

(1981) 07 GUJ CK 0025
In the Gujarat High Court

Sarvoday Kelavani Mandal

APPELLANT

Vs

Gujarat Secondary Education Board and Others

RESPONDENT

Date of Decision : 03-07-1981

Acts Referred:

Gujarat Secondary Education Act, 1972 — Section 31, 31, 48, 48

Citation : (1982) GLH 404 : (1982) 2 GLR 159

Hon'ble Judges : B.K. Mehta, J

Bench : Single Bench

Judgement

B.K. Mehta, J.—An unfortunate and unseemly controversy is raised by this petition purported to have been made under Article 226 of the Constitution by the petitioner-trust which runs and manage a Higher Secondary School known as Shree Nutan Vidyalaya at village Bhalak in Visnagar taluka of Mehsana district. It is an admitted position that village Bhalak has a population of about 5000 persons. There is a small hamlet of Laxmipura near village Bhalak, though the former is not a revenue village. The students aspiring to prosecute studies in higher secondary schools from Laxmipura were going to Bhalak where again it is an admitted position that there are four higher secondary schools. The controversy reflected in this petition has arisen because one another Trust, which is respondent no. 4 before me, was running and managing one primary school at village Laxmipura and in order to facilitate the students of said primary school in prosecuting their further education in secondary school, decided to start Standard VIII, which is part of secondary education in school known as Shree Ratnakar Vidyalaya, Laxmipura. In order to establish a secondary school, the Trust has to obtain registration u/s 31 of the Gujarat Secondary Education Act, 1972, by making proper application in that behalf to Gujarat Secondary Education Board at Gandhinagar constituted u/s 3 of the said Act. The respondent Trust therefore, accordingly made an application to the Gujarat Secondary Education Board—respondent No. 1 herein, on 27-11-1979. The Gujarat Secondary Education Board on consideration of the relevant criteria prescribed under the Regulations made in that behalf, refused to grant

registration by its decision taken in the meeting of its Executive Committee held on March 20, 1980. It should be noted at this stage that the petitioner Trust on learning that the respondent No. 4 Trust has applied for registration filed its objections by letter of March 20, 1980, addressed to the Secretary of respondent No. 1 Board, setting out inter alia that respondent no. 4 Trust could not be granted registration as it did not satisfy the criteria prescribed in the Regulations and in any case it would appreciably reduce the numbers of students at the school of the petitioner Trust and would also affect the services of some teachers. Respondent no. 4 Board, therefore, by its letter of May 19, 1980, intimated the President of the petitioner Trust that the Executive Committee of the Board has, on consideration of the personal representation as well as the memorandum of objections, decided to refuse registration to the school of respondent no. 4 Trust. Being aggrieved by this decision of the Board, respondent no. 4 Trust went in appeal u/s 31(10) of the Gujarat Secondary Education Act, 1972 before the State Government. It is an admitted position that the Deputy Secretary in Education Department of the State of Gujarat, who heard the appeal, by his order of August 16, 1980 dismissed the appeal and confirmed the decision of the respondent No. 1 Board refusing to grant registration to respondent no. 4 Trust. It appears that respondent no. 4 Trust made a fresh representation to the State Government, which decided to review its earlier decision and grant registration, on September 6, 1980. Meanwhile a development which is of some significance should also be referred to. A press note issued by the District Education Officer, Mehsana, appeared in the daily newspaper Jana Satta bearing the date line of September 13, 1980 stating that Ratnakar Vidyalya, Laxmipura was refused registration by Gujarat Secondary Education Board and the guardians of the students studying in the said school were advised to admit their wards in some other recognised school. A newspaper report, however, appeared in Jana Satta saying that Ratnakar Vidyalaya, Laxmipura, had been granted registration by the State Government by its decision of September 6, 1980. It is not clear in which issue of Jana Satta this news item appeared but it is clear that since it refers to the earlier press note of District Education Officer of Mehsana dated September 13, 1980, the insertion must be subsequent to that date. It is surprising that how the District Education Officer, who issued the press note which appeared in the issue of Jana Satta of 13th September was unaware of the decision taken by the State Government on September 6, 1980 for granting registration to the school of respondent no. 4 Trust. It is this decision of the State Government according registration to school of respondent no. 4 Trust which aggrieved the petitioner Trust. It, therefore, moved this Court for a writ of mandamus or any other appropriate writ, order or direction for declaring the impugned decision of the State Government as void ab initio and for setting aside the grant of registration to Ratnakar school.

