

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 315 OF 2014**

1. Gramin Shikshan Prasarak Mandal,
Dongar Konali, Tq. Jalkot,
Dist. Latur a registered public trust
Through its President
Shri. Kondiba S/o Jalba Shinde,
Age : 36 Years, R/o. Dongar Konali,
Tq. Jalkot, Dist. Latur.
2. Shri. Samarth Dhondu Tatya Nivashi
Matimand Vidhalaya, Wadvana (Bk.),
Tq. Udgir, Dist. Latur
run by Gramin Shikshan Prasarak Mandal,
Dongar Konali, Tq. Jalkot,
Dist. Latur through its Head Master
Sou. Shilpa W/o Laxmanrao Kamble .. PETITIONERS.

VERSUS

1. The State of Maharashtra
Through Secretary Social Justice
Special Assistance Department,
Maharashtra State Mantralya,
Mumbai, Extension Bhavan, Mumbai.
2. The Commissioner Handicap,
Welfare Maharashtra State,
3 Church Road, Pune.
3. The District Social Welfare Officer,
Zilla Parishad, Latur.
4. Astha Charitable Institute,
Kolhapur through its President ... RESPONDENTS

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Advocate for Petitioners : Mr. V.D. Salunke
A.G.P. for Respondent No.3 :Mr. M. M. Nerlekar
Advocate for respondent No.4 : Mr. S.S. Panale

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**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATE : 22nd JANUARY, 2019.**

ORAL ORDER :-

The proceeding is filed for relief of quashing and setting aside the order/decision of the Social Welfare Department of the Government of Maharashtra dated 26.08.2013 by which the registration given to a School run by the petitioner's came to be cancelled.

2. Both the sides are heard.

3. The petitioner institution was running a residential school for mentally retired children under the name as Shri. Samarth Dhondutatya Nivashi Matimand Vidhyalaya at Wadvana (Bk) Tq. Udgir, District Latur. The submissions made show that the President of the institution by name Kondiba is the husband of Smt. Shilpa who is shown as Headmistress of the school.

4. The licence to the aforesaid School was granted in the year 2004 and from time to time the licence was renewed. In the year 2012, application was moved by the institution for renewal of licence but renewal was not given. Show cause notice was issued to the institution/Management for cancellation of the registration on the basis of record of inspection. Personal hearing was given to the Management

on 05.03.2013, and after giving the hearing the proposal for renewal of licence was rejected and the registration also came to be cancelled.

5.It is case of the petitioner that the decision of the authority is challenged by the petitioners by filing appeal before the State but the appeal is not yet decided. Submissions made by the respondent shows that the appeal is already disposed of. The School subsequently came to be transferred to the respondent no.4, one institution running School is for mentally retired children and which is functioning in Kolhapur District. The School which was run by the petitioners was receiving grant-in-aid from the State Government and it can be said that in future respondent No.4 will be getting grant in respect of the School transfer to it.

6. The present matter needs to be considered from two angles viz entitlement of the petitioner to get renewal of the licence for running the aforesaid School and second the power of the State Government to cancelle the registration and transfer the School in favour of institution like respondent No.4. Registration is cancelled on the ground that the School was not run properly and during surprise inspection School was found in close condition most of the times. There was doubt about the strength of the students shown on record and there was no approval given even in respect of teaching and non teaching staff members.

There is record of routine inspection done by the Education Department and there is also the record of surprise visits paid under the direction of the Chief Executive Officer, Zilla Parishad, and that was done as per the direction given by authority like Commissioner appointed to control such Schools. As per the correspondence Zilla Parishad was also to have supervision over such Schools as they were Schools of the children.

7. The letter of the Commissioner dated 23.05.2012, contents following things

(a) In the verification done by the State government in respect of strength of the students who were shown on record in School started for mentally retired children it was noticed that the students actually admitted were less than the expected strength.

(b) In some districts many number of such Schools were given registration and as grant was given, some false record of admission of such students were made and in many cases it was noticed that the children who were not mentally retired were also shown to be admitted.

(c) It was noticed that in routine inspection the officers of Social Welfare of the local region were either ignoring the irregularities, or they were intentionally avoiding to give report and they were protecting the bogus institutions by supplying false information to the Commissioner.

(d) From the year 2000 the government had given the duty of

supervision and also control of such Schools to Zilla Parishad and so the Chief Executive Officer of the Zilla Parishad was expected to look into the matter and by using his own staff he needs to do the detail inspection of the institution to find out the bogus admissions of the students and make proposal to close such School by cancelling its registration.

(e) During the inspection the officers were expected to ascertain as to whether the students who were actually present in the School were as per the record and whether they were receiving necessary facilities as per the rules and regulations.

