

(2003) 09 GUJ CK 0024
In the Gujarat High Court

Case No : Special Civil Application No's. 6765 of 2003 and 11157 and 11158 of 2002

Sadhna Education Trus.

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 24-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Higher Secondary Education Act, 1972 — Section 33
Gujarat Secondary Education Act, 1972 — Section 33
Gujarat Secondary Education Regulations, 1974 — Regulation 9

Citation : (2003) 09 GUJ CK 0024

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : B.K. Oza in Special Civil application No. 6765 of 2003, Nanavati in Special Civil application No. 11157 of 2002 and Nanavati, in Special Civil application No. 11158 of 2002, for the Appellant; Joshi, Ld. AGP for Respondent Nos. 1-2 and Sejal K. Mandavia, in Special Civil Application No. 6765 of 2003, Joshi, Ld. AGP for Respondent No. 1 in Special Civil Application No. 11157 of 2002 and Joshi, Ld. AGP for Respondent No. 1 in Special Civil Application No. 11158 of 2002, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—Draft amendment granted in SCA No.6765/2003.

2. In all these petitions common challenge is to the order passed by the State Government for transferring the management of the School namely; Narsinh Vidhya Mandir, Junagadh to Saraswati Education and Charitable Trust. The petitioner of SCA No.6765/2003 is a Trust which is interested to take over the management of the School and, therefore, it has preferred the petition not only for quashing the order for transfer of management, but for directing the respondents to transfer the management to the petitioner. The other petition being SCA No.11158/2002 is preferred by the teachers of the said School for

quashing the order passed by the State Government for transfer of the management of the said School. The petition being SCA No.11157/2003 is preferred by the teachers of the other School, challenging the very order of the State Government for transfer of the management.

3. Having heard the learned Counsel for the petitioners, Mr.Oza and Mr.Buch for Nanavati Advocates and Mr.Joshi, learned AGP for the authorities and Ms.Mandavia for respondent No.3, it appears that initially when Junagadh Municipality was there (now converted into Corporation), the very impugned order of the State Government for transferring the management of the very School was challenged by preferring SCA No.11498/2000 and this Court (Coram: K.R.Vyas, J.), as per the decision dated 10-10-2001, for the reasons recorded in the said decision, has upheld the legality and validity of the said order. It may be stated that in the decision dated 10-10-2001 in SCA No.11498/2000 (Coram: K.R.Vyas, J.) the Court has observed as under:

"It appears that the petitioner Municipality issued a resolution dated 15-7-1960 as per Annexure requesting the State Govt. to run Shri Narsinh Vidyamandir for a period of 10 years. It also appears that the Govt. has accepted the said request. In affidavit-in-reply filed by the Under Secretary, Education Department, it has been pointed out that the term of Shri Narsinh Vidyamandir, Junagadh for administration of Government School had expired on 1-7-2000 and therefore, the Education Department vide letter dated 1.11.2000 instructed the Commissioner of Schools, Gandhinagar regarding handing over the administration and management of the Government School of Shri Narsinh Vidyamandir, Junagadh for five years to Shree Saraswati Education Charitable Trust, from Junagadh Municipality, Junagadh. This instruction and direction for action was issued to District Education Officer, Junagadh by the Commissioner of Schools, Gandhinagar vide letter dated 13.11.2000 for handing over the administration and management of Shree Saraswati Education Charitable Trust, Junagadh for five years. According to the said deponent, meanwhile, the present petition was preferred on 13.11.2000 and ad-interim relief was granted on 15.11.2000 which was received by the respondents on 14.11.2000, by that time the process of handing over the management was over on 13.11.2000. It has been further pointed out that the said school is a Government School and the administration of the same was handed over to the petitioner lastly on 1.7.1995 for five years and the said period of five years had expired on 1.7.2000. In this view of the matter, I am of the opinion that on the expiry of the term, the State Govt. is justified in taking over the administration from the petitioner Municipality. Regarding the contention that the petitioner is not heard before passing the order and therefore, the respondents have violated Section 33 of the Gujarat Secondary Education Act, I am of the opinion that that the said provision is applicable to taking over the administration of the registered private schools by the State Government, whereas in the present case, Shri Narsinh Vidyamandir is a Government School and the management of which was handed over to Junagadh Municipality and as the petitioner Municipality has failed in discharge of

its duty properly, the respondents authorities were justified in passing the impugned order. The said decision, as can be seen from the affidavit, is taken only in the interest of the students and for the enlistment of the standard of education in the aforesaid school."

4. Therefore, in my view, so far as the decision of the State Government for transfer of the management is concerned, the issue is fully covered by the decision of the coordinate Bench of this Court and challenge to the same cannot be accepted. Further, there is no dispute on the point that the earlier judgment dated 10-10-2001 passed by this Court (Coram: K.R.Vyas, J.) in SCA No.11498/2000 was challenged in LPA No.1158/2001 and initially it was admitted and stay was granted and subsequently the LPA was withdrawn and, therefore, also I find that in view of the decision and the judgement of the other coordinate Bench of this Court, it would not be possible for this Court to take any contrary view.

