

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 WRIT PETITION NO.11786 OF 2022
WITH WP/6952/2022 WITH WP/6948/2022 WITH WP/7217/2022 AND
WP/6914/2022 WITH WP/6951/2022

KARUNA SHIKSHAN SANSTHA WADGAON DA. SANCHALIT THROUGH
ITS SECRETARY PRAKASH KERBA SURWASE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

...
Advocate for Petitioner : Mr. N.P. Patil Jamalpurkar
AGP for Respondents 1 to 4: Mr. S.G. Karlekar
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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 8th DECEMBER, 2022.**

PER COURT :-

1. These matters were briefly heard on 02.12.2022. We had granted time to the learned A.G.P. to take instructions in the light of the judgment delivered by this court on 08.09.2022, in writ petition No.7821 of 2021, filed by ***Mother Teresa Balakashram vs. State of Maharashtra and others*** and connected matters.

2. We have considered the submissions of the learned advocate for the petitioners and the learned A.G.P. on behalf of the respondents. Considering the record before us and in the light of the submissions of the parties, we have no doubt that our order dated 08.09.2022, delivered in ***Mother Teresa Balakashram (supra)***, would squarely apply to these cases. A similar view has been taken by this Court as well as the coordinate Bench in identical matters.

For the sake of brevity, we reproduce paragraph Nos. 10 to 12 of the judgment delivered in ***Mother Teresa Balakashram (supra)***, as under:-

“10. There cannot be any dispute about the consequences of the Act of 2015 replacing the Act of 2000 viz-a-viz registration of child care homes, in view of section 41 of the former. Section 41 of the Act of 2015 lays down the provision of registration of child care institutions. Sub-Section (1) mandates registration of such institutions but the proviso clearly prescribes that the institutions having valid registration under the Act of 2000 on the date of commencement of the Act of 2015 shall be deemed to have been registered. Precisely for this reason, while deciding writ petition no. 4831 of 2020 with connected mattress, it was observed that the petitioners - institutions were not required to be registered afresh, albeit, since the registration under the Act of 2015 can be only for a period of 5 years at a time requiring renewals thereafter from time to time, in view of Sub-Section (6) of Section 41, it was imperative for the petitioners' child care homes to renew their registration within one year as was required by Rule 22(1)(b) of the Rules of 2018 framed under the Act of 2015. It was also specifically observed that such re-registration under the Act of 2015 has been mandated because of the rigours of the registration of institutions under the Act of 2015. It was clearly noticed that the provisions of the Act of 2015 and the rules of 2018 were required to be obeyed and an opportunity to the concerned authorities would be available to look into the strict compliances of such institutions under the new provisions. The following question was formulated by this Court while deciding writ petition no. 4831 of 2020 :

“Whether the Institutions granted registration under the Juvenile Justice (Care and Protection of Children) Act, 2000 would be required to apply for registration under the Act-2015 and / or seek renewal of registration after 1

year?"

While answering this question, the following observations have been made which according to us need to be borne in mind while deciding these petitions :

"12. Sub Section 1 of Section 41 of the Act-2015 is circumscribed by the proviso appended to it.

Proviso appended to said Sub Section carves out an exception. The institutions possessing valid registration under the Act-2000 on the date of commencement of the Act-2015 shall be deemed to be registered under the Act-2015.

15. The institutions, though registered under the Act-2000, are required to comply with the provisions of the Act-2015 in all respects. All the requirements, such as, the infrastructure and all other aspects are to be complied as required under the Act-2015. Under the Act-2000 some of the institutions were registered for 5 years and renewals were granted to them from time to time and in cases of few institutions the registration did not provide for the period of registration. Under the Act-2015 once registration is granted the same is valid of 5 years as per Sub Section 6 of Section 41 and those institutions are required to apply for renewal. The petitioner institutions upon enactment of the Act-2015 and Rules- 2016 would be governed by the Act-2015 and Rules framed thereunder. The registration under the Act-2015 cannot be valid for more than 5 years unless renewed.

16. Proviso to Sub Section 1 of Section 110 of the Act-2015 provides that the Central Government may frame Model Rules in respect of or any of the matters with respect

to which the State Government is required to make Rules and where any such Model Rules have been framed in respect of any such matter they shall apply to the State mutatis mutandis unless the rules in respect of that matter are made by the State Government. The Model Rules-2016 framed by the Central Government came into force with effect from 21.09.2016. They were published in the Gazette on 21.09.2016.

