

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.264 OF 2016**

Shankar Shikshan Prasarak Mandal,
Bijur, Tq.: Naigaon, Dist.: Nanded
Through its Secretary ..PETITIONER

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Social Justice & Special Assistance
Department, Mantralaya,
Mumbai-32.
2. The Commissioner for Welfare of
Disabled, Maharashtra State and
Competent Authority
Church Road, Pune-1.
3. The District Social Welfare Officer,
Zilla Parishad, Nanded.
4. The Hon'ble Minister for
Social Justice and Special Assistance,
Mantralaya, Mumbai-400 032.
5. Shishu Vidya Vikas Samiti,
Plot No.491, Nehru Nagar Chowk,
Nagpur, through its Secretary,
Ananta Pkshabhan Fulzele,
Age: 43 years, Occu: Service,
r/o: Nehru Chowk, Nagpur. ..RESPONDENTS

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Mr. P. G. Rodge, Advocates for the Petitioner.
Mr. P. S. Patil, A.G.P. for Respondent Nos.1 and 2.
Mr. R. K. Ingole, Advocate for Respondent No.3.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

Closed for Orders on : 30.04.2019.

Order Pronounced on : 05.07.2019.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The petitioner challenges the order passed by the Hon'ble Minister dismissing the appeal filed by the petitioner against the order de-recognising the institution run by the petitioner. The petitioner also seeks direction against the respondents to set aside the order dated 29.06.2013 transferring the school to respondent no.5 and seeks further direction to transfer the residential school for mentally retarded, Narsi, Tq. Naigaon to the petitioner which was initially run by the petitioner. The petitioner also challenges the order passed by respondent no.2 negating the claim of the petitioner for non-salary grants for the period 1999 to 2007.

2. The petitioner was granted permission to run residential school for mentally retarded with a sanctioned strength of 25 students on no grant basis on 09.10.1995. On or about 31.03.1997, the petitioner is granted permission to run the school on grant-in-aid basis. The intake capacity of the petitioner was increased to 30 students. The petitioner was given registration certificate from 12.11.2007, the same was up to 31.03.2011. On or about 30.10.2012, respondent no.2 on the basis of the adverse report of respondent no.3 cancelled the registration of petitioner school with effect from 2011. The petitioner initially preferred an appeal challenging the cancellation of registration. In

the interregnum on or about 29.06.2013, the school run by the petitioner was transferred to the present respondent no.5.

3. According to Shri. Rodge, learned counsel for the petitioner, the permission was granted to run the mentally retarded school by the Government under its order dated 09.10.1995 on non-grant basis. Subsequently on 31.03.1997, the State Government granted permission on grant-in-aid basis since the year 1996-1997. Under order dated 26.05.1997, the petitioner was granted permission to admit 30 students. The learned counsel submits that, at the relevant time, there was no provision to obtain a separate registration certificate. Subsequently, the registration certificate was granted to the petitioner on 08.11.2007. The same was for period upto 31.03.2008. It was renewed upto 31.03.2011 under letter dated 04.05.2010. The learned Counsel submits that, without notice to the petitioner, the recognition of the petitioner-Institution was cancelled. The petitioner had filed an appeal. Without deciding the appeal the respondent authority transferred the petitioner's school to respondent No. 4 school at Nagpur i.e. at the distance of more than 400 Kms. According to the learned counsel, the petitioner had filed a Writ Petition bearing No. 7374 of 2013. In the said petition, a wrong statement was made that the appeal filed by the petitioner against cancellation of registration certificate is

dismissed. In view of that , the court disposed of the writ petition. Thereafter, it was found that the appeal filed by the petitioner was still pending. When the present Writ Petition No. 264 of 2016 with Civil Application No. 14273 of 2017 was taken up for hearing, it was stated that the appeal filed by the petitioner is still pending. This Court directed the petitioner to appear before respondent No. 1 on 18.12.2017 but, before that date, the respondent authority dismissed the appeal of the petitioner under order dated 28.11.2017 behind the back of the petitioner. According to the learned counsel, the said order is illegal. He relies on the following judgment:

1. Sant Dnyaneshwar Shikshan Sanstha and Anr Versus State of Maharashtra and Ors in Civil Appeal No. 9384 of 2014 with connected appeals decided on 05.03.2019

2. Madhukar Sikshan Prasarak Mandal and Ors. Versus The State of Maharashtra and Others in Writ Petition No. 8685 of 2014 decided on 29.02.2016.

3. Jeevanjyoti Krida and Shikshan Prasarak Mandal Versus State of Maharashtra and Others in Writ Petition No.949 of 2012 decided on 10/11.09.2012.

