



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9966 OF 2019

Matoshree Pannai Sevabhavi
Shikshan Sanstha, Naik Nagar,
Udgir, Tq. Udgir, District Latur,
Through its President,
Anilkumar Veerbhan Pawar.

... **Petitioner.**

Versus

1. The State of Maharashtra,
Through its Secretary,
Social Justice and Special
Assistance Department,
Mantralaya, Mumbai-400032.
2. The Commissioner for Welfare
of Handicapped,
Maharashtra State, Pune-411001.
3. The District Social Welfare officer,
Zilla Parishad, Latur,
4. The Secretary,
Sayali Bahuuddeshiya Shikshan
Sanstha, Nagpur.

... **Respondents.**

WITH

WRIT PETITION NO.13400 OF 2019

Sadnath Bahu Uddeshiya
Shikshan Mandal, Nitur,
Tq. Nilanga, District Latur,
Through its Secretary,
Kalidas S/o Vasantrao Patil,
Age 44 years, Occu. Secretary,
R/o Nitur, Tq. Nilanga, District Latur.

... **Petitioner.**

Versus

1. The State of Maharashtra,

Through its Secretary,
Social Justice and Special
Assistance Department,
Mantralaya, Mumbai-32.

2. The Commissioner for Welfare
of Handicapped,
Maharashtra State, Pune-411001.
3. The District Social Welfare officer,
Zilla Parishad, Latur,
4. The Secretary,
Sayali Bahu Uddeshiya Shikshan
Sanstha, Nagpur.

... Respondents.

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Advocate for Petitioner in WP/9966/2019 : Mr. V. D. Hon
(Senior Counsel) i/b Mr. K. P. Rodge and Mr. P. G. Rodge.
Advocate for Petitioner in WP/13400/2019 : Mr. S. P. Urgunde.
AGP for Respondent/s-Staten in Both WP : Mr. P. S. Patil.
Advocate for Respondent No.3 in Both WP : Mr. S. S. Manale.
Advocate for Respondent No.4 in WP/9966/19 : Mr. V. D.
Salunke.

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

**RESERVED ON : 19.12.2024
PRONOUNCED ON : 15.01.2025**

JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally
by the consent of the parties.
2. Both petitioners have impugned the order dated
15.06.2019 of respondent No.1 transferring and shifting the
school which was closed, to respondent No.4.

3. The brief facts of the case were that Marathwada Apang Sanghatna, Latur was running residential school for girls by name “Maher Asthi Vyang School, Latur”. However, the management failed to run the school. Therefore, respondent No.2 cancelled its registration. An application from the interested social institutions were invited from throughout the State of Maharashtra, for allotting the registration of transferring said school. Both petitioners had also applied. After scrutiny, the Government granted the registration and transferred the said school to respondent No.4 which was registered at Nagpur. Though, respondent No.4/society has been registered at Nagpur the school was shifted in Gadchiroli district.

4. Petitioner in writ petition No.9966 of 2019 has impugned the order of respondent No.1 on the ground that the Government did not follow the norms correctly. The school transferred to respondent No.4 is around 523 k.m. away from the place where it was earlier running. Respondent No.4 had not submitted the application to the District Social Welfare, Zilla Parishad, Latur. They have the institution in the same District where the closed school was running. The students

from Latur District have been suffering the loss. They were to be preferred.

5. In Writ Petition No.13400 of 2019, the grounds of objections are identical to the grounds raised in Writ Petition No.9966 of 2019. In addition thereto, they have the contention that as per the Government Resolution, such a school should be allotted to the institution which is nearly to the earlier place. Their institution runs the school within the periphery of 30 k.m. Therefore, they had the priority right over the distribution.

6. Heard the respective learned counsels at length.

7. Learned senior counsel Mr. Hon for petitioner in writ petition No.9966 of 2019 has referred to various documents and vehemently argued that in the absence of any application to the office of respondent No.3 it cannot be said that it was an appropriate application. There is no other school in the Latur district of the similar nature. There was no specific guidelines for determining the place where it was to be transferred. He relied on the case of *Jeevan Jyoti Krida and Shikshan Prasarak Mandal, through its President, N. S. Survase Vs. State of Maharashtra and others, in Writ Petition No.949 of 2012* with