(f) The Chief Executive Officer was expected to see that special squad were to be created to strictly inspect the School and to see that standard of the School is raised and tendency to get registration of such Schools when there was no necessity is reduced.

8. The record produced show that in the past the Social Welfare Department had done inspection but they were routine inspection and no surprise inspection was made. The record is sufficient to infer that there was substance in the facts mentioned by the Commissioner in aforesaid communication dated 23.05.2012. The record is also there to show that in the past the institutions like present one were protected by the officers probably by joining hands with them. As these institutions gets Government grants for things, there is tendency to create false

record in the manner shown in the aforesaid correspondence dated 23.05. 2012. The circumstances that competent staff were not there and due to that no approval was given even after eight years of giving registration to the staff in the circumstances which is sufficient to infer that only to get grant and grab the amount the institution was created. There is copy of FIR No. 18/2013 registered with Wadvana Police Station for the offences punishable under Sections 420, 408, 468, 471 read with Section 34 of the Indian Penal Code and this FIR shows that it was given against Kondiba and his wife Shilpa, the present petitioners that they had given false promise to give appointment in the School and under that pretext the amount of Rupees Six Lakh was collected for giving appointment to the post of Superintendent of the Hostel of the School and amount of Rupees Five Lakh was collected for giving appointment on the post of peon. In these FIR's even the charge sheet is filed against these two persons and against one Arjun Hiwale. This circumstances cannot be ignored in view of the aforesaid observations made by the Commissioner in the correspondence. The record of inspection which is available needs to be considered after keeping in mind the aforesaid possibility.

9. There is inspection report along with the report of the Education Officer, (Secondary) of the Zilla Parishad Latur dated 07.11.2012, and it shows that on two occasions he had paid visit. On 23.11.2011, when he

visited the School, the School was found in close condition and enquiry he know that for about two months the School was in close condition. Not a single child was present there and no employee was present there. The persons who were used as panch witnesses were resident of village Wadvana and they included even the member of village Panchayat. On 25.10.2012, a lame excuse was given that on account of Bakri Eid festival the School was kept in close condition. Information was supplied by the Headmistress on phone that there was some dispute regarding appointment of the staff and they were not turning up. He realized that even the Headmistress was not turning up. He noticed that no necessary facilities including the utensils were available and even sufficient stock of food grains was not there. The learned counsel for the petitioners submitted that it is false record created and it took this Court through the Inward and Outward register for submitting that this record was subsequently created. It is already observed that the Education Department was not doing the needful in the past and it can be that only after the order issued by the Commissioner on 23.05.2012, necessary things were done, however, there is no reason to disbelieve that the visit was paid on 23.11.2011 also, in view of the record available.

10. There is record of report given by other inspecting authority dated 08.12.2011, and it shows that on that day he did not find any students

present in the School and School was found in close condition. This report is consistent with the report given by the Education Officer which is already mentioned along with report dated 08.12.2011, there is document showing signature of petitioner No.2 Shilpa and it shows that on that day this lady was present with one more employee and she complained that the employee of the School were not remaining present. Thus irregularities have started from the year 2011 itself.

11. There is report dated 20.02.2013, and it also shows that when the visit was paid on 20.02.2013 not a single student was present in the School.

12. Some record is produced by the petitioners like report shown to be dated 04.07.2012, on which the date of renewal is mentioned as 31.03.2012 which is shown to be signed by some persons but it not bearing stamp of any authority, but it is shown that 24 students were available. This document is seriously doubtful in nature as the name of the authority who made inspection is not there and apparently it is prepared by the petitioner. There is serious allegations against the petitioners that after filing of the present proceeding they created false record to show that one Officer Shri. Jadhav done the inspection and submitted report dated 10.11.2014. The copy of report came to be filed along with affidavit. There is reply affidavit on the record showing that

Jadhav denied that he had visited the School and he had submitted the report dated 10.11.2014. When the registration was already cancelled, there was no need for any officer to visit the School and to give such report. There was no Interim relief granted in the present matter. Due to all these circumstances, this Court is taking serious view and giving direction to take criminal action against the both the petitioners for creation of false record for using the record in the Court.

13. The submission made on record show that as many as 30 such Schools were sanctioned for Latur district and out of them 21 were receiving grant-in-aid and nine were given registration with indication that no grants will be given to them. For Udgir district even after the cancellation of the registration of the petitioners there were three grant-able Schools and two non grant-able Schools. The cancellation of the registration order show that direction was given to see that students if any were really admitted in the present School are accommodated in other School as per the choice of their parents. It is needless to say that false record of admission of students was created in the present matter and that is why there were no students but huge number of employees were shown to be appointed and institution was trying to get approval to all those posts. For that allegedly amount was also collected from some persons who were shown as appointed on different posts. There is something more to show that persons shown to be appointed were not

discharging any duty and that can be seen from the report of visit on 05.10.2012 paid by Jadhav and it shows that when he visited only five students were there and seven more children were called and teacher who was present could identify only seven students. Only three children were having uniform but their uniform were also to be dirty and it can be said that some arrangement was made to create show that some students where there. Circumstances that teacher was not in position to know the students is sufficient to infer that for the purpose of the inspection some children were collected on that day.

