

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

WRIT PETITION NO. 6781/2019

1. Navshakti Education Society, Agargaon, District Nagpur, through its President Dhumsingh Jadhav.
2. Dhumsingh Jadhav, President, Navshakti Education Society, R/o Plot No.21, Balaji Nagar (West), Manewada Road, Nagpur-27.

PETITIONERS

-VERSUS-

1. State of Maharashtra, Department of V.J.N.T. through its Secretary, Mantralaya, Mumbai-32.
2. Additional Commissioner, Social Welfare Development Department, Nagpur Division, Nagpur.
3. Sayali Bahu-uddeshiya Society, through its Secretary having its office address at Pendhari (Kajali), Tah. Hingna, District Nagpur.
4. The Commissioner, VJNT Department, 3, Church Road, Pune-411 001.

RESPONDENTS

Shri K.V. Deshmukh, counsel for the petitioners.
Ms S.S. Jachak, Assistant Government Pleader for the respondent nos.1, 2 and 4.
Shri R.L. Khapre, Senior Advocate with Shri A.S. Dhore, counsel for the respondent no.3.

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 07.03.2019 issued by the Vimukta Jati, Nomadic Tribes, Other Backward Class and Special Backward Class Welfare Department of the State of Maharashtra. By the said Government Resolution the respondent no.3 has been permitted to operate the Ashram School that was initially being run by Lokjagruti Shikshan Sanstha at Village Gose (Bu.), Taluka Paoni, District Bhandara. Though such decision was taken by issuing Government Resolution dated 05.03.2019, that Government Resolution was superceded by the Government Resolution dated 07.03.2019.

3. The facts in brief that are relevant for considering the challenge as raised are that the aforesaid Department on 24.04.2018 issued Government Resolution prescribing the modality for transfer/shifting of an Ashram School that had been either closed down or whose recognition has been cancelled. The said policy pertained to such schools that were being run for students from the V.J., N.T., O.B.C. and S.B.C. Category. As per Clause 22 thereof if the recognition of an Ashram School was cancelled for lack of number of students or such Ashram School had been closed down, it was permissible to transfer such Ashram School at a nearby place, adjoining Taluka or even adjoining District. It was however stipulated that the transferred place should not exceed fifty kilometers from the school proposed to be transferred. As per Clause 26 in an

exceptional situation and considering the need, the terms and conditions in the Government Resolution could be relaxed and the final authority in that regard was with the State Government. In terms of the aforesaid Government Resolution an advertisement was published by the Directorate on 29.05.2018 inviting proposals from societies interested in operating such Ashram Schools that had been closed down. A Secondary Ashram School by the name Baba Khatalu Secondary Ashram School at Gose (Bu.), Taluka Paoni, District Bhandara that was being conducted by Lokjagruti Shikshan Sanstha was one such Ashram School that had been closed down. The recognition of the primary school that was operating Classes 1 to 7 as well as a secondary school conducting Classes 8 to 10 came to be cancelled on 30.05.2013. The petitioner no.1-Society alongwith four others had responded to the aforesaid advertisement with regard to the secondary school. On 13.08.2018 a note-sheet was prepared by the Department in which it was stated that all the five applications were considered and none of the applicants were found to be qualified for allotment of the said Ashram School. It was then directed by the Hon'ble Minister for Vimukta Jati, Nomadic Tribes, Other Backward Class and Special Backward Class Welfare Department that as per Government Resolution dated 24.04.2018 one Institution be selected from amongst the applicants. Thereafter on 21.09.2018 a Committee comprising of three members came to be constituted to re-examine the aforesaid proposals. After the report was submitted by the said Committee the matter was

again considered and the Hon'ble Minister directed allotment of the aforesaid Ashram School to the respondent no.3-Society. Pursuant thereto initially Government Resolution dated 05.03.2019 came to be issued allotting the secondary Ashram School to the respondent no.3-Society. However, thereafter Government Resolution dated 07.03.2019 came to be issued wherein it was stated that by exercising the power of relaxation conferred under Clause 26 of the Government Resolution dated 24.04.2018 the aforesaid Ashram School was transferred to the respondent no.3-Society. The earlier Government Resolution dated 05.03.2019 was superceded. Various conditions were imposed in the order granting permission which included the absorption of the existing staff members and compliance with various necessary conditions. The petitioner no.1-Society being one of the applicants for allotment of the secondary Ashram School being aggrieved by the aforesaid Government Resolution dated 07.03.2019 has challenged the same in the present writ petition.

