
(1999) 12 GUJ CK 0052
In the Gujarat High Court

Case No : Spl. Civ. Application No"s. 2498, 3419 and 3935 of 1999

M.S. Bhut Education Trust and Others	APPELLANT
Vs	
State of Gujarat and Others	RESPONDENT

Date of Decision : 30-12-1999

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 2000 Guj 160

Hon'ble Judges : M.S. Shah, J

Bench : Single Bench

Advocate : Mamta R. Vyas, for the Appellant; B.Y. Mankad, A.D. Oza, Anshin H. Desai, R.M. Chhaya, Nanavatya and Tushar Mehta, for the Respondent

Judgement

M.S. Shah, J.—Under the provisions of the Gujarat Secondary Education Act, 1972 an institution is required to obtain recognition from the Gujarat Secondary Education Board. Under the Grant-in-Aid policy, the secondary school can apply for grant from the State Government and it is the State Government which takes the decision as to which institution is to be given grant and subject to which conditions. Considering the limited resources available with the State in the year 1998, the State Government had instructed the Gujarat Secondary Education Board to invite applications for recognition with grant from institutions interested in imparting education to girls in Secondary Classes and to submit a list of 15 institutions which had applied for such recognition with grant. Accordingly, 428 institutions applied for recognition with grant. The Board scrutinised the applications and prepared the list of 15 institutions for recognition with grant. The Board forwarded the list to the State Government. By the orders dated 24.3.1999 impugned in these petitions the State Government however, instructed the Board to grant recognition with grant not only to 2 schools out of the said 15 schools (Respondent Nos. 4 and 6 herein) but the State Government also instructed the Board to grant recognition with grant to respondent Nos. 3, 5 and 7 although their applications were not included in the list forwarded by the Board but were rejected by the Board.

2. At the hearing of these petitions, it is the case of the Board that the applications of respondent Nos. 3, 5 and 7 were rejected and that in spite of the above factual position, the State Government by order dated 24.3.1999 directed the Board u/s 48 of the Act to register the said 5 schools (respondent Nos. 3 to 7 herein) and accordingly the said schools were registered by the Board after 6.4.1999. The petitioners in Special Civil Application No. 2498 of 1999, four in number, and the petitioner in Special Civil Application Nos. 3419 and 3935 of 1999, one in each petition, in all six institutions out of the 15 institutions whose names were included in the list prepared by the Board for the purpose of conferring recognition with grant, have approached this Court challenging the aforesaid decision dated 24.3.1999 of the State Government.

3. The facts leading to filing of these petitions, briefly stated, are as under:-

3.1 By advertisement dated 15.9.1997 (Annexure-I to the additional affidavit on behalf of the Gujarat Secondary Education Board) the applications were invited for the registration of secondary schools from persons intending to start secondary schools from June 1998. It was mentioned in the advertisement that the institutions starting schools without grant shall be given separate conditions along with application form and only the institutions intending to start girls schools shall be eligible for grant. In response to the advertisement, Board received 428 applications for recognition with grant and 168 applications for recognition without grant. Initially, by letter dated 20.2.1998 (Annexure-ii) the State Government instructed the respondent-board not to grant any recognition with grant to any school in view of the inability of the Government to make any estimate for allocation of grant to new schools in the budget for the next year i.e. 1998-99. Thereafter by letter dated 18.6.1998 (Annexure-iii) the Additional Chief Secretary of the State Government instructed the respondent-Board that before granting recognition the Board shall enquire whether there was real need for starting a new school in the area; whether opening of a new school will have an adverse effect on the existing schools; whether the management is having sound financial position; whether the facilities of land, building and other infrastructure facilities were available in the new school and that the process for granting recognition to new schools may be started accordingly. Again by letter dated 15.7.1998 (Annexure-iv) the State Government instructed the Board to commence the process. By letter dated 6.8.1998 (Annexure-v) the State Government instructed the respondent-board that the respondent-Board i.e. Gujarat Secondary Education Board shall prepare the list of the schools selected for granting recognition with grant along with the reasons for the recommendations and shall forward the list of such schools to the State Government. This direction was issued u/s 48 of the Gujarat Secondary Education Act.

