

(2011) 07 GUJ CK 0018
In the Gujarat High Court

Case No : Special Civil Application No. 1348 of 2011

National Education Society

APPELLANT

Vs

District Primary Education Officer, Valsad and Others

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Bombay Primary Education Rules, 1949 — Rule 106A(10)

Citation : (2012) 1 GLR 172

Hon'ble Judges : S.J. Mukhopadhaya, J;K.M. Thaker, J

Bench : Division Bench

Advocate : Shivani Rajpurohit, for the Appellant; Rutvij M. Bhatt, for Respondent No. 1, Notice Served by D.S. for Respondent Nos. 2 to 6, Ms. Krina Calla, A.G.P., for Respondent Nos. 4 and 5 and Rushabh R. Shah, for the Respondent

Final Decision : Allowed

Judgement

K.M. Thaker, J.—Present petition is directed against the order dated 18/19-1-2011 passed by the District Primary Education Officer, Valsad whereby the respondent No. 1 has cancelled the recognition/registration granted in favour of the education institute run by the petitioner National Education Society a Trust registered under the Bombay Public Trusts Act. The respondent No. 1 has, vide impugned order, cancelled the recognition/registration of five education institutes viz. (i) Sanskar Bharti Gujarati Primary School (Standard 1st to 4th, Gujarati Medium), (ii) National Primary School (Standard 5th to 7th, Gujarati Medium), (iii) Shree Sarigam English Medium Primary School (Standard. 1st to 4th, English Medium), (iv) Shri Sarigam English Medium Middle Primary School (Standard 5th to 7th, English Medium), (v) Shri Sarigam Hindi Primary School (Standard 1st to 4th, Hindi Medium). Aggrieved by the said order, the petitioner has preferred present petition and assailed the said order on diverse grounds including the allegation that the order has been passed in violation of principles of natural justice and without complying the directions issued vide order dated 6-7-2010 in the Letters Patent Appeal No. 1050 of 2010.

2. The facts involved in the petition and relevant for the purpose of present decision can be summarized thus :

2.1. The petitioner, a Trust, has claimed that it is engaged in imparting primary education to the students in Valsad district and under its administration, it has different education institutes, particularly Primary level and Middle primary level Schools which include the institutes imparting the education through Gujarati Medium, Hindi Medium as well as English Medium. It is claimed that viz. (i) Sanskar Bharti Gujarati Primary School which imparts education in Gujarati Medium to the students of Standard 1st to 4th was granted recognition/registration vide order dated 7-9-2007, (ii) Shri Sarigam English Medium Middle Primary School which imparts education through English Medium to the students in Standard 5th to 7th was granted recognition/registration vide order dated 27-6-2007 and (iii) National Primary School which imparts education through Gujarati Medium to the students in Standard 5th to 7th was granted recognition/registration vide orders dated 31-7-2007, 29-5-2001, 12-6-2002 respectively, (iv) Shri Sarigam English Medium Middle Primary School which imparts education through English Medium to the students in Standard 5th to 7th was granted recognition/registration vide order dated 26-7-2007, (v) Shri Sarigam Hindi Primary School, which imparts education through Hindi Medium to the students in Standard 1st to 4th and 5th to 7th was granted recognition/registration vide order dated 27-6-2007.

2.2. It appears that the said schools are situate at different places but within district Valsad.

2.3. Another relevant aspect involved in the matter is that the respondent No. 6, another Trust viz. Pandit Shriram Sharma Acharya Education Trust, is also engaged in imparting primary education to the students in the same area. The said Trust is also imparting education through English Medium, Gujarati Medium and Hindi Medium.

2.4. The fact that the petitioner-Trust and the respondent No. 6-Trust are engaged in the same activity in the same area, is enough to make it obvious that there would be competition between the institutes run by the petitioner and the respondent No. 6, particularly because both manage schools which impart education through Gujarati Medium, Hindi Medium and English Medium in the same area.

