

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2977 OF 2018

Marathwada Gramin Apang Vikas
Mandal, Dawarwadi, Tq. Paithan,
Dist. Aurangabad,
Through its President
Shri Ayyub Mohammad Majid Khan,
Age : 47 years, Occu. : Social Work,
R/o At Post Dawarwadi, Tq. Paithan,
Dist. Aurangabad.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Social Justice and Special Assistance
Department, Mantralaya,
Mumbai – 400 032.
2. The Commissioner,
(Handicap Welfare),
Maharashtra State, Pune.
3. The Social Welfare Officer,
Group A, Zilla Parishad,
Aurangabad.
4. The Social Welfare Officer,
Group A, Zilla Parishad,
Jalna.
5. Shivsharada Gram Vikas Mandal,
Tandulwadi, Tq. Bhum, Dist. Osmanabad
(Through its President).
6. Guruprasad Bahuuddeshiya
Shikshan Prasarak Mandal,
N-7, C-2/47, CIDCO, Aurangabad

(Through its President).

7. New Jay Tulajabhawani Shikshan
Prasarak Mandal, Fulambri,
Tq. Fulambri, Dist. Aurangabad.
(Through its President). .. Respondents

Ms. Pradnya S. Talekar, Advocate i/by Talekar and Associates,
Advocate for the Petitioner.

Shri S. B. Yawalkar, Addl.G.P. for the Respondent Nos. 1 and 2.

Shri U. B. Bondar, Advocate for the Respondent No. 3.

The Respondent No. 4 is served – absent.

Shri V. D. Salunke, Advocate for the Respondent Nos. 5 to 7.

**WITH
CIVIL APPLICATION NO. 11872 OF 2023
IN
WRIT PETITION NO. 2977 OF 2018**

Ku. Pranjal Pramod Pradhan
minor under guardian of father
Pramod Sandu Pradhan and others .. Applicants

Versus

Marathwada Gramin Apang Vikas
Mandal, Dawarwadi, Tq. Paithan,
Through its President
Shri Ayyub Mohammad Majid Khan
and others .. Respondents

Shri Umakant B. Deshmukh, Advocate for the Applicant.

Ms. Pradnya S. Talekar, Advocate i/by Talekar and Associates,
Advocate for the Respondent No. 1.

Shri S. B. Yawalkar, Addl.G.P. for the Respondent Nos. 2 and 3.

Shri U. B. Bondar, Advocate for the Respondent No. 4.

The Respondent No. 5 is served – absent.

Shri V. D. Salunke, Advocate for the Respondent Nos. 6 to 8.

**WITH
CIVIL APPLICATION NO. 11884 OF 2023
IN
WRIT PETITION NO. 2977 OF 2018**

Rajendra Shrirang Paighan and others .. Applicant

Versus

Marathwada Gramin Apang Vikas

Mandal, Dawarwadi, Tq. Paithan,

Through its President

Shri Ayyub Mohammad Majid Khan

and others

.. Respondents

Shri Aniruddha A. Nimbalkar, Advocate for the Applicant.

Ms. Pradnya S. Talekar, Advocate i/by Talekar and Associates,
Advocate for the Respondent No. 1.

Shri S. B. Yawalkar, Addl.G.P. for the Respondent Nos. 2 and 3.

Shri U. B. Bondar, Advocate for the Respondent No. 4.

The Respondent No. 5 is served – absent.

Shri V. D. Salunke, Advocate for the Respondent Nos. 6 to 8.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

CLOSED FOR JUDGMENT : 26.09.2023

JUDGMENT PRONOUNCED ON : 05.10.2023

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. Heard learned counsel for the respective sides finally at the admission stage.

2. The petitioner is challenging Government Resolution dated 14.12.2017 transferring six residential schools run by it to the respondent Nos. 5 to 7. In pursuance of the impugned action the schools are actually transferred and they are in the management of the respondent Nos. 5 to 7.