3.2. The respondent-board which had started the process of scrutinising the applications prepared a list of 15 institutions which deserved to be recognised with grant as per the instructions given by the State Government vide letter

dated 6.7.1998. The letter dated 13.8.1998 from the respondent-board to the State Government along with a copy of the Resolution dated 12.8.1998 is produced at Annexure-vi to the Additional Affidavit filed on behalf of the respondent-Board. The resolution mentioned that as per the instructions from the Education Department of the State Government, the Board selected 5 schools from tribal areas and 10 schools from the other areas. From each district only one secondary school for girls was to be selected for the purpose of giving recognition with "grant, accordingly five girls" schools were selected from tribal areas one each from Santrampur Taluka in Panchmahal District. Dantaner Taluka in Banskantha District, Dediapad Taluka in Bharuch District Khedbrahma Taluka in Valsad District and Kamrej Taluka in Surat District. As far as 10 girls schools from non-tribal areas are concerned, one school was selected from each of 10 different districts viz. Amreli, Khefla, Jamnagar, Junagadh, Bhavnagar, Mehsana, Rajkot, Vadodara, Sabarkantha and Surendranagar.

3.3. Thereafter by letter dated 8.1.1999 (Annexure-vii) the State Government instructed the Board that all the institutions whose applications were not accepted by the Board (i.e. all the institutions other than 15 institutions included in the list recommended by the Board) be informed that their applications were rejected and that 15 institutions included in the list may also be informed that for lack of adequate allocation in the budget, the said schools could also not be granted recognition with grant. In compliance with the said instructions, the Board informed the State Government on 30.1.1999 that the Board had informed the concerned schools that their applications were not granted. Ultimately, by letter dated 24.3.1999 (Annexure-x) the State Government instructed the Board u/s 48 of the Act to give recognition with grant to five institutions for starting grantable secondary schools. Those five institutions are respondents Nos. 3 to 7 including respondent No. 4 and 6 whose names were already included in the list of 15 institutions selected by the respondent-Board. Accordingly the Board has given recognition with grant to the said five schools after 6.4.1999. The petitioners have challenged the aforesaid decision of the State of Gujarat contained in the communication dated 24.3.1999 (Annexure-X) and the consequential orders of the respondent-Board. While issuing notice, this Court had granted ad interim relief which came to be vacated when the petitions came to be admitted on 1.7.1999 and fixed for early final hearing. The matters have now reached final hearing.

4. The main grounds raised in the petition are:-

4.1. The petitioners' schools were already included in the list of 15 institutions selected by the respondent-Board as per the instructions and guidelines issued by the State Government and therefore they ought to have been granted recognition with grant.

4.2. The petitioner-institutions had already made arrangements for starting secondary schools for girls in their respective areas where no other school was available and therefore there was need for starting the school in the concerned

area and that there was no likelihood of any unhealthy competition. In Special Civil Application No. 2498 of 1999 it is stated that petitioner No. 4-school is situated in a tribal area in Junagadh District where there is no girls school and the parents of minor girls are not prepared to send their children for secondary education. Similarly, petitioner No. 2 school is situated in a tribal area where there is no girls school, petitioner No. 1 and petitioner No. 3 schools are also situated in rural areas where there is no girls schools within the radius of 10 km.

4.3. Allegations are also made by the petitioner in the memo of SCA No. 2498 of 1999 in para 3.12 in the following terms:-

"3.12 The petitioners submit that all the 5 schools which are given recognition, are in one district only viz. Rajkot and that too with retrospective effect i.e. from June, 1998. It is all the more interesting to note that all the schools are run by Patels and out of the said 5 schools, 4 schools are run by one Shri Shivilalbai Vekaria. who is, as per the knowledge of the petitioners, got very good intimate relations with the leading political leaders."

