

Bombay High Court

Ankur Prathisthan And Sanshodhan ... vs The State Of Maharashtra And Ors. on 19 December, 2002

Equivalent citations: (2003) 105 BOMLR 864

Author: B Marlapalle

Bench: B Marlapalle, N H Patil

JUDGMENT B.H. Marlapalle, J.

1. This Petition filed under Articles 226 and 227 of the Constitution brings in question the order dated 20th April, 2002 issued by the Director of Social Welfare, Maharashtra State, Pune granting permission in favour of the respondent No. 7 to run the Vrudha Ashram at Ambejogai and further seeks directions to consider the application of the petitioner for running the said Vrudha Ashram. The other reliefs are for directions to release an amount of Rs. 12,88,830/- and also the unpaid amount of grant-in-aid for the period from March, 2000 to June, 2002.

2. Brief facts which are relevant, could be set out as under:

The petitioner - Ankur Prathisthan Sanshodhan Sanstha, Ambejogai is a public trusts registered under the Bombay Public Trusts Act, 1950 and some of its objects are to impart education and undertake social as well as cultural activities. The Government of Maharashtra had issued a resolution on 17th November, 1995 announcing a scheme for homes of aged citizens (Vrudha Ashram) to be run by the Non-Government organisations. In all 70 such Vrudha Ashrams were intended to be started through the State of Maharashtra. An amount of Rs. 750/- per Inmate in addition to the funding of building was the financial benefit announced under the said scheme which covered men above 60 years and women above 55 years. In every district, there was one Vrudha Ashram proposed. The petitioner was one of the Institutions which responded to this policy decision and submitted Its application for running the Vrudha Ashram at Ambejogai in Beed District. Its proposal was considered favourably and by order dated 15.1.1996 it was granted permission to start Vrudha Ashram at Ambejogai. It constructed a building for the said Ashram and the building expenditure came to Rs.

67,88,830/- as per the Certificate issued by the Executive Engineer, P.W.D.. Ambejogai on 28th March, 2002 and the Government of Maharashtra had contributed an amount of Rs. 55,00,000/- towards the said building. Thus, an amount of Rs. 12,88,830/- was invested by the petitioner from its funds. The Vrudha Ashram was commenced in the year, 1997-98 and the strength of the inmates reached to 115.

3. It appears that the Social Welfare Officer, Beed visited the Vrudha Ashram on 25.11.2000 and noticed certain deficiencies. A show cause notice dated 20/24th April, 2001 followed thereafter against the petitioner and issued by (he Director, Social Welfare. The only charge in the said show cause notice was that against the capacity of 100, the strength of inmates had come down to less than 50. The visit report of the Social Welfare Officer indicated that on the day of visit, the strength was 31 on rolls and only 24 were physically present. The Director, Social Welfare by the said show cause notice, took a stand that the reduction of strength of the inmates below 50 was a sufficient reason and serious enough to withdraw the permission/recognition granted in favour of the

petitioner. Reply to the show cause notice was required to be submitted by 10.5.2001. On 4.5.2001, the petitioner submitted reply. The petitioner contended that though during the visit of the Social Welfare Officer on 21.11.2000, the strength of the inmates had come down to 31, the said strength on the date of reply had reached to 58 which was more than 50% of its capacity. The petitioner had also indicated that the strength of 58 was also likely to go up. The petitioner, therefore, requested to withdraw the show cause notice. However, by order dated 4/6th May, 2001, the Director, Social Welfare held that the reply submitted by the petitioner was not satisfactory and he withdraw the permission/recognition of the petitioner - Institution by noting that the strength of inmates had reduced below 50. The permission granted in favour of the petitioner pursuant to the Government Resolution dated 17.11.1995 was withdrawn w.e.f. 21.6.2001. The Petitioner submitted an appeal on 25.6.2001 to the State Government against the order passed by the Director, Social Welfare. The appeal remained pending.

