

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7821 OF 2021

Mother Teresa Balakashram,
Run by Yogeshwar Bahu-Uddeshiya
Sevabhavi Sanstha, Beed,
Through its Secretary,
Lalaji S/o Tukaram Jadhav,
Age : 52 years, Occu. : Agri.,
R/o Ankushagar, Old Charhata Road,
Beed, Tq. And Dist. Beed

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Principal Secretary,
Woman and Child Development Department,
Mantralaya, Mumbai
- 2] The Commissioner of Women and,
Child Development,
Maharashtra State, Pune
- 3] The District Women and
Child Development Officer,
Beed, Dist. Beed
- 4] The Child Welfare Committee,
Beed, Tq. & Dist. Beed

.. Respondents

WITH
WRIT PETITION NO. 7786 OF 2021

Mauli Balakashram, Beed,
Run by Savitri Bahuuddeshiya
Sevabhavi Sanstha,
Kukkadgaon, Tq. Dist. Beed,
Through its Secretary,
Ranjit S/o Ramhari Jadhav,
Age 20 years, Occ. Agri.,
R/o Shahunagar, Beed, Tq. Dist. Beed

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Principal Secretary,
Woman and Child Development Department,
Mantralaya, Mumbai

- 2] The Commissioner of Women and
Child Development,
Maharashtra State, Pune
- 3] The District Women and
Child Development Officer,
Beed, Dist. Beed
- 4] The Child Welfare Committee,
Beed, Tq. & Dist. Beed .. Respondents

**WITH
WRIT PETITION NO. 7793 OF 2021**

Indira Balgrah
Run by Shri. Sant Gadge Baba
Gramvikas Sevabhavi Sanstha
Pandhurna, Tq. Bhokar, Dist. Nanded
Through its President,
Narayan S/o Vishwanathrao Shinde,
Age 53 years, Occ. Social Work,
R/o Pandhurna, Tq. Bhokar, Dist. Nanded .. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Principal Secretary,
Woman and Child Development Department,
Mantralaya, Mumbai
- 2] The Commissioner of Women and
Child Development,
Maharashtra State, Pune
- 3] The District Women and
Child Development Officer,
Nanded, Dist. Nanded
- 4] The Child Welfare Committee,
Nanded, Tq. & Dist. Nanded .. Respondents

**WITH
WRIT PETITION NO. 9389 OF 2021**

Gokul Balsadan (Balgrah)
Run by Sudhakarraoji Naik
Magasvargiya Samaj
Kalyan Mandal, Beed,
Through its President,

Maroti S/o Ramrao Rathod,
Age 66 years, Occu. Social Work,
R/o Gajanan Nagar, Behind Hanuman Mandir,
Nalwandi Road, Beed,
Tq. Dist. Beed

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Principal Secretary,
Woman and Child Development Department,
Mantralaya, Mumbai
- 2] The Commissioner of Women and
Child Development,
Maharashtra State, Pune
- 3] The District Women and
Child Development Officer,
Beed, Dist. Beed
- 4] The Child Welfare Committee,
Beed, Tq. & Dist. Beed

.. Respondents

**WITH
WRIT PETITION NO. 9637 OF 2021**

Shri Babasai Bahhuddeshiya Sevabhavi Sanstha,
Aurangabad Sanchalit, Babasai Aidsgrast
(AIDS Stricken) Mule/Mulinche Balgruh,
Shivshankar Colony, Aurangabad
Through its President
Nitin S/o Vishwanath Wakude,
Age : 42 years, Occu : President,
R/o Shivshankar Colony,
Aurangabad, Tq. & Dist. Aurangabad and others

.. Petitioners

Versus

- 1] The State of Maharashtra,
Through its Principal Secretary,
Woman and Child Development Department,
Mantralaya, Mumbai
- 2] The Commissioner of Women and
Child Development,
Maharashtra State, Pune
- 3] The Regional Deputy Commissioner,
Woman and Child Development,
Aurangabad Region, Aurangabad

- 4] The Regional Deputy Commissioner,
Woman and Child Development,
Beed Region, Beed
- 5] The Regional Deputy Commissioner,
Woman and Child Development,
Latur Region, Latur
- 6] The Regional Deputy Commissioner,
Woman and Child Development,
Nanded Region, Nanded
- 7] The District Woman and Child
Development Officer, Aurangabad
- 8] The District Woman and Child
Development Officer, Beed
- 9] The District Woman and Child
Development Officer, Latur
- 10] The District Woman and Child
Development Officer, Nanded

.. Respondents

**WITH
WRIT PETITION NO. 9914 OF 2021**

Kanishtha Va Varishtha Balgruha,
Ganesh Nagar, Beed,
Run by Shri Jagdamba Mahila, Bal Va
Apang Kalyan Mandal, Beed and others