2. At the time of hearing of this petition, a preliminary objection was raised on behalf of the State Government that the petitioner has no right to pray for a writ of mandamus or any other writ in the nature of mandamus since it is only the

person whose right has been infringed that can apply for such writ. In support of this objection, the learned Asstt. Government Pleader, relied on the decision of the Supreme Court in *Jashbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, . It is axiomatic to say that a petition for writ in nature of mandamus can be filed by an aggrieved party. It is no doubt trite position of law that a mandamus can only issue if public officer is under a duty in favour of applicant and the applicant has legal right to enforce such duty, (vide *Maganbhai Ishwarbhai Patel etc. Vs. Union of India (UOI) and Another, and State of Andhra Pradesh Vs. Duvvuru Balarami Reddy*, . Who is an "aggrieved person" competent to move the court under Article 226 for a writ of certiorari, was considered in *Jashbhai's* case (supra) and the Supreme Court speaking through Sarkaria J. ruled that its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. The court in *Jashbhai's* case was concerned with the right of a proprietor of cinema theatre holding licence for exhibiting cinematographic films to invoke the certiorari jurisdiction *ex debito justitiae* for quashing and setting aside no objection certificate granted under Rule 6 of Bombay Cinema Rules, 1954 by the District Magistrate in favour of a rival in the trade. The Supreme Court having regard to the Bombay Cinema Regulations Act, 1953 and the Bombay Cinema Rules, 1954 which are not designed to set norms of moral or professional conduct for the community at large or even a section thereof and they merely regulate the exercise of private rights of an individual to carry on a particular business on his property, construed the expression "person aggrieved" strictly. It cannot be gainsaid that the Gujarat Secondary Education Act, 1972 and the Gujarat Secondary Education Regulations, 1974, are designed to set norms and standards in the field of secondary education and for the conduct and regulation thereof, in the interest of the community at large. The constitution of the Gujarat Secondary Education Board u/s 3 and powers and duties of the Board prescribed u/s 17, which inter alia include the obligation of the board to advise the State on matters of policy relating to secondary education in general and on matters particularly for evolution of suitable pattern of secondary education, prescription and maintenance of educational standards, integration of national and State policy in respect of secondary education and matters pertaining to education planning, programme and organisation, go clearly to show that it is with a view to evolve consistent pattern of secondary education in the State in the national perspective. The power of the Secondary Education Board u/s 17 to grant registration to secondary schools leading to Secondary School Certificate Examination and to withdraw registration of such schools either in whole or in part, also reveals the anxiety of the State Government to regulate the establishment and running of secondary schools according to certain norms and standards in the interest of the community at large. The relevant procedure for according registration to the secondary schools is prescribed in Chapter IV of the Gujarat Education Regulations, 1974. Clauses 15, 16 and 17 inter alia provide

the guideline for the Board for the purposes of deciding whether registration should be accorded or not. The first principle which the Board has to bear in mind is that it should not permit a new school to be opened unless it is satisfied that it would fulfil the felt need of the locality concerned, and the body proposing to start a new school has to furnish convincing proof in that behalf. The second principle which the Board has to keep in mind is that ordinarily no new school should be permitted in a locality if it is likely to result in unhealthy and unfair competition with an institution situated within reasonable distance from the proposed school. The reasonable distance in the rural areas is ordinarily prescribed to be of 5 Kms. The latter part of 01.16 which raises conclusive presumption that there would be unhealthy competition if 20 of the students enrolled with an existing school is diverted to the proposed school and that Board on that basis alone should refuse to recommend for grant to a new school. Clause 17 provides for the unit of population justifying the need of a new school. The unit prescribed is population of 3000 persons. The latter part of Clause 17 imposes an obligation on the sponsors of a new school in an area which is already started with the existing schools to justify their proposal on stronger grounds. However, it is not to be insisted upon any areas having Adivasi or backward class population. However, in such areas also the principle of reasonable distance of 5 Kms., which is to be borne in mind under Clause 16 is not departed from. It is in this context, therefore, that I have to consider whether the petitioner Trust, which has an existing school in the area, can be said to be an aggrieved person in the light of settled legal position in that behalf. It cannot be urged, without violence to the language, that the petitioner Trust is a stranger or a busy body and is not entitled to move the court for appropriate writs or directions. It is a party which is already running and managing an existing school in the area and if the respondent no. 4 Trust is proposing to start a school at a distance of 3 Kms. and if in the radius of 5 Kms. from the proposed school as many as four existing schools are there, the respondent no. 4 Trust has to justify its proposal on very strong reasons. The petitioner Trust filed its objections before the Secondary Board which had given hearing to the representatives of that Trust and intimated about its decision of not according registration to the respondent no. 4 Trust. I am of opinion that having regard to the Secondary Education Act, 1972 and the Regulations of 1974, the term "aggrieved person" should not be construed in the limited sense and on the facts and circumstances of the case, the petitioner Trust must be held to be an aggrieved person. The preliminary objection, therefore, deserves to be rejected.

3. The second question which, therefore, arises is whether the State Government is entitled to review its decision in appeal since it is an admitted position that the appeal preferred by respondent no. 4 Trust was, rejected by the State Government. The result of the dismissal of appeal of respondent no. 4 Trust was that the registration was refused to be granted for the new school which had already commenced functioning. The respondent no. 4 Trust, therefore, made a representation to the State Government, to reconsider its decision, particularly in

