

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 6619 OF 2009
WITH
CIVIL APPLICATION NOS. 3070/2010, 2453/2012 & 14396/2017

- 1) Shri Trikuteshwar Sikshan
Prasarak Mandal, Kapsi (Bk),
Tq. Loha, Dist. Nanded
Through its President
Shri. Govind Maruti Karahle,
Age 45 years, Occu. Agriculture,
R/o. Siradhon, Tq. Kandhar,
Dist. Nanded.
- 2) Vithal s/o. Nagoji Bhute,
Age 62 years, Occu. Agriculture,
R/o. Bhutechi Wadi, Tq. Kandhar,
Dist. Nanded.
- 3) Shamsundar Shankarrao Jagirdar,
Age 65 years, Occu. Agriculture,
R/o. Osmannagar, Tq. Kandhar,
Dist. Nanded.

....Petitioners.

Versus

- 1) The State of Maharashtra
through the Secretary Social
Justice and Special Assistant
Department Maharashtra State,
Mantralaya, Mumbai.
- 2) Shri. Ashok s/o. Shankarrao Chavan,
Chief Minister, Maharashtra State,
Mantralaya, Mumbai.
- 3) The Director V.J., N.T. and other
Backward Class, Special Backward
Class Category Welfare,
Maharashtra State, Pune.
- 4) The Divisional Social Welfare
Officer, Latur Division, Latur.

- 5) The Special District Social Welfare Officer, Social Welfare, Nanded, Dist. Nanded.
- 6) Saraswati Sikshan Prasarak Mandal Siradhon, Tq. Kandhar, Dist. Nanded through its Secretary Balaji Madhavrao Pandagale, Age 45 years, R/o. Siradhon, Tq. Kandhar, Dist. Nanded.
- 7) Raosaheb s/o. Shankarrao Wadole, Age 62 years, Occu. Agriculture, R/o. Kapsi (Bk), Tq. Loha, Dist. Nanded.
- 8) Tukaram Shankarrao Warkad, Age 63 years, Occu. Agriculture, R/o. Osmananagar, Kandhar, Tq. Kandhar, Dist. Nanded.
- 9) Devkubai d/o. Kondiba Karahle, Age 42 years, Occu. Service, R/o. Siradhon, Tq. Kandhar, Dist. Nanded.
- 10) Ashok s/o. Marotrao Kore, Age 54 years, Occu. Agri., R/o. Board, Tq. Mudhked, Dist. Nanded.

....Respondents.

Mr. P.R. Katneshwarkar, Advocate for petitioners.

Mr. M.M. Nerlikar, AGP for respondent Nos. 1, 3, 4 & 5.

Mr. V.D. Gunale, Advocate for respondent No. 6.

Mr. V.D. Hon, Senior Counsel for respondent Nos. 7 and 8.

Mr. G.J. Karne, Advocate for respondent No. 9.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.
DATED : APRIL 10, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

- 1) The petition is filed for relief of setting aside the order

dated 28.8.2009 passed by respondent State Government, by which Kai. Shankar Patil Primary Ashram School run by trust Shri. Trikuteshwar Shikshan Prasarak Mandal, Kapsi (Bk), Tahsil Loha, District Nanded is transferred to respondent No. 6 trust, Saraswati Shikshan Prasarak Mandal, Siradhon, Tahsil Kandhar, District Nanded. Both the sides are heard.

2) The petitioner trust, Shri. Trikuteshwar Shikshan Prasarak Mandal was registered under the provisions of Bombay Public Trust Act in the year 1993. The aforesaid Ashram School was started by it in the year 1996 and it was receiving grant in aid. On Schedule I of register of Assistant Charity Commissioner (hereinafter referred to as 'ACC' for short), the name of respondent No. 7 Raosaheb Wadole was shown as the President and the name of respondent No. 8 Tukaram Warkad was shown as the Secretary. Govind Karahle, present petitioner was the Joint Secretary of the trust. The dispute started amongst the trustees of the trust in or about the year 2003. Govind Karahle, Joint Secretary was on one side and for some time, the two members like Jagirdar and Bhute were with him. Similarly for some time, Treasurer Istari Misamwar was also with him. The submissions made during arguments of the present proceeding show that at present, only Govind Karahle is against the President Raosaheb Wadole and Secretary Tukaram

Warkad. Due to the dispute, separate Change Reports were submitted in the office of ACC by the two groups to show that elections had taken place in the year 2003 and new body had come in power. Govind Karahle had shown the name of other members as trustees and office bearers and he had shown his name as the new President and request was made to change the names of office bearers in the record of ACC. This Change Report came to be rejected before filing of the present writ petition. The submissions made show that the Change Report filed by Raosaheb Wadole also came to be rejected, but that order was passed in the year 2014.

