

(2023) 07 GUJ CK 0034

In the Gujarat High Court

Case No : R/Special Civil Application No. 16260 Of 2017, 9284 Of 2018

Gayatri Education Trust

APPELLANT

Vs

State Of Gujarat & 3 Other(S)

RESPONDENT

Date of Decision : 10-07-2023

Acts Referred:

Right To Education Rules, 2012 — Rule 14
Bombay Primary Education Rules, 1949 — Rule 106
Gujarat Secondary Education Regulation, 1974 — Regulation 9A, 20
Indian Penal Code, 1860 — Section 120B, 408, 420, 465, 467, 471, 473

Citation : (2023) 07 GUJ CK 0034

Hon'ble Judges : Bhargav D. Karia, J

Bench : Single Bench

Advocate : RV Deshmukh, Krutik Parikh, Mamta R Vya

Final Decision : Allowed

Judgement

Bhargav D. Karia, J

1. Heard learned advocate Mr.R.V.Deshmukh for the petitioners, learned Assistant Government Pleader Mr.Krutik Parikh for respondent nos.1 to 3 in Special Civil Application NO.16260 of 2017 and learned advocate Mr.Meet Shah for learned advocate Mr.A.D.Oza for respondent no.3 in Special Civil Application No.9284 of 2018, learned advocate Ms.Mamta R. Vyas for the respondent no.4, learned Assistant Government Pleader for respondent nos.1 and 2 in Special Civil Application No.9284 of 2018.

2. As both the petitions are arising out of closure of the schools namely Sugnan Vidhyavihar Prathmik Shala run and managed by Shri Gaytri Education Trust petitioner of Special Civil Application NO.16260 of 2017 and Sugnan Vidhyavihar Higher Secondary School (Secondary Section/ Grant-in-aid School), Sugnan Vidhyavihar Higher Secondary School (Higher Secondary Section/ Grant-in-aid) and Sugnan Vidhyavihar School (Higher Secondary/ Science Stream/ non-granted School) run by Sugnan Education Trust petitioner of Special Civil

Application NO.9284 of 2018.

3. Both the petitions pertain to Primary and Higher Secondary Schools run by the same management and both were heard analogously and are being disposed of by this common judgment.

4. The brief facts of Special Civil Application No.16260 of 2016 are that the petitioner Shri Gayatri Education Trust is represented by its trustee Shri Gaurangbhai Madhubhai Patel and the petitioner trust is registered under the Bombay Public Trusts Act, 1950.

4.1. The respondent no.2 without following any procedure prescribed under the Act passed an order on 07.06.2016 for closure of the Primary School.

4.2. The petitioner being aggrieved by the said order preferred Special Civil Application No.9746 of 2016 before this Court. This Court vide order dated 17.02.2017 quashed and set aside the order of closure and the case was remanded to the Director of Primary Education to decide afresh after giving opportunity of hearing to all the parties including the petitioner in due compliance of the principles of natural justice without expressing any opinion on the merits of the case.

4.3. The respondent no.2 however without providing the necessary documents to the petitioner, by order dated 07.06.2016 for closure of the Primary School. The petitioner therefore again filed Special Civil Application NO.10107 of 2017 which was disposed of as withdrawn on 25.05.2017 in view of the withdrawal of the order dated 24.04.2017. The petitioner thereafter submitted a detailed reply on 13.07.2017. The petitioner also requested that considering the dispute involved in the proceedings certain witnesses were required to be examined. The petitioner also made a request to examine Shri A.C.Trivedi, Dr.Jesal M.Patel, Dr.Haresh B.Vadhel and Shri V.K.Gameti who had given a report after a spot inspection of the School because according to the petitioner such persons never visited the School and never examined and checked the school records and upon their arbitrary report, order of closure was passed.

4.4. The respondent no.2 however passed an order dated 10.08.2017 for closure of the Primary School run by the petitioner Trust. The petitioner has therefore preferred this petition to quash and set aside the impugned order dated 10.08.2017 by which the Sugnan Vidhyavihar Prathmik Shala run and managed by the petitioner Trust is ordered to be closed.

5. The brief facts of the case of the Special Civil Application No.9284 of 2018 are as under:-

5.1. The petitioner Trust is registered under the provisions of the Bombay Public Trusts Act, 1950 and its aim and object is to impart education. The petitioner trust is running Sugnan Vidhyavihar Higher Secondary School (Secondary Section/ Grant-in-aid School), Sugnan Vidhyavihar Higher Secondary School (Higher Secondary Section/ Grant-in-aid) and Sugnan Vidhyavihar School (Higher

Secondary/ Science Stream/ non-granted School). The respondent No.3-Gujarat Secondary & Higher Secondary Board granted recognition to Secondary School (Grant-in-aid) in the year 1981, Higher Secondary Section (General Steam/ Grant-in-aid) in the year 1988 and Higher Secondary School (Science Stream/ non-granted) in the year 2011. The petitioner is not running non granted Science Stream School for which recognition is granted on 17.08.2011 for last two academic years.

5.2. The brief history of the Trust is as under:-

5.3. Sugnan Education Trust is established in the year 1975 and as stated hereinabove, the said Trust is established with a view to impart an education in the city of Ahmedabad. When the Trust is established, the following were the Trustees of the Trust

- (1) Prahladbhai V. Patel
- (2) Aatmaram B. Patel
- (3) Balchandbhai Mafatlal Patel
- (4) Amratlal Ramdas Patel
- (5) Baldev Hirdas Patel
- (6) Premchandbhai Joitaram Suthar
- (7) Purshottamdas Baldevdas Patel

5.4.It is to be noted at this stage that Prahladbhai V.Patel is the father of the respondent no.4- Rakesh Patel and he was a principal of the school who had taken voluntary retirement the year 2003.

5.5.In the year 2004, after the change report is placed before the competent authority, the following trustees were on the record of the Charity Commissioner and their names are as under:

- (1) Baldevbhai Hirdas Patel
- (2) Paliben Prandas Patel
- (3) Rakesh Prahladbhai Patel
- (4) Gaurang Madhubhai Patel
- (5) Artiben Amitbhai Patel
- (6) Rajendra Dashrathbhai Patel
- (7) Jigarbhai Madhubhai Patel

5.6.The Trustee Paliben Prahladbhai Patel is the mother of the respondent no.4- Rakesh Prahladbhai Patel. Baldevbhai Hirdas Patel is an uncle of respondent no.4- Rakesh Prahladbhai Patel. So far as Trustee Aartiben Amitbhai Patel is

concerned, she is the first ranked relative of Paliben Prandas Patel and Rakesh Prahladbhai Patel.

5.7. It is further case of the petitioner that after Prahladbhai Vitthalbhai Patel who was principal and was voluntarily retired in the year 2003 and as there is clear vacancy arise for the post of Principal in Sugnyan Vidhyavihar Higher Secondary School, Paliben Prandas Patel, Dr. Rakesh Prahladbhai Patel and one Mahendrabhai Vitthalbhai Patel who is a brother in law of Paliben Prandas Patel and a real uncle of Rakesh Prahladbhai Patel and though the Sugnan Education Trust has not passed any resolution nor have obtained No Objection Certificate to fill up the post in question nor even Trust has constituted selection committee, a false, concocted and forged resolution is passed, constituted a selection committee, obtained NOC, and selected a candidate viz. Renukaben Ambalal Patel who is a wife of Trustee Rakesh Prahladbhai Patel, though she is not possessing requisite qualification and experience as prescribed under regulation 20 of the Gujarat Secondary Education Regulation, 1974. The regulation 20 provides that the candidate who possesses qualification of BA, B.Ed and is having a teaching experience of five years in a granted school will be an eligible candidate. The petitioner states that Renukaben Ambalal Patel, a wife of Rakesh Prahladbhai Patel and as stated hereinabove, Rakesh Prahladbhai Patel is a son of Paliben Prahladbhai Patel, who is a trustee of the petitioner trust knowing fully well that the wife of Rakesh Prahladbhai Patel viz. Renukaben Amaballal Patel is not possessing a requisite qualification and degree of B.Ed. is obtained from Baraktulla University, a university which is not recognized by the NCTE (National Council for Teacher Education) for B.Ed., also knowing fully well that she is not possessing teaching experience of 5 years from the grant in aid school, but the only qualification she is possessing is that she is a wife of trustee Rakesh Prahaldbhai Patel and daughter in law of Paliben Prahaldbhai Patel, is selected by the selection committee, though at no point of time, the Sugnan Education Trust has passed a resolution and constituted the selection committee.

5.8. It is the case of the petitioner that as per the section 35 of the Gujarat Secondary Education Act 1972, that after the selection committee, select the candidate and thereafter, the Trust has passed the resolution and accept the selection made by the committee, then proposal is required to be forwarded to the District Education Officer and in present case before the respondent no.2. The Sugnan Education Trust has never passed any resolution and at no point of time, no proposal is forwarded to the respondent no.2 naturally that the Trust has not undertaken any proceedings for the appointment of the principal in the school.

5.9. It is the case of the petitioner that as stated hereinabove, a head clerk Mahednra Vitthaldas Patel, a real uncle of Rakesh Prahladbhai Patle has created false and concocted resolution in the name of Trust wherein, he has obtained the signature of Paliben Prandas Patel, a mother in law of selected candidate, Renukaben Amablal Patel, Rakesh Prahladbhai Patel husband of Renukaben

Amabalal Patel and has falsely and forged the signature of Gaurang Madhubhai Patel and Baldevbhai Hirdas Patel. The said document has been placed before the respondent no.2 giving an impression that it is the Trust who has made the selection of Renukaben Ambalal Patel and on such false, frivolous and concocted document, the respondent no.2 has granted approval to the appointment of Renukaben Ambalal Patel as a principal of the Sugnyan Vidhyavihar Highersecondary School which is grant in aid school.

5.10. In the year 2013, the management has received a complaint about the said irregularity in the matter of appointment the Trust has decided to look into the matter and to the great shock and surprise, the Trust reached to the conclusion on the basis of documentary evidence and the record of the Trust that the Trust has not passed any resolution to obtain NOC, constitute selection committee, approval to the selection made by the selection committee and a proposal forwarded to the respondent no.2, the petitioner Trust further surprised when the resolution contained the signature of Baldev Hirdas Patel and Gaurang Madhubhai Patel and when there is a prima facie opinion that it is a false signature of both these two Trustees, therefore, they have filed a criminal complaint before the Odhav Police Station which is being registered as No. 97/13 on dated 23.2.2013 under section 120 B, 408, 420, 465, 467, 471, & 473 of the Indian Penal Code and even now charge-sheet is also filed before the competent court on 17.02.2015 and the matter is pending for trial. As there is a dispute with regard to the signature of Trustees Baldevbhai Hirdas Patel and Gaurang Madhubhai Patel, the court has sent for the signature verification to the Directorate of Forensic Science Handwriting and Photographic Bureau at Gandhingar. The said authority after taking into consideration, the signature specification of both the Trustees and the signature at resolution reached to the conclusion that that Mahendra Vitthalbhai Patel has signed in the name of Gaurang Madhubhai Patel and Gaurang Madhubhai Patel has never signed resolution in question.

5.11. During the pendency of verification of the signature and as there is a prima facie evidence available with the management that the Renukaben Ambalal Patel, a daughter in law of Trustee Paliben Prahladbhai Patel and wife of one more trustee Rakesh Prahladbhai Patel is not possessing qualification as prescribed in the regulation 20 of the Regulation 1974 and therefore, on 22.06.2013 and 24.07.2013, a show cause notice was issued to Renukaben Ambalal Patel to explain about the allegation made in the said show cause notice. It is alleged in the said show cause notice that her B.Ed. qualification is not from a university which is recognized by the NCTE (National Council for Teacher Education) therefore, she is not possessing requisite qualification of B.Ed. and even she is not possessing a requisite experience of 5 years from a school which grant in aid. In nutshell, the said employee is asked to show cause as you are not possessing a requisite qualification, and along with other charges why a necessary departmental action should not be taken against her.

5.12. As stated hereinabove on 23.02.2013, a criminal complaint is filed for the offence punishable u/s.408, 420, 465, 467, 471, 473 and 120-B of the Indian Penal Code, a show cause notice is issued on 22.06.2013 and 24.07.2013, even pursuant to the criminal complaint filed on 23.02.2013, and pursuant to the said complaint, the investigating officer has arrested Paliben Prahaldbhai Patel, Dr. Rakesh Prahaldbhai Patel, Mahendra Viththalbhai Patel and Renukaben Ambalal Patel.

5.13. It is the case of the petitioner that as the criminal complaint is filed, show cause notice is issued, therefore, to counterblast and to settle an account with the Trust, a false and frivolous representation is made to the respondent no.3 Gujarat Secondary and Higher secondary Education Board, making a frivolous allegation with regard to the appointment of teachers in the science stream and certain so- called irregularities committed by the Trust in the Sugnan Vidhyavihar Higher Secondary School (non- granted/science stream). The said representation is made in May 2013 by the respondent no.4. It is to be noted that the respondent no.3, Gujarat Secondary and Higher Secondary Education Board has not given even a copy of the said representation but has chosen to issue a show cause notice dated 01.08.2013 on the basis of such frivolous compliant.

6. Pursuant to the complaint made by the respondent no.4 the show-cause notices were issued by the respondent no.3-Gujarat Secondary & Higher Secondary Board on 01.08.2013 which was replied by the petitioner on 17.08.2013. Thereafter the petitioner was called upon to remain present on 04.10.2013 before the Officer Shri P.N.Modi of the Board. The petitioner demanded the copy of the petition made by the respondent no.4. The petitioner earlier filed written submissions on 25.10.2013.

7. Another show-cause notice dated 25.10.2013 was issued by the respondent no.3- Gujarat Secondary & Higher Secondary Board calling upon the petitioner to explain about the details of School building. In response to the show-cause notice the petitioner produced necessary documents with regard to the land on which the school was situated to point out that there was no irregularities as alleged in the show-cause notice. It was contended by the petitioner that the land of the school is situated in the sim of village Odhav of Odhav Nagar Panchayat and the original land lord is one Maganbhai Somabhai Prajapati, Shakarbai Somabhai Prajapati and Keshavbhai Somabhai Prajapati who have sold the land to one M/s Chhotalal Damodardas and Partnership Firm and their partners Ranchodlal Gordhandas Thakkar and Natvarlal Vanmalidas by sale deed dated 12.11.1965.

8. It was also pointed out that the said M/s Chotalal Damodardas and other two partners sold the land to Ambika Corporation a partnership firm by sale deed dated 29.08.1975 who in turn sold the land to M/s Patel Mehta & Company by sale deed dated 15.11.1975 which is a registered partnership firm having partners Mr.Atmaram Baldevdas Patel, Kantilal Keshavlal Mehta and Madhavlal Hardas Patel who is father of the managing trustee of the petitioner trust

Ramanbhai Amthabhai Patel, Paliben Prandas Patel-mother of the respondent no.4, Rakesh Prahladbhai Patel and Premchanbhai Joitaram Suthar. The said partnership has given the land in question to the petitioner trust as well as to Gayatri Education Trust to run Primary and Higher Secondary School as per the rent agreement executed between the M/s Patel Mehta & Company and both the Trusts on 18.10.2006. It appears that on perusal of the reply given by the petitioner, respondent no.3-Gujarat Secondary & Higher Secondary Board was satisfied that there is no so called irregularities in the matter of land in question and there was no necessity to obtain permission from the Ahmedabad Municipal Corporation because of the fact that the Odhav Nagar Panchayat is merged with Ahmedabad Municipal Corporation in the year 1985 and all the sale deed and the building was constructed prior to the merger.

9. The Ahmedabad Municipal Corporation had also issued notice to the petitioner trust on 23.04.2015 which was replied by the petitioner trust refuting the allegations made by the respondent no.4 and his father-in-law Ambalal Joitaram Patel which was accepted by the Ahmedabad Municipal Corporation who did not find any irregularities with regard to the land in question.

10. However, the respondent no.3- Gujarat Secondary & Higher Secondary Board passed the orders dated 10.06.2015 and 17.06.2015 to derecognize the Sugnan Vidhyavihar Higher Secondary School (Science Stream/ non-granted) and Secondary and Higher Secondary (Grant-in-aid) Schools without following any procedure prescribed under Regulation 9A of the Gujarat Secondary Education Regulations, 1974 (for short 'the regulation').

11. The petitioner being aggrieved by the aforesaid orders preferred an appeal under Section 31(10) of the Gujarat Secondary and Higher Secondary Education Act, 1972 (for short 'the Act, 1972') before the respondent no.1-Deputy Secretary of the Education Department.

12. The respondent no.1-Deputy Secretary by order dated 05.04.2016 quashed and set aside both the aforesaid orders and remanded the matter to the respondent no.3- Gujarat Secondary & Higher Secondary Board with a direction to follow the procedure prescribed under Regulation 9A of the regulations to conduct inquiry and thereafter to pass necessary orders.

13. The respondent no.3- Gujarat Secondary & Higher Secondary Board therefore by letter dated 26.04.2016 called upon the petitioner to explain about the irregularity mentioned therein. The petitioner by letter dated 02.05.2016 submitted a detailed reply explaining the case of the petitioner with a request to drop the proceedings.

14. The respondent no.3- Gujarat Secondary & Higher Secondary Board also provided an opportunity of hearing to the petitioner on 03.05.2016. The respondent no.3- Gujarat Secondary & Higher Secondary Board by order dated 30.05.2016 dropped the proceedings and reached to the subjective satisfaction that there was no illegality nor any irregularity and it is not a case to recognize

the school in question.

15. The respondent no.4 being aggrieved by the order dated 30.05.2016 preferred Special Civil Application No.8654 of 2016 before this Court which was disposed of vide order dated 05.02.2018 directing the respondent no.4 to avail the alternative remedy as available under the Act, 1972. The respondent no.4 also preferred Special Civil Application No.2150 of 2015 before this Court with a prayer that appointment of all teachers of the Higher Secondary Schools be declared as illegal. The said petition is also disposed of directing the respondent no.4 to approach the appellate authority.

16. The respondent no.4 thereafter preferred the appeal before respondent no.1 on 01.03.2018. It appears that after considering the documents produced by the petitioner on record and after giving opportunity of hearing to all the concerned parties, the respondent no.1 passed an order dated 21.05.2018 setting aside the order passed by the respondent no.3-Gujarat Secondary & Higher Secondary Board and ordered to derecognize the schools which are run and managed by the petitioner trust. The petitioner being aggrieved by the order dated 21.05.2018 followed by order dated 23.05.2018 passed by the respondent no.2 to derecognize the respondent no.2-District Education Officer sealing the School premises of the petitioner trusts. The respondent no.3 also issued a communication dated 25.06.2018 cancelling the registration of the school. The petitioner being aggrieved by the orders dated 21.05.2018 passed by the respondent no.1, order dated 23.05.2018 passed by the respondent no.2 and order dated 25.06.2018 passed by the respondent no.3 has preferred this petition.

17. Learned advocate Mr.Deshmukh for the petitioners submitted that the respondent no.4 Rakeshbhai Prahladbhai Patel has initiated the proceedings for closure of the school run by the petitioner trusts. It was submitted that the facts are not in dispute inasmuch as since 2013 when the criminal complaints were filed, as a counterblast respondent no.4 initiated proceedings for closure of the schools which were running for more than two decades.

18.1. It was submitted that so far as the order dated 10.08.2017 passed by the Director of Primary Education to close the primary school is concerned, the findings in the said order are contrary to the facts on record. It was submitted that the said order was passed under Rule 14 of the Right to Education Rules, 2012 (for short 'Rules, 2012') which stipulates for withdrawal of recognition on the ground of violation of any of the conditions for grant of recognition or failure to fulfill the norms and standards prescribed in the Schedule of the Right to Education Act, 2009 (for short 'the Act, 2009'). It was submitted that none of the norms and standards for schools prescribed in Section 19 of the Act, 2009 is violated by the petitioner trusts.

18.2. Learned advocate Mr.Deshmukh for the petitioners referring to each of the findings arrived at by the Director of Primary Education in the order dated

10.08.2017 pointed out that none of the findings is commensurating with the facts on record. It was pointed out that grounds for cancellation of the recognition of the primary school are only pertains to possession of the land in question as alleged by the respondent no.4 that the school is running on a land belonging to the Ahmedabad Municipal Corporation.

18.3 It was submitted by learned advocate Mr.Deshmukh that the litigation with regard to the land in question was going on when the impugned order was passed and at present no proceedings are pending against the petitioners with regard to the land in question with the Ahmedabad Municipal Corporation. It was submitted that the issue with regard to the respondent no.4 also the subject matter of the pending litigation and therefore the same cannot be the basis for cancelling the recognition. With regard to other grounds mentioned in the impugned order are not correct as the Primary and Secondary Schools are not run simultaneously in the same building but are run in the same building at different shifts which is permissible. It was submitted that the issues with regard to the teachers, their salary etc. are all rectifiable. It was also pointed out to the respondent no.2-Director of Primary Education that the respondent no.4 without permission of other trustees has falsely submitted the proposal for closure of the schools. It was further submitted that the hearing to the petitioner was given by the Deputy Director and order was passed by the Director of Primary Education and therefore the impugned order is liable to be quashed and set aside.

18.4. With regard to the impugned order dated 21.05.2018 passed by the Appellate Authority reversing the order passed by the Gujarat Secondary and Higher Secondary Board for derecognizing the Higher Secondary Schools run by the petitioner in Special Civil Application No.9284 of 2018 is concerned it was submitted by learned advocate Mr.Deshmukh that the impugned order dated 21.05.2018 and consequential orders dated 23.05.2018 and 25.06.2018 to derecognize the Higher Secondary Schools run by the petitioner are contrary to the facts and evidence on record inasmuch as respondent no.3-Board after conducting thorough inquiry came to the conclusion that the Schools run by the petitioner trusts are not required to be derecognized.

18.5. It was further submitted that only the major ground for setting aside the decision of the respondent no.3-Board in relation to the land in question upon which the schools were running. It was submitted that absolutely flimsy grounds are stated in the order dated 21.05.2018 questioning the veracity of the rent agreement which was in existence since the year 2006 and was never questioned at any point of time till the issues are raised by the respondent no.4.

18.6. It was submitted by the learned advocate Mr.Deshmukh that the respondent authorities have acted as per the directions given by the respondent no.4 for closure of the Schools which were running for more than two decades.

18.7. In support of his submissions learned advocate Mr.Deshmukh relied upon the decisions of this Court in case of Panchmahals District Sarvoday Education

Trust V/s State of Gujarat reported in 2016 (4) GLR 2753 to submit that the procedure prescribed under Rule 9A of the Rules, 1974 are mandatory and therefore when such inquiry conducted by the respondent no.3-Board after remand has resulted in to an order that the Higher Secondary School run by the petitioner is not required to be derecognized was set aside on the grounds not germane to the inquiry proceedings conducted by the respondent no.3-Board.

19. On the other hand learned Assistant Government Pleader Mr.Krutik Parikh submitted that the affidavits are filed on behalf of respondent nos.2 and 5 to place on record that sufficient opportunity of hearing was given to the petitioner and the hearing was granted by the Director of Primary Education in his presence which is stated on oath that the allegations made by the petitioner that hearing was conducted by the Deputy Director is without any basis. In support of his submissions reliance was placed on the following averments made by the respondent no.2 in the affidavit affirmed on 06.12.2022 as under:-

"2. I say that, the present Affidavit in Reply is filed in compliance of oral Order dated 01.12.2022, whereby, the Hon'ble Court has directed me to explain the statement made at Paragraph 7 in the Affidavit in Reply filed by me at Page No. 279 of the paper book of the present Petition. For the sake of brevity, the paragraph No. 7 at Page No. 279 of the of the paper book of the present Petition is reproduced as under;

"7. I say and submit that the petitioner had contended that the Director of Primary Education was not personally present at the time of hearing of the Appeal. The said contention is baseless and the competent officer had carried out quasi judicial proceedings and there is no breach of principles of competency were occurred in the case of petitioner."

4. I say that in the course of hearing, the Director of Primary Education used to seek factual details about the matter from the abovementioned subordinate officer and clerk present in the proceedings, whenever it was required. Thereafter, the Director of Primary Education has passed the Impugned Order. I further say that, it was Director of Primary Education who has heard all the parties and passed the Impugned Order and the role of the Officers subordinate & clerk to the Director of Primary Education, including the Deputy Director, was only to provide factual details with regards to the matter, at the time of hearing. Thus, the Deputy Director has not heard any of the parties to the proceedings and it was only the Director of Primary Education, who had heard all the parties and passed the Impugned Order.

6. I say that as per the Notification dated 10.04.2013, the Director of Primary Education has been vested with the powers to derecognize any Primary School. On the basis of such fact, an averment has been made at Paragraph 7 in the Affidavit in Reply filed by me dated 14.12.2018 that:

"the competent officer had carried out quasi-judicial proceedings and there is no breach of principles of competency were occurred in the case of petitioner.""

19.1. Learned Assistant Government Pleader Mr.Parikh submitted that an advertisement was issued on 28.10.2022 soliciting applications from new standards and classes in case of existing school and the petitioner could have made an application to grant fresh recognition if the petitioner trusts were of the opinion that after filing of the petitions, there was no impediment in running the schools. It was submitted that as the petitioners have chosen not to file such applications clearly shows that the petitioner trusts are not interested in running the schools. In support of his submissions reliance was placed on the affidavit filed on behalf of the respondent no.2 which reads as under:-

"2. It is stated that the present Petition has been filed seeking a writ of mandamus or any other appropriate writ, order or direction to quash and set aside the order dated 10.08.2017 passed by the Respondent no. 2, whereby the recognition of Sugnan Vidhyavihar, Prathmik Shala, run and managed by the Petitioner Trust, has been cancellation and the school has been ordered to be closed. The present Additional Affidavit is filed for the limited purpose of stating the procedure that may be undertaken by the school run by the Petitioner trust, for obtaining its recognition and the same is narrated herein under:

3. It is stated that the Respondent no.

2 has issued an dated 28.10.2022, soliciting applications from new standards and classes, in case of existing schools. A corrigendum was also issued on 9.11.2022, that prescribed a change of website for the purpose of submitting applications online. The copies of the advertisement dated 28.10.2022 along with its corrigendum dated 09.11.2022.

3. It is stated that as per the schedule of the aforementioned advertisement, schools who are desirous of seeking approval to operate as well as for commencing new standards/classes, will have to submit an application online between 17.11.2022 till 1.12.2022 and it is extended upto 08.12.2022 the physical copies of such applications shall have to be submitted to the concerned Offices of DPEO as well as DEO, between 17.11.2022 till 12.12.2022.

4. It is stated that a physical inspection of all such Schools shall be undertaken till 18.12.2022. The purpose of inspecting the schools would be to verify as to whether all such schools comply with the Rule 106 of The Bombay Primary Education Rules, 1949, as well as the provisions of the right of Children to Free and Compulsory Education Act, 2009 as well as Right to Education Rules, 2012.

5. It is stated that the decisions upon such physical inspection of all such Schools shall be made by 25.12.2022. If the Schools is dis-satisfied by any Order passed against them, then such Schools can prefer an appeal within 30 days before the concerned authority. The Appellate authority shall conduct the hearing between February to March-2023.

6. It is stated that the school of the Petitioner Trust who has lost its recognition pursuant to the impugned Order can also apply pursuant to the advertisement

and the same shall be processed as per the procedure stated hereinabove.

7. It is stated that the present affidavit is filed only for the limited purpose of stating the procedure for getting a new recognition to operate again. Otherwise, the impugned Order dated 10.08.2017 cancelling the recognition of the school run by the Petitioner trust is based upon the reports prepared pursuant to its physical inspection and after noticing the glaring discrepancies in the functioning and operation and after affording sufficient opportunity of hearing and the same is in consonance with the provisions of the Right of Children to and Compulsory Education Act, 2009 as well as Right to Education Rules, 2012. Thus, the impugned Order is in legal, valid and in accordance with law."

19.2. The petitioner has also filed an additional affidavit pursuant to the order dated 21.02.2022 to place on record the present situation of the building and infrastructure in which the school was run by the petitioners in the year 2017 disclosing the following details:-

"(A) The school building is in the possession of the petitioner and is in perfectly good and usable condition and a portion of which is being used as the office of the Trust. The Electricity and water supply is in place.

(B) That all the infrastructure/furniture like Tables, Chairs, Library, computers, black board etc. required for running the school are available and the petitioner is in a position to start the school within a week. However, actual teaching work can be commenced from June 2022. School is expecting good student strength from the upcoming Academic year- June 2022.

(C) The position of the Trustees in both the Trusts is not changed and is as it was on the date of filing of the petition.

(D) I say that the owner of the building is Patel Mehta & Co. a partnership firm which has given the premises on rent to the schools and the said arrangement continues though the schools are closed due to the orders impugned.

(E) I say that the Teachers of Secondary and Higher Secondary (Grant-in-aid) Schools are posted in other schools as surplus Teachers. Teachers of Primary have left due to closure of schools. It is stated that presently Trust has no income. I humbly submit that if allowed, the petitioner is in a position to start the school soon, as indicated above."

19.3. The petitioner has also placed on record the copy of the PTR showing the names of the trustees of the petitioner trusts in both the petitions to rebut the allegation made by the respondent no.4 against the maintainability of the petition filed by one of the trustees of the petitioner trusts.

19.4. Learned Assistant Government Pleader Mr.Parikh submitted that the impugned order was passed by the respondent no.2 is well reasoned order taking into consideration the following flaws as stated in the affidavit affirmed on 14.12.2018:-

"6.1. In the very same building, there are two different schools are functioning. During the morning hours, Sugnan Education Trust is conducting school functions for standard 9 to 12 and after completion of education by Sugnan Education Trust, the present petitioner is conducting classes for primary education i.e. for standard 1 to 8. The deponent humbly submits that both the trusts are totally different. There might be a few common trustees among both trusts but among legal article it is altogether different entity.

6.2. The salary of the school staff was not paid through bank transaction.

6.3. The recruitment of the teachers in the school was irregular appointments and not as per Schedule F. Barring one teacher, all teachers did not possess minimum qualification as a teacher.

6.4. The schools are functioning on the land of Ahmedabad Municipal Corporation. There are no provisions under Section 8(1)(a)(b)(c) of Gujarat Regularization of Unauthorized Development Act, 2015 to regularize any illegal construction on the Government land. Hence building is irregular and Ahmedabad Municipal Corporation had also asked to vacate the land and to hand over peaceful possession by communication dated 23.04.2015.

6.5. The majority of the Trustees had already requested to close down the schools but only one Trustee namely Gaurangbhai Patel are continuing various proceedings to run the school.

6.6. Students will not affected from closure of the school as the District Education Officer, Ahmedabad will look after their re-allotment in the other school. Similarly re-allotment of Sugnan Education Trust was already carried out and the students of higher secondary were admitted and they are pursuing their study in other schools."

19.5. This Court by order dated 01.12.2022 directed to join Shri Shankarbhai Pruthiraj Chaudhari, Deputy Director of the respondent no.2 Office in view of the averments made in para no.7 of the affidavit filed by him as the averments made therein were contrary to the averments made by the respondent no.4 in his affidavit to the effect that the hearing was given only by the Deputy Director. However, in view of the further affidavit filed by the respondent no.2-Director of Education that he was present during the hearing, the issue of hearing by one officer and order being passed by the another officer would not arise.

19.6. Learned Assistant Government Pleader Mr.Parikh thereafter submitted that the petitioners were running the schools on the land of the Ahmedabad Municipal Corporation which is reserved for School and Playground and therefore notice was issued by the Ahmedabad Municipal Corporation under the provisions of Section 68 of the Gujarat Town Planning & Urban Development Act, 1976 to handover the vacant possession of the land to the Ahmedabad Municipal Corporation. It was therefore submitted that the impugned orders passed by the respondent no.2-Director of Primary Education with regard to the Primary School

and the Appellate Authority with regard to the Higher Secondary School are justified as the functioning of the schools are contrary to such notices issued by the Ahmedabad Municipal Corporation. It submitted that even the irregularities were found during the course of inspection conducted by the Education Inspector has recorded in the impugned order passed by the Director of Primary Education which would result into hamper the educational career of the innocent students.

19.7. It was also submitted by learned Assistant Government Pleader Mr.Parikh that all the impugned orders passed in both the petitions are therefore liable to be upheld as they are based on the facts emerging from the record, more particularly when the occupation of the land by both the petitioner trusts is in violation of provisions of the law and therefore the schools run by the petitioner trust have rightly been ordered to be closed by diverting the students and the staff to other schools.

20. Learned advocate Ms.Mamta Vyas for the respondent no.4 submitted that the petitions filed by Shri Gaurangbhai Madhubhai Patel is not maintainable as the petitioner trust has never passed a resolution to file a petition for and on behalf of Gayatri Education Trust and Sugnan Education Trust. However, such contention raised by learned advocate Ms.Vyas is not tenable in view of the amendment made in the petition by placing on record the requisite resolutions passed by the trusts prior to filing of the petitions.

20.1. It was further submitted by learned advocate Ms.Vyas for the respondent no.4 that the impugned orders are justified to close down the schools because the building where the schools are situated belongs to the Ahmedabad Municipal Corporation and in violation of the provisions of the Gujarat Town Planning & Urban Development Act, 1976, the land lord had given the land on rent to the petitioner trusts and notices are issued by the Ahmedabad Municipal Corporation to vacate the premises. It was also pointed out that the petitioners have chosen not to join the Ahmedabad Municipal Corporation as party respondent and on the ground of none joinder of the necessary party, the petition is dismissed. It was submitted by learned advocate Ms.Vyas that the respondent no.1 has followed the procedure prescribed under the Act, 2009 and after providing opportunity of hearing and providing the necessary documents to the petitioner, the impugned order is passed and therefore the grievance raised by the petitioner that the petitioner was not provided any opportunity of hearing is misplaced.

20.2. It was submitted that false complaints were filed against the respondent no.4 and undue harassment and hardships was caused on false and fabricated charges levelled against the wife of respondent no.4 and the respondent no.4 is undergoing various litigations filed by the petitioner trusts. It was also submitted that the respondent no.4 has filed Criminal Miscellaneous Application NO.4294 of 2015 for quashing the complaint and the interim relief is granted to the respondent no.4 by this Court. It was also submitted that the complaint is filed against Gaurangbhai M.Patel and Sujalkumar Madhubhai Patel by the respondent no.4 in Odhav Police Station for offences under Sections 354, 323, 294, 506(1)

of the Indian Penal Code on 25.02.2013 and 30.05.2014. It was submitted that the petitioners have suppressed these facts and the petitioners have not approached to this Court with clean hands.

20.3. It was submitted by learned advocate Ms.Vyas that in view of the internal disputes between the trustees of the petitioner trust, the students have suffered and therefore the impugned orders are justified for closure of the Schools run by the petitioner trusts.

21. Having heard learned advocates for the respective parties and on perusal of the material on record, it appears that both the authorities below have not taken into consideration the fact with regard to the proposal made by the respondent no.4 for closure of the schools without there being any supporting document to justify such proposal.

22. It is an admitted position between the trustees of both the petitioner trusts and the respondent no.4 that there are cross-complaints filed by both the sides which are pending for adjudication. The respondent no.2 in Special Civil Application No.16260 of 2015 and the respondent no.1 in Special Civil Application NO.9284 of 2018 have failed to appreciate that the Schools which are running properly till the respondent no.4 made an application for closure have been ordered to be closed down without any rhyme or reason. Both the authorities have ordered to close down the schools only on the ground that the land upon which the school was running was belonging to the Ahmedabad Municipal Corporation without taking into consideration that the Schools were running on the rent which was paid to the partnership firm "Patel Mehta & Company" whose partners are trustees of the petitioner trusts and therefore the Respondent Gujarat Secondary and Higher Secondary Board has rightly considered all the evidence and documents on record to come to the conclusion that on the ground canvassed by the respondent no.4 to close down the schools is not genuine.

23. The respondent no.4 has challenged the order passed by the Board before the Deputy Secretary Appeals of the Education Department so as to see that the schools run by the petitioner trusts are closed down so as to achieve his personal vendetta. The respondent no.1 for the reasons best known has passed the impugned order dated 25.06.2018 for cancellation of the recognition of the Higher Secondary Schools contrary to the findings arrived at by the respondent no.3-Board. The reasons given for closure of the schools is that the show-cause notice was issued by the Ahmedabad Municipal Corporation to vacate the land upon which the school was running without taking into consideration that the proceedings were going on with regard to such notice and till final outcome of such proceedings, the school could not have been ordered to be closed down. Similarly, the Director of Primary Education has only considered such aspect as canvassed by the respondent no.4 by circulating a proposal to close down the school, so as to handover the vacant possession of the land on which the school was run to the Ahmedabad Municipal Corporation without taking into

consideration of the fact that the School was run since last more than two decades and the proceedings were going on before the Ahmedabad Municipal Corporation with regard to the show-cause notice which was issued under Section 68 of the Gujarat Town Planning & Urban Development Act, 1976.

24. It is difficult to understand as to how the authority of highest level like Director of Primary Education and Deputy Secretary Appeals have fallen to the pray to the submissions made by the respondent no.4 who has personal axe to grind against the petitioner trusts to take revenge for the actions initiated against his wife as stated in the facts hereinabove, the same are not repeated for the sake of brevity.

25. Even the provisions of the Act, 2009 and the Rules, 2012 under the Right to Education Act are also not applicable in the facts of the case which are sought to be invoked by the Director of Primary Education to derecognize the Primary School. The grounds given in the impugned order dated 10.08.2017 passed by the Director of Primary Education are also contrary to the facts on record. The proceedings were going on with regard to the show-cause notice issued by the Ahmedabad Municipal Corporation and during the pendency of such proceedings, the schools could not have been ordered to be closed down. Similarly, false reason is given with regard to running of the schools simultaneously in the same building without mentioning as to which rule of the Rules, 2012, is violated. Other grounds with regard to the teaching staff are all rectifiable.

26. Moreover, no opportunity was given to the petitioner trusts to examine the witnesses and cross-examine the members of the inspection committee as though the contention was raised by the petitioner trust that no inquiry was carried out as stated in the inquiry report submitted to the Director of Primary Education. It is also apparent that the proposal to close down the school forwarded by the respondent no.4 was without sanction of the majority of the trustees whose names are available as per the records with the Charity Commissioner.

27. Thus, both the authorities i.e. Director of Primary Education and the Deputy Secretary Appeals have committed an error in passing an order to close down the School.

28. In view of the forgoing reasons, both the petitions succeeds and are accordingly allowed. The impugned order dated 10.08.2017 passed by the Director of Education so far as the Primary School run by the petitioner trust in Special Civil Application NO.16260 of 2017 and the impugned orders dated 21.05.2018 passed by the respondent no.1, 23.05.2018 passed by the respondent no.2 and 25.06.2018 passed by the respondent no.3 in Special Civil Application No.9284 of 2018 are hereby quashed and set aside. Considering the fact that the infrastructure is available with the petitioner trusts to run the schools, the respondent authorities are directed to pass necessary orders granting recognition to the schools run by the petitioner trusts after carrying out

the due verification and inspection in accordance with the provisions of the Act and the Rules. Rule is made absolute to the aforesaid extent.