

(2012) 02 GUJ CK 0051
In the Gujarat High Court

Case No : Letters Patent Appeal No. 266 of 2012 and Civil Application No. 2112 of 2012

Azad Education and Development trust APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 02 GUJ CK 0051

Hon'ble Judges : V.M. Sahai, J;A.J. Desai, J

Bench : Division Bench

Advocate : N.V. Gandhi for Mr N.C. Shah, for the Appellant; N.J. Shah, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice A.J. Desai

1. By way of the present appeal under Clause-15 of the Letters Patent, the appellant - Azad Education and Development Trust, has challenged the Order dated 2/3rd February, 2012, passed by the learned Single Judge in Special Civil Application NO. 14619 of 2011, dismissing the writ petition, by which the prayer was made to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondents to grant permission for opening a Class of Standard XI w.e.f. June 2010 instead of June 2013 and that Class of Standard-XII w.e.f. June 2011 instead of June, 2014 and also made a prayer that the students of the appellant educational institutions who had filled in their application form for Higher Secondary Certificate Examination of March 2012 shall be accepted and to allow the students to take the said examination which is scheduled to be held in March, 2012. We have heard learned Advocate Mr. N.V. Gandhi, appearing for Mr. N.C. Shah, appearing for the appellant - Trust and have also gone through the order passed by the learned Single Judge.

2. It is an admitted position that by Order dated 10.5.2010, the Gujarat Secondary and Higher Secondary Education Board, had rejected the application of the appellant - Trust to start Higher Secondary School i.e. for opening a Class of Standard XI and Class of Standard-XII. The said order of the respondent No.2 - Board was challenged by the appellant - Trust by way of preferring an Appeal before the respondent No. 1- Education Department.

3 Though, the respondent No. 2 Board had refused to start classes of Standard XI and Class of Standard-XII, it appears that the appellant- Trust has admitted several students in it's school from June, 2010. It also appears that pursuant to the application dated 14.6.2011 made by the appellant - Trust, by communication dated 6.7.2011, the second respondent - Gujarat Secondary and Higher Secondary Education Board has granted permission to the appellant - Trust to start classes for Standard-X from June, 2012, Standard-XI from June, 2013 and Standard-XII from June, 2014.

4. In view of the factual aspect of the case, the learned Single Judge, after hearing of the parties and after considering the decisions of the Apex Court as well as of this Court, has observed as under:

The petitioner Trust is running a primary school with Gujarati medium since 2005. The said school is unaided school and it is imparting education to the students in standard 1st to 8th only. The petitioner was intending to start secondary school and higher secondary school, for which, appropriate application was also made for seeking recognition of these two schools. The secondary school now as per the prevailing rules would form class 9th to 10th and higher secondary school would form classes of 11th and 12th. Thus, the primary school, which had recognition is a school imparting education upto the standard 8th only. Earlier 8th standard school was included in secondary school. The petitioner, in anticipation of obtaining recognition and permission, started standard 9th, 10th, 11th and 12th in the school from June, 2010. The request for petitioner was declined by the competent authority vide order dated 10.5.2010. Thus, the petitioner's request had been declined by the competent authority and therefore, petitioner could not have started classes as aforesaid and starting thereof was without recognition. However, petitioner did start those classes and in the meantime on 23.11.2010 new policy for granting permission to existing school to open classes was promulgated and petitioner sought reliance thereupon to justify its stand. It is also important to note at this stage that appeal against the order dated 10.5.2010 of petitioner was also dismissed by the authority i.e. Secretary, Education and thus, the starting of classes, secondary school and higher secondary school were absolutely not admissible under law in view of subsequent promulgation of policy dated 23.11.2010 and also, it would not have been availed to the petitioner.

Learned advocate for the petitioner contended that the policy and methodology adopted vide communication dated 23.11.2010 would help the petitioner in justifying its stand and continuation of the classes, as in case, if the school is

fulfilling the criterion laid down thereunder, then, that school is not required to obtain formal approval permission/ recognition and therefore, this policy should have been appreciated by the department and respondent and petitioner's school so far as secondary school and higher secondary school is concerned, should have been granted recognition and students may not have to suffer as the examination of standard 12th is starting from 4.3.2012.

Learned advocate for the petitioner has also invited this court's attention to the affidavit, which is produced at Page-21 at Annexure - E, wherein, the petitioner has show its willingness to undertake and fulfill all the criterion prescribed under the communication dated 23.11.2010 and therefore, the school could not have been denied the recognition, which will have greater effect upon the future of the student, who were enrolled and prosecuting their study in standard 9th, 10th, 11th and 12th.

