

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12365 OF 2019

- 1 Karmaveer Pratishthan,
Jalna, Tq. & Dist. Jalna,
Through it's Secretary
Dr. Lahurao Anandrao Patil,
Age 55 yrs., Occ. Service,
R/o Ramnagar, Jalna,
Tq. & Dist. Jalna.
- 2 Jalna College of Social Work, Jalna
Through it's Principal
Dr. Rajkumar Haribhau Mhaske,
Age 45 yrs., Occ. Service,
R/o Ramnagar, Tq. & Dist. Jalna.

... **Petitioners**

... **Versus** ...

- 1 The State of Maharashtra,
Through it's Secretary,
Social Justice and Special Assistance Department,
Mantralaya, Mumbai – 32.
- 2 The Hon'ble Minister for Social Justice and
Special Assistance Department,
Government of Maharashtra,
Mantralaya, Mumbai – 32.
- 3 The Commissioner of Social Welfare,
Maharashtra State, Pune.
- 4 The Special District Welfare Officer,
Jalna, Tq. & Dist. Jalna.
- 5 Dr. Babasaheb Ambedkar Marathwada University,
Aurangabad, Through it's Registrar.

- 6 Navchaitanya Shikshan Sanstha,
Warzadi, Tq. Patoda, Dist. Beed
Through it's President
Sanjay Nilkanthrao Lakhe Patil,
Age 53 yrs., Occ. Agri.,
R/o Ramnagar, Jalna,
Tq. & Dist. Jalna.
- 7 Kushindra Patilbuva Kedar,
Age 52 yrs., Occ. Agri.,
R/o Wadzari, Tq. Patoda,
Dist. Beed.

... **Respondents**

...

Mr. V.J. Dixit, Senior Counsel i/b Mr. V.D. Gunale, Advocate for petitioners

Mr. A.R. Kale, AGP for respondent Nos.1, 2 and 4

Mr. Milind Patil, Advocate for respondent No.6

Mr. P.A. Bhosle, Advocate for respondent No.7

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**CORAM : SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

RESERVED ON : 12th OCTOBER, 2022

PRONOUNCED ON : 20th DECEMBER, 2022

ORDER : [PER : SMT. VIBHA KANKANWADI, J.]

1 The petitioners, by invoking the constitutional powers of this Court under Article 226 of the Constitution of India have prayed thus –

B) By issuing writ of certiorari or any other appropriate writ, order or directions, the impugned order dated 18.09.2019 passed by respondent No.2, thereby cancelling the transfer of petitioner No.2 college to the petitioner No.1 institution vide Government Resolution dated 07.04.2006 and directing to hand over the said petitioner No.2 college to respondent No.6 institution be quashed and/or set aside.

C) Pending hearing and final disposal of this writ petition, the effect, execution and operation of the impugned order dated 18.09.2019 passed by respondent No.2, thereby cancelling the transfer of petitioner No.2 college to the petitioner No.1 institution vide Government Resolution dated 07.04.2006 and directing to hand over the said petitioner No.2 college to respondent No.6 institution be stayed.

2 The case has its checkered history which has been unearth by learned Senior Counsel Mr. V.J. Dixit instructed by learned Advocate Mr. V.D. Gunale. We could get the said history also from the earlier round of litigations. The said history need not be reproduced now, but summary thereof has to be mentioned. The Government had passed Resolution on 07.04.2006 thereby granting permission to transfer Samajkarya Mahavidyalaya run by Navchaitanya Shikshan Sanstha, Warzadi to Karmaveer Pratishthan, Jalna, however, respondent No.7 had made representation/complaint in respect of the said transfer. That representation was not considered and, therefore, respondent No.7 and others had filed Writ

Petition No.7122 of 2019. This Court accepted the statement by learned AGP that they would consider the petition as a representation and would pass appropriate order and then this Court disposed of that petition on 05.12.2009. Thereafter it appears that the university had constituted a fact finding committee consisting of three members under the Chairmanship of Dr. D.V. Dhaygude. The report was submitted by the committee on 10.02.2012. It was opined by the committee that there does not appear to be any substance in the representation/complaint and as regards the alleged fraud is concerned/preparation of fabricated documents it was opined that it should be agitated before the appropriate Court or authority. Thereafter, the matter was placed before Hon'ble Minister (Social Justice) and then order came to be passed on 28.08.2014/09.09.2014 cancelling the permission of transfer of the said college to the petitioner No.1 under the said Government Resolution.

3 The said order dated 28.08.2014/09.09.2014 passed by the Hon'ble Minister was the subject-matter of Writ Petition No.9055 of 2014 and after hearing the parties this Court had relegated the matter back to the Government/Hon'ble Minister/competent authority by quashing the said order. The said authority was directed to hear all the parties concerned and pass a reasoned order afresh.

4 Now, it appears that Hon'ble Minister has passed the order on 18.09.2019, thereby cancelling the permission of transfer of the college to petitioner No.1, once again.

5 Learned Senior Counsel has once again submitted that though this Court had specifically stated that the parties should be heard, still the Hon'ble Minister has not given the hearing. It has been wrongly stated that after the orders were passed by this Court hearing was given and no documents were submitted by Karmaveer Pratishthan, Jalna. Rather the communication/letter dated 10.10.2018 on behalf of Karmaveer Pratishthan and Jalna Samajkarya Mahavidyalaya would show that those petitioners were remaining present before the Hon'ble Minister on that day. Thereafter on 06.08.2019 application was given by President, Navchaitanya Shikshan Sanstha that he has been stuck in Mumbai due to the heavy rains and cancellation of railway he could not remain present. He also stated that he should be made aware as to which documents are required which he could produce. In spite of these communications, no hearing was given and abruptly the order was passed. In fact, though respondent No.7 and others were not even concerned with the institution; yet they were allowed to make representation and without there being any ground shown by them, the Hon'ble Minister has rejected the university committee report dated

13.02.2012 by saying that it is not clarificatory. Once the Government Resolution was passed, it pre-supposes that all the procedures have been adopted and under such circumstance, the Hon'ble Minister could not have recalled the said order without there being strong grounds.

