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

WRIT PETITION NO. 12923 OF 2017

Lokseva Magasvargiy Shikshan Prasarak
Mandal, Chilwadi, Tq. and District
Osmanabad, Through its Secretary
Nandkumar s/o Shivaji Jadhav

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary
Women & Child Development Department,
Maharashtra State, Mantralaya,
Mumbai-32.
2. The Principal Secretary
Finance Department, Maharashtra State,
Mantralaya, Mumbai-32.
3. The Commissioner,
Women and Child Development,
Maharashtra State, Pune.
4. The Divisional Deputy Commissioner
Women and Child Development,
Aurangabad Division, Aurangabad.
5. The District Women & Child Development
Officer, Osmanabad.
6. Shobha Vidyasagar Jadhav,
Age: 50 years, Occ: Service,
Sub Divisional Officer, Ausa/Renapur,
Dist. Latur.

..RESPONDENTS

Mr K.J. Ghute Patil, Advocate for petitioner;
Mr A.S. Shinde, A.G.P. for respondents no.1 to 5

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

DATE : 6th August, 2018

ORAL ORDER:

Heard learned Counsel appearing on behalf of respective parties.

2. The petitioner is a trust registered under the provisions of the Bombay Public Trusts Act and is working in the field of upliftment of the weaker sections for quite some time and is running a Child Care Home i.e. Balgruha in the name of Shikshan Maharshi Balasaheb Korke Balsadan at Chilwadi, Taluka and District Osmanabad from the year 2009.

3. Mr Patil, learned Counsel appearing on behalf of the petitioner submitted that the initial permission granted was subsequently extended and renewed time to time by the competent authorities. Our attention was invited to a document placed on record at Exh.A. Perusal of the said document shows that a proposal was received for final approval/sanction and an inspection was carried out in view of the proposal submitted by the petitioner institute. The communication dated 20th August, 2009 forwarded through the District Women and Child Development Officer, Osmanabad to the Deputy Commissioner of Child Welfare shows that the proposal was positively recommended. It was stated that the petitioner institute was

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having certain infrastructural facilities for accommodating 100 children and an undertaking was also given by the institute to make available the other remaining infrastructural facilities. Learned Counsel submitted that a few photographs are also placed on record with the petition giving a general idea of the infrastructural facilities available with the petitioner institute.

4. Learned Counsel for the petitioner then submitted that by way of the Govt. Resolution dated 13th July, 2015 the State Government undertook an exercise of inspection of the child care homes through the Women and Child Care Department. It is stated that the said child care homes would be placed in a categorization like A, B, C and D as per the criteria laid down. Learned Counsel then invited our attention to the judgment and order dated 5th May, 2017 rendered by the Division Bench of this Court in Writ Petition Nos.6579 of 2015 and 6526 of 2015. Then learned Counsel invited our attention to a document placed on record at Exh.D. The tabular format is prepared by the State Government for assessment of the proposals and the marks are to be allotted by the inspection committee on various counts.

5. Learned Counsel for the petitioner then by inviting our attention to the document placed on record at page 65 submitted that the petitioner institute was also subjected to re-inspection and the total marks allotted to the petitioner institute are 159 out of 200 marks. Then our attention was invited to a communication dated 9th October, 2017 dealing with

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disbursement of the financial aid for the financial year 2017-18. Perusal of the said communication shows that as per the inspection report if an institute is placed in "A" category or "B" category, the child care home being run by such institute is entitled for receiving the grant. The child care home placed in "B" category would be granted one opportunity to improve their performance and the child care homes receiving "C" or "D" category are not entitled for any financial assistance and the children admitted in such institutes be accommodated in the institutes receiving "A" or "B" grade.

