

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

914 WRIT PETITION NO.1130 OF 2016

DEVANANDJI KRUPA SEVABHAVI SANSTHA ITOLI, DIST. PARBHANI
THROUGH ITS PRESIDENT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Pratap G. Rodge
AGP for Respondents: Mrs. R.P. Gaur
Advocate for Respondent No.6 : Mr. R.T. Nagargoje
Advocate for Respondent No.3 :Mr. R.K. Ingole
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CORAM : **PRASANNA B. VARALE & R. G. AVACHAT, JJ.**

Date: July 17, 2019
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PER COURT :-

1 Heard Mr. Rodge, learned counsel for the petitioner, Mrs. R.P. Gaur, Assistant Government Pleader for respondent No.1, Mr. R.T. Nagargoje, learned counsel for respondent No.6.

2 With the consent of the learned counsel appearing for the respective parties, petition is taken-up for hearing and disposal.

3 The submission of the learned counsel Mr. Rodge appearing for the petitioner, on the back-drop of material placed on record, as well as the rejoinder submitted in this Court on 11.2.2018, is in support of prayer clause 'B'.

4 Mr. Rodge learned counsel appearing for the petitioner in his extensive submissions invited our attention to the documents

placed on record.

5 Mr. Rodge submits that the petitioner is an institute/society registered under the provisions of the Societies Registration Act, 1860 as well as the Public Trusts Act and is active in the field of education since the year 2005-2006. The petitioner society is running a residential school for mentally retarded students at Adgaon, Tq. Jintur, District : Parbhani since the year 2007 with due permission of the State Government. It was further submitted by learned counsel Mr. Rodge that a school being run by Adarsha Shikshan Prasarak Mandal, Dhanora (Kautha) Tq. Kandhar namely Jay Malhar Residential School for Handicapped was closed down in the year 2004. The State Government had formulated a policy of handing over the closed down schools to other institutions. The petitioner institution was desirous to run the school which was closed down in the year 2004 and accordingly, request was made to the State Government and particularly respondents No.2, 3 and 4. On receipt of such proposal, the Desk Officer of the State of Maharashtra informed the Commissioner for Welfare of Handicapped i.e. respondent No.2 by communication dated 8.5.2008 to consider the proposal by hearing the parties concerned and this hearing was expected of 20 points framed by the State Government. These points are referred to in the communication dated 8.5.2018. It is not necessary for us to refer to each point. Suffice it to say, these points take into consideration various aspects such as feasibility

of the school at the place where-for a proposal is made, the bonafides of the institute, the reasons seeking transfer, absorption/accommodation of the teaching and non-teaching staff members working in the close down school, the accessibility of place etc..

6 The Commissioner, on receipt of communication, in turn, directed the Social Welfare Officer, Group 'C', Zilha Parishad, Nanded to submit report and such report was submitted to the Commissioner on 2.9.2008. Copy of the communication/report is placed on record at Exhibit 'C'. Perusal of this report shows that the Social Welfare Officer gave necessary information and opinion on these twenty points. The information and opinion, on the most of the points is positive in respect of the proposal submitted.

In response to point No.16, it is stated that no information was made available. On specific query put to learned counsel Mr. Rodge, on point No.16, in respect of absorption/accommodation of the staff earlier working in the closed down institution, Mr. Rodge, on instructions, submitted that the petitioner institution is ready to accommodate/absorb these teaching and non teaching employees in the present institution. There is also a report submitted through the Social Welfare Officer Zilha Parishad, Group 'A' Parbhani to the Commissioner on 22.10.2008. This report is also mostly positive in support of the proposal. The proposal submitted by the Social Welfare Officer, Group 'A'

Parbhani concludes with a positive recommendation in favour of the petitioner institute.

7 On perusal of these proposals, the Commissioner thought it fit to hear the parties. Accordingly, hearing was scheduled on 30.1.2009. The Commissioner, on 9.2.2009 caused a communication to the Department of Social Justice and Special Assistance, Mantralaya, Mumbai, in which the Commissioner refers to the hearing and report submitted by the Social Welfare Officer, Group A, Zilha Parishad, Nanded and Parbhani respectively. Though there is no specific opinion expressed by the Commissioner, the Commissioner refers to the positive opinion expressed by the District Social Welfare Officer, Nanded and Parbhani.

In spite of communication forwarded to the concerned Department in the month of February, 2009, there is no reasonable progress in the matter. As such, the petitioner was constrained to approach the Honourable Minister, Social Justice & Special Department with a request letter dated 15.2.2014. On 16.8.2014, a request was made to the Commissioner for Welfare of Handicapped to recommend respondent No.1 to decide their proposal. The petitioner, then again approached the concerned Department under the Right to Information Act, seeking information about the decision on the said proposal. It was informed to the petitioner through communication dated 24.9.2014 that no decision is taken on proposal. As such, there is

no question of providing copy of the decision to the petitioner. Again on 8.1.2016, the petitioner made request to the Commissioner for handing over/transfer of the institute. Waiting for considerable period, as there was no decision, the petitioner left with no choice but to approach th is Court, filing the present petition.

