

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2810 OF 2015

Dhammaratna Maruti Shinde]
Proprietor of M/s. Scholar Typing Institute,]
Age:-36 years, Occu:-Business,]
Shop No.30, Vighnahar Complex,]
Sector-12, Kharghar, Navi Mumbai-410210.].. Petitioner

Versus

1. The Director,]
Maharashtra State Council of Examination,]
17, Dr. Ambedkar Marg, Pune-411001.]

2. The Deputy Director of Education,]
Mumbai Division,]
Jawhar Balbhavan, Charni Road,]
Mumbai-400004.]

3. The State of Maharashtra,]
Education Department,]
Mantralaya, Mumbai.].. Respondents

Mr. Kunal Bhanage, for the Petitioner.

Mr. S. D. Rayrikar, AGP for the Respondent Nos.2 & 3.

CORAM : R.M. SAVANT, J.
DATE : 04th AUGUST, 2015

ORAL JUDGMENT

1. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court is invoked against the order dated 14.01.2015 passed by the Director, Maharashtra State Council of Examination, Pune, by which order the Appeal filed by the Petitioner came to be dismissed and resultantly, the order dated 26.11.2014 passed by the Deputy Director, Education, Mumbai cancelling the recognition of the Petitioner's institute i.e. "Scholars Typing Institute" came to be confirmed.

3. It is not necessary to burden this order with unnecessary details having regard to the nature of the order to be passed. Suffice it would be to state that the Petitioner is running a typing institute in the name and style of "Scholars Typing Institute" at Kharghar, Navi Mumbai. In terms of the requirements, the Petitioner was to obtain the requisite qualifications for the recognition to his institute being continued. It is an undisputed position that the Petitioner did not obtain the requisite qualification within the original period which was stipulated for the same. The Petitioner was therefore granted an extension of six months to obtain the said qualification i.e. up to 23.11.2014. The said extension which was granted by the Deputy Director of Education, Mumbai came to be

challenged by the Petitioner's competitor by way of Writ Petition No.7157 of 2014. The said Petition was heard by a Division Bench of this Court and disposed of by order dated 01.12.2014. Paragraphs 3 and 4 of the said order passed by the Division Bench dated 01.12.2014 are material and reproduced hereinunder :-

“3. The communication dated 26th November 2014 clearly records that the eleventh Respondent has not acquired the requisite qualifications notwithstanding the grant of time to the eleventh Respondent. This aspect is bound to be considered by the concerned Authorities while dealing with the fresh proposals, if any, submitted by the eleventh Respondent. Fresh proposals can be considered by the concerned Authorities only if the eleventh Respondent possesses necessary qualification. If any proposal has been submitted by the eleventh Respondent till 26th November 2014, obviously, the same cannot be considered inasmuch as till that date, the eleventh Respondent had not acquired the requisite qualifications. It is obvious that the concerned Authorities cannot act contrary to what is stated in the communicated dated 26th November 2014.

4. In view of the statements made in the affidavit of Shri. D. T. Junnarkar, the Deputy Education Inspector in the office of Deputy Director of Education, Mumbai, at this stage, it is not necessary to grant any relief to the Petitioner. We, however, make it clear that this Court has not approved the action of the Authorities of granting extension of time by a period of six months to the eleventh Respondent to acquire the requisite qualifications.”

It appears that prior to the said order being passed by the Division Bench, the recognition of the Petitioner's institute was already cancelled by order dated 26.11.2014 passed by the Deputy Director of Education, Mumbai.

The said order dated 26.11.2014 was taken exception to by way of an Appeal by the Petitioner before the Appellate Authority i.e. the Respondent No.1. The said Appeal came to be dismissed by the Appellate Authority in the light of the order passed by the Division Bench dated 01.12.2014 as also in the light of the fact that the Petitioner had not obtained the requisite qualification though the time was extended.

