



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

WRIT PETITION NO.5349 OF 2018

Ravisoot Vyayam And Shikshan
Prabodhan Sanstha, Indira Smriti,
Bhoiwada, Mill Corner, Aurangabad,
Through its President,
Mr. Bhimcharan S/o Anandrao More,
Age: 53 yrs, Occup. Business and Social Worker,
R/o: Aurangabad, Ta. and Dist.
Aurangabad.

..Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary, VJNT, OBC and Special Backward
Class Welfare Department, Mantralaya,
Mumbai-32.
2. The Director
VJNT, OBC and Special Backward,
State of Maharashtra, Pune.
3. The Divisional Commissioner,
Social Welfare Office, Aurangabad Division,
Aurangabad.
4. The Assistant Commissioner,
Social Welfare Office, Aurangabad.
5. Shivam Bahuudedeshiya Sevabhavi
Mandal, Ghusurtanda, Tal. Kannad,
District Aurangabad,
through its President
Mr. Namdeo Soma Chavan,
Age: Major, Occu: Government service.
R/o: "Matoshree Niwas" Near Shivaji
College Gate, Kannad, Ta. Kannad,
District Aurangabad.

..Respondents

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Mr. V. D. Sapkal, Senior Advocate i/by S. R. Sapkal, Advocate for
the Petitioner.
Ms. R. P. Gour, AGP for Respondent Nos.1, 3 and 5.
Mr. V. J. Dixit, Senior Advocate i/by Mr. V. B. Garud, Advocate for
Respondent No.6 through (V.C.)

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

JUDGMENT RESERVED ON :- 15th APRIL 2024.

JUDGMENT PRONOUNCED ON :- 28th JUNE 2024.

JUDGMENT (Per: S. G. Chapalgaonkar, J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India, thereby impugning order dated 03.05.2018 passed by the Hon'ble Minister, VJNT, OBC and Special Backward Class Welfare Department, thereby setting aside the order dated 18.11.2017 passed by the Secretary of the same department to continue the management of the Ashram School with the petitioner and withdraw the order dated 01.03.2009 regarding its transfer in favour of respondent no.6.

3. The facts giving rise to present Writ Petition can be summarized as under:-

a. On 12.03.1980 respondent no.1 granted permission to run Ashram School at village Ghusurtanda, Taluka Kannad, District Aurangabad in favour of the petitioner. However, since June 1993 the school was shifted to village Chapaner, Taluka Kannad, District Aurangabad. Later on grant-in-aid was conferred to run the Ashram School in favour of the petitioner-Society.

b. On 01.12.2005, on account of certain difficulties faced, petitioner society passed a resolution to transfer the school in favour of respondent no.6. Consequently, a proposal dated

13.02.2006 had been submitted to Social Welfare Officer seeking approval for transfer of the school management to respondent no.6.

c. While said proposal was pending for consideration, the petitioner alleged to have passed Resolution dated 01.03.2006 in suppression of its earlier Resolution dated 01.12.2005. According to the petitioner, subsequent decision dated 01.03.2006 was duly communicated to respondent-Authorities as well as respondent no.6. However, ignoring same, respondent no.1 permitted transfer of School management in favour of respondent no.6 relying on earlier Resolution dated 01.12.2005, without hearing petitioner or other stake-holders. The employees working on the establishment of the Ashram School were also adversely affected since grant-in-aid was withhold in pursuance of the policy decision of the Government dated 01.08.2007 which stipulates that no grant-in-aid shall be made available for the period of three years, in case of transfer of management of Ashram School.

d. The decision dated 01.03.2009 permitting transfer of Ashram School in favour of respondent no.6 was assailed by the petitioner in Writ Petition No.4346/2009 before this Court. Similarly, the employees of the school had independently assailed the aforesaid decision by filing Writ Petition No.2871/2009. This Court after hearing the parties, allowed both the Writ Petitions vide order dated 31.03.2017 and quashed and set aside the Government Resolution dated 01.03.2009 with further direction that the respondent-Authorities shall take fresh decision as regards to the transfer of the Ashram School after hearing the concerned parties in accordance with law.

e. In deference to the aforesaid order of this Court, the Secretary, VJNT, OBC and Special Backward Class Welfare Department heard the respective parties and passed the order

dated 11.11.2017 and continued management of the school with petitioner, holding that transfer of management cannot be permitted.

f. The respondent no.6 assailed the order dated 18.11.2017 passed by the Secretary, before the Hon'ble Minister, VJNT, OBC and Special Backward Class Welfare Department by filing Review Application No.03/2018, contending that the Secretary of the Department has no jurisdiction to take final decision in the matter of transfer of the schools. No authorization has been given by the Hon'ble Minister in favour of the Secretary. Consequently, the order passed by the Secretary is illegal. Similarly, it is contended that the transfer of the school in favour of respondent no.6 is inconsistent with the procedure. The Hon'ble Minister allowed the Review Application vide his order dated 03.05.2018 and thereby quashed and set aside the order dated 18.11.2017 passed by the Secondary, VJNT, OBC and Special Backward Class Welfare Department and restored the order permitting transfer of the school in favour of respondent no.6 and issued consequential direction against the petitioner to transfer the management in favour of respondent no.6.

