

(2019) 02 GUJ CK 0038

In the Gujarat High Court

Case No : R/Special Civil Application No. 5170, 20432 Of 2017, 18920 Of 2018

Maa Durga Education Trust

APPELLANT

Vs

District Education Officer

RESPONDENT

Date of Decision : 12-02-2019

Acts Referred:

Gujarat Secondary & Higher Secondary Education Act, 1972 — Section 31(1), 31, 32, 41, 42

Indian Penal Code, 1860 — Section 420

Citation : (2019) 02 GUJ CK 0038

Hon'ble Judges : S.H. Vora, J

Bench : Single Bench

Advocate : Rr Vakil, Hardik Soni, Ad Oza

Final Decision : Allowed

Judgement

1. As the issues raised in all the captioned writ applications are interrelated and the parties are also the same, those were heard analogously and are being disposed of by this common judgment and order.

2. The Special Civil Application No.5170 of 2017 was filed first in point of time with the following prayers;

"(A) Be pleased to admit this Special Civil Application.

(B) Be pleased to issue a writ of mandamus and/or certiorari or any other appropriate writ, order or direction by quashing and setting aside the order dated 17.10.2016 passed by respondent No.2 and the order dated 06.02.2017 passed by respondent No.4 and further be pleased to direct respondents to allow the petitioner-trust to run Prabhat Tara Public School in the Hindi medium secondary and higher secondary school without any disturbance.

(BB) Be pleased to issue a writ of mandamus and/or any other appropriate writ, order or direction by quashing and setting aside the order dated 04.09.2017 passed by the respondent No.2 and further be pleased to direct respondents to

allow the petitioner-trust to run Prabhat Tara Public School (Hindi Medium) secondary and higher secondary without any disturbance.

(C) Pending admission, hearing and final disposal of this petition, the Hon'ble Court may be pleased to stay further implementation, execution, operation and enforcement of the order dated 17.10.2016 passed by respondent No.2 and the order dated 06.02.2017 passed by respondent No.4.

(CC) Pending admission, hearing and final disposal of this petition, be pleased to stay further implementation, operation, execution and enforcement of the order dated 04.09.2017 passed by respondent No.2.

(D) Be pleased to pass such other and further orders as may be deemed just and proper looking to the facts and circumstances of the case and in the interest of justice."

3. Thereafter, the writ applicant preferred the Special Civil Application No.20432 of 2017 with the following prayers;

"(A) Be pleased to admit this Special Civil Application;

(B) Be pleased to issue a writ of mandamus and/or certiorari or any other appropriate writ, order or direction by directing the respondents to allow the petitioner-trust to fill in the forms of 36 students of Std.10 and 22 students of Std.12 of Prabhat Tara Public School through nearby school/s for appearing in board examination which is going to be conducted in March, 2018.

(C) Pending admission, hearing and final disposal of this petition, the Hon'ble Court may be pleased to direct the respondents to allow the petitioner-trust to fill in the forms of 36 students of Std.10 and 22 students of Std.12 of Prabhat Tara Public School through nearby school/s for appearing in board examination which is going to be conducted in March, 2018.

(D) Be pleased to pass such other and further orders as may be deemed just and proper looking to the facts and circumstances of the case and in the interest of justice."

4. In the last, the Special Civil Application No.18920 of 2018 came to be filed with the following prayers;

"(A) Your Lordships may be pleased to admit and allow the present petition.

(B) Your Lordships may be pleased to pass appropriate writ in the nature of mandamus certiorari or any other appropriate writ, order, relief, direction directing the respondents to permit the petitioner to fill the examination form of 54 students studying 10th and 12th Std who are eligible forth coming examination going to be held in March, 2019 from the school of the petitioner as all the schools of Surat refused to fill the form of the students of the petitioner.

(C) Any other appropriate relief may be granted as deem fit by this Hon'ble Court in the interest of justice."

5. For the sake of convenience, the Special Civil Application No.5170 of 2017 is treated as the lead matter.

6. The writ applicant is a Public Charitable Trust registered under the Bombay Public Trusts Act, 1950 bearing the Registration No.24687-E-4078, Surat. The trust came to be registered on 26th November, 1997 and is a linguistic minority trust. The trust is running a school by name Prabhat Tara Public School. The school has primary, secondary and higher secondary sections.

