

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 8018 OF 2019

Soniya Magasvargiya Bahuudeshiya Mahila
Shikshan Sanstha, Solapur and Ors. ... Petitioners

V/s.

State Bank of India and Ors. ... Respondents

Mr. D.G. Dhanure with Ms. Jyoti D. Dhanure for the Petitioners
Mr. N.K. Rajpurohit, AGP for Respondent - State

***CORAM : NITIN JAMDAR &
MILIND N. JADHAV, JJ.***

DATE : 8 DECEMBER 2020

P.C. :-

Heard learned Counsel for the parties.

2. The Petitioners, six in number, have sought a direction to Respondent No.2 – Commissioner, Women & Child Development Department, Government of Maharashtra to recommend/forward the applications of the Petitioners – Institutions to the Respondent No.1 – State of Maharashtra for issuance of the Registration Certificate under

Section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2015 pursuant to a communication dated 8 March 2019 issued by the State of Maharashtra.

3. The Petitioners are registered under the provisions of Maharashtra Public Trust Act, 1950 and also Societies Registration Act, 1860. Pursuant to the Act of 2015, the State Government has introduced various Schemes for setting up Children Homes, Balak Ashrams and Bal Sadans which are to be run through Public Charitable Trust, Societies and Non-Governmental Organizations. The Petitioners are running such institutions under various names. Permissions are granted to the Petitioners to start Balak Ashrams on Grant Aid basis. The Respondent – Authorities had conducted a drive of registration of Child Care Institutions under the Act of 2015 and applications were sought for. It is the case of the Petitioners that though the Petitioners fulfilled all the criteria, no action was being taken by the Respondent – Commissioner and their applications were not being processed. With this grievance the Petition was filed.

4. The Petition has been heard from time to time. On 21 November 2019, the following order was passed :-

“1. Heard. The learned AGP for the Respondent submits that they have already filed Affidavit in Reply dated 21.09.2019. he submits that in para 12 of the said Affidavit in Reply, they have

specifically stated that Petitioner Nos.2,4 and 6 have submitted the compliance as per the requirement.

2. The learned Counsel for the Petitioner submits that other Petitioners have also complied with the requirements.

3. Hence, the learned AGP is directed to take instructions and make a statement before this court on the next date. At his request, S.O. to 27.11.2019.”

Thereafter, the Petition could not be taken up later due to the COVID-19 pandemic. On 22 October 2020 when the Petition was taken up for hearing, following order was passed :-

“1] Heard learned counsel for the parties.

2] The petition is pending since more than a year.

3] The Petitioners request for a direction to Respondent No.2 for issuance of Registration Certificate under Section 41 of the Juvenile Justice (Care & Protection of Children) Act, 2015. The reply-affidavit and the responses of the Petitioners would indicate that the issue of compliances with the conditions under the Act necessary for registration, is being debated.

4] The Respondent No.2 will call and hear the Petitioners either through Video Conferencing or Physically to ascertain whether any shortfall remains in the application of the Petitioners and whether there are any impediments in the way for issuance of registration certificate. If there are no impediments and all shortfalls have been completed by the Petitioners, then the Respondent No.2 will proceed to issue necessary registration certificate without waiting for further orders

of this Court. In case there are legal and factual impediments and shortfalls, the Petitioners would be informed in writing accordingly.

5] The Respondent No.2 will call and hear the Petitioners within a period of two weeks. Thereafter, communicate the decision to the Petitioners within a period of four weeks. It is needless to say that, case of each petition would be considered independently by the Respondent No.2- the Commissioner, Women & Child Development Department.

6] List the petition under the caption for “direction” on 24 November 2020.”

Thereafter, on 24 November 2020, further order was passed as follows :-

“By order dated 22 October 2020 we had directed the Respondent No.2 to call and hear each of the Petitioner to ascertain whether any shortfalls remain in the applications filed by the Petitioners for registration. If there were any shortfall, the Petitioners were to be informed in writing accordingly.

2. Both, the learned Counsel for the Petitioners and the learned AGP, are not able to make a specific statement as to whether any such communication regarding the shortfalls in the applications was made to each of the Petitioner. To enable them to take instructions in this regard and make a statement, stand over to 3 December 2020.”

5. Reply affidavit on behalf of Rajabhau Limbaji Bansode,

District Women and Child Development Officer, Solapur dated 2 December 2020 is filed. In the affidavit it is stated that the Respondent No.2 had issued notices to all the Petitioners in respect of their proposals. It is also stated that the Respondent No.2 brought to the notice of the Petitioners various shortfalls in the proposals and has communicated the shortfalls. It is stated in the affidavit in paragraph 3(c) that it is because of the shortcomings in the proposals, recommendation could not be made to the State Government.

6. Perusal of the reply affidavit shows that it is not the case of the Respondent No.2 that the Petitioners are not eligible *per se* at all but recommendation cannot be made as long as they do not remove the shortfalls. It is not a specific stand with particulars that the Petitioners are ineligible at the inception. Reply annexes the communication in which details of shortfalls have been given with respect to each of the Petitioners whose registration is pending.

7. As far as the Petitioner No.4 is concerned, it is the common ground at the bar that the Petitioner No.4 has been given a registration certificate and therefore, cause as far as the Petitioner No.4 is concerned, does not survive.

8. As far as the Petitioner No.1 is concerned, the affidavit filed by the Respondent No.2 states, which is also confirmed by the learned AGP, that the Petitioner No.1 has fulfilled all the shortfalls.

That being the case, there is no impediment for Respondent No.2 to make a recommendation in favour of the Petitioner No.1.

9. As far as the Petitioner Nos. 2,3,5 and 6 are concerned, the learned Counsel for the Petitioners submits that these Petitioners will remove the shortfalls. Considering the fact that the shortfalls/deficiencies in the applications have now been crystalized and specified by the Respondent No.2, if the Petitioners comply with the same, there should not be any impediment in the Respondent No.2 making a positive recommendation. Needless to mention that if these Petitioners remove the shortfalls as pointed out, then a recommendation be made by the Respondent No.2 as sought for. Needless to state, the case of each Petitioner will be considered independently by the Respondent No.2.

10. As regards the prayer clause (c) of the Petition for release of arrears of Grant-in-Aid due is concerned, no particulars are given in the Petition. The Petitioners will have to make a representation to the authorities.

11. In light of the above, the Petition is disposed of as under :-

(i) The Respondent No.2 will issue necessary communication/recommendation in respect of the

Petitioner No.1 within a period of three weeks from today.

(ii) As regards, the Petitioner Nos. 2,3,5 and 6, once the Petitioners remove the shortfalls and communicate the removal of the shortfalls as stated in the communication annexed to the affidavit alongwith the documentary evidence, the Respondent No.2 will examine the same within a period of four weeks thereafter and upon satisfaction that all shortfalls stand removed, make a recommendation in favour of these Petitioners to the Respondent No.1 within a period of two weeks thereafter.

(ii) As regards the prayer clause (c) of the Petition for release of arrears of Grant-in-Aid due is concerned, no particulars are given in the Petition. The Petitioners will have to make a representation to the authorities which would be considered as per law within a period of six weeks from the date of its institution.

12. The Writ Petition is disposed of in above terms.

MILIND N. JADHAV, J.

NITIN JAMDAR, J.