6 Learned AGP has relied on the affidavit-in-reply filed by Amit Murlidhar Ghawle, Assistant Commissioner, Social Welfare, Jalna on behalf of respondent Nos.1 to 4, wherein almost all those facts have been reiterated. It is then stated that the first hearing had taken place on 06.08.2019, 22.08.2019, 29.08.2019 and then it was postponed on 04.09.2019. Those persons who were present had signed on the attendance sheet and prior to that notice was issued in respect of next date. As no additional documents were produced, the order has been pronounced and there is no illegality in the same.

7 On behalf of respondent No.7 learned Advocate Mr. P.A. Bhosle has relied on the decision in **Vishnu Rajaram Thakar vs. State of Maharashtra in Writ Petition No.647 of 2022** decided on 09.03.2022 by this Court (Nagpur Bench), wherein it was observed that *the power of reconsideration cannot be exercised by the Scrutiny Committee, as the Scrutiny Committee has no power of review of its own order*. However, in **Devendra Gurunath Khedgikar**

vs. The Scheduled Tribe Certificate Scrutiny Committee, Pune and another,
2009 (2) ALL MR 869 it was held that *“if there is any playing of fraud or suppression of material facts or misrepresentation of facts, the Scrutiny Committee can reconsider the order of validity passed by it earlier and upon consideration of merits of the matter, it confined to aspects of fraud, suppression or misrepresentation of facts, it can recall it's order”*. Therefore, similarly, here also when the original Government Resolution was obtained by fraud, then, the Hon'ble Minister had the power to recall the order. Learned Advocate for respondent No.7 has stated that in the representation made by him before the Government it was demonstrated as to how fraud has been played.

8 At the outset, it is to be noted that this Court while passing detailed order on 19.09.2018 in Writ Petition No.9055 of 2014 and thereby relegating the matter to the Government/Hon'ble Minister/competent authority directed that the concerned authority should hear all the parties and peruse the record. If we consider the affidavit filed on behalf of respondent Nos.1 to 4 we could get notices issued time and again regarding the next dates. Taking into consideration those facts it appears that the last date of hearing that was informed was 22.08.2019. The Desk Officer had given letter to Commissioner, Social Welfare, Pune and copy of which was

given to President/Secretary, Navchaitanya Karmaveer Pratishthan, Jalna that they should remain present. Here, it is to be noted that the petitioner in Writ Petition No.9055 of 2014 was Karmaveer Pratishthan, Jalna. Here, also the petitioner No.1 is the same institution and second is Jalna College of Social Work, Jalna. Respondent No.6 is Navchaitanya Shikshan Sanstha, Warzadi. No such document has been produced on record to show that notice regarding the said dated 22.08.2019 was given to Karmaveer Prathishthan, Jalna. It appears that some mistake has been committed when it is said as “Navchaitanya Karmaveer Pratishthan, Jalna”. At the cost of repetition, it can be said that it is “Navchaitanya Shikshan Santha, Warzadi” and the another institution is “Karmaveer Pratishthan, Jalna”. No doubt, it appears that Principal Dr. Rajkumar Haribhau Mhaske was present and had represented Navchaitanya Shikshan Sanstha on 22.08.2019. However, when the President of Karmaveer Pratishthan, Jalna was also directed to be heard and there is no such document that he was served with the notice, we cannot say that there is compliance of the order passed by this Court in Writ Petition No.9055 of 2014 dated 19.09.2018. Vital right of being heard i.e. the principles of natural justice have been denied and further it can be seen from the earlier communication that the President, Karmaveer Pratishthan had expressed his inability to remain present on 06.08.2019 due to heavy rains and then taking the hearing on 22.08.2019 and deciding the matter on

18.09.2019 has resulted in denial of hearing to the petitioner No.1. There is no record produced by deponent Amit Ghawle for respondent Nos.1 to 4 that any notice for the hearing of 29.08.2019 and 04.09.2019 was given to the petitioners. One more aspect that has to be mentioned is that the impugned order lacks in appreciation of the University Committee's report. Only six line reasons have been mentioned. Therefore, the impugned order sans reasons and cannot be allowed to sustain.

9 When no proper opportunity has been given to put forth the say to the present petitioners, rather the principles of natural justice have been denied to them, we are inclined to relegate the parties to the Government for consideration once again the objections/representations by the parties concerned. We hope and trust that now proper opportunity would be given to both the parties by the Government/Hon'ble Minister/competent authority.

10 From the above discussion the impugned order dated 18.09.2019 is hereby quashed and set aside.

11 The parties shall appear before the Government/Hon'ble Minister/competent authority on 02.01.2023.

12 All the parties be given hearing/fair chance to put forth their

representation/stand and then a reasoned order be passed.

13 Already there is much delay in the matter and, therefore, we expect that the authority would decide the matter expeditiously, within a period of four months, from the date of appearance of all the parties.

14 We are making it clear that since the first date of appearance has been given by us for the parties to appear before the concerned authority, it is not necessary that the notice be issued to all the parties.

15 Writ Petition stands disposed of.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)

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