4. On 3rd December, 2001, the State Government issued another resolution and invited applications to run Vrudha Ashram on no grants basis all over the State. This resolution was applicable to the existing as well as proposed Vrudha Ashrams. Pursuant to the said resolution, an advertisement was released in some of the leading local newspaper on or about 17th December, 2001. At the same time, on 31.12.2001, the Additional Secretary in the Department of Social Justice, Cultural Affairs, Sports and Special Assistance, addressed a letter to the petitioner referring to its appeal and the hearing thereon. The petitioner was requested to submit a fresh proposal in response to the Resolution dated 3rd December, 2001 for running the subject Vrudha Ashram at Ambejogai as an Unaided Institution, if it was so willing. Consequently, the petitioner also submitted a fresh proposal. By the impugned order dated 20.4.2002 permission was granted in favour of the respondent No. 7 to run the subject Vrudha Ashram at Ambejogai and on signing an agreement between the parties, reigns of the Institution were handed over to the respondent No. 7 on 7th June, '2002.

5. This Petition was moved before us on 6.6.2002 and was admitted on 7.10.2002. Shri Deshmukh the learned Counsel appearing for the petitioner has advanced three-fold arguments. At the threshold, it has been submitted that the order impugned and passed by the Director, Social Welfare was unjustified, illegal and without application of mind to the reply furnished by the petitioner to the show cause notice. It was no where mentioned in the Resolution dated 17.11.1995 that permission granted once was liable to be withdrawn if the strength of the inmates had reduced below 50% of the capacity and even otherwise, the strength of the inmates as on the day [he reply was furnished, had gone to 58. In any case, the substantial appeal submitted by the petitioner against the order passed by the Director, Social Welfare was not decided by (he State Government and, therefore, the petitioner continued to run the subject Vrudha Ashram without interruptions. Secondly, by letter dated 31.12.2001, the Government requested the petitioner to submit fresh proposal to run the subject Vrudha Ashram as an Unaided Institution and this communication, therefore, implied that the petitioner's, appeal was allowed and the slur of deficiency which was the foundation of the order passed by the Director of Social Welfare was removed. The petitioner, having submitted its proposal, stood a preferential chance in selection as compared to other applicants as it was running I he subject Ashram right from 1997 and had invested some funds from its own account, Its proposal ought to have been accepted by the State Government, in preference to the proposal of the respondent No. 7 as well as other proposals, if any. The decision of the State

Government In grant permission in favour of the Respondent No. 7 to run the subject Vrudha Ashram is illegal, arbitrary and unfounded on merits. On the third issue taken up before us through his oral submissions, Shri Deshmukh contended that the proposals of the institutions/trusts in which the persons holding high public office or their family members are involved directly or indirectly, should not be considered by the State Government for granting any permissions/recognitions to run institutions which are fully or partly funded by the State Government.

6. The State Government has filed affidavit as well as additional affidavit and supported its decision. The respondent. Nos. 5 and 6 have also filed a separate affidavit-in-reply and opposed the Petition. Affidavit-in-reply on behalf of the respondent Nos. 7 and 8 has been filed by respondent No. 8 Dr. Vimal Nandkishor Mundada and it has been contended that the Competent Authority, on assessment of the comparative merit of all the applicants, has selected the respondent No. 7 Institution to run the subject Vrudha Ashram and merely because she is a member of the Council of Ministers, the respondent No. 7 was not estopped from applying for such permission. The order granting permission in favour of the respondent No. 7 is legal and did not suffer from any irregularities. It has been admitted that the possession of the subject Vrudha Ashram has been taken over on 7.6.2002 and the same is being run by respondent No. 7 as at present.

7. At the outset, we wish to record that the petitioner's prayer for directions for releasing an amount of Rs. 12,88,830/- as well as pending amount of grant-in-aid cannot be entertained in this Petition. The petitioner has not attributed any personal malice on the part of the respondent No. 8 and from the record submitted before us, there is no evidence to show that the respondent No. 8 has, by her own acts, influenced the selection of respondent No. 7. We are, therefore, required to examine the only issue regarding the merit of the selection of respondent No. 7 to run the subject Vrudha Ashram pursuant to the guidelines issued in the Resolution dated 3.12.2001. We shall first deal with the standing of the petitioner-trust visa-vis its running the subject Vrudha Ashram.

