

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

922 WRIT PETITION NO.5683 OF 2014

GRAMIN SHIKSHAN PRASARAK MANDAL, NEHARUNAGAR,
NAGALGAON, TQ. KANDHAR, DIST. NANDED
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. S. S. Choudhary.

AGP for Respondent Nos.1 to 4 : Mr. P. N. Kutti.

Advocate for Respondent Nos.5 & 7 : Ms Yogita Kshirsagar.

Advocate for Respondent No.9. : V. D. Salunke.

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CORAM : **T. V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

DATE : 06th February, 2019.

ORDER: (Per T. V. Nalawade, J.)

. The petition is filed by one institution, which was running the school for handicapped children and it was a residence school. Initially, it was started on no grant in aid basis, but in the year 1997, the Government gave grant in aid. The school was started at Yawal Pimpri in Ghansavangi Taluka of Jalna District. Certificate was issued of registration to this school for the period 10th October, 2000 to 31st March, 2001 for the place from Jalna. On 5th March, 2002, on the

basis of recommendation made by the District Social Welfare Officer, Zilla Parishad, Jalna, registration came to be suspended with effect from 16th March, 1999 though initially certificate of registration was granted. Suspension order came to be issued on 5th March, 2002.

2 After the aforesaid adverse orders, the Petitioner requested for permission to transfer the school to Naik Nagar, Nanded in the year 2004. This proposal was accepted and then the school was transferred to Nanded and certificate of registration was again issued for the period 2006 to March, 2008. At the new place, the Petitioner institution made appointments of new employees including teaching staff. There was a grievance of the previous staff, who were appointed at Jalna that they were not absorbed and so the District Welfare Officer did not grant approval to the appointments of the new staff. The approval was rejected in December 2006 and after that, even direction was given to see that old staff was absorbed.

3 The Petitioner institution then closed the school in June 2008. Show cause notice was given for cancellation of registration and after considering the reply given to the show cause notice, the registration came to be cancelled by order dated 18th May, 2013. As

the school was already found to be closed, the registration certificate came to be cancelled with effect from 1st April, 2008. Respondent No.9 had applied for giving permission to start one such school and by order dated 3rd March, 2014, the school came to be transferred in favour of Respondent No.9 for starting it at village Kharwandi Kasar, Tahsil Pathardi, District Ahmednagar.

4 The main contention of the Petitioner is that opportunity was not given to the Petitioner before making order of transfer in favour of Respondent No.9. Prior to the order of transfer, order was made against the Petitioner of cancellation of registration certificate, but that order of 2013 is not challenged in the present proceeding. The submissions made by the learned counsel that the Petitioner was not aware of the said order cannot be accepted as there is explanation of the Petitioner dated 2nd April, 2013, which was in response to the show cause notice given before making the order of transfer and there is also copy of order of cancellation of certificate of registration dated 18th May, 2013 showing that the explanation of the Petitioner dated 30th April, 2013 was considered by the authority, Commissioner for Welfare of Handicapped persons of this State.

5 In the explanation offered in April 2013, the Petitioner had admitted that the Petitioner had closed the school from June 2008. The Petitioner had contended that as there was dispute between the Petitioner institution and the employees, the institution was required to be closed. Admittedly, the Petitioner had not absorbed the employees appointed at Jalna school and the Petitioner had applied for approval in respect of the new staff shown to be appointed at Nanded. This approval was rejected and it can be said that due to that circumstance, the Petitioner preferred to close the school.

6 It was submitted by the Petitioner that as the school was closed, technically it was not possible for the Respondent authority to transfer the school in favour of Respondent No.9. In support of this contention, the learned counsel placed reliance on some observations made by this Court in the judgment given in **Writ Petition No.3728 of 2012** (*Smt. Manisha Bhimraj Patil and others Vs. The State of Maharashtra and others*). The school involved in that matter was Ashram Shala school and not a school for handicapped children. For handicapped children, there was separate policy and one Resolution was also issued by the Government on 24th January, 2014. Similar matter had come before this Court vide **Writ Petition No.315 of 2014**

(Gramin Shikshan Prasarak Mandal and another Vs. State of Maharashtra and others) and in that matter this Court considered the relevant provisions of the Handicapped Persons (protection of their rights and equal opportunity to them) Regulations 1995, Rules made under the said Act and Regulations of 2016. The power of the Government and also the duty of the Government was considered by this Court and defence taken in the present matter was also considered. The observations can be found in paragraphs 18 to 20 and they are as under:

“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 closed 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, 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, 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 subjective 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.”

7 In the present also, the aforesaid observations can be used. It can be said that the Petitioner institution wanted to appoint new staff apparently for making money. In the past also, the registration was suspended by the authority. It can be said that by transferring the school at new place, one opportunity was given to the Petitioner institution, but the Petitioner institution wanted to indulge in illegal activities. As per the Government policy, it was necessary for the Petitioner institution to absorb the old staff, but that was not done. In view of these circumstances and provisions of aforesaid Act and Rules, there was no other alternative before the authority than to cancel the registration and to see that the school is transferred to other

institution, which can run it competently. The school came to be closed in June 2008 and no interest was shown till 2013 even when steps were taken to cancel the registration already granted. This circumstance shows that only to create some pressure on the authorities and also on the institution, which was getting the school resistance was offered by the Petitioner institution and the present petition is filed. There are no merits in the petition and so it is dismissed.

[SUNIL K. KOTWAL, J.]

[T. V. NALAWADE, J.]

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