5. The affidavit-in-reply dated 13.9.1999 has been filed on behalf of the State Government pointing out 1 asunder: -

5.1 The Secondary Education Board is competent to grant recognition to non-grant-able schools and that the State Government asked the Secondary Education Board to scrutinise the applications for recognition with grant and list out 15 schools to which the grant can be given specifically mentioning that five schools should be in tribal area and 10 schools should be in non-tribal area and that the suggestions which may be made by the Board should be in accordance with various guidelines issued by the State Government from time to time. The power, to give grant to the schools is vested with the State Government. In the budget indent of 31.3.1999 there was a provision of grant to 15 schools and, therefore, the State Government asked the Board to investigate the applications. However, suggestions or proposals made by the Board are not binding on the State Government and the State Government can decide about giving grant to any school which is eligible.

5.2 On merits of the decision, the affidavit contains the following averments:-

"I submit that as regards giving the grant to the 15 institutions came up for consideration before the State Government the State Government also received some applications from the Institutions who had already applied also to the Gujarat Secondary Education Board. I submit that those institutions directly applied to the State Government for grant. I submit that out of the names suggested by the Gujarat Secondary Education Board two institutions were given grant and three institutions which were not suggested by the Secondary Board and who had applied to the Secondary Education Board and the State Government, after careful consideration, the State Government decided to give grant to them as per new policy of June, 1999. I submit that those applications were considered by the State Government at the higher level and after

considering that they are otherwise eligible for grant, they were given grant and the orders are already passed for giving grant to these five institutions. I submit that as regards other 10 institutions are concerned, their applications were rejected on the ground that it was considered after 31.3.1999.

"I submit that the applications of other five institutions were considered prior to 31.3.1999 and the Board was informed by the State Government that the grant should be given to these five institutions as per new grant policy of 1999. I submit that the Gujarat Secondary Education Board gave recognition in April 1999 subject to new policy as per direction of the State Government."

5.3 As regards the power to give directions to the Board, the State Government has relied on the provisions of Section 48 of the Act and that the power of the Board to grant registration to a secondary school or to withdraw registration is subject to the power of the State Government u/s 48 of the Act. Accordingly, in exercise of the said powers, directions were given by the State Government for registering five schools with grant of which two schools were recommended by the Board.

5.4 It is further stated in the affidavit as under :--

"The applications of other ten institutions could not be finalised before 30.3.1999. I submit that the orders are passed by this Honourable Court to give grant to higher secondary schools where there are no provision for grant and Secondary schools grant was utilised for the purpose of higher secondary. I submit that in the present year there is provision to give grant to 15 schools and if the petitioners will apply for the same it will be considered in accordance with law along with other applications which are already received for the current year."

6. Affidavit-in-reply and additional affidavits are also filed on behalf of respondent No. 4 -- Gujarat Secondary Education Board pointing out the facts which are already set out in para 3 hereinabove. In the affidavit dated 13.9.1999 the Board has also pointed out reasons for rejecting the applications of the respondents Nos. 3, 5 and 7 as under: -

Respondent No. 4

"(i) the building is not suitable for the school as contemplated under Regulation 9(13), (1)(2) of the Gujarat Secondary Education Regulations, 1974 (hereinafter referred to as "the Regulations") as in the proposal form itself the said respondent has mentioned the measurement of the four rooms which prima-facie found inadequate and further at the time of hearing the photograph of under construction of the building was produced, and (ii) the possibility of unhealthy competition as contemplated under Regulation 9(16). The aforesaid decision of the Board was conveyed to the respondent No. 3 by order dated 12.1.1999.

Respondent No. 5

"the proposal for registration was rejected mainly on two grounds, (1) the

Building is not suitable for the school as contemplated under Regulations 9(13)(1) (2) as in the proposal itself the said respondent has only mentioned measurement of three rooms out of four and which were found inadequate and for the purpose of furniture and other facilities the said respondent have mentioned that they have though (sic) it spend Rs. 2.00 lakhs for the same (in fact not created infrastructure before claiming for registration), and (ii) the need of the school is not established as contemplated in Regulation 9(15). The aforesaid decision was communicated to respondent No. 5 by order dated 12.1.1999."

Respondent No.7

"in the case of respondent No. 7, Shri Lauva Patel Kanya Kelvani Mandal, Gondal, the proposal was rejected mainly on two grounds, (i) the building is not suitable to the School as in the case on the spot inspection report of the D.E.O. It has been clearly mentioned that the construction is going on, and (ii) the need of the school is not established.