5. Mr.Oza made an attempt to submit under the instructions that the petitioners are also ready to take over the management of the School without payment of grant. I am afraid such contentions can be accepted on the basis of the view taken by another coordinate Bench of this Court and hence the said contention is rejected.

6. Mr.Buch and Mr.Oza, learned Counsel for the petitioners, also submitted that the basis of the order of this Court (Coram:K.R.Vyas, J.) is that the School is a government school, whereas the learned AGP submitted that as such it is a government school. I find that even if this Court has to consider the contention raised on behalf of the petitioners as to whether the school is a government school or not, sitting in the other coordinate Bench of this Court, it may not be possible for me to take a contrary view as to dilate or to nullify the effect of the observations made by this Court in the aforesaid decision in SCA No.11498/2000.

7. So far as the other prayer for transferring the management of the School to the petitioner Trust is concerned, it has been submitted by Ms.Mandavia that similar issue in respect of the other School of Junagadh Municipality was considered by the coordinate Bench of this Court (Coram: K.A.Puj, J.) in Sacs No.5090/2003 and No.5092/2003 in the case of "Raj Education & Charitable Trust vs. State of Gujarat through Secretary" dated 21-7-2003, and the Court has not interfered with the decision of the State Government to transfer the management and the Court has also not entertained the prayer for taking over of the management by the petitioner Trust therein. Mr.Buch made an attempt to submit that it was on account of the financial capacity of that petitioner Trust the Court did not consider the same and, therefore, he submitted that the matter can be examined further by this Court and it cannot be said that the question is concluded. If the observations made at para 14 of the said judgment of this Court in the case of "Raj Education & Charitable Trust vs. State of Gujarat through Secretary" in SCA No.5090/2003 are considered, it reads as under:

"14. I have heard the learned advocates appearing for the respective parties and I have also considered the submissions made and contentions raised on their behalf. I have also given my anxious thoughts to the impugned order dated 8.11.2001 and other orders passed in earlier two petitions filed by the Junagadh Municipality. The very foundation of Mr.Mehta's argument that the respondent No.5 school is a private school run by the Junagadh Municipality is not accepted in view of the fact that the said school originally belonged to the King of Junagadh before independence and on his migration to Pakistan the management of the school came to be vested in the State Government and the State Government in turn has entrusted the management to the Nagarpalika. Thus, it cannot be termed as a private school and hence the provisions contained in Regulation 9 of Secondary Education Regulations 1974 are not applicable. Even Section 33 of Gujarat Higher Secondary Act, 1972, on which the reliance was heavily placed by Mr.Mehta, is applicable only to any private secondary school and hence the said provisions are required to be followed at the time of taking over the management of any private school. Since the respondent No.5 is not the Private Secondary School, there is no question of invoking the provisions contained in Section 33 of the Act. Mr.Mehta's further argument that the Government should not act arbitrarily in transferring the management of the respondent school to the respondent No.4 trust, is also not accepted, in view of the fact that there is no doubt or dispute about the capacity of the respondent No.4 trust. The said trust has got its own reputation and prestige, not only in the field of education but also in the field of other social services. The figures given in the affidavit-in-reply and the pamphlets and brochures attached therewith and the work that has been done by the respondent No.4 trust itself speaks volumes about the capacity and efficiency of the respondent No.4 trust. If the management of the respondent No.5 is given to such a well-renowned trust, it cannot be said that the State Government has taken any arbitrary or unlawful decision. At the time when the impugned order was passed the application of respondent No.4 was very much pending before the State Government and the petitioners have come in the fray only after the petition filed by the Junagadh Municipality was withdrawn or about to be withdrawn. The petitioner has not produced anything on record which even remotely appeals to this Court to consider its case for the purpose of transferring the management of the respondent No.5 school to the petitioner trust. Even if it is assumed that both the trusts have filed these two separate petitions before this Court showing their genuine desire or inclination to get the management of the respondent No.5 school, that by itself however, is not sufficient to pass any order in their favour in view of the competence and the very strong and convincing public record shown by the respondent No.4 trust. Since this Court is of the view that the State Government has taken the decision in the best interest of the students at large, and also for furtherance of the very broad object of education, this Court does not think it fit and proper to interfere in the said order, while exercising the extraordinary writ jurisdiction under Article 226 of the Constitution of India. None of the contentions raised by the petitioners in the present petitions is having

substance or merit and hence both the petitions are rejected. Notice is discharged in each of these petitions, without any order as to costs."

Therefore, I am of the view that sitting in the other coordinate Bench of this Court, it would not be possible to take a different view and in view of the reasons recorded for the purpose of considering the case of hand over of the management, the prayer of the petitioner cannot be accepted.

8. Therefore, the present petitions deserve to be dismissed and dismissed accordingly. Rule discharged. Ad-interim relief stands vacated.

9. Mr.Oza and Mr.Buch requested for continuation of the ad-interim relief for some time. Considering the facts and circumstances of the case, ad-interim relief granted and continued earlier shall continue till 6-10-2003.