2.5. The applicable statute viz. Bombay Primary Education Act, 1949 and Rules framed thereunder as well as the instructions issued by the Government and the Education Board aim at curbing, "unhealthy competition" and for that purpose, the provisions are made in the applicable Rules and instructions have been and are being issued by way of the Government Resolutions.

2.6. The petitioner has alleged that the respondent No. 6 always harboured grudge against the institutes run by the petitioner-Trust and it employed all sort of practices and tactics to hurt the interest of the petitioner-Trust and the

institutes run by it.

2.7. One of the provisions aimed at curbing or controlling unhealthy competition is to be found under Rule 106(A)(10) of the Bombay Primary Education Rules, 1949. The said provision reads thus :

No new school will ordinarily be allowed to be opened in a locality if the authority recognizing the private primary school is convinced that it is likely to result in unhealthy and unfair competition with an existing school within a reasonable distance of 1.5 kms. If, as a consequences of starting of a new private primary school, any school already in existence in the same locality suffers a loss of more than 20 per cent in its enrollments, this would be considered as a positive proof of unhealthy competition.

2.8. The petitioner has alleged that by invoking provision under the aforesaid Rule, the respondent No. 6 started making concocted and false complaints and representations against the institutes run by the petitioner-Trust, particularly the above referred six schools and requested the authorities to cancel the registration/recognition of the said schools and de-recognized on the alleged ground of "unhealthy competition". The petitioner has alleged that in its attempt to distabilize the schools run by the petitioner-Trust, the respondent No. 6 took out proceedings before the respondent No. 1 by way of applications/representations and also challenged the orders passed by the respondent No. 1 granting recognition/registration in favour of the schools run by the petitioner-Trust. The petitioner has made reference of Special Civil Application No. 20475 of 2006 and Special Civil Application No. 21343 of 2006 wherein the respondent No. 6 challenged the orders granting recognition to the schools managed by the petitioner. The said petitions were disposed of by the Court by orders dated 25-9-2006 and 9-10-2006 directing the statutory authority to consider the representations of the petitioner i.e. present respondent No. 6 against the respondents in the said petition i.e. present petitioner. The petitioner has claimed that pursuant to the said orders passed by the Court in the said two petitions, the Competent Authority heard the parties and by his order dated 14-3-2007 rejected the grievance and representations/complaints of present respondent No. 6 and confirmed the orders granting recognition/registration to the schools of the petitioner.

2.9. It is further alleged by the petitioner that present respondent No. 6 felt aggrieved by the said order dated 14-3-2007, and that therefore, it preferred two writ petitions being Special Civil Application Nos. 11681 and 11682 of 2007 which were disposed of by the Court by common order dated 15-2-2010. The Court remanded the cases to the Competent Authority with a direction to consider the cases afresh, and thereafter, pass fresh order on or before 31-5-2010. The Court clarified that while passing the said order dated 15-2-2010 and set aside the order dated 14-3-2007, the Court had not entered into merits of the cases, but the matters were remanded only on the ground that the petitioner (i.e. present respondent No. 6) was not heard before the order dated

14-3-2007 was passed. It deserves to be noted that the present petitioner felt aggrieved by the said order of the learned Single Judge and preferred two Letters Patent Appeals viz. Nos. 1050 and 1051 of 2010 and challenged the said common order dated 15-2-2010. The said two Letters Patent Appeals were decided by the order dated 6-7-2007 wherein the Court observed as follows :

From the plain reading of Rule 106(A)(10), it is evident that the main question which is required to be seen for granting recognition is whether such recognition is likely to result into unfair competition with the existing school, situated within a reasonable distance of 1.5 kms. The question of unhealthy competition will arise, if two schools are equal. The said question will not arise amongst the unequal schools. For example, if a primary school is imparting education in Gujarati medium, it will not create any unhealthy or unfair competition with the one imparting education in English medium - which is not equally situated. It can only claim unhealthy, unfair competition, if two schools are imparting education in the same medium. If there is a difference in standard of two schools, in that case also, no unhealthy or unfair competition can be alleged. The question of refusal of recognition to a new, school would arise under Rule 106(A)(10) of the Rules, only when, as a consequence of starting of the new private primary school, any similarly situated school already in existence in the same locality suffers a loss of more than 20 per cent in its enrollments.