8. As noted earlier, it has spent an amount of Rs. 12,88,830/- for const ruction of the building over and above the financial assistance of Rs. 55,00,000/- extended by the State Government. It was running the subject Vrudha Ashram right from the beginning and till the show cause notice was issued, there was nothing adverse reported against the petitioner. The show cause notice was based on the sole issue that the strength of the inmates had reduced below 50 on the day when the Social Welfare Officer visited it. The explanation submitted by the petitioner indicated that the strength had reached to 58 by the time the reply was submitted and the petitioner expected the strength to go up. This explanation has been noted down in the order of cancellation of permission passed by the Director, Social Welfare. But, no reasons have been given as to why this explanation was found to be not satisfactory. The petitioner submitted an appeal which remained pending with the State Government and an inference was required to be drawn that the said appeal was disposed of by withdrawing the order passed by the Director, Social Welfare in view of the communication dated 31.12.2001 read with Clause No. 2 of the Government Resolution dated 3.12.2001. The said clause is reproduced as under for ready reference:

2- ljn ;kstuk ekrksJh o`)Je ;kstus[kkrh 'kklukus ekU;rk fnysY;k loZ o`)Jekauk ykxw dj.;kr ;sr vkgs-lapkyd] lekt dY;k.k ;kauh fouk vuqnku rRokoj ekrksJh o`)kJe pkyfo.;klkBh o`Rri=krwu tkfgjkr nsÅu izLoko ekxokosr] rlsp ;k ;kstuslkBh 'kklukus ekU;rk fnysY;k loZ o`)JekaO;k lsLFkkaukgh vtZ dj.;kph eqHkk lkfgy T;k laLFkkps dkedkt lek/kkudkj d vkgs] R;kauk oj uewn dsysY;k vVh o 'krhZ ekU; vlrhy rj R;kauk izk/kkU; ns.;kr ;sbZy/

9. Unless the recognition granted in favour of the petitioner was restored by the State Government, there was no scope for the petitioner to submit, a fresh proposal in response to the Resolution dated 3.12.2001 and by communication dated 31.12.2001, the petitioner was requested to submit a fresh proposal, if it so desired. This action of the State Government indicated that the order of withdrawing/cancelling permission (granted to the petitioner), either did not exist, or if did not come in its way from submitting fresh proposal.

10. By a resolution dated 3.12.2001, the Government announced its decision to run the Vrudha Ashram as an Unaided Institutions. However, it would be fallacious to accept that, the Vrudha Ashrams were proposed to be run without any financial assistance by the State Government. Clause (7) of the said Resolution clearly indicated that an amount of Rs. 335/- per month for each inmate was to be reimbursed to the trust running the Vrudha Ashram and in the past, the said amount was Rs. 750/- per month per inmate. The Resolution also stated that, preference would be given to the existing institutions which were running Vrudha Ashrams, provided their working was satisfactory.

11. The concerned files have been produced before us from the Social Welfare Department as well as the Directorate of Social Welfare. From the Beed district, in all four proposals were received in response to the proclamation published on or about 17th December, 2001 and they were, - (1) the petitioner, (2) the respondent No. 7, (3) Nrusinha Maharaj Pratishthan Pangari, Beed and (4) Lok Mangal Pratishthan, Pune. A tabular statement was prepared in respect of these four proposals and without deciding any proposal on inter se merit, the tabular statement was submitted to the Secretary in the Department of Social Welfare as well as to the Minister. The record also shows that in all thirty proposals were accepted all over the State of Maharashtra and they were in four different categories i.e. A, B, C and D. The first category consists of 10 Vrudha Ashrams which were allotted to the trusts which were running the respective Vrudha Ashrams. The second group consisting of 7 Vrudha Ashrams was of those trusts who were selected by rejecting the proposals of the trusts which were running the respective Vrudha Ashrams. The third category of five Vrudha Ashrams consisted of permissions granted in favour of the existing trusts who did not apply and the proposals submitted by the new trusts were not found eligible. The last group consisted of eight Vrudha Ashrams where the trusts running the Vrudha Ashrams did not apply and new proposals submitted in respect of them did not contain satisfactory details and at the same time, the existing trusts could not apply as they had no knowledge of the proclamation having been released and their oral request to grant permission to continue them was accepted. The present petitioner's case falls in the second group.