I say that after the aforesaid decision, it seems that the respondent No. 7 represented their case before the Government through M.L.A. Shri Jayrajsinh Jadeja and pursuant to the said representation, by or-order dtd. 16.10.1998, the Government informed the Board that the Government has granted approval to the respondent No. 7 with the condition that the said Trust would not be entitled for the grant. After the said communication of the Government, the Board has categorically informed the State Government that the action of the State Government granting approval straightway is not in accordance with the provision of law and therefore, requested the Government to reconsider the decision. In spite of this communication of the Board, the Government informed the Board that the Board cannot review the Government decision and there is no valid reason for the Board not to implement the Govt. decision. In the meanwhile, Government by order dated 24.3.1999 directed the Board to register the school and that too with the grant."

As far as respondents Nos. 4 and 6 are concerned, since their names were already included in the list of 15 schools, no averments are made in the affidavit-in-reply on behalf of the Board.

7. As far as respondents Nos. 3 to 7 are concerned, affidavit-in-reply dated 15-7-1999 has been filed on behalf of respondents nos. 3 to 6. Identical averments are made in the affidavit-in-reply on behalf of each of respondents Nos. 3 to 6. In the separate affidavits filed on behalf of each of the said four respondents it is stated that the respective trust has one of their objects to impart education to girls who are deprived of education because of want of facilities of good schools as well as hostels that each of the four trusts has its own funds of about Rs. 3 crores and has its own land between 8-15 acres and that the concerned trust has developed the land and has created facilities of running school as well as facilities of 18 to 24 rooms for the hostel wherein all

basic amenities are provided for. The allegations of oblique motive are denied.

Additional affidavits-in-reply dated 10.10.1999 also came to be filed on behalf of the respondents Nos. 3 and 5. In the said affidavits attempt is made to explain that respondent No. 7 has established a residential school meant for girls at village Khamta situated in Kodatari Taluka on Rajkot-Jamnagar highway and respondent No. 3 trust has already constructed 28 rooms wherein the respondent-school is imparting education to the students of that area and respondent No. 3 charges only token fee towards the boarding charges. It is further stated that since respondent-Board had rejected the application of respondent No. 3 as per the communication dated 12.1.1999, respondent No. 3 filed an appeal before the State Government on 5.2.1999 and that the said appeal was kept for hearing but in the meanwhile as the registration was granted in favour of respondent No. 3-trust vide order dated 7.4.1999, the said appeal having become infructuous, the respondents have prayed for its disposal. It is further stated in the affidavit that there is no school of a similar nature with residential facilities in the whole taluka or within the vicinity of 50 km from the school of respondent No. 3. The allegation of political patronage to Shivilal Vekharia is denied.

Similarly, in another additional affidavit-in-reply dated 10.10.1999 it is stated that respondent No. 5-school is meant for girls and is at village Chandali situated in Lodhika Taluka on Rajkot-Junagadh Highway and the trust has constructed 28 rooms where education is being imparted to the girls belonging to that area. Here also token fees are charged from the students towards boarding charges. The appeal against the decision dated 12.1.1999 of the Board was filed by respondent No. 5 before the State on 5.2.1999 but as the registration was granted in favour of respondent No. 5 vide order dated 7.4.1999, the appeal became infructuous and, therefore, respondent No. 5 prayed for its disposal. In this affidavit also averments are made that there is no school of similar nature meant for imparting education with residential facilities in whole Lodhika taluka and that no similar such school is situated within the vicinity of 50 km from the school of respondent No. 5-trust. The allegation of political patronage to Shivilal Vekharia is denied.

