

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9384 OF 2014

SANT DNYANESHWAR SHIKSHAN SANSTHA AND ANR. ...Appellants

VERSUS

STATE OF MAHARASHTRA AND ORS. ...Respondents

WITH

CIVIL APPEAL NO. 9385 OF 2014

SANT DNYANESHWAR SHIKSHAN SANSTHA AND ANR. ...Appellants

VERSUS

STATE OF MAHARASHTRA AND ORS. ...Respondents

WITH

CIVIL APPEAL NOS. 9673-9674 OF 2014

STATE OF MAHARASHTRA AND ORS. ETC. ...Appellants

VERSUS

MANISHA BHIMRAJ PATIL & ORS. ETC. ...Respondents

J U D G M E N T

Uday Umesh Lalit, J.

1. These appeals by special leave challenge the correctness of the judgment and order dated 22.10.2013 passed by the High Court of Judicature

at Bombay, Bench at Aurangabad in Writ Petition Nos.6537 of 2012 and 3728 of 2012 respectively.

2. A Primary Ashram School was being run by Banjara Magasvargiya Shikshan Prasarak Mandal in the name of Prabodhankar Thakare Prathmik Ashram Shala, Talegaon Tanda, Taluka-Chasligaon, Distt-Jalgaon. Around 2009 certain irregularities and deficiencies having been found, a report was submitted to the Director of VJNT, OBC, Social Welfare of Special Backward Class, Pune. Consequently, the recognition granted to said Ashram Shala came to be withdrawn on 23.08.2010 for not taking corrective steps with regard to deficient infrastructural facilities. By the same order the students of said Ashram Shala were directed to be absorbed in nearby Ashram Schools.

3. By subsequent order dated 15.12.2010 passed by the Director, permission/no objection was given to absorb the employees of said Ashram Shala in other Primary Ashram Schools recognized by the Government. In a tabulated chart, the order noted the names of Primary Ashram Schools where each of those employees was to be absorbed and directed the employees to report within seven days. The employees at Sl.Nos.10,11 and 12 were temporarily adjusted in the office of Special District Welfare Officer and after review of vacant posts in the division, the adjustment of said employees was

to be undertaken. In partial modification of the aforesaid order, an order was passed on 18.06.2011 making revised postings of the employees.

4. Thereafter, on 02.01.2012 a Resolution was passed by Government of Maharashtra, Department of Social Justice and Special Assistance accepting proposal of handing over said Ashram Shala to another entity named Sant Dnyaneshwar Shikshan Sanstha, Islampur, Taluka Walava, District Sangli (appellant in Civil Appeal No.9384 and 9385 of 2014). Under the Resolution the entire Ashram Shala which had been closed down was to be transferred to a place at a distance of 400 kms. The relevant portion of the Resolution was as under:-

“Govt. Resolution :- The proposal of handing over closed down Ashram School named as the Prabodhankar Thakare Primary Ashram School run and govern by the Banjara Backward Education Society, At Talegaon Tanda, Taluka Chalisgaon to the Dnyaneshwar Education Society, Islampur, Taluka Walava, District Sangli and transfer at the Punyashlok Ahilyadevi Holkar Primary Ashram School, Choundi, Taluka Jamkhed, District Ahmed Nagar is approved subject to following terms and conditions:

1. The currently serving approved Teaching/Non-Teaching employees of closed down Ashram School shall be absorbed.
2. The Resident Students of the closed down Ashram School shall be shifted in new society.
3. The Orders, Terms and Conditions time to time issued by the Government shall be binding upon the society.”

5. The employees of erstwhile Ashram Shala which was closed down and who were absorbed in various posts as stated above challenged the Resolution dated 02.01.2012 and communication issued to each of those employees on 06.04.2012 to report at the new place, by filing Writ Petition No. 3728 of 2012 before the High Court. On 24.04.2012 the effect of communication dated 06.04.2012 was stayed by the High Court. Despite the order of stay, a communication was issued by the Assistant Commissioner, Social Welfare Department to various schools where the employees were actually absorbed to relieve them. It is a matter of record that since April, 2012 the employees have not received any payment towards salary or emoluments.

6. The challenge raised by the employees was accepted by the High Court. The High Court considered Government Resolution dated 01.08.2007 dealing with the subject "The conditions for transfer of Primary and Secondary Residential Schools" and found that said Resolution dated 01.08.2007 did not make any reference to transfer of a derecognized or closed school. It further found that none of the terms and conditions as stipulated in said Resolution dated 01.08.2007 were satisfied in the present case. It was observed that the recognition accorded to an Ashram School was being considered as if it was a business licence. The High Court held that the transfer was not preceded by

any circulation about intention to transfer, which would have enabled other institutions to explore possibility of putting in their claims. The High Court also relied upon the decision of the Division Bench of the same High Court rendered in *Jeevanjyoti Krida and Shikshan Prasarak Mandal vs. State of Maharashtra and ors.*¹ .

