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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3362 OF 2012

Mauli Sevabhavi Sanstha,
Raimoha, Tq. Shirur (Kasar),
District Beed,
through its President/ Secretary

...PETITIONER

VERSUS

1. The State of Maharashtra
through its Secretary,
Social Justice and Special Assistance
Department, Madam Kama Road,
Hutatma Rajguru Chowk,
Mantralaya Vistar Bhavan,
Mumbai - 32
(Copy to be served on Government
Pleader, High Court of Bombay,
Bench at Aurangabad)
2. The Commissioner,
Commissionerate Handicapped Welfare,
Maharashtra State, Pune - 1
3. The Social Welfare Officer,
Gut - A, Zilla Parishad, Nanded
4. The Social Welfare Officer,
Gut - A, Zilla Parishad, Beed
5. Haji Hafiz Baig Bahuuddeshiya
Shikshan Sanstha, Arni,
Tq. Arni, District Yeotmal
through its Secretary

...RESPONDENTS

...
Shri S.S. Deve, Advocate for petitioner
Mrs. A.V. Gondhalekar, A.G.P. for respondents/ State
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**CORAM : PRASANNA B. VARALE &
R.G. AVACHAT, JJ.**

DATED: 5th July, 2019.

JUDGMENT (PER R.G. AVACHAT, J.) :

By this petition under Article 226 of the Constitution of India, the petitioner is challenging the order dated 26/8/2011, passed by the respondent - State of Maharashtra, thereby transferring the Niwasi Matimand Vidyalaya, Mukhed, District Nanded in favour of the respondent No.5 - Society. The petitioner has also prayed for directions to the respondents No.1 to 4 to transfer the said school in its favour.

2. Heard. Shri S.S. Deve, learned counsel for the petitioner, the public Trust, registered under the Maharashtra Public Trusts Act and rules thereunder, would submit that the institution namely Samaj Prabodhan Mandal, Degloor, District Nanded was granted permission way back in January 1992 for opening of a Niwasi Matimand Vidyalaya, at Mukhed on no grant basis. The respondent No.1 - State, in August 1996, sanctioned grant-in-aid to the said institution. It was a residential school. The institution run the school till the year 2002. the respondent No.2, for some reasons, cancelled the registration of Samaj Prabodhan Mandal in April 2003. As per the Government policy, the

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residential schools which are closed down, can be transferred in favour of other institutions. While considering the proposal for transfer of such school, the consent of the concerned institution is required to be obtained. Hearing has to be given to the institutions involved. The respondent No.2 – Commissioner, Commissionerate of Handicapped Welfare was the competent authority to take decision as regards transfer of such schools. The learned counsel would further submit that, the petitioner institution had necessary infrastructure. It, therefore, applied for transfer of the said school in its favour. The concerned school gave its consent for transfer in favour of the petitioner.

The respondent No.2 commenced the proceedings for transfer of the school and issued notices to the institutions involved. Pending the proposal of transfer of the school, the respondent No.1 – State transferred the said school in favour of respondent No.5, without following the due process of law. The learned counsel would further submit that, the respondent No.5 did not apply for transferring the Niwasi Matimand Vidyalaya, Mukhed in its favour. As such, the decision to transfer the said school in favour of respondent No.5 is invalid. The petitioner institution is entitled to have the said school transferred in its favour. The learned counsel took us through various documents on record to ultimately submit for allowing the petition.

3. An affidavit-in-reply has been filed on behalf of respondents No.1 to 3, by the Assistant Commissioner, Social Welfare, Beed. Mrs. Gondhalekar, learned A.G.P. made submissions, reiterating the averments in the affidavit-in-reply. She would submit that, the State Government has revised the policy in respect of transfer of management and shifting of the closed schools. She would further urge to let the Commissioner to publish an advertisement for transfer of management/ shifting of the school and for calling requisite fresh proposals from competent Non-Governmental Organisations (NGOs). A proposal in that regard has been submitted to the Government on 16.10.2018. The Government's response thereto is awaited. It has been recorded in the affidavit that the deponent forwarded a report to the State Government, recommending the cancellation of transfer of the said school and also seeking permission to advertise the said school, calling upon applications from the interested and eligible non-Governmental organisations in view of the revised policy of the Government vide Government Resolution dated 16.9.2017.