7. By order dated 17th October, 2016 passed by the respondent No.2, i.e., the Gujarat Secondary & Higher Secondary Education Board, the registration of the school came to be cancelled on the following grounds;

(a) The writ applicant had the rent agreement of only the upper-ground floor of the premises for a period of 11 months with the rent fixed at Rs.500/- per month. The trust, thereafter, never got the rent agreement renewed for a further period.

(b) The trust was found running the school in an unapproved area.

(c) The condition of the premises was found to be most unhygienic.

(d) There were no adequate and proper health facilities provided in the school for the students.

(e) The playground which was shown to the Board at the relevant point of time was also incorrect.

(f) The class-rooms were found to be of less than 400 square feet in area.

(g) Out of 16 teachers appointed by the trust, 11 were found to be unqualified.

(h) The students of two to three classes were made to sit together in one class for the purpose of imparting education through only one teacher.

8. Thus, after due consideration of the matter and following due procedure as prescribed in Regulation 9A, a detailed reasoned order dated 17th October, 2016 came to be passed by the Board cancelling the registration of the school. It also appears that the District Education Officer (DEO) had issued a show-cause notice to the writ applicant dated 11th April, 2016 and was called upon to show-cause as to why the registration of the school should not be cancelled. The writ applicant was given an opportunity of hearing and a detailed report in this regard was also prepared by the authority concerned.

9. The order passed by the Board dated 17th October, 2016, cancelling the registration of the school, came to be challenged by the writ applicant by preferring an appeal before the State Government. The State Government, vide order dated 6th February, 2017, dismissed the appeal and thereby affirmed the order passed by the Board, cancelling the registration.

10. In the course of the hearing of the writ applications, it was brought to the

notice of this Court by Mr. A.D. Oza, the learned counsel appearing for the Board that although the registration of the school came to be cancelled, yet the writ applicant preferred the Special Civil Application No.19466 of 2016 and prayed that they may be permitted to fill up the examination forms of the students who were already admitted. The Board, in such circumstances, directed the DEO by its letter dated 15th November, 2016 to arrange for the filling up of the forms of the 10th standard examination through the nearby registered school as the school was functioning till 16th October, 2016.

11. In all, 41 students of standard 10th of the Prabhat Tara School were permitted to fill up the examination forms for the examination which was conducted in March, 2017.

12. Being dissatisfied with the decision of the Board to cancel the registration and also being dissatisfied with the dismissal of the appeal by the State Government, the Special Civil Application No.5170 of 2017 came to be filed. It appears that by way of draft amendment, the writ applicant also challenged the order dated 4th September, 2017 passed by the Board pursuant to the interim directions issued by this Court vide order dated 28th June, 2017. The order passed by this Court dated 28th June, 2017 reads thus;

"1. Heard learned advocates for the respective parties and perused the record.

2. Initially recognition of the petitioner School has been cancelled for Secondary and Higher Secondary School Division. Reason for cancellation of recognition is recorded in order dated 17.10.2016. However, at this stage, I do not want to enter into factual details since after considering the overall facts and details, some directions are required to be issued so as to resolve the dispute forever.

3. It is undisputed fact that order dated 17.10.2016 has been challenged by the petitioner as per Rules before the competent Appellate Authority. It is also undisputed fact that appellate authority has also decided the appeal against the petitioner and, thereby, confirmed the order dated 17.10.2016. Though, there are several reasons for rejection of recognition, one of the reason is with reference to the right to possession and holding the premises where school is being run by the petitioner, since it is not owned by the petitioner but it is a rented premises. It is also undisputed fact that till decision of the Appellate Authority, the petitioner was not having the rent deed in his favour so as to confirm that the premises is available with him for the requisite period of ten years. It is also undisputed fact that on the date of impugned order, probably, the petitioner was having a rent deed disclosing that premises is available with them only for 11 months.

4. In addition to above referred issue regarding possession of the premises for running school, there are several other issues including issue regarding area of play ground. However, now, petitioner has come forward by filing additional affidavit on 16.3.2017 that landlord has entered into a rent deed in favour of the petitioner wherein it is confirmed that landlord has agreed to let the premises in

question for ten years on rent and, thereby, petitioner has at-least confirmed one of the conditions for recognition of the school. Thereby, when there is change of circumstances, at-least on one such issue, it would be necessary for the competent authority to reconsider the case of the petitioner based upon change in circumstances, if any, including rent deed as disclosed hereinabove.