3. The petitioner was granted permission to run six schools

which are mentioned in paragraph No. 2 of the memo of the writ petition. The permission was on non grant basis granted vide order dated 29.03.1997. Thereafter, by order dated 31.04.1997 the grant in aid was provided to the schools. The schools are residential schools for differently-abled students namely mentally challenged, deaf and dumb and handicapped. By virtue of the impugned resolution, the respondent No. 5 is entrusted with three schools, the respondent No. 6 is entrusted with two schools and the respondent No. 7 is entrusted one school.

4. An administrator was appointed over four schools of the petitioner due to the disputes in the management by order dated 09.02.2005. That gave rise to Writ Petition No. 440 of 2008. The administrator was removed and the elected body was directed to be restored in the management by order of this Court dated 06.02.2009. Thereafter, order dated 06.02.2009 was recalled by order dated 23.09.2010 passed in Writ Petition No. 1579 of 2009. The then Administrator was directed to hear the rival groups and hand over the management to the duly elected body.

5. There were various complaints against the office bearers of the petitioner from the employees and the stake holders. The respondent No. 2/Commissioner received various complaints regarding lack of infrastructure in the school, non payment of salary, not having legally elected body, misuse of the grants, the service conditions were not being followed, etc. The respondent No. 2 received the recommendations from District Social Welfare Officers of Aurangabad and Jalna. A hearing was conducted by

the respondent No. 2. A detailed report was prepared on 13.08.2013 and it was forwarded to the respondent No. 1 with a recommendation to appoint an administrator under the provisions of the Maharashtra Educational Institutions (Management) Act 1976 (herein after referred as "Management Act 1976" for the sake of brevity).

6. The respondent No. 1, however, by order dated 26.05.2014 returned the proposal of the respondent No. 2 for appointment of administrator. Considering the illegalities, it was opined that the action be taken against the petitioner for cancelling the recognition or transferring the schools to the competent educational institutions.

7. The respondent No. 2, thereafter, called upon the respondent No. 3 and 4/District Social Welfare Officers to conduct enquiry and submit the report. On 08.04.2015, the respondent No. 4 submitted a report. Similarly on 09.04.2015, the respondent No. 3 submitted a report to the Commissioner. After receiving the reports the respondent No. 2 submitted a proposal on 10.04.2015 to the respondent No. 1. Considering issues of the mismanagement of the six schools, illegalities, criminal proceedings against the office bearers, disputes in the management, it was recommended to transfer schools to the respondent Nos. 5 to 7 under the provisions of the Management Act 1976.

8. On 02.11.2017, the respondent No. 2 addressed a letter to

the respondent No. 1 reiterating the recommendation of transfer of the management to the competent educational institutions as per the provisions of The Maharashtra Educational Institutions (Transfer of Management) Act 1971 (hereinafter referred as to the “Transfer of Management Act 1971” for the sake of brevity). Finally, the impugned government resolution dated 14.12.2017 was issued by the respondent No. 1 directing the petitioner to hand over the management of the six schools to the respondent Nos. 5 to 7 institutions.

9. It is the case of the petitioner that initial attempt of the respondent No. 2 to hand over management of the schools was not successful because proposal dated 13.08.2013 was turned down. Thereafter though the report was submitted by the respondent Nos. 3 and 4/District Social Welfare Officers on 08.04.2015 and 09.04.2015, there were no specific allegations against the petitioner. The office bearers of the petitioner have settled their disputes and the schools were being run properly. It is contended that no opportunity of hearing was extended by the respondent Nos. 1 to 4 to the petitioner before recommending transfer of management. The respondent Nos. 3 and 4 conducted inspection of two of the schools on 24.11.2017 and the petitioner was given 76% marks and given A category. The schools were granted renewals by the competent authority and the certificates to that effect are placed on record at Exhibit – L. On 18.11.2017 an inspection of Sillod school was conducted and it was given 82% marks with A category.

10. There was proper infrastructure and schools were being managed properly. No specific irregularities or defects were pointed out. The respondent No. 2 did not extend any opportunity to the petitioner before forwarding proposal dated 10.04.2015. The petitioner was not supplied relevant documents. Thus the impugned action is in gross violation of the principles of natural justice and misconceived.

