

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4876 OF 2020

Shriram Gramvikas Pratishtan ... **Petitioner**
At Post Karjat, Tq. Karjat,
District Ahmednagar,
Through its President Swapnil s/o
Popatlal Desai, Age 46 years,
Occu: Social Work and Business, R/o
Bajartal, Karjat, District Ahmednagar.

VERSUS

1. The State of Maharashtra,
Through the Secretary,
School Education Department,
Mantralaya, Mumbai 400 032
2. The Deputy Director of Education, ... Respondents
Pune Region, Pune.
3. The Education Officer (Secondary)
Zilla Parishad, Ahmednagar.
4. The President, Ambika Trust,
Ambikanagar, Post Jagdamba Factory,
Tq. Karjat, Dist. Ahmednagar.
5. The President,
Shri Amba Pratishtan
Ambikanagar, Post Jagdamba Factory,
Tq. Karjat, Dist. Ahmednagar.

Mr V. P. Latange, Advocate for the petitioner
Mr D. R. Kale, Government Pleader for Respondent Nos. 1 to 3
Mr S. P. Salgar, Advocate for respondent No.4.
Mr N. V. Gaware, Advocate for Respondent No.5

**CORAM : S. V. GANGAPURWALA &
SHRIKANT D KULKARNI, JJ.**

RESERVED ON : 16th October, 2020

PRONOUNCED ON 28th October, 2020

JUDGMENT (Per Shrikant D. Kulkanri, J.)

1. Rule. Rule made returnable forthwith. With the consent of the parties, the petition is taken up for final disposal at the admission stage.

2. The petitioner- Shriram Gramvikas Pratishtan is a trust, duly registered under the Maharashtra Public Trust Act, 1950 and Societies Registration Act, 1860. The petitioner trust is running schools at Bitkewadi Tq. Karjat District Ahmednagar and at Kada, Tq. Ashti, so also Junior College at Karjat. Respondent No.5/Amba Pratishtan is also a public trust and running English medium school and I.T.I. at Ambikanagar, Tq. Karjat.

3. The lis between the parties is taking over of management of the school namely Late Vasantdada Patil Secondary and Higher Secondary School at Ambikanagar, run by respondent No.4/ Shri Ambika trust, Ambikanagar, Tq. Karjat.

4. Heard Mr V. P. Latange, learned Advocate for the petitioner, Mr. D. R. Kale, I/c Government Pleader for Respondent Nos. 1 to 3/State, Mr S. P. Salgar, Advocate for respondent No.4 and Mr N. V. Gaware, learned Advocate for Respondent No.5. Perused various communications with annexures made by

petitioner and respondent no.5 to the authorities regarding transfer of the school.

5. Mr. Latange, learned Advocate for the petitioner vehemently submitted that the proposal submitted by the petitioner trust was complete in all respect. Respondent No.3 has forwarded the proposal regarding transfer of school in favour of the petitioner with positive recommendation to respondent no.2. The petitioner has deposited Rs.10,000/- regarding transfer of school way of chalan on 27.08.2019. Now respondent No.5 has come in the way of transfer of school in its favour. The proposal of respondent no.5 was not considered by the authorities since there were deficiencies. On the other hand, the proposal submitted by the petitioner was complete in all respect and that is why, on the basis of noting of the concerned authority, the Hon'ble Minister was pleased to pass order to grant permission for transfer of the school in favour of the petitioner. However, respondent No.2, is unnecessarily causing delay by calling upon respondent No. 5 in view of its earlier proposal. There is no merit in the proposal of respondent No.5.

6. Mr. Kale, the learned I/c Government Pleader submitted that respondent No.5 has moved the proposal for transfer of the school first in time. There were certain deficiencies and therefore, respondent no.5 was directed to remove deficiencies and after

removing the deficiencies, respondent no.5 has resubmitted the proposal through proper channel. The petitioner has submitted its proposal for transfer of school in question subsequently. Mr. Kale, the learned i/c Government Pleader submitted that two proposals are pending before the authority regarding transfer of the school and those are under consideration. The State has not taken any decision. The Hon'ble Minister has observed in the noting that after following legal and due procedure of law, steps be taken for transfer of school and that process is yet to complete. The authority would conduct hearing on the point of transfer of the school and would take appropriate decision.