view of the fact that the career about 37 students who were enrolled in the school in standard VIII was at stake. It should be noted at this stage that out of 37 students, there were as many as 22 girl students enrolled with the said school of respondent no. 4 Trust. This fact is disclosed in the affidavit-in-reply filed by the respondent no. 4 in this petition. The State Government, therefore, reconsidered its decision and decided to grant registration to the proposed school of respondent no. 4 Trust. The learned advocate for the petitioner Trust assails this decision on two grounds. In the first place, it has been urged that the State Government has no power to review its decision in appeal. The second ground is that in any case, the State Government could not have reconsidered its decision without giving an opportunity to the petitioner Trust to make its submission since it was affected by the school set up by respondent no. 4 Trust. I am of the opinion that the petitioner Trust is on firm grounds, in so far as the second contention is concerned. It is difficult for me to agree with the learned advocate for the petitioner Trust that the State Government cannot reconsider its decision in appeal. Section 48 of the Gujarat Secondary Education Act, 1972, empowers the State Government to issue to the Board such directions as it may consider necessary after considering the advice, if any, tendered by the Board, in regard to all or any of the matters specified in Section 17. It is under Clause (17) of Section 17 that the Secondary Education Board accords or refuses registration to secondary schools for teaching such subjects in Standard VIII and onwards leading to Secondary School Certificate Examination. u/s 31 of the said Act, before a person can impart secondary education through a school, it is necessary for him to be registered under the provisions of the Act. An application is to be made by such person under Sub-section (4) of Section 31. The Board has to consider and make an inquiry in respect of every such application for registration in such manner as may be prescribed and then to decide within a period of three months from the date of receipt of the application by the Board. This is provided in Sub-section (6) of Section 31. In Sub-section (9), the Board has been empowered to remove the name of any school registered with it for committing any default in carrying out any of the obligations imposed on such person under the Act or the Regulations or instructions issued by the Board after giving an opportunity to such management. Under Sub-section (10) of Section 31, any person aggrieved by the decision of the Board in the matter of grant of recognition under Sub-section (6) or in the matter of removal from register under Sub-section (9) is given a right to file an appeal to the State Government and the State Government's decision in the said appeal has been made final. The power of the State Government u/s 48 is an overriding power to issue directions and, therefore, if the State Government has decided an appeal, that decision will not operate as *res judicata* so as to preclude the State Government from reconsidering its decision. In that view of matter, therefore, the contention of the learned advocate for the petitioner Trust is not well founded and it should be rejected. However, the pertinent question remains whether the State Government having once decided to refuse to grant registration to the respondent no. 4 Trust by dismissing its appeal, can reconsider the decision

without giving an opportunity to the petitioner Trust, on whose objection the Board had refused registration and which decision has been confirmed by the State Government in appeal. In the circumstances, therefore, it was necessary for the State Government to give an opportunity to the petitioner Trust to make its submission in that behalf. It should be stated here that from the file of the Board which was shown to me by the learned advocate Mr. Shelat that the Board has reported to the Secretary in the Education Department of the State of Gujarat by its letter No. MBS/N.S/. 80-81 G-I/ Appeal/6868 dated 22/24-7-80, the reasons which had weighed with the Board for refusing registration to respondent no. 4 Trust, which included the objections and submissions made by the representative of the petitioner at the time of the personal hearing. The State Government, was, therefore, aware that the petitioner Trust has a vital interest in the matter. The State Government therefore could not have decided to reconsider its decision and grant registration to the respondent no. 4 Trust without giving any opportunity to the petitioner Trust to make its submission in that connection. To the extent to which the State Government has failed to afford an opportunity to the petitioner Trust, its decision to review its earlier decision in appeal refusing to grant registration, is contrary to the principles of natural justice and fair play. The impugned decision of September 6, 1980 is, therefore, liable to be quashed and set aside.

4. A further question would arise as to what should be the directions in the matter. I am of opinion, having regard to the facts and circumstances of the case, particularly those pointed out in the affidavit-in-reply of the respondent no. 4 Trust that the State Government should consider the matter afresh, after giving opportunity of hearing to the petitioner as well as respondent no. 4 Trust and decide the question whether registrations could be granted to respondent no. 4 Trust or not. There is an added reason for this view of mine. The reason is that even the decision of the State Government in appeal preferred by respondent no. 4 Trust against the decision of the Board refusing registration was made ex parte without giving any opportunity to respondent no. 4 Trust to substantiate the compulsion of the circumstances for establishment of new school. It is, therefore, in the fitness of things that the State Government should consider the matter afresh. A further question will also arise as to what is to happen to the registration which has been accorded to respondent no. 4 Trust in the interregnum period till the Matter is finally decided by the State Government as directed in this order.

5. I am of opinion that having regard to the fact that respondent no. 4 Trust has opened new class of Standard IX over and above one class of St. VIII with which it started the school, it is in the interest of justice that situation be not disturbed till the matter is finally decided by the State Government. In that view of the matter, therefore, the impugned decision of the State Government of September 6, 1980 is quashed and set aside and the matter is remanded to the State Government in Education Department for deciding the matter afresh according to well settled legal principles after giving opportunity to the representative of the

petitioner as well as respondent no. 4 Trust to substantiate their rival cases and during that period, the registration granted to respondent no. 4 Trust be not disturbed till the matter is finally decided by the State Government. The State Government shall decide the matter within 8 weeks from the receipt of writ from this Court. Rule is made absolute accordingly with no order as to costs.