4. The above Petition has been filed challenging the said order dated 14.01.2015 passed by the Director, Maharashtra State Council of Examination, Pune. It seems that in the light of the observations made by the Division Bench in its order dated 01.12.2014 and especially paragraph 3 thereof the Petitioner had approached the Division Bench by filing Civil Application No.1060 of 2015 seeking clarification of the said order dated 01.12.2014. The Division Bench disposed of the Civil Application and in the context of the present Petition, paragraphs 3 and 4 of the said order are material and reproduced hereinunder :-

“3. It is in this context that an observation has been made in paragraph 4 of the order to ensure that it should not be construed that this Court has approved the action of the Authorities of granting extension of time by a period of six months to the eleventh Respondent (present Applicant) to acquire the requisite qualifications. This observation shows that this Court has not recorded any finding on the issue of the legality of the action of the Authorities of granting extension of time by a period of six months to the present Applicant.

4. Therefore, in view of what is stated above, according to us, no clarification is required as no finding has been recorded in the order as regards the legality of the action of the Authorities of granting extension by a period of six months. Accordingly, prayer for seeking clarification is rejected.”

Hence, the Division Bench has observed that it has not recorded any finding on the issue of the legality of the action of the Authorities of granting extension of time by a period of six months to the Petitioner and view thereof the Division Bench has observed that no clarification is required as no finding has been recorded by it as regards the legality of the action of the Authorities of granting extension by a period of six months.

5. It is required to be noted that though on the date when the order cancelling the recognition of the Petitioner was passed the Petitioner did not have the requisite qualification, the Petitioner in fact has now the requisite qualification according to the Learned Counsel for the Petitioner pursuant to the result declared in November 2014 which is on the website of the Respondent No.1 and which is annexed as “Exh-K” at page No.32 of the writ paper book. However, the Appellate Authority in its order has observed that the Petitioner has not obtained the qualification though the result on the website of the Respondent No.1 was brought to the notice of the Appellate Authority which according to the Learned Counsel for the Petitioner has not been taken cognizance of by the Appellate Authority.

6. The Learned Counsel for the Petitioner also draws this Court's attention to an order passed by a Division Bench of this Court dated 23.07.2015 filed by two students of the petitioner's institute being Writ Petition No.6404 of 2015, by which order the Division Bench has directed the results of the said two students be declared for the reasons mentioned in the said order. The Learned Counsel for the Petitioner therefore submits that a similar order as passed by the Division Bench in respect of the said two students be passed in the instant matter as regards the remaining students.

7. In so far as the order passed by the Appellate Authority is concerned, as indicated above the Appellate Authority has relied upon the order dated 01.12.2014 passed by the Division Bench in Writ Petition No.7157 of 2014, where the Division Bench had adversely commented upon the extension granted to the Petitioner's institute. The Appellate Authority has also proceeded on the basis that the Petitioner did not have the requisite qualification when it was considering the matter. In the light of the clarification issued by the Division Bench by its order dated 17.06.2015 passed in Civil Application No.1060 of 2015 filed in the said Writ Petition No.7157 of 2014, as also considering the fact that the Petitioner now claims to possess the qualification that is required, in my view, it would be just and proper to set aside the order passed by the

Appellate Authority and remand the matter back to the Appellate Authority for a de-novo consideration of the Appeal. In so far as the relief sought by the Petitioner as regards declaration of the results of the other students who have appeared for the Government Commercial Certificate Examination, it would be open for the Petitioner to apply to the Appellate Authority for the said relief as it would not be proper for this Court whilst considering the above Writ Petition challenging the order passed by the Appellate Authority to consider the grant of the said relief. If any such application is filed by the Petitioner, needless to state that the Appellate Authority would consider the same in accordance with law. On remand, the Appellate Authority to hear and decide the Appeal within 3 weeks of the Petitioner appearing before it. The Petitioner to appear before the Appellate Authority on 11.08.2015. The Appellate Authority to decide the Appeal latest by 01.09.2015. Needless to state that the Appeal be decided on its own merits and in accordance with law uninfluenced by the impugned order or the instant order. The Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

8. The Learned AGP to inform the developments to the Appellate Authority forthwith.

[R.M. SAVANT, J]