

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

WRIT PETITION NO. 15223 OF 2017

Late Yashwant Baliram Patil
Shikshan Prasarak Mandal, Talai,
Tq. Erandol, Dist. Jalgaon,
Run by Padmabai Mulinche Balgruha,
Tq. Erandol, Dist. Jalgaon
Through its President
Prabhakar Yashwant Patil,
Age : 53 years, Occ.: Social Worker
R/o. 119, Om Nagar, Dharangaon Road,
Erandol, Tq. Erandol, Dist. Jalgaon.

... PETITIONER

VERSUS

1. Union of India,
Through its Secretary,
Ministry of Tribal affairs,
Shastri Bhavan, New Delhi.
2. The Under Secretary,
Government of India,
Ministry of Tribal affairs,
Shastri Bhavan, New Delhi.
3. The State of Maharashtra,
Through its Secretary,
Tribal Development, Mantralaya,
Mumbai.
4. The Commissioner,
Tribal Development,
Maharashtra State, Nashik.
5. The District Collector,
Jalgaon, Dist. Jalgaon.
6. The Sub Divisional Officer,
so also Sub Divisional Magistrate,
Erandol, Tq. Erandol, Dist. Jalgaon.
7. The Project Officer,
Ekatmik Adiwasi Vikas Prakalp
(Integrated Tribal Development Project)
Yawal, Tq. Yawal, Dist. Jalgaon.

... RESPONDENTS

Mr. Vijay B. Patil, Advocate for the petitioner
Ms. Sudha Kulthe, Advocate for respondents No. 1 and 2.
Mr. P. N. Kutti, Assistant Government Pleader for respondent/State.

**CORAM : SUNIL P. DESHMUKH &
 S.M. GAVHANE, JJ.**

DATED : 15-10-2019

P.C. :-

1. The petitioner-trust is before this court questioning propriety, legality and validity of order passed by respondents No. 1 and 2-Union of India, Under Secretary, Ministry of Tribal Affairs.
2. Little background of the case would be worthwhile to be considered in order to appreciate the case of petitioner. Respondents No. 1 and 2 had given permission for grant-in-aid setting up a new project of residential school (primary) for 100 scheduled tribe students under an order dated 28-05-2007. Pursuant to the same petitioner had set up and started residential school for scheduled tribe students since 2007. Subsequently, there had been transfer of project to Eraondol. Since 2007 petitioner has been receiving grant every academic year.
3. For the year 2013-2014 petitioner had submitted proposal with respondents seeking grant with requisite number of sets. Said proposal passed through State Level Committee. Maharashtra State had recommended proposal of petitioner for grant for the year 2013-2014 on 31-12-2013.
4. However around January, 2015 respondent No. 2 purportedly

asked for audit report, photocopy of bank passbook and some other information of the institution. Petitioner had immediately responded to the same supplying required documents alongwith detailed explanation. Subsequently, respondent No. 2 had raised entirely different query with respondent No. 3 with regard to enrollment of students and attendance claiming absence to be more than 20% on the date of inspection. Thereupon, a report was called by Commissioner of tribals from District Collector. Requisite information had been supplied by petitioner to the collector pointing out that in 2013 there were extra admissions although students capacity is 100. However, extra students did not continue with the school pointing further out that as per Right to Education Act, petitioner could not deny extra admissions. It was also explained there is correspondence on the same among respondents taking note of that there would be fluctuation in strength of students having regard to that it is a tribal area. Around September, 2015, the Commissioner of tribals directed collector to undertake actual inspection and to submit report for 2013-2014, while the academic year had been over. Said direction had been passed on to lower authorities by the collector.

5. It is the case of petitioner that for the year 2014-15 again the proposal for grant-in-aid had been submitted through proper channel twice in July, 2014. However, beyond certain correspondence *inter se* the proposal did not make any further progress. During these two academic years, the petitioner-trust had to arrange for expenses. The sources were arranged from outside which were to be repaid upon receipt of grant-in-aid. In 2016-17 as

well the grant-in-aid had not been released by respondents resulting in stoppage of the school. Since grants had not been released despite all the compliances, the petitioner had approached, respondent No.1 in November, December 2016 and in January, 2017.

6. As the matter did not move, writ petition bearing No. 211 of 2016 entailed. The writ petition had been disposed of by high court with direction to respondent No. 1 to take decision on proposals for release of grant-in-aid to the petitioner for the years 2013-14 and 2014-15 within a period of six months.