11. The respondent Nos. 1 to 3 have filed affidavit in reply and contested the petition. It is their stand that there was mismanagement, disputes between the rival groups, employees had made complaints for not following the service conditions. The change reports were pending. Criminal cases were pending against the office bearers and there was no elected body. Therefore, the action was required to be taken. It is further averred that, the proposal was forwarded on 13.08.2013 by the respondent No. 2 for appointment of administrator. It was returned vide letter dated 26.05.2014 by the respondent No. 1. Thereafter, hearing was held on 23.06.2014 by the respondent No. 2 calling upon all the stake holders to submit their reply as well as calling upon the social welfare officers to submit the reports. Accordingly, the opportunity of hearing was actually extended to the petitioner.

12. After receiving the reports of the District Social Welfare Officer, a proposal was prepared on 10.04.2015 and forwarded to the respondent No. 1 recommending transfer of management to the respondent Nos. 5 to 7. The respondent No. 2 was called

upon to give further opinion, therefore on 02.11.2017 a letter was addressed by the respondent No. 2/Commissioner to the respondent No. 1. Thus, they defended the action being in accordance with law and it was to safeguard the interest of the stake holders. It is further contended that the respondent No. 2 has cancelled the renewal of registration by orders dated 16.12.2017 and 31.06.2018. The impugned action was taken under the provisions of the Transfer of Management Act 1971 and same was proper and legal.

13. The respondent Nos. 5 to 7 have also filed affidavit in reply on similar lines as that of the respondent Nos. 1 to 3. They have adopted the contentions of the respondent Nos. 1 to 3 and reiterated the sequence of events. It is pointed out that on 17.06.2014 the notice was issued by the respondent No. 2/Commissioner for hearing. On 23.06.2014 actually hearing was conducted in which the office bearers of the petitioner participated. Thus the grievance of the petitioner regarding violation of principles of natural justice is stated to be misplaced. The Zilla Parishad Aurangabad submitted report on 22.08.2014. The social welfare officer also submitted report against the petitioner on 08.04.2015 and 09.04.2015.

14. It is further contended that the detailed reports were submitted to the respondent No. 1 disclosing the disputes in the management, the grievances of the employees and the students, deficiencies in the management. On 31.03.2018 the respondent No. 2 cancelled the renewal of the registration for the period

01.10.2017 to 14.12.2017 for one of the schools of the petitioner. It is further contended that the schools are being run properly by the respondent Nos. 5 to 7. The students and the staff are content with the management of school. The impugned action is passed in the interest of the students and the schools. The respondent Nos. 5 to 7 are providing proper educational facilities to the students. The petition is liable to be dismissed.

15. Two civil applications are filed seeking intervention. The applicants are supporting the respondents.

16. The learned counsel Ms. Pradnya S. Talekar has made following submissions.

(i) No opportunity of hearing was extended before passing the impugned order or before the recommendations.

(ii) There is non compliance of statutory provisions of Sections 3, 4 and 6 of the Transfer of Management Act 1971. Mandatory provisions are not being followed.

(iii) The respondents have supplied the grounds, which are not incorporated in the Government Resolution.

(vi) Reliance is placed on the following judgments :

a. Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others reported in (1978) 1

SCC 405

- b. Jeejau Shikshan Sanstha Nagpur Vs. State of Maharashtra reported 2011(4) Mh. L. J. 352.
- c. Chanda Shikshan Prasarak Mandal Vs. Director of Education, Maharashtra State Pune and others reported in 1991 Mh.L.J. 850.

17. The learned counsel Mr. V. D. Salunke appearing for the respondent Nos. 5 to 7 and the learned Additional Government Pleader have made the following submissions :

(I) There were serious allegations against the petitioner regarding disputes in the management, deficiencies in the infrastructure, registration of criminal cases against the office bearers, misuse of the grants, which prompted the authorities to transfer the schools.

(II) The petitioner made representations and was aware of the action to be taken. Due opportunity of hearing was extended to it.

(III) The impugned action is based upon the reports of the fact finding enquiries conducted by the District Social Welfare Officers and the proposals of the respondent No. 2/Commissioner. Proper procedure was followed.

