
(2017) 02 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No.6323 of 2014 with Civil Application No.10836 of 2016

Urling Peddi Education Society

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Ashram School Code — Rule 3.57
Constitution of India, 1950 — Article 226

Citation : (2017) 4 AIRBomR 161 : (2017) 2 ALLMR 701 : (2017) 3 MhLJ 663

Hon'ble Judges : Sangitrao S. Patil and T.V. Nalawade, JJ.

Bench : Division Bench

Advocate : Writ Petition No.6323 of 2014; Mr. V.D. Gunale, Advocate, for the Petitioner; Mr. A.R. Kale, AGP, for the Respondent; Mr. Sachin S. Deshmukh, Advocate, for the Intervenor; Civil Application No.10836 of 2016; Mr. Sachin S. Deshmukh, Advocate, for the Applicant; Mr.V.D.Gunale, Advocate, for the Respondent No. 1; Mr.A.R.Kale, AGP, for the Respondent Nos. 2 to 5

Final Decision : Disposed Off

Judgement

Sangitrao S. Patil, J.—Rule, made returnable forthwith. With the consent of the parties, heard finally.

2. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 08.07.2014 passed by the Hon'ble Minister, Tribal Development Department, Government of Maharashtra, Mantralaya, Mumbai, whereby the order dated 16.03.2013 passed by respondent no.2 - Commissioner, Tribal Development Department, State of Maharashtra, Nashik, derecognising the school of the petitioner with effect from 16.03.2013, came to be confirmed.

3. The petitioner started Ashram School namely Sambhaji Dulewad Basic and Post Basic Tribal Ashram School, Janapuri, Bahadurpura, Tq. Kandhar, Dist. Nanded with effect from 16.01.1999. The petitioner was receiving grantinaid for running the said Ashram School.

4. There were about 400 students in total studying in the said Ashram School from 1st to 10th standards. Respondent no.2 received certain complaints about major deficiencies/irregularities in the Ashram School of the petitioner which had adverse effect on the rights of the students studying therein. Therefore, respondent no.3 - Additional Commissioner and respondent no.4 Project Officer, Integrated Tribal Development Project were directed to carry out inspection of the Ashram School of the petitioner and submit reports. Accordingly, respondent no.3 inspected the Ashram School of the petitioner and submitted the report to respondent no.2 on 03.11.2012 pointing out certain serious deficiencies/irregularities. Respondent no.2 issued notice dated 01.01.2013 to the petitioner and called upon to show cause, as to why the Ashram School run by the petitioner should not be derecognised on account of the deficiencies/irregularities mentioned in the inspection report. The petitioner replied that show cause notice on 08.01.2013. After considering the inspection report as well as the reply given by the petitioner and considering the interests of the students, respondent no.2 ordered derecognition of the Ashram School of the petitioner as per the order dated 16.03.2013.

5. The petitioner filed appeal against that order which was heard by the Hon'ble Minister of Tribal Development Department. After considering the inspection report, reply of the petitioner, the order dated 16.03.2013 passed by respondent no.2 and after hearing the petitioner, the Hon'ble Minister of Tribal Development Department did not find any force in the appeal. Considering the deficiencies/irregularities noted in the inspection report and considering their adverse effect on the academic career of the students, the learned Minister confirmed the order dated 16.03.2013 passed by respondent no.2 derecognising the Ashram School of the petitioner.

6. The learned Counsel for the petitioner submits that there were some minor deficiencies in the Ashram School because of noncooperation and deliberate acts of the Headmaster and other staff members of the Ashram School and those deficiencies were removed by the petitioner. He submits that the petitioner was running the Ashram School in a most proper manner keeping in view the interest of the students studying therein, however, on the basis of the complaints made by the rivals of the petitioner, respondent no.2 wrongly ordered derecognition of the Ashram School of the petitioner. He further submits that the appeal was heard by the then Hon'ble Minister of Tribal Development Department on 29.05.2013, but it was not decided by him. The said appeal was decided by the Minister who succeeded the earlier Minister of the Tribal Development Department on 08.07.2014 without again hearing the petitioner. He submits that the impugned orders derecognising the Ashram School of the petitioner are not legal, proper and correct. The petitioner has constructed a twostorey building by spending a huge amount. Sufficient infrastructure is available with the petitioner to run the Ashram School. He, therefore, submits that the impugned orders may be set aside and the petitioner may be directed to be allowed to run the said Ashram School.