Allowing the Writ Petition the High Court quashed Government Resolution dated 02.01.2012 and directed the State authorities to release the salaries of the employees regularly with further direction to issue to said employees proper absorption orders in the schools nearer to the derecognized Ashram Shala or allow them to continue at the places of absorption according to the position prior to 02.01.2012.

7. The aforesaid decision of the High Court is presently under challenge by appellant in C.A. Nos.9384 and 9385 of 2014 ('appellant' for short). While issuing notice on 17.12.2013, this Court had directed that the school run by the appellant in terms of Resolution dated 02.01.2012 would continue to run and would not be directed to be closed down till further orders. Consequently, the school is still being run by the appellant. Challenge has also been raised by State of Maharashtra by filing Civil Appeal Nos. 9673-9674 of 2014 against the very same judgment of the High Court. According to the State, the

¹ 2012(6) Maharashtra Law Journal (Mh.L.J) page no. 836

Resolution dated 02.01.2012 was perfectly within the competence of the State and was a proper exercise of power.

8. We have heard Mr. Sudhanshu S. Choudhari, learned Advocate for the appellant in Civil Appeal Nos.9384 and 9385 of 2014, Mr. Arun R. Pednekar, learned Advocate for the State in Civil Appeal Nos. 9673-9674 of 2014 and Mr. Vinay Navre, learned Advocate for the employees.

9. The Government Resolution dated 01.08.2007 dealt with certain conditions under which transfer of employees of primary and secondary residential schools could be permitted. Those conditions were as under:-

“1. The government may permit or consider another option to grant other place to the Ashram run by the institute if the population is enough and the plan has been granted by the government, and considering all the facilities of that Ashram.

2. The location from where the Ashram is functioning and its undertakings and if there is a necessity to requisite that land or there is any danger of earthquake flood natural calamity or

3. If the population of the place where the Sanstha is located is by any reason lessened or moved to some other place/village and if the population becomes less than 50% or

4. If there is any scarcity of basic needs such as availability of land, water, electricity or any other tension such as communal tension and or if that place is not safe for there is occurrence of tension frequently, within the area of 10 k.m., the Director of that Division of the government can

permit to start the functioning of the Sanstha if there is all the required facilities.

5. The permission can be sought by the director of the public welfare (local) authority to shift the location of the Sanstha within the area of 10 km. if the basic facilities such as water, electricity, ground, building are available at that place.

6. If there is an application from the Sanstha or if it faces the problems as mentioned in para 1 such as lack of basic necessities, or the population of children is reduced or the place has gone into Government requisition plan etc. then in that case the govt. authority can consider the permission to shift the place of the Sanshtha.

7. The authority will have the power to grant the permission under extraordinary conditions or situations.

8. If the grant has not been given to any Sanstha once it has shifted its base, the responsibility of the payment of salaries of the teachers and staff shall be wholly on the Sanstha itself.

9. If the location of the Sanstha (Organisation) is changed without seeking the permission of the authority then in that case it will be held illegal and for that the Govt. authority will not be responsible for any query which may be raised on issues such as staff, immovable property population of the children. And the permission given to that organization will stand cancelled. The govt. authority will have the right and power to hand over the functions of the Sanstha to some other Sanstha/Organization.”

10. In *Jeevanjyoti*¹ almost similar fact situation came up for consideration before the High Court where transfer of recognition, after derecognition of an existing Ashram School, was effected and the distance between two places was about 600 kms. After considering the issues involved, the High Court held that once an existing Ashram School was derecognized there would be no occasion to handover that recognition to another Ashram School. The relevant portion of the decision of the High Court was as under:-

“.....Evidently since a policy decision has been taken by the Government in 2006 not to allow new Ashram Schools, this was an attempt to get around that decision ostensibly by handing over the recognition of a derecognized school to another NGO. Once an existing Ashram School was derecognized, there would be no occasion to handover that recognition to another Ashram School. If as a result of the derecognition of an Ashram School the Government is in a position to fund some other institution elsewhere in the State of Maharashtra, that is a completely separate and independent decision, in arriving at which a transparent decision making process must be followed. Recognition is not like a licence to enter on a business which can be transferred. Once recognition granted to a school is withdrawn, that original recognition ceases to exist in law and in fact. There is no occasion then to ‘transfer’ the erstwhile recognition to another institution.

... ..