5. Otherwise also, pursuant to proviso (2) of regulation No.9(13) whereby the requirement in respect of buildings, laboratory, library, furniture, equipment, stationery and other articles for conducting registered Schools and equipment of a Secondary School cannot be complied with by any applicant for registration of a School, the applicant may specify in full details; the special circumstances, reasons or local conditions on account of which such deficiency or deviation from the standard requirement may be condoned. After such provision, there are in all six conditions, but with similar proviso that the Executive Committee may, in special circumstances allow the registered School to admit students in excess of the limit laid down in such clause and relax the requirement regarding area of play ground. Whereas, proviso to Rule (14) of Rule (9) specifically confirms that the Executive Committee may relax any of the requirement specified in this regulation in special circumstances of a registered School on the merits of its case. Therefore, when regulations permit the mode of relaxation, it would be appropriate for the Respondents to allow the Petitioner to represent its case before such Executive Committee and it is statutory duty of the Executive Committee to decide such issue in accordance with law.

6. In view of above facts and circumstances, initially, it would be appropriate for the petitioner to comply with all the criteria regarding requisite infrastructure and requirement as per Rules to confirm as sought for by it. If there is any deficiency or short fall in any infrastructure or requirement then Petitioner shall apply before the Committee as per Government Resolution dated 4.8.2011 for necessary directions regarding relaxation of any such short coming if at all it is so permissible. Petitioner shall submit his representation before the Committee latest by

7th July, 2017. The Committee shall decide such request within four weeks from the date of reference to it but purely based upon the facts and circumstances and in accordance with law thereby without being influenced by present order but it has to ensure that there should not be any discrimination or arbitrariness in such decision. The Committee shall be careful in considering such request since there is prima facie evidence to prove that other Schools are recognized with less facilities and play ground.

7. Committee of Respondent shall refer the Order dated 22.6.2017 in Special Civil Application Nos.1369 and 1370 of 2017.

List on 11.8.2017.

Direct Service is permitted."

13. It appears that although the registration came to be cancelled, yet the school management went to the extent of admitting 37 students in standard 9th, 34 students in standard 10 th, 20 students in standard 11th and 16 students in standard 12 th from June, 2017, i.e, for the academic year 2017-18.

14. The writ applicant, thereafter, preferred the Special Civil Application No.20432 of 2017, referred to above. In the said petition, a Coordinate Bench of this Court passed the following order dated 15th November, 2017;

"Leave to amend the cause-title by joining as respondent No.4 Gujarat Secondary and Higher Secondary Education Board. Learned advocate Mr. A. D. Oza appears and waives service of notice on behalf of respondent No.4-Board. Therefore, notice is not required to be issued.

2. Heard learned advocate Mr. R. R. Vakil for the petitioner, learned Assistant Government Pleader Mr. Rashesh Rindani for respondent Nos.1 to 3 and learned advocate for newly added party respondent No.4.

3. The petitioner Trust has been running the secondary and higher secondary classes. It appears that the registration of the petitioner Trust came to be cancelled by respondent No.4 Board by order dated 17.10.2016. Challenging the said order, separate Special Civil Application No. 5170 of 2017 is pending. The grievance of the petitioner herein in the present petition is that the District Education Officer did not allow the petitioner to fill up the forms of 10th and 12th Standards Examination which is scheduled to take place in March 2018. It was submitted that the last date of submission of the forms is 17.11.2017.

4. Since the challenge to the cancellation of registration is pending and live before this Court and that if the forms are not permitted to be forwarded, the ultimate sufferers would be the students. Therefore, by way of ad-interim relief in this petition, it is directed that the respondents shall allow the petitioner Trust to fill up the forms of 36 students of Standard 10 and 22 students of Standard 12 who are the students studying in Prabhat Tara Public School through recognized school nearby situated which shall be named and communicated by the District Education Officer to the petitioner, for the purpose of examination to be conducted in March 2018.

5. It is clarified that this arrangement shall not create any right or equity for the petitioner Trust and the same shall be subject to further orders which may be passed in the petition.

To be listed on 12th December, 2017.

Direct service is permitted today."