.. Petitioners

Versus

- 1] The State of Maharashtra,
Through its Principal Secretary,
Woman and Child Development Department,
Mantralaya, Mumbai
- 2] The Commissioner of Women and
Child Development,
Maharashtra State, Pune
- 3] The Regional Deputy Commissioner,
Woman and Child Development,
Aurangabad Region, Aurangabad
- 4] The Regional Deputy Commissioner,
Woman and Child Development,
Beed Region, Beed

- 5] The Regional Deputy Commissioner,
Woman and Child Development,
Latur Region, Latur
- 6] The Regional Deputy Commissioner,
Woman and Child Development,
Nanded Region, Nanded
- 7] The District Woman and Child
Development Officer, Aurangabad
- 8] The District Woman and Child
Development Officer, Beed
- 9] The District Woman and Child
Development Officer, Latur
- 10] The District Woman and Child
Development Officer, Nanded .. Respondents

**WITH
WRIT PETITION NO. 11457 OF 2021**

Pandurang Balakashram,
Kaij, Tq. Kaij, District Beed
Run by Gramlok Samaj Vikas Mandal,
Umarga (K), Tal. Ahmedpur, Dist. Latur and others .. Petitioners

Versus

- 1] The State of Maharashtra,
Through its Principal Secretary,
Woman and Child Development Department,
Mantralaya, Mumbai – 32.
- 2] The Commissioner, Women and
Child Development,
Maharashtra State, Pune
- 3] The Regional Deputy Commissioner,
Woman and Child Development,
Aurangabad Region, Aurangabad
- 4] The Regional Deputy Commissioner,
Woman and Child Development,
Beed Region, Beed
- 5] The Regional Deputy Commissioner,
Woman and Child Development,
Latur Region, Latur

- 6] The Regional Deputy Commissioner,
Woman and Child Development,
Nanded Region, Nanded
- 7] The District Woman and Child
Development Officer, Aurangabad
- 8] The District Woman and Child
Development Officer, Beed
- 9] The District Woman and Child
Development Officer, Latur
- 10] The District Woman and Child
Development Officer, Nanded .. Respondents

**WITH
WRIT PETITION NO. 7446 OF 2022**

Vaibhav Balgraha, Neknoor,
Tal. & District Beed,
Run by Maharashtra Sevabhavi Sanstha,
Beed, Tal. & Dist. Beed,
Through its President,
Ranjana Chandrasen Ghodke,
Age : 43 years, Occu. Household,
R/o Jagdamba Nivak, Vishaveshwar Colony,
Bhakti Construction, Beed, District Beed .. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Principal Secretary,
Woman and Child Development Department,
Mantralaya, Mumbai – 32.
- 2] The Commissioner, Women and
Child Development,
Maharashtra State, Pune
- 3] The Regional Deputy Commissioner,
Woman and Child Development,
Beed Region, Beed .. Respondents

**WITH
WRIT PETITION NO. 7447 OF 2022**

Niwara Balgraha, Georai,
Tal. Georai, District Beed,

Run by Maharashtra Sevabhavi Sanstha,
 Beed, Tal. & Dist. Beed,
 Through its President,
 Ranjana Chandrasen Ghodke,
 Age : 43 years, Occu. Household,
 R/o Jagdamba Nivak, Vishaveshwar Colony,
 Bhakti Construction, Beed District Beed

.. Petitioner

Versus

1] The State of Maharashtra,
 Through its Principal Secretary,
 Woman and Child Development Department,
 Mantralaya, Mumbai – 32.

2] The Commissioner, Women and
 Child Development,
 Maharashtra State, Pune

3] The Regional Deputy Commissioner,
 Woman and Child Development,
 Beed Region, Beed

.. Respondents

...
 Advocate for petitioner in all WPs : Mr. S.S. Thombre
 AGP for the respondent – State : Mrs. M.A. Deshpande (in all WPs)

...

**CORAM : MANGESH S. PATIL &
 SANDEEP V. MARNE, JJ.**

**RESERVED ON : 22 AUGUST 2022
 PRONOUNCED ON: 08 SEPTEMBER 2022**

JUDGMENT (MANGESH S. PATIL, J.) :

Rule. Rule is made returnable forthwith. Learned AGP waives notice for all the respondents. At the joint request of the parties, the matters are heard finally at the stage of admission and are being disposed of by this common judgment.

2. Though petitioners are different entities, the respondents are the same and petitioners are seeking the same relief in similar set of facts. With a view to avoid rigmarole, we are disposing of these petitions by this common judgment.

3. The petitioners are the public trust and societies registered under the relevant laws and were running child care homes under the relevant provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter **the Act of 2000**).