8. At the hearing of the petitions, learned counsel for the petitioners Ms M.R.Vyas and Mr. M.R.Shah have submitted that once the State Government asked the respondent-Board to short-list 15 schools out of 428 schools (5 from tribal areas and 10 from non-tribal areas) for the purpose of recognition with grant and once the Board selected such 15 schools, and the petitioners' names were included in the said list of 15, the State Government and the respondent-Board could not have denied the recognition with grant to any of the petitioners and that in any view of the matter, even if the financial resources were not adequate for the year 1998-99, the State Government ought to have granted recognition with grant to 15 schools as and when financial resources permitted the State Government to do so. However, the very fact that the State Government instructed the

respondent-Board to give recognition with grant to schools whose applications were rejected by the respondent-Board clearly shows the arbitrary and discriminatory treatment meted out by the respondents to the petitioners. It is submitted that the petitioners have clearly averred right from day one that the Board had selected all the 15 schools for girls education and that five schools were from 5 different tribal areas in 5 districts and 10 schools from different non-tribal districts as per the instructions of the State Government as acknowledged in the affidavit-in-reply filed on behalf of the State Government (para 6 of the affidavit-in-reply dated 13.9.1999). Still however, out of the five schools in question, as many as four are in Rajkot District itself being respondents Nos. 3, 4, 5 and 7. Specific averments made in para 3.4 of the petition that four schools are run by Shivilal Vekaria are not disputed. This clearly smacks of not merely arbitrariness but also nepotism shown by respondent No. 1 in favour of respondents Nos. 3, 4, 5 and 7 all of which are run by Shivilal Vekariya.

9. Mr A.D. Oza, learned counsel for the Gujarat Secondary Education Board, has reiterated the submissions made in the affidavit-in-reply and additional affidavit-in-reply and has submitted that the power to grant recognition is vested in the Board u/s 31 of the Act read with Regulation 9 of the Regulations framed under the Act and that the Board had rejected the applications of respondents Nos. 3, 5 and 7 for registration on the grounds which are already disclosed in the reply affidavits and which grounds were also disclosed to the concerned respondents. It is asserted on behalf of the respondent-Board and also stated in the reply that the Board had not received any appeal having been filed by respondents Nos. 3, 5 and 7 against the communication dated 12.2.1999 from the Board rejecting the applications of respondents Nos. 3, 5 and 7. It was very much within the power of the Board to reject the applications on the grounds mentioned in those respective communications. It is submitted that without giving the Board an opportunity of being heard, the State Government could not have reversed the decision of the Board and that the power conferred upon the State Government u/s 48 of the Act is to give directions in matters of policy and that too after giving the Board an opportunity of being heard. It is submitted that whether the decision of the Board to reject the application for registration of an institution in a particular case should be reversed or not was not a policy matter and it was only in an appeal u/s 31(10) of the Act that the State Government could have reversed the decision of the Board. It is further submitted that the question of grant would come only if the Board decides to grant recognition to the institution for starting a school and that since for the sake of convenience the State Government had itself asked the Board to prepare the list of 15 schools for recognition with grant, the State Government could not have arrogated to itself the power of taking a decision on the question of registration or grant without first considering the question of registration in a properly constituted appeal and after giving the Board an opportunity of being heard.

10. The learned Government Pleader for the State Government submitted that in view of the scheme of the provisions of the Gujarat Secondary Education Act and

the Regulations framed thereunder, the State Government has the power to give directions to the Secondary Education Board in all matters including grant of registration to secondary schools in general or even to particular schools in individual cases. It was submitted that since the provisions of the Act or the Regulations do not confer any power on the Board to take any decision in the matter of grant to be given to the schools and since that is a matter being governed by the Grant-in-Aid policy within the exclusive Jurisdiction of the State Government, It was for the State Government to decide which school should be granted recognition with grant and that the recommendation of the Board by preparing a list of 15 schools selected for registration with grant was not binding on the State Government. It was further submitted that looking to the financial resources available with the Government for the period prior to 31.3.1999 the State Government had considered the cases of five schools and that some of the funds were required to be diverted for complying with the directions given by this Court in three other matters where the institutions running higher secondary schools were required to be given the grant from the year 1998-99.

11. Mr. N. D. Nanavati with Mr. R.M.Chhaya and Mr. A.H.Desai for respondents Nos. 3 and 5 have opposed the petition and have submitted that since there is no prayer made by the petitioners for challenging the grant of recognition with grant in favour of the said respondents, this Court may not quash the decision dated 24.3.1999 of the State Government and the consequential grant of registration by the Board In favour of respondents Nos. 3 and 5. It was further submitted that respondents Nos. 3 and 5 had provided for all the facilities for running the school for girls in the respective areas and that therefore the State Government was justified in taking the decision in favour of the said respondents.

12. Having heard the learned counsel for the parties and having regard to the material on record, the Court is clearly of the view that the decision of the respondent No. 1-State Government in instructing the Gujarat Secondary Education Board not to give recognition with grant to the petitioners herein though included in the list of 15 schools selected by the Gujarat Secondary Education Board, and to give recognition with grant to respondents Nos. 3, 5 and 7 was clearly arbitrary and discriminatory and violative of the petitioners' fundamental rights under Article 14 of the Constitution.

13. Although respondents Nos. 3 and 5 have averred in their additional affidavit dated 10.10.1999 that they had preferred appeals before the State Government on 5.2.1999, there is not a whisper in the affidavit filed on behalf of the State Government about any such appeal having been preferred by respondents Nos. 3, 5 and 7. The Board has clearly stated in its reply affidavit that the Board has not received any intimation about any such appeal having been preferred by respondents Nos. 3, 5 and 7. The explanation offered in the additional affidavit dated 10.10.1999 on behalf of the respondents Nos. 3 and 5 is that the appeal filed was kept for hearing but in the meanwhile as the registration was granted in favour of respondents Nos. 3 and 5 trust vide order dated 7.4.1999, the said

appeals having become infructuous, respondents Nos. 3 and 5 have prayed for their disposal. It is, therefore, clear that neither according to the State Government nor according to the respondents Nos. 3 and 5 the decision of the Board communicated to respondents Nos. 3, 5 and 7 on 12.1.1999 to reject their applications for registration was ever reversed by the State Government in any proceedings u/s 31(10) of the Act. The averments in the affidavit-in-reply filed on behalf of the State Government which are already quoted in para 5.2 hereinabove only indicate that some representations were received by the State Government from different schools and that the State Government at the "higher level" took the decision to give recognition with grant to respondents Nos. 3, 5 and 7 whose applications were earlier rejected by the Board and also to respondents Nos. 4 and 6 whose names were already included in the list of 15 selected schools. The State Government has not at all explained as to why the State Government reversed the decision of the Board to reject the applications of the respondents Nos. 3, 5 and 7 for registration without giving the respondent-Board (a Statutory Board) an opportunity of being heard although its decision was being reversed and which decision could not have been reversed otherwise than in an appeal u/s 31(10) of the Act and that no intimation at all was given by the State Government to respondent-Board in this behalf.

14. There is also no dispute about the fact that and in fact it is the case of the State Government itself in para 6 of the affidavit-in-reply as under:-

"I submit that the State Government asked the Secondary Education Board to scrutinise the applications for recognition with grant and list out 15 schools to whom the grant can be given. It was also specifically mentioned that five schools should be in a tribal area and 10 schools should be in non-tribal area. I submit that it was also pointed out that the suggestions which may be made by the Board should be in accordance with various guidelines issued by the State Government from time to time."

In spite of these specific instructions, the State Government has not explained as to why four institutions from the same District i.e. Rajkot District (respondents Nos. 3 to 6) have been granted registration with grant. Even if one is prepared to overlook the allegation made by the petitioners that all the four schools are run by one Shivilal Vekarlya who has got good intimate relations with the leading political leaders as a vague allegation of mala fides, there is no denial to the specific assertion that all the four schools are run by Shri Shivilal Vekariya. It is significant to note this particular aspect also because in the separate affidavits-in-reply filed on behalf of respondents Nos. 3 to 6 in Special Civil Application No. 2498 of 1999 similar averments are made on behalf of the said respondents and it is stated in each of the said affidavits as under:- Respondent No. 3

"It is submitted that the respondent No. 3 trust has its own funds of about Rs. 3 crores and has its own land admeasuring 10 acres. The respondent No. 3 trust has developed the said land and has created facilities of running the school as well as the facility of 24 rooms of the hostel."

Respondent No. 4

"It is submitted that the respondent No. 4 trust has its own funds of about Rs. 3 crores and has its own land measuring 8 acres. The respondent No. 4 trust has developed the said land and has created facilities of running the school as well as the facility of hostel."

