "Status of Disability in India-2012" and submitting that as the students having locomotor disabilities are having normal intellectuality like children and physical ailment is not causing adverse to their intellectual ability and these students can take benefits of integrated education under scheme of Sarva Shiksha Abhiyan. It is not necessary for the State Government to admit these students for grants. The stand of the State Government fails to reply the point raised about the discrimination. As stated above, the State Government by its Resolution dated 8th August, 2014, admitted the school, namely, Babasaheb Ambedkar Asthivyang Vidyalaya, Horti to grants with the strength of total 75 students. The petitioners-schools also impart education to the students having physical disabilities. It is not in dispute that the petitioners-institutes are granted registration by the competent authority of the State of Maharashtra under provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. We also fail to understand any rational by the State

Government for taking a stand that the petitioners-institutes are not entitled for the grants because a few students are facing a peculiar physical disabilities. If the State Government in the same schools admit the initial strength of students to grants and in the same schools, the increased intake capacity of the students having the same physical disabilities refused to admit these students to grants, we find considerable merit in the submission of learned Counsel appearing for the petitioners, that the State Government is giving discriminatory treatment to the petitioners-institutes on the backdrop of the Government Resolution dated 19th July, 2003. As stated above, the said Government Resolution states that the institutes, which were subjected to an inspection and have obtained 'A' status or 'A' category and the institutes having a registration certificate by the competent authority and have completed two years after the registration certificate, are entitled for the benefit of admission to grants. If this yardstick is to be applied for consideration of the proposal of the institutes, we fail to understand how the State Government can keep the petitioners-institutes out of consideration when the petitioners-institutes were subjected to inspection, obtained 'A' status and have completed more than two years after the registration certificate granted by the competent authority and the registration certificate is renewed time to time and the registration of the petitioners-institutes operates till year 2019.

23. Mr Nimbalkar, learned Counsel was also justified in submitting that the Government though not specifically but impliedly takes a stand before this Court that admitting these students to grants may lead to a financial burden on the State Government and the State Government is not in a position to bear such financial burden. He was justified in submitting that in the recent past i.e. by the Government Resolutions dated 14th June, 2018 and 15th June, 2018, the State Government admitted as many as 7 schools to grants. Then it will not lie in the mouth of the State Government that the State Government may reject the proposal of the institutes on the ground of financial burden.

24. Though learned A.G.P. made an attempt to rely on the judgment of the Division Bench of this Court at Nagpur in Writ Petition No.2758 of 2015 to oppose the petitions, we are unable to accept the submission of learned A.G.P. Perusal of the judgment of the Division Bench of this Court clearly shows that the petitioner-institute therein had committed a serious breach of conditions and apart from the breach of conditions, it was brought to the notice of the Court that the petitioner-institute was running the school without there being a registration or permission granted to the said school. The other distinguishing fact is, the petitioner-institute in Writ Petition No.2758 of 2015 had not only committed the breach of conditions but was also subjected to a criminal prosecution launched against the office bearers and the employees of the said school for causing sexual harassment of the inmates of the special school.

25. Considering the submissions on the backdrop of the above referred facts, the Division Bench of this Court at Nagpur could not find any favour with the petitioner and resultantly dismissed the petition. As stated above, the facts in the present petitions and the facts in Writ Petition No.2758 of 2015 are clearly distinguishable. We are of the opinion that the judgment of the Division Bench in Writ Petition No.2758 of 2015 is of no help to the learned A.G.P.

26. In view of the aforesaid discussion, we are of the opinion that the learned Counsel for the petitioners-institutes has made out a case for causing indulgence. Resultantly, we allow the petitions partly with the following directions:-

(i) The petitioners-institutes to submit fresh proposals to the State Government for admitting the schools run by them to grants within a period of two weeks from the date of the order of this Court. The petitioners may also pray for personal hearing, if they wish.

(ii) The State Government to grant an opportunity of hearing to the petitioners, if so claimed, within a period of two weeks after receipt of the proposals.

(iii) The State Government to decide the proposals of the petitioners-institutes on its merits, within a period of ten weeks from the date of the order of this Court, without putting a rider, that as the petitioners-institutes had already submitted an undertaking to the State Government that they will not claim the benefit of grant-in-aid, the proposals of the petitioners-institutes can not be considered.

Writ Petitions are accordingly disposed of with the above referred directions.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)

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