8 On a notice being issued by order dated 29.1.2016, affidavit in reply is filed in this Court through Mr. Laxman S/o Govindrao Kadam, District Social Welfare Officer, Zilla Parishad, Parbhani.

9 Learned AGP, on the basis of this affidavit in reply, submitted before this Court that the State Government, by assigning reasons in communication dated 13.7.2006 through the Deputy Secretary informed the Commissioner that the State Government is in the process of framing a fresh policy and the proposal of the petitioner can only be decided after such policy is framed by the State Government. Copy of the communication dated 13.7.2006 is placed on record at Exhibit R-1 along with affidavit in reply. There is another communication placed on record at Exhibit R-3 dated 16.7.2016 whereby the petitioner is informed that the State Government is not in a position to take any decision on the proposal submitted by the petitioner, in view of certain orders of this Court and the State Government is in the process of framing new policy. As such, the petitioner is

informed that he should withdraw its' petition.

10 The learned AGP submitted that as the proposal of the petitioner is pending before the State Government, the State Government be permitted to take decision on the proposal and if needed within a time frame, the State Government would take appropriate decision.

In the normal circumstance, we would have certainly considered the submission of the learned AGP and it is not in dispute that in number of petitions, this Court directed the State Government to take appropriate decision within stipulated time frame on the proposal, considering the merit of the proposal. But for certain reasons which would be referred to by us in the latter part of the order, we are unable to accept the submission of learned AGP.

11 As it is not in dispute that the proposal was submitted by the petitioner in the year 2008, the exercise of calling the report from the District Social Welfare Officer was undertaken and reports were submitted by these District Social Welfare Officers in the year 2008 itself. On receipt of reports, respondent No.2 Commissioner, Social Welfare himself called upon the parties including the District Social Welfare officer for hearing, which was scheduled on 30.1.2009. The Commissioner, then submitted his report to the department on 9.2.2009. Till the year 2014, the proposal was just pending in cold storage of the State

Government. In 2014, on a specific query, the petitioner was informed that no decision is taken on the proposal. This information was provided to the petitioner on 24.9.2014. Interestingly enough, now when the petitioner's proposal is pending before the State Government, the State Government is coming before this Court with a communication dated 15.7.2016 to submit that the State Government is under the process of framing fresh policy and also refers to certain orders of this Court passed in Writ Petition No.5407/2012, No.9458/2013 and No.8685/2014. During the very time span i.e. from 2008 to 2014, the State Government decided many such proposals. On 29.8.2009, a proposal seeking transfer of a closed down school at Ghogri Tq. Hadgaon, District: Nanded to village Gavattwadi, Tq.Tamsa, Dist. Nanded, was sanctioned. On 29.6.2013, a similar request made for transfer of a closed down school at Narsi Nayagaon, Nanded to village Dighori, Dist. Nagpur was allowed. On 3.3.2014 a closed down handicapped students school, Sugaon, Tq. Mukhed, Dist. Nanded was allowed to be transferred to Takali Dhokeshwar Tq. Parner, Dist. Ahmednagar. Similarly by order dated 9.11.2011, the State Government granted permission for transfer of closed down school at Navandi, Tq. Udgir, Dist. Latur to Hangarga, Tq. Nilanga, Dist. Latur.

12 Now, if all these proposals were decided in the span of the year 2009 to 2014, there is no justifiable reason coming forth from the State Government, why the petitioner's proposal was

singled-out and kept pending for decision and if the State Government was desirous of framing a new policy, then to consider the proposal on the back-drop of decision of this Court as referred to in the communications dated 13.7.2016 and 16.7.2016, why the same rider could not come in the way of decision on those proposals which are already allowed by the State Government is the question which is unanswered by the State Government. If the State Government is desirous of framing policy and to take decision accordingly, such desire certainly is expected to be applicable to all the proposals equally. The State Government cannot take this ground only in respect of the petitioner institute. On the other hand, State is deciding the proposals favourable for some institutions. As there is no reasonable, logical explanation to the act of the State Government, we find merit in the submissions of learned counsel Mr. Rodge that, the State is acting arbitrarily and has failed to specify the mechanism in respect of fair play. At the cost of repetition, we state that when the Commissioner directed the District Social Welfare to submit report on 20-points, the District Social Welfare Officers of Nanded and Parbhani submitted their reports on most of the points positively in favour of the petitioner. With this primary material, which was certainly in favour of the petitioner, the proposal of the petitioner was kept pending for years together and when the petitioner approached this Court, the State is coming out with an excuse that now, the State Government is framing a policy and petitioner's proposal

would be considered after framing of such policy.

13 We cannot approve the approach of the State Government that some institutes are getting the proposals decided at the earliest and some institutes are kept waiting on a spacious plea that the Government would frame policy and then proposal would be considered. Such an approach needs to be regulated so that the State would not act in an arbitrary manner and as there is nothing negative in the reports submitted by the District Social Welfare Officers, we deem it appropriate to allow the petition in terms of prayer clause 'B'. We make it clear that the State Government is not prevented from carrying out the exercise of assessment of infrastructural facilities being provided by the petitioner, on periodical basis.

(R. G. AVACHAT, J.)

(PRASANNA B. VARALE, J)