Respondent No. 5

"It is submitted that the respondent No. 5 trust has its own funds of about Rs. 3 crores and has its own land measuring 8 acres."

Respondent No. 6

"It is submitted that the respondent No. 6 trust has its own funds of about Rs. 3 crores and has its own land measuring 15 acres. The respondent No. 6 trust has developed the said land and has created facilities of running the school as well as the facility of 18 rooms of the hostel."

It is, therefore, surprising as to why the State Government selected respondents Nos. 3, 4, 5 and 6 for giving recognition with grant when each of them has its own funds of about Rs. 3 crores apart from the lands and buildings.

As is well known in a welfare State, grant is given by the State for subsidising the cost of education, when such activity is undertaken by an institution which cannot meet with all the expenses like staff salary on its own. Of course, the institution must have sufficient funds to take care of maintenance of buildings, etc. On the one hand it is the case of the State Government that financial resources of the State Government were too scarce to give grant to 15 schools recommended by the Secondary Education Board and on the other hand it decided to give the grant, over and above registration, to as many as four schools in the same District, Rajkot, when each of these four schools has its own funds of Rs. 3 crores and has its own land measuring 8 acres to 15 acres and each of them has already constructed a number of rooms ranging between 18 to 24. On the basis of the material on record, therefore, this Court has no hesitation in coming to the conclusion that the decision of the State Government to give recognition as well as grant to respondents Nos. 3 to 6 was arbitrary and violative of Article 14 of the Constitution.

15. As far as respondent No. 7-school is concerned, its case also falls in the same class as respondents Nos. 3 and 5. In view of the fact the application of respondent No. 7 for registration was also rejected by the Secondary Education Board on the ground that the building was not suitable as per the DEO and on the ground that the school was not established, the State Government clearly acted illegally in directing the respondent-Board to grant registration to respondent No. 7 for a secondary school though the State Government could not have taken such a decision otherwise than in an appeal u/s 31(10) of the Act. It is not the case of the State Government that any such appeal was preferred by respondent No. 7. Hence, the Board was justified in requesting the Government

to reconsider the decision dated 16.10.1998 by which the State Government had approved the application of respondent No. 7. It is all the more surprising that on 16.10.1998 the State Government had not only granted approval to respondent No. 7 for registration without grant without giving the respondent-Board an opportunity of hearing but even when the respondent-Board requested the Government to reconsider its decision, the Government found fault with the Board and compelled the Board to implement the Government's decision. Not stopping there, the Government went further and by order dated 24.3.1999 directed the Board to register respondent No. 7 school and that too with grant, purporting to act u/s 48 of the Act which power was not available to the State Government for the purpose of reversing the decision of the respondent-Board rejecting the application of respondent No. 7 for registration u/s 31 of the Act.

16. It is true that the petitioners have not in terms challenged as a final prayer, the grant of recognition to respondents Nos. 3 to 7 though they had prayed for an interim relief for restraining respondent-authorities from implementing the impugned decision dated 24.3.1999 and in fact on the ground that respondents Nos. 4 to 6 were already included in the list of 15 schools recommended by the respondent-Board, even at the oral hearing they had submitted that they were not in a position to challenge the recognition with grant given to respondents Nos. 4 and 6. However, since full opportunity was given to all the respondents specifically bringing it to their notice that in view of the defence of the State Government that the State Government did not have sufficient financial resources to give grant to all 15 schools, over and above registration recommended by the respondent-Board, any order for reconsidering the petitioners' case for registration with grant was bound to affect respondents Nos. 3 to 7 and, therefore, they were given full opportunity to file additional affidavits-in-reply over and above the affidavits which were already filed by them earlier on 15.7.1999. Respondents Nos. 3 and 5 availed of the said opportunity by filing additional affidavits dated 10.10.1999.

