
(1999) 10 BOM CK 0079
In the Bombay High Court
Case No : Writ Petition No. 442 of 1998

Late K.L. Deshmukh Shikshan Sanstha	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 21-10-1999

Acts Referred:

Citation : (2000) 2 ALLMR 221 : (2000) 102 BOMLR 912 : (2000) 1 MhLj 830

Hon'ble Judges : Y.K. Sabharwal, C.J.;G.D. Patil, J

Bench : Division Bench

Judgement

Y.K. Sabharwal, C.J.—Rule, returnable forthwith.

2. The Petitioner - Educational Society challenges the grant of permission to respondent No. 4 - Shri Shankargiri Maharaj Shikshan Sanstha and Krida Mandal, Karkheda to open a new secondary school at Waroli in terms of the order dated 26th November, 1997 passed by respondent Nos. 1 to 3. By the impugned order dated 26th November, 1997, respondent No. 4 has been granted permission to open a new secondary school from 8th Standard onwards from the academic Session 1997-98 at Waroli. The application filed by the petitioner to open the said school at Waroli has been rejected by respondent Nos. 1 to 3. The petitioner claims that it is entitled to grant of permission to open a new secondary school at Waroli, but its application was not considered by Respondent Nos. 1 to 3 and instead the permission was granted to respondent No. 4 illegally and contrary to the relevant rules. Directions are sought against respondent Nos. 1 to 3 to consider the application of the petitioner for grant of such permission.

3. It does not appear that any intimation was sent to the petitioner informing it of rejection and reasons thereof. However, from the submissions of respondent No. 1 filed in this Court, it appears that the permission was declined to the petitioner on the ground that the lease-deed in respect of the land and the building constructed thereon in which the petitioner intends to start a new secondary school was not produced by the petitioner, so also the audited accounts of the petitioner Society. Another reason given is that no

recommendation in favour of the petitioner was received from the Director of Education or the Deputy Director of Education. Further it appears that the said recommendation was not sent also for the aforesaid two reasons, namely non-production of the lease-deed and the audited accounts. It has not been explained whether the petitioner was asked to produce the aforesaid documents or was asked to explain the reasons for non-production thereof, it is thus evident that the non-grant of permission was without application of mind and without complying with the basic principles of natural justice.

4. In respect of permission granted to respondent No. 4, it has been specifically averred that even before the receipt of permission dated 26th November, 1997, respondent No. 4 had unauthorized started the secondary school at Waroli in the academic session 1997-98 with effect from July, 1997. None of the respondents has denied this averment. Even respondent No. 4 does not claim that the said school was opened after 26th November, 1997. The unamended Rule 2.5 in Chapter 2 of the Secondary Schools Code provided that in no case should the school be started, unless the previous permission of the Department is obtained, and the school started without such permission shall not ordinarily be considered for recognition. Now, Rule 2.13 of the said Code stipulates that the school started without such permission, shall not ordinarily be considered for grant of such permission, the effect of the amendment is that the word "recognition" stands substituted by the word "permission". It is evident from the reading of the Rule that ordinarily if the applicant opens a new school without grant of permission for such purpose, it would not be considered by the Authorities while taking up the case for grant of permission to start a new school. The object is obvious. It is to visit a person with a penalty on account of the said person on one hand applying for grant of permission to start a new school and on the other hand, without waiting for a receipt of a permission, going ahead with the starting of the school, thereby jeopardizing the interests of the innocent students. It is only in special circumstances to be noticed in writing that the permission may be granted to start a new school, despite the fact that, without grant of such permission, the applicant started the new school. It is not the case of respondent Nos. 1 to 3 that they took into consideration the factum of respondent No. 4. having already started the school before 26th November, 1997.

5. Under the aforesaid circumstances, the impugned permission granted on 26th November, 1997 is unsustainable. It is hereby quashed. Respondent Nos. 1 to 3 to consider afresh the applications of the petitioner and respondent No. 4 in the light of this decision. We, however, make it clear that permission to start the new school will have to be presently considered only from the academic session 2000-2001, since we would not like to affect the careers of those students, who may have got admission in the school of respondent No. 4 for the academic session 1997-98, 1998-99 and 1999-2000. The annulment of the permission dated 26th November, 1997 will have no effect on the students, who may have joined the respondent No. 4 School, taken examination, treating it as recognised school.

6. The Rule is made absolute in the above terms. The petitioner would also be entitled to costs quantified at Rs. 5,000/- (Rs. Five Thousand) to be equally shared by respondent Nos. 1 to 3 on one hand and respondent No. 4 on the other.

7. Writ Petition is disposed of accordingly.