14. There is report like dated 05.10.2012, but it cannot be said that no verification was done and whatever information was supplied was written in the report by the Center head by name Mundhe. The report does not show that even information was recorded about the presence of the students. This was only in respect of some material, which was shown by the School. Such report can be of no help to the petitioners. In view of subsequent dated huge record. From the record the approach of the Chief Executive Officer, Zilla Parishad needs to be appreciated. He deed the trick. Every time for surprise inspection and verification he sent different officers who includes Engineers and Medical Officers, thus, no room was kept for manipulation to the petitioners. In view of this circumstances and the responsibility of the Zilla Parishad to supervise the things, this Court seen no reason to disbelieve the record

of inspection created by exercising the power of supervision. There was no other technical point and order under challenge of cancellation of licence, registration came to be passed by the authority to whom the power was delegated by the Government.

15. The learned counsel for the petitioners placed reliance on some observations made by this Court at this bench in some decided cases like

(i) Writ Petition No. 3728 of 2012 Smt. Manisha Bhimraj Patil and others Vs. State of Maharashtra and others decided on 22.10.2013.

(ii) Writ Petition No. 9737 of 2011 (Shivchatrapati Shikshan Sanstha Vs. The State of Maharashtra and others) decided on 10.12.2014

(iii) Writ Petition No. 8685 of 2014 (Madhukar Shikshan Prasarak Mandal Vs. The State and Others) decided on 29.02.2016.

16. The submissions made and copy of order made by the Hon'ble Supreme Court in the petition which was filed for Special Leave to Appeal (C) No. 15709 of 2016 which had arising out of the decision of the case of Madhukar Shikshan Mandal and others cited (supra) shows that Supreme Court directed the parties of that proceeding to maintain status-quo in respect of the School run by the transferee institution. However, the Apex Court has also observed as per the order made by the

Supreme Court there was liberty to the prove previous institution also to start the School again.

17. The decision given in the case of Smt. Manisha cited supra was in respect of Primary Ashram School and the proceeding was filed by the permanent employees of the School due to the harassment they were facing after the transfer of the School. These employees were appointed in the year 1999 and due to deficiencies in infrastructural facilities the recognition of this School was withdrawn by the authority on 23.08.2010. These employees were temporarily absorbed in other Schools. In January 2012, the de-recognized School from Talegaon Tanda District Jalgaon was transferred to other institution from district Sangali. Direction was also given to the transferee institution to see that the staff of closed School was absorbed in new School. The order of transfer of School and the order of absorption of the staff at new place were challenged by the employees. There was one more circumstances like non payment of salary to the employees by the School which was directed to absorbed employees temporarily before the transfer of previous School. This Court referred G.R of 2012 issued in respect of Ashram School which provided for transfer but within the limit of 10 Km from the initial place. The conditions of transfer were considered by this Court and the Court observed that there was no provision to transfer closed School. It was also observed that procedure was not followed. Due to those circumstances the proceeding filed by the

employees was allowed and the transfer order was set-aside. The facts of the present matters are totally different and the present matter involve the School of mentally retired children and there is no policy of the Government which was there for Ashram School and which was considered by this Court, while deciding the case of Smt. Manisha Patil cited supra.

18. In the case of Madhukar cited supra School of handicapped children was involved. The G.R dated 24.01.2014 of the State Government in respect of such Schools was considered by the Court and this G.R shows that it was possible to transfer such close Schools to other institution which had experience of three years running of such Schools. There was the contention of Management of the original institution, in the petition that due to absence of release of grants by the Government, it could not run the School and it had closed the School. The license in that case was first cancelled and then School was transferred. The appeal filed to the Government by the Management was dismissed and then the matter was considered by this Court. Further no licence was issued in favour of the transferee School and there was no verification of the infrastructure and on the date of filing of the proceeding the School was not started by the transferee institution. Due to all this circumstances, this Court cancelled the order of transfer. However, as already observed this decision is virtually stayed by the Supreme Court and transferee institution is protected by

the Supreme Court. Further the facts of present matter are different and there is no challenge to the transfer on the aforesaid ground in the present matters.

