

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

WRIT PETITION NO.3051/2019

Khateshawar Magasvargiya Bahuddeshiya
Vyaysayik Shikshan Sanstha, Amravati,
through its President, office at Sambodhi
Colony, Rahatgaon Amravati,
Dist. Amravati.

..Petitioner.

..Vs..

1. State of Maharashtra,
through the Principal Secretary,
Social Justice and Special Assistance
Department, Mantralaya, Vistar
Bhavan, Mumbai 400 032.

2. The Commissioner (Persons with
Disabilities), Maharashtra State, 3
Church Road, Pune 411 001.

3. The District Social Welfare Officer,
Zillah Parishad, Amravati (Group -A),
Tal. & Dist. Amravati.

..Respondents.

Mr. P. S. Patil, Advocate for the petitioner.
Mr. N. R. Patil, A.G.P for the respondents.

**CORAM :- SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.**

DATED :- 6.9.2021.

ORAL JUDGMENT *(Per Sunil B. Shukre, J.)*

Heard. **Rule.** Rule made returnable forthwith. Heard finally
by consent.

2. The petitioner society runs three special schools for the

pecially enabled children namely (i) Daryaji Shinde Niwasi Matimand Vidyalaya, Nandgaon Khandeshwar, Tal. Nandgaon Khandeshwar, Dist. Amravati (ii) Saraswatibai Niwasi Mukbadhir Vidyalaya, Nandgaon Khandeshwar, Tal. Nandgaon Khandeshwar, Dist. Amravati and Omshanti Niwasi Matimand Vidyalaya, Sambodhi Colony, Rahatgaon Amravati, Dist. Amravati. These schools are already registered with respondent No.2. They are imparting education to the specially enabled students who are covered by the provisions of Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The petitioner society had applied for bringing its three schools run for the specially enabled children on permanent grants-in-aid basis but, the effort of the petitioner society yielded no fruitful result and the failure of the petitioner society in this regard continues till date.

3. The facts narrated above, are not disputed. The further undisputed facts are that despite the specific directions given by the coordinate Bench of this Court at Aurangabad while deciding the Writ Petition No.10180/2012 [Gramin Shramik Pratishtan, Buldhana and another V/s. The State of Maharashtra and others] on 2nd September, 2013, no policy regarding extension of grants-in-aid to schools registered under the provisions of the Act of 1995 has been framed by the State so far. The observations made by the coordinate Bench of

this Court at Aurangabad in paragraph Nos.5, 6 and 7 being relevant are reproduced below:-

“5. It is not necessary for this Court to go into details of rival contentions. Workshop is admittedly being run and children who acquire various skills therein are special children. These children are having various degrees of disabilities. In this situation, many of them may not be in a position to come from their residence to school every day. The State Government, in this situation, cannot rely upon absence of policy to deny grants. The said policy ought to have been evolved immediately after above mentioned legislation came into force. In any case, grants being released for residential services, could not have been and should not have been discontinued.

6. The note put by Finance Department and assailed by Adv. Mr. Gunale correctly points out absence of uniform policy.

7. In the present facts, said grants are discontinued in 2004. Hence, we find it in the interest of justice to direct the respondents to evolve appropriate policy at the earliest looking to the children who are taking education in such workshop all over the State. Once policy is framed, the decision, whether to extend grants or to restore grants can then be taken in accordance with that policy. We, therefore, direct respondent no.1 to evolve appropriate policy within a period of three months from today, without fail. We direct Secretary of that Department to personally supervise this work because children concerned are special children.”

Thus, it would be clear that what was to be done by the State was framing of policy for extending grants-in-aid already made available to such special schools imparting education to specially enabled children and not to some selected schools.

4. Learned A.G.P submits that the above referred directions were complied with by the State when it issued Government Resolution dated 8th April, 2015. Learned counsel for the petitioner points out that this Government Resolution approves only 123 schools for availing of the benefit of grants-in-aid of the State Government but does not allow the other schools to have the same benefit.