In the present case, the learned Single Judge has failed to take into consideration the fact that one of the schools in the present case is an English Medium school, whereas, the school run by the original writ petitioner 6th respondent herein is a Gujarati medium school. The learned Single Judge has also failed to decide whether the original petitioner suffered loss of more than 20 per cent of its enrollments - considering the admission of students in other school. If the students have left the old school to secure admission in some other newly recognized private school, which is at the distance of more than 1.5 kms., in that case also, such suffering of loss in enrollment cannot be put on the head of the newly recognized private primary school run by the 6th respondent-appellant.

2.10. In view of the controversy raised in present petition, it is relevant and appropriate to take into account the final observation and direction by the Division Bench in the said order dated 6-7-2010 by which the earlier L.P.As. were decided. In the said order dated 6-7-2010, the Court observed. "The learned Single Judge having failed to consider the issues aforesaid, we have no other option but to set aside the impugned common judgment and order dated 15th February, 2010 passed in Spl. C.A. No. 11681 of 2007 and Spl. C.A. No. 11682 of 2007. However, this order will not stand in the way of the original petitioner-6th respondent to make afresh application before the competent authority to reconsider the case of de-recognition of the other school, on the basis of criteria laid down under Rule 106(A)(10) of the Rules. In that case, the respondent will consider the same in accordance with law and the ratio laid down by us in the

preceding paragraph."

2.11. It comes out from the record that present respondent No. 6, feeling aggrieved by the aforesaid order dated 6-7-2010, carried in appeal before the Apex Court by way of Special Leave to Appeal (Civil) No. 1917 of 2010. The Apex Court, by order dated 3-1-2011 condoned delay in filing the appeal, however, expressed that there was no reason to interfere with the decision of the Division Bench remanding the matter. The respondent No. 6 was permitted to put before the authority that the petitioner and the respondent No. 6 both were managing schools imparting education in English Medium as well as Gujarati Medium.

2.12. It appears that subsequently, the respondent No. 6 preferred an appeal before the respondent No. 1 on or around 10-1-2011 and requested that the schools of the petitioner-Trust which impart education in English Medium, Gujarati Medium and Hindi Medium may be derecognized. The said appeal/representation made by the respondent No. 6 came to be allowed by the order dated 18/19-1-2011, which is impugned in present petition.

3. Heard learned Advocates for the respective parties. Rule. Mr. Rutvij Bhatt, learned Advocate wavier service of notice of Rule on behalf of the respondent No. 1, Ms. Krina Calla, learned A.G.P., wavier service of notice of Rule on behalf of the respondent Nos. 4 and 5 and Mr. Rushabh Shah, learned Advocate, waives service of notice of Rule on behalf of the respondent No. 6. With the consent of the learned Advocate appearing on both the sides, the petition is taken up for final hearing today.