4. The petitioners' grievance is that since their child care homes were already registered under the Act of 2000, by virtue of the provisions of Section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter **the Act of 2015**), there was no need for fresh registration of their child care homes. Initially, only a writ of mandamus was sought directing the respondents nos. 3 and 4 who are the District Women and Child Development Officer and Child Welfare Committee for the concerned district, to allot inmates to the petitioners' child care homes. However, by the communications under challenge, issued by the respondent no. 2 - the Commissioner of Women and Child Development, Maharashtra has rejected the petitioners' proposals for renewal of licences by them pursuant to the directions of this Court in writ petition no. 4831 of 2020 and connected matters by the judgment and order dated 22-12-2020 (Jay Sevalal Sevabhavi

Sanstha Takarwan, Tq. Majalgaon, District - Beed Vs. The State of Maharashtra and others). By way of amendment, the petitioners are now challenging even such communications rejecting their proposals for renewal of the registration.

5. Learned advocate for the petitioners Mr. Thombre vehemently submitted that the petitioners have been running child care homes for years together smoothly and without any objection from the respondents. Even if the Act of 2015 has replaced the Act of 2000, they are entitled to continue to run the child care homes without re-registration. In view of section 41 of the Act of 2015, there was no question of re-registration. Only they were expected to get the licence / permissions renewed. Respondent no. 2 has ignored the provisions and has treated the petitioners' request as if they were seeking a fresh permission. The whole approach of the respondent no. 2 is unmindful of the provisions of the law and is illegal.

6. Mr. Thombre would submit that if at all the respondent no. 2 had some objections regarding necessary compliances to be made, the petitioners ought to have been given an opportunity to rectify the shortcomings. However, merely because the petitioners had approached this Court and that he was called upon to take a decision that the impugned communications have been issued *mala fide* as one of the petitioners had initiated a contempt proceeding against him for

dis-obedience of the directions in writ petition no. 4831 of 2020. He has issued similar communications of the same date to all the petitioners which are impugned in these petitions. The whole approach is illegal and the communications be quashed and set aside.

7. Mrs. Deshpande, learned AGP supported the communications. She would submit that though the petitioners' child care homes were registered under the Act of 2000, it was imperative for them to get such permissions renewed within one year of enforcement of the Act of 2015. She would point out that even this Court was alive to the rigours of the Act of 2005 and the rules framed thereunder which prescribe for stringent compliances to be made by the societies running the child care homes, keeping in mind the best interest of the inmates. It was not a mere formality or technical compliance. The respondents were legally bound to scrutinize the proposals for renewal strictly in accordance with the Act of 2015 and the rules framed thereunder in the year 2018 and particularly rules 22(2) and 23 (2). There is no illegality and the petitions be dismissed.

8. She further pointed out the statistics and the documents annexed to the affidavit in reply to point out that already sufficient child care institutions have been registered throughout Maharashtra and considering the number of children, sufficient number of institutions

have already been registered and there is no need for registration of any more institutions.

9. We have carefully gone through the papers including the impugned communications and the affidavit in reply filed by the District Women and Child Development Officer i.e. respondent no. 3.

10. There cannot be any dispute about the consequences of the Act of 2015 replacing the Act of 2000 viz-a-viz registration of child care homes, in view of section 41 of the former. Section 41 of the Act of 2015 lays down the provision of registration of child care institutions. Sub-Section (1) mandates registration of such institutions but the proviso clearly prescribes that the institutions having valid registration under the Act of 2000 on the date of commencement of the Act of 2015 shall be deemed to have been registered. Precisely for this reason, while deciding writ petition no. 4831 of 2020 with connected mattress, it was observed that the petitioners - institutions were not required to be registered afresh, *albeit*, since the registration under the Act of 2015 can be only for a period of 5 years at a time requiring renewals thereafter from time to time, in view of Sub-Section (6) of Section 41, it was imperative for the petitioners' child care homes to renew their registration within one year as was required by Rule 22(1)(b) of the Rules of 2018 framed under the Act of 2015. It was also specifically observed that such re-registration under the Act of 2015 has been

mandated because of the rigours of the registration of institutions under the Act of 2015. It was clearly noticed that the provisions of the Act of 2015 and the rules of 2018 were required to be obeyed and an opportunity to the concerned authorities would be available to look into the strict compliances of such institutions under the new provisions. The following question was formulated by this Court while deciding writ petition no. 4831 of 2020 :

“Whether the Institutions granted registration under the Juvenile Justice (Care and Protection of Children) Act, 2000 would be required to apply for registration under the Act-2015 and / or seek renewal of registration after 1 year?”

While answering this question, the following observations have been made which according to us need to be borne in mind while deciding these petitions :

“12. Sub Section 1 of Section 41 of the Act-2015 is circumscribed by the proviso appended to it.