19. It can be said that for the Schools of mentally retired children the procedure similar to the Schools for handicap children needs to be followed. The relevant provisions for present Schools are **Handicap Persons (Protection of their rights and equal opportunity to them) Regulations 1995**, Maharashtra Handicap Children (Protection of their rights and equal opportunity to them) Rules of 2001 and handicap persons right and Regulations 2016 needs to be considered. Even in the licence issued in the present matter the provisions of these regulations and rules are quoted and compliance of some provisions of the regulations and rules needs to be done by the licence holder and in case of breach the renewal of licence can be refused. The provisions of the regulations and rules and further the provisions of Article 19 of the constitution of India needs to be used and on that base it can be said that the power of the Government to refuse to renewal licence when there is breach of the conditions cannot be disputed. Only the things which can be used by the petitioners is about the procedure but in the present matter there is record to show that before cancellation of the registration show cause notice was issued, the petitioners gave reply and hearing was given to the petitioners. As already observed the order

of cancellation of the registration was passed by the competent authority.

20. Though there is nothing on record to show the logic or reason for which the close Schools are transferred by the Government, on the basis of G.R dated 24.01.2014 it can be inferred that the Government wants to avoid incurring of more financial liability. It is bad but it is fact that many a times the registration and the licences are issued in favour of the persons who are either political figures or the workers of the political figures. Even when there is no infrastructure the licences are issued and as observed by the authority, the Schools are started to get money from the Government under the name of grants that is why hudge number of staff which is more than 15 is shown to be appointed, even when the staff was not competent for such Schools. The submissions made and record show that at the relevant time for Latur district there were as many as 30 such Schools and in Udgir taluka there were five Schools receiving grants-in-aid including the present School. There was clear possibility of showing false strength of the students and the record is sufficient to infer that there was subject to satisfaction of the authority, on this point. By such policy the Government avoids starting of new Schools as it involves incurring of more financial liability and as there are aforesaid circumstances and so some Schools which are not properly run are transferred to other places. Due to this logic and reasons the

Courts are not expected to interfere in such matters, on some technical points when there is no scope to the institutions which was running the School to say that it was running the School properly and there was no breach of condition of licence.

21. The voluminous record shows that in the past also the petitioners were required to file appeal, in the year 1999 against the decision of the Government. The Writ Petition No. 2772 of 2003 was allowed by this Court as this Court at the relevant time found that reasonable opportunity was not given to the Management in the appeal itself. The facts of the present matters are different and there is record to show that show cause notices was given before the cancellation of the registration, to the show cause notice reply was given on 23.02.2013 by the Management and after hearing the Management the order of cancellation of registration came to be passed on 15.03.2013. When the present petition was filed, there was nothing on record to show that appeal was filed to challenge this decision. However, subsequently it was submitted that during the pendency of the present matter the appeal came to be dismissed. It is already observed that there was sufficient material for cancellation of registration. The object of starting such institutions involves giving opportunity to the persons who are interested in doing social work and only when the persons have intention of social work, they can be allowed to run such institutions.

The mentally retired children cannot explain or express their difficulties which they are required to face when the persons like petitioners are managing the School and it is never desirable to allow such persons to run such Schools.

22. The order of transfer of School in favour of respondent No.4 came to be passed on 26.08.2013. In view of the date of cancellation of the registration on 15.03.2013 and as there was no stay of authority or this Court to that decision, the petitioners have no locus to oppose the proposed transfer in favour of respondent no.4 which was done on 26.08.2013. The order of transfer itself shows that the matter of respondent was process by the social welfare office of the Kolhapur district in the year 2011 itself and it was under consideration of the authority. The licence is issued and registration is given subject to usual conditions, voluminous record is produced by the transferee School showing that it is properly running the School and during the inspections mark more than 80% are given to this School. Renewal of the licence also came to be given to the transferee institution on 01.04.2017 for further period and that period will end on 31st March 2022. In view of the record which is available in favour of respondent No.4 of the inspection which includes competent staff and infrastructure this Court holds that it is not desirable to use the power against the respondent, transferee institution on any technical reasons. This Court

holds that no relief can be given to the petitioners in the present matter. On the contrary for creation of false record like record of officers of Zilla Parishad to corroborate the contention that it still running the School when the registration was cancelled criminal action needs to be taken against the petitioners. They not only created false record but they used the record in the present proceeding. In the result following order.

ORDER

1. Dismissed.
2. The Registrar (Administration) is to take steps to see that first information report is given in respect of false record produced in this Court like record of inspection done by one Shri. Jadhav dated 10.11.2014, which is filed along with affidavit by the petitioner, as the same is apparently false record created for use in the Court and it is actually used as it is referred during arguments by counsel of the petitioners.

[SUNIL K. KOTWAL]
JUDGE

[T.V. NALAWADE]
JUDGE

YSK/