4. We have heard the learned Counsel for the contesting parties and perused the record.

5. Ms. Rajpurohit, learned Advocate for the petitioner, submitted that the respondent No. 1, has in substance, allowed the appeal/representation made by present respondent No. 6 and has passed the impugned order mainly, on four grounds viz. (a) the schools of the petitioner-Trust are within distance of 1.5 kms. from the schools of the respondent No. 6, (b) there has been a decrease to the extent of 20% in the number of students in the schools of the respondent No. 6 and (c) less than 1.5 km. distance between schools of the two trusts coupled with the reduction of 20% of students from the schools of the respondent No. 6 are proof of unhealthy competition, and (d) one Mr. M.T. Shah, who signed the application for registration/recognition for the petitioner, was not authorized to prefer the application on behalf of the petitioner-Trust. She has, then, submitted that none of the reasons assigned by the respondent No. 1 are justifiable or in consonance with the facts or supported by material on record and the reasons are not sustainable on facts and law. She has also alleged that the copy of the appeal/representation filed by the respondent No. 6, after the Apex Court passed the order on 3-1-2011 (i.e. the appeal/ representation in respect of which the impugned order is passed) was not served on the petitioner and the impugned order has been passed without affording opportunity of hearing to the

petitioner. She has also submitted that there was no material before the respondent No. 1 to even presume, much less conclude that there was reduction in the number of students with the respondent No. 6, to the extent of 20% or more as alleged by the respondent No. 6. She has also submitted that the ratio laid down by the Division Bench pertaining to the construction of Rule 106(A)(10) has not even been considered, much less followed, by the respondent No. 1. She has also submitted that in any case, the schools of the petitioner-Trust which are imparting education in Hindi Medium were outside the purview of the earlier orders since in the previous matters/orders, any issue against the schools imparting education in Hindi Medium was never raised by the respondent No. 6. She has also submitted that in fact, there has not been reduction in number of students of the respondent No. 6.

6. Per contra, Mr. Shah, learned Advocate for the respondent No. 6, has while supporting the decision of the respondent No. 1, submitted that it is undisputed that the distance between the schools of the petitioner and schools of the respondent No. 6 is of 1.5 kms. or less. He also asserted that in view of the schools of the petitioner-Trust and the attempts of the petitioner-Trust, the number of the students in the schools of the respondent No. 6 has been reduced and the reduction is to the extent of 20% or more and that both the aspects conjointly would conclusively establish "unhealthy competition" by the petitioner-Trust, and that therefore, the order impugned in the present petition does not warrant any interference.

7. On perusal of the impugned order, it can be immediately noticed that there is no reference about the presence of the representative of the petitioner at the time of hearing i.e. the order does not reflect presence or absence of the petitioner's representative. Actually, from the said order, any reference about any notice of hearing which might have been issued and/or any reference about the date of hearing when the parties were heard, also does not emerge.

8. Furthermore, the order does not deal with any of the submissions which might have been made by the contesting parties, particularly by the petitioner, before the authority who passed the order.

9. Therefore, from the aforesaid aspects, there is reasonable ground to believe that before passing the impugned order after receiving the appeal/representation dated 10-1-2011 from the side of the respondent No. 6, the respondent No. 1 did not issue any intimation to the petitioner conveying the date of hearing and any opportunity of hearing do not appear to have been extended to the petitioner and any submission either regarding factual aspects or submission based on the construction of Rule 106(A)(10), by the petitioner, does not appear to have been taken into account before passing the impugned order.

10. The following discussion also would show that the petitioner's contention that the impugned order suffers from violation of principles of natural justice appears to be justified and is required to be sustained.

11. Even during the hearing before us, Mr. Bhatt, learned Counsel for the respondent No. 1, could not demonstrate from the order or even from the record of the respondent No. 1 and did not even assail that opportunity of hearing to the petitioner was granted after 10-1-2011, but before passing the impugned order.

12. It becomes clear from the reading of the order that after the order dated 3-1-2011 was passed by the Apex Court within about 15 days the impugned order came to be passed and the said order does not contain any details or reference about the submissions either by the departmental authority or by the respondent No. 6 and much less by the affected party i.e. the petitioner.

13. Despite such position, which is apparent on the face of the order, the respondent No. 6 has attempted to claim, in its reply-affidavit, that the respondent No. 1 had offered opportunity of hearing to the petitioner and hearing had taken place before the impugned order came to be passed.

