
(1980) 12 GUJ CK 0005
In the Gujarat High Court

K.D. Dwivedi Kelvani Mandal

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 05-12-1980

Acts Referred:

Gujarat Secondary Education Act, 1972 — Section 31, 44, 44(1)

Citation : (1980) 2 GLR 589

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is a petition by two Trustees of two different trusts registered as such under the name and style of R.R. Dwivedi Kelvani Mandal and the Mayur Kelvani Mandal respectively. The Trustees of the first Trust has been running a secondary school known as Ramanuj Vidyalaya. Under the provisions of the Gujarat Secondary Education Act, 1972, that is, Section 31 thereof; this school was required to be registered and admittedly this school was, registered. At some time, that is around the year 1977, the Trustees of the first Trust were facing financial difficulties and so they had initially decided to close down the school and they had approached the Board, constituted under the Gujarat Secondary Education Act, and hereinafter referred to as "the Board", by making an application u/s 44 of the Act, because no manager of a registered private secondary school is entitled to close down the school without giving notice in writing of his intention so to do to the Board at least six months before the date with effect from which the school is proposed to be closed down. Section 44(1) does not speak of any sanction of the Board for the purpose of closing down the school. All that it requires is that the management should give a notice of closure. The application for that purpose was made on 30-11-77 and the school was intended to be closed at the end of the academic year in June 1978. So six months" notice was given. The Board did not give any reply to that letter. On 3-1-78, the Board asked the petitioner no. 1 to send the resolution of the Board of Trustees of the first public Trust in that regard. The resolution was sent, but no reply was given and it is possible that no reply was required to be given u/s 44 of

the Act.

2. In April 1978, the Trustees of the first Trust decided to transfer the school to the petitioner no. 2 and approached the Board for the purpose of granting permission to transfer. There is no provision in law, clothing the Board with the authority to grant the permission for transfer as such. All that Section 31 and the Regulation 9(7) of the Secondary Education Regulations, 1974 provide for is to register and to continue to treat the school as registered, though it is to be conceded that in the power to continue the school to be registered, the power to discontinue registration is also implicitly there. The said application is Annexure A to the petition and it is dated 19-4-78. In July or August 1978, the Board gave the reply that permission to close down the school was granted and the prayer to accord sanction to transfer was rejected. Both these petitioners had, therefore, filed the special civil application no. 1414 of 1978 in this High Court for a writ prohibiting the Board from treating the petitioner-school in the name and style of Ramanuj Vidyalaya to have been closed and also directing the respondents to recognise the management of the said school by the petitioner no. 2-Trust. When the matter v as before my Brother P.D. Desai J. on 30-1-79, the learned advocate appearing for the Board stated that both the orders stood cancelled and that in case the petitioner no. 2 made an application in compliance with Regulation 9(10) of the Regulations, 1974 within a period of 15 days from 30-1-79, such application would be considered and decided on merits as expeditiously as possible. It was further provided in that order that in case the petitioner no. 2 (who is the petitioner no. 1 in this petition also) did not make any application within the aforesaid time limit, it would be open to the respondent no. 2 to take such action as it deems fit in the circumstances of the case. The petition, therefore, ultimately was held to be not surviving and, therefore, rejected at that stage.

3. Then both the petitioners made a fresh application within 15 days. On 3-3-79 the Board addressed a letter to the petitioner no. 2 that they should, as the proof of financial stability of the petitioner no. 2, deposit jointly in the account of the President of the Trust and the District Education Officer the amount of Rs. 10,000/-per class of the school sought to be continued to be run. The petitioners no. 2 was informed that on that direction being complied with, further action on the application, would be taken in accordance with law. The petitioners again rushed to this Court by challenging that direction contained in Annexure D.

4. It is no longer in controversy before me that application, which was made by both these petitioners, was under Regulation 9(10) of the aforesaid 1974 Regulations. Said Regulation 9(10) is quoted below:

(10) On a request made by a person in charge of management of a registered school the Secretary may make a change in the entries in relation to the school entered in the Register, after, following, as far as may be, the procedure similar to the procedure for registration of the school, and obtaining the previous approval of the Executive Committee of the Board to such change.

As said above, the application was made under Regulation 9(10). Mr. Majmudar, the learned advocate for the petitioners, however, urged that the enquiry about financial stability of the new managing body could not be investigated as it is required only for new registration. Alternatively, he urged that the deposit of Rs. 10, 000/-per class to be made in the joint name of the President of the petitioner no. 2-Trust and the District Education Officer was something uncalled for and even if it be the indicia of the financial stability of the trust of the petitioner no. 2, it was not the only indicia and the Board having resorted to only this onerous method, had shut out consideration of any other proof that may be furnished by the petitioner no. 2 in that regard.

5. As far as the first contention of Mr. Majmudar is concerned, I do not uphold it. Before effecting a change in the register in so far as it relates to the persons in management is concerned, Regulation 9(10) itself provides that the procedure similar to the procedure for registration of the school is to be followed. The procedure for registration of the school is to be followed under sub-Regulation (7) of that Regulation 9 and it specifically mentions that enquiry into the financial stability of the managing body and its reliability and proper constitution are the requirements. The effect of continued registration with the change in name of the management would call for the very requirements to be satisfied, because it is the mandate of law, namely, Section 31(1) of the Act, which provides that no person can impart secondary education through a school unless such school is registered under the provisions of the Act. The purpose of getting charge effected under Regulation 9(10) is to make it available to the Manager of the petitioner no. 2-Trust the power or right to impart secondary education through that very registered school. It is, therefore, in the fitness of things that before effecting that change and thereby giving necessary permission to the petitioner no. 2 to continue the benefit of the registration of that very school, the enquiry into various factors, including the financial stability of the Managing body, are relevant factors.

6. The next question, however, is the propriety of sticking to only one form of financial stability. The order, Annexure D, proceeds on the assumption that only conceivable and available proof of financial stability is the capacity of a man to readily deposit Rs. 30, 000/-per class. By any standards of common sense, this rigidity is uncalled for. All that the Board can call upon the managing body is to assure the Board of the financial stability of the new management. A man may have with him a bunch of golden ornaments worth thousands of rupees, but at one particular point of time he may not be having ready cash. A man or person in-charge of the management may be possessing immovable properties of potential value, but ready cash may not be at that point of time available. So the insistence in the form of deposit of Rs. 10, 000/-per class and that too to be made in the name of the President of the Trust and the District Education Officer are the insistence uncalled for by law and in this fashion by restricting the scope of the enquiry only to the ready cash, the Board has usurped the powers which it has not. All that the Board can insist on is to call upon the managing body to

furnish the board with the proof of financial stability. It will be within the province Of the Board's powers to adjudge the stability on the basis of the proof furnished. What I am insisting upon in this judgment is that the Board cannot arrogate itself the right to choose only one form of assurance of the nature referred to in the order, Annexure D. It is only on this ground that I set aside the order, Annexure, D. It is only on this ground that I set aside the order, Annexure D, and Direct the respondents that they should call upon the managing body to assure the Board of the financial stability of the managing Body in any other known forms. It will be for the Board to consider the adequacy or sufficiency or otherwise of that proof. It is not for this Court to pronounce its opinion on this score.

7. The result is that the petition is allowed by quashing the order, Annexure D. Rule is accordingly made absolute with no order as to costs.

8. I am sure the Board would issue a notice within a period of one month from to-day and then within one month of the furnishing of the proof, would decide the question. I have refrained from expressing any opinion about other requirements of Regulation 9 and I am not to be understood to have expressed any opinion that financial stability is the only factor, which remains to be considered.