4. Shri K.V. Deshmukh, learned counsel for the petitioners after referring to the Government Resolutions dated 24.04.2018, 21.09.2018 as well as other documents on record submitted that the State Government was not justified in allotting the said Ashram School to the respondent no.3-Society. The said Society did not satisfy various requirements prescribed by the Government Resolution dated 24.04.2018. While the

existing Ashram School run by the petitioner no.1-Society was at a distance of about Eighteen to Nineteen kilometers from the Ashram School to be allotted, the Institution being run by the respondent no.3-Society was at a distance of about One Hundred and Fifty kilometers. The petitioner no.1-Society was already running two primary and two secondary schools and hence the staff engaged by it had sufficient experience to run another Ashram School. On the contrary the respondent no.3-Society had no experience of running any school. The discretion exercised under Clause 26 was without any justification inasmuch as under the said Clause the power of relaxation could have been exercised only in exceptional circumstances. Such discretion had been exercised to favour the respondent no.3-Society by disregarding other conditions stipulated in the said Government Resolution. There was no comparative assessment undertaken by the respondent no.1 while holding the respondent no.3-Society to be eligible. Since all the five applicants had been found to be not qualified it was not open for the respondent no.1 to have chosen the respondent no.3-Society from amongst them. He invited attention to the relevant averments made in paragraph 4 of the writ petition to indicate that the location of the institution proposed to be run by the respondent no.3-Society was at a distance of about One Hundred and Fifty kilometers from the earlier Ashram School. Since the petitioner no.1-Society was eligible in terms of the Government Resolution dated 24.04.2018 and it had also applied for

being allotted the Ashram School it had sufficient locus to challenge the allotment of the Ashram School to the respondent no.3-Society. In support of his submissions the learned counsel for the petitioners placed reliance on the decisions in *Sant Dnyaneshwar Shikshan Sanstha & Another Versus State of Maharashtra & Others* [2019 (4) Scale 1], *Shetkari Shikshan Prasarak Mandal, Ashti Versus State of Maharashtra & Others* [2002 (1) Mh.L.J. 814], *Chairman-cum-M.D., Coal India Limited & Others Versus Ananta Saha & Others* [(2011) 5 SCC 142], *Rameshwar Versus Jot Ram* [AIR 1976 SC 49] and *Jeevanjyoti Krida and Shikshan Prasarak Mandal Versus State of Maharashtra & Others* [2012 (6) Mh.L.J. 836]. It was thus prayed that the allotment of the Ashram School to the respondent no.3-Society vide Government Resolution dated 07.03.2019 be set aside and the petitioner no.1-Society be allotted the Ashram School in question for being run.

5. Ms S.S. Jachak, learned Assistant Government Pleader for the respondent nos.1, 2 and 4 opposed the aforesaid submissions. Placing reliance on the affidavit-in-reply filed on behalf of the said respondents it was denied that any favour was extended to the respondent no.3-Society by allotting the secondary Ashram School that had been closed down. The discretion under Clause 26 had been exercised after considering the entire material on record as well as the factual situation. The petitioner no.1-Society was not recommended and since it was not found to be

eligible, it had no locus to challenge the allotment of the Ashram School in favour of the respondent no.3-Society. It was further submitted that after the respondent no.3-Society started operating the Ashram School, regular inspections were conducted and as per the reports dated 01.08.2019 and 21.11.2019 there were no deficiencies in the said Ashram School which was being run satisfactorily by the respondent no.3-Society. The respondent no.2 had recently visited the said Ashram School on 24.09.2021 and the said school was being run in accordance with the prescribed norms. Since the terms and conditions imposed on the respondent no.3-Society had been complied with, the Authorities had no grievance in that regard.

