

(2000) 12 GUJ CK 0038
In the Gujarat High Court

Case No : Special Civil Application No. 231 of 1988

Jankalyan Jagruti Kelavni Mandal

APPELLANT

Vs

Secretary

RESPONDENT

Date of Decision : 01-12-2000

Acts Referred:

Citation : (2000) 12 GUJ CK 0038

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : R.N. Shah, for the Appellant; Digant P. Joshi, Adv and R.M. Desai for Respondent No. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Ravi R. Tripathi, J.—The petitioner is a registered trust under the Bombay Public Trusts Act ("the Act" for brevity). The present petition is filed challenging the order dated 23.11.1987 which is produced at Annexure "J" passed by respondent no.1, whereby registration of Secondary School for Standard VII run by the petitioner trust was cancelled.

2. The facts giving rise to the present proceedings are as under. The petitioner established the school for upliftment of the scheduled castes and scheduled tribes in Panchmahal district for imparting education to children. The petitioner made an application to respondent no.1 to start secondary school in the name of "Shri Kiran Vidyalaya" from June 1981. An application was made under the provisions of section 31(1) of the Act. The application of the petitioner was rejected by respondent no.1 by order dated 4.5.1986. Being aggrieved of that the petitioner preferred an appeal under sec.31(1) of the Act before respondent no.3, who was pleased to allow the appeal by order dated 21.2.1986. It is the case of the petitioner that the appeal was allowed by respondent no.3 taking into consideration the requirement of secondary school in the village Nemkapurva, Taluka Sanjeli, district Panchmahals as there was no objection from any other school in nearby area. The petitioner was granted permission and order dated

4.5.1986 passed by respondent no.1 was quashed by respondent no.3. A copy of that order passed in appeal dated 22.10.1987 is produced at Annexure "A" (Copy produced at Annexure "A" bears date as 30.12.1986).

3. The petitioner has also stated that, the school was started from June 1986 and 23 students were admitted in Standard VIII. It is also stated that all those students belong to scheduled castes and scheduled tribes and that the trust or the school is not collecting any fee from the students. It is also mentioned that the District Education Officer had also granted No Objection Certificate (NOC) by an order dated 7.2.1987 for appointment of 1 1/2 teacher, i.e. one full time teacher for teaching Gujarati and Sanskrit; one part time teacher for Science and Mathematics; one Clerk and one Peon. The petitioner has then by giving an advertisement on 19.2.1987 after holding interview in presence of representative of District Education Officer has appointed teachers, clerk and peon and the school is running fulfilled. It is also stated that as per the requirement under regulations, the petitioner trust has deposited a sum of Rs.30,000/-, in Panchmahals District Cooperative Bank in a joint account in the names of the District Education Officer, President of Jan Kalyan Jagruti Kelavani Mandal and the Principal of Shri Kiran Vidyalaya. It is also the case of the petitioner that a certificate issued by Panchmahal District Cooperative Bank Limited was sent to respondent no.1 about the aforesaid deposit and a copy of the said certificate dated 18.2.1987 is annexed at Annexure "E" to the petition.

4. The petitioner was surprised when the Secretary of the Gujarat Secondary Education Board, respondent no.1 sent a letter dated 1.10.1987 informing that the registration of the school from June 1986 is cancelled as the petitioner has not complied with the order of depositing a sum of Rs.30,000/-, in the joint account of the District Education of Officer and the President of the trust. A copy of the said order is produced at Annexure "F". It is further stated in the petition that the District Education Officer also wrote a letter dated 20.10.1987 informing the petitioner that registration of the petitioner's school is cancelled and the copy of letter dated 20.10.1987 of the District Education Officer is produced at Annexure "G". The petitioner replied both these letters dated 1.10.1987 and 20.10.1987 by a letter dated 30.10.1987 wherein the facts were stated to the effect that the petitioner was granted permission to run secondary school from June 1986 and that the petitioner has already started the school from June 1986 by admitting 23 students belonging to scheduled caste and scheduled tribe and that the petitioner has already complied with the directions issued by the District Education Officer. The petitioner has purchased furniture and other equipments and also selected necessary staff and a report to that effect was already sent to the District Education Officer. It is further stated that after receipt of the letter dated 1.10.1987 from respondent no.1 the petitioner had contacted the Secretary of the Gujarat Secondary Education Board on 6.10.1987. At that time the petitioner was orally informed that as the petitioner has not opened joint account in the name of the District Education Officer and the President of the Trust, the order cancelling registration is passed. It is the case of the petitioner