4. Mr. Sapkal, learned Senior Advocate i/by Mr. S. R. Sapkal, learned Advocate appearing for the petitioner while assailing the impugned order vehemently submits that the Hon'ble Minister do not possess power akin to review of the orders passed by the Secretary of his own Department. The learned Secretary of the Department had issued notices to all concerned in pursuance of the direction of this Court in Writ Petition No.4346/2009 and after hearing all the stake-holders found that transfer of school was inconsistent with the policy of the Government and also principles of nature justice. Consequently, declared earlier decision

permitting transfer of the school as invalid. The Resolution dated 01.12.2005 passed by the petitioner for transfer of the school was canceled on 01.03.2006. Therefore, decision relying upon the Resolution dated 01.12.2005 is not sustainable.

5. Mr. Sapkal would further submit that there was no policy of the Government enabling transfer of the Ashram School in the year 2005. He would further submit that no transfer of management from minority to non-minority can be permitted.

6. Per contra, Mr. Dixit, learned Senior Advocate i/by Mr. Garud, learned Advocate appearing for respondent no.6 would submit that the Secretary had no jurisdiction to take final decision as regards to the transfer of the Ashram Schools. He would submit that Maharashtra Government Rules of Business framed under Clause Nos.(2) and (3) of the Article 166 of the Constitution of India provides for “competence of the Minister to pass the order”. There is nothing to demonstrate that the Minister had delegated his powers to the Secretary in any manner. No standing order or direction issued by the Minister-in-charge empowering Secretary of the Department for disposal of cases in the Department is available. Therefore, the order passed by the Secretary is non-est. He would, therefore, submit that Hon’ble Minister has rightly set aside the order passed by the Secretary and issued consequential directions.

7. Ms. Gaur, learned A.G.P. appearing for respondent nos.1, 3 and 5 relying upon the affidavit-in-reply filed by Mr. Jagdish Prasad Gupta, Principal Secretary submits that in pursuance of direction given by this Court vide order dated 31.03.2017 passed in Writ Petition No.4346/2009, Secretary of the Department heard respective parties and passed order dated 18.11.2017, which has been quashed and set aside by the Hon’ble Minister by impugned

order, in this petition. She would, therefore, urge to pass the appropriate order.

8. Upon hearing the learned Advocates appearing for the respective parties, the controversy that needs consideration is as regards to the jurisdiction of the Hon'ble Minister vis-a-vis the learned Secretary of the Department to hear and decide matters pertaining to transfer of the management of Ashram schools. The petitioner while assailing the impugned order passed by the Hon'ble Minister contends that the Hon'ble Minister was not competent to interfere or review order passed by the Secretary, whereas respondent no.6 assails very competence of the Secretary to take decision as regards to the transfer of the Ashram School, which is not regulated by the Statutory scheme and depends on procedure laid down under Government Resolutions issued time to time.

9. Since there were no modalities or procedure prescribed regulating transfer of schools from one management to another, the Division Bench of this Court in case of ***Jeejau Shikshan Sanstha V. State of Maharashtra***¹ prescribed certain modalities until Government frames the Rules and Regulations. So far as the powers of the Hon'ble Ministers and officers in Secretariat are concerned, they are regulated by Maharashtra Government Rules of Business with instructions of 7th May 1964 (As amended time to time) issued under Rule 15 of the aforesaid Rules and standing orders dated **10.01.2000**. Rules 5, 7 and 10 of the Maharashtra Government Rules of Business reads as under:

“5. The Governor shall on the advice of the Chief Minister allot among the Ministers the business of the Government by assigning one or more Departments or part of Departments to the charge of a Minister.

¹ (2011) 4 Mh.L.J. 352.

Provided that, nothing in this rule shall prevent the assigning of one Department to the charge of more than one Minister.

7. *Each Department of the Secretariat shall consist of the Secretary to the Government, who shall be the official head of that Department and of such other officers and servants subordinate to him as the State Government may determine:*

Provided that-

(a) More than one Department may be placed in charge of the same Secretary;

(b) the work of a Department may be divided between two or more Secretaries.