7. Mr. N.V.Gaware, the learned Advocate for respondent Nos. 5 invited our attention to the order passed in Writ Petition No. 1197/2020 filed by the present petitioner. It is submitted that though the petitioner was knowing that the proposal for transfer of the school submitted by respondent no.5 was pending for consideration, respondent no.5 was not made party to the earlier writ petition. It was suppression of material fact.

8. Mr. Gaware, learned Advocate for respondent No.5 vehemently submitted that the proposal for transfer of school moved by respondent no.5 was first in time. It was forwarded by respondent No.3 with recommendations, to respondent No.2. No deficiencies were pointed out while submitting the proposal.

Subsequently, it was informed that there were deficiencies in the proposal. Those deficiencies were removed and the proposal has been resubmitted through proper channel. Respondent No.4 has given consent for transfer of the school in favour of respondent no.5. The proposal submitted by respondent no.5 is complete in all respect. Therefore, respondent no.5 is entitled to get the approval for transfer of the school in its favour since its proposal was moved first in time. Mr.Gaware, the learned counsel has placed reliance on the following stock of citations in support of his argument.

- (i) Jijau Shikshan Sanstha, Nagpur Vs. The State of Maharashtra, reported in 2011 (4) Mh.L.J.352.
- (ii) Rajasthan State Industrial Development and Investment Corporation and another Vs Diamond and Gem Development Corporation and others reported in AIR 2013 Supreme Court 1241
- (iii) K.D.Sharma Versus Still Authority of India Ltd., reported in (2008) 12 Supreme Court 480.

9. Mr. Salgar, learned Advocate for respondent No.5 echoed the argument advanced by Mr. Gaware, learned Advocate for respondent no.5.

10. On perusing the record, it is found that it is a second round of litigation regarding transfer of the school. The petitioner had earlier filed writ petition no. 1197/2020 in this Court and

sought direction. This court, while disposing the said writ petition, pleased to issue directions to respondent no.1 to decide the proposal for transfer of the school to the petitioner preferably within six months, on its own merits, under order dated 20.01.2020

11. Mr. Latange, learned counsel for the petitioner laid emphasis that the Hon'ble Minister has granted permission to transfer the school of Ambika Trust to the petitioner trust by considering interest of the students. Taking help of the noting, the learned counsel Mr. Latange submitted that the petitioner trust has received the permission from the Hon'ble Minister to transfer the school in its favour and the respondent No.2 must issue necessary order.

12. Mrs. Anuradha Avinash Oak, Deputy Director of Education, Pune Region , Pune has filed reply affidavit on behalf of Respondent Nos. 1 and 2. It is explained in the reply affidavit that the Hon'ble Minister has not taken any decision regarding transfer of the school in favour of the petitioner. It is observed in the said noting that after following legal and due procedure of law, steps be taken for transfer of the school management.

13. It seems that said noting was put up by the concerned department before the Hon'ble Minister regarding transfer of the

school to the petitioner. The State was oblivious of the fact of earlier proposal moved by respondent No.5/Trust. The noting of the Hon'ble Minister appears to be in ignorance of the proposal of respondent No.5. There are two proposals for transfer of a school/Late Vasantdada Patil Secondary and Higher Secondary School at Ambikanagar. One is submitted by the petitioner trust and another is submitted by respondent No.5. Both the proposals are pending with respondent No.2/Deputy Director of Education, Pune Region, Pune. It reveals from the affidavit sworn by the Deputy Director of Education, that the State is going to extend an opportunity of hearing to both the parties i.e. the petitioner and respondent no.5 regarding proposal for transfer of the school. The Authority has to take appropriate decision in compliance of the above said provisions of the Act and the Secondary Schools Code and keeping in mind the modalities/ transparency and compliance of rules of natural justice. In the above premise, we do not find any force in the argument advanced by Mr. Latange, the learned counsel for the petitioner.