4. Kranti Bahu-Uddeshiya Mahila Mandal Versus The State of Maharashtra & Others in Writ Petition No.6149 of 2014 decided on 21.07.2014.

4. The learned counsel submits that, the respondents did not disburse the salary and non-salary grants to the petitioner since 1999. From 1999 upto the date of cancellation of registration, the petitioner is entitled for salary and non-

salary grants. The letters were issued by the competent authorities determining an amount of Rs.13,90,099/- towards the non-salary grants from the year 1999-2000 to 2006-2007. According to the learned counsel, the bill was prepared to that effect. The learned counsel further submits that, even the amount of salary grants is calculated by the District Social Welfare Officer, Zilla Parishad, Nanded and recommended to the Commissioner Handicap, Welfare, Maharashtra State, on 30.10.2017 recommending an amount of Rs. 78,74,270/- towards the salary grants and Rs. 19,11,399/- towards the non-salary grants. The said amount is not paid.

5. The learned A.G.P. submits that this Court had directed the Commissioner to peruse the record and decide the claim of the petitioner with regard to the salary and non-salary grants. After considering the averments of the petitioner in his representation it is concluded by the Commissioner that the claim of the petitioner is not proved beyond the reasonable doubt. More over, the petitioner did not turn to the Commissionerate for hearing scheduled on 05.03.2018 and 11.06.2018. Therefore, respondent no.2 was constrained to decide the issue in absence of the petitioner and District Social Welfare Officer and without recommendation. It is further submitted that respondent no.1 taking into account the inconvenience caused to the mentally retarded

students and need of the school in the said locality has taken decision to grant permission to transfer residential school for mentally retarded at Narsi, Tq. Naigaon to Shishu Vidya Vikas Samiti, Nagapur. The petitioner did not challenge the order transferring school dated 29.06.2013 earlier and raised challenge to the same for the first time in the year 2018. The learned A.G.P. relies on the order passed by this Court in Writ Petition No.315/2014 dated 22.01.2019 to submit that such transfer of the school is permissible.

6. Mr. Ingole, learned counsel for respondent no.3 submits that the petitioner-Institution is paid grants from April 2007 till the date of de-recognition that is 20.03.2011. The petitioner was not possessing requisite registration from 1999-2007. In the year 2007, the petitioner was issued the registration and the petitioner has been paid grants for the period the registration of the petitioner was in force. The school of the petitioner was closed for the period the petitioner is claiming the salary and non-salary grants. It is further submitted that during the validity of certificate of registration it is mandatory to run the school with criterion laid down in Special School Code, 1997. The reports are on record of respondent no.3 and it reveals that the petitioner has made only farce to run the school and the same was in closed condition on each and every inspection. The petitioner has not placed any

documents to show that the petitioner has trained staff. The staff also has to get registration from RCI under the provision of Rehabilitation Council of India Act, 1992, failing which the staff cannot go ahead with teaching the mentally retarded students. No such documents are placed on record by the petitioner. The list of the students studying during 1999-2000 is also not placed on record. With regard to the non-salary grants also the petitioner is merely seeking building rent on the basis of only averments without cogent and relevant proof of documents. The respondent no.3 has already paid the salary grant to the petitioner employee for which registration of license was valid. As per Rule 4(3) of the Code, 1997, the petitioner was not having certificate of registration from the 1999 till 2007 and the same is accorded on 08.11.2007 and it was valid up to 31.03.2011. Therefore, the petitioner was not entitled for grants for period 1999 till 2007. The claim of the petitioner for grants is false and bogus. The petitioner is not entitled for the grants as per the provisions of Rule 95(2) and (4) of Special School Code, 1997, as there was no certificate of registration to the school from 1999 to 2007. The school has been legitimately transferred to respondent no.5 after following the proper norms and getting reports.

7. Mr. Thombre, learned counsel for respondent no.5 supports the order of transfer of

school and submits that the petitioner school was closed. The order cancelling registration is confirmed by the Hon'ble Minister. The order of the transfer of school in favour of respondent no.5 is challenged after five years. The respondent no.5 is running the school properly. The authority has also granted approval to the staff, so also the salary and non-salary grants to the staff. The transfer is as per the policy of the Government and considering the provisions of Act, 1995 and as per the provisions of the Apang Shala Sanhita, 1997, the order is legal and proper.

8. Mr. Rodge, learned counsel for the petitioner further submits that the petitioner has placed on record the inspection reports dated 31.12.2002, 07.01.2003, 27.05.2004 alongwith affidavit in rejoinder to suggest that the petitioner-School was functioning.