3) Due to the dispute amongst the trustees, proper attention was not paid to the Ashram School. During inspection, various discrepancies were noted by the authorities and the management was directed to see that the discrepancies were removed. Even proper building was not there for the school and for residence of resident students. Proper protection was also not provided to them and in the night time, nobody used to remain present to take care of the students. There was no facility of toilet block, bathrooms and proper facility for light was also not there. Only three bulbs were found to be fixed in the few sheds constructed in the field and there was no alternate arrangement of light if there was shortage of electricity. Neither the shed nor the space was

belonging to the trust. Due to these circumstances, the authority had submitted report to withdraw the recognition of the school and transfer the school to some other institution. This was going on for many years, but the dispute continued. Ultimately, in the year 2009 the President and the Secretary namely Raosaheb Wadole and Tukaram Warkad gave application to the Chief Minister for permission to transfer Ashram School to other institution viz. respondent No. 6. Some record like consent letter was prepared and copy of resolution was also given in support of the request of transfer. Five trustees had signed on the resolution and at present, only Govind Karahle is disputing that resolution. In support of this request, there were reports of authorities of all the levels and ultimately, the school came to be transferred to respondent No. 6 along with grants and arrears of grants. The school was actually shifted to new place, the place of respondent No. 6. Govind Karahle had objected to the transfer and he had not signed on the resolution.

4) The record produced shows that there was report of Director, V.J., N.T., recommending the transfer and the Government treated it as a special case for transfer. It appears that the amount of Rs.45 lakh was due from the Government towards the arrears of grants and the possibility that the two groups continued the dispute

due to such huge amount is also there.

5) The main contention of Joint Secretary Govind Karahle is that proper procedure was not followed and everything was done in haste. It is his contention that the Government could not have treated it as a special case. Argument was advanced and attention of this Court was drawn to the circumstance that the resolution was passed subsequent to the filing of the application and consent letter was also given subsequent to the date of application. Though these circumstances are there, the Court is expected to ascertain as to whether there were circumstances for transfer of Ashram School to other institution, either on the basis of consent or for other reasons. The fact that the Government had such authority cannot be disputed.

6) The submissions made and the record show that in the past, Govind Karahle had filed writ petition for similar relief, but the said writ petition was dismissed for default and so present petition cannot be considered. On this point, the learned AGP, who is supporting the order of transfer, placed reliance on the case reported as **AIR 1987 SC 88 [Sarguja Transport Service Vs. State Transport Appellate Tribunal, Madhya Pradesh, Gwalior]**. In that case, the writ petition was withdrawn to institute fresh petition

and the Apex Court held that the provisions of Order 23, Rule 1 (3) of Civil Procedure Code need to be kept in mind when there is the disposal of writ petition in the such manner. The Apex Court has laid down that the repetition of such proceeding is not permissible, though not on the ground of *res-judicata*, but on the ground of public policy. There is force in this submission.

7) One more point was argued by the learned AGP and that is the tenability of the proceeding as only Govind Karahle is prosecuting the present matter. Admittedly, the Change Report filed by Govind Karahle in the present proceeding shows that he had claimed to have become the President of the trust prior to the date of present proceeding. But, his Change Report was rejected. Thus, there was no question of passing any resolution by the trustees of his side for filing the present petition. That order has become final. The subsequent Change Report for the years 2008 onwards is also not yet accepted by the office of ACC. Due to these circumstances, it is difficult to accept the proposition that Govind Karahle was authorised by the trust itself to challenge the transfer. The proceeding is filed by Govind Karahle as the president of the trust and not as a trustee shown in Schedule I. Other two petitioners are not with Govind Karahle now. Further, other two trustees had signed on the resolution and even on the consent letter for transfer of the

school. The submissions made and the record produced show that the entire record of the institution is still with Raosaheb Wadole and Tukaram Warkad and that is not with Govind Karahle. The submissions made show that infact Raosaheb Wadole and and Tukaram Warkad were controlling the institution. Thus, in fact they were in control of the institution. The order of transfer of Ashram School is made subject to the decision of ACC which can be given on the Change Reports. In view of the circumstance that the Change Report of Karahle for the year 2003 onward period is rejected is sufficient to show that he was not in control of the institution as office bearer and the management had not changed as per his contention in the year 2003. The Change Report came to be rejected on 18.7.2009 and petition was filed on 23.9.2009. Thus, there are such technical points against Govind Karahle.