15. The writ applicant, thereafter, went to the extent of admitting 34 students in standard 10th and 20 students in standard 12th for the academic year 2018-19. Although the writ applicant knew very well that the registration had been cancelled, yet proceeded highhandedly and fraudulently to admit the students.

16. In the last, the Special Civil Application No.18920 of 2018 came to be preferred, seeking appropriate directions to the Board to permit the school to fill up the examination forms of 54 students studying in standard 10th and 12th respectively for the Board examination to be conducted in March, 2019.

17. Mr. R.R. Vakil and Mr. Balram Jain, the learned counsel appearing for the writ applicant very boldly and bluntly submitted that although the registration of the school came to be cancelled way back in the year 2016, yet the school admitted students for the academic year 2017-18 as well as for the academic year 2018-19. The only argument canvassed by both the learned counsel before this Court is that the future of the students may be looked into. To put it in other words, the only submission canvassed is that if the students are not permitted to appear in the March, 2019 examination, their whole academic career will go in waste and they will be the sufferers.

18. Mr. R.R. Vakil appearing in the Special Civil Applications Nos.5170 of 2017 and 20432 of 2017 tried to make submissions even on the merits of the decision of the Board to cancel the registration. However, this Court declined to hear Mr. Vakil on merits having regard to the conduct of his client. A writ court would be justified in declining to exercise its jurisdiction at the instance of a party whose conduct is highly deplorable and who has no regards for the law. The writ applicant, for its own monetary gain, has played with the career and future of innocent students.

19. All the three writ applications have been vehemently opposed by Mr. A.D. Oza, the learned counsel appearing for the Board. Mr. Oza submitted that there cannot be a gross case than the one on hand of fraud and highhanded action on the part of a public trust playing with the future and career of the innocent students. Mr. Oza submitted that the action of the school is violative of the provisions of sections 31 and 32 respectively of the Gujarat Secondary & Higher Secondary Education Act, 1972 and the regulations framed thereunder. Mr. Oza invited the attention of this Court to the provisions, referred to above.

"Section 31: Prohibition against imparting of secondary education without registration.

(1) No person shall impart secondary education or higher secondary education through a school unless such school is registered under the provisions of this Act."

20. Mr. Oza also invited the attention of this Court to section 41 of the Act. Section 41 reads as under;

"Section 41: (1) No manager of a registered private secondary school [or registered private higher secondary school] shall appoint a head-master and of manager or head-master of such school shall appoint a teacher of the school except in the manner provided in section 35.

(2) Any person who contravenes the provisions of sub-section (1) shall, on

conviction, be punished with fine which may extend to one thousand rupees."

21. Section 41, referred to above, is with regard to the penalty for the contravention of the provisions as amended by the Gujarat Act No.15 of 2018 and published in the Government Gazette on 8th October, 2018.

22. Before the amendment, section 42 read as under; "Section 42: Penalty for contravention of certain provisions;

Any person who contravenes the provisions of sub-section (1) of section 31 or fails to comply with any direction issued by the Tribunal under sub-section (9) of section 39, shall, on conviction, be punished with fine which shall not be less than rupees one hundred and which may extend to rupees one thousand."

23. Section 42, as amended, is reproduced hereinbelow;

"Section 42: Penalty for contravention of certain provisions:-

Any person who contravenes the provisions of sub-section (1) of section 31, shall, on conviction, be punished with fine which shall not be less than rupees one lakh and which may extend to rupees two lakh."

24. Mr. Oza submitted that the violation of sub-section (1) of section 31 of the Act entails the consequences of the responsible persons being prosecuted in view of section 42 of the Act, referred to above.

25. Mr. Oza submitted that the case is one of outright cheating and fraud with the students as well as the parents of the students. The persons responsible are liable to be prosecuted not only under the Act, 1972, but also for the offence of cheating under the IPC.

