

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8387 OF 2015

- 1 Vikas Shikshan Sanstha
 Durga Nagar, Vidyasagar Colony,
 MIDC, Miraj, District Sangli,
 Through its President.
- 2 Sanjay Gandhi Residential School
 At Vidyasagar Colony,
 Behind S.T. Work Shop,
 Opp. Godrej Factory,
 Near Durga Nagar, Miraj,
 District Sangli
 Through its Head Master Petitioners

V/s

- 1 The State of Maharashtra
 Through the Secretary,
 School Educaion Department,
 Mantralaya,
 Mumbai – 400 032.
- 2 The Director of Education
 (Secondary) M.S., Pune.
- 3 Joint Director of Education,
 Pune.
- 4 Deputy Director of Education,
 Kolhapur Region, Kolhapur.
- 5 Education Officer (Secondary),
 Zilla Parishad, Sangli. Respondents

Mr. N.V. Bandiwadekar a/w Mr. Sagar A. Mane for Petitioners.
Ms. S.S. Bhende, AGP for Respondents/State.

**CORAM : ANOOP V. MOHTA &
 A.A. SAYED, JJ.
DATED : 21 AUGUST 2015**

ORAL JUDGMENT: (PER ANOOP V. MOHTA, J.)

1 Rule, returnable forthwith. Heard finally.

2 The Petitioners have challenged the impugned order dated 6 June 2015, accordingly, apart from prayer to set aside the same, prayed to grant approval to the teachers and non-teaching employees and to release the grant-in-aid for payment of salary to the employees, also prayed for no coercive steps based upon the order against Petitioner No.2 and not to treat the school as unauthorised.

3 This Court by order dated 12 September 2012 in a Writ Petition No.7251 of 2012 filed by the Petitioners for the similar reasons/grounds while allowing the Petition recorded as under:

"5. Clause-7.6 of the Secondary School Code provides as under :

"7.6 The Management shall not shift any school run by it from its existing location to any other location for any reason, without prior written permission of Government. If the Management shifts the school without prior permission of Government, the recognition of such a school shall automatically stand withdrawn on ground of such unauthorised shifting."

6. In the present case, in our view, the order withdrawing recognition is required to be reconsidered by the Deputy Director of Education for two reasons. First and foremost,

from the report of the Deputy Education Officer (Secondary) dated 18 October 1993, it appears that the building of the school had collapsed and the management was directed to take steps to accommodate the students in alternate premises. Immediately on 18 October 1993, the Education Officer (Secondary) was informed about this. There are subsequent communications which are also part of the record. It would have been necessary for the Deputy Director of Education to consider the provisions of Clause-7.6 of the Secondary School Code having due regard to the facts which have been placed on the record. Secondly, though the only ground in the notice to show cause was that the school had been closed, the Appellate Authority considered an additional reason namely the results of the school for the year ending March-1995. This was not a part of the notice to show cause. To rely on that ground without notice to the Petitioners constitutes a violation of the principles of natural justice.

7. In the circumstances, we set aside the impugned orders of the Deputy Director of Education and the Director of Education (Secondary and Higher Secondary) dated 28 May 1995 and 25 June 2012. We remit the proceedings back to the Deputy Director of Education for fresh consideration. We clarify that we have not expressed any view on the suitability of the premises in which the school is being run. It will be open to the Deputy Director of Education to cause a report to be obtained from the Education Officer (Secondary) in regard to the existing premises where the school is being conducted and the suitability of the premises for the purposes of conducting a secondary school. Since the Petitioners now

have notice of the second ground for withdrawal of recognition proposed to be relied upon by the Department- viz; that relating to the results, they would be at liberty to respond thereto within four weeks. The Deputy Director of Education is at liberty to issue a supplementary show cause notice after a fresh inspection, if he considers it necessary. The Deputy Director of Education shall pass a fresh order within three months from the date on which an authenticated copy of this order is produced on his record. All the rights and contentions of the parties are kept open.”

4 The Petitioners filed another Writ Petition No.6637 of 2013 against the order of rejection of earlier Application and this Court on 13 September 2013 has recorded as under:

“1. Heard learned counsel appearing for the petitioners and learned AGP for the respondents.

2. Learned Counsel appearing for the petitioners state that the petitioners will make an application within three weeks from today in terms of Clause-7.6 of the Secondary School Code to the appropriate Authority for grant of permission for shifting the School.

3. Rule. Learned AGP waives service for the respondents. Rule on interim relief is made returnable on 9th December, 2013. If an application is made by the petitioners under Clause-7.6 of the Secondary School Code to the Competent Authority within a period of three weeks from today, the same shall be decided as expeditiously as possible

and preferably within a period of six weeks from the date on which the application is filed.

4. We make it clear that the prayer for interim relief can be considered provided permission is granted to the petitioners to shift the School.”

5 Respondent No.4 by the impugned order has though referred to the pendency of the Contempt Petition No.588 of 2014, rejected the Petitioners' Application even by noting earlier communications dated 25 June 2012 and another order dated 5 December 2012 as stated, not received by the Petitioners. No reason what so ever given on aspect of shifting of school, but decided on the basis of stated withdrawal of recognition of the school.

6 Un-communicated order dated 5 December 2012 therefore ought not to have been the foundation of passing such order without considering the Application for permission to shift the school. As recorded already, the building collapsed due to heavy rains and earthquake. There was specific direction issued as quoted above to consider the case of permission to shift the school under clause 7.6 of the Secondary School Code. But the learned Authority Respondent No.4 overlooked these relevant factors and has passed the unreasoned order. The impugned order is unsustainable and requires interference from this Court in view of the admitted position on record and specifically the

circumstances which compelled the Petitioner to apply for shifting of school.

7 The reference to clause 7.6 of the Secondary School Code, cannot be read and utilized by overlooking the factual position in the present case. The Petitioners' Management require to shift the school, in the circumstances, which were beyond their control. The reasons that the Management had shifted the school without permission of the Government and the consequence order of automatic de-recognition of the School, in our view, ought not to have been the foundation to reject the Petitioners' Application. We are of the view that the Respondents to reconsider the case on an assumption that Petitioners' school is recognised on the date of Application in question. Therefore, we are inclined to pass the following order:

O r d e r

- i) The impugned order dated 6 June 2015 is quashed and set aside;
- ii) Respondent No.4 to reconsider the Applications filed by the Petitioners in view of the observations so referred above, as early as possible preferably within eight weeks;
- iii) The Petitioners to appear before Respondent No.4 Authority on 1st September 2015;
- iv) Respondent No.4 to pass an order by giving an opportunity to all the concerned;

- v) Rule made absolute accordingly. No order as to costs;
- vi) Parties to act on the basis of authenticated copy of this order.

(A.A. SAYED, J.)

(ANOOP V. MOHTA, J.)

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