14. It is pertinent that though it is not even the case urged by the respondent No. 1 or respondent No. 2 or respondent Nos. 4 and 5, the respondent No. 6, has in its affidavit, zealously made such a submission i.e. the submission claiming that respondent No. 1 did grant hearing to the petitioner. In that context, even if the said submission of the respondent No. 6 were to be considered for the sake of testing the submissions then it would fail in view of two apparent facts obtaining on the record viz.-

(a) the order does not contain any details about any dates of hearing or any date of notice to the parties or any reference about the presence of the petitioner or any details about any submissions made and/or documents submitted by the petitioner. Had any hearing actually taken place wherein the petitioner, as claimed by the respondent No. 6, was present and made submissions and also placed on record documents to support its case, then the order would definitely reflect such details; and

(b) in the 6th Paragraph of the impugned order it is specifically recorded that on 10-1-2011 i.e. after the Apex Court passed the order dated 3-1-2011 the respondent No. 6 had "presented fresh/new appeal" and it was in respect of the said new appeal/fresh appeal presented by the respondent No. 6 that the impugned order came to be passed and there is nothing on record to show that after 10-1-2011 any intimation/ notice of hearing was given to the petitioner and/or any hearing in presence of the petitioner had taken place after 10-1-2011.

15. There is also no material on record to even suggest, much less demonstrate, the presence of the petitioner before the Competent Authority for the purpose of hearing of the appeal or to suggest and demonstrate that the petitioner has submitted any material/documents in support of its case against the appeal by the respondent No. 6.

16. In its affidavit, the respondent No. 6 has stated that the respondent No. 1

had sent intimation to the petitioner and had also sent show-cause notice to the respondents and the petitioner, had in response to such intimation, appeared before the authority and filed documents and made submissions.

17. However, the intimations of which reference is made by the respondent No. 6 in its affidavit are of July, 2010 which means that they are of the date prior to 10-1-2011 when the respondent No. 6 submitted new/fresh appeal, and that therefore, the respondent No. 6 is not justified in claiming that the petitioner was heard before the impugned order was passed.

18. Besides this, it also deserves to be mentioned that even if the said submissions of the respondent No. 6 were to be considered and entertained for the sake of deciding its sustainability in light of the order and the material on record, then also the impugned order should fall and should fall with more force, for the reason that assuming, only for the sake of testing the submission, that the hearing (as alleged by respondent No. 1) did take place, then in that event the order must fail and fall since it does not contain any reference of such hearing and/or of the material allegedly placed before the Competent Authority by the petitioner and relied on by it during the alleged hearing before the respondent No. 1 and the respondent No. 1 has not dealt with any of the documents allegedly placed on record by the petitioner (as per the allegations of the respondent No. 6) and/or the submissions allegedly made (as per the allegation of the respondent No. 6) by the petitioner.

19. All the aforesaid aspects demonstrate that the impugned order is passed in violation of principles of natural justice and does not contain any reasoning or even discussion. Hence, it is not sustainable.

20. Besides this, if the history of the earlier petitions between the parties in respect of the same subject-matter is taken into account then it comes out that this is third round of petitions-litigation between the parties in respect of the same subject-matter and if the impugned order is examined in that backdrop then it would be difficult to consider and treat the impugned order as a "speaking and reasoned" order, more particularly in view of the specific directions to the respondent No. 1 vide order dated 6-7-2010 in Letters Patent Appeal Nos. 1050 and 1051 of 2010 (wherein the Division Bench specifically directed the respondent No. 1 that "the respondents will consider the same in accordance with law and the ratio laid down by us in the preceding paragraph"). This is another aspect coming out from the order which render the said order unsustainable as being in disregard to the specific direction by the Division Bench in the order dated 6-7-2010 in Letters Patent Appeal Nos. 1050 and 1051 of 2010.

