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

WRIT PETITION NO. 5306 OF 2018

Sanjivani Medical Training Center,
Koudgaon, Tq. & Dist. Ahmednagar
Through it's President,
Bhagwan Jagannath Funde,
Age: 55 years, Occ: Agri.,
R/o. At Post Mehkari, Tq. &
Dist. Ahmednagar.

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Department of Women and Child
Development, Mantralaya, Mumbai
2. The Commissioner,
Women and Child Development,
State of Maharashtra, Pune

..RESPONDENTS

.....
Mr Santosh S. Jadhavar, Advocate for Petitioner;
Mr C.S. Kulkarni, A.G.P. for Respondents
.....

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

RESERVED ON : 12th JULY, 2018

PRONOUNCED ON: 3rd MAY, 2019

ORDER:

Heard Mr. Jadhavar, learned Counsel for the petitioner and learned
A.G.P. for the respondents.

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2. The petitioner is an institute under the name of Sanjivani Medical Training Center, Koudgaon, Taluka and District Ahmednagar and by way of present petition, petitioner is challenging the order dated 27th October, 2017 thereby cancelling the permission of *Balgrah*, earlier granted in favour of the petitioner institute.

3. Mr. Jadhavar, learned Counsel for the petitioner vehemently urged two grounds in challenge to the order impugned in the petition. Firstly, the respondents authorities failed to follow the procedural formalities as stated in the Government Resolution dated 13th July, 2015. The next ground raised by learned Counsel for the petitioner is, the constitution of the Committee which inspected the *Balgrah* assigned to the petitioner is not in conformity with the Government Resolution dated 13th July, 2015 and third ground raised is, the allotment of the marks to the petitioner society's *Balgrah* is not on rational basis.

4. Few facts which are necessary so as to consider the backdrop of challenge raised are stated in brief as follows :

By an order dated 17th March, 2001 the petitioner institute was granted two units so as to start Balsadan treating institute as a voluntary service provider institute on certain conditions. The specified number of admissions in the *Balgrah* is twenty students. Again by an order dated 7th

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July, 2006 the petitioner was granted additional two units with capacity of twenty students. On 13th July, 2015 the State Government under consideration of an extensive inspection of the *Balgrahas* on the backdrop of the provisions of the Maharashtra Juvenile Justice (Care and Protection) Rules, 2002. Government Resolution dated 13th July, 2015 provided the procedure for allotment of marks under the various marks on fulfilling various criteria. This criteria is in respect of making appropriate provisions of the facilities to the inmates of the *Balgrah*, such as, the food hygienic conditions, bedlinen, availability of play ground, making the provisions of basic amenities and timely medicines etc. The institutes then are categorized in three grades, such as, A, B and C. The institutes having 70% to 79% are placed in 'C' category, institutes having 80% to 89% are placed in 'B' category and the institutes having 90% plus are placed in category 'A'.

5. The State Government then issued Government Resolution dated 27th October, 2017, whereby it is decided by the State Government to cancel the approval granted to the *Balgrahas* without issuance of any notice falling under categories 'C' and 'D'. The said resolution states that the inquiry report submitted to the State Government after inquiry, it is brought to the notice of State Government that there are as many as 470 *Balgrahas* in categories 'C' and 'D'. The petitioner institute having been allotted initially two units and subsequently additional two units were

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subjected to inspection and the inspection/inquiry committee allotted 147 marks out of 200 marks to the petitioner institute i.e. 73.5% marks. As per marks obtained the petitioner institute is placed in 'C' category.

6. Mr. Jadhavar, learned Counsel vehemently submitted that the Committee carried out inspection was constituting of the Sub Divisional Officer, Jalgaon, Tahsildar, Jalgaon and the Deputy Chief Executive Officer, Zilla Parishad, Jalgaon. Then it was submitted by him that in view of G.R. dated 13th July, 2015, the Committee conducting inspection was not a duly constituted Committee as it is short of the representative of Non Government Organization or the Voluntary Service Organization. It was also the submission of Mr. Jadhavar, learned Counsel that the G.R. dated 13th July, 2015 refers to the training to be provided to the inspection committee and also refers to the pre-intimation of the inspection dates to the institute. Then it is further submission of Mr. Jadhavar, learned Counsel that the allotment of marks is contrary to the record available with the petitioner institute.

7. Learned Assistant Government Pleader appearing for the respondents supports the order impugned in the petition by taking support from the affidavit in reply filed in this Court by one Smt. Vijaymala Mane, working as District Women and Child Development Officer, Ahmednagar on behalf of respondents.

