



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1775 OF 2021

Jai Malhar Shikshan Prasarak Mandal,
Sawargaon (P), Tq. Mukhed,
Dist. Nanded.
Office at – Sawargaon (P), Tq. Mukhed,
Dist. Nanded.
Through its Secretary
Gangadhar Datta Suryawanshi,
Age 45 yrs., Occ. Agri.,
R/o Sawargaon (P), Tq. Mukhed,
Dist. Nanded.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through -
 - A) The Principal Secretary,
Social Justice and Special Assistance
Department, Mantralaya,
Vistar Bhavan, Mumbai – 400 032.
 - B) The Principal Secretary,
Finance Department, Mantralaya,
Vistar Bhavan, Mumbai – 400 032.
- 2 The Commissioner,
Persons with Disabilities,
Maharashtra State, 3 Church Road,
Pune – 411 001.
- 3 The District Social Welfare Officer,
Zilla Parishad, Nanded,
Dist. Nanded.

... Respondents

...

Mr. S.S. Deshmukh, Advocate for petitioner
Mr. P.S. Patil, AGP for respondent Nos.1 and 2
Mr. A.B. Shinde, Advocate for respondent No.3

...

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

RESERVED ON : 10th JANUARY, 2024

PRONOUNCED ON : 18th JANUARY, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 The petitioner is a public Trust registered under the provisions of the Bombay Public Trust Act. It is established with an object to impart education to poor, Adivasi as well as disabled persons. The petitioner is relying on various Government Resolutions which have been passed by respondent No.1, which are governing the schools for disabled persons conferring grant-in-aid to those schools, transfer of schools etc.

3 It is contended that upon the registration of the person with disability i.e. 2433 in Nanded district it was felt by the State Government to

run a school for disabled persons. A Trust by name 'Sundaradevi Apang Shikshan va Prashikshan Mandal, Aurangabad' started school for disabled persons by name 'Kalikamata Niwasi Matimand Vidyalaya, Chalisgaon, Dist. Jalgaon' on 08.11.2000. Its certificate was renewed up to 31.03.2002, however, it was closed down by the orders of the competent authority on 16.04.2003. The said school came to be transferred in favour of petitioner by Government Resolution dated 31.08.2009. A detailed order from the Commissioner, Welfare of persons with disability, Pune issued order dated 27.04.2010 permitting strength of 50 students in the school of the petitioner and various conditions were imposed including the approval of the salary of the staff. There was demand from various institutions for 100% grant-in-aid to the schools for the disabled persons. Ultimately Government Resolution came to be issued on 08.04.2015, thereby granting 100% grant-in-aid to the schools those are in category-A. The petitioner's name was listed at Sr.No.57. Thereafter, again in Government Resolution dated 04.07.2018 100% grant-in-aid was granted to the petitioner by considering it in the Category-A at Sr.No.93. Thus, the entitlement of the petitioner was duly endorsed in the successive Government Resolutions. However, it was restricting from 2015 as against its entitlement from the date of certificate of registration i.e. 27.04.2010. It has been contended further that as per the policy by Government Resolution dated 19.07.2003 the grant-in-aid was to be given to

the schools those who were in existence before 30.09.2002 and have completed two years. But in ignorance of the policy the respondents had placed the petitioner for the first time in the year 2015. It appears that the petitioner wants to say that since it is predecessor it should have been considered that the petitioner was entitled to get grant-in-aid from 27.04.2010 itself i.e. when the date of certificate of registration was issued to it and prior to that the school was transferred to it. The petitioner is facing its claim on said Government Resolution dated 19.07.2003 and supplementary Government Resolution dated 04.12.2003. It is stated that the Government again promulgated Resolution dated 06.11.2018 by making serious departure from the previous Government Resolutions and the entitlement of 100% grant-in-aid of the petitioner was reduced to 50%, that too, as a special case. The subsequent Government Resolution is contrary to the Government Resolution which was issued four months prior to the same. It has been contended that the respondent authorities were not justified in contravening their own stand without any reason and, therefore, present petition has been filed.

4 Affidavit-in-reply has been filed on behalf of respondent No.1A and 2 by one Raju Hari Yedke, the District Social Welfare Officer, Zilla Parishad, Nanded. Most of the facts are admitted. But it is said that the

relief sought by the petitioner is based on lapsed and time barred policy in Government Resolution dated 04.12.2003. The Government Resolution dated 19.07.2003 and 04.12.2003 have been superseded by Government Resolution dated 16.09.2017 and revised by Government Resolution dated 15.02.2019. Though it is admitted that the school was transferred to the petitioner, it is said that there is no provision in respect of sanction of grant-in-aid to unaided special schools on its de-recognition. After the earlier school was de-recognized it was subsequently handed over to the petitioner institution in the year 2009, which was not fully aided at the relevant time. In fact, the petitioner ought to have approached if it would have aggrieved in view of the fact that the transfer was in the year 2009 and certificate of registration was issued in the year 2010. Therefore, the petition suffers from delay. In fact, by Government Resolution dated 19.07.2003 a ban was imposed on granting new special school until finalization of master plan. It is in fact, the prerogative of the State Government either to grant or deny grant-in-aid to certain special schools, taking into consideration the necessity and making available special education for mentally retarded students through special school for a particular area. The grant-in-aid cannot be asked as of right. He, therefore, prayed for the dismissal of the writ petition.