21. All the above noted defects in the impugned order and foregoing discussion demonstrates that the impugned order is not sustainable, the impugned order is passed not only by totally disregarding the direction given by the Division Bench vide order dated 6-7-2010, it has been passed without taking into consideration

any of the relevant aspects involved in the matter and any of the aspects required to be taken into consideration in light of the provisions under Rule 106(A)(10).

22. It is pertinent that despite the fact that the authority who passed the order is impleaded in the proceedings as respondent No. 1, and although the Director of Primary Education is also party to the proceedings as respondent No. 4 along with the District Development Officer as respondent No. 2. None of the said authorities have entered their reply so as to contest the petition or to justify and support the order and it is the respondent No. 6 who has rushed to file reply and oppose the petition and support the order passed by the respondent No. 1, who himself has not said anything, by filing affidavit, in support of his order.

23. As noted earlier, the order does not discuss, much less deal with, any of the relevant aspects and does not even record any submission by either of the parties, if at all they were called and allowed to make submission. It is pointed out by the petitioner that the order dated 6-7-2010 passed by the Division Bench in Letters Patent Appeal No. 1051 of 2010 was carried to the Apex Court by the respondent No. 6 and the SLP was dismissed vide order dated 3-1-2011 and within short period of 15 days from the date of the order by the Apex Court, the Competent Authority after having being informed about the order dated 3-1-2011 passed by the Apex Court, proceeded to entertain "new appeal" (as expressly recorded in 6th Para of the impugned order dated 18/19-1-2011). The Competent Authority who passed the impugned order has purportedly relied upon certificate said to have been issued by the Deputy Executive Engineer certifying the distance between the school of the petitioner and school of the respondent No. 6 and on the certificate purportedly issued by the Competent Authority certifying the alleged reduction in enrollment of students in school of the respondent No. 6. Merely on the said two documents, without further examination and/or without considering any other aspect and without any discussion, the Competent Authority has passed the impugned order.

24. Besides this, it is also noticed from the order that the respondent No. 1 has recorded the conclusion that the distance between the school of the respondent No. 6 and the institutions/schools of the petitioner is less than the minimum distance i.e. 1.5 kms. contemplated by the aforesaid rule. In this context, it is relevant to note that the respondent No. 1 has relied on the certificate allegedly issued by the Deputy Executive Engineer, Vapi. Copies of the said certificates appear to have been submission before the respondent No. 1 by the respondent No. 6 and do not appear to have been obtained independently by the respondent No. 1. The copies of the said certificates are to be found in pages 113 to 122, which suggest that the distance between institutes/schools of the petitioner viz. National Primary School, Sarigam, Sarigam English Medium Primary School, Sarigam Hindi Medium Primary School and the schools/institutions of the respondent No. 6 i.e. Pragna Vidyaiaaya Gujarati Medium and Pragna Vidyalaya English Medium and Pragna Vidyalaya Gujarati Medium and Pragna Hindi

Vidyalaya is of about 750 metres. However, prima facie, it is difficult to comprehend, in absence of other detail as to how all these schools/institutions of the petitioner are at the same distance i.e. at the distance of 750 metres from the schools/institutes of the respondent No. 6. It is not clarified as to whether the schools/institutes of the petitioner are being run in the same building or though they are in different buildings, they are in adjoining buildings in the same compound/precinct or that they are so closely located that the distance between each one of them is the same i.e. 750 metres from the institutes/schools of the respondent No. 6. Such doubt arises in view of the fact that one certificate which is also purportedly issued by the Deputy Executive Engineer, Vapi, certifies that the distance between the schools/institutes of the petitioner which are situate in village Sarigam, Taluka Umargam and the institutes of the respondent No. 6 is of about 1.5 kms.

25. Whatever may be the reality and fact situation regarding the distance however, the point which emerges from the discrepancies and strikes at the first glance is that the respondent No. 1 has not at all addressed and dealt with the said aspects and particularly that two sets/types of certificates (both issued by Dy. Executive Engineer) are made available and both indicate conflicting facts - in the impugned order.

