

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

WRIT PETITION NO. 5744 OF 2012

Narendra Education Trust

... Petitioner

Vs

1 The State of Maharashtra & Ors.

... Respondents

Mr. Narendra V. Bandiwadekar for the Petitioner.

Mr. S.B. Kalel, AGP, for the Respondent Nos.1 to 4 – State.

Advocate for Respondent No.6 absent.

**CORAM : S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

MONDAY, 19TH NOVEMBER, 2018

P.C. :

1 On hearing all the parties to this writ petition on 29th
November, 2013, this Court passed the following order :

“ *Let the Competent Authority in the Department
of School Education and Sports, Government of
Maharashtra explain how the order dated 18.05.2012
complies with the direction of this Court in Writ Petition
No. 52 of 2011 decided on 01.02.2012.*

2 *When this court directs that an order should be*

passed afresh after complying with the principles of natural justice, it clearly means that parties should be heard and a reasoned order to be passed and duly communicated. The impugned order does not contain any reasons. It is therefore necessary to seek an explanation from the Government as to why such orders are passed and prima facie defying the direction of this court.

3 *Stand over to 06.12.2013. To appear on Supplementary Board.”*

2 According to our understanding, this order subsumes all the facts and circumstances till that date, including those highlighted in the affidavit of the contesting respondent No.6. That also makes reference to the Government's affidavit. After this order, there has been no record placed by the State Government. There is no explanation forthcoming till date on oath. The order was to be complied with by 6th December, 2013. Thereafter, the matter was put in cold storage, presumably to assist the Management or to get over the orders of this Court.

3 In the circumstances, we reject the request made by Mr. Kalel, learned AGP, for adjournment and do not intend to adjourn this case only to enable the Government to file an

affidavit or furnish an explanation. Today, the respondent No.6 and its advocate are absent.

4 In the light of the clear order of this Court, the petition must succeed. The order passed on 18th May, 2012 by the respondent No.1, cancelling the No Objection Certificate granted to the petitioner to commence and set up a Central Board of Secondary Education School, cannot be sustained. The order passed is in clear breach of the principles of natural justice. It cannot be sustained by relying on materials produced by the sixth respondent, who is a private party. Once the materials referred in that sixth respondent's affidavit are of no assistance to sustain an order passed by the statutory authority and which make no reference to any of the documents relied upon by the respondent No.6, then, the only course open to us is to set aside the impugned order.

5 We, accordingly, make the Rule absolute in terms of prayer clause (b), but with a modification that the earlier No Objection Certificate now cannot be restored after proceedings for its withdrawal are in place. All that we permit the statutory

authority is to initiate the process, if it is desirous of doing so, and particularly to recall the earlier No Objection Certificate within a period of four weeks from today and pass a speaking order after hearing all concerned within a period of four weeks thereafter. In the event the initiation is not done within a period of four weeks as directed by us, then, the statutory authority, namely, the first respondent, or its delegates shall not be permitted to re-open the No Objection Certificate granted in favour of the petitioner. Thereupon, the petitioner can approach the fifth respondent and which can permit the petitioner to set up the School on such terms and conditions as are permissible in law.

6 The writ petition is disposed of with these directions. We clarify that we have not examined the merits of the rival contentions.

SMT. BHARATI H. DANGRE, J.

S.C. DHARMADHIKARI, J.