facts and denied that its relief are claimed on lapsed or time barred Government Resolution. It is reiterated that the constitutional obligation mandates the State to provide education to the disabled children also. In fact, for that purpose itself the registration has been enacted under the name “The person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The petitioner wants to rely on the decision in Writ Petition No.7451 of 2007 directing the respondents to disburse the grant-in-aid to concerned schools, in fact, on identical facts on the basis of Government Resolution dated 04.01.2002.

6 Heard learned Advocate Mr. S.S. Deshmukh for the petitioner, learned AGP Mr. P.S. Patil for respondent Nos.1 and 2 and learned Advocate Mr. A.B. Shinde for respondent No.3 and with their help we have gone through the documents, especially the Government Resolutions on record.

7 The learned Advocate appearing for the petitioner submits that when a policy decision has been taken, then Government cannot deviate itself unless there are special reasons. Here, the Government has decided to give grant-in-aid and resolutions to that effect were also passed. Legitimate expectation, therefore, arises that the same rule will be applicable to the similarly situated institutions. Government cannot make discrimination. In

catena of Judgments of the Hon'ble Supreme Court it is held that the public trust doctrine is a part of law of the land. The doctrine has grown from Article 21 of the Constitution. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it would be only a case of colourable exercise of power. The power vested by the State in a public authority is coupled with a duty to be exercised in larger public and social interest. Public authorities cannot play fast and loose with the powers vested in them. A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. Learned Advocate for the petitioner relies on **Lalaram and others vs. Jaipur Development Authority and another** [(2016) 11 SCC 31] with companion matters, **State of Jharkhand and others vs. Brahmputra Metallica Ltd., Ranchi and another** [AIR Online 2020 SC 993] and **Shree Krishna Education Society vs. State of Maharashtra and another** [2019 (4) ABR 230].

8 Learned AGP points out the additional affidavit filed by Raju Hari Yedke, the District Social Welfare Officer in view of the inquiry made by this Court in respect of present status and applicability of Government Resolution dated 08.04.2015 as regards sanction of 100% grant to the petitioner school stating that the Government Resolution dated 08.04.2015 is still in existence and it is not superseded. The Government had primarily

accorded sanction on grant-in-aid to 123 special schools by said Government Resolution dated 08.04.2015 and then by Government Resolution dated 18.01.2018 Government has granted 100% arrears of non salary grants with effect from 08.04.2015 to the petitioner school along with similarly situated institutions in the budgetary provisions for the Financial Year 2018-19. The said Government Resolution further directs to continue to pay 100% non salary grants with effect from 01.01.2018. As regards extending benefits to the petitioner's school as well as similarly situated special schools in respect of 100% salary grants by letter dated 15.06.2022 respondent No.1 has asked respondent No.3 to provide comprehensive information with regard to the proposed expenses to be incurred if those 123 special schools could have been benefited for 100% salary grants. However, the learned AGP submits that since the grant-in-aid cannot be asked as of right, it would depend upon the availability of finance.

9 The first and the foremost thing which is required to be borne in mind is that the Government had transferred the school which was closed due to certain reasons. The closure of the said institution/school was on 16.04.2003 and the transfer in favour of petitioner was by way of Government Resolution dated 31.08.2009. There was much time gap in between the said period. The registration of the petitioner is on 29.09.2007

under the Public Trust Act and under the Maharashtra Co-operative Societies Act it is 04.05.2007. Even if for the sake of argument it is accepted that the earlier institution was granted 100% grants; yet, taking into consideration the time gap and the fact that the petitioner was not in existence at all on the date of closure of the earlier institution, we cannot give a retrospective effect to the Government Resolution. As per the prayer the 100% grant has been claimed with effect from 27.04.2010, that is, the date on which petitioner started the school. Prior to that by Government Resolution dated 31.08.2009 the school was transferred. If we consider the Government Resolution in respect of transfer of the school, it was with condition and there was no mention about the grants to be given under any category. The said Government Resolution cannot be interpreted as all the service conditions to the staff to be employed and the grants those were accorded would automatically be given to the petitioner. The order dated 27.04.2010 is specific which permitted the school to be run from 23.04.2010 to 31.03.2011 by permitting 50 students on residential basis and it is specifically stated that it is on the basis of non grant basis. The petitioner never objected to those words and it appears that it has started the school. Thereafter, the proposal was given on 30.11.2010 by Commissioner, Welfare of persons with disability, Pune to the Secretary, Social Justice and Special Aid Department to grant aid to the school. Thereafter, it appears that communications have been made

and the representations have also been made. Thereafter, by Government Resolution dated 08.04.2015 the Government took up the representation of grant-in-aid to the schools for disabled persons either residential or non residential run by the private institutions, which was in respect of 123 schools run on non grant basis. By imposing conditions permission was granted and those 123 schools were under Category-A. The petitioner's school stood at Sr.No.67 with the intake of 50 students. Thereafter by Government Resolution dated 04.07.2018 the same Government Resolution dated 08.04.2015 was reiterated. 100% grant-in-aid was decided to be given to the petitioner as it was placed in Category-A. There were 101 schools, which were put in 100% grant-in-aid out of 123 schools. Surprisingly it appears that on 06.11.2018 while granting post of 1264 to 121 schools for disabled on grant-in-aid basis it was decided to grant 50% of grant-in-aid as special case and that too, from 06.11.2018. It is also stated that the arrears will not be granted. The petitioner school was placed at Sr.No.2. If we consider this Government Resolution dated 06.11.2018, it does not say that it had superseded Government Resolution dated 06.07.2018 in specific words and there is absolutely no reason as to why the facility granted in July has been taken away in November. Opportunity to explain the said circumstance was given to the State. Unfortunately there is no specific statement as to why the petitioner was brought down from 100% to 50% within five months.

Unless that reason would have been given the Government was not justified in bringing it down. It has not been pointed out that the petitioner has violated any terms of Government Resolution dated 04.07.2018. Under the said circumstance, definitely the action of the respondents to place the petitioner in Government Resolution dated 06.11.2018 is illegal and unjustified. Therefore, it deserves to be quashed and set aside. The Government Resolution dated 04.07.2018 would then be applicable to the petitioner school.

10 Now, the point as regards legitimate expectation is concerned, we are bound by the law laid down on the point as stated in the above said decisions, however, whether in the present case the said principle is applicable or not is required to be considered. As aforesaid, though by Government Resolution dated 19.07.2003 the Government had taken decision to grant grant-in-aid to those schools which were in existence till 30.09.2002 and had completed two years, as regards the schools which would come up after 01.10.2002 it is specifically stated that the proposals of such special schools would be forwarded to the Central Government for grants under the Central Government funded schemes and, therefore, the Government Resolution dated 27.03.2003 will not be applicable. By a Circular dated 04.12.2003 it was stated by the Government that if any school

has been closed prior to 01.10.2002, which might be aided or unaided, that school would be then transferred and whether to grant aid or not would then be considered. Therefore, the said circular does not speak a concrete policy decision. The resolutions dated 29.03.2006 and 31.03.2008 took up the decision in respect of those schools whose names were enlisted. Though it appears that those schools were in existence prior to 01.10.2002 and then closed down due to some reasons, those were granted grant-in-aid. Similar is the situation in respect of Government Resolution dated 15.09.2008. It is not clear from those Government Resolutions as to whether it was a case of transfer of school from one institution to another or the same schools were allowed to be re-opened/re-started on conditions. There are other Government Resolutions which are produced on record in respect of particular institutions and in some of them it is specifically stated that the decision has been taken as special case. When it comes as a special case, the petitioner cannot seek grant-in-aid as of right.

11 At the cost of repetition, we would like to state that when the Government Resolution was passed in respect of present petitioner to transfer the school to it, there was no assurance as such by the Government to grant 100% grant-in-aid and the order dated 27.04.2010 specifically states that it was granted on non grant basis. Therefore, now, the petitioner cannot say

that it was eligible and entitle for 100% grant-in-aid with effect from 27.04.2010. If that was the interpretation to be put on the basis of Government Resolution dated 19.07.2003 vis-a-vis 04.12.2003 then writ petition filed on 08.10.2020 would suffer from delay and laches. A petitioner, who is negligent in respect of alleged rights, cannot be protected under a discretionary relief, that too, under the Constitution of India. Recently in Delhi Development Authority vs. Hello Home Education Society, Civil Appeal Nos.3659 – 3660 of 2023 Hon'ble Supreme Court had reiterated that *the litigant who lacks diligent cannot invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India*. A negligent litigant would then cannot expect the State to observe the doctrine of legitimate expectation. Certainly, as regards prayer clause 9-B the decision of this Court in **Shree Krishna Education Society** (supra) supports the claim of the petitioner. When, once the Government had held the petitioner entitled to get 100% grants by Government Resolution dated 04.07.2018, then it could not have been changed by Government Resolution dated 06.11.2018, that too, with retrospective effect. Under the said circumstance, the case is made out for exercise of the constitutional powers of this Court partly only and, therefore, the writ petition deserves to be allowed partly. We, therefore, proceed to pass following order.

ORDER

1 The writ petition is partly allowed.

2 The Government Resolution dated 06.11.2018 is hereby quashed
and set aside to the extent of petitioner only. Consequently, in view of
Government Resolution dated 04.07.2018 the Government should release
100% grant-in-aid towards the salary and non salary grants, forthwith, in
respect of petitioner.

3 Prayer clauses (A) and (C) stand rejected.

4 Rule is made absolute in the aforesaid terms.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)