8. On going through the material placed on record, though the submissions of Mr. Jadhavar, learned Counsel looked attractive at the first blush, on going through the material placed on record along with affidavit, we are unable to accept the submissions of Mr. Jadhavar, learned Counsel. The allotment orders in favour of the petitioner institute make it very clear that these allotments/permissions are granted subject to certain conditions. Thus, it cannot be said by any stretch of imagination that the permission granted in favour of the petitioner can be treated as an absolute right of the petitioner institute to run the *Balgrah*. These orders also make it clear that the institutes are duty bound to make all appropriate provisions for the inmates in *Balgrah* and these provisions include all the basic amenities. The Statement of allotment of marks to the petitioner-institute is placed on record. Now on assessment of availability of the requisites and the basic provisions is undertaken by the the Committee and marks are allotted under the various heads. It is the submission of Mr Jadhavar, learned Counsel that as per the record of the petitioner-institute, every requisite facilities are available with the petitioner or the petitioner had made such arrangement so as to provide the facilities to the inmates. This admitted position that the Committee of three members visited the units of *Balgrah* being run by petitioner institute and committee allotted marks under their physical verification of the facilities. Now, whether petitioner institute was possessing these

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facilities as per the record maintained by the petitioner or there was short fall in the facilities as observed by the committee in its physical verification, is certainly a disputed question of fact. Firstly, this Court in exercise of writ jurisdiction cannot go into disputed question of fact and secondly, there is nothing on record to state that the committee had undertaken the exercise with a *mala fide* intention.

9. It may not be out of place to state that on one hand, the petitioner states that certain facilities are made available by the petitioner institute whereas the committee finds short fall of these facilities. The petitioner stated in the petition that insofar as marks allotted under clause 10 (2) is concerned, the inspection squad has allotted '0' marks by observing that sufficient number of books are not available, whereas just adjacent to the *Balgrah*, the petitioner society, there is a Government approved library run by one society and all entrants of *Balgrah* of the petitioner are made members of the said library. Then further statement is made in the very paragraph-25 of the petition that there are 150 books in the *Balgrah* run by the petitioner. Now, firstly a statement is self contradictory and secondly, the marks are allotted by the committee on their personal verification in the visit to these *Balgrahas*. As such, at the cost of repetition, we have to state that this being a disputed question of fact, this Court would refrain itself from exercising the writ jurisdiction.

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10. The other submission of Mr. Jadhavar, learned Counsel is, the exercise undertaken by the committee is not in conformity with the G.R. dated 13th July, 2015. It was submission of Mr. Jadhavar, learned Counsel that as per G.R. dated 13th July, 2015 the committee is expected to have a training and no such training was made available to the committee. We are unable to accept this submission of Mr. Jadhavar, learned Counsel for the petitioner-institute on the backdrop of the documents made available to us by learned A.G.P. Learned A.G.P. placed on record the communication dated 9th October, 2015 issued by the competent authority namely, District Women and Child Development Officer, Jalgaon. This communication refers three members of committee i.e. Sub Divisional Officer, Erandol, the Deputy Chief Executive Officer, Jalgaon and Tahsildar, Chalisgaon, District Jalgaon. Perusal of this communication shows that the committee members were subjected to a training on 4th September, 2015 and initially they were requested to conduct the inspection from 8th September, 2015 to 10th September, 2015 but due to certain unavoidable circumstances, the inspection was deferred.

11. We are unable to accept the submissions of Mr. Jadhavar, learned Counsel on the backdrop of another aspect as well, the G.R. dated 13th July, 2015 was challenged in Writ Petition No. 6579 of 2015 and Writ Petition No. 6526 of 2015. These two petitions were filed on behalf of the

Organizations namely, Balvikas Sanstha Chalak and Karmachari Sanghatna, Maharashtra State and Maharashtra Mahila Prashikshan Bal Sadan, Balakashram, *Balgrah* Swayansevi Sanstha Chalak Sangh through their President, respectively. The Division of this Court by a detailed judgment dated 5th May, 2017 disposed of the said petitions (Coram: S.V. Gangapurwala and K.L. Wadane, JJ.). It would be useful to refer to the relevant observations of this Court in paragraph Nos. 14, 15, 16, 17 and 19 in above referred judgment which read thus :

"14. Section 54 of the Act of 2015 requires the State Government to appoint inspection committees for the State and District as the case may be for all institutions registered or recognized to be fit under this Act. Sub Sec. 2 of Section 54 of the Act of 2015 requires the inspection committees to mandatorily conduct visits to all facilities housing children in the area allocated atleast once in three months. The said team shall consist of not less than three members, of whom atleast one shall be a woman and one shall be a medical officer. The said committee is required to submit report of the findings of such visits to the District Child Protection Units. U/Sec. 55 of the Act of 2015, the Government may individually evaluate the functioning of the registered institutions through such persons or institutions as may be prescribed by that Government.

