

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13579 OF 2021

SHRI SHIVAJI SHIKSHAN SANSTHA, GOUR THROUGH
ITS SECRETARY, ANILKUMAR DIGAMBARRAO
GHARULE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioner : Shri N.P. Patil Jamalpurkar
AGP for Respondents 1 to 6/State : Shri P.S. Patil
...

CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.

DATE :- 10th January, 2023

Per Court :-

1. The petitioner has put forth prayer clauses B, C, D,
E and F as under :-

- “B) The order dated 03.12.2021, issued by the respondent no.6 thereby directing the petitioner to transfer or shift the children/juveniles admitted in the Children Home run by the petitioner to another Children Home, by issuing writ of certiorari or any other appropriate writ, order or direction in nature of writ of certiorari.
- C) The communication dated 25.10.2021, made by the Assistant Commissioner, Women and Child Development, Maharashtra State, Pune to the Hon'ble Minister. Environment & Climate Change, Water Supply, Sanitation, Public Works, Employment, Guarantee. Earthquake

Rehabilitation & Parliament Affairs, Maharashtra State, Mumbai and the communication dated 24.11.2021 issued to the District Women & Child Development Officer, Aurangabad to the petitioner may please be quashed & set aside, by issuing writ of certiorari or any other appropriate writ, order or direction in nature of writ of certiorari.

- D) The respondent no.2 may please be directed to forthwith forward the proposal submitted by the petitioner for grant of Registration Certificate U/sec.41 of the Juvenile Justice (Care & Protection of Children) Act, 2015 to the State Government and the State Government be further directed to forthwith take decision on the said proposal.*
- E) Pending hearing and final disposal of the Writ Petition, the effect, operation and implementation of the order dated 03.12.2021, issued by the respondent no.6 thereby directing the petitioner to transfer or shift the children/juveniles admitted in the Children Home run by the petitioner to another Children Home may please be stayed.*
- F) Pending hearing and final disposal of this Writ Petition, the effect, operation and implementation of the communication dated 25.10.2021, made by the Assistant Commissioner, Women and Child Development, Maharashtra State, Pune to the Hon'ble Minister, Environment & Climate Change, Water Supply, Sanitation, Public Works, Employment, Guarantee, Earthquake Rehabilitation Affairs, Maharashtra State, & Mumbai Parliament and the communication dated 24.11.2021 issued to the District Women & Child Development Officer, Aurangabad to the petitioner may please be stayed.”*

Gangapurwala and S.G. Dige, JJ.) dated 07.12.2021, it was ordered as under :-

- “1. *The learned Counsel for the Petitioner submits that the Children Home run by the Petitioner is registered under the Act-2000. After the enactment of 2015 Act, the Petitioner again applied for registration in the year-2018. The Report was submitted by the District Women and Child Development Officer, Aurangabad to the Commissioner, Women and Child Development Commissionerate about removal of all the deficiencies and the same was pending. On 25.10.2021 it was intimated that as there were deficiencies of more than 10% the proposal of the Petitioner is not forwarded to the State Government. The Petitioner was under the impression that the proposal of the Petitioner is pending. Now, again an order has been passed on 03.12.2021 to transfer the 6 children with the Petitioner Child Care Home Institution on the ground that registration does not exist.*
2. *Issue notice to the Respondents. The learned A.G.P. waives service of notice for all the Respondents and seeks time.*
3. *Stand over to 12.01.2022.*
4. *Till then, status-quo with regard to the 6 children with the Petitioner's institution be maintained, however, no fresh children be allotted to the petitioner until further orders. It is also made clear that if it is found that the Petitioner institution is not properly catering to those 6 children mentioned in the impugned communication dated 03.12.2021, then the Respondents may take further steps.”*

3. This Court as well as the Division Bench at the

Principal Seat have considered several such matters in the light of the introduction of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Rules framed thereunder and it has been held by this Court that under the 2015 Act, those child care homes, which have already been granted registration under the earlier Act, would have to undergo a scrutiny for renewal of their registration. It has also been considered that such renewal has been often misconstrued by the statutory authorities to mean a fresh application for registration and in the backdrop of such misunderstanding of the authorities, this Court ruled that the proposal would be considered only for renewal and not as like a proposal for fresh registration.