Shri R.L. Khapre, learned Senior Advocate for the respondent no.3-Society also opposed the writ petition. According to him the petitioner no.1-Society had no locus whatsoever to challenge the allotment of the Ashram School in favour of the respondent no.3-Society. The power of relaxation conferred by Clause 26 of the Government Resolution dated 24.04.2018 had been appropriately exercised in a fair manner. After being satisfied that the respondent no.3-Society was entitled to be allotted the said Ashram School in the light of its earlier record, the same had been done. Considering the nature of power being exercised, it was not necessary to record detailed reasons as to why the respondent no.3-Society was found eligible for such allotment. The power exercised in this regard was legislative in nature and the same was not required to be

supported by any reasons. It was then submitted that after allotment of the said Ashram School it was being run in a satisfactory manner. Regular inspections were being carried out by the Authorities and they did not notice any deficiency whatsoever. The said school was affiliated to the Maharashtra State Board of Secondary and Higher Education and the result for the S.S.C. examination conducted in March-2020 as well as March-2021 was 100%. The results were slightly affected only in March-2022 as it was 78.57% on account of the death of parents of four students in the pandemic. The respondent no.3-Society was also permitted to run vocational courses and all the staff members of the erstwhile Ashram School that had been closed down had been accommodated. In these facts therefore there was no reason to interfere with the Government Resolution dated 07.03.2019 especially at the instance of the petitioner no.1-Society which was not found eligible. In support, the learned counsel for the respondent no.3 relied upon the decisions in *State of Rajasthan Versus Sriram Verma & Another* [(1996) 6 SCC 493] and *K.T. Plantation Private Limited & Another Versus State of Karnataka* [(2011) 9 SCC 1]. It was thus submitted that the writ petition was liable to be dismissed.

6. We have heard the learned counsel for the parties at length and with their assistance we have also gone through various documents placed on record. The factual aspects on record indicate that in view of closure of the existing secondary Ashram School it was proposed to invite

applications from the societies interested in running the said Ashram Schools. The advertisement in that regard is dated 29.05.2018. In response thereto five applications were received for being allotted the Secondary Ashram School that was located at Taluka Paoni, District Bhandara. The proposals as received were examined by a three member committee pursuant to the Government Resolution dated 21.09.2018. As per the said Government Resolution the Committee was specifically required to examine whether the society seeking allotment of Ashram School had its own land. In case the society did not own such land the same was required to be acquired by purchasing the same within a period of one month and till such period it was not permissible to start the Ashram School. Further it was stipulated that the Ashram School should be located in the same village or in a nearby village. Preference was also to be given to a society having experience of running an Ashram School. The three member committee that had examined the five proposals found that none of the applicants were eligible for being allotted the said Ashram School. It was noted that none of the societies owned land on which the Ashram School could be started. The report of the said committee was placed before the State Government for consideration. The proposals were to be examined in the light of the Government Resolution dated 24.04.2018. It appears that the State Government on 01.03.2019 proceeded to allot the said Ashram School to the respondent no.3-Society. In the note-sheet placed on record by the petitioners it has

been noted by the Hon'ble Minister that the Ashram School be allotted to the respondent no.3-Society. Except aforesaid statement it cannot be gathered as to what was the reason behind such allotment. In this regard it is necessary to refer to the Government Resolution dated 24.04.2018 that has been issued in the matter of transfer/allotment of Ashram Schools that have been closed down. Amongst various conditions stipulated therein Condition No.13 requires an interested society to be owning two acres of land in a rural area or one acre land in an urban area where such Ashram School could be relocated. As per Condition No.22 when an Ashram School has been closed down on account of its de-recognition due to reduction in the number of students the same can be allotted to another society in the vicinity. However the distance between the area where the Ashram School is located and the area where it is proposed to be relocated should not be more than fifty kilometers. As per Clause 26 in an exceptional situation after considering the need it was permissible for the State Government to relax certain terms and conditions.

