
(2000) 05 GUJ CK 0050
In the Gujarat High Court

Case No : Civil Application No. 3684 of 2000 in Letters Patent Appeal (Stamp Number) No. 135 of 2000

District Education Officer

APPELLANT

Vs

Rajvirsinh K. Rathod

RESPONDENT

Date of Decision : 29-05-2000

Acts Referred:

Citation : (2000) 05 GUJ CK 0050

Hon'ble Judges : K.M. Mehta, J

Bench : Single Bench

Advocate : Patel, for the Appellant;

Judgement

K.M. Mehta, J.—Rule. Heard the learned advocates appearing for parties and with the consent of learned advocates appearing for parties this application is finally disposed of today.

2. The District Education Officer and others-appellants-original respondent Nos 2 and 3 in the main petition have filed this Letters Patent Appeal against the judgment and order, dated 13.7.1999/24.8.1999 decided by this court in Special Civil Application No.4183/99 wherein the learned single judge has held that once the school admitted a student, such admission continues class after class until he leaves that school. The admission of the student to the next higher class is not fresh admission or re-admission.

3. The facts giving rise to the present appeal are that Mr.Rajvirsinh K.Rathod and others-original petitioners were studying in K.N.Shah Modasa Village High School at Modasa, District Sabarkantha. The said school is a Government aided school. While studying in the aforesaid school the petitioners appeared in the public examination of 10th standard held by the Gujarat Secondary Education Board in the year 1999 and have passed the said examination. They were desirous of continuing their studies in the same school for 11th and 12th standard and is the common case of the parties that in this school there is a Science stream also and

they wanted to studying the Science stream. In the petition it was alleged that the petitioners are not likely to get admission in that school as a policy decision had been taken to stop admission at 86% in the Science Stream and whereas the petitioners had obtained percentage of marks lesser than 86%. It was also alleged in the petition that the respondent-School had entertained the applications for admission to the 11th standard in Science stream from the students of other schools also and the result is that they are denied admission to the 11th standard in science stream in the school from which they have passed the 10th standard. It was the case of the petitioners that the respondent No.3 had taken a decision that over and above 60 students in each class, only six more students will be accommodated meaning thereby 66 students can be accommodated while in the said school there are two sections and therefore 132 students can be accommodated. But, even this power of increasing number of students by 6% is not exercised and there is scope for admission of 120 candidates only in the said school in science stream in 11th standard.

4. Before learned single judge in the affidavit-in-reply which was filed on behalf of respondent Nos 2 & 3 through DEO(appellant herein) it has been stated that a policy decision has been taken by the State Government and circular/resolution dated 6.11.1985 has been issued and this circular/resolution was issued on the basis of certain orders passed by this court. The respondents have taken the stand that in the State there are certain schools which do not have science stream and that the actual option for the student is available only from 11th standard and therefore the students of those schools in which the education is available upto 10th standard and/or the schools wherein the education is imparted upto 12th standard but there is no science stream in those schools and the students passing 10th standard from such schools, i.e. where there is no further education for 11th and 12th standards or where the students of 11th and 12th standards were there but science stream are not available are also to be considered and such boys of other schools if they have a higher percentage of marks they have to be given preference over the students of the schools and it was for those reasons the aforesaid circular was issued and a decision was taken to put the maximum limit of 70% seats on the basis of merit from amongst the students who have applied in the very same school and 30% of the seats are reserved for other schools from the total number of seats and further reservation for the other backward class and SC and ST are also to be kept in view. In this background the bifurcation of the seats of one school has been made. It was further averred that such admission policy is in consonance with the rules and regulations for admission as passed by the State Government after considering the decisions of this court. It has also been submitted that there are number of other students in the merit list at the point where from the general merit list has been stopped to the eligible number of students and therefore otherwise also the petitioners may not fall in the list of students to be admitted in the same school. Copies of resolutions dated 6.11.1985 and 10.6.1997 were enclosed to the reply.

5. Before this court, Mr.B.T.Rao, learned counsel for the appellants has drawn my

attention to the decision of the Division Bench of this court in the case of The Proprietary High School, Trust, Ahmedabad and Others Vs. State of Gujarat and Another, wherein the Division bench of this court has considered the entire education policy and the circulars issued by the Government from time to time and in para 28 of the judgment the Division bench has held as under:

"The Government was obliged to interfere to regulate admissions into schools as otherwise a good number of students who pass out from schools where there are no higher secondary classes would have been unable to pursue their education in the science stream despite their good performance in the 10th standard examinations. This would certainly affect their right to enter professional colleges and in due course practise professions of their choice."

6. It appears that the attention of the learned single judge was not invited to the said binding decision of the Division Bench of this court.

7. I have also heard Mr.S.I.Nanavaty, Ld.Senior counsel appearing for some schools who has supported the contention of Mr.Rao appearing on behalf of the State of Gujarat . He has stated that on the basis of the decision of the Division Bench of this court in the case of Proprietary H.S.Trust (Supra) the Government has formulated a policy and that has been worked out right from 1986 till today. Therefore, this court should give interim directions to continue this policy for the academic year starting from June 2000. He submitted that this court has no time to dispose of the appeal finally in the vacation and therefore some interim directions should be given in consonance with the practice of the Government which has been followed by the Government in view of the binding decision of the Division Bench of this court in the case of Proprietary High School (Supra).

8. I have also heard Mr.R.C.Jani, learned advocate appearing for the original petitioners-respondents herein who has strenuously tried to support the case of the original petitioners as well as the reasoning of the learned single judge.

9. I have given my anxious thought to the matter and since this being Letters Patent Appeal and since I am sitting as single judge in vacation it is not possible for this court to deal with the Letters Patent Appeal finally and so the following interim directions are given. I have also considered the judgment of the Apex Court in the case of The Principal, Cambridge School and another Vs. Ms. Payal Gupta and others, . However, what will be effect of the judgment of the Honourable Supreme Court vis-a-vis the circulars issued by the Govt.of Gujarat and also what is the effect of the judgment of the Division bench of this Court in the case of Proprietary High School Trust (Supra) will have to be considered by the Division bench at the time of hearing of the entire appeal and I do not express any opinion about the said decisions at this stage as the Division bench has to decide the same at the time of hearing of the appeal. This court has also considered both the circulars/resolutions dated 6.11.85 and 10.6.97 and also gone through the entire history wherein entire history of the education policy has been considered by the Division bench Proprietary High School case (supra)

particulars in paras 4 to 11 and 23 to 33 of the judgment. hence, this court passes the following interim order and while passing the interim order this court also considered carefully the prima facie case put up by the appellants and balance of convenience where fate of large number of students lies:

10. The judgment and order, dated 13.7.99/24.8.99 passed by the learned single judge (Coram: M.R.Callan,J) of this court in Special Civil Application No.4183/99(with CA Nos 6067/99 and 9132/99) reported in 2000(1) GLH 267 is stayed in view of the binding decision of the Division Bench of this court in the case of Proprietary High School Trust (Supra) and the existing policy as stated in the circulars/resolutions dated 6.11.1985 and 10.6.97 which has been amended from time to time by the Government shall remain in force in connection with the admissions to the XIth standard by the State of Gujarat.

11. As the matter is of urgent nature and the above interim directions are issued, the LPA is ordered to be posted on 13.6.2000 i.e. on the very first working day after the vacation before the appropriate Division Bench. Rule is made absolute accordingly. No order as to costs.