6. Learned Counsel for the petitioner then invited our attention to the communications dated 16th October, 2017 and 27th October, 2017. Then by inviting our attention to annexure "A" of the Government Resolution dated 27th October, 2017, learned Counsel for the petitioner submitted that the petitioner institute finds place at Sr. No.64 having received 159 marks and accordingly is placed in "C" category. Learned Counsel then submitted that in view of these factual aspects, the petitioner challenged the inspection report and the ultimate decision reflected in the Govt. Resolution and accordingly the prayers in the petition are prayers (B), (C) and (CC) [amended prayer clause.] Learned Counsel submitted that by way of amendment the petitioner has placed on record the erroneous appreciation by the inspection committee resulting in an erroneous allotment of marks, thereby placing the petitioner institute in "C" category. Mr Patil submitted that the said exercise put the petitioner in the group of institutes not entitled

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for receiving the grants and the same causes a serious prejudice to the petitioner institute. Learned Counsel submitted that the petitioner is not opposing the exercise of State Government to inspect the child care homes as the petitioner institute itself is of the opinion that the child care homes are aimed at providing the better facilities and due care and caution of the children in conflict. The State Government cannot be prevented from assessing the institutes on counts of the basic facilities being available with the institute to see that the child care homes are being run properly to achieve the object of Juvenile Justice (Care and Protection of Children) Act, 2000.

7. Mr Patil submitted that the only grievance of the petitioner is, while undertaking such an exercise the State Government must not undertake the exercise as per the whims and fancies and there must be some rational assessment. Learned Counsel submitted that the allotment of marks to the petitioner institute shows that even though the petitioner institute was complying the requisite criteria, the allotment of marks was not in accordance with the compliance. Learned Counsel then submitted that there are the glaring examples of an erroneous appreciation and thereby resulting in grant of erroneous marks. Mr Patil then invited our attention to the document at page 65. Learned Counsel then submitted that as per sub-clause (2) of Clause 15 if the institute provides all the relevant information of the admitted children in the online track child system, the institute is

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entitled for receiving 5 marks. Then as per clause 16, the institute is entitled for two marks for the news published in the newspaper which is reflecting a positive picture of the institute. If there is no news about the institute, the institute is entitled to get 1 mark and if there is some adverse news, the institute/child care home is entitled to 0 (zero) marks. Learned Counsel then invited our attention to the document placed on record along with additional affidavit at Exh.P-1 to submit that there is full and complete compliance of sub-clause (2) of clause 15 and as such the petitioner institute ought to have been allotted 5 marks. Similarly, the institute has been allotted 0 (zero) marks under clause 16 and as there is no adverse news or no news at all against the petitioner, the petitioner was entitled to receive 1 mark, instead of it, 0 (zero) mark is allotted to the petitioner institute. Learned Counsel then submitted that the petitioner institute is ready and willing to have a fresh inspection either with intimation to the institute or any surprise inspection. The only anxiety of the petitioner is that the State authorities to undertake the exercise of inspection at the earliest and on a fresh assessment may allot appropriate marks. Learned Counsel then submitted that the only apprehension of the petitioner is, while undertaking an exercise of fresh inspection the authorities may not proceed with a prejudiced approach to the institute. The exercise of fresh inspection be an exercise of a fair deal.

8. Learned Asstt. Govt. Pleader though opposes the petition, by placing reliance on the affidavit-in-reply and on oral instructions submitted that the

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State Government will undertake exercise of fresh inspection to the petitioner institute and may pass appropriate orders in view of the fresh inspection and the report thereof.

9. Considering the aforesaid aspects, we are of the opinion that without going into other controversies, the petition can be disposed of with directions to the respondents - authorities and more particularly respondents no.3 to 5 to undertake an exercise of fresh inspection of the petitioner institute. The competent authorities undertaking the exercise of fresh inspection may submit a report to respondent no.1. Respondent no.1 in turn to take appropriate decision at the earliest. The apprehension expressed by the learned Counsel for the petitioner is justified. As such, we direct the respondents - authorities to undertake the exercise of fresh inspection without any prejudice or without any preconceived notion on the backdrop of earlier report and the respondents - authorities to adopt the approach of fair deal. The said exercise be undertaken as early as possible and not later than six weeks from the date of the order of this Court.

10. In the result, the Govt. Resolution dated 27th October, 2017, to the extent of placing the petitioner at Sr. No.64 in category "C", is quashed and set aside, without disturbing any other institute/s enlisted in annexure "A".

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Writ Petition is accordingly disposed of with the above directions.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)

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