7. At this stage it would be necessary to refer to the decision in *Jeevanjyoti Krida and Shikshan Prasarak Mandal* (supra) where the Division Bench noted the absence of a transparent procedure in the matter of transfer of a de-recognized Ashram School. The State Government was directed to frame a policy in that regard so as to obviate an arbitrary exercise of power. Till such policy was formulated the Court issued

various directions which included the requirement of passing a reasoned order while permitting such relocation of an Ashram School. The aforesaid decision was considered by the Hon'ble Supreme Court in *Sant Dnyaneshwar Shikshan Sanstha & Another* (supra). Therein an Ashram School that had been closed down came to be transferred at a place which was about four hundred kilometers away from such school. It was noted that after the decision of this Court in *Jeevanjyoti Krida and Shikshan Prasarak Mandal* (supra), Government Resolution dated 19.12.2016 came to be issued. After finding that the Ashram School had been transferred at a distance of four hundred kilometers when as per the Government Resolution dated 01.08.2007 the application for transfer was required to be considered within a distance of ten kilometers, the order passed by the High Court setting aside such transfer was not interfered with.

8. From the aforesaid decision it becomes clear that the allotment of an Ashram School is required to be undertaken in a transparent manner and after complying with the stipulations prescribed by the Government Resolution dated 24.04.2018. A reading of the entire Government Resolution clearly indicates that it was mandatory for a society seeking allotment of a closed Ashram School to own land. Further, distance between the Ashram School that was closed down and the place where it was proposed to be transferred was not to exceed fifty kilometers. It was however permissible in exceptional cases after considering the respective

merits to relax certain terms and conditions of the said Government Resolution. It is however seen from the record that of the five applicants seeking allotment of Ashram School, none of them were owning any land of their own. The committee constituted to examine the proposals thus rejected all the applications by finding them ineligible. It cannot be gathered from the note-sheet placed on record as well as the impugned Government Resolution dated 07.03.2019 as to the basis for allotment of the closed Ashram School to the respondent no.3. There has been no comparative assessment amongst the five applicants before determining the allotment of the said Ashram Schools to the respondent no.3. It is an admitted position that the respondent no.3-School is at a distance of about one hundred and fifty kilometers from the area where the Ashram School that was de-recognized was located. Once the committee found that none of the applicants were eligible it was necessary for the State Government to have indicated the reason for preferring the respondent no.3 while disallowing the claim of the other applicants. There is no reason indicated as to why the claim of the respondent no.3 came to be accepted. Though it would not be permissible to consider any extraneous material other than the reasons stated in the impugned order as a reason for supporting the same, for the record we may state that in paragraph 6 of the affidavit filed on behalf of the respondent nos.1, 2 and 4 it has merely been stated that the State Government after considering all the available material on record proceeded to rely upon Clause 26 of the

Government Resolution dated 24.04.2018 while allotting the school to the respondent no.3. What material was considered has not been indicated.

9. Other pertinent aspects that cannot be ignored are that the application moved by the respondent no.3 for allotment of the Ashram School was dated 22.02.2018 which is much prior to the issuance of the Government Resolution dated 24.04.2018 prescribing norms for allotment of an Ashram School. Further according to the respondent no.3 it was holding a lease for a duration of five years from 01.02.2018 to 31.12.2023 that was executed in its favour on 17.02.2018. The Ashram School was proposed to be conducted on said plot. This unregistered lease-deed of immovable property is for a period of five years and has been executed on a stamp paper of Rupees Hundred. While the area where the petitioners proposed to conduct its Ashram School if allotted was at a distance of about eighteen to nineteen kilometers from the place where the earlier Ashram School was located, the area proposed by the respondent no.3 was at a distance of one hundred and fifty kilometers. The averments made by the petitioners in this regard have not been denied by the respondent no.3. It thus becomes clear that in the light of these factual aspects it was necessary for the State Government to have indicated at least briefly as to which aspect was considered by it as being the reason for relaxing the conditions stipulated under the Government Resolution dated 24.04.2018. Though Clause 26 thereof permits

relaxation of such conditions the same can be done only after comparatively assessing the case of each applicant and thereafter briefly indicating the reason for choosing one of them. This aspect is absent in the present case.