26. Mr. Oza placed strong reliance on the decision of the Supreme Court in the case of C.B.S.E & Anr. vs. P. Sunil Kumar & Ors., reported in 1998 SCC (5) 377, wherein the Supreme Court has observed as under;

"On the admitted position and in view of the law laid down by this Court, referred to above, Mr. Altaf Ahmed, Addl. Solicitor General, appearing for the appellants contended that the impugned direction of the High Court is wholly erroneous and cannot be sustained. The learned counsel appearing for the students in different appeals did not dispute the position that the schools from where their clients have perused their studies are not yet affiliated to the Central Board of Secondary Education. But they mainly contended that the students having been permitted to appear at the examination and they having been successful and certificates have been issued in their favour, it would work out great injustice, if the impugned directions of the High Court are set aside at this length of time. In support of this contention they placed reliance on a recent decision of this Court in the case of CENTRAL BOARD OF SECONDARY EDUCATION v. NIKHIL GULATI AND ANOTHER,(1998) 2 SCC 5. In the aforesaid case, this Court deprecated the practice followed by the High Court to issue direction and also observed that such aberrations should not be treated as a precedent in future but did not interfere

with the ultimate direction of the High Court on the ground that found hopes have been raised in the minds of the students and therefore it would be inappropriate to interfere under Article 136 of the Constitution. We are unable to apply the reasoning given in the aforesaid case, inasmuch as there is no iota of material placed before us to indicate that the Central Board of Secondary Education, the appellants herein, either directly or indirectly had held out to the students at any point of time that the institutions in which they are prosecuting their studies have been affiliated or are going to be affiliated at a near future. We are conscious of the fact that out order setting aside the impugned directions of the High Court would cause injustice to these students. But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the court and then to compel the Board to issue certificates in favour of those who ave undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of students. In view of the aforesaid premises, we set aside the impugned judgment of the Division Bench of the Kerala High Court as well as the interim orders issued by the single Judge in several petitions out of which the writ appeals arose and t he writ petitions filed by the respondents stand dismissed. These appeals are allowed but in the circumstances there will (be) no order as to costs. "

27. Mr. Oza, in the last, submitted that the management knew very well that the order of the cancellation of the registration has not been stayed by this Court, and despite such knowledge, the management for their own monetary gain proceeded to admit the students for the academic year 2018-

19. Mr. Oza also placed reliance on the following decisions;

"(1) Central Board of Secondary Education vs. P. Sunil Kumar, reported in (1998) 5 SCC 377; 1998 (0) GLHEL-SC 4285;

(2) State of Tamil Nadu & Ors. vs. St. Joseph Teachers Training Institute & Ors., (1991) 3 SCC 87;

(3) Mansukhbhai Kanjibhai Patel vs. Gujarat Secondary and Higher Secondary Education Board, (1999) 2 GLH 123;

(4) National Council for Teachers & Anr.,vs. Venus Public Education Society & Ors., (2013) 1 SCC 223;

(5) Azad Education & Development Trust vs. State of Gujarat & Ors., LPA 266 of 2012;

(6) Frinka Anilkumar Katariya & 36. vs. State of Gujarat & 3, SCA No.2530 of 2013;

(7) Gujarat Secondary an Higher Secondary Education Board vs. Shri Zalawad Education Trust, LPA No.216 of 2003;

ANALYSIS

28. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is whether the writ applicant is entitled to any of the reliefs prayed for in the three writ applications.

29. I am conscious of the damage that is being caused to the academic career of the students, but it is the settled principle of law that the Court would not endorse illegal action of the college authorities or other bodies on the ground of compassion alone. The Supreme Court in the case of *State of Maharashtra v. Vikas Saheb-rao Roundale*, reported as 1992 (5) JT (SC) 175 : (AIR 1992 SC 1926) held as under :--

"Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. The directions to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Article 226 of the Constitution, directing the appellants to permit the students to appear for the examination etc.

30. I am of the considered view that anything done or permitted to be done in detriment to the provisions of the Act, Rules, Regulations and terms and conditions of the examination Brochure will not only be prejudicial to the interest of the students so admitted but would adversely, affect the requisite standards of high education and training. Non-implementation of instructions/directions issued by such statutory authority are bound to prove counter-productive and would not be in the interest of the society at large.

31. At this stage it would be appropriate to make reference to some other judgments of the Supreme Court. In the case of *A. P. Christians Medical Educational Society v. Govt. of Andhra Pradesh*, 1986 (2) SCC 667 : (AIR 1986 SC 1490), the Supreme Court held as under :--

"We do not think that we can possibly accede to the request made on behalf of the students any direction of the nature sought for would be in clear transgression of the provision of the University Act and the provisions of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the Court to disobey the laws."