14. Transfer of school management/educational institute is governed by the Maharashtra Educational Institutions (Transfer of Management) Act, 1971 (for short, 'the Act') and Secondary Schools Code.

15. Provisions of Sections 3, 4 and 5 of the Act deal with transfer of management of school, whereas clauses 12.1 to 12.5 of the Secondary Schools Code deals with change of management which reads as follows:

"12.1 When the management of a school is proposed to be changed, previous permission of the Deputy Director shall be obtained for effecting the change

12.2 The transfer of a recognized school from one management to another shall be governed by the following sub-rules:

(i) The transfer shall not be effected without the previous approval of the Deputy Director;

(ii) A previous notice of three months for the intended transfer shall be given to the Deputy Director.

12.3 The Deputy Director may, at his discretion, dispense with the condition in sub-rule (ii) above.

12.4 If the condition laid down in Rule 1.2(i) above is not complied with, the recognition of the school should be deemed to have been withdrawn automatically from the date of change of management. In very special cases, however, the Director may, at his discretion, waive the condition in Rule 1.2.(i) above.

12.5 The school may be held eligible for grant-in-aid under the new management when the transfer has been effected with the permission of the Deputy Director; or when the condition in Rule 12.2(i) above is waived by the Director, unless he directs otherwise"

16. In case of **Jijau Shikshan Sanstha, Nagpur Vs. The State of Maharashtra, reported in 2011 (4) Mh.L.J.352** the Division Bench of this Court, Bench at Nagpur has observed that Clauses 12.1 to 12.5 of the Secondary School Code nowhere provides modality, transparency and compliance of rules of natural justice. After making note of it the Division Bench has formulated the modalities to be followed in the matter of change of management henceforth until framing of rules, regulation or guidelines by the State Government in the matter of change of management. The modalities are as under:

(1) A public notice shall be published and displayed at appropriate and prominent newspapers in the concerned area at the cost of transferor or transferee society about the proposed change in the management of a grant-in-aid school and objections should be invited from all the interested persons including students, their parents, teaching and non-teaching staff, the citizens of the area and the other school, if it is going to adversely affect, may be because of transfer of one area to another.

(2) Enquiry shall be held about the reasons etc. for proposed change of management. The enquiry shall include independent report from Education Officer and Vigilance Section, to find out bona fides behind the proposal.

(3) All objections shall be heard by the Deputy Director of Education who shall then pass a reasoned order which fact shall be made known by publication/display as stated in (1) above.

(4) Actual transfer/change of management shall not be allowed to take place for a period of thirty days from the date of publication about fact of passing of order and it should be preferably from the commencement of the new academic session subject to prior permission of the Charity Commissioner under section 36 of the BPT Act.

17. The modalities laid down in case of **Jijau Shikshan Sanstha** (supra) still hold the field. Certainly respondent No.1/Secretary, School Education Department and respondent No.2/Deputy Director of Education, Pune Region, Pune would consider the proposals moved by the petitioner and respondent No.5 for transfer of management of the School in the light of modalities/guidelines referred above. We refrain ourselves from entering into the arena of merits of the matter when the proposals of the petitioner trust and respondent No.5 trust are pending before the authorities for appropriate decision.

18. In view of the above, the writ petition can be disposed of by giving directions to the authorities. Hence the following order:

O R D E R

- (i) The authorities/ respondent No.1-Secretary, School Education Department and respondent No.2-Deputy Director of Education, Pune Region, Pune shall take appropriate decision on the proposals regarding transfer of the school management, moved by the petitioner and respondent No.5 on its own merits.
- (ii) Writ petition is disposed of.
- (iii) Rule is accordingly discharged. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V.GANGAPURWALA, J.)

JPC