

(2003) 11 GUJ CK 0046
In the Gujarat High Court

Case No : Special Civil Application No. 3747 of 2001 and Civil Application No. 3182 of 2003

Amrutbhai Joitabhai Prajapati

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 05-11-2003

Acts Referred:

Citation : (2003) 11 GUJ CK 0046

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Ketan A. Dave, for Petitioner No. 1-9, for the Appellant; Mukund M. Desai and Desai, AGP for Respondent No. 1, 2-3, 5, 7, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—With the consent of the parties when the CA No.3182/03 is taken up for hearing main Spl.C.A.No.3747/01 is taken up for final hearing.

2. The short facts of the case appear to be that the petitioners are the teachers of a school under the control of respondent No.4-trust. The respondent No.4 trust had applied for grant of permission for closure of the school. Initially the permission was granted as per order, dated 8.2.2000 which came to be challenged by the teachers by way of preferring Spl.C.A.No.3511/99 on the ground that no opportunity of hearing was given to the teachers who are affected by permission for closure. This court (Coram:Kundan Singh,J) as per decision dated 19.2.2001 found that the teachers were required to be heard and since hearing was given to the petitioners of SCA no.3511/99 order was passed by this court directing the petitioners to make representation to the respondent No1-Government within a period of one month from that day and the respondent No.1-Govt was directed to decide the same within two months thereafter by speaking order. It was observed by the court that till the decision of the State Govt order dated 8.2.2000 granting permission for closure shall remain in abeyance. It appears that thereafter the Addl.Secretary of the Education Dept,

State Govt heard the petitioners. It is the case of the petitioners that the written submissions were given copy whereof is also produced before this court as per annexure "D". It was contended, inter alia, by the petitioners in the written submissions that the present closure of class is not bonafide but is malafide in as much as the same group of trustees had opened another school at a distance of 100 Mtrs and old students of the said classes are transferred to the said new school and now the present classes of the present school are proposed to be closed. It appears that the learned Secretary, Education Dept of the State Govt as per decision dated 21.3.2001 decided that the State Govt has a very limited jurisdiction and the management has right to close the classes and consequently the Secretary, Education Dept of the State Govt has continued with the earlier order dated 8.2.2000 passed by the State Govt permitting the closure of classes and it is under these circumstances the petitioners have approached this court by this petition.

3. Having heard the learned counsel Mr.Ketan Dave, appearing for the petitioners, Mr.Desai, Ld.AGP for respondent State as well as Mr.M.M.Desai for respondent No.1, it appears that the Secretary, Education Dept of the State Govt while considering the matter pursuant to the directions given by this court has not properly examined the case in the light of scope and ambit of power of the State Govt permitting or refusing the closure of classes. Clause 5 which is relevant for the purpose of this petition reads as under:

"No management or recognized private primary school shall effect any reduction in total number of classes in its school or close down the school without the prior permission in writing of the Government. For this purpose, the management shall have to make an application to the authorised officer atleast six months before the date from which it intends to reduce the number of classes or close down the school. On receipt of such application, authorised officer shall hear the management and forward such application with his remarks to Government through the Director of Primary Education. The Government may in such manner as may be deemed necessary make such further inquiry as it may appear to it to be necessary and shall decide whether the application should be granted or refused either in whole or in part."

4. It is true that the management which has opened the school has power to close the school in normal circumstances subject to compliance of procedure provided under law. When the school is opened relevant provisions of statute are required to be followed. Similarly, when the closure is to be effected, such relevant provisions will have to be followed. Therefore, with a view to see that there may not be any malafide closure or closure with any ulterior motive and as a consequence thereof it may not result into injustice to students and/or to teachers, the aforesaid provisions of Cl.5 have been provided under the Rules.

(Since the court time is over, put up the matter on 5.11.03 for further dictation).

5. Keeping in view the aforesaid observations, if the order of the Additional

Secretary of the State Government is examined it appears that he has not at all considered the crucial aspects of the case as to whether the closure is sought to be effected with malafide purpose or not. This was required to be examined because it was the case of the petitioners-teachers that the very group of trustees have opened a new school at a distance of 100 Mtrs and the old students of the said classes are transferred to the said new school. The petitioners-teachers did in their representations have given details also, but on the said aspects neither there is any discussion nor any finding by the Additional Secretary in the impugned order. Since the main challenge to the closure on the part of the petitioners-teachers who objected to such closure was that it is malafide and not in any case bonafide, the said aspects, in my view were required to be considered by the Additional Secretary while passing the order for permitting closure or otherwise.

6. In view of the aforesaid, the order, dated 21.3.01 passed by the Additional Secretary-annexure "B" is quashed and set aside with directions to the Additional Secretary, Education Dept, State of Guajrat to reconsider the matter in the light of the observations made by this court hereinabove and to pass appropriate order in accordance with law after giving opportunity of hearing to the respondent-School management as well as to the petitioners-teachers. The Additional Secretary shall pass the order as indicated hereinabove within a period of three months from the date of receipt of writ of this court.

7. Rule is made absolute accordingly. There shall be no order as to costs. Ad interim relief is vacated.

8. In view of order on main special civil application no order is required to be passed in C.A.No.3182/03 and the CA is disposed of accordingly.