15. The Rules of 2002 were framed pursuant to the powers conferred by Sec. 68 of the Juvenile Justice (Care and Protection of Children) Act 2000. Section 110 under the Act of 2015 confers powers on the State Government to make rules to carry out the purpose of the Act. It appears that, the Maharashtra State has not

framed its rules pursuant to powers conferred U/Sec. 110 of the Act of 2015 and relies on the Rules of 2002 framed under the Act of 2000. The model rules are framed by the Central Government namely the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. The proviso to Sec. 110 of the Act of 2015 states that, where any such model rules have been framed by the Central Government, they shall apply to the State *mutatis mutandis* until the rules in respect of that matter are made by the State Government. The model Rules 2016 provide for the manner of registration of child care institutions. The management and monitoring of child care institutions, fit facility, physical infrastructure, sanitation, hygiene, clothing, bedding, etc. The infrastructure also includes providing of computer, telephone with inter-net facility, etc. The rules lay down the elaborate provision with regard to other aspects to be taken care of, for such children.

16. The Government Resolution dated 13.07.2015 assailed in the present petitions is prior to the introduction of the Act of 2015 and the model Rules of 2016. The same is referable to the Maharashtra Rules of 2002. The State now will have to formulate inspection committees as is required U/Sec. 54 of the Act of 2015. As on the date the impugned Government Resolution was issued, the Act of 2015 had not come into force and as such the G. R. dated 13.07.2015 was issued pursuant to the Maharashtra Rules of 2002. The Maharashtra Rules of 2002 were amended in the year 2011.

17. The rules does lay down the constitution of the inspection team. There has to be some standard to assess and evaluate. The marking system would be a safe system for evaluating and assessing the functioning and working of the Balgruhas. The

marks prescribed are certainly in respect of the items which are required to be provided by the Balgruhas. There should not be any objection of the institutions in respect of marks to be allotted. The objection with regard to Clause 4.1 does not appear to be proper. Six marks are allotted for bed sheets, carpets, blankets. Under clause 5.11 marks are allotted for the necessary staff as per the staffing pattern. Clause 7.3 provides marks for separate medical case sheet for every individual which is also necessary. One of the objection is marks being allotted for training given to the inmates such as computer, etc. and for providing separate teaching apart from school to the students. The same, in fact, is required to be done by the institutions. Two marks are awarded for holding annual gathering or for taking children to picnic under clause 10.4. Even the petitioners are objecting for the marks being awarded for appointment of councillors. The same is for well being of inmates. The another objection of the petitioners is marks being allotted for the steps being taken by the institutions for rehabilitation and preparing the programme for rehabilitation and steps taken to implement it. So also the steps taken by the institution for giving children below 12 years in adoption. The said marks are only for the efforts taken by the institution. The institution is supposed to do that. The children home are established with specific object and for those children who are found to be in conflict with law and children in need of care and protection, these institutions are required to cater to their basic needs through proper care, protection, development, treatment, social, re-integration by adopting a child friendly approach.

(Emphasis supplied)

19. The standard adopted for giving grant in aid to the institution appears to be reasonable and proper. Those institutions

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getting more than 90% of marks are to be held eligible for grant in aid and those getting percentage between 80% to 89% are given six months time to clear the deficiencies, upgrade themselves and upon upgrading themselves, they will again be entitled for the grants. Those institutions getting less than 80% marks are categorized in category C and their registration would be cancelled. The contention of the petitioners that, one more opportunity be given to them cannot be accepted. These institutions in category C would not be taking proper care of the children and would be lacking in providing basic facilities and amenities. Leniency cannot be shown to such institutions, more particularly when it deals with providing care to the destitute children. The contentions of petitioners as such cannot be accepted."

12. Considering this fact and the above referred observations of the Division Bench, in our opinion, the challenge raised in this petition based on the G.R. dated 13th July, 2015 clearly fails. Needless to state that the petition, thus, being meritless, deserves to be dismissed and the same is dismissed accordingly.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)

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