Proviso appended to said Sub Section carves out an exception. The institutions possessing valid registration under the Act-2000 on the date of commencement of the Act-2015 shall be deemed to be registered under the Act-2015.

15. The institutions, though registered under the Act-2000, are required to comply with the provisions of the Act-2015 in all respects. All the requirements, such as, the infrastructure and all other aspects are to be complied as required under the Act-2015. Under the Act-2000 some of the institutions were registered for 5 years and renewals were granted to them from time to time and in cases of few institutions the registration did not provide for the period of registration. Under the Act-2015

once registration is granted the same is valid of 5 years as per Sub Section 6 of Section 41 and those institutions are required to apply for renewal. The petitioner institutions upon enactment of the Act-2015 and Rules-2016 would be governed by the Act-2015 and Rules framed thereunder. The registration under the Act-2015 cannot be valid for more than 5 years unless renewed.

16. Proviso to Sub Section 1 of Section 110 of the Act-2015 provides that the Central Government may frame Model Rules in respect of or any of the matters with respect to which the State Government is required to make Rules and where any such Model Rules have been framed in respect of any such matter they shall apply to the State *mutatis mutandis* unless the rules in respect of that matter are made by the State Government. The Model Rules-2016 framed by the Central Government came into force with effect from 21.09.2016. They were published in the Gazette on 21.09.2016.

21. Reading the proviso to Sub Section 1 of Section 41 of the Act-2015 and Sub Rule 1(b) of the Rule 22 of the Rules-2018 harmoniously the irresistible conclusion can be drawn that the institutions housing children in need of care and protection or children in conflict with law registered under the Act-2000 will be deemed to be registered under the Act-2015 and these institutions shall get renewal of their registration after completion of 1 year as per the provisions of the Act and Rules. The leverage has been given of 1 year for these institutions to get the registration renewed. Once the registration is granted under the Act-2015 that registration would be valid for 5 years and after 5 years the institution will have to seek renewal. Reference can be had to Sub Section 6 of Section 41 of the Act-2015.

22. To apply for renewal of registration after 1 year is also necessary because these institutions deemed to be registered did not undergo rigors of registration under the Act-2015 so as to give an opportunity to the authority to verify compliance of the requirement of the Act-2015 and the rules.”

In view of such clear observations, it was imperative for the respondent no. 2 to scrutinize petitioners' proposals as per the directions of this Court objectively. Though it is expected that the respondent no. 2 would take decisions strictly in compliance of the provisions of the Act of 2015 and the rules of 2018, it was imperative for him to have followed the principles of natural justice in pointing out the deficiencies to the petitioners and calling upon them to make compliances, may be within the stipulated time. It is not that he was legally obliged to treat the petitioners' proposals as fresh proposals under section 41(1) of the Act of 2015 but it clearly appears that he has treated these proposals in that fashion. He seems to have taken a bold decision of out-rightly rejecting the proposals of as many as 57 institutions in one stroke by the same communication which are under challenge in these writ petitions. The impugned communication only vaguely asserted that it was found that the proposals were not compliant with the requirements of law particularly the rules 22 and 23. It merely vaguely mentioned that the proposals were not complete in all respect and the documents were not annexed. The impugned communication is bereft of any concrete ground or reason for communication. It has not even been made clear in the affidavit in reply as to if a specific order in each of the petitioners' proposals was passed by the respondent no. 2.

11. True it is that in affidavit in reply, a subsequent communication is annexed pointing out the deficiencies to be met by the petitioners. We are afraid, it is a sheer afterthought. If the respondent no. 2 was of the opinion that the proposals of the petitioners' were deficient in some specific respect, he should have firstly notified the objections to the petitioners and called upon them to comply with it before taking any drastic decision of straightway rejecting the proposals. It is like putting the cart before the horse. He has taken the decision first and then seems to have taken steps to notify the petitioners regarding the specific objection, whereas the proper course should have been in the reverse order.

12. Be that as it may, the impugned communications clearly demonstrate utter lack of any objectivity in decision making process and even has been taken without following the principles of natural justice. We, therefore, deem it appropriate to quash and set aside the impugned communications and request the respondent no. 2 to take decisions afresh in the light of the observations made herein-above.

13. The writ petitions are partly allowed.

14. The impugned communications are quashed and set aside.

15. The respondent no. 2 shall now take decisions on the petitioners' proposals afresh in the light of the observations made herein-above by giving opportunity to them of hearing and even an opportunity to rectify the shortcomings in the proposals, if any.

16. The petitioners shall approach the respondent no. 2 once again within four (4) weeks from today whereupon the respondent no. 2 shall take final decision within 16 weeks from today.

17. Rule is made absolute in the above terms.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/