

(1988) 04 AHC CK 0037

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 277 of 1977

Gujrati Samaj

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-04-1988

Acts Referred:

Constitution of India, 1950 — Article 30
Societies Registration Rules, 1860 — Rule 2

Citation : (1988) 2 AWC 1181

Hon'ble Judges : R.M. Sahai, J;D.S. Sinha, J

Bench : Division Bench

Advocate : Bharat Ji Agarwal, for the Appellant; M.P. Bajpai, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—The principal question which arises for determination in the instant petition is whether Chaturbhuj Shivji Anglo Gujarati School, Kanpur, hereinafter referred as the Institution, is an educational institution established and administered by a minority as contemplated by Article 30 of the Constitution of India?

2. The Petitioner before us is Shri Gujarati Samaj (Regd.). It claims that the institution was established in the year 1898 by Gujarati speaking people and the medium of instruction in the institution, upto primary level, is Gujarati. It further asserts that the institution is being administered exclusively by the Gujarati speaking people. According to the Petitioner, the Gujarati speaking people in the State of Uttar Pradesh are in minority and as such they have constitutional right to administer the institution without any interference. The Petitioner's complaint is that the Respondents are illegally denying the institution the status of a minority institution.

3. The scope of enquiry is restricted to the question whether the institution was established by the Gujarati speaking people and has always been administered

by them. It is not necessary to investigate the question whether Gujarati speaking people in the State of Uttar Pradesh are in minority. For the purposes of instant petition we are assuming that the Gujarati speaking people are in minority in the State of Uttar Pradesh.

4. There is nothing on the record which may justify the inference that the institution was, in fact, established by the Gujarati speaking people except a bald statement in the writ petition to the effect that the institution was started in the year 1898 by the Gujarati Samaj. Even if the said statement is accepted as true it does not advance the case of the Petitioner.

5. Gujarati Samaj is, as stated in paragraph 1 of the petition, a Society registered under the Societies Registration Act, 1860, having Registered Office at 27/54, Canal Road, Kanpur. Rule 2 of the Rules and Regulations of Gujarati Samaj, which provides for the composition of membership of Gujarati Samaj, reads thus:

2. Any individual, firm or company subscribing to the objects of the Society shall be eligible for a membership of the Society on filling with the Secretary an application in the form as Appendix A annexed hereto.

A bare perusal of the rule quoted above indicates that membership of Gujarati Samaj is not restricted to the Gujarati speaking people alone. It is open to any individual, firm or company who satisfies the requirements of Rule 2. In these circumstances it is not possible to conclude that the institution was, in fact, established by the Gujarati speaking people alone.

6. Likewise there is no material on record to come to this conclusion that the institution has all through been and is being administered exclusively by the Gujarati speaking people alone.

7. Before an institution can be granted the status of a minority institution it has got to be established, as a matter of fact, that the institution has been established and has all through been administered by the minority alone.

8. The learned Counsel for the Petitioner placed reliance on the decisions rendered in the following cases:

A.P. Christian Medical Educational Society v. Government of Andhra Pradesh AIR 1986 SC 1190, Mrs. Y. Theclamma v. Union of India AIR 1987 SC 1210, Vellore Educational Trust Vs. State of Andhra Pradesh and Others, and Jugalkishore Kedia and Others Vs. State of Assam and Others, .

In our opinion the decisions relied upon by the learned Counsel for the Petitioner do not help the Petitioner in any manner inasmuch as the twin basic requirements for declaring an institution to be a minority institution, namely, establishment and administration by a minority have not been established in the instant case.

9. The learned Counsel for the Petitioner assails the order dated 1-9-1976

declining to grant the institution the status of minority institution on the ground of non-disclosure of reasons. Normally this ground urged by the learned Counsel would have persuaded us to quash the said order but we decline to do so in view of the fact that the Petitioner has failed to establish the existence of the conditions which are sine qua non for upholding its claim for being recognised as minority institution.

10. For the reasons stated above the writ petition fails and is dismissed. There shall be no order as to costs.