connected writ petition of Bombay High Court, decided on 10/11 September 2012. It was a case of transfer of the Ashram school. The facts of the case were that there were no procedure laid down by the State Government for considering the request for transfer of Ashram Schools. He further argued that the information supplied by respondent No.3 under Right to Information Act supports the contention of the petitioner that respondent No.4 had submitted no application for allotment of registration of the closed school to respondent No.3. Therefore, there was no application and recommendation for respondent No.4. He would submit that since the school was closed in Latur district, the District Welfare Officer, Latur is the Authority to whom the applications should be submitted and on his recommendation only the school is to be allotted/shifted. However, the Government/respondent No.1 did not consider the concept of transferring the school for the welfare of the physically disabled children in the Latur district. The interest of the students should have been protected. Therefore, shifting the school at such far away is against the principle of equity and it is a discrimination with the students who were already admitted to the school which was closed. The transfer rules have *prima facie* been violated and respondent No.1 has favoured respondent No.4.

8. Learned counsel Mr. Urgunde for petitioner in writ petition No.13400 of 2019 adopted the arguments of learned senior counsel Mr. Hon and in addition thereto has vehemently argued that the petitioner's institution was about 30 k.m. away from the earlier school which was closed. The petitioner runs the same type of school. The petitioner was recommended by respondent No.3. He referred to the Government Resolution dated 23.07.2019 and argued that as per this resolution, if the Ashram school is to be transferred or shifted to another place it should not be transferred or shifted more than 10 k.m. He would submit that the Government Resolutions are not properly considered.

9. Learned counsel Mr. Salunke for contesting respondent No.4 has vehemently argued that the applications were invited from throughout the State. He has referred to the Government Resolution dated 16.09.2017 and argued that Sub Clause 5 of Clause (1) of the said resolutions states that the registered institutions in the State may apply to the District Social Welfare Office. The clause was specific that their society registered within a peculiar district should pray to the District Welfare Officer of the said district. Referring to Sub Clause 14 of the said Government Resolution he would argue that the

employees of the schools were to be absolved. Again he referred to Sub Clause 3 of Clause 2 of the said Government Resolution and argued that the aspirant institutions shall apply for transferring such school to the concerned District Social Welfare Officer Zilla Parishad of entire State. Clause 3 provides that after receiving such proposals, the concerned District Social Welfare Officer should scrutinize and verify the proposals and submit the proposal with candid opinion to the Commissioner of Social Welfare. He further referred to the Government Resolution dated 15.02.2019. It is also about the transfer of the closed schools for physically disabled students. He again referred to Sub Clause 5 of Clause 1 which was identical to the resolution dated 15.06.2019. He would submit that the same course was adopted by the Government. Even in a resolution dated 15.06.2019 no material changes are made. However, some additions were been made in Clause 15 of the Government Resolution dated 15.02.2019. He again referred to the Government Resolution dated 23.07.2019, it was pertinent to the transfer of the Ashram school. He would submit that the case law relied upon by learned senior counsel Mr. Hon was about the Ashram school for which there were a separate guidelines. Therefore, that case law would not assist the petitioners. He would argue that the transfer or shifting of the

Ashram schools were based on the area and distance. Therefore, the said case law would not apply. He further referred to the advertisement and submit that the terms and conditions of transfer were clinching, clear and unambiguous. The intention of the Government was free from doubt to shift/transfer the closed school to any of the institution throughout the State. Therefore, it cannot be said that there was a distance and area restrictions while shifting/transferring such closed school for the physically disabled children. Undoubtedly, the society of the respondent No.4 was registered at Nagpur. Hence, they have correctly applied to the District Welfare Officer, Zilla Parishad, Nagpur. He properly verified the submissions and recommended in their favour to the Commissioner. Since there was no condition to file an application with respondent No.3, the arguments are without foundation.

10. He referred to the impugned order and vehemently argued that the terms and conditions and the policies of the Government have been correctly applied. It is not a mechanical order. It reflects the complete application of mind and it is a conscious decision of respondent No.1 for shifting the school in

question to be run in the Gadchiroli district by respondent No.4. He also objects that the petitioners have no locus.

11. The affidavit-in-reply of respondent Nos.1 to 3 is supporting the petitioners. The Government policy has not been challenged. Therefore, the writ petitions deserve to be dismissed.

12. Learned AGP has vehemently argued that no Government policy has been violated and no discrimination has been made while passing the impugned orders. The proposal of respondent No.4 was received from District Welfare Officer, Zilla Parishad, Nagpur. He referred to the reply and argued that the staff was correctly absolved and they are not the parties to the proceeding. The students were also accommodated before the impugned order was passed in the nearby school. He further adopted the argument of the learned counsel Mr. Salunke and also prayed to dismiss the writ petitions.