4. In the judgment delivered by this Court on 08.09.2022 in Writ Petition No.7821/2021 filed by Mother Teresa Balakashram vs. State of Maharashtra and others, it was concluded in paragraphs 10 to 12 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 hereinabove.”

5. In similar set of facts, in Writ Petition No.11786/2022 and group of petitions, filed by ***Karuna Shikshan Sanstha, Wadgaon vs. The State of Maharashtra and others***, this Court (Coram : Ravindra V. Ghuge and Sanjay A. Deshmukh, JJ.) had passed the order on 08.12.2022 in the light of ***Mother Teresa Balakashram (supra)***, as under :-

- “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.”*

6. Having considered the strenuous submissions of the learned advocate for the petitioner and the learned AGP, we find

that the case of the petitioner stands on a better footing. The petitioner was informed by the competent authority about deficiencies more than 10%, by the communication dated 06.08.2018. On 30.08.2018, the petitioner addressed the communication “offline-12” to the Commissioner, Women and Child Development, State of Maharashtra, Pune, stating therein that a complete compliance report is annexed vide offline-12 to the said communication. Pursuant to the said report, the District Women and Child Development Officer, Aurangabad, conveyed vide the communication dated 08.07.2019 to the Commissioner that the petitioner has removed the deficiencies as were pointed out and the deficiencies removal and compliance report is tendered, which is scrutinized and forwarded by the District Women and Child Development Officer, Aurangabad, to the Commissioner in the form of annexure-A appended to the communication dated 08.07.2019. It is noteworthy that the reaction from the District Women and Child Development Officer is after 11 months of receiving the compliance report from the petitioner.

7. Despite this situation, the Assistant Commissioner, Women and Child Development Department, addressed the

competent authority at Mantralaya, Mumbai, vide the communication dated 25.10.2021, stating that the proposal of the petitioner indicates more than 10% deficiencies. It appears from the said communication that there was no specific inspection carried out by the said authority after the District Women and Child Development Officer had given the compliance report. Based on the same, it is now contended on behalf of the State, through the affidavit in reply dated 12.04.2022 filed by Harsha Dinkarrao Deshmukh, Divisional Deputy Commissioner, Women and Child Development Department, Aurangabad, that because the compliance report is tendered after the deadline 05.07.2019, that the proposal of the petitioner has been turned down.

8. We, therefore, noticed from the record before us that there is a lack of communication between the officers of the Women and Child Development Department, more specifically in between the District Women and Child Development Officer, the Assistant Commissioner and the Divisional Deputy Commissioner. When the compliance report has been approved by the district level officer and there has been no further inspection of the petitioner, as it appears from the record, the officers at the higher level would not be justified in canvassing

the same story that there are more than 10% deficiencies with the petitioner institution. Nevertheless, by the first order of this Court, status-quo has been directed to be maintained with regard to the petitioner's institution, albeit on the condition that no fresh children would be allotted or admitted in the petitioner's welfare home.

9. We find that the compliance report tendered by the petitioner (offline-12) was dated 30.08.2018. For the year, 2019, the cut off date was 05.07.2019. If the District Women and Child Development Officer has tendered the report three days beyond the deadline, the petitioner cannot be held responsible.

10. In the above fact situation, we could have issued a direction to the authorities to issue a renewal certificate of registration to the petitioner. However, considering the introduction of the 2015 Act, which mandated renewal after inspection of the registered institutions, to be conducted within one year and considering the fact that since 2018, there has been no renewal of registration, that we follow the same procedure as was followed by this Court consistently.

11. In view of the above, this Writ Petition is partly allowed as under:-

(a) The order dated 03.12.2021 stands quashed and set aside. Consequentially, the communications dated 25.10.2021 and 24.11.2021 would lose their efficacy.

(b) Respondent No.2 shall issue appropriate instructions to the competent authority to conduct a surprise inspection of the petitioner's welfare home, within 45 days from today.

(c) In the event, any deficiency is noticed, the authorities would convey such deficiency to the petitioner through it's email, which is anilkumargharule007@gmail.com, within 15 days from the date of inspection.

(d) The petitioner would thereafter, remove such deficiencies and submit a proposal through email as well as offline, immediately after the deficiencies, if any, are removed.

(e) Thereafter, the competent authority would proceed to issue an appropriate order and if there are no deficiencies or such deficiencies, which are tolerable within the limits, if any, prescribed by the Act of 2015, grant a certificate of renewal of registration.