7. Respondent nos.1 to 4 filed affidavit-in-reply and strongly opposed the petition. They pointed out the deficiencies/irregularities, which were major in nature, in the Ashram School run by the petitioner which had adverse effect on the interests of the students. They have justified the decision taken by respondent no.2 and the Hon'ble Minister, Tribal Development Department derecognising Ashram School of the petitioner. Based on the contents of the said reply, the learned A.G.P. supports the impugned orders and prays that the Writ Petition may be dismissed.

8. Respondent no.2 issued show cause notice dated 01.01.2013 to the petitioner, wherein, he reproduced the deficiencies/irregularities noted in the inspection report submitted by respondent no.3, which, broadly, can be stated as under :

(i) No woman employee was sleeping with the girl students in the Ashram School in the night. The girl students were residing in the class room only and there was no special hostel for them. There were no latches to the doors of the rooms where girl students were residing, which had created serious security problem for the girl students. The office bearers of the Institution were sleeping in the room which was near the room of the girl students. The InCharge Headmaster used to touch the girl students under the influence of liquor and as such there was sexual harassment of the girl students.

(ii) The Management of the school was being run by an unauthorised Managing Committee. False bills were being encashed through bogus Managing Committee and the unauthorised Headmaster, whereby they cheated the Government with crores of rupees.

(iii) As per Rule 2.1 of the Ashram School Code, each class should have 40 residential + 10 nonresidential = 50 students in each class. Accordingly, 500 students were expected in the school running classes from 1st to 10th standards. However, about 402 students were on the musterroll of the school, out of which only 167 students were actually present. The biometric system recording presence of the students was not available.

(iv) The students were being made to reside in the class rooms only. The electricity fittings in those rooms were found to be broken. There was only one bulb in each room. There was no facility of fans in those rooms. Because of the loose/broken electricity fittings, there was danger to the life of the students.

(v) The foodgrains and grocery articles were kept in laboratory making it difficult to conduct experiments in the laboratory for the students. The Laboratory Attendant was assigned another work and he was simply being paid salary of that post resulting into loss to the Government.

(vi) There was no separate store room and the food was being cooked openly. There was no dining room and the students were being made to have food in the open space. Since there was no kitchen, the weekly menu board was not being displayed. Atmosphere being very dirty, there was every possibility of food

poisoning to the students.

(vii) The students were not being provided vegetables and non-veg menus as per the norms, which had adverse effect on the physical and mental development of the students.

(viii) As per the Rules of the Ashram School Code, it was necessary to provide uniform, utensils, beddings, etc. as per the norms to the students, which norms were not being followed.

(ix) For overall personality development of the students, it was necessary to arrange for scout/ guide, band unit, etc., which was not being arranged.

(x) The students were not being provided sufficient educational material e.g. notebooks, books, compass, etc. In case any student asked for the said educational articles, he was being threatened to be removed from the Ashram School. There were no sufficient desks/benches for the students. It was noticed that the petitioner was not serious about the educational progress of the students.

(xi) The staff members were being harassed by the petitioner by not sanctioning leave, by unauthorisedly deducting 5% of the amount from their salaries etc. The Management of the school was being looked after by the near relatives of the President of the Institution. The son of the President was the Headmaster of the Secondary School, the daughter of the President was teacher in Primary School. The nephew (sister's son) was working as a Cook and the Secretary was the son-in-law of the President. All these nears and dears of the President were pressurising the staff members and the students. The staff members were being asked to look after the domestic work of the President instead of rendering their services for the school.

9. The reply dated 08.01.2013 given by the petitioner to that show cause notice shows substantial admission of the deficiencies/ irregularities on the part of the petitioner. However, the petitioner has tried to justify the said deficiencies/ irregularities on the ground that it was because of the hostile attitude of the staff members including the Headmaster as well as the teaching and non-teaching staff members. It is admitted that since one month prior to the inspection, no woman employee was sleeping with the girls students in the Ashram School. However, it is tried to be explained that because some of the employees of the school had threatened the said woman employee, she had abstained herself from attending the Ashram School in the night. It is stated that the latches of some of the doors of the schools were broken and those were repaired.

10. It is stated that it was the responsibility of the employees of the Ashram School to increase the number of students. However, despite the written notices, they did not take it seriously and therefore, there were 402 students on the musterroll, while 167 students only actually were present in the school. It is stated that because of construction of the building of the institution, the students

were made to stay in the night in the class rooms temporarily. It is further stated that the employees of the institution have broken the electric fittings. The petitioner showed willingness to affix new fittings, bulbs and fans in the rooms. In respect of laboratory, it is stated that the teachers concerned were supposed to conduct experiments for the students as per the syllabus, but the teachers were not performing their duties properly.

