

(2005) 03 GUJ CK 0090

In the Gujarat High Court

Case No : Special Civil Application No. 18141 of 2003 with Miscellaneous Civil Application No. 72 of 2005 in Civil Application No. 8446 of 2004

Shishu Jyot Kalyan and Kelavani Trust

APPELLANT

Vs

Gujarat Secondary Education Board

RESPONDENT

Date of Decision : 14-03-2005

Acts Referred:

Gujarat Secondary Education Act, 1972 — Section 17, 31, 31(1), 53

Gujarat Secondary Education Regulations, 1974 — Regulation 10(2), 10(3), 9, 9(7)

New Secondary School Certificate Examination Regulations, 1975 — Regulation 26, 27

Citation : (2005) 03 GUJ CK 0090

Hon'ble Judges : M.S. Shah, J;D.H. Waghela, J

Bench : Division Bench

Advocate : Yatin Oza and N.K. Majmudar, for Petitioner Nos. 1-3 in Special Civil application No. 18141 of 2003, for the Appellant; A.D. Oza, in Special Civil Application No. 18141 of 2003, for the Respondent

Final Decision : Allowed

Judgement

M.S. Shah, J.—This petition was initially heard by a learned Single Judge, but by order dated 5.3.2003, the learned Single Judge expressed the opinion that in view of various decisions of the Apex Court on the question of permitting or not permitting the students to appear at the public examination when the institution (where the students have been imparted instructions) is unregistered or unrecognized by the public examination body like University or Secondary Education board, the matter was required to be heard by a Larger Bench. Since the entire petition has been placed before us alongwith the interlocutory applications, after having heard the learned counsel for the parties, we proceed to decide the petition and the interlocutory applications.

2. The facts leading to institution of these proceedings, briefly stated, are as under :-

2.1 Petitioner No. 1-Shishu Jyot Kalyan and Kelavani Trust and its Managing

Trustee (hereinafter referred to as "the petitioners"), have filed the present petition. The petitioner-trust runs the following institutions :-

Medium Standard Since (i) Rachna Primar Gujarati I to VIII June 1991 School (ii) Rachna Secondary Gujarati VIII to X June 1995 School (iii) Rachna Primary Hindi I to VIII June 1992 School (iv) Rachna Secondary Hindi VII June 1997 School IX June 1998 X June 2004

There is no dispute about the first three schools run by the petitioners; as they are registered by the respective regulatory bodies being the Administrative Officer, Primary Education Committee of the Ahmedabad Municipal Corporation for the two primary schools and Gujarat Secondary Education Board for the Gujarati medium secondary school. The controversy in the present petition only centers around the fourth institution i.e. Rachna Secondary School (Hindi Medium). It is, however, necessary to refer to the relevant facts about the establishment of the other three institutions also in view of the contentions raised in the petition.

2.2 In June 1995, the petitioner-trust was granted permission by the Gujarat Secondary Education Board to establish Rachna Secondary School (Gujarati Medium). One of the conditions of the said permission was that the petitioner-trust was to deposit Rs.2 lakhs as security deposit for showing the financial stability of the trust. The trust deposited the said amount of Rs.2 lakhs on 6.12.1996. The trust which was already running Rachna Primary School (Hindi Medium) with students in Stds. I to VII found that there was a need for establishing a Hindi medium secondary school for students passing out from its Hindi medium primary school. Accordingly, the trust applied for permission for establishing a Hindi medium secondary school. By communication dated 23.4.1997 (Annexure "A"), the petitioner-trust was granted permission by the Gujarat State Education Board to establish a Hindi medium secondary school from June 1997 subject to the condition that the trust files an undertaking and a deed of declaration on a permanent basis not to take grant. It also appears that subsequently by letter dated 28.4.1997 the Board also required the petitioners to deposit a sum of Rs.2 lakhs with a bank in the joint names of the District Education Officer and the trust.

2.3 In response to the above communication, by letters dated 15.9.1997 and 21.12.1997 (Annexure "B" and "D"), the Managing Trustee informed the Board that the trustees had already finalized the deed of declaration, but some time would be required for making the deposit in the joint account and, therefore, time may be granted; the delay may be excused considering the fact that it was an educational institution managed by a trust run by persons of scheduled castes. By letter dated 15.10.1999 (Annexure "D"), the Managing Trustee again informed the DEO that the deed of declaration was ready, but some time was still required for collecting the funds to the tune of Rs.2 lakhs. Since the aforesaid assurance was not acted upon, by letter dated 29.10.1999, an officer in the office of the DEO called upon the petitioners to deposit the amount of Rs.2 lakhs

in the joint account and to obtain registration from the Board, failing which necessary procedure will be followed as per the Rules.

