

(1958) 11 MP CK 0017
In the Madhya Pradesh High Court
Case No : Civil M.P. No. 48 of 1958

Laxminarayan Maniram Gupta

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 27-11-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1959) MPLJ 150

Hon'ble Judges : H.R. Krishnan, J;A.H. Khan, J

Bench : Division Bench

Advocate : P.L. Inamdar, for the Appellant;

Final Decision : Dismissed

Judgement

This petition under Article 226 of the Constitution is by the management of a school recognized by the Madhya Bharat Secondary Education Board to prepare students for their examinations. The prayer is that a direction be issued on the Board, and the Education Department of the Madhya Pradesh Government to the effect, that the recognition granted to another School viz., Rashtriya Vidyalaya, Mihona, located a few miles from the applicant's school, should be quashed as having been given in contravention of the statutory regulations in this regard. The real grievance is that after the recognition given to the other school the applicant's school is getting fewer and fewer students and is beginning to realize progressively lesser amounts as fees. According to the applicant this has become particularly serious for him because, for one thing he has put up a new school building at the considerable cost of Rs. 60,000, so as to comply with the Board's requirements for recognition; for another the competitor school is located in part of a Government owned building meant for a Middle School, which is given free of rent, and the Board has not yet thought fit to call upon this competitor school to put up a new building. In effect, the competitor school is able to give more favourable terms to the students in the locality. Thus it is contended that the applicant is adversely affected by the recognition granted to the Rashtriya

Vidyalaya, Mihona (Non-applicant No. 3). Since this recognition has been granted in contravention of the law contained in statutory regulations it is prayed that a direction should be issued calling upon the authorities concerned (Non-applicants 1 and 2) to cancel the recognition.

Any citizen is entitled to start a school and teach such subjects as are not forbidden by law. Students can also appear privately for the Board's examinations. However it is obviously convenient for the students, the schools, and the Board itself, if certain institutions are recognized for sending students for the examination. The requirements for recognition are contained in certain regulations made u/s 16 of the Madhya Bharat Secondary Education Act, Samvat 2007 (Act 51 of 1950). The school has to make an application by a particular date. In the present case non-applicant No. 3 prayed for recognition in 1957. It was refused in that year, but after a year it was again taken up. This Court has nothing to do with this as it is open to the Board to consider an application in changed circumstances. Regulation No. 3 in Chap. XI of the Regulations provides that the application should be made not later than the 15th Aug. preceding the year in which it is proposed to open the classes in preparation for an examination. In the present instance, the application was certainly filed before that date, in fact, more than a year before that date. The argument is that there should be a second application and not merely a reconsideration of the application filed in the previous year. I find no substance in this. I would not interfere with the recognition on this ground.

The next ground is that the regulations have provided for an inspection with special attention being given to the test contained in regulation No. 4. It also provides for a consideration of the inspection report by the "recognition committee," but the point is that this report is purely advisory. The Board will give due regard to the report, but it is not bound to accept it. So the fact that the report was not accepted is no ground for this Court's interference with the recognition.

The third ground is that the requirement in (a) in Regulation 4 has not been established. The applicant says that there is no real need for the new institution. From his view point this is perfectly true. But the Board is concerned not with one single institution or the prospect of the fees collections of the applicant alone. It is concerned with the broad question whether or not a new institution is needed in the locality. Nor in this area is there any provision that unless special reasons are given, no new institution should be recognised within a prescribed distance from a recognized institution. After all it is for the Board to decide this question and once it has decided it is not the business of the High Court to say whether it has decided rightly or wrongly.

There is no doubt that the income from fees made by the applicant has fallen or is likely to fall in the immediate future. On the other hand, the Board has not given the applicant any guarantee either individually or generally by any rule, that his expectations will not be frustrated by the recognition of a new institution

within a few miles.

All things considered, I find there is no substance in this application and I dismiss it summarily.

A.H. Khan, J.

My learned brother has given reasons for rejecting the petition. I would add one more ground.

The reason which in the main has actuated the Petitioner to pray for a writ is that having invested sixty thousand rupees in building a school and obtaining its recognition from the Board, the rival institution opened a couple of miles away from his school, has taken away many of his pupils and has caused him monetary loss. It is contended that the Board in granting recognition to the rival institution has acted in breach of the provisions of the regulations made under the M.B. Secondary Education Act, Samvat 2007 (Act No. 51 of 1950). The question is even assuming the Board has done so (and I do not for a moment concede that the Board has acted in a manner as complained of by the Petitioner) has there been any violation of the Petitioner's rights. In other words has he suffered any legal injury?

The petition reminds one of the English classical case Gloucester Grammar School Case (1410 V.B. 11 Hen. IV f.o. 27 pl. 21-23) of the two school teachers of the Grammar School of Gloucester decided as far back as 1410 A.D. An action was brought by one against the other who had set up a school in the same town, as a result of which one teacher who took forty pence a quarter for a child's schooling only got twelve pence. It was held to be a case of *damnum sine injuria* i.e. damage without injury. An act may cause inconvenience and even loss to others, such as competition in business. According to law, competition with all its drawback is permissible, provided nobody's right, such as a patent right or the right to a trade-mark is infringed. The simple rule of law is that no action lies on the ground of mere damage, however, substantial, caused by some act which does not violate a legal right. The Petitioner has failed to show any violation of his right, except that as a result of the competition, he has suffered a loss.

The petition deserves to be dismissed.