Learned advocate appearing for the respondent Board relying upon the decision of this court in case of Solanki Pravinkumar Gagabhai Vs. State of Gujarat, reported in 2002 (3) GLH 299, contended that the petitioner was not justified in indulging into future of the students by enrolling them without their being any valid recognition or permission for running those standards. The facts of present petition, go to show that the petitioner's request and prayer for granting recognition was declined way back on 10.5.2010 and appeal preferred thereon was also rejected. When this facts were within the knowledge of the petitioner, the petitioner in the interest of student also could not have enrolled students, which petitioner did in blatant disregard of the rule of law and now under the guise of protection of interest of student, petitioner cannot be permitted to seek any relief from this court under Article 226 of the Constitution of India. The Court, in the case cited, in fact imposed damage upon the Trustees, which were ordered to be paid personally upon the Trustees to the students of unrecognized school and the learned advocate for the respondent has heavily emphasized upon paras-10, 11 and 12 of said judgment.

Learned advocate for respondent No.2 has also relied upon the decision of the Supreme Court in case of C.B.S.E. and Another Vs. P. Sunil Kumar and Others, and contended that such school or trustee are not entitled to seek any direction compelling the board to perpetuate their illegality which they committed in commencing the classes without due recognition. Learned advocate for the respondent no. 2 has also relied upon the decision of Division Bench of this Court in case of Shishu Jyot Kalyan and Kelavani Trust Vs. Gujarat Secondary Education Board, Gandhinagar, reported in 2005 (4) GLR 2867 : 2006 (1) GCD 97 and decisions cited thereon to justify the stand of the Board.

The court is of the view that it is indeed unfortunate that the school management in utter disregard of the provisions of law, commenced classes and enrolled students. The students who have been enrolled by the school have not come to this court nor have they made any grievances with regard to action of the board. It is the school, who is prima-facie responsible for commencing the classes

without permission, has approached this court, praying for exercise of powers under Article 226 of the Constitution of India, which in my view, would not be justified in any manner as the school had knowledge with regard to rejection of its request for commencing classes, secondary school and higher secondary school and has knowledge of the fact that appeal preferred against said order was rejected. After this, there was no scope for any hope or giving any hope to obtain permission for starting school. Thus, starting of classes, secondary school and higher secondary school in the month of June, 2010 was de hors the rules and in blatant disregard to the rule of law, whereby, the petitioner in fact, enrolled the students in those classes. The petitioner has not pleaded as to whether the students were informed that the school has requested for recognition and recognition has been declined nor has it coming on record that whether the school had informed the students that recognition is not there, therefore, in this case, the court would not go on recording any finding on this aspect or could not give any damages to the students as submitted by learned advocate appearing for the respondent Board but it is made clear that, if the students seeks any damage, if misinformed by the school, then, they would be entitled to seek damage under appropriate proceedings before appropriate forum. The school was not justified in relying upon the policy promulgated in communication dated 23.11.2010, as on close reading of the policy, it would go to show that what was dispensed with, was a formal requirement of obtaining permission by the already recognized school. In the instant case, the school, i.e secondary school and higher secondary school were not existed at all and it was only primary school, whose management was intending to start secondary school and higher secondary school for which, they could not have validly relied upon the policy of 23.11.2010. Assuming for the sake of examining without holding that petitioner did have some semblance to indicate that the existing school were exempted from seeking formal permission for commencing classes or new classes, then also, that policy was never in the offing, when the petitioner's school and classes for which, there exists no permission or rather specific request was declined and said order was confirmed by the Appellate Authority. Under this circumstances, the blame would go to the management and when the blame is fasten upon the management, such management cannot maintain the writ petition seeking extra ordinary jurisdiction of this court under Article 226 of the Constitution of India, as the court cannot continuance the fact of non-recognition of the school, even on specious plea of future of students is pleaded, as the judgments cited by learned advocate for respondent Board would go to show that in such a case, the court is left with no choice but to dismiss the petition.

5. We are of the opinion that the appellant - Trust should not have admitted the students in Classes XI and XII in absence of any permission from the respondent No. 2 - Gujarat Secondary and Higher Secondary Education Board and particularly when the respondent No.2 had passed an order refusing the application of the appellant - Trust for starting Higher Secondary School for Classes in Standard - XI & XII, way back on 10th May, 2010. The learned Single

Judge has rightly dismissed the writ petition. We do not find any reason to interfere with the just and reasoned order passed by the learned Single Judge.

6. In view of the aforesaid, the appeal lacks merit and the same is dismissed. In view of the order passed in the main appeal, the Civil Application No. 2112 of 2012 also stands dismissed