

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

WRIT PETITION NO. 12343 OF 2022

Sharada Shikshan Prasarak Mandal

Thr Its President and Ors.

...Petitioners

Versus

The State Of Maharashtra and Ors

...Respondents

YUGANDHARA
SHARAD
PATIL

Digitally signed
by
YUGANDHARA
SHARAD PATIL
Date:
2024.01.15
18:51:29
+0530

.....

Mr. Prashant Bhavake for the Petitioners.

Mr. B.V. Samant, Addl. G.P a/w Mr. K.S. Thorat, AGP for Respon-
dent Nos. 1 to 4.

Mr. Suresh Pakale, Sr. Adv. a/w Mr. Nilesh Desai i/b Mr. S.M.
Katkar for Respondent No. 6.

.....

**CORAM : NITIN JAMDAR &
M.M.SATHAYE, JJ.**

DATE : 5 JANUARY 2024

P.C.:

. Heard learned counsel for the parties. Though the learned counsel for the parties has sought to advance various contentions on merits of the matter including relying on the order passed by this Court in Writ Petition No. 11273 of 2023 and others, the issue before us is the grievance brought before us by the Petitioner- Institution along with its 13 employees regarding hearing of notice dated 3 October 2022. By the said notice, Deputy Director of Education called the Petitioner-Institution for hearing on 13

October 2022 regarding approval granted to it referring to the complaints made for cancellation of transfer and individuals approvals.

2. The main ground on which Petitioners seek to question the proceedings initiated by Deputy Director of Education is based on the Government Resolution dated 10 June 2022 and orders passed by this Court. The Government Resolution dated 10 June 2022 has taken review of the earlier resolutions and has streamlined the process regarding grant of approval as well as including the details in the Shalarth portal. In clause 3.2 of the Resolution, it is stated that if personal approval are granted prior to 6 February 2012, then as per the Government Resolution dated 23 August 2017, the same can be set aside and recalled or cancelled only on the grounds of fraud, misrepresentation and suppression of facts. Meaning thereby that such grounds must exist and general review is not permissible in such cases.

3. In the Judgment and order dated 30 March 2021 in Writ Petition No. 1380 of 2019 alongwith other Petitions, identical issue arose as to grounds of fraud, misrepresentation or suppression of facts for cancellation of the approval granted. In paragraph no. 9 of the said decision following observations were made.

“Therefore, when the impugned orders came to be passed, the aspect of whether there was any fraud or misrepresentation or suppression was to be dealt

with. The impugned orders based on a show cause proceed only on the basis that Rule 9(8) has not been followed, and with no allegation of any fraud, suppression, misrepresentation or collusion. Therefore, since neither the show- cause-notice nor the impugned order is based on fraud, misrepresentation or suppression, such impugned orders would be contrary to the order passed on 16 August 2017. Considering the language of the Government Resolution dated 23 August 2017 whereby show-cause-notice and opportunity of hearing are contemplated, a reasoned order is to be passed first putting the party to the notice of the fraud or misrepresentation or suppression and then to deal with the same in the impugned order. Since this has not been done and, in view of the order passed on 16 August 2017 in Petitioners' own case, the impugned order is liable to be quashed and set aside."

4. In the present case, grievance of the Petitioners is that there is nothing specified in the show cause notice regarding fraud, misrepresentation or suppression of material facts without which Petitioners cannot effectively deal with show cause notice. It is submitted that on such limited grounds only review of approval already granted is permissible and the implications being serious resulting in cancellation of approval already granted, it follows that opportunity needs to be given to deal with allegations. Show cause notice is based on a complaint made by Respondent No. 6. It is admitted that copy of the complaint is also not seen annexed alongwith the show cause notice.

5. By interim order passed by this Court on 17 October 2022, proceedings before the Deputy Director of Education have not been stalled, but final decision is directed not to be taken. This order is continued till date.

6. According to us, it would be a part of principle of natural justice that if the Respondents/ authorities are proceeding to take action against Petitioners on the basis of fraud, misrepresentation etc., they have to be given an opportunity to deal with the same by indicating so, either in the show cause notice or at least annexing the copy of complaint with the show cause notice. Since neither has been done, we direct Deputy Director of Education to issue a supplementary show cause notice in addition to one already sent, setting out proposed grounds which according to the Deputy Director amount to fraud, misrepresentation, collusion etc. on the part of the Petitioners.

7. Learned AGP states that such additional show cause notice would be sent to the Petitioners within a period of 3 weeks from today. After the notice is so served, let the proceedings before Deputy Director of Education continue. Deputy Director will permit the Petitioners to respond to the additional show cause notice by setting out time table for conclusion of the inquiry.

8. We make it clear that we have passed this order to direct the authorities to comply with the principles of natural justice and

not on merits of the case, which the Deputy Director will consider, in accordance with law.

9. Writ Petition is disposed of as above.

(M.M.SATHAYE, J.)

(NITIN JAMDAR, J.)