11. It is further stated that the Ashram School Superintendent Shri.Mohite had deliberately kept the foodgrains and grocery articles in the laboratory with a view to defame the institution. It is stated that there were 10 gas units in the kitchen of the institution, but due to the new policy of the Government, gas cylinders were not available. Secondly, the food was being cooked near the kitchen on fireovens. It is stated that the students were being served with the food in Varandah in front of the school and not in the open space. It is stated that the Ashram School Superintendent Shri Mohite was under the obligation to display the weekly menu, but he ignored his duty to do so. It is stated that there were sufficient number of desks/benches in the class rooms, however, the students themselves have broken them and therefore, they have been dumped in a room by the petitioner.

12. All the other allegations have been denied by the petitioner. It is stated that some of the staff members including the Headmaster and the Superintendent of School have made false complaints against the petitioner with a view to defame the petitioner. They compelled the students to speak false against the officebearers of the Institution. The petitioner undertook to provide all the amenities to the students in case, it is permitted to suspend the hostile staff members.

13. The impugned order dated 16.03.2013 passed by respondent no.2 has considered in detail the report of respondent no.3, wherein the abovereferred deficiencies/irregularities were noted. There was no reason for respondent no.3 to make a false report against the petitioner showing the abovereferred deficiencies/irregularities. The said report was based on the factual position. The report of inspection cannot be said to be mala fide since some of the deficiencies/irregularities have been admitted by the petitioner itself, as seen from the reply to the show cause notice. There is specific allegation that the office bearers of the Institution were the nears and dears of the President of the petitioner who were pressurising the staff members and the students. The learned Counsel for the petitioner has produced a copy of the Change Report application form, which is taken on record and marked as "X", showing the names of the Managing Body of the Institution. Shivling Sambhaji Dulewad is the President of the Institution. His wife namely, Vijayalaxmi Shivling Dulewad is the Vice President. His son Dr.Shirish Shivling Dulewad is the Secretary. His another son Shivkumar Shivling Dulewad is the Joint Secretary of the said Institution. The Treasurer namely, Surekha Rameshrao Chabilwad and two members namely, Santabai Manika Shahpurwad and Nagorao Bhujanga Jhampalwad are not from the family of the

petitioner. However, in view of the specific allegations made against the petitioner and considering their surnames, the possibility of their being close relatives of the President cannot be ruled out. If that be so, the allegations made against the nears and dears of the petitioner cannot be said to be unfounded. In the circumstances, considering the interests of the students, respondent no.2 cannot be said to have committed any mistake in derecognising the Ashram School of the petitioner in view of the powers vested in him under Rule 3.57 of the Ashram School Code.

14. The Hon''ble Minister of Tribal Development Department also considered the inspection report, the order dated 16.03.2013 passed by respondent no.2 and passed the order dated 08.07.2014 confirming derecognition of the Ashram School of the petitioner. The order dated 08.07.2014 is a reasoned order. It shows application of mind to the facts of the case. There is reference of the observations of the Hon''ble Supreme Court made in Petition No.95 of 2010 decided on 12.04.2012, wherein the role of the Government in the matters of continuation of the school, to fulfil the norms and standards, to achieve the object of providing free and compulsory education to the students, etc., has been explained. Though the Hon''ble Minister, who passed the order dated 08.07.2014, actually did not hear the petitioner, the order dated 08.07.2014 shows that the Hon''ble Minister has thoroughly considered the inspection report, reply of the petitioner and on the basis of the findings of facts recorded in the inspection report, passed the impugned order. In the circumstances, we do not find any flaw in the order passed by the Hon''ble Minister.

15. The impugned orders are based on findings of facts recorded by respondent no.3 in inspection report. Though some of the findings in respect of deficiencies/irregularities have been disputed by the petitioner, it is not desirable that this Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, should consider the said disputed facts. Respondent no.2 has considered all these disputed facts and has recorded his clinching findings holding that in view of the deficiencies/irregularities in the Ashram School run of the petitioner, it was not in the interest of the students to continue the said Ashram School anymore. The said findings of facts have been confirmed by the Hon''ble Minister as per the order dated 08.07.2014. We do not find any reason to disturb the findings of facts recorded by respondent no.2 and the learned Minister which are based on the factual position noted by respondent no.3 at the time of inspecting the Ashram School of the petitioner.

16. The petition is devoid of substance. It is liable to be dismissed and accordingly, dismissed. Rule is discharged accordingly. The Writ Petition is disposed of. No costs.

17. Civil Application No.10836 of 2016 stands disposed of.