4. None appeared for the respondent No.5. The affidavit-in-reply indicates that the respondent No.5 has not commenced the functioning of the school transferred in its favour. The same indicates respondent No.5's disinclination to take over the

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management of the closed down school and run the same.

5. The petitioner - institution is a public trust. It has necessary infrastructure to run the school for mentally challenged students. The Samaj Prabodhan Mandal, Degloor was granted permission way back in January 1992 to run a school for mentally challenged students. It was of residential school. The State Government, in 1996, brought it on the rolls of grant-in-aid schools. As per the Government policy, closed down school, or registration of which has been cancelled, can be transferred in favour of other institutions on certain conditions.

6. For considering the proposal for transfer, the consent of the concerned institution was required to be obtained and hearing is given. Admittedly, the management of the closed down school gave its consent for transfer of the school in favour of the petitioner institution. At the relevant time, the competent authority to accord sanction for transfer of the school, was the Commissioner, Commissionerate, Handicapped Welfare, State of Maharashtra, Pune (respondent No.2). The petitioner - institution had moved the proposal to respondent No.2 for transfer of the said school in its favour.

7. Admittedly, the respondent No.2, by his letter dated

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27/4/2011, asked Social Welfare Officers (Group A), Zilla Parishad, Nanded and Beed to give their reports on 21 points, listed in the communication. Both the Social Welfare Officers, in turn, submitted their reports. The Social welfare Officer, Nanded even recommended for transfer of the school in favour of the petitioner institution. On receipt of those reports, the respondent No.2 scheduled for hearing of the matter on 5/11/2011. Before the respondent No.2 took a decision regarding transfer of the school in favour of the petitioner - institution, the respondent No.1 - State of Maharashtra, by its order dated 26/8/2011, transferred the school in favour of the respondent No.5. It has been recorded in the order that, the respondent No.5 has requested for the transfer of the said school in its favour. The facts, however, appear to be other way round.

8. The affidavit-in-reply states that the respondent No.5 has not commenced functioning/ working of the school. The same indicates the respondent No.5's lack of interest in running the school. The record indicates, that the respondent No.2 wrote to the Secretary, Ministry of Social Justice and Special Assistance Department, Mantralaya, Mumbai, giving his candid views. The respondent No.2, in his communication dated 10/1/2012, informed that the school has been transferred to respondent No.5 without following the necessary procedure. The decision to transfer the

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school to the respondent No.5 may, therefore, be not justifiable. He had, therefore, requested to recall the order dated 26/8/2011.

9. It is true that the respondent No.1, by its resolution dated 16/9/2017, revised the policy in respect of transferring the closed down schools. In our view, almost entire procedure, as has been expected by/ under the then prevailing policy of the Government, as regards transfer of the schools, had been completed long back.

10. The management of the closed down school had given its consent for the transfer of its school to the petitioner institution. Social welfare Officer, Beed has recommended the proposal of the petitioner institution. The respondent No.5, in whose favour the school has been transferred, had not staked its claim for taking over the closed down school. Even after the State Government transferred the said school to respondent No.5, it has failed to commence the said school. In this factual backdrop, we are not inclined to grant the request of the respondents No.1 to 3 to allow them to go by the revised policy of the State Government and take a decision regarding transfer of the school in favour of the petitioner institution. In our view, the claim of the petitioner institution in the aforesaid backdrop needs to be granted.

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11. In the result, the petition succeeds. The petition is allowed in terms of prayer clauses (A) and (B). Rule made absolute in above terms.

(R. G. AVACHAT)
JUDGE

(PRASANNA B. VARALE)
JUDGE

fmp/