10. ***(1) Without prejudice to the provision of rule 7, the Minister-in- charge of a Department shall be primarily responsible for the disposal of the business appertaining that Department or part of the Department.***

(2) Every Minister, every Minister of State, every Deputy Minister and every Secretary shall transmit to the Chief Minister all such information with respect to the business of the Government as the Chief Minister may from time to time require to be transmitted to him."

10. The cumulative reading of aforesaid provisions would shows that the Minister-in-charge of the Department shall be primarily responsible for the business of his Department. In pursuance of Rule 15, the instructions regarding the business of the Government have been issued. **Clause 4 of the instructions reads as under:**

"4. Except as otherwise provided In these Instructions, cases shall ordinarily be disposed of by, or under the authority, of the Minister-in-charge, who may by means of standing orders give such direction as he thinks fit for the disposal of cases in the Department. Copies of such standing orders shall be sent to the Governor and the Chief Minister. "

11. Apparently, the cases are required to be disposed of by, or under Authority, of the Minister-in-charge, although he may issue such standing orders in his discretion for disposal of the cases in

his Department. Copies of such standing orders are required to be sent to the Governor and the Chief Minister. At this stage reference can be given to observation of Supreme Court of India in case of ***A. Sanjeevi Naidu, etc V. State of Madras***² in paragraph 9 and 10, which reads as under:

*“Under our Constitution, the Governor is essentially a constitutional head; the administration of State is run by the Council of Ministers. But in the very nature of things, it is impossible for the Council of Ministers to deal with each and every matter that comes before the Government. In order to obviate that difficulty the Constitution has authorised the Governor under sub-Art. (3) of Art. 166 to make rules. for the more convenient transaction of business of the government of the State and for the allocation amongst its Ministers, the business of the government. All matters excepting those in which Governor is required to act in his discretion have to be allocated to one or the other of the Ministers on the advice of the Chief Minister. Apart from allocating business among the Ministers, the Governor can also make rules on the advice of his Council of Ministers for more convenient transaction of business. **He can, not only allocate the various subjects amongst the Ministers but may go further and designate a particular official to discharge any particular function. But this again he can do only on the advice of the Council of Ministers.***

The cabinet is responsible, to the legislature for every action taken in any of the ministries. That is the essence of joint responsibility. That does not mean that each and every decision must be taken by the cabinet. The political responsibility of the Council of Ministers does not and cannot predicate the personal responsibility of the Ministers to discharge all or any of the governmental functions. Similarly an individual Minister is responsible to the legislature for every action taken or omitted to be taken in his ministry. This again is a political responsibility and not personal responsibility. Even the most hard working minister cannot attend to every business in his department. If he attempts to do it, he is bound to make a mess of his department. In every well planned administration, most of the decisions are taken by the civil servants who are likely to be experts and not subject to political pressure. The Minister is not expected to burden himself with the day to day administration. His

2 1970 (1) SCC 443.

primary function is to. lay down the policies and programmes of his ministry while the Council of Ministers settle the major policies and programmes of the 'government. ***When a civil servant takes a decision, he does not do it as a delegate of his Minister. He does it -on behalf of the government. It is always open to a Minister to call for any file in his ministry and pass orders. He may also issue directions to the officers in his ministry regarding the disposal of government business generally or as regards any specific case. Subject to that over all power, the officers designated by the 'Rules' or the standing orders, can take decisions on behalf of the government. These officers are the limbs of the government and not its delegates.***”

12. The survey of provisions contained in business rules and instructions issued thereunder coupled with observations of Honorable Supreme Court in case of **A. Sanjeevi Naidu (Supra)** clarify that in absence of the standing orders, the Secretary of the Department would not get authority to decide any matter, which is otherwise within competence of the Minister-in-charge. Perusal of the affidavit-in-reply filed by Mr. Jagdish Prasad Gupta, Principal Secretary of the Department nowhere states that the Minister-in-charge had authorized him under standing orders for disposal of the cases in the Department. It was expected of him to clarify as regards to his authority to pass the order dated 18.11.2017. In absence of such clarification, particularly in light of the provisions under Rules of Business and instructions, we are inclined to hold that the Secretary had no authority under law to deal with the matter as regards to the transfer of management of Ashram school and take any final decision in this regard. The decision rendered by Secretary in any subject that requires to be dealt with by concern Minister, can never be treated as decision of Government. As such, the order dated 18.11.2017 appears to be non-est or invalid for want of authorization by concern Minister of Department. In this backdrop, if respondent no.6 had approached

the Hon'ble Minister seeking review / recall of the order, no fault can be found in such action. Even, we have no hesitation to hold that in such circumstances the Hon'ble Minister is justified in exercising his powers and consider subject matter afresh, ignoring invalid / unauthorized order passed by secretary. When subject matter is not regulated by statutory provisions and administrative orders are passed in discretion of government, we can not countenance submission that Minister was not empowered to recall or review order passed by secretary in absence of specific provision.

