

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

WRIT PETITION NO. 3412/2021

Parivartan Shikshan Sanstha, Basela Post Gose (Bk.),
Tah. Paoni, District – Bhandara, through its
Secretary Sanjay Ghodke, Aged 52 years, R/o Basela,
Post Gose (Bk.), Tah. Paoni, Distt. Bhandara.

PETITIONER

-VERSUS-

1. The State of Maharashtra,
Through its Chief Secretary, V.J.N.T., O.B.C.
and Spl. Backward Class Department,
Mantralaya, Mumbai - 32.
2. The Hon'ble Minister, V.J.N.T., O.B.C. and
Special Backward Class, Maharashtra State,
Mantralaya, Mumbai - 32.
3. The Director, V.J.N.T., O.B.C. and Social
Welfare of Special Backward Class
Directorate, 3 Church Road, Maharashtra
State, Pune 01.
4. The Deputy Commissioner,
Social Welfare, Nagpur Division, Nagpur.
5. Sayali Bahu-uddeshiya Shikshan Sanstha,
Rawanwadi, New Shukrawari, Nagpur,
Through its Secretary.

RESPONDENTS

Shri R.N. Ghuge, counsel for the petitioner.
Ms S.S. Jachak, Assistant Government Pleader for the respondent nos.1 to 4.
Shri R.L. Khapre, Senior Advocate with Shri A.S. Dhore, counsel for the
respondent no.5.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE ON WHICH ARGUMENTS WERE HEARD : 23RD SEPTEMBER, 2022.
DATE ON WHICH JUDGMENT IS PRONOUNCED : 10TH NOVEMBER, 2022.
JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
counsel for the parties.

2. The challenge raised in this writ petition is to the Government Resolution dated 05.03.2019 issued by the State Government through its Vimukta Jati, Nomadic Tribes, Other Backward Class and Special Backward Class Welfare Department by which Baba Khatalu Secondary Ashram School, Gose (Bu.), Taluka Paoni, District Bhandara has been transferred to the respondent no.5-Society. A subsequent order dated 10.05.2021 also passed by the State Government refusing to re-consider the earlier Government Resolution dated 05.03.2019 is also under challenge.

3. In January-2018 the State Government issued an advertisement inviting applications from interested education societies that were desirous of running the primary as well as the secondary Ashram Schools that were being conducted by Lokjagruti Shikshan Sanstha at Village Gose (Bu.), Taluka Paoni, District Bhandara that had been closed down. The recognition of the said schools came to be cancelled on 30.05.2013. Applications were required to be submitted by 22.02.2018. The petitioner claims to have submitted its proposal on 21.02.2018. Subsequently on 29.05.2018 the aforesaid department issued another advertisement inviting applications from interested education societies for running the Ashram Schools that had been earlier closed down. This advertisement pertained to seven such Ashram Schools including the primary as well as secondary Ashram Schools at Gose (Bu.), Taluka Paoni,

District Bhandara. In the advertisement it was stated that some applications had been received pursuant to the earlier advertisement issued in January-2018. Such applicants were directed to apply afresh pursuant to the advertisement dated 29.05.2018 and applications were required to be made in accordance with the Government Resolution dated 24.04.2018.

4. It is the case of the petitioner that pursuant to the earlier advertisement it had moved an application indicating its interest in running the primary/secondary Ashram School at Gose (Bu.), Taluka Paoni, District Bhandara. Despite submitting its application in the requisite form, according to the petitioner the same was not considered and instead on 05.03.2019 the secondary Ashram School at Gose (Bu.), Taluka Paoni, District Bhandara came to be allotted to the respondent no.5-Society. Being aggrieved by the aforesaid decision the petitioner on 01.04.2019 preferred an appeal before the Hon'ble Minister of Vimukta Jati, Nomadic Tribes, Other Backward Class and Special Backward Class Welfare Department. Since the appeals were not being adjudicated the petitioner-Society preferred Writ Petition Nos.4551 of 2019 and 4572 of 2019 praying that directions be issued to the State Government to decide the said appeals expeditiously. On 07.01.2020 this Court directed the aforesaid appeals to be decided expeditiously. In accordance therewith the State Government on 10.05.2019 decided the said proceedings. The

appeals preferred by the petitioner-Society were not entertained on the ground that the application preferred by the petitioner-Society seeking allotment of the secondary Ashram School was not found on record. Being aggrieved by this communication as well as the initial order (Government Resolution) dated 05.03.2019 allotting the secondary Ashram School to the respondent no.5-Society, the present writ petition has been filed.

