

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7602 OF 2012

DNYANPRASARAK SHIKSHAN SANSTHA
KILLE-DHARUR, TQ.DHARUR, DIST.BEED

PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

RESPONDENTS

Mr.S.R.Barlinge with Mr.Kalyan Patil, Advocate for the petitioner.
Mr.N.B.Khandare, Advocate for respondent No.3.
Mr.P.G.Borade, AGP for respondent Nos. 1 and 2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/12/2015

PER COURT :

1. The petitioner has challenged the order dated 10/01/2012 passed by 3 Members of the National Commission for Minority Educational Institutions by which the appeal preferred by the petitioner for challenging the order dated 31/03/2011 has been dismissed on the ground that linguistic minorities are outside the purview of the National Commission for Minority Educational Institutions Act, 2004 (For short, the Act of 2004).

2. Contention of the petitioner is that this Court by its order dated 07/12/2011 passed in WP No.5698/2011 had granted liberty to the petitioner to prefer an appeal before the National Commission.

3. Mr.Barlinge points out from Chapter IX which provides for “Appeals against Orders of the Competent Authority” as provided by the Government Resolution dated 04/07/2008 that an appeal was maintainable before the National Commission against any order passed by the competent authority either rejecting the recognition granted or revoking the said recognition.

4. He submits that the impugned order dated 31/03/2011 is an order revoking the recognition granted to the petitioner as a Linguistic Minority Institution. He, therefore, submits that the appeal before the National Commission was maintainable and by the impugned order dated 10/01/2012, the Commission has dismissed the appeal without issuing notices even to the petitioner to address the Commission on the issue of maintainability.

5. Mr.Khandare, learned Advocate appearing on behalf of respondent No.3 submits that the order passed by this Court dated 07/12/2011 was on the basis of the submissions put forth by him that an alternate remedy by way of an appeal before the National Commission was available to the petitioner. The said submission was made on the basis of the GR dated 04/07/2008.

6. He, however, submits that during the pendency of this petition, the Maharashtra Government has issued a fresh Government Resolution dated 27/05/2013 by which several Government Resolutions / circulars stated in the reference clause of the said GR, inclusive of the GR dated 04/07/2008, have been set aside and they stand replaced by this GR dated 27/05/2013.

7. He then points out from internal page no.11 of the GR that clause (v)(b) defines a "Linguistic Minority Institution". He, then, refers to clause (8) of the GR on internal page no.15 to contend that any order passed by the competent authority can be challenged either before the Chief Secretary or the Secretary, Minority Development Department, Mantralaya since the said Authority has been designated to be an "Appellate Authority" Such an appeal can be filed within 90 days from the date of the order sought to be challenged.

8. Mr.Barlinge, in response to the submissions of Mr.Khandare, submits that if the period spent by the petitioner in litigation and this Court can be taken as a ground for condonation of delay, the petitioner can resort to preferring an appeal under clause (8) of the

GR dated 27/05/2013.

9. In the light of the above, this petition is disposed of with the following observations :-

- [a] The petitioner is at liberty to prefer an appeal under clause (8) of GR dated 27/05/2013 to the Appellate Authority within a period of 8 (eight) weeks from today.
- [b] If such an appeal is filed as noted above, the time spent by the petitioner in this Court in WP No.5698/2011, the time spent in preferring an appeal before the National Commission and the time spent before this Court in this petition shall be a good ground for condonation of delay in challenging the order dated 31/03/2011 passed by the competent authority cancelling the Linguistic Minority Status granted to the petitioner.
- [c] The appeal shall be entertained by the Appellate Authority and shall be decided on its own merits.
- [d] Contentions of all the litigating sides, including the stand taken by the Government in this petition, are kept open.
- [e] The challenge to the order of the National Commission dated 10/01/2012 has not been dealt with by this Court in this petition. The said issue is left open to be considered in an appropriate proceeding.
- [f] Considering that the earlier order of this Court dated 07/12/2011 by which interim relief was granted to the petitioner against the impugned order dated 31/03/2011, having been continued and thereafter since this Court has

granted interim relief to the petitioner in this petition on 11/12/2012, the said interim relief shall stand continued for a period of 6 (six) weeks after the Appellate Authority decides the appeal of the petitioner.

- [g] The Appellate Authority, after receiving the appeal, shall issue notices to the litigating sides and after hearing the parties, shall endeavour to decide the said appeal on or before 31/05/2016. Decision of the Appellate Authority shall then be communicated to the litigating sides with promptitude.

(RAVINDRA V. GHUGE, J.)