

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 148 OF 2014

M.N. Narayan Nair Memorial Education
Trust & Anr.

... Petitioners

vs.

State of Maharashtra, through Secretary,
Ministry of Education & Ors.

... Respondents

Mr. S.K. Chinchalikar, Advocate for the petitioners.

Ms. S.S. Bhende, AGP for the respondent nos. 1 to 3.

**CORAM : SMT. VASANTI A. NAIK &
C.V. BHADANG, JJ.**

DATE : 14th January, 2015.

P.C.

Rule. Rule made returnable forthwith. The Petition is heard finally with the consent of the learned counsel for the parties.

By this Petition, the petitioners impugn the order of the Deputy Director of Education, Mumbai dated 31st May, 2012 withdrawing the recognition of the school run and administered by the petitioner no. 1/Trust. The petitioners also impugn the order of the State Government dated 4th December, 2013 holding that substantial, legal and factual grounds were not involved in the Appeal and, therefore, it was not necessary to hear and decide the Appeal on merits.

The petitioner no. 1 is a registered educational trust and the petitioner no. 2 is a recognized Secondary High School run and administered by the petitioner no. 1/Trust. The respondent no. 2 issued a show cause notice to the petitioners in regard to the deficiencies in the petitioner no. 2/school in Hindi Medium. It is the case of the petitioners that the petitioners cured the deficiencies, however, the respondent no. 2, by the impugned order dated 31st May, 2012 cancelled the recognition of the Hindi Medium school. Being aggrieved by the said order, the petitioners filed an Appeal before the State Government under the provisions of the Secondary School Code. However, the respondent no. 1, by the impugned order dated 4th December, 2013 held that the Appeal could not have been heard and decided on merits, as substantial grounds were not raised in the Appeal for challenging the order of the Deputy Director of Education. The orders passed by the respondent nos. 1 and 2 are impugned in this Petition.

Mr. Chinchalikar, the learned counsel for the petitioners submitted that the respondent no. 2 was not justified in cancelling the recognition of the Hindi Medium School run by the petitioner no. 1/Trust without granting a fair opportunity of hearing. It is stated that the matter was listed for hearing before the respondent no. 2 on 31st May, 2012 and though the office bearer of the petitioner no. 1/Trust could not remain present before

the Deputy Director of Education on 31st May, 2012 in view of Bharat bandh call, the Deputy Director of Education did not adjourn the matter and decided the same. It is stated that if the petitioners would have been afforded an opportunity of hearing, the petitioners would have informed the Deputy Director of Education that the deficiencies in the Hindi Medium School were removed after the show cause notice was issued to the petitioners. It is stated that though the ground in regard to the violation of the principles of natural justice was raised before the respondent no. 1 in the Appeal, the said ground was not considered by the respondent no. 1 while refusing to entertain the Appeal on the ground that substantial grounds of law and facts were not raised in the Appeal. It is stated that when the office bearer of the petitioner no. 1/Trust was present before the Deputy Director of Education on 29th May, 2012 and had requested for some time as he was not well, the matter was fixed on 31st May, 2012 though there was a bharat bandh call for that date. It is stated that in the facts of the case, it would be necessary to quash and set aside the impugned order and remand the matter to the Deputy Director of Education for a fresh decision on merits.

Ms. Bhende, the learned Assistant Government Pleader appearing on behalf of the respondents supported the orders of the respondent nos. 1 and 2 and submitted that the office bearer of the petitioner no. 1/Trust

was not only absent before the Deputy Director of Education on 31st May, 2012 but had also failed to remain present on the earlier date of hearing, i.e., 29th May, 2012. It is stated that in view of the amended provisions of the Secondary School Code, the State Government first considers whether the substantial grounds are raised in the Appeal and if it finds that they are so raised, then only the Appeal is heard on merits. The learned AGP sought for the dismissal of the Writ Petition.

On hearing the learned counsel for the parties and on perusal of the impugned orders, we find that an opportunity of hearing needs to be granted to the petitioners, as admittedly the petitioners were not heard before the matter was decided by the Deputy Director of Education on 31st May, 2012. There is a serious dispute whether the petitioner was present or not on the previous date of hearing, i.e., 29th May, 2012. The petitioners have stated in the Memorandum of Appeal filed before the State Government that the office bearer of the petitioner no. 1/Trust was present before the Deputy Director of Education on 29th May, 2012, however, there is a wrongful mention in the order of the Deputy Director that the petitioners were absent on 29th May, 2012. Be that as it may, on 31st May, 2012, the petitioners could not remain present before the Deputy Director of Education, as there was a Bharat bandh call. It is also the case of the petitioners that the office bearer of the petitioner no.

1/Trust who was looking after the matter was not well during the last week of May, 2012 and, therefore, he had asked for a longer date for hearing but unfortunately the same was not granted. In the facts of the case, we find that an opportunity of hearing needs to be granted to the petitioners, as a fair opportunity of hearing was not granted before the order was passed by the Deputy Director of Education. The ground raised by the petitioners in this regard before the State Government was not considered by the State Government while declining to entertain the Appeal by the order dated 4th December, 2013.

Hence, for the reasons aforesaid, the Writ Petition is allowed. The impugned orders are quashed and set aside. The Deputy Director of Education may pass an appropriate order after hearing the petitioners. The petitioners undertake to remain present before the Deputy Director of Education on 2nd February, 2015 so that issuance of notice to the petitioners could be dispensed with.

Rule is made absolute with the aforesaid terms, with no order as to costs.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)