that the petitioner informed about opening of the joint account in the name of the District Education Officer and the President of the trust and thus, complying with the directions issued by the District Education Officer, had brought Pass Book showing balance and also produced a certificate to that effect. The petitioner submits that despite the aforesaid facts were represented before the Secretary, Gujarat Secondary Education Board on 6.10.1987, the District Education Officer issued order dated 20.10.1987 (Annexure "G" to the petition), which is in disregard of the fact that a certificate showing deposit of Rs.30,000/-, was sent to the office of the District Education Officer and subsequent to that an NOC was granted by the District Education Officer for selection of staff, which was also made in an interview in which a representative of the DEO had remained present and selected the staff on 22.7.1987. A copy of letter dated 30.10.1987 is produced at Annexure "I".

5. The case of the petitioner is that orders at Annexures "F" and "G" are passed without any application of mind and without taking into consideration the aforesaid facts and therefore, the same are vitiated and are required to be quashed and set aside on that ground. It is the case of the petitioner that though the petitioner had brought all the facts before the authorities, the authorities issued the aforesaid orders dated 1.10.1987 and 20.10.1987 which is illegal, bad, void ab initio, against the principles of natural justice and against the provisions of the Act. The petitioner also contended that the action is vitiated on account of the fact that registration is cancelled without giving any opportunity of hearing to the petitioner and without giving show cause notice as to why registration granted should not be cancelled.

6. The petitioner submits that after the petitioner brought all these facts to the notice of the respondent authorities by a reply dated 30.10.1987, respondent no.1 issued another order dated 23.11.1987 on altogether a new ground that the school has not started from June 1986; therefore, the application for registration is not required to be entertained and hence the proposal is filed (closed).

7. The petition was filed on 18.1.1988 and this Court issued notice on 19.1.1988 making it returnable on 27.1.1988. Thereafter on 13.9.1988 the Court issue rule and granted ad interim stay of operation of the order cancelling recognition. The ad interim relief has continued to operate for all these years and the respondents have not bothered to file an affidavit in reply to the petition. Even in the year 2000 when the matter came to be listed for final hearing and it was adjourned from time to time, the respondents have not controverted the facts of the petition and therefore, this Court has no other alternative but to allow this petition and to quash and set aside the orders at Annexures "F", "G" and "J".

8. It is also required to be noted that the petitioner had filed a Civil Application No.2306 of 1989 seeking a direction against the respondents to allow students of Standard 10 of the petitioner school to appear in March 1990 examination and a further direction to accept forms of the students of the petitioner school for Standard 10 examination. Said Civil Application was allowed by this Court by

order dated 29.12.1989. However, none of the respondents have chosen to file any affidavit in reply to controvert the facts of this case which speaks volumes for itself.

9. A perusal of order dated 1.10.1987, Annexure "F" to the petition reveals that the same was issued only on the basis that the petitioner trust has not complied with the requirement of opening a joint account, depositing a sum of Rs.30,000/-, and submitting a certificate to that effect by 30.4.1987. Similarly, the order dated 20.10.1987, Annexure "G" to the petition is also based on the order dated 1.10.1987 issued by the Gujarat Secondary Education Board and no other reason is mentioned for passing of that order. So far as order dated 23.11.1987 is concerned, for the first time, Gujarat Secondary Education Board has put forward a reason that, "Your School does not seem to have started and therefore, there is no question of giving registration from June 1986 and therefore, your request/proposal for June 1986 is filed (closed)".

10. In view of the certificate produced at Annexure "E" dated 18.2.1987 it is clear that an amount of Rs.30,000/-, was deposited in joint account and therefore, the foundation on which the order dated 1.10.1987 is passed does not survive and for the reasons best known to the respondents, nobody has chosen to file any reply to controvert the aforesaid facts.

11. In the result, the petition is allowed. Rule is made absolute. The orders dated 1.10.1987, 20.10.1987 and 23.11.1987, Annexures "F", "G" and "J" to the petition are hereby quashed and set aside. Rule is made absolute with costs, which is quantified at Rs.2,500/-, (Rupees two thousand and five hundred only) which shall be paid by respondents nos.1 and 2 in equal proportion. no order as to costs.