



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1609 OF 2024

1. Vitthal Shikshan Prasarak Mandal,
Omerga, Dist. Osmanabad
Through It's Secretary
Gopalrao s/o Tukaram Birajdar
age 68 years, Occ. Retired,
R/o 38, Matoshri, Town Centre,
Cidco, Aurangabad,
District Aurangabad. Petitioner

Versus

1. The State Of Maharashtra
Through The Secretary
School Education Department,
Mantralaya, Mumbai – 400 032.
2. Commissioner of Education,
Pune, Dist. Pune.
3. Director of Education,
Pune, District Pune.
4. Education Officer (Secondary),
Osmanabad, District Osmanabad. Respondents

.....
Mr. S.S. Deshmukh, Advocate for the petitioner.
Mr. A.M. Phule, AGP for Respondents No. 1 to 4
.....

CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.

Reserved on : April 23, 2024

Pronounced on : May 08, 2024

...

FINAL ORDER :- (Per S.G. Chapalgaonkar, J.)

1. The Petitioner approached this Court under Article 226 of the Constitution of India with following prayers :-

“A. By issuance of appropriate writ or order in the like nature quash and set aside the impugned communication dated 30.11.2023 dated and consequential communication dated 7.12.2023 (Exh.-J) and for that purpose, issue necessary directions.

B. To hold and declare that the school run by the petitioner namely Matoshri Kashibai Birajdar Prashala, Koral, Tq. Omerga, District Osmanabad is eligible for 20% grant-in-aid w.e.f. report dated 13.9.2019 with consequential further benefits in that relation; and for that purpose, issue necessary directions.”

2. Mr. Deshmukh, learned advocate appearing for the petitioner submits that the petitioner is an Educational Institution, who runs the school namely Matoshri Kashibai Birajdar Prashala, Koral, Tq. Omerga, District Osmanabad. Respondent no.1 granted permission to run the school from 16.10.2003 on permanent no-grant basis. However, in pursuance of the Government Policy, expression “permanent” has been deleted and school is considered on no-grant basis. In all nine post of the teaching and non-teaching staff have been sanctioned on establishment of school by the competent authority. Respondent No.3 recommended case of the petitioner for grant-in-aid after examining requisite compliance. The communication dated 11.9.2019 refers to the name of the petitioner's school that is held to be eligible for grant in aid. However, the final order passed by the Government dated 4.12.2020 excluded petitioner's name.

3. Mr. Deshmukh, would submit that name of the petitioner has been excluded applying the eligibility criteria which is not applicable to the proposal of the petitioner. He would further submit that, the impugned order refers to the Government Resolution dated 6.2.2023 to disqualify the petitioner. The conditions laid down in the said Government Resolutions could not have been applied retrospectively to pending proposal of petitioner to deny the benefit of grant in aid.

4. Mr. Deshmukh, in support of his submissions, relies upon the observations in the order of the Division Bench of this Court in case of **Shree Krishna Education Society Vs. State of Maharashtra reported in 2020 (1) Mh.L.J 87.**

5. Mr. A.M. Phule, learned AGP appearing for the Respondent-State submits that the petitioner-school was not compliant with requisite norms for grant-in-aid. Although, the school of the petitioner was recommended on 16.9.2019 for receiving grant-in-aid, vide Government Resolution dated 4.12.2020, terms and conditions as regards to eligibility were revised. The inspection of the petitioner school was conducted alongwith similarly situated schools. During inspection, it is revealed that for academic year 2022-2023 school was not in operation for want admissions and none of the student appeared for secondary school examination for that academic year. Consequently, the petitioner-School is held ineligible for grant-in-aid.

6. We have considered the submissions advanced by the learned advocates appearing for the respective parties. It appears that on 16.9.2019 Commissioner of Education and Director of Education had recommended proposal of the petitioner institution for extending 20% grant-in-aid. Since, proposal was not decided, petitioner had approached this Court by filing writ petition No.3262 of 2021. The learned AGP had made statement before this Court that the State Government has returned back the proposals of 2500 institutions and the Director of Education is again in the process to submit the proposals to the Commissioner of Education. Consequently, this Court directed Respondents to process the pending proposal of the petitioner within the period of six months.

7. It appears that on inspection of the petitioner's school, the Block Education Officer, Omerga submitted his report to the Education Officer, at Zilla Parishad, which indicates that for academic year 2022-2023 School was not in operation. It further stipulated that for academic year 2023-2024, the school was reopened. The Head Master of the school submitted his explanation vide communication dated 29.9.2022 to the Deputy Director of Education, at Latur stating that because of nuisance of the villagers, the school was not in operation during the academic yer 2022-2023. The perusal of the impugned order dated 7.12.2023 shows that grant-in-aid is refused to the school as school was closed during academic year 2022-2023 and it was not compliant with the conditions

laid down in Government Resolution dated 6.2.2023. It is not disputed before us that the school was not functional for academic year 2022-2023. The proposal of the petitioner was examined in pursuance of the directions given by this Court vide order dated 5.10.2021 in Writ Petition No.3262 of 2021. Inspection of the School was carried in that process which revealed that the school was not functional.

8. So far as second contention raised on behalf of the petitioner that eligibility of the petitioner ought to have been examined on the basis of the Government Resolution that was in operation at the time of the submissions of the proposal and not on the basis of subsequent Government Resolution dated 6.2.2023, we find that such contentions cannot be accepted in the facts and circumstances of the present case. When, the petitioner-school was completely closed down or was not in operation for the academic year 2022-2023, the authorities are not expected to consider case of the petitioner for grant-in-aid. Unless school is found to be functional, the question of release of grant-in-aid does not arise. It is not a case here that some condition imposed owing to subsequent change in policy of the Government is applied while declining petitioners proposal.

9. In facts of this case, we find that if the petitioner's school itself was not functional, and none of the student was admitted in the school for the academic year 2022-2023, Authorities cannot be blamed for not considering the petitioners proposal for release of grant-in -aid. In this factual background, the law laid down by this Court in case of **Shree**

Krishna Education Society (supra) would not be of any assistance to carry forward the case of the petitioner. Hence writ petition sans merit, Hence dismissed. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

aaa/- (f)