8) There are some circumstances like after filing of the application, resolution was filed by Raosaheb Wadole and Tukaram Warkad for transfer of the Ashram School and even consent letter was prepared subsequent to the date of application. Only due to these circumstances, inference is not possible that the proper procedure was not followed. The school was transferred in favour of respondent No. 6 by the order dated 28.8.2009 and prior to that the aforesaid record was created.

9) In the Government Resolution (hereinafter referred to as 'GR' for short) dated 1.8.2007 which has base of previous GRs of 1990 and 1994, the policy of the State Government with regard to transfer of the schools is mentioned. It is true that in this GR, it is made clear that if school is transferred due to consent of institution, for three years after the date of transfer, no grants will be payable to the transferee institution. Though this condition is there in the present matter, the Government has made a special case and has continued the grants in favour of transferee institution. Only due to these circumstances the transfer order cannot be set aside. It is the policy decision of the Government and the circumstance that it was Ashram School and more than 100 students were living in Ashram School need to be kept in mind. Those students were not getting the basic facilities as per the record of the authorities and it was necessary for the Government to take steps to see that they get the basic facilities. This Court holds that the Government has the power to give grants even after transfer on consent of the previous institution and such decisions are ordinarily taken in the interest of the students and not in the interest of the transferee institution.

10) In the GR dated 1.8.2007 some conditions for transfer are mentioned and the ground on which transfer can be made are

also mentioned. When financial condition of Ashram School is not good, when the institution is not providing basic facilities like building, water, electricity, toilet blocks, bathrooms and it is not taking care of the education of the students, the transfer can be made by the Government. In the GR, it is made clear that even when no ground is made out, due to peculiar circumstances the transfer of the school can be made by the Government as a special case. As the schools are started after getting permission and as the Government was making the payment of grants to the present Ashram School, the Government had the power to transfer the institution. Even the petitioner is not disputing that there were aforesaid reports of the authorities against the Ashram School which were given right from the year 2005. Nothing is with the petitioner Govind Karahle to show that steps were taken to remove the deficiencies. On the other hand, the subsequent report show that the authority was satisfied with the improvements in the facilities made by the transferee institution. After the transfer, the school was shifted to a building and the basic facilities were provided to the students. Thus, the transfer proved to be for the benefit and in the interest of the students. This Court cannot ignore that circumstance while exercising writ jurisdiction. The students or the parents have no complaint against the order of transfer and only one office bearer of the past, who was Joint Secretary has now the grievance. This

circumstance also cannot be ignored by the Court.

11) The learned counsel for petitioners placed reliance on some reported cases in support of his contention that proper procedure ought to have been followed and Govind Karahle ought to have been heard before making order of transfer. In **Writ Petition No. 6073/2005 decide on 22.9.2005** decided by this Court at this seat [**Janata Shikshan Prasarak Mandal and Anr. Vs. The State of Maharashtra and Ors.**] facts were totally different, though there was one circumstance like the office bearer, who had made the proposal was not the member of new elected body of the society. In the present matter, Change Report is approved by the office of ACC and it can be said that the term of aforesaid President and Secretary had come to an end in the year 2003 and subsequent Change Report filed by them came to be rejected in the year 2014 by the office of ACC. The facts of other case reported as **2008 (5) Mh.L.J. 853 [Vijay K. Mehta and Anr. Vs. Charu K. Mehta and Ors.]** were different. Reliance was placed on the observations made by this Court in **Writ Petition No. 4305/2009 decided on 25.7.2011 [Gramoddhar Vidya Prasarak Shikshan Sanstha Vs. State of Maharashtra and Ors.]**. The facts of this case were also different. Similarly the facts of the case reported as **2010(5) Bom.C.R. 569 [Anil Panjabrao Nahate and Ors. Vs. State of**

Maharashtra and Ors.] were also different. The learned counsel for petitioners submitted that by following the procedure like giving publicity of intention of transfer, the Government could have found proper institution to which the school could have been transferred, but that was not done. Such procedure was proposed by this Court at Principal seat in the year 2013 and the present transfer took place in the year 2009. So, such proposition cannot be accepted. In any case, this Court has noticed that the things have improved and the transfer has proved to be for the benefit of the students. This Court sees no reason to interfere in the matter. In the result, the petition stands dismissed. All civil applications are disposed of. Rule stands discharged.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

ssc/