10. Finding itself in such position, the learned Senior Advocate for the respondent no.3 tried to extricate its case by urging that on 09.04.2019 pursuant to a gift-deed executed by one Govinda Narayan Kohale, land admeasuring 1 Hectare 5 R at Khasra No.112, Mouza Pendhari, Deoli had been gifted to the society where the Ashram School was being run. Similarly an inspection had been carried out by the Social Welfare Department in the months of August and November-2019 which indicated that the Ashram School was being run in a smooth manner after absorbing the services of the existing employees.

11. We are however afraid as to whether these events that have occurred after the impugned allotment of the Ashram School would be sufficient to withstand the challenge as raised to such allotment. Once the manner of allotment is under challenge it would be necessary for the respondent no.3 to satisfactorily justify such allotment in its favour to be in accordance with the Government Resolution dated 24.04.2018 and the same having been made in a transparent manner after comparative assessment of all applications. As stated above there is no material

whatsoever on record to indicate the basis for preferring the respondent no.3 over the other applicants for allotment of the Ashram School especially when the respondent no.3 proposed to start the Ashram School at a distance of about one hundred and fifty kilometers from the existing Ashram School and that it did not own any land as required thereunder. If such relaxation could be considered for the respondent no.3 other applicants would also be justified in urging that their applications could also have been considered for similar relaxation. In that view of the matter, we find that the allotment of the Ashram School to the respondent no.3 is unsustainable. Though it was urged by the learned Senior Advocate for the respondent no.3 that the State Government while allotting such Ashram School was exercising legislative powers and thus was not required to assign any reasons in support of its decision, said contention cannot be accepted. The allotment of an Ashram School pursuant to an applicant possessing requisite requirements and choosing one such applicant from amongst various applicants after assessing the material on record cannot be said to be a process in exercise of any legislative power. It would be an administrative decision that is required to be supported by the material available on record and subject to being examined on the touchstone of fairness. It has been emphasized on various occasions that such allotment has to be done in a transparent manner and in accordance with the guidelines laid down therein. As observed by the Hon'ble *Supreme Court in Sant Dnyaneshwar Shikshan*

Sanstha & Another (supra) the transfer of an Ashram School cannot be viewed as a transfer of a business license which could be utilized at any place. It has to be done in accordance with the prescribed norms and when the norms prescribe a maximum distance of about fifty kilometers, the allotment of an Ashram School at a distance of one hundred and fifty kilometers without any justification can hardly be supported. Incidentally, it may be noted that on 23.07.2019 the State Government has itself reduced the distance criteria from fifty kilometers to ten kilometers. This is in the light of the decision of the Hon'ble Supreme Court in *Sant Dnyaneshwar Shikshan Sanstha & Another* (supra). However, this Government Resolution has been issued after the allotment of the Ashram School to the respondent no.3-Society.

12. Hence for aforesaid reasons we find that the challenge as raised by the petitioners to the allotment of the Ashram School in favour of the respondent no.3-Society pursuant to Government Resolution dated 07.03.2019 is liable to be upheld. At the same time it cannot be ignored that presently the Academic Session 2022-23 is almost half way through and displacing the students taking education at the said Ashram School as well as the staff members in mid-session would cause inconvenience to them. In this factual backdrop therefore while setting aside the allotment of the said Ashram School to the respondent no.3-Society it would have to be directed that the effect thereof would take place at the end of Academic Session 2022-23.

13. As a sequel to the aforesaid discussion, the following order is passed:-

- I. The Government Resolution dated 07.03.2019 issued by the respondent no.1 allotting the Ashram School to the respondent no.3-Society is quashed and set aside.
- II. The State Government is directed to reconsider the matter of allotment of said Ashram School in accordance with the prevailing policy and preferably by issuing a fresh advertisement in that regard.
- III. Since the Academic Session 2022-23 is in progress the effect of setting aside the order of allotment in favour of the respondent no.3-Society would be from the end of Academic Session 2022-23.

14. The writ petition is allowed in aforesaid terms. Rule accordingly.

No costs.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

APTE