12. The tabular statement which has also been submitted before us along with additional reply, has set out various parameters for the Government's considerations and they are registration of the trust with its year of registration, names of the trustees, the activities presently undertaken by the trust,

pendency of any Court case connected with the affairs of the trust, experience of the trust in the relevant, field, availability of trained and experienced staff and funds available in the bank account. In the affidavit. -in-reply submitted before us, it has been stated that all these parameters have been considered while deciding the inter se merits of all these four proposals received for Beed District. We have noted that Nrusinha Maharaj Pratishthan, Pangari did not have relevant experience where as the remaining three applicants had stated that they possessed such experience. The respondent No. 7 had stated that in its Bank Account, an amount of Rs. 3,71,806/- was available as on. 24.12.2001 as against an amount of Rs. 1,96,474/- available in the Bank account of the petitioner, whereas the third applicant namely Lok Mangal Pratisthan, Pune had shown an amount of Rs. 90,900/- lying in its account, as on 27.12.2001. In the affidavit-in-reply submitted before us, it has been in no uncertain words stated that the petitioner was not selected in view of its financial standing as compared to the standing of the respondent No. 7. This submission does not commend to us. The availability of certain amount in the Bank Account on a particular day cannot be the sole criteria in reaching to the conclusion regarding the financial capacity of a trust or an institution. The petitioner has admittedly. spent an amount of Rs. 12,88,830/- over and above the financial assistance rendered by the State Government for construction of the Vrudha Ashram building at Ambejogai. The amount of grant-in-aid @ Rs. 750/- per inmate, per month was not reimbursed to the petitioner for the period from April, 2000 onwards and as per the statement made by the learned Counsel appearing for the petitioner, the said amount comes to Rs. 5,25,000/-. The fact remains that the petitioner - Institution was running the Vrudha Ashram with 50 or less than 50 inmates or more than 50 inmates right from April, 2000 onwards till it was forced to hand over the same to the respondent No. 7 in spite of the fact that the financial assistance due to it was not reimbursed by the State Government. This itself was a major factor in support of the petitioner's better financial status.

13. The note prepared and circulated to the Minister for Social Welfare as well as to the Honourable the Chief Minister also speaks of the parameters having been considered in selecting the thirty applicants all over the State of Maharashtra and more particularly, the respondent No. 7 for Beed district and the parameters are, (a) field of activities; (b) assessment of such activities; (c) seniority in registration; (d) financial status; and (e) man power etc. There is nothing on record to show that any committee or subcommittee either from the office of the Director, Social Welfare or the Department of Social Welfare had considered the credentials of all the three or four applicants and prepared an inter se merit list on the assessment of the above said parameters. The tabular statement attached to the note speaks only about one applicant not having the relevant experience. The record is silent as to how the respondent No. 7 was selected in preference to the petitioner and the Lok Mangal Pratishthan, Pune. When a decision for selection of one particular applicant was required to be taken, it was necessary to have on record the parameters which weighed in favour of a particular applicant for being selected, if, a particular application has been just picked up without substantiating the factors that weighed in favour of such selection, Article 14 of the Constitution would come into play and such a decision would have to be termed as being arbitrary.

14. Going by the details submitted by the petitioner and the respondent No. 7 in their respective proposals, we will consider the comparative merits and we are doing this because we are not in agreement with the submissions made by the learned Government Pleader as well as the learned

Counsel for respondent No. 7 that the Government would withdraw the impugned order and consider all the three applications afresh or invite fresh proposals by releasing another proclamation.

Friday, 20th December, 2002

15. In the proposal submitted by the respondent No. 7. it had listed the details of its experience and it substantially pertains to social work and to some extent, sports and cultural activities for senior citizens. It had also listed the names of the Educational Institutions run by it in Beed district and they were Ashram Schools, Primary/Secondary Schools, Anganwadi Workers Training Centre and Zunka Bhakar Kendra in the premises of Medical College at Ambejogai. The said respondent also had supplied the names of the male as well as female employees. The proposal submitted by the said respondent did not indicate that it had any experience in running a Vrudha Ashram. As against the credentials of the respondent No. 7, regarding experience in the same field and availability of trained and experienced staff, the petitioner was running the subject Vrudha Ashram right from its inception and during this period of about five years, it had a duly trained staff on its rolls. The petitioner was certainly of better merit than the respondent No. 7 when it came to experience in the same field and availability of trained staff and this factor has not been considered by the concerned authorities, nor is there any reflection in the files produced before us that after assessing these parameters, comparative suitability was decided by any committee or sub-committee and based on such decisions, the respondent No. 7 was allotted the subject Vrudha Ashram.