13. In reply, learned senior counsel Mr. Hon again argued that the Public Information Officer of Zilla Parishad, Gadchiroli also informed under RTI that no application was filed to the District Welfare Officer, Gadchiroli by respondent No.4 in

pursuance of the advertisement. He would reply that the Government Resolution dated 16.09.2017 would apply because the process was started, when that Government Resolution was in existence. The Government Resolution dated 15.02.2019 would not apply. He further argued that the office of the Public Information Officer of Divyang Kalyan Ayuktalay, Pune also supports the contention of the petitioners that no approval was granted to the society run by respondent No.4 till that date. However, the approval granted to respondent No.4 in the month of June/July 2019. That was against the information supplied by the Commissioner Office under RTI dated 22.10.2019. It is a colourable favouritism to respondent No.4. The proposal of the petitioners was not considered though it was eligible. The case relied on by respondent No.4 does not apply as well as the Government Resolution dated 15.02.2019 would also not apply. He prayed to allow the petitions.

14. After hearing the respective learned counsels, the core questions are to be decided are as follows :

- (i) Was there any location, distance, restrictions, while shifting or transferring the closed schools for physically disabled children ?

(ii) Whether the applications in pursuance of the advertisement were to be filed only with the District Welfare Officer where such schools are closed or whether such an application should be filed to the office of the District Social Welfare Officer, Zilla Parishad where such schools are proposed to be shifted ?

(iii) Whether the guidelines of Government Resolution dated 16.09.2017 would only apply ?

15. There are no serious dispute on facts. The Government had issued two Government Resolutions dated 16.09.2017 and 23.07.2019. The advertisement was issued inviting a proposal for transferring and shifting the closed schools for physically disables. Condition No.3 of the advertisement was specific that the proposals for transfer should be made to the Assistant Commissioner Social Welfare, Mumbai City and Sub Urbans and District Social Welfare Officer of Zilla Parishad and they have to submit their proposals to the Commissioner for welfare of handicapped on 18.03.2019. The petitioners have referred to the Government Resolution dated 16.09.2017 which is particularly about transfer of the closed schools run for the

handicapped. It was a transparent policy decision of the Government for shifting and transferring such closed schools. Clause 1 of the said Government Resolution is about the procedure to be followed for such process. Sub Clauses 2, 3 and 5 are relevant which reads thus :

“(२) अस्थिव्यंग विद्यार्थ्यांच्या उपस्थिती अभावी बंद पडलेल्या अस्थिव्यंग शाळांचे हस्तांतरण व स्थलांतरण अस्थिव्यंग प्रवर्गाऐवजी आवश्यकता तपासून बहुविकलांग, सेरेब्रल पाल्सी किंवा आवश्यकतेनुसार इतर प्रवर्गासाठीची शाळा/ कर्मशाळा असा प्रवर्ग बदलून हस्तांतरीत करण्याचा अधिकार शासनास राहिल. त्यानुसार आवश्यक पद मान्यता देण्याची कार्यवाही नियमानुसार शासन स्तरावरून करण्यात येईल. प्रवर्ग बदलामुळे नव्याने अनुज्ञेय पदावर प्राधान्याने अतिरिक्त कर्मचा-यांचे समायोजन करण्यात येईल. प्रतिका यादीवर उमेदवार उपलब्ध नसल्यास विहित मार्गाने आयुक्त, अपंग कल्याण, पुणे यांचे ना-हरकत प्रमाणपत्र घेऊन पात्र कर्मचा-यांची नियुक्ती करण्याचे अधिकार संस्थेस राहतील.

(३) व्यवस्थापनाच्या चुकीमुळे जी अपंगांची शाळा/कर्मशाळा बंद पडली आहे अथवा मान्यता रद्द झालेली आहे, अथवा नोंदणी प्रमाणपत्र रद्द झालेले आहे, अशा अपंगांच्या विशेष शाळा/कर्मशाळा त्याच संस्थेस हस्तांतरित करण्यात येणार नाहीत. सदर विद्यार्थी लगतच्या अपंगांच्या विशेष शाळा/कर्मशाळेत वर्ग करण्यात येतील व त्या संस्थेचा समावेश काळ्या यादीत (Black List) करण्यात येईल.