5. On a bare perusal of the Government Resolution dated 8th April, 2015, one cannot but agree more with the learned counsel for the petitioner than the learned A.G.P for the respondents. This Government Resolution recognizes status of 123 special schools specifically named therein as being eligible for receiving the grants-in-aid from the State Government and accordingly sanctions the grants-in-aid to these 123 schools. But, this Government Resolution does not do any more than taking decision regarding sanctioning of grants-in-aid to these 123 schools. We would have appreciated if this Government Resolution has also spoken about all the special schools, not just named therein, and not in terms of identification of their names but in terms of the prescription of the criteria for their being eligible to receive the grants-in-aid from the State Government. But, unfortunately, that is not the position revealed by the Government Resolution dated 8th April, 2015. So, what we have stated earlier has to be confirmed by us and, therefore, we find that there is no policy as

such framed by the State Government regarding sanction of grants-in-aid to different schools by prescribing the eligibility conditions and criteria for receiving the same. This is also admitted by respondent Nos.1 to 3 in their reply filed on affidavit on 13th August, 2019. In paragraph No.4 of the reply a categorical statement has been made that there is no policy to sanction grants-in-aid to the special schools run by the petitioner nor the petitioner is under consideration by the State Government. It is further stated that without any policy, the demand of the petitioner cannot be accepted. This paragraph is reproduced for convenience as below:-

“4. It is submitted that, there is no policy to sanction grants-in-aid to the Special Schools run by the petitioner nor (sic : not) the petitioner’s demand is under consideration of the State Government. Hence without policy, the demand of the petitioner cannot be considered.”

6. Now, it is clear that the directions issued by the coordinate Bench of this Court at Aurangabad by its judgment dated 2nd September, 2013 rendered in Writ Petition No.10180/ 2012 have not been complied with so far. But, the State Government has continued to grant sanctions for grants-in-aid to the special schools intermittently, selectively and as per its will. This could be seen from the decisions it has taken in respect of some of the special schools.

7. By the Government Resolution issued on 3rd July, 2019 (page

98), the State Government has sanctioned grants-in-aid to two schools, namely, (i) Lilatai Deshmukh Specially Enabled Girls School and Indutai Dhoble Workshop and Rehabilitation Centre for Specially Enabled Girls, both situated at Nagpur. Of course, in this Government Resolution, it is stated that such sanction has been granted only as a special case and thereafter a statement has been made by the State Government giving a solemn promise that in future no such grants-in-aid shall be sanctioned by the State Government. The solemn promise by which the State Government bound itself to not repeat such act of grant of largesse was implemented only in its breach when about two and half months later, the State Government issued yet another sanction for grants-in-aid to three schools by the Government Resolution issued on 17th September, 2019 (page 106). These three schools are (i) Late Umesh Haladkar Specially Enabled Boys Residential School, Katol Road, Nagpur, (ii) Shri Wasudeorao Patil Specially Enabled Boys Residential School, Tq. Achalpur, Dist. Amravati and (iii) Late Sou. Sushilabai Danchand Ghodawat Residential School for Blinds, Miraj. Dist. Sangli. This Government Resolution again had the same rhetoric that grants-in-aid are sanctioned for these three schools only as a special case. This Government Resolution also reiterated Government's solemn promise to not grant any aid to special schools in future.

8. It would be clear from the above referred acts on the part of the State Government that while it does not make any policy which would be generally applicable to all the schools for being eligible to receive grants-in-aids from the State Government, inspite of directions issued by the coordinate Bench of this Court at Aurangabad on 2nd September, 2013 in Writ Petition No.10180/2012, and it also says that without there being any such policy in existence, special schools like the one involved in this petition could not be given any grants-in-aid, it intermittently and conveniently goes on a spree to sanction similar grants-in-aid to some different special schools. Such action of the State Government speaks of arbitrariness of high degree, which makes some special schools enjoy the largesse given to them by the Government and deprives other special schools of the same, and that too on the whims of the Government, in the name of special case and on the solemn promise of not repeating the act in future, which is observed more in breach than it's keeping. This arbitrariness has been the cause of injustice to less fourtunates like the petitioner and it deserves to be removed by this Court by invoking its extraordinary jurisdiction under Article 226 of the Constitution of India. This is all the more so because respondent No.2 by its communication dated 3.6.2019 has sent a report for sanctioning of grants-in-aid to three schools run by the petitioner society.

9. In the result, the petition is **allowed**. We direct the State Government to examine the proposals of the petitioner society for sanctioning grants-in-aid to schools run by the petitioner society on the similar lines as the State Government has done while sanctioning the grants-in-aid under the Government Resolutions dated 8th April, 2015, 3rd July, 2019 and 17th September, 2019 and make them available the grants-in-aid, in accordance with law.

10. We further direct the State Government, by way of reiteration of the directions already issued by the coordinate Bench of this Court at Aurangabad on 2nd September, 2013 in Writ Petition No.10180/2012, to frame a policy for sanctioning grants-in-aid on permanent basis to the special schools run by different societies across State of Maharashtra within a period of six months from the date of the judgment. Rule accordingly.

11. Put up after six months for compliance.

JUDGE

JUDGE