13. In fact when this Court remitted the matter back to the Government under order dated 31.03.2017 passed in Writ Petition No.4346/2009 alongwith companion matters, it was expected to be heard by the Hon'ble Minister himself. However, the Secretary appears to have wrongly assumed jurisdiction to take decision and passed the order dated 18.11.2017. Such decision can never be recognized as decision by Government.

14. It appears that there is serious dispute whether Resolution dated 01.12.2005 passed by respondent no.6 was subsisting as on 01.03.2009 when proposal for transfer of management is favorably considered by Government. It is the contention of the petitioner that such Resolution was canceled through subsequent resolution of petitioner trust passed during the meeting dated 01.03.2006, accordingly, communication was made to respondents. The petitioner placed on record the postal receipts to indicate that communications were made under the certificate of posting to the respondents-authorities as well as respondent no.6-Trust. However, the impugned order observes that there is nothing on record to show that subsequent decision of the petitioner had ever reached to the respondents-authorities. Therefore, it would not be appropriate for this Court to delve into disputed questions of facts.

15. The moot question that requires consideration is that whether based on mutual agreement between two institutions, the transfer of school which is conferred with grant-in-aid from state can be permitted. It is not in dispute that no specific guidelines were framed by the State Authorities governing the transfer of the management of Ashram School. Pertinently, in the year 2006 the decision was taken by the Government to not to allow new Ashram Schools. This Court in ***Writ Petition No.949/2012***, while considering the a matter pertaining to the transfer of the management of Ashram Schools between ***Jeevanjyoti Krida and Shikshan Prasarak Mandal Vs. State of Maharashtra and Others*** vide order dated ***10/11.09.2012*** laid down certain guidelines to obviate arbitrary exercise of the powers while expecting State Government to come with the appropriate guidelines/procedure or Rules and Regulations laying down procedure for considering the request for transfer of the management of the Ashram School falling within the jurisdiction of the Tribal Development Department or the Social Justice Department. In short, it is expected that when a change in the management of an aided Ashram School is contemplated, the State Government shall issue and publish a notice in two prominent newspapers as well as on the website of the Department inviting applications from interested organisations/NGOs for conducting the Ashram School and also invite suggestions from other stakeholders including parents and the teaching staff. It was expected that the Director shall hold an enquiry as regards to the reasons for a proposed change in management and also check track record and credentials of the proposed transferee management. The actual transfer or change in management can be effected after publication order through widely circulated newspaper and preferably at the commencement of the new academic session, so as

to prevent disruption of the education of the children. Pertinently the State Government issued Government Resolution dated 01.08.2007 laying down certain guidelines. The introductory part of the said Government Resolution states that the transfer of the management of the Ashram School from one Institution to another Institution is not consistent with the policy of the grant of Ashram Schools and such proposal shall be dealt with in the manner to curb such practices. However, in exceptional cases, such proposals are expected to be entertained subject to conditions as laid down.

16. In the present case, the Resolution dated 01.12.2005 passed by the petitioner simply states that the decision is taken to transfer the School alongwith its assets in favour of respondent no.6. No specific reason is mentioned therein. The Resolution nowhere states that the petitioner was incapable to run the school either on account of financial crisis or otherwise. Perusal of the Government decision dated 01.03.2009 permitting transfer of the School in favour of respondent no.6, nowhere suggests any specific reason as to why such transfer was found essential and permitted by the Government. The documentary evidence available on record suggests that the proposal received in the year 2005 for transfer of the School was kept in dormant condition. However, after the political interference, that has been moved leading to the order dated 01.03.2009. Apparently, the order permitting transfer has been made pursuant to the so called mutual agreement between the petitioner and respondent no.6. Permitting transfers of Government aided schools in such a manner can never be approved, since it would be unhealthy practice and detrimental to the basic object of the establishment of the Schools. It is not in the interest of the Government, as grant-in-aid is given after satisfying conditions and transferring it to unaided school will financially prejudicial to Government. It will also open a flood gate or the

back door for getting finance to such schools which are otherwise not entitled. It will also amount to injustice to other schools.

17. It is pertinent to note that the order permitting transfer was never implemented and the School is continued to run by the petitioner. The reports of inspection during recent past indicates that the School is functional and smoothly running as on today. Consequently, the impugned order passed by the Hon'ble Minister dated 03.05.2018 cannot be sustained in law. Though we hold that Hon'ble Minister was justified in entertaining review, we hold that his order is illegal.

18 Hence, the following order:

ORDER

- a. Writ Petition is allowed in terms of prayer Clause (B).
- b. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE