



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5797 OF 2020

Om Shanti Balakashram (Balgraha), Naldurg,
Tal. Tuljapur, Dist. Osmanabad,
Run by Shri Kulswamini Bahu-Uddeshiya
Samajik Sanstha, Kamatha,
Tal. Tuljapur, Dist. Osmanabad,
Through its President,
Sau. Anita Sanjay Rathod,
Age 39 years, Occu. Household,
R/o Deep Nagar Tanda,
Tal. Tuljapur, Dist. Osmanabad. ... **Petitioner**

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Women and Child Development Dept.,
Mantralaya, Mumbai.
2. The Commissioner of Women and
Child Development,
Maharashtra State, Pune.
3. The District Women and
Child Development Officer,
Osmanabad, Dist. Osmanabad. ... **Respondents**

WITH

WRIT PETITION NO.5817 OF 2020

Vishwasagar Balakashram, Latur,
Run by Vishwasagar Shikshan Prasarak Mandal,
Latur, Tal. &, Dist. Latur,
Through its Secretary,
Shri. D. T. Suryawanshi,
Age 45 years, Occu. Agri., ... **Petitioner**

Versus

1. The State of Maharashtra,
Through its Principal Secretary,

Women and Child Development Dept.,
Mantralaya, Mumbai.

2. The Commissioner of Women and
Child Development,
Maharashtra State, Pune.

3. The District Women and
Child Development Officer,
Latur, Dist. Latur.

... Respondents

WITH

WRIT PETITION NO.5807 OF 2020

Mamata Mulinche Balakashram, Latur,
Run by Manisha Shikshan Prasarak Mandal,
Labour Colony, Latur, Tal. &, Dist. Latur,
Through its Secretary,
Shri. Mahesh Suryawanshi,
Age 40 years, Occu. Agri.,

... Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Women and Child Development Dept.,
Mantralaya, Mumbai.
2. The Commissioner of Women and
Child Development,
Maharashtra State, Pune.
3. The District Women and
Child Development Officer,
Latur, Dist. Latur.

... Respondents

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Advocate for Petitioners in all WP : Mr. S. S. Thombre.
AGP for Respondents-State : Mr. A. S. Shinde.

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**CORAM : S. G. MEHARE, AND
SHAILESH P. BRAHME, JJ.**

RESERVED ON : 19.11.2024

PRONOUNCED ON : 09.12.2024

JUDGMENT : (Per S. G. Mehare, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners have impugned the direction issued by respondent No.2 dated 29.05.2020, directing all District Women and Child Development Officers and the Chairman, Child Welfare Committees not to allot the children to the institutions which are not registered under the Juvenile Justice (Care and Protection of Children) Act 2015 ('The Act of 2015' for short).

3. The petitioners are institutions registered under the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'Act of 2000'). They run the institutions for in need of abundant children. Their registrations of the institutions were in force till 2018. After repealing the Act of 2000, rules were framed in 2018. In the Act of 2015, Section 41 was newly enacted. Under that section, the institutions like petitioners were to register the institutions by applying online. The registration certificates under the Act of 2000 were not for any prescribed period. However, in the Act of 2015, the life of registration certificates is five years. The executives were directed to implement the new law, and rules. Hence, respondent No.2 by his directions to respondent No.3 directed to publish an

advertisement inviting applications for the license to run such institution. In the said directions, it was clarified that the registration certificates of the institutions already registered under the Act of 2000 and the Act of 2015 have been lapsed and they should also have to submit online proposals/ applications.

4. The petitioners had also submitted their proposals as per the advertisements. Their proposals were scrutinised. Respondent No.3 had recommended them for licenses and registration favourably. However, the names of the petitioners were not found place in the list published with the resolution dated 08.03.2019. Thereafter, the impugned directions were issued.

5. In view of the impugned directions/circular, the concerned department is not allocating the children to the institutions of the petitioners nor the Government funds were released. In short, the petitioners would submit that their institutions were registered under the Act of 2000. It need not to apply afresh for registration under the Act of 2015. The registration of the institutions under the Act of 2000 are deemed to be registered. Hence, the impugned direction does not bind it. Therefore, it should be quashed and set aside.

6. Respondent Nos.1 to 3 filed affidavit-in-reply. It has been contended in affidavit-in-reply that as per Section 41(1) of the Act of 2015, the registration of the petitioner's societies

is compulsory. The institutions which were already registered under the Act of 2000 were not exempted. The Maharashtra State Juvenile Justice (Care and Protection of Children), Rules 2018 ('The rules 2018' for short) were framed by notification dated 14.03.2018. Those rules came into force on the same day.

7. By circular dated 25.09.2017 addressed to respondent No. 3 were directed to publish the advertisement in local newspapers inviting applications for registration. By communication dated 27.04.2018, it was directed that if those institutions fail to submit online applications for registrations their registration should be cancelled. The last date for application was 23.05.2018. Accordingly, on 03.05.2018 the advertisements were published in newspapers of each District. The off-line submissions were also allowed. After the proposals were submitted, by Government Circular dated 27.07.2018, time was extended to submit new online proposals till 30.08.2018 and also allowed to submit the report of shortfalls found at the time of scrutiny. The said circular was communicated to respondent No.3. It is the submission of the respondents that it has provided just and sufficient opportunity to comply with all shortfalls mentioned in scrutiny sheet. However, the petitioners failed to comply with the same.

Failing to comply with Section 41(1) of the Act of 2015 is punishable under Section 42 of the said Act. After following due procedure and Government Resolutions dated 08.03.2019 and 06.03.2019 were issued granting registration certificate to the eligible institutions. The Hon'ble Supreme Court in the case of *State of Tamilnadu Vs. Union of India and others, Writ Petition (Criminal) No.102 of 2007, order dated 05.05.2017* has directed the State Governments and Union Territories the process of registration of all child care institutions to be completed by 31.12.2017. In view of the directions of the Hon'ble Supreme Court, the advertisement inviting the application for registration were circulated in local newspaper on 11.10.2017. The Commissioner/respondent No.2 by its communication dated 29.05.2020, issued directions to all Districts Women and Child Development Officer to publish advertisement for inviting applications for registration under Section 41(1) of the Act of 2015. In response to the advertisement, respondent No.1 received total 893 proposals for registration throughout the State. Out of it, 713 were online and 180 were offline. All those proposals were scrutinized and submitted to the State for further necessary directions. As far as the case of the petitioners is concerned, their proposals were scrutinized. It was transpired that structure of the petitioners institutions is an education

institutions. It is not just and proper as per the norms of the Act 2015 for residence of child in need of care and protection. As well, there was no compound wall for the protection of children those in need of care and protection. A just and sufficient opportunity was granted to the petitioners to comply with all the shortfalls mentioned in the scrutiny sheet. However, the petitioners failed to comply with it. The answering respondents took the decision of inspection to verify the accommodation, sanitation and hygiene, nutrition and diet scale and staffing pattern of all child care institutions those filed online/offline applications for registration. During the inspection, it appears that no inmates were present in the petitioners institutions and institutions are closed down. Therefore, the petitioners grievance does not survive and only for that reason, the petitions deserve to be dismissed.

8. Learned counsel for the petitioners would submit that the registration of the institutions was never cancelled. Since the children were not allotted to the institutions, there were no students. Considering the scheme, the institute could only run if the children are only allotted to the institution. Therefore, it cannot be said that the institutions have been closed down. He would submit that this may not be the ground to stop the allocation of the children to their institutions or renewal of

registration. He relied on the case of *Jai Sevalal Sevabhavi Sanstha Vs. State of Maharashtra and others, Writ Petition No.4831 of 20209 with many other writ petitions of this Bench decided pm 22.12.2020*. He would submit that in this case, the issue of the application of new Act to the institutions already registered under the Act of 2000 has been set at rest and it has been held that the institutions registered under the Act of 2000 and the said registration validity enforced on the day of the implementation of the Act 2015 shall be deemed to be registered under the Act of 2015. Hence, their registration afresh is unwarranted.

9. Learned AGP has strongly opposed the contentions of the petitioners. He would submit that since the institutions of the petitioners were closed down, he cannot take the advantage of the pronouncement of this Court in *Jai Sevalal* (supra). The case of the petitioners is on different footing. Therefore, the above case is distinguishable on facts. Once the institutions have been closed, they must apply afresh under the Act of 2015 read with Rules 2018. Hence, the petitions deserve to be dismissed.