16. The Government Resolution dated 3.12.2001 clearly indicated that the institutions presently running the Vrudha Ashram would be given preference over others, in case it was found that they were running the same satisfactorily. The only reason for withdrawing the permission granted to the petitioner was the reduction in the strength of the inmates and in the reply submitted by the petitioner, it was pointed out that the said strength had also gone beyond the minimum required number which factor was not considered by the Director of Social Welfare, Even otherwise, in view of the communication dated 31.12.2001 calling upon the petitioner to submit its fresh proposal would operate in removing the slur of deficiency on that score as well. There was no single instance noticed or placed on record regarding maladministration of the Vrudha Ashram by the petitioner during the period of about five years or so. Having regard to these facts on record, we are of the considered view that the petitioner ought to have been preferred over the other applicants including the respondent No. 7.

17. In paragraph 12 of the Petition Memo, the petitioner has set out the grounds of challenge against the impugned decision dated 20.4.2002. The respondent No. 8 who is Minister of State for Women Welfare and Child Development, is the President of the respondent No. 7 and the petitioner alleges that it was favoured under political pressure and the permission was granted to respondent No. 7 without considering the provisions of Government Resolution dated 3.12.2001 as well as 17.11.1995. Shri Deshmukh, the learned Counsel appearing for the petitioner submitted before us that the respondent No. 8 being the President of respondent. No. 7 and her being a member of the Council of the Ministers, has a direct bearing on the decision to select the respondent No. 7 for running the subject Vrudha Ashram. To maintain purity in administration and transparency in the Government

decisions while granting State largess, the respondent No. 8 ought to have either alienated herself from respondent No. 7 or brought to the notice of the Government that she is directly connected with the said respondent as a President. In support of these contentions, Shri Deshmukh referred to the following decisions of the Apex Court.

(1) Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi and Ors. ;

(2) Common Cause, a Registered Society v. Union of India and Ors. .

(3) Padma v. Hiralal Motilal Desarda .

18. In (he case of Shivajirao Nilangekar Patil (supra), the Apex Court, in paras 50 and 51, observed thus:

50. There is no question in this case of giving any clean chit to the appellant in the first appeal. It leaves a great deal of suspicion that tampering was done to please Shri Patil or al his behest. It is true that there is no direct evidence. It is also true that there is no evidence to link him up with tampering. Tampering is established. The relationship is established. The reluctance to face a public enquiry is also apparent. Apparently Shri Patil, though holding a public office does not believe that "Ceaser's wife must be above suspicion". The erstwhile Chief Minister in respect of his conduct did not wish or invite an enquiry to be conducted by a body nominated by the Chief Justice of the High Court. The facts disclose a sorry state of affairs. Attempt was made to pass the daughter of the erstwhile Chief Minister who had failed thrice before by tampering the record. The person who did it was an employee of the Corporation. It speaks of a sorry state of affairs and though there is no distinction between comment and a finding and there is no legal basis for such a comment, we substitute the observations made by the aforesaid observations as herein.

51. This Court cannot be oblivious that there has been a steady decline of public standards or public morals and public morale. It is necessary to cleanse public life in this country along with or even before cleaning the physical atmosphere. The pollution in the values and standards is an equally grave menace as the pollution of the environment. Where such situations cry out the Courts should not and cannot remain mute and dumb.