21. Reading the proviso to Sub Section 1 of Section 41 of the Act-2015 and Sub Rule 1(b) of the Rule 22 of the Rules-2018 harmoniously the irresistible conclusion can be drawn that the institutions housing children in need of care and protection or children in conflict with law registered under the Act-2000 will be deemed to be registered under the Act-2015 and these institutions shall get renewal of their registration after completion of 1 year as per the provisions of the Act and Rules. The leverage has been given of 1 year for these institutions to get the registration renewed. Once the registration is granted under the Act-2015 that registration would be valid for 5 years and after 5 years the institution will have to seek renewal. Reference can be had to Sub Section 6 of Section 41 of the Act-2015.

22. To apply for renewal of registration after 1 year is also necessary because these institutions deemed to be registered did not undergo rigors of registration under the Act-2015 so as to give an opportunity to the authority to verify compliance of the requirement of the Act-2015 and the rules.”

In view of such clear observations, it was imperative for the respondent no. 2 to scrutinize petitioners' proposals as per the directions of this Court objectively. Though it is expected that the respondent no. 2 would take decisions strictly in compliance of

the provisions of the Act of 2015 and the rules of 2018, it was imperative for him to have followed the principles of natural justice in pointing out the deficiencies to the petitioners and calling upon them to make compliances, may be within the stipulated time. It is not that he was legally obliged to treat the petitioners' proposals as fresh proposals under section 41(1) of the Act of 2015 but it clearly appears that he has treated these proposals in that fashion. He seems to have taken a bold decision of out-rightly rejecting the proposals of as many as 57 institutions in one stroke by the same communication which are under challenge in these writ petitions. The impugned communication only vaguely asserted that it was found that the proposals were not compliant with the requirements of law particularly the rules 22 and 23. It merely vaguely mentioned that the proposals were not complete in all respect and the documents were not annexed. The impugned communication is bereft of any concrete ground or reason for communication. It has not even been made clear in the affidavit in reply as to if a specific order in each of the petitioners' proposals was passed by the respondent no. 2.

11. True it is that in affidavit in reply, a subsequent communication is annexed pointing out the deficiencies to be met by the petitioners. We are afraid, it is a sheer afterthought. If the respondent no. 2 was of the opinion that the proposals of the petitioners' were deficient in some specific respect, he should have firstly notified the objections to the petitioners and called upon them to comply with it before taking any drastic decision of straightway rejecting the proposals. It is like putting the cart before the horse. He has taken the decision first and then seems to have taken steps to notify the petitioners regarding the specific objection, whereas the proper course should have been in the reverse order.

12. Be that as it may, the impugned communications clearly demonstrate utter lack of any objectivity in decision making process and even has been taken without following the principles of natural

justice. We, therefore, deem it appropriate to quash and set aside the impugned communications and request the respondent no. 2 to take decisions afresh in the light of the observations made herein-above."

3. It is thus apparent that this court concluded that the authorities cannot treat the proposals of the petitioners as fresh proposals. They were expected to seek renewal within one year in view of the introduction of the Juvenile Justice (Care and Protection of Children) Act, 2015, by which the earlier Act of 2000, was repealed and the Model Rules of 2016 were framed by the Central Government. After such renewal, the said institutions are legally obliged to seek renewal after completion of five years since the Act mandates the stringent conditions to be complied with and also introduces strict rigors of registration of such institutions.

4. It is undisputed that all these petitioners before us have already been registered under the earlier Act, which has been repealed by the 2015 Act and they would be legally obliged to seek their registration within one year. The said issue has been dealt with in several matters by this Court.

5. In view of the above and considering the law laid down in ***Mother Teresa Balakashram (supra)***, which has been followed consistently by this Court in various matters, that these petitions are partly allowed.

6. The impugned communications are quashed and set aside. The applications/proposals of these petitioners, seeking renewal under the 2015 Act, are restored to the file of respondent No.2 and we direct the said authority to consider these proposals afresh in the light of the observations set out in ***Mother Teresa Balakashram (supra)***.

7. In the event of there being any deficiencies in the proposals, respondent No.2 shall convey the deficiencies to the petitioners, on or before 15.01.2023, through E-mail on their E-mail IDs, which have been registered in the record of respondent No.2. Within two weeks therefrom i.e. until 31.01.2023, the petitioners would remove the deficiencies and submit their proposals, complete in all respects.

8. In the event any petitioner has not tendered E-mail address or has changed the E-mail address, we expect, such petitioner to immediately convey the E-mail address to respondent No.2, on or before 15.12.2022.

9. Needless to state, after the deficiencies are removed, respondent No.2 shall proceed to deal with the applications tendered by the petitioners as meant for renewal of their licences under the 2015 Act. Let such decision be communicated to the petitioners, as expeditiously as possible and in any case, on or before 15.03.2023.

10. Needless to state that the protection granted by this Court to the petitioners, vide order dated 21.09.2021, in writ petition Nos. 10397 of 2021, 10410 of 2021 and 10405 of 2021, would continue, until the decision of respondent No.2.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

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