10. Admittedly the petitioners institutions were registered under the Act of 2000. However, the objection has been raised

that since the institutions were defunct, it has to apply afresh under Section 41 of the Act of 2015. The Juvenile Justice (Care and Protection of Children) Rules, 2007 are relevant to decide the controversy. Chapter VII of those rules was speaking of recognition of fit persons or fit institution for receiving a juvenile child in need of care, protection temporarily. Rule 70 thereof provides for a certification or recognition and transfer of management of institutions and after care organisations. Sub Rule (4) of the said Rules speaks of the withdrawal of the registration of such institutions. A detail procedure has been prescribed therein before withdrawing the registration. Though the learned AGP has strongly raised the objection that the institutions of the petitioners were defunct, there is nothing to believe that any such inquiry as provided under the Rules mentioned above was conducted and the certificate or registration of the institution/organisation was withdrawn before 2018. However, letter of respondent No.2 dated 03.05.2018 is specific that the institutions which were registered under the Act of 2000 and Rule 2015 are lapsed and such institutions shall also apply for registration.

11. The root question of these cases is whether the institutions which were already registered under the Act of 2000 would require to apply afresh for registration under

Section 41 of the Act of 2015. This issue has been no more *res-integra*. This Court in case of *Jai Sevalal (supra)* on identical issue held that the institution under registered Act 2000 and its registration is in force on the date of implementation of the Act 2015 shall be deemed to be registered under the Act 2015 and these institutions shall apply for renewal of registration after one year of the enforcement of the Rules 2018. In this case also, the impugned communication was impugned.

12. In paragraph No.19 of the above judgment, it has been observed that Rule 22(1)(b) mandates all child care institutions registered under the Act 2000 and deemed to be registered under the Act of 2015 to get registration certificate renewed after completion of a year as per the provisions of the Acts and Rules. Act of 2015 came into force with effect from 01.01.2016 and Rules 2018 were operating with effect from 14.03.2018.

13. In para No.21 it has been observed that reading the proviso to Sub Section 1 of Section 41 of the Act 2015 and sub rule 1(b) of Rule 22 of the Rules 2018 harmoniously the irresistible conclusion drawn that in need of care and protection of 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 one year as per the provisions of the Acts and Rules. The leverage has been given of one year for these institutions to get the registration renewed. Once the registration is granted under the Act 2015 that registration would be valid for five year and after five years, the institution will have to seek renewal. Reference can be had to Sub Section 6 of Section 41 of the Act 2015.

14. In paragraph No.22 it has been observed that to apply for renewal of registration after one year is also necessary because these institutions deemed to be registered did not undergo rigors of registration under Act 2015 so as to give an opportunity to the authority to verify compliance of requirement of the Act 2015 and the Rules.

15. In paragraph No.23 it has been observed that the conspectus of the aforesaid discussion leads us to an irresistible conclusion that the institutions registered under the Act 2000, and the said registration validity in force on the date of the implementation of the Act 2015, shall be deemed to be registered under the Act 2015 and these institutions shall apply for renewal of registration after one year of the enforcement of

the Rules 2018.

16. Herein the case, the petitioners had applied for registration. The authority had verified the requirement of the Act 2015 and Rules of 2018 and found certain shortfalls. The opportunity was granted to the petitioners to remove the shortfalls. However the petitioners failed to comply with. Hence they did not get registration. The petitioners have no case that they were applied for renewal of their existing registrations. Merely the institution is registered under the Act of 2000 is not excused from complying with the requirement of the Act 2015 and the Rules. The authorities had applied the same scale and found that the petitioners were deficit to comply with the requirements. The petitioners did not feel it appropriate to remove the defects. Hence, this Court is of the view that the impugned communication does not affect the rights and interest of the petitioners. In other words, it is stated that since the life of the registration of the petitioners under the Act 2000 were extended for one year and there were no compliances as required under the new Act. The petitioners cannot claim that by way of the impugned communication they have deprived of their right to get the children and funds from the Government. The Ratio laid down in the case of Jai Sevalal (supra) would apply to the extent of opportunity to apply for

renewal.

17. For the above reasons, all writ petitions stand dismissed.

18. However, the petitioners are at liberty to move an application for renewal of their registration under the Act of 2015 and Rules of 2018 within a month from today. Thereafter, the concerned authority shall verify the compliances as required under the Act of 2015 and Rules of 2018 within three (3) months thereafter and communicate the decisions to the petitioners.

19. Rule made discharged, in the above terms.

(SHAILESH P. BRAHME, J.)

(S. G. MEHARE, J.)

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