32. In the case of *Students of Dattatraya Adhyapak Vidyalaya v. State of Maharashtra*, SLP (C) No. 2067 of 1991, decided on 19-2-1991, the Supreme Court held as under :--

"We are coming across cases of this type very often where allegations are made that innocent students are admitted into unrecognised schools and are made to suffer. Some Court out of compassion occasionally interfere to relieve the

hardships. We find that the result of this situation is total indiscipline in the field of regulation."

33. In *Narendra Bahadur Singh v. Gorakhpur University*, , AIR 1987 SC 1154, it was held (Para I):--

"..... The Gorakhpur University will also take care to ensure that no College affiliated to it shall give admissions to the students more than the prescribed number, because the students who are admitted in excess of the prescribed number suffer in the process and it is the duty of the University to take care to see that the students are not duped by the Colleges. The University must take steps against the erring College with a view to protect the students. It is surprising that immediately after the admissions are over the University has not taken care to check whether any of the Colleges had admitted students in excess of the prescribed numbers. To wake up at the last moment and then to rely on the legal provision would cause great hardship to the students. We hope and trust that the University will be more careful in future and try to ensure the welfare of the students, a task in which the University in the present case has failed."

34. In *State of Maharashtra v. Minoo Noazer Xavarana*,, AIR 1989 SC 1513, it was observed (at p. 1515 of AIR):--

"There is considerable force in the contention of Mr. Ramaswamy that the High Court was also not justified in directing creation of additional seats. The additional seats can be created only if the Indian Medical Council approves of such creation. In the instant case, the Indian Medical Council has vehemently opposed before us the creation of the additional seats. There is also the question of bearing the cost of creation of additional seats. The High Court, in our opinion, should not have directed the creation of additional seats. In exceptional circumstances and for ends of justice, the Court may direct the creation of one or two seats after giving the Indian Medical Council an opportunity of being heard, but surely the Court should not direct the creation of so many additional seats when neither the Government nor the Indian Medical Council consents to such creation. In the circumstances, it is difficult to sustain the impugned judgment of the High Court "

35. In the case of *Punjab Engineering College vs. Sanjay Gulati & Ors.*, 1983 SCC (3) 517, his Lordship the Chief Justice Chandrachud speaking for the Court sounded a note of caution and observed as follows (at p. 582) :

'Laws are meant to be obeyed, not flouted. Some day, not distant, if admissions are quashed for the reason that they were made wrongly, it will have to be directed that the names of the students who are wrongly admitted should be removed from the rolls of the institution."

36. In *Rajalakshmiah v. Slate of Mysore*, AIR 1967 SC 993, the Supreme Court held (at p. 996 of AIR):--

"There is some force in some of the contentions put forward on behalf of the State of Mysore. It is not necessary to test them as we find ourselves unable to uphold the contention of the appellants. No doubt some concession had been shown to the first batch of 41 persons and the batches of persons who had come in after the batch of 63 persons also received some concession, but after all these were concessions and not something which they could claim as of right. The State of Mysore might have shown some indulgence to this batch of 63 persons but we cannot issue a writ of mandamus commanding it to do so. There was no service rule which the State had transgressed nor has the State evolved any principle to be followed in respect of persons who were promoted to the rank of Assistant Engineers from Surveyors. The indulgence shown to the different batches of persons were really ad hoc and we are not in a position to say what, if any, ad hoc indulgence should be meted out to the appellants before us."

37. In the case of *Dental Council of India v. Harpreet Kaur Bal & Ors.*, 1995 Supp (1) Supreme Court Cases 304, it has been held:

"There are many pronouncements of the Supreme Court cautioning against exercise of jurisdiction characterised more by benevolence than on settled legal principles. A relief must be such as could be considered permissible in law and worked out by the application of legally recognised principles. The decision must have legitimacy of legal reasoning and should not incur the criticism of lacking objectivity of purpose and rational and legal justification. Where an educational institution embarks upon granting admissions without the requisite affiliation and recognition and the students join the institution with their eyes wide open as to the lack of legitimacy in the admission, it would be preposterous to direct the University to hold examinations for the benefit of such students. Such an order is totally unjustified.

The High Court should have instead directed the Union of India to forward the application for recognition stated to have been submitted sometime ago by the institution to the Dental Council of India and, in turn, directed the Dental Council of India to consider that application and decide within a time-frame whether it would accord the recognition or not. These were the only permissible reliefs grantable in the case."

