

(2008) 08 GUJ CK 0006

In the Gujarat High Court

Case No : Letters Patent Appeal No. 79 of 2008 in Special Civil Application No. 4082 of 2007 with Civil Application No. 851 of 2008 in Letters Patent Appeal No. 79 of 2008

Gnanyog Education and Welfare Trust

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Citation : (2008) 08 GUJ CK 0006

Hon'ble Judges : M.S. Shah, Acting C.J.; S.R. Brahmbhatt, J

Bench : Division Bench

Advocate : Y.N. Oza and B.P. Gupta, for the Appellant; Sangita Vishen, Ld. AGP for Respondents 1 - 3 and J.J. Yajnik, for Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

M.S. Shah, Acting C.J.

1. The appellant herein filed the petition giving rise to this appeal, primarily challenging the communication dated 20/12/2006 of the respondent Nos. 1 & 2 of the State Government, by which the State Government refused to grant No Objection Certificate ("NOC") to the appellant Institution for the purpose of establishing a Nursing College. The said decision was taken by the Government on the basis of the so called policy contained in the communication dated 29/6/2005 to the effect that the college should not be granted NOC for the purpose of seeking affiliation to a University outside the State of Gujarat.

2. Learned Single Judge allowed the petition on the ground that the communication dated 29/6/2005 could not be said to be a policy decision, because it was merely a departmental communication addressed to two Deputy Secretaries of different departments and that it could not be considered as a formal decision of the State Government. Learned Single Judge also took the view that if at all it was a policy decision, it should have been published for the

knowledge and consumption of the public at large. Accordingly, while allowing the petition, Learned Single Judge gave following directions.

12. The respondent -Authority having already accepted that a fresh decision shall be taken on the application dated 3.11.2006 and reminder dated 5.12.2006 moved by the petitioner without being influenced by the communication dated 20.12.2006, the only direction that is required to be issued is that while taking such a fresh decision the respondent-Authority shall not be influenced by the communication dated 29.06.2005 which was at best only an inter departmental communication not reflecting any policy decision of the State Government.

13. In light of the view that the Court has adopted it is not necessary to issue any further directions. The petition is allowed accordingly in the aforesaid terms. Rule made absolute to the aforesaid extent. There shall be no order as to costs.

3. In the present appeal the institution has challenged that part of the order by which the learned Single Judge declined to issue any further direction.

4. Mr. Y.N. Oza, learned Sr. Counsel for the appellant institution states that after the aforesaid order of the learned Single Judge was passed, the State Government considered the appellant's application dated 3/11/2006 and rejected it on the basis of the Government Resolution dated 4/10/2007 containing a policy decision of the State Government not to grant NOC to an institution seeking affiliation to a University outside the State of Gujarat. It is vehemently submitted that when the appellant's application was pending since November 2006 and the Court had allowed the petition and directed the Government to consider the said application without being influenced by the letter dated 20/12/2006 which was based on the so called communication dated 29/6/2005, the Government could not have rejected the appellant's application for NOC by relying on the subsequent Government Resolution dated 4/10/2007.

5. Having heard the learned Counsel for the parties, it appears to us that, in the facts & circumstances of the case it is not necessary to go into the larger question whether the Government can or can not take into account the Government policy decision taken after receipt of the application for NOC. In our view, when the appellant had already filed Special Civil Application No. 4082 of 2007 on 5/2/2007 challenging the communication dated 20/12/2006 (Annexure-D) and the learned Single Judge allowed the petition and held that the appellant's application dated 3/11/2006 and the reminder dated 5/12/2006 were required to be decided without being influenced by the communication dated 20/12/2006 which was in turn based upon the communication dated 29/6/2005, in all fairness the Government should have decided the appellant's pending application without being influenced by the subsequent Government resolution dated 4/10/2007 which gave formal shape to the view which the Government had already formed on 29/6/2005.

6. In view of the above peculiar facts & circumstances of the case, we direct the State Government to consider the appellant institution's application dated

3/11/2006 for No Objection Certificate and reminder dated 5/12/2006 as expeditiously as possible and within one month from today, without being influenced by, or without taking into consideration the Government Resolution dated 4/10/2007, or its previous communication dated 20/12/2006 addressed to appellant institution, or the inter-departmental communication dated 29/6/2005.

7. The appeal is allowed in the above terms. Civil application stands disposed of. Direct service is permitted.

8. A copy of this order shall be made available to learned AGP Ms. Sangita Vishen for forwarding the same to the concerned authority for timely compliance with the directions.