

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9145 OF 2021
WITH CA/10102/2021 IN WP/9145/2021

CHANDRASAGAR BAHUUHESHIYA SEVABHAVI SANSTHA
THROUGH ITS SECRETARY USHA LAXMAN BHALKE
AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY
AND OTHERS

Advocate for Petitioners : Mr. V.D. Salunke
AGP for Respondent Nos. 1 & 3 : Mrs. M.A. Deshpande
Advocate for Respondent No. 2 : Mr. S.S. Thombre

CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, JJ.

DATE : 16 JUNE, 2022.

ORDER :

The corrected affidavit-in-reply filed by the respondent No. 4 is taken on record.

2. Rule. Rule made returnable forthwith. Learned AGP and learned counsel for the respondents waive service. Heard finally by consent of parties.

3. The principal contention raised on behalf of the petitioner is that the action taken by the third respondent under Section 53 of the Persons with Disabilities (Equal Opportunities, Protection of Rights

and Full Participation) Act, 1995, is in breach of principles of natural justice. It is submitted that the third respondent has not issued any show cause notice nor an opportunity to file reply was given and the observation in the impugned order passed by the third respondent that opportunity was given to the petitioners is bareft – of the record. It is submitted that the second respondent which is the appellate authority has also failed to appreciate that opportunity is not granted and the order came to be confirmed mechanically.

4. Learned AGP has referred to the observations in the impugned order passed by the third respondent which states that the explanation given by the petitioners was considered and, therefore, there is no breach of principles of natural justice.

5. We have perused the papers of the case produced by the learned AGP and except an office copy of the show cause notice dated 16 November, 2019, there is nothing on record to show that the show cause notice was served on the petitioners. Learned AGP in all fairness, did not dispute that there no acknowledgment found on record. The record also does not contain any written reply or explanation submitted by the petitioners. Thus, we find that the learned counsel for the petitioners is justified in saying that neither any show cause notice was served on the petitioners nor the petitioners have filed any reply or given any explanation.

7. We, therefore, find that the impugned action of the respondents is clearly in breach of the principles of natural justice. In that view of the matter, the petition is allowed in terms of prayer clause 'B'.

8. This order, however, would not be an impediment for the authorities to take action in accordance with law, after providing an opportunity to the petitioners, as contemplated under the Act of 1995 and the rules framed thereunder.

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

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.