38. The principles laid down in the above decisions support the contentions advanced on behalf of the Board.

39. The Court's task as I understand is to lend meaning and purpose to the accepted public values and adjudication is the process through which the meaning is manifested. The task remains incomplete if the Court fails to impart concrete meaning to constitutional values. As rightly said, "the social conscience just as the individual conscience may usefully serve as the launching pad of moral judgment".

40. The remedy of the unwary students is against the erring school if it had made them the gullible entrants because such errant institution do not enjoy

dispensation either from the law of tort or the law of contract in the absence of statutory protection. It is only where there are large unchartered areas unoccupied by the legislation that the Court could exercise its discretion. The Court can hardly brook institutionalized administrative deviance. The epidemic which is rapidly spreading in the hallowed sphere of education and learning, must be halted in time. In the context of unedifying conduct, the principle cannot be better stated than what learned Hand articulated:--

"Law represents a compromise achieved by competing interests. If the compromise was made in the strictly political forum of the legislature, the statute embodying the agreement (consensus of the legislators) is merely to be interpreted, not altered one jot, by the Judge. To substitute the Judge's supposed sagacity or sympathy is an arbitrary, despotic intrusion."

41. The Act enjoins upon the Board the duty to supervise and regulate the working of the schools in the matter of providing standardised education, ensuring discipline in the academic sphere. The rule of law would suffer a grievous blow if not a fatal one, when educational discipline and good order are broken down by the institutionalised vagaries and, therefore, the Court cannot afford to remain insensitive to the situation. I am reminded of what Cardozo had to say in another context :

"The vestiges of organs atrophied by misuse and abuse will become centres of infection if allowed to remain within the social body."

42. The frequency of arbitrary and illegal admissions by malpractice and misrepresentation and many similar evils having become endemic, the much aspired evolution of rising expectation is gradually giving way to the undesirable evolution of rising frustration in the academic sector. If the rot has to be stemmed in time, there can be no place for unregulated or misplaced benevolence. The Board regulations are not meant to be pious platitudes. The Board will be failing in its statutory duty if it allows such schools to go with impunity in spite of the Regulations.

43. It is high time to give a quietus to infiltration and subversion having due regard to the larger interests of society, societal values and more than all the quality of education, especially at a time when the judiciary is supposed to be the anointed mediator of public values within the political system and when the public social services are mandated by public values. During the present period of institutional decadence, the really critical role of the judiciary is to be alive to the tide of events, and the mores of the day and to display resurgence in insisting upon the principal issues and to compel society to focus on the value needs. The role of creating or implementing public values is no less important. That there is a complex interaction between courts and legislature in which the judges and legislators shape the means in order to achieve the articulated societal objectives, has to be recognized.

44. Whether the law is constitutional or statutory, the ultimate aim is the

realisation of socially derived objectives which the sociology of law admits, since the judges are seen as enforcing rules the origins of which are empirical subjects of sociological inquiry.

45. In pragmatic instrumentalism what is expected is that the judge who, makes the decision should understand and identify the social objectives which underly a particular rule of law and test the rule of law as a means to accomplish those objectives.

Can there be a higher social objective than promotion and preservation of quality of education?

46. Considering the nature of fraud committed by the writ applicant by illegally admitting the students, as rightly pointed out by the learned counsel appearing for the Board, the students; to whom ignorance is no 'bliss, became beneficiaries of the fraud allowing no scope for considerations of equity. On the other hand, flagrant violation of the intake condition which was imposed at the time of grant of affiliation and willful mutilation of regulatory standards, may be for collateral considerations do not commend sympathy or equity. As the dictum goes :--

"Law's discretionary element shall not be at the expense of its rule element"

47. Over a period of time, this Court has noticed that the schools and colleges have not only been playing with the future of the students by admitting the students without there being any affiliation, recognition or in anticipation of affiliation, but either itself or on behalf of the students are filing the writ petitions at the last moment playing upon the sympathy of the Courts that the students may be permitted to appear in the examination to save an academic session which would be wasted if the courts do not immediately interfere. I may only say that the students admitted by the unrecognized schools are not entitled to appear in the examination held by the Board. They are not bonafide students of the Board. Hence, the Board cannot be directed to either take their examination as its students nor can be directed to issue the mark-sheets. A relief which is not permissible in law should not be granted and worked out by the application of the legally recognized principles.

48. Despite all that has been observed above, if I grant the directions sought by the writ applicant, it will amount to putting premium on illegality and it will be subversive of the rule of law. (vide *Miss Annie Abraham & Ors. vs. Sarvajna Education Society & Ors.*, AIR 1991 Karnataka 148)

49. The Supreme Court in *State of Tamil Nadu v. St. Joseph Teachers Training Institute*, 1991 SCC (3) 87, held as under:

"The practice of admitting students by unauthorised educational institutions and then seeking permission for permitting the students to appear at the examination has been looked with disfavour by this Court in *M.N. Nageshwaramma v. State of A.P.* this Court observed that if permission was granted to the students of an unrecognised institution to appear at the examination, it would amount to

encouraging and condoning the establishment of unauthorised institutions. The Court declared that the jurisdiction of this Court under Art. 32 of the High Court under Art. 226 of the Constitution should not be frittered away for such a purpose. In *A.P. Christians Medical Educational Society v. Govt. of A.P.* a similar request made on behalf of the institution and the students for permitting them to appear at the examination even though affiliation had not been granted was rejected by this Court. The Court observed that any direction of the nature sought for permitting the students to appear at the examination without the institution being affiliated or recognised would be in clear transgression of the provision of the Act and the regulations. The Court cannot be a party to direct the students to disobey the statute as that would be destructive of the rule of the law. The Full Bench noted these decisions and observations and yet it granted relief to the students on humanitarian grounds. Courts cannot grant relief to a party on humanitarian grounds contrary to law. Since the students of unrecognised institutions were legally not entitled to appear at the examination held by the Educational Department of the Government, the High Court acted in violation of law in granting permission to such students for appearing, at the public examination. The directions issued by the Full Bench are destructive of the rule of law. Since the Division Bench issued the impugned orders following the judgment of the Full Bench, the impugned orders are not sustainable in law."

50. In *State of Maharashtra v. Vikas Sahebran Roundale*, 1992 AIR 1926, the Supreme Court observed (para 11)':

"For equipping such trainee students in a school or a college, all facilities and equipments are absolutely necessary and institutions bereft thereof have no place to exist nor entitled to recognition. In that behalf compliance of the statutory requirements is insisted upon. Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. The directions to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Art. 226 of the Constitution, directing the appellants to permit the students to appear for the examination, etc."

51. It was also sought to be submitted that the writ applicant is a linguistic minority trust. This would hardly make any difference.

52. Under Article 30 of the Constitution, the minorities based on religion or language, have the fundamental freedom to establish educational institutions of their own choice, but the State has the right to prescribe the regulatory provisions for ensuring the educational excellence. The minority institutions which do not seek recognition are free to function according to their own choice, but if such an institution seeks recognition from the State it has to comply with the prescribed conditions for granting recognition and in that event the minority institution has to follow the prescribed syllabus for examination, courses of study

and other allied matters. These conditions are necessary to be followed to ensure efficiency and educational standard in the minority institutions.

53. Even if a minority community has the fundamental right to establish and administer educational institution, it has no right to insist upon the State to allow its students to appear at the public examination without recognition or without complying with the conditions prescribed for such recognition.

54. In the overall view of the matter, I have reached to the conclusion that the writ applicant is not entitled to any of the reliefs prayed for in the writ applications.

55. All the three writ applications fail and are hereby rejected. However, rejecting the writ applications is not going to be enough in the facts and circumstances of this case. The facts, as narrated above, warrant strictest of the action against the management of the trust responsible for illegally admitting the students knowing fully well that the registration of the school stood cancelled since 2016. The persons concerned are not only guilty of the breach of the provisions of the Act, 1972 but are also liable to be prosecuted for the offence of cheating punishable under section 420 of the IPC.

56. In such circumstances, I propose to issue appropriate directions;;

"The DEO, Surat is directed to immediately register an FIR at the concerned police station against the persons responsible and managing the affairs of the trust for the offence of cheating punishable under section 420 of the IPC as well as for the offence punishable under the provisions of the Act, 1972. The first information report shall be registered in accordance with law within a period of one week from the date of the receipt of the writ of this order. The registration of the first information report shall be reported to this Court immediately alongwith a copy of the first information report. For reporting compliance of the direction, the Registry shall notify this matter, once again, after a period of 15 days from today.