

## CIVIL APPELLATE JURISDICTION

**(Arising out of S.L.P. (C) No.14795 of 2006)**

**...Appellant(s)**

**...Respondent(s)**

(Arising out of S.L.P. (C) No.16804 of 2006)

**Leave granted.**

**These appeals are directed against order of the Division Bench of Bombay High Court which dismissed the writ petitions filed by the appellants, Raja Shri Shivrai Pratishthan, Pune and Siddhai Mahila Mandal, Kolhapur, questioning government resolution dated April 20, 2002 whereby names of the appellants were excluded from the list of institutions selected for running Vruddhashrams on non-grant-aid basis.**

The appellants are non-government organizations. In furtherance of the policy decision taken by the Government of Maharashtra to establish homes for senior citizens under the Matoshree Vruddhashram Scheme (for short ‘the Scheme’), the

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appellants established old age homes at Pune and Kolhapur respectively. In 1995, the State Government framed rules for providing grant-in-aid to recognized Vruddhashrams. The same were circulated vide Resolution dated 17<sup>th</sup> November, 1995. The Vruddhashrams established by the appellants were among the institutions selected for grant-in-aid. After six years, the State Government reviewed its decision and issued Resolution dated 3<sup>rd</sup> December, 2001 for conducting Vruddhashrams through private voluntary institutions on permanent non-grant-aid basis. Para 2 of the resolution envisaged the issue of an advertisement by Director, Social Welfare for inviting proposals for conducting Vruddhashrams on non-grant-aid basis with a stipulation that all recognized Vruddhashrams will be entitled to apply and the institutions whose work was to be found satisfactory and who agreed to be abide by the terms and conditions enumerated in the government resolution will be given preference.

In response to the advertisement issued by Director, Social Welfare, Maharashtra, the appellants submitted applications along with the required information and documents. Likewise, the private respondents submitted applications for being selected for running Vruddhashrams. Vide Resolution dated 20<sup>th</sup> April, 2002, the government notified the listing of institutions selected for conducting Vruddhashrams on non-grant-aid basis. The names of the appellants did not figure in that list. Instead, the private respondents were shown as the institutions selected for running Vruddhashrams at Pune and Kolhapur respectively.

The appellants challenged resolution dated 20<sup>th</sup> April, 2002 by contending that their non-selection for running Vruddhashrams on non-grant-aid basis is wholly arbitrary, capricious and violative of Article 14 of the Constitution.

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Another plea taken by the appellants was that before rejecting their applications, the concerned authorities did not afford them opportunity of hearing and, therefore, the impugned action is liable to be declared as vitiated due to violation of rules of natural justice.

In the counter affidavit filed in Writ Petition No.3091 of 2002, Shri N.N. Bhadikar, Deputy Secretary to the Government, Social Welfare Department, Government of Maharashtra, stated that at the time of inspection of Vruddhashrams by the Director of Social Welfare on 21.11.2000, it was revealed that a number of Vruddhashrams were not running as per the norms laid down by the Government and in the light of his report, it was decided to implement the Scheme through non-government organizations on permanent non-grant-aid basis. However, he did not controvert the assertion made in the writ petition that the Vruddhashram established by the appellant, Raja Shri Shivraya Pratishthan, Pune was being conducted satisfactorily and that there was no deficiency which could justify denial of the benefit of para 2 of resolution dated 3<sup>rd</sup> December, 2001. In the writ petition filed by appellant, Siddhai Mahila Mandal, Kolhapur, neither any counter affidavit was filed nor any material was placed before the High Court to show that there was any deficiency in the running of Vruddhashrams.

By the impugned order, the High Court dismissed the writ petitions by observing that the allotment of Vruddhashrams on grant-in-aid basis did not create any vested right in favour of the appellants and that the appellants cannot complain against the revised policy decision or claim that they should have been heard before rejection of their applications.

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Shri V.A. Bobde, learned senior counsel appearing for Raja Shri Shivrai Pratishthan extensively referred to the pleadings of the special leave petitions, documents filed by the parties to show that Vruddhashram established by his client is being conducted satisfactorily and that there has been no complaint from any inmates about any deficiency of service. He also also referred to the inspection reports prepared by the departmental authorities to show that the Vruddhashram is being conducted as per norms and satisfactorily. He pointed out that despite non exclusion of the appellant's name in the list of the institutions selected for conducting Vruddhashrams on non-grant-aid basis, his client has been running the Vruddhashram at Pune to the full satisfaction of the inmates. Both the learned counsel argued that in the absence of any adversity in the running of Vruddhashrams by their clients, the government's decision not to select them for conducting Vruddhashrams on non-grant-aid basis should be declared arbitrary and violative of the doctrine of equality.

Shri V.N. Raghupathy, counsel appearing for the Government of Maharashtra could not draw our attention to any document or other evidence from which it can be inferred that the appellants have been conducting Vruddhashrams in violation of the norms laid down by the government or that their performance was/is unsatisfactory. Learned counsel also could not show as to why the appellants were not given benefit of para 2 of resolution dated 3<sup>rd</sup> December, 2001. He, however, reiterated that non selection of the appellants for conducting Vruddhashrams on non-grant-aid basis was as per the policy decision taken by the government and the institutions which were found suitable were selected by the competent authority.

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We have considered the respective submissions and scrutinized the records. Since the respondents have failed to produce any tangible evidence to prima facie establish that conducting of Vruddhashrams by the appellants was unsatisfactory and that there was some valid reason for denying them the benefit of preference clause embodied in resolution dated 3<sup>rd</sup> December, 2001, it must be held that their non selection is wholly arbitrary and violative of Article 14 of the Constitution. It is true that one time selection of the appellants for conducting Vruddhashrams under the Scheme on grant-in-aid basis did not create any vested right in their favour but there can be no gainsaying that in terms of the policy decision taken by the government, they were entitled to preferential treatment in the matter of selection for conducting Vruddhashrams on non-grant-aid basis. Once the government laid down the policy for selection, the same was binding on all its functionaries including the Director, Social Welfare and the applications of the appellants could not have been indirectly rejected without any rhyme or reason.

So far as the case of Siddhai Mahila Mandal, Kolhapur, is concerned, there is no report by any officer indicating that the functioning of this institution was not satisfactory. Even in the counter affidavit filed before this Court, it has not been stated that the work of appellant was unsatisfactory. In this view of matter it is not possible for us to accept the justifications for overlooking the claim of the appellant and it must be held that non selection of the appellant is arbitrary and wholly unjustified.

Ordinarily, we would have remitted the matter to the State Government for re-considering the matter afresh in

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accordance with law but, in our view, the facts of the case are so telling that it would not be advisable to remit the matter to the State Government. Rather it is a fit case in which direction deserves to be given to the State Government to include the names of the appellants in the list of institutions selected for conducting Vruddhashrams on non-grant-aid basis.

Accordingly, the appeals are allowed, the impugned order is set aside. The writ petitions filed by the appellants are allowed and the State of Maharashtra is directed to include the names of the appellants in the list of institutions selected by Government order dated 20<sup>th</sup> April, 2002, by making amendment therein. This order must be carried out within one month from today.

[B.N. AGRAWAL] .....J.

[G.S. SINGHVI] .....J.

New Delhi,  
July 28, 2008.