

(2017) 01 GUJ CK 0203
In the Gujarat High Court
Case No : 2855 of 2015

KANTABEN S DOSHI

APPELLANT

Vs

DIRECTOR - PRIMARY EDUCATION & ORS.

RESPONDENT

Date of Decision : 27-01-2017

Acts Referred:

Citation : (2017) 01 GUJ CK 0203

Hon'ble Judges : N.V.Anjaria

Bench : Single Bench

Advocate : BHARAT R PANDYA, KUNAL S SHAH, RAJAN J PATEL, RJ RAWAL
ASSOC., MAMTA R VYAS, SHIVYA A DESAI

Judgement

1. As per the below mentioned order, the captioned petition was reserved for judgment alongwith Special Civil Application No. 4556 of 2015. "By judicial order dated 17.01.2017 followed by the order on administrative side, the first captioned Special Civil Application No. 4556 of 2016 was ordered to be placed before this court by notifying the same alongwith the Special Civil Application No. 2855 of 2016. Heard learned advocate Mr. Kunal Shah for the petitioner in Special Civil Application No. 2855 of 2016, learned Assistant Government Pleader Mr. Rohan Yagnik for the state authorities and learned advocate Ms. Mamta Vyas for the respondent No.4; as far as Special Civil Application No. 4556 of 2016 is concerned, submissions of learned advocate Mr. Ishan Patel for the petitioners and learned advocate Mr. Kunal Shah for the second respondent were, heard at length in both the petitions. Reserved for orders."

1.1 The other petition is being decided by a CA V order separately made.

2. The present petition is filed seeking to set aside order dated 04.09.2014 passed by the first respondent- the Director of Primary Education. It further seeks to set aside the communication dated 14.11.2014, which rejected the request of the petitioner for reconsideration of her case. The first impugned order dated 04.09.2014 was an order in appeal by V. R. Shah Smruti Vidhyalay

Prathmik Shala Education Trust - the fourth respondent herein under Right of Children to Free and Compulsory Education Act, 2009. 2.1 The appeal was preferred against order dated 27.06.2015 passed by the District Education Officer, Ahmedabad whereby the District Education Officer had refused the application of the said trust to start three classes of standard 8th from June, 2014 on the grounds stated in the order. The Primary Education Director & the Appellate Authority allowed the appeal on condition of compliance of Right of Children to Free and Compulsory Education Rules and other conditions. Permission to commence the 8th standard classes was granted. It appears that thereafter the request cum representation of the petitioner dated 26.09.2014 was made by the petitioner to reconsider the said decision which was turned down by the Director of Education as per the impugned communication dated 14.11.2014.

3. Adverting to the minimum necessary facts, the school named V. R. Shah Smruti Vidhyalay Prathmik Shala was run since 1963 through management in form of partnership firm of which the petitioner was one of the partners. The school had classes from standard 5th to 7th standard. Upon coming into force of the Right of Children to Free and Compulsory Education Act, 2009 and also Gujarat Right To Education Rules, 2012, the reclassification of primary section was provided for. Standards 1st to 5th became primary level, whereas standards 6th to 8th came to be treated as upper-primary section. One of the other requirements prescribed under the new law was that the school was required to be run through management, which should be a body in form of registered trust. Learned advocate for the fourth respondent stated that the trust was formed and the management have been converted into a trust. 3.1 It appears that it is in light of the aforesaid division primary section standards, into primary and upper primary, the permission was applied for by the fourth respondent school to start 8th standard classes. The District Education Officer did not find favour with the request on the ground that one of the partner of the partnership firm had an objection, that there was only one class for 6th and 7th standards and that in the same building other schools were being run. At this stage, may be noted as an undisputed position that fourth respondent school is being run in the same building as housed on the 1st, 2nd and 3rd floors of the building and as far as the fourth and fifth floors are concerned, another school was being run.

3.2 It may be mentioned that the legality of construction of fourth and fifth floors of the building was a matter dispute. The order was passed by the competent authority to regularise the construction on payment of necessary fees under the Gujarat Regularisation of Unauthorised Development Act, 2011, was subjected to proceedings by filing Special Civil Application No. 4556 2016.

4. Reverting to the factual aspects of this case, pursuant to the filing of this petition, this court by dated 22.04.2015 directed the respondent authorities to file a report stating whether the grounds recorded by the District Education Officer in the order dated 27.06.2014 denying the permission to start

that the standard classes were correct. Extracting the relevant part of the said order dated 22.04.2015, "Learned AGP requested for time, therefore, hearing is adjourned, however, with clarification and direction that respondent No.1 shall personally examine the matter and file a report about the building in which the schools are being run and in respect of which request for permission to start new / additional classes. Respondent No.1 shall explain the matter in light of the findings recorded by his order dated 27.6.2014 and on face of such finding by DEO and without having reached to the conclusion that the findings at Sr.Nos.4 and 5 are not incorrect how could the concerned officer have passed the impugned order dated 4.9.2014. Respondent No.1 shall, after personally examining the matter and if required after personal inspection at the site, more particularly with regard to the findings recorded at Sr. Nos.4 and 5 in the order dated 27.6.2014, file a report as to whether the details recorded in the order dated 27.6.2014 are correct or not and if the details are correct, then how did the officer pass the impugned order."

5. Now, pursuant to the aforesaid order, report dated 30.04.2015 was prepared by the District Education Officer. The same was produced on record of the present proceedings alongwith affidavit dated 01.05.2015. The following uncontroverted factual aspects are stated, (a) There are three classes for 116 students. It cannot be therefore said that number of classes are inadequate.

(b) In so far as the aspect of four schools being run in the building, three classes are in the morning shift and one is in afternoon. Anupam Vidyavihar and V. R. Shah Smruti Aadarsh Prathmik Shala have been running secondary and higher secondary classes, whereas V. R. Shah Smrutinutan Aadarsh Kanya vidyalay, in respect of which the dispute is raised, for primary section of standard 5th.

(c) Each floor is properly utilized by the school and its utility was examined.

(d) On 16.06.2014, a meeting was convened in presence of the District Education Officer. The schools have resolved their issues unanimously deciding to run the classes in the interest of students.

(e) The order impugned in this petition came to be passed after taking into consideration the interests of the students and to see that their education is not be hampered.

6. In the aforesaid view, in view of the report of the District Education Officer submitted pursuant to this court's order dated 22.04.2015, the grounds mentioned by the District Education Officer in his order dated 27.06.2016 whereby he refused to start the standard class to the petitioner, stand clearly falsified. The gist that after coming into force the Right of Children to Free and Compulsory Education Act, 2009, primary and upper primary divisions were created comprising of standards 1 to 5th and standards 6th to 8th respectively. The petitioner school applied for opening the standard class so as to

accord i ts impartat ion of educat ion with such d ivis ion of primary and upper primary. The Distr ic t Education Off icer somehow refused the permission by order d ated 27.06.2015 on untenable grounds. The appe l late author i ty found that in the interests of sttuh dents, 8 standard permission was required to be granted. The appel late author i ty granted the permission on com pliance of the condit ions of the act and the rules. During the pendency of the peti t ion, as noted above, thi s court sol ic i ted report to know about the correctness of the grounds mentioned by the Distr i c t Education Off icer refusing the permission. The said report , as noticed above, also conf i rmed on facts , the merits of the decis ion of the appel late author i ty . 6.1 In the aforesaid facts and circumstances, no ground whatsoever to inter fere in the impugned orders i s made out. The chal lenge in this peti t ion is merit less .

7. The peti t ionis dismissed. Notice is disch arged. Inter im rel ief , i f any, stands vacated.