(५) राज्यातील नोंदणीकृत इच्छुक स्वयंसेवी संस्था जाहिरातीस अनुसरून विहित नमून्यात संबंधीत जिल्ह्याचे समाजकल्याण अधिकारी, सहाय्यक आयुक्त, समाज कल्याण, मुंबई शहर/ मुंबई उपनगर यांच्याकडे अर्ज करू शकेल.”

16. The word “concerned District Social Welfare Officer has been seriously assailed. The petitioners have assailed that respondent No.4 did not apply to the District Social Welfare Officer of Latur or the Gadchiroli. They had applied to the District Social Welfare Officer, Nagpur. The papers reveals that the District Social Welfare Officer, Zilla Parishad, Nagpur had sent the recommendation to the Commissioner in favour of respondent No.4. The words used in Sub Clause No.5 of Clause 5 and Sub Clause 2 and 3 are clear that the societies interested to get the closed institution transferred or shifted should apply to the concerned District Social Welfare Officer. The society of respondent No.4 was registered at Nagpur. Therefore, they have correctly submitted the proposal to the District Social Welfare Officer, Zilla Parishad, Nagpur. In view thereof, the information received by the petitioners from the District Social Welfare Officer, Latur as well as Gadchiroli that respondent No.4 did not submit the proposal through them is correct but not affecting the right of respondent No.4. The Government Resolution dated 23.07.2019 is about Ashram Schools and the rule for transferring Ashram Schools appears quite different from the rules for transferring the schools for handicap children. Another Government Resolution dated 15.02.2019 is on the same subject. The condition inviting the

application from the institution throughout the States for transfer and shifting such handicap closed schools are the replica of the Government Resolution dated 16.09.2017. When the process was started, the institutions from throughout the States were eligible to apply through the District Social Welfare Officer of the societies registered in the said district. The Government Resolution dated 23.07.2019 is about Ashram schools. The process for transferring the Ashram schools and the closed schools for handicapped are apparently different.

17. The case of *Jeevanjyoti (supra)* was about the Ashram School. That time, there were no policy decision of the Government. Since the issue of Ashram School has been dealt with the other criteria that would not help the petitioners. The case of *Radhabai w/o Vitthal Sawant and others Vs. State of Maharashtra and others ; 2016(1) Mh.L.J. 850* was on the fact that the school for handicap was run at Dharur, District Beed. However, it was closed and then it was transferred to Jalna. The school was allowed to run at village Badnapur with the capacity of 80 students. The parents of the students in the school at Badnapur were the petitioners. However, respondent No.4/society informed the parents that they were going to shift the school in Beed District and assured that all students would

be shifted at that place. The said proposal was objected. The permission granted by the State Government to shift the school from Badnapur to Warvanti, Taluka and District Beed was challenged. Subsequently, the State Government by impugned orders had directed respondent No.4 to shift the residential school of Badnapur, District Jalna to village Ghoti, Taluka Kinwat, District Nanded. Under this premise, this Court held that no reasons were mentioned in the Government Resolution dated 23.01.2013 why the Government has taken the decision to transfer the school from Badnapur to Warvanti Taluka and District Beed. When Government takes a decision to transfer a school from one place to another, certainly there should be some reasons for such transfer from one place to another. There was no provision made about the students who were studying at Badnapur. The Government Resolution dated 23.01.2013 shifting the school from Badpur to Warvanti is silent and without reason. It was not the case that the institution was closed for want of the students. The school having full strength of students and it was abruptly shifted without any reason. Hence, the petitions were allowed.

18. The facts of this case are different. The school which was at Latur was closed for various reasons including no students

and hence, the conscious decision was taken by the Authority to shift the same. For shifting such closed schools, the Government Resolutions were put into service and those appears to be correctly considered. The Government Resolution does not restrict the area nor the particular locality. However, in the impugned order, the Authority has specified the reasons that where the granted school comparing with the other districts are less or where such schools are not available, the transfer of such schools were given first preference to such places. The impugned order is well reasoned and in consonance with the Government policies and procedure laid down in the Government Resolutions dated 16.09.2017 and 15.02.2019.

19. After having gone through the facts of the cases and the reply of respondent Nos.1 to 3, we do not find any illegality in the impugned decision. It is a conscious decision considering the facts of the requirement of such schools in Gadchiroli district and those are in consonance with the guidelines and procedure laid down in the above Government Resolutions.

20. For the reasons mentioned above, the writ petitions stand dismissed.

21. Rule made discharged. No order as to costs.

(SHAILESH P. BRAHME, J.)

(S. G. MEHARE, J.)

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