20. In the case of Common Cause (supra). In paragraph 24, it is stated as under:

...There is no justification whatsoever to pick up these persons except that they happen to have won the favour of the Minister on mala fide considerations. None of these cases fall within the categories placed before this Court in Centre for Public Interest Litigation v. Union of India but even if we assume for argument sake that these cases fall in some of those or similar guidelines the exercise of discretion was wholly arbitrary. Such a discretionary power which is capable of being exercised arbitrarily is not permitted by Article 14 of the Constitution of India. While Article 14 permits a reasonable classification having a rational nexus to the objects sought to be achieved, it does not permit the power to pick and choose arbitrarily out. of several persons falling in the same category. A transparent, and objective criteria/procedure has to be evolved so that the. choice among the

members belonging to the same class or category is based on reason, fair play and non-arbitrariness. It is essential to lay down as a matter of policy as to how preferences would be assigned between two persons falling in the same category. If there are two eminent sportsmen in distress and only one petrol pump is available, there should be clear, transparent and objective criteria/procedure to indicate who out of the two is to be preferred. Lack of transparency in the system promotes nepotism and arbitrariness. It is absolutely essential that the entire system should be transparent right, from the stage¹ of calling for the applications up to the stage of passing the orders of allotment. The names of the allottees, the orders and the reasons for allotment should be available for public knowledge and scrutiny....

21. In the case of Padma (supra), which arose from the decision of this Court, the Apex Court observed in para No. 33, as under:

It was contended that Shri Sambhaji Pawar, the respondent No. 12 was not a party to any of the decisions whereby the land was allotted to Sewa Sanstha. Suchita Housing Society or Holiday Resorts (respondent Nos. 5, 6 and 15 respectively) and therefore the allotment is not vulnerable on this count. We are not impressed. Shri Sambhaji Pawar was holding a public office and that too in CIDCO. If he directly or indirectly proposed to deal in property and in the course of such business activity to encounter with CIDCO then he should have not accepted the directorship of CIDCO. Else if he was motivated with the idea of serving the society by being a Director of CIDCO he should have seen that he cautiously kept away from directly or indirectly dealing with CIDCO. The least that was expected of him was to have informed CIDCO very specifically that the respondent Nos. 5, 6 and 15 consisted of his family members and/or relations and CIDCO while dealing with them should be consciously aware of this. Such standards are required to be maintained by public office-holders in the interest of probity in public life.

22. Though in the files produced before us, the notings submitted before the Secretary, Minister and the Honourable Chief Minister, do not indicate the respondent No. 8 being noted as President of respondent No. 7, the fact remains that the respondent No. 8 is one of the two Ministers under the Cabinet Minister for Social Welfare. Women and Child Welfare Department. In the chart annexed to the notings which resulted into final | selection of respondent No. 7, it is clearly mentioned that respondent No. 8 is the President of the said Institution and, therefore, an inference is required to be drawn that while processing the applications received in respect of Beed district, transparency and probity in public life to be followed was not maintained. The files do indicate that the selection of respondent No. 7, on the comparative assessment, of merits between respondent No. 7 and the petitioner, does suffer from the vice of arbitrariness and the selection of respondent No. 7 is in violation of the guarantee provided under Article 14 of the Constitution. We have no doubt in our mind that the petitioner had better credentials than all other applicants for Beed district and therefore, it ought to be granted the permission to run the subject Ashram and none else.

23. We now come to the last issue raised before us by Shri Deshmukh in his address. It was submitted that if any of the high office holders like ministers etc, are directly or indirectly associated themselves or their family members are associated in a similar way with such Institutions, they should not be considered for granting licences/permissions of Institutions which are fully or partly

aided by the State. In support of these arguments. Shri Deshmukh elaborately read out the above cited three judgments of the Supreme Court. It would not be proper for us to make any comments on this issue in the instant petition and we leave the same for the due considerations of the Honourable Chief Minister and the Council of Ministers headed by him.

24. In the result, the Petition succeeds and the order dated 20.4.2002, passed by the Director of Social Welfare, Maharashtra granting permission in favour of the respondent No. 7 to run Vrudha Ashram at Ambejogai is hereby quashed and set aside. The proposal submitted by the petitioner pursuant to the communication dated 31.12.2001 is hereby allowed and it is directed that the petitioner shall be put in charge of the Vrudha Ashram at Ambejogai forthwith and the compliance of other formalities shall be done within one week from today by the concerned authorities. We direct the respondent No. 5 to hand over possession of the subject Vrudha Ashram to the petitioner immediately.

25. Rule made absolute in terms of the above directions however, without, any order as to costs.

26. At this stage, Shri Bhavthankar, learned Advocate appearing for respondent Nos. 7 and 8 submitted an oral application for stay to the above directions. We do not find any merit in the said application and the same is hereby rejected.