(IV) There was checkered history of mismanagement and illegalities. On 09.02.2005 an administrator was appointed over

the petitioner. The Charity Commissioner rejected the change reports of rival groups meaning thereby there was no legally elected body to look after the management.

(V) The students and the employees are the sufferers because of the mismanagement and the schools were virtually run by the teachers. After following due procedure of law the impugned action is taken. The transfer of the schools is for temporary period.

(VI) The members of the staff and the students are content with the management of the respondent Nos. 5 to 7. To safeguard the students being differently - abled, no interference is called for in the impugned action.

18. We have considered the rival submissions of the parties. We deem it proper to ensure first as to which Act is invoked by the respondent authorities for transferring the schools. The Management Act of 1976 seems to have been confused with the Transfer of Management Act of 1971 as is evident from the proposal dated 10.04.2015, report dated 02.11.2017 and the impugned Government Resolution dated 14.12.2017. Once it is ascertained under which Act the impugned action is taken, then allegations in respect of violation of the statutory provisions can be gone into.

19. The Management Act of 1976 deals with taking over of the management of the educational institution and appointment of

the administrator for specific duration. The procedure for taking over management is laid down in Section 3 and 4 of the Act. The powers of the administrator are provided by Section 6 of the Act. The appointment of the administrator is an adhoc arrangement. After the specific period the management would be restored to original institution. The Director is empowered to take action.

20. The Transfer of Management Act of 1971 contemplates an enquiry and investigation in to detrimental activities of the management. Section 4 empowers the State Government to issue directions in respect of matters enumerated in it, in case there is failure to comply with the directions issued. Whereas Section 6 empowers the State Government to issue directions for handing over of entire management and control to a third party society. The composition of the society receiving schools for management is provided by Section 6(2) of the Act. Pertinently, Transfer of Management is a permanent measure unlike that of measure under the Management Act of 1976. It is drastic action and more serious than the action under the Management Act of 1976.

21. By Government Resolution dated 14.12.2014 schools of the petitioner were transferred to the respondent Nos. 5 to 7. This resolution does not spell about appointment of administrator, neither it speaks about the duration for which the schools were being transferred. The respondent Nos. 5 to 7 institutions are specifically named which are to receive the respective schools. The Director did not play any role in the present matters. Undoubtedly, the impugned Government Resolution is issued

under the provisions of the Transfer of Management Act of 1971.

22. Reference to the Maharashtra Education Institutions (Transfer of Management) Act 1976 in clause No. 6 and opening part of the resolution of page No. 108 is clearly erroneous. Similarly, the correspondence and proposal dated 10.04.2015, report dated 02.11.2017 refer to incorrect Act. The respondent Nos. 1 to 3 authorities appear to be casual and oblivious of the distinction in the actions to be taken under the Maharashtra Educational Institutions (Transfer of Management) Act, 1971 and the Maharashtra Educational Institutions (Management) Act, 1976.

23. The submissions of the learned counsel Ms. Pradnya Talekar need to be tested on the touch stone of provisions of the Transfer of Management Act 1971. Section 3 of the Transfer of Management Act 1971 is as follows :

**The Maharashtra Educational Institutions
(Transfer of Management) Act, 1971.**

1.
2.

3. Where the State Government is of opinion that any educational institution is being managed in a manner detrimental to the public interest, the State Government may make or cause to be made an investigation into the circumstances of the case by such person or body of persons as it may appoint for the purpose. The person or body of persons shall, after making the investigation, submit his or its report in

that behalf to the State Government. In making such investigation the person incharge of the institution shall be given an opportunity of being heard in relation to any matter pertaining to such investigation.

24. The above referred statutory provision contemplates an opportunity of hearing to the educational institutions from whom management is to be divested. The opportunity of hearing has to be in the letters and spirit. The incumbent management must be apprised of the allegations specifically with necessary documents. There is nothing on record to show that the petitioner was ever issued any show cause notice disclosing the allegations. The respondents are unable to point out that the reports submitted on 08.04.2015 and 09.04.2015 by the District Social Welfare Officers were supplied to the petitioner. No specific allegations or the grounds were ever served upon the petitioner. The respondent No. 2/Commissioner, who formed an opinion objectively did not hear the petitioner. On 10.04.2015, he submitted proposal recommending handing over of the schools of the petitioner. A fresh report was submitted on 02.11.2017 by the respondent No. 2 to the respondent No. 1 that too without hearing the petitioner. The respondent No. 1/State Government also did not make any endeavour to extend opportunity of hearing to the petitioner.

25. The learned counsel for the respondents has submitted that on 23.06.2014 hearing was conducted and the representative of the petitioner was present for hearing. Although hearing was conducted by the respondent No. 2, it is not disclosed that the

petitioner was apprised of the allegations. The respondent No. 2/ Commissioner received reports from the District Social Welfare Officers on 08.04.2015 and 09.04.2015. We have gone through reports. The report dated 08.04.2015 submitted by the District Social Welfare Officer, Jalna/respondent No. 4 does not spell about specific acts of mismanagement. Another report dated 09.04.2015 submitted by the District Social Welfare Officer/respondent No. 3 pertains to four schools in Aurangabad District. It refers to few instances of mismanagement. We find force in the submissions of the learned counsel for the petitioner that reasonable and meaningful opportunity of hearing was not extended.

26. A action was proposed against the petitioner having drastic consequences. The learned counsel for the petitioner has relied upon paragraph Nos. 13 and 15 of the judgment of of this Court in the matter of **Chanda Shikshan Prasarak Mandal Vs. Director of Education, Maharashtra State Pune and others** cited (supra). Though that matter was pertaining to the action under the Management of Act 1976, the significance of the principles of natural justice are emphasized which are applicable with equal force to an action under the provisions of the Transfer of Management Act 1971 also. We find that there is gross violation of principles of natural justice as mandated by Section 3 of Transfer of Management Act 1971.

27. The learned counsel for the petitioner has further relied upon the extended provisions of the Secondary School Code in

the matters of the transfer of management of the school. In the matter of **Jeejau Shikshan Sanstha Nagpur Vs. State of Maharashtra** (cited supra), the coordinate bench of this Court was dealing with an action of transfer of schools under the provisions of the Transfer of Management Act 1971. The relevant paragraphs of the judgment are reproduced hereinbelow :

"22. We are, however, faced with a situation particularly with reference to Clauses 12.1 to 12.5 of the Secondary School Code wherein no modalities, transparency and compliance of rules of natural justice is provided. There is no reason why the spirit of said provisions should not be taken into consideration while considering the request for transfer of the school.

23. In the aforesaid premises, we direct that the following modalities shall be followed in the matter of change of management henceforth until framing of the Rules and Regulations or Guidelines by the State Government in the matter of change of Managements.

(1) A public notice shall be published and displayed at appropriate and prominent newspapers in the concerned area at the cost of transferor or transferee society about the proposed change in the management of a grant-in-aid school and objections should be invited from all the interested persons including students, their parents, teaching and non-teaching staff, the citizens of the area and the other school, if it is going to adversely affect, may be because of transfer of one area to another.

(2) Enquiry shall be held about the reasons etc. for proposed change of management. The enquiry shall include independent report from Education Officer and Vigilance Section, to find out bona fides behind the proposal.

(3) All objections shall be heard by the Deputy

Director of Education who shall then pass a reasoned order which fact shall be made known by publication/display as stated in (1) above.

(4) Actual transfer/change of management shall not be allowed to take place for a period of thirty days from the date of publication about fact of passing of order and it should be preferably from the commencement of the new academic session subject to prior permission of the Charity Commissioner under section 36 of the BPT Act."

28. The modalities stipulated in above paragraph needed to be followed in the present matter. There is absolutely non compliance of the provisions stated above in para No. 23. The submissions for violation of principles of natural justice are well founded.

