

(2008) 05 GUJ CK 0025

In the Gujarat High Court

Case No : Special Civil Application No. 1696 of 1990

Gram Vikas Trust and Another

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 07-05-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Citation : (2008) 2 GLH 407

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : N.C. Shah, for Petitioners 1 - 2 and N.V. Gandhi, for Petitioners 1 - 2, for the Appellant; Trusha Patel, AGP for Respondents 1 - 2 and A.D. Oza, for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—The short facts of the case appear to be that the petitioners, without prior permission, started School and thereafter applied for permission to the Gujarat Secondary Education Board. Such permission was not granted against which the petitioner preferred appeal and the appeal is also dismissed. Once again the petitioner approached the State Government for reconsideration and in spite of the pendency of the proceedings before the State Government, the petitioner, without prior permission, stated Classes of 9th Standard. It appears that the State Government directed the Board to grant registration to the School of the petitioner somewhere in 1986 and there were also other illegalities committed by the petitioner, as per the State Government, mentioned in the affidavit-in-reply, including that certain documents were concocted etc., and the grants were withdrawn. Thereafter, the actions were taken by the District Education Officer (DEO) and ultimately the order came to be passed by DEO of withholding of the grant on account of the alleged illegalities committed by the petitioner in the matter of appointment of staff, withdrawal of the grant, etc. The petitioner by this petition, under these circumstances, has approached this

Court, challenging, inter alia, the validity of Regulation 10(2) of the Secondary Education Regulations read with Rule 95 of the Grant-in-Aid Code, declaring as unconstitutional. The petitioner has also prayed to quash and set aside the order dated 22.6.1989 passed by the Joint Director of Education at Annexure "F", whereby the appointments made are not regularized. The petitioner has prayed for directing the respondent State Authorities to release the salary of the employees in question in favour of the School as if the appointments are legally made.

2. Heard Mr. Amit Chaudhary for Mr. Gandhi, learned Counsel for the petitioner, Ms. Patel, learned AGP for the State Authorities, Mr. Hemang R. Rawal for Mr. A.D. Oza, learned Counsel for the respondent No. 3 - Board.

3. The matter, as such, can be considered in two parts; one for challenging the validity of the regulation of the Grant-in-Aid Code and another for challenging the legality and validity of the order passed by the authority for not granting approval to the appointments made by the petitioner from the date on which they were appointed.

4. It does appear from the record that the petitioner had started School namely; without prior permission. Not only that, but the appointments of the staff were not made as per the requirement under the law. It is only after the permission is granted, at the most the educational activity could be said as legal, but the appointment of the staff, which is dehors the settled, prescribed procedure, if not approved, the same cannot be termed as arbitrary or unreasonable. Further, the facts as referred to herein above are considered even on merits also, it cannot be said that any illegality is committed by the authority in not granting approval to the appointments or withholding the grant.

5. Regulation 10(2), which is under challenge reads as under:

10(2)(a) An application for permission to open a higher standard or higher standards shall be submitted to the officer not less than six months before the academic year from which it is proposed to open a higher standard or higher standards.

(b) Similarly, an application for permission to open new division or additional divisions of existing standards shall be submitted to the officer within a month of the commencement of the academic year.

6. The only ground contended on behalf of the petitioner by the learned Counsel is that such regulations do not provide for any time limit for taking decision upon such application and, therefore, such regulation would be rendered unreasonable. He also submitted that if such outer limit is not provided for consideration of the application, it would adversely affect the students' education and, therefore, also such regulations can be said as arbitrary or unreasonable.

7. The requirement of submission of the application within a stipulated period prior to the commencement of the academic year is to enable the concerned

authority, which is Board in the present case, to gather the information well in time and to take decision within reasonable time. Merely because an outer limit is not provided, the regulation would not be rendered unreasonable and the reason being that even otherwise also the application, if any, would be required to be decided within reasonable time limit. What shall be the reasonable time would normally depend upon the facts and circumstances of each case. It would also depend upon the furnishing of the details well in time, the quarries, if any, the reply of the same and thereafter the time consumed by the authority for taking decision. If there is a delay in supplying the requisite details, it may take some more time in comparison to the application, which is made with the details. Therefore, no straight-jacket time limit can be read, but when the application is to be decided within reasonable time, in normal circumstances. Merely because it is not mentioned expressly, the regulation would not be rendered unreasonable.

8. The learned Counsel for the petitioner has not been able to show any other proposition of law, which would render the regulation unreasonable or unconstitutional, merely because the legislature has not provided the outer limit to decide the said application.

9. In view of the above, as the application is to be decided within reasonable time, it cannot be held that the regulation is unconstitutional or violative of Article 14 of the Constitution of India.

10. Rule 95 of the Grant-in-Aid Code reads as under:

Rule 95:- Grants may be reduced by the (DEO concerned) after due warning given to the management if he is satisfied that the provisions of the rules laid down in this Code are not duly maintained and that the school has deteriorated in general efficiency. In case, however, of a breach of an instruction or order issued by the department or of an infringement of the provisions of a rule of rules in the Code, as well as in cases of gross mis-management and deterioration in standards of efficiency and discipline, the grant may be reduced or withdrawn without any previous warning.

11. The contention raised on behalf of the petitioner by the learned Counsel is that Rule does not lay down specific test to judge the efficiency of the School, nor does it lay down specific inquiry to be carried out by DEO and, therefore, the DEO is vested with the uncontrolled and unilateral power to take punitive measure to reduce the grant and, therefore, the contention is that the Rule 95 deserves to be stricken down.

12. The Rule 95, if read as it is, it is apparent that prior to the taking of action on the deterioration of general efficiency of any School, a warning is required to be given by the DEO to the management. Such warning can be termed as an opportunity to the management to improve the efficiency and, therefore, it is difficult to accept the submission that the power is un-guided or unfettered, more particularly when the exercise of the power on the ground of deterioration of the efficiency is coupled with the express opportunity to the management to improve

the efficiency. The deterioration of the efficiency in a school, though may be a general term, but would include the standard of education, the minimum requirement for studies in a school by the students and the minimum requirement for continuing with the school etc. There cannot be any exhaustive list, but any activity, which results into lowering down the quality and standard of education in a school can generally be termed as deterioration in the efficiency. When the normal meaning can be extracted and the ground on the basis of which the power can be exercised can be gathered, it cannot be said that the power vested with the DEO would be rendered arbitrary or unreasonable. Further, so far as the mismanagement or the breach of the instructions or the order issued by the Department in infringement of the provisions of the Rule is concerned, even otherwise also such power can be read with the DEO for reduction of the grant. It is true that in Rule 95, the language used is without previous warning, but such word would be applicable so far as not giving the opportunity to the management to improve upon the alleged breach of the instructions or the order or the infringement of the provisions of the Rules or mismanagement. But thereby, it cannot be said that no inquiry would be required to be held by the DEO on the aspects as to whether any breach of the instructions or the order is committed or there is infringement of the provisions of the Rule or the Rules of the Code or there is any mismanagement. If the power is to be exercised after holding proper inquiry, it cannot be said that Rule 95 would be violative of Article 14 and 19 of the Constitution of India.

13. Therefore, subject to the aforesaid observations, Rule 10(2) as well as Rule 95 cannot be declared as violative of Article 14 and 19 of the Constitution of India.

14. If the facts of the present case are examined in light of the aforesaid observations of Rule 95, it is clear that the opportunity of hearing was given to the petitioner by DEO and the inquiry was held by DEO and thereafter DEO has exercised power for withholding of the grant. Under these circumstances, the exercise of the power by DEO under Rule 95, even otherwise also, cannot be said as ultra vires to his power.

15. In view of the above, subject to the aforesaid observations, the petition fails. Hence, the same is dismissed. Rule discharged. No order as to costs.