9. We have considered the submissions canvassed by learned counsel for the respective parties.

10. The petitioner's mentally retarded school was de-recognised. The petitioner had challenged the said order in Appeal. The petitioner has filed writ petition praying for disposal of the Appeal before the Hon'ble Minister. Some wrong statements came to be made by the learned A.G.P. on instructions of the officer concerned in writ petition no.7374 of 2013 filed by the petitioner

with regard to the appeal filed by the petitioner. It was noticed thereafter that the appeal filed by the petitioner was still pending. When the present writ petition was taken up for hearing it was stated that the appeal filed by the petitioner is still pending. This Court directed the petitioner to appear before the respondent no.1 on 18.12.2017, but before that date, the respondent dismissed the appeal of the petitioner under order dated 28.11.2017. In fact the petitioner was not expected to remain present on 28.11.2017, when this Court had specifically given directions to the petitioner to appear before respondent no.1 on 18.12.2017. The order dismissing the appeal filed by the petitioner against the order of de-recognition is without hearing the petitioner and behind the back of the petitioner. The same is in violation of principles of natural justice. Such an order cannot be sustained. The appeal is substantive right given by the Statute. The appeal could not have been decided on merits in absence of the petitioner. In the result, we set aside the impugned order dated 28.11.2017 passed by respondent dismissing the appeal of the petitioner. The appeal stands restored to its original position. The respondent shall decide the appeal after hearing the petitioner.

11. The school that was run by the petitioner is transferred at the distance of 400 kilometers to Nagpur. The order of transfer of school is dated

29.06.2013. Of course, the petitioner it appears has challenged the order by amending the present writ petition in the year 2018. The Apex Court in the case of Civil Appeal 9384 of 2014 dated 05.03.2019 had observed that the State authorities are directed to invite proposals strictly in terms of the direction issued by the High Court in the case Jeevanjyoti (supra) from interested parties to set up a new school or conduct the very same school which was closed down and preference would be given to those who wish to restart or set up a new Ashram School at a location in conformity with Resolution dated 01.08.2007. The same does not seem to have been adhered to in the present case. The respondent no.5 is running the school transfer to it of the petitioner-Institution at a distance of 400 kilometer since 2013-2014. At this stage, we would not like to abruptly stop the said school, as the new academic year has commenced and as the school is functioning since five years at the transferred place. However, if the appeal filed by the petitioner is allowed, then certainly the said school will have to be restored back to the petitioner-Institution.

12. This Court had directed respondent no.2 to consider the claim of the petitioner for salary and non-salary grants after hearing the petitioner and considering the reports of District Social Welfare Officer. However, as per the affidavit filed by respondent no.2 neither the petitioner nor the

Social Welfare Officer remained present before him in spite of giving notices and the Commissioner had to decide the same without the record. The case of the petitioner is that the petitioner had submitted an application for renewal of registration and the same was pending with respondent. The respondent had not rejected nor granted the said application. The question would be whether without proper registration, the petitioner could have run the school. Considering the fact that the order is passed by the Commissioner without assistance of the District Social Welfare Officer and petitioner, we are inclined to grant one more opportunity to the petitioner to put forth his claim with all the relevant document about the functioning of the school, the number of students admitted, the qualified staff working and compliances of all conditions as required under the Special School Code, 1997. In the result, we pass the following order:

ORDER

1. The order dated 28.11.2017 passed by respondent dismissing the appeal filed by the petitioner against the order of the de-recognition of its school is quashed and set aside and the matter is remitted back to the respondent-authority to decide the said appeal afresh expeditiously.
2. In case, the appeal of the petitioner is allowed, then the school run by the

petitioner-Institution and transferred to respondent no.5 shall be restored to the petitioner. In case, the appeal of the petitioner is dismissed, then the order of transfer of the school shall not be disturbed. If the said school run by respondent no.5 is not complying with the norms, the respondents are free to take further action.

3. With regard to the salary and non-salary grants for the period 1999-2007, the petitioner may approach respondent no.2. Place all records before it. The Commissioner shall also call for the say from the District Social Welfare Officer and after considering all the aspects of the matter such as functioning of the school from 1999-2007, the presence of approved staff or otherwise, necessity of registration for running the school and all other relevant aspects, as required under the Special School Code, 1997 and thereafter decide the same expeditiously.

13. With these observations and directions, the writ petition stands disposed of.

(A. M. DHAVALÉ)
JUDGE

(S. V. GANGAPURWALA)
JUDGE