12. Ordinarily, we would have been inclined to set aside the Government Resolution dated 30 August, 2011 at this stage, having regard to the illegality in purportedly transferring the recognition of a derecognized primary Ashram School to the Fourth Respondent and the absence of a transparent procedure, even assuming that this was

permissible. However, the Court cannot now be unmindful of the factual position on the ground which is that 120 students have been admitted during the current academic year to the Fourth Respondent which is a residential primary Ashram School. These students who belong to the reserved category would now be left in a state of uncertainty if the Government Resolution dated 30 August, 2011 is set aside and their education would be liable to suffer. In this view of the matter, we are now taking recourse to the step of quashing and setting aside the Government Resolution dated 30 August, 2011, particularly having regard to the fair attitude shown by Counsel appearing on behalf of the Petitioner that even the Petitioner would not seek such an extreme direction at this stage having regard to the aforesaid circumstances. We are, however, of the view that henceforth the State Government must frame appropriate guidelines, procedures or, as the case may be, rules and regulations laying down the procedure for considering requests for transfers of managements of Ashram Schools falling within the jurisdiction both of Tribal Development Department and the Social Justice Department. Until the State Government does so, we are of the view that direction should be issued by the Court to obviate an arbitrary exercise of power. The directions which we issue would be as follows:

(i) 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 in the concerned area and on the website of the Department inviting applications from interested organisations including NGOs for conducting the Ashram School. The Government shall simultaneously invite suggestions from all stakeholders including parents, citizens and the teaching and non-teaching staff who may be affected by the transfer of a management;

(ii) The Director (VJNT) or, as the case may be, the Director (Tribal Development) shall hold an enquiry in regard to the reasons for a proposed change in management. The concerned District Social Welfare Officer shall submit a report to the Director (VJNT) or, as the case may be, the Director (Tribal Development) before a final decision is taken. The track record and credentials of the proposed transferee management(s) shall be duly considered;

(iii) After objections are heard, the Director (VJNT) or, as the case may be, the Director (Tribal Development) shall pass a reasoned order. The actual transfer or change in management shall be given effect to thirty days after the publication of the passing of the order in the same mode of publication as indicated earlier and it should preferably be from the commencement of the new academic session, unless for exceptional reasons it becomes necessary to exercise the power during the academic year to prevent a disruption of the education of the children.”

11. The decision in *Jeevanjyoti*¹ was rendered on 11.09.2012 i.e. after the Government Resolution dated 02.01.2012. However, said decision was never challenged by the State. On the other hand, a Government Resolution was issued on 19.12.2016 laying down policy for transfer of recognition of an Ashram Shala in a fair and transparent manner, in terms of said decision in *Jeevanjyoti*¹. In the face of such stand by the Government, the submission raised by Mr. Navre, learned advocate that the appeal preferred by the State Government against the decision which had followed the decision in *Jeevanjyoti*¹ may not be entertained, has some force.

12. In any case, we have gone through the record and considered rival submissions. The way the issue of transfer was dealt with by the State Government, the criticism levelled by the High Court was fully justified. The permission to an Ashram Shala was taken as if it was a business licence which could be utilized at any place. In terms of Government Resolution dated 01.08.2007, the applications for transfer would normally be considered within a distance of 10 kms. In the present case, the distance itself is 400 kms. and for a Primary Ashram Shala it would not be proper to expect the children enrolled in the Ashram Shala to be transferred to a new place. Further, there was no school in existence at the place where the transfer was effected and an entity that was based in a completely different district was allowed to set up a new Ashram Shala. In our view, the High Court was right in rejecting the submissions advanced on behalf of the appellant as well as the State Government. We, therefore, affirm the view and dismiss these appeals.

13. However, we deem it appropriate to pass following directions:-

- a) Considering the facts and circumstances that the students presently enrolled in the Ashram school run by the appellant would be put to great prejudice if the school is to be closed as a result of dismissal of these appeals, it is directed that said school may continue till the academic

session 2019-2020. However, the school of the appellant which is presently functioning by virtue of Resolution dated 02.01.2012 shall not be allowed to function from the academic session 2020-2021.

b) The State authorities are directed to invite proposals strictly in terms of the directions issued by the High Court in *Jeevanjyoti*¹ from interested parties/societies to set up a new school or conduct the very same school which was closed down. Preference shall be given to those who wish to re-start or set up a new Ashram School at a location in conformity with Resolution dated 01.08.2007. If no such proposal is received or is not found viable, then in terms of the decision in *Jeevanjyoti*¹ and for exceptional reasons to be recorded, permission may be given to start a new Ashram Shala at a location beyond the limits prescribed under said Resolution dated 01.08.2007. In either case, there shall be adequate publicity and steps will be undertaken in conformity with the decision in *Jeevanjyoti*¹.

c) The employees who are presently transferred to the school of the appellant shall always be treated to be in continuous service and the entire period from 02.01.2012, right upto the date of this judgment, shall be taken to be part of continuous service.

d) All those employees, till the conclusion of academic session 2019-2020 shall be part of the school presently being run by the appellant. Contemporaneous with the closure of said school in terms of direction (a), the services of the employees shall be directed to be absorbed in any school wherever there are vacancies, or to the school which, as a result of the aforesaid direction would either be re-started or newly set up.

e) The employees shall be entitled to salary and emoluments for the period that they had rendered service. For the period they could not/did not render service, the employees shall be entitled to 25% of back-wages.

(f) All the arrears of salary and emoluments shall be released by the State Government to the employees within six weeks from today.

14. With the aforesaid directions these appeals stand dismissed without any order as to costs.

.....J.
(Uday Umesh Lalit)

.....J.
(Dinesh Maheshwari)

New Delhi,
March 05, 2019.