5. Shri R.N. Ghuge, learned counsel for the petitioner submitted that the petitioner-Society had submitted its complete application seeking allotment of the secondary Ashram School pursuant to the advertisements dated 25.01.2018 and 29.05.2018. Despite receiving the application the same was not considered by the State Government while issuing the Government Resolution dated 05.03.2019 thereby allotting the Ashram School in favour of the respondent no.5-Society. Even in the subsequent proceedings seeking re-consideration of the earlier decision it was pointed out by the petitioner-Society that such application had been duly made. Despite that the petitioner's application was not considered. The learned counsel further submitted that even otherwise the allotment of the secondary Ashram School in favour of the respondent no.5-Society was contrary to the norms prescribed by the Government Resolution dated 24.04.2018. While preference was required to be given to interested societies situated within the same district the allotment had been made to

the respondent no.5-Society which did not have its operations in Bhandara district. Attention was invited to the decision of the Hon'ble Supreme Court in *Sant Dnyaneshwar Shikshan Sanstha & Another Versus State of Maharashtra & Others* [2019 (4) Scale 1]. It was further submitted that initially the distance criteria which was fixed at fifty kilometers on the basis of which interested societies could make their application, said criteria was reduced to ten kilometers by issuing Government Resolution dated 23.07.2019. Reference was also made to an order passed in **Writ Petition No.2954 of 2019** [*Kai.Tilokchand Kuche Shikshan Prasarak Mandal Versus The State of Maharashtra & Others*] at the Aurangabad Bench wherein the absence of reflection of satisfaction of necessary conditions while exercising discretion under Clause 26 of the Government Resolution dated 24.04.2018 was considered. In the light of the interim orders passed therein the State Government had reconsidered its earlier decision of transferring an Ashram School to a society beyond fifty kilometers. It was thus submitted that by failing to consider the petitioner's application seeking allotment of the secondary Ashram School, grave prejudice had been caused to the petitioner-Society. Further, the allotment in favour of the respondent no.5 being contrary to the Government Resolution dated 24.04.2018 was liable to be set aside.

6. Ms S.S. Jachak, learned Assistant Government Pleader for the respondent nos.1 to 4 opposed the aforesaid submissions and relied upon

the affidavit-in-reply filed on their behalf. It was submitted that after considering all relevant aspects the secondary Ashram School was allotted to the respondent no.5-Society. As per the material on record the discretion exercised in terms of Clause 26 of the Government Resolution dated 24.04.2018 was justified and did not call for any interference. After allotment of the said secondary Ashram School it was being run in a satisfactory manner by the respondent no.5-Society and hence there was no reason to interfere with the impugned orders.

7. Shri R.L. Khapre, learned Senior Advocate for the respondent no.5-Society also opposed the writ petition. It was submitted that since it was found by the State Government that no application has been preferred by the petitioner-Society it could not be said that the petitioner's case had not been considered. It was necessary for an interested society to submit an independent and separate proposal since allotment of primary as well as secondary Ashram Schools was required to be undertaken. For each proposal, fees of Rupees Ten Thousand each were required to be deposited. This compliance was not shown to have been done by the petitioner-Society. In view of the fact that the respondent no.5-Society was running the secondary Ashram School satisfactorily after its allotment coupled with the fact that the services of the existing staff had been absorbed, there was no reason to interfere in exercise of writ jurisdiction.

8. We have heard the learned counsel for the parties and we have perused the documents placed on record. It may be noted that the order dated 05.03.2019 allotting the secondary Ashram School to the respondent no.5-Society is also the subject matter of challenge in Writ Petition No.6781 of 2019 preferred by Navshakti Education Society & Another. By the judgment pronounced in the aforesaid writ petition today, it has been held that the allotment of the secondary Ashram School in favour of the respondent no.5 herein was not in accordance with the Government Resolution dated 24.04.2018. The said allotment was not shown to have been made in a transparent manner. Since a challenge has also been raised to the said order dated 05.03.2019 allotting the secondary Ashram School to the respondent no.5-Society which challenge has been accepted, it is not found necessary to enter into the merits of the challenge as raised to the very same order in this writ petition. While setting aside the order dated 05.03.2019 the State Government has been directed to re-consider the matter of allotment of the secondary Ashram School in accordance with the prevailing policy and preferably by issuing a fresh advertisement. In the present case there is a dispute with regard to the petitioner-Society having moved an application seeking allotment of the secondary Ashram School. In the light of the directions issued in Writ Petition No.6781 of 2019 it would be open for the petitioner-Society to participate in the fresh process of allotment that is to take place in the academic session 2023-24. In the light of the fact that the order dated

05.03.2019 passed by the State Government stands set aside in Writ Petition No.6781 of 2019 the purpose of preferring the present writ petition stands served.

9. Accordingly, the following order is passed:-

- I. In the light of the fact that the order issued by the State Government allotting the secondary Ashram School at Gose (Bu.), Taluka Paoni, District Bhandara has been set aside in Writ Petition No.6781 of 2019, the Government Resolution dated 05.03.2019 impugned in the present writ petition ceases to exist.
- II. Consequently, the subsequent order dated 10.05.2021 also does not survive and it is also set aside.
- III. The State Government is directed to re-consider the matter of allotment of said Ashram School in accordance with the prevailing policy and preferably by issuing a fresh advertisement in that regard. It would be open for the petitioner-Society to seek allotment of the secondary Ashram School in accordance with the procedure prescribed.

10. The writ petition is disposed of in aforesaid terms. Rule accordingly. No costs.

(URMILA JOSHI-PHALKE, J.) (A.S. CHANDURKAR, J.)

APTE