2.4 It appears that thereafter, however, the petitioners requested the Board to transfer the deposit of Rs.2 lakhs made by the petitioners for the Gujarati medium secondary school on 6.12.1996, as the deposit for the Hindi medium secondary school. This request was made through the letters dated 28.9.2000, 2.12.2000 and 20.10.2002 (Annexure "G" colly.). It appears that the said letters were based on a Government circular. There was no response to the said letters, but ultimately by letters dated 4.8.2003 and 10.8.2003 (Annexures "H" and "I" respectively), the school management informed the DEO that the management was forwarding the deed of declaration and that for depositing the amount of Rs.2 lakhs in the joint account, necessary endorsement may be made on the bank form. The said request was acceded to and on 11.8.2003 the petitioner trust deposited an amount of Rs.2,25,299/= in a fixed deposit receipt with Dena Bank in the joint name of Rachna Hindi Vidhyalaya (Ganpatbhai J Parmar) and the DEO for a period of 24 months. The petitioners have produced a photostat copy of the fixed deposit receipt at Annexure "J" alongwith the bank certificate of even date to that effect. The amount deposited in the fixed deposit receipt could be withdrawn only with the joint signatures of the President of the trust and the DEO.

2.5 However, in the meantime the DEO required the petitioners to submit any letter showing whether the registration of the school was continued or renewed. In view of such query, the petitioners requested the Secretary of the Board by letter dated 30.7.2003 (Annexure "H") to continue/renew the permission so that the future of the students does not suffer. The petitioners also requested the Board to consider performance of the school which had started the classes in the Hindi medium from June 1997 after getting permission. The petitioners also requested the DEO on 7.10.2003 (Annexure "K") to do the needful and to submit a report to the Board. Necessary documents such as the proposals for additional classes of Stds. VIII and IX and school progress report were also submitted. Details as under were given about the number of classes and divisions.

Standard No. of Divn. Started in VIII 1 June 1997 VIII 1 1998-99 VIII 1
1999-2000 IX 1 1999-2000

The position continued in the next academic year 2000-01 in which the proposal was also made for a second division of Std. VIII. The same position continued in the next two academic years 2001-02 and 2002-03 in which fresh proposal was also made for a second division of Std. IX. In the year 2003-04, the school had two divisions in Std. VIII and one division in Std. IX.

The petitioners specifically mentioned in the aforesaid communication that the school was in a very backward area of poor labour class and backward classes of people speaking Hindi and mixed groups required such a secondary school in the area. The number of students in the school was increasing. Rachana Primary

School in Hindi medium (Rachna Hindi Vidhyalaya) having students of Stds. I to VII with 18 divisions was running from June 1992 which fact was also required to be taken into consideration.

2.6 It was only on 17.12.2003 (Annexure "L") that the DEO informed the petitioners that the request for transfer of deposit (from Gujarati medium to Hindi medium) cannot be granted. Thereafter by letter dated 22.12.2003 (Annexure "M") the Secretary of the Board informed the Managing Trustee of the petitioner trust that the trust was granted permission to establish a secondary school in Hindi medium from June 1997 as non-grantable school, but the deed of declaration and the certificate of having opened a joint account as required by the Rules were not submitted inspite of reminders and, therefore, by the Board letter dated 17.8.1998, the permission letter dated 23.4.1997 was cancelled. The Secretary, therefore, rejected the request for continuation/renewal of permission as made in the petitioners' letter dated 30.7.2003 (Annexure "H") and also informed that legal action will be taken for starting an unregistered school.

3. Thereupon the petitioners filed the present petition challenging the aforesaid communications dated 22.12.2003 and 17.8.1998 referred to therein, with a specific averment made in the petition that the aforesaid communication dated 17.8.1998 was not received by the petitioners or its trustees. Contentions were also raised in the petition about absence of opportunity of hearing and reliance was also placed on the Government Resolutions dated 1.10.1997 and 28.8.1998 (Annexures "E" and "F") of the State Government in the Education Department as applicable to the non-grantable schools. It was contended on the basis thereof that a non-grantable school in urban area was required to make a deposit of Rs.2 lakhs, but such deposit was to be made only initially and was required to be continued only for a period of two years and if the school was run and managed properly, the deposit may be permitted to be withdrawn after two years (clause 1 of the Govt. Resolution dated 28.8.1998). Reliance was also placed on clause 11 of the said resolution stating that once a non-grantable school is granted permission, no prior permission was required for additional divisions of the same standard or for having further progressive classes, but the concerned DEO and the Joint Director of Education, Gandhinagar shall be informed within 30 days from the date of commencement of new class. Similarly for commencing Std. X class, the Secondary Education Board would have to be informed in accordance with the Rules. The petitioners, therefore, contended that the petitioners were justified in contending that the deposit of Rs.2 lakhs made for the Gujarati medium school in December 1996 was required to be treated as deposit for the Hindi medium school from December 1998 onwards.

4. When the petition was taken up for preliminary hearing on 26.12.2003, the following order was passed :-

"On condition that the petitioner deposits a sum of Rs.2 lakhs with the respondent Board by December 31, 2003, Notice returnable on January 12, 2004.

Till then, there shall be ad-interim relief in terms of para 8(E) on page No. 36."

By the said ad-interim order, the Court restrained the respondent authorities from discontinuing the petitioners from imparting education to its students in the Gujarati Medium Secondary School as well as in the Hindi Medium Secondary School.

5. Affidavit in reply came to be filed by the Secretary, Gujarat Secondary and Higher Secondary Education Board, stating that since the petitioner trust had not complied with the conditions of giving the deed of declaration and deposit of Rs.2 lakhs inspite of sufficient opportunