

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

WRIT PETITION NO. 1906 OF 2021

PETITIONER : Gurudeo Vidya Prasarak Mandal,
Through its Secretary, Dyaneshwar
Pundlikrao Raut, Age @ 62 yrs, R/o.
Shanti Vatika, Anjangaon Surji Road,
Paratwada, Tq. Achalpur, Dist. Amravati.

...VERSUS...

RESPONDENTS :

1. The State of Maharashtra, Through its its
Minister for Tribal Development
Department, Mantralaya, Mumbai.
2. The Commissioner for Tribal
Development, State of Maharashtra
Nasik.
3. The Additional Tribal Commissioner,
Tribal Development Department,
Amravati Division, Amravati.
4. The Project Officer, Ekatmik Adiwasi
Vikas Prkalpa, Dharni, Dist. Amravati.

Mr.M.G.Bhangde, Sr.Advocate a/b Mr.S.M.Vaishnav,
counsel for the petitioner.
Mr. N. R. Patil, AGP for respondent Nos.1 to 4.

**CORAM : SUNIL B. SHUKRE &
ANIL L. PANSARE, JJ.**

DATE : 17.11.2021

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

Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. By the order passed on 22nd September, 2020, the recognition granted to the secondary and higher secondary ashram school run by the petitioner-society has been permanently cancelled by respondent No.2. This order of respondent No.2 has been confirmed by the State Government i.e. respondent No.1 by its order passed on 5th May 2021. It is the contention of learned Senior Advocate that both these orders are bad-in-law as they are passed in violation of principles of natural justice in the sense that they draw heavily from two inspection reports, but copy of any of the inspection reports has not been furnished to the petitioner to its explanation. He further submits that even there was another

inspection report submitted after surprise visit paid to the school on 12th February, 2020 by the Flying Squad of Nashik Tribal Commissionerate and that this report was completely in favour of the petitioner. He points out that this report did not mention anything adverse against the petitioner and it was also referred to by respondent No.1 in its order dated 5th May, 2021 but, it was unfortunately not considered in any manner rather, it was ignored by the State Government.

4. Learned Senior Advocate further submits that violation of rule of natural justice vitiates the proceedings and therefore, he prays for quashing of the impugned orders. He has relied upon the case of **Nagarjuna Construction Company Limited v. Government of Andhra Pradesh and others**, reported in (2008) 16 SCC 276 while seeking to distinguish the case of **Maneka Gandhi v. Union of India**, reported in (1978) 1 SCC 248 relied upon in order dated 5th May, 2021 passed by the State Government, which is impugned herein.

5. Learned AGP submits that it may be true that copies of the inspection reports, which have formed the basis for

permanent withdrawal of recognition of the ashram school, may not have been given but, the fact remains that the defects, lacunae and illegalities pointed out in the inspection reports are true and are of very serious nature and, therefore, this was a fit case wherein the only action that was possible was of withdrawal of recognition granted to the ashram school.

6. On going through the order of the State Government dated 5th May, 2021, what comes forth in a striking manner is the fact that the State Government admits that the copies of the inspection reports, which have formed the basis for passing of the adverse orders against the petitioner have not been supplied to the petitioner. But, such failure on the part of the Authorities has been sought to be justified by the State Government by drawing support from observations of the Hon'ble Supreme Court in the case of ***Maneka Gandhi v. Union of India*** (*supra*). The extract of the observations is reproduced in paragraph 10.3 of the order dated 5th May, 2021 and they are also reproduced now, for the sake of convenience, as below.

“where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt action, especially action of a preventive or remedial nature, right of prior notice and opportunity to be heard may be excluded by implication.”

7. It is clear from the above referred observations that principles of natural justice are not required to be followed only by way of an exception justified by the need for taking of prompt or immediate action, especially the prompt action of preventive or remedial nature. In the present case, it is an admitted fact that notice of the proceedings initiated for withdrawal of recognition was given to the petitioner. It means that there was a decision taken by the Authority i.e. respondent No.2 regarding necessity of issuance of notice. The moment such a decision is taken, the implication that results there from is that in the opinion of respondent No.2, prompt and immediate action, especially in the preventive or remedial nature was not required. This conclusion is further supported by the reliance placed upon the inspection report dated 26th February, 2019. This inspection report had pointed out certain deficiencies, irregularities, neglect and even

illegalities. This report was submitted in February, 2019 to respondent No.2, but respondent No.2 did not think it necessary to immediately act upon the report dated 26th February, 2019 and he took a period of almost more than one year for passing the order of withdrawal of the recognition, which was ultimately passed on 22nd September, 2020 by relying upon his report dated 26th February, 2019 and also another confidential report as mentioned in his order dated 22nd September, 2020. Respondent No.2 has mentioned about the hearing that took place on 6th March, 2020 and the instruction given by him to the Committee constituted by Tribal Research and Training Institute, Pune for making of a confidential enquiry and submission of confidential report. This report was confidentially submitted in due course and it was also relied upon by respondent No.2. Both these reports were not supplied or made available to the petitioner. That apart, as stated earlier, respondent No.2 took his own time in taking his final decision in the matter.

8. All these facts would only show that there is great substance in the argument of learned Senior Advocate when he

submitted that the case of ***Maneka Gandhi v. Union of India*** (*supra*) has no application to the facts of the present case. The reliance placed by respondent No.2 on the case of ***Maneka Gandhi v. Union of India*** (*supra*) is thus misplaced.

9. Now what remains on record is the admission of the respondents regarding their failure to supply copies of the inspection reports to the petitioner, which formed the basis of both the impugned orders. When such reports are considered and relied upon by the Authority, an opportunity to explain the stand of the party likely to be affected, must be given to such a party and that is the requirement of the principle of natural justice which forms the part of Rule of Law which concept runs through Articles 14 and 21 of the Constitution of India like a common thread.

10. In the case of ***Nagarjuna Construction v. Government of Andhra Pradesh and others*** (*supra*), the Hon'ble Apex Court has held that when the Authority acts upon certain materials which are collected behind the back of the appellant and the reports are submitted by one Authority, it would not be proper to say that non-supply of material disclosed by the report would not cause

any prejudice. This only shows that whether a prejudice or not actually, the material collected confidentially and behind the back of a party like the petitioner is required to be made available to such a party to enable it to submit its say in the matter. In this case this has not been done and, therefore, the whole order based upon these reports would have to be declared to be bad-in-law.

11. We also find that respondent Nos.1 and 2 both have ignored completely the report of the visit paid by Shri G. P. Telang, Assistant Project Officer, Pandharkawada on 12th February, 2020, perhaps because of the fact that the report was not on the lines as expected by respondent Nos.1 and 2. This report, as we can see, favours the petitioner and strengthens the case of the petitioner. But, such a report has been completely sidelined by respondent Nos.1 and 2 while passing the impugned orders. On this ground also, we find that the impugned orders are illegal.

12. In the result, we allow the petition. The impugned orders dated 22nd September, 2020 and 5th May, 2021 both are hereby quashed and set aside.

13. We direct respondent No.2 to consider the matter afresh, in accordance with law, after giving due opportunity of hearing to the petitioner and by following the principles of natural justice. We further direct respondent No.2 to furnish copies of all the inspection reports and material which he proposes to consider in the present matter to the petitioner.

14. It is directed that the fresh decision be taken within a period of three months from the date of appearance of the petitioner before respondent No.2. The petitioner shall appear before respondent No.2 on 29th November, 2021.

15. Meanwhile, the petitioner shall be entitled to run the Ashram School, which running, however, shall be subject to the decision of respondent No.2 to be taken afresh by following the directions given herein above.

16. Rule is made absolute in the above terms. No costs.

(ANIL L. PANSARE, J)

(SUNIL B. SHUKRE, J)