7. Learned counsel Mr. Vijay Patil for petitioner submits after the directions were issued by the high court, the matter did not progress further beyond soliciting information from petitioner in March, 2017. Explanation alongwith documents and material had been provided to respondent No. 1. Thereafter while petitioner persisted with, requesting release of grant-in-aid, a communication had been issued by respondents No. 1 and 2 dated 23-05-2017 intimating that the Ministry had decided to withdraw funding for activities and project. There had been no indication nor any reason for such a communication.

8. Petitioner has stated that even after this communication, a detailed representation had been submitted to respondents to point out that such communication/ order dated 23-05-2017 would not be applicable to

petitioner's case. The petitioner had been seeking release of grant-in-aid for the years 2013-14 and 2014-15. Decision of a Ministry of withdrawal would not be applicable to the project run by petitioner.

9. In reply to the petition, it has been stated that grant-in-aid cannot be claimed as a matter of right and is a matter within sole discretion of government of India, depending on the merits of project, to be considered upon recommendation of multi disciplinary State committee. Rule 230(15) of General Financial Rule, 2017 (GFR) had been pointed out stipulating that grants-in-aid may be sanctioned to meet bonafide expenditure incurred not earlier than two years prior to the date of issue of sanction. It is further stated that directions of the high court were to take appropriate decision in respect of the concerned years in observance of relevant procedure and in accordance with the scheme formulated.

10. It is contended that grant-in-aid for the year 2013-14 was time barred in view of *proviso* to Rule 209(6)(viii) of GFR, 2005. It is further contended that reasons solicited for higher rate of absence of students for the year 2014 in January 2015 and documents as directed under communications in January 2017 and two communications in March 2017 were not furnished. Clarifications were sought from the State Government also as per the guidelines which had not been received. Documents in respect of grant-in-aid for the year 2014 had not been received from petitioner by 31st March, 2017. Percentage of drop outs for 2014-15 had been 47% and the grant-in-aid for

2014-15 had been rendered time barred in view of *proviso* to rule 230(15) of GFR, 2017. It is further referred to that under circular dated 18-07-2016 the Ministry of Tribal Affairs had decided to discontinue funding to projects of elementary education like (Primary and Upper Primary) residential/ non residential schools; new hostels and complexes from the year 2016-17 onwards. Said restrictions have been withdrawn under circular dated 23-05-2017 and the same has no relevance to petitioner.

11. The State Government has submitted affidavit-in-reply referring to that giving grant-in-aid is a decision by of Central Government and petitioner had given an undertaking itself about the same being binding and had further accepted that any dispute relating to the scheme would be subject to Delhi high court jurisdiction. The State affidavit also refers to that upon receipt of application for grant-in-aid from petitioner the State Government had already forwarded the application to the Central Government for further necessary action.

12. The situation emerges that petitioner makes reference to correspondence with the respondents as well as their *inter-se* correspondence, which appears to be chronicled one. The same has not been met with by the respondents. After the directions by high court in writ petition No. 211 of 2016, impugned communication dated 23-05-2017 had been issued. It would be worthwhile to reproduce the same herein below;

"Kindly refer to this Ministry's communication of even number dated 18-0-2016 and 07-02-2017 on the above

mentioned subject. It has been decided that the restriction on funding for activities/ projects indicated therein stands withdrawn with immediate effect.

2. This has the approval of Competent Authority."

13. Respondents No. 1 and 2 in their affidavit-in-reply have filed no annexures whereas the State authorities have alongwith their affidavit have filed the scheme of grant-in-aid to voluntary organizations effective from 1st April, 2008. Alongwith rejoinder of petitioner has filed order passed in writ petition No. 211 of 2016.

14. The claims for release of grant for both the years are precluded being time barred. Petitioner's case in this respect is otherwise stating proposals have been submitted well before due date. This aspects has not been come forth clearly and would require opportunity to parties to place their cases properly.

15. Impugned communication dated 23-05-2017 is short of conveying its underlying purport nor the documents referred to therein have been produced before this court. It does not specifically refer to that proposals for the year 2013-14 and 2014-15 would covered under the same and stand decided. Communication is also short of reflecting application of mind.

16. The situation emerges that it would be difficult to say that any decision in respect of release of grants for the years 2013-14 and 2014-15 has been taken with objective application of mind to the proposals submitted by

petitioners.

17. In the circumstance, we would have to issue similar directions as were issued by this court under its order dated 19-10-2016 in writ petition No. 211 of 2016. We therefore, deem it appropriate to direct concerned authorities respondents No. 1 and 2 to take appropriate decision with reference to the claims made by the petitioner, in accordance with facts and law. The respondents shall take appropriate decision in accordance with the policy of the Central Government with regard to release of grants-in-aid for the years 2013-14 and 2014-15 to the petitioner, as early as possible, preferably within a period of six months, from the date of receipt of writ of this order.

[S.M.GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]