29. The learned counsel for the petitioner would submit that the respondent No. 1 without adhering to the earlier stages of the procedure contemplated by Sections 3 and 4 of the Transfer of Management Act 1971, directly issued the impugned resolution for transferring six schools. This amounts to by-passing the earlier stages of issuing directions and giving opportunity to comply the directions. There is no material on record to show that any directions were ever issued to the petitioner in the public interest considering detrimental activities of the petitioner. The respondent No. 1 is empowered to issue the directions as enumerated in Section 4(2) of the Transfer of Management Act 1971. Thereafter in case of non compliance it was open to issue impugned directions. However there is no justification to by-pass the mandatory stages. The learned counsel for the petitioner is right in contending that

there is violation of Section 4 of the Transfer of Management Act 1971.

30. The learned counsel for the petitioner has further submitted that there is violation of Section 6(2) of the Transfer of Management Act 1971. It was not permissible to hand over the management of the schools run by the petitioner to respondent Nos. 5 to 7. It is not demonstrated that any officer of the Education Department has been nominated by the respondent No. 1/State to be member of the respondent Nos. 5 to 7. The respondent Nos. 5 to 7 are the private managements. There is no participation of any nominee of the State Government in the management of the schools in question. We are in agreement with the submissions made by the learned counsel for the petitioner.

31. The learned counsel for the respondents have submitted that there were serious allegations against the petitioner pertaining to mismanagement, disputes in the management, pendency of the criminal cases, lack of competent office bearers, the atrocities caused to the employees, lack of infrastructure and facilities, etc. It is being pointed out that the administrator was appointed in 2005. Thereafter on 13.08.2013 recommendation was made to transfer the schools and as such for prolonged period the activities continued to be detrimental to the interest of students and the staff. On 08.04.2015 and 09.04.2015 District Social Welfare Officer reported against the petitioner. Therefore it is not conducive to keep the management of the schools with

the petitioner.

32. When the situation of the present case is governed by the statutory provisions, it is mandatory to adhere to the procedure prescribed by the statute. Things which are required to be done in a particular manner have to be done in that manner only. The respondents failed to follow the provisions of Sections 3 to 6. Therefore, above submissions of the respondents disclosing the conduct of the petitioner and its incompetency are of no avail.

33. It is submitted by the learned counsel for the respondents as well as intervenors that presently the schools are being run in orderly manner. The students and the members of the staff are happy with the management of the respondent Nos. 5 to 7. The schools may not be restored to the petitioner considering the public interest. The intervenors have tried to demonstrate the plight of the members of the staff before handing over of management and after handing over of management. The above submissions do not command us when the statutory provisions are violated. The unfortunate situation could have been avoided by following due procedure of law. The submissions of the intervenors involve disputed questions of facts. It is incomprehensible why intervenors did not agitate their grievances earlier. We therefore reject the submissions of the respondents and intervenors.

34. We have noticed that there are two State legislations dealing with detrimental conduct of the office bearers of the

management. Both the legislations deal with the deterrent action against defaulting management. The procedure contemplated by both the legislations is distinct. Only common thread is extension of opportunity of hearing. When the drastic actions are contemplated by the legislations, the officers at the helm of administrative affairs have to be more cautious and well informed. We fail to understand why the respondent Nos. 1 to 4 did not follow mandatory procedure contemplated by the Transfer of Management Act 1971. It amounts to dereliction of duties. The respondent Nos. 1 to 4 should have been more transparent and cautious. The poor students and the members of the staff are the stake holders. In the matters requiring serious action casualness and the aberrations of the procedure lead to loss of public confidence.

35. For the reasons recorded above, we propose to pass following order.

O R D E R

A. The Government Resolution dated 14.12.2017 issued by the respondent No. 1 is quashed and set aside. The respondents shall restore the management of the schools stated in para No. 2 of the memo of the petition to the petitioner.

B. The respondent Nos. 2 to 4 shall monitor the management of the petitioner over the restored schools periodically to safeguard the interest of the students and the members of the

staff.

C. The respondent Nos. 1 to 4 are at liberty to initiate the necessary action against the petitioner as is permissible in law in case of any instance of mismanagement.

D. The rule is made absolute in above terms. There shall be no order as to costs.

E. The civil applications for intervention also stand disposed of.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

bsb/Oct. 23