17. In view of the above discussion, the inescapable conclusion is that respondent No. 1-- State Government acted not merely illegally in reversing the decision dated 12.1.1999 of the respondent-Board rejecting the applications of respondents Nos. 3, 5 and 7 for registration without giving the respondent-Board any opportunity of being heard and when there is no evidence of any appeal having been preferred by respondents Nos. 3, 5 and 7 before the State Government (since it is not the case of the State Government in the reply affidavit that respondents Nos. 3, 5 and 7 had preferred any appeal and it is the specific case of the respondent-Board that it had not received any intimation of any such appeal having been filed by respondents Nos. 3, 5 and 7), the Court is clearly of the view that the decision on the part of the State Government in granting recognition as well as grant to respondents Nos. 3, 5 and 7 and that too with effect from June 1998 was a mala fide decision to favour Shri Shirlal Vekharlya who is running all the four schools under respondents Nos. 3 to 6 in the same District which assertion in para 3.12 of the petition is not disputed and

the mala fides of the decision become self-evident in view of the fact that it is the case of the respondents Nos. 3 to 6 themselves in their respective reply-affidavits that each of them has got funds to the tune of Rs. 3 crores apart from each of them having land ranging between 8 to 15 acres and each of them having hostel facilities having 18 to 24 rooms. When the financial resources of the State Government are so scarce that it does not think it fit to give recognition with grant to the girls schools in tribal areas like petitioners Nos. 1 and 4 in SCA No. 2498 of 1999 and to 3 other tribal schools selected by the respondent-board (though the State Government itself had entrusted the Board to select 5 institutions out of five different tribal areas and 10 institutions from non-tribal areas in 10 different districts) the State Government has chosen to give grant to respondents Nos. 3 to 6 in the same district (Rajkot) each of which has its own funds of Rs.3 crores over and above huge areas of lands and buildings, as stated above. The Government decision dated 24.3.1999 instructing respondent No. 2 Board to give recognition with grant to respondents Nos. 3 to 6, therefore, deserves to be quashed and set aside as arbitrary, discriminatory and mala fide. In view of the fact that each of the four institutions being respondents Nos. 3 to 6 is having funds of Rs.3 crores apart from lands and buildings, directing the respondents to give effect to this judgment insofar as grant is concerned even before the end of the academic term will not cause any prejudice to the respondent-institutions. As far as respondent No. 7 is concerned, it has chosen not to appear before this Court and, therefore, also no indulgence is required to be shown to respondent No. 7

18. In the result, the decision of the State Government as contained in the letter dated 24.3.1999 addressed to the Gujarat Secondary Education Board and the consequential orders of the said Board are hereby quashed and set aside. Respondents Nos. 1 and 2 are directed to consider the case of the petitioners and other institutions (except respondents Nos. 4 and 6) whose names were recommended by the Gujarat Secondary Education Board on 12/ 13.8.1998 for grant of recognition with grant as per the instructions issued by the Government itself earlier, afresh in light of the observations made in this judgment and on the basis of the Grant in Aid policy which was in force when the State Government took the impugned decision dated 24.3.1999. If the policy was liberalised thereafter, such liberalised policy shall be taken into account.

19. While the aforesaid decision dated 24.3.1999 of the State Government for giving grant to respondents Nos. 3 to 7 is quashed and set aside with immediate effect without making any recovery of the grant already paid so far, the order of respondent-Board passed in April, 1999 conferring registration on respondents Nos. 3, 5 and 7 are quashed with effect from immediately upon expiry of the academic year 1999-2000.

20. It is clarified that the orders of Respondent-Board granting registration to respondent Nos. 4 and 6 are not disturbed by this judgment but they shall not hereafter be paid grant, though no recovery shall be made for grant already paid

so far.

21. It is also clarified that this judgment shall not come in the way of respondents Nos. 3, 5 and 7 applying for, and respondents Nos. 1 and 2 considering registration without grant-in-aid for secondary schools already started by them on the basis of the State Government's decision dated 24.3.1999 and consequential orders of respondent-board .

Rule is made absolute to the aforesaid extent.

22. At this stage, the learned counsel for respondent Nos. 3, 4 and 5 pray for stay of operation of this judgment for some time in order to enable their respective respondents to have further recourse in accordance with law.

The learned counsel for the petitioners and the learned counsel for the respondent-Board oppose the above request.

In the facts and circumstances of the case, the operation of the direction against respondent Nos. 3 to 5 shall remain stayed till 21.1.2000. It is clarified that there is no stay against the operation of the other directions contained in this judgment.