26. The foregoing discussion leaves behind the issue about the number of students enrolled with the respondent No. 6 and/or reduction of the number of enrollment of students with the respondent No. 6 and whatever the reduction was purely and only on account of the location and existence of the institutes/schools of the petitioner.

27. As observed in the order of Division Bench in L.P.A. No. 1501 of 2010, there could be various reasons for reduction of the number of students/enrollments in a school e.g. it could be deterioration in the standards of the school or it could be movement of the residents of the village or it could be pure and simple reason of drop outs (considering the area in which the schools are located) and such other reason.

28. However, for the purpose of passing any order in light of and by invoking the said rule, it would be necessary for the authority to satisfy itself about the fact that the sole reason for the reduction is the location of the other school and the said other school/s are at a distance of less than 1.5 kms. merely because reduction in the number of students occur in one school, it would not justify an order such as the order impugned in present petition and it cannot justify cancellation of registration of the other schools and it also cannot justify the inference, without there being any correlation and strong evidence, that the reduction is on account of the location and existence of the other schools at a distance of less than 1.5 kms.

29. The conclusion should be arrived at after taking into account relevant aspects and it should be based on judicious consideration and evaluation of relevant

aspects and after hearing the concerned party and the order must disclose the reasons and the base for the conclusion, which are apparently lacking in present case.

30. Besides the aforesaid defects in the impugned order, it is pertinent to note that the petitioner has placed on record the statements containing details of the number of students who, over period of time left the school/ institutions of the respondent No. 6 and joined the schools/institutes of the petitioner and from the said statements which are to be found from Pages 56 to 81 @ Page 57 and from the said statement it transpires that the total number of students (from 1st standard to 4th standard) who migrated from the school of the respondent No. 6 to the schools of the petitioner during the period between 2006 to 2011 are in all 16 out of total strength of 1,059 students in the said four classes of the respondent No. 6.

30.1. The petitioner has placed on record various tables containing the details of the names and numbers of the students in the schools of the respondent No. 6 who migrated to one school or another school of the petitioner. The tables are to be found at pages 56 to 81 of the paper book. The said details also indicate and establish that such data was neither collected nor called for and has not been considered by the authority before and while passing the order rejecting the registration of the schools of the petitioner and the conclusion recorded by the respondent No. 1 is not based on relevant consideration and/or it overlooks the relevant facts and details and is based on non-germane consideration. The details of the data mentioned by the petitioner in couple of such tables (out of various such tables submitted on record by the petitioner) are as mentioned below :-

Table showing the details of the students of Standard-I to IV of Pragna Vidyalaya who got admitted in petitioner's school Shri Sarigam English Medium Primary School :

Yr.

Std. I

Std. II

Std. III

Std. IV

Total

own

Pragna

Total

own

Pragna

Total

own

Pragna

Total

own

Pragna

Total

own

Pragna

Total

2006

-07

54

0

34

18

1

19

16

0

16

13

1

14

101

2

103

2007 -08

77

0
77
59
2
61
31
4
35
15
2
17
182
8
190
Yr.
Std. I
Std. II
Std. III
Std. IV
Total
own
Pragna
Total
own
Pragna
Total
own
Pragna
Total
own

Pragna

Total

own

Pragna

Total

2008 -09

62

0

62

68

3

71

63

1

64

36

0

36

229

4

233

2009 -10

51

0

51

67

0

67

72

0

72
38
0
58
248
0
248
2010 -11
12
3
0
12
3
86
1
87
61
1
62
59
0
59
329
2
331
36
0
36
29
7

305

243

6

249

18

3

184

108

16

1105

7

7

8

1

9

Table showing the details of standardwise yearly admission granted to the students from Pragna Vidyalaya in Shri Sarigam English Medium Primary School :

Year

Std.-I

Std.-II

Std.-III

Std.-IV

Total

2006-07

0

01

00

01

02

2007-08

0
02
04
02
08
2008-09
0
03
01
00
04
2009-10
0
00
00
00
00
2010-11
0
01
01
00
02
07
06
03
16

Table showing the details of the students of Standard-V to VII of Pragna Vidyalaya who got admitted in National Primary School :

Year

Std. V

Std. VI

Std. VII

Total

own

Pragna

Total

own

Pragna

Total

own

Pragna

Total

own

Pragna

Total

2000-01

33

0

33

0

0

0

0

0

0

33

0

33

2001-02

19
05
25
45
05
51
0
0
0
64
12
76
2002-03
12
02
24
31
01
32
52
0
52
105
03
108
2003-04
26
02
28
22

02
24
32
01
33
80
05
85
2004-05
31
06
37
41
0
41
37
01
38
109
07
116
2005-06
34
05
39
42
01
43
41
03

44
117
09
126
2006-07
55
11
66
45
0
45
55
05
60
155
16
171
2007-08
29
11
40
67
03
70
62
02
64
158
16
174

2008-09

40

04

44

44

02

46

69

0

69

153

05

159

2009-10

45

02

47

53

02

55

54

0

54

152

04

156

2010-11

40

0

40

56

0

56

58

0

58

154

0

154

37 4

49

423

446

17

463

460

12

472

1280

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31. Thus, on careful consideration of the impugned order, we are of the considered view and are convinced that the order is unsustainable because of the inherent defects discussed hereinabove earlier. We also find that there was no cogent material and scientific base before the authority to invoke the provision under the said Rule and to hold that there was unhealthy competition between the petitioner and respondent No. 6 because of the location and distance between the schools and that it was the sole reason for reduction, to the extent of 20%, in the number of students in respondent No. 6 as contemplated under the said Rule.

32. In such circumstances, the complainant and/or the authority would ordinarily plead for and the Court may consider the alternative of remanding the matter to the competent authority to decide it afresh after hearing the parties and after

considering all relevant aspects.

33. However, in present case, we are not inclined to take the said course of action because on earlier two occasions we followed the said course and the matter was remitted to the competent authority for fresh decision after considering all relevant aspects. On the second occasion, when the Court had to remit the matter, it was remitted with express direction that the competent authority shall consider the case "in accordance with law and the ratio laid down by us in the preceding paragraph", however, despite such express direction the authority did not consider the case in consonance with the said direction and passed the order in very casual manner.

34. Therefore, when we are satisfied and are of the considered view that the facts available on record do not justify or warrant the conclusion that all the institutes of the respondent No. 6 and all the institutes of the petitioner are so similarly situated that they constitute a comparable lot and there is no scientific data related to the schools/institutes of the petitioner and the respondent No. 6 which may lead to and justify the conclusion that the alleged reduction in number of students/enrollment with the respondent No. 6 is solely due to unhealthy competition between the petitioner and the respondent No. 6 and that therefore, the impugned conclusion and the order of the respondent No. 1 are not sustainable, we are not inclined to remit the matter to the competent authority since this is already third round of litigation between the parties, wherein the respondent No. 6 is steadfastly pursuing the singular goal of ousting the schools of petitioner from the area.

35. It appears appropriate that the petitioner and the respondent No. 6 should concentrate more on their principal activity of imparting education rather than consuming time, energy and money after litigation.

36. Thus, when we have noticed that impugned order is not a speaking order and it is passed in violation of principles of natural justice and there is no cogent and scientific and legally sustainable data or material to establish that the impugned reduction in enrollment of the students with the respondent No. 6 is on account of alleged unhealthy competition which in turn has resulted on account of the location and existence of the schools of petitioner, which, allegedly, are at less than 1.5 kms., we consider it appropriate to quash and set aside the impugned order. We order accordingly. Consequently, the impugned order stands quashed and the petition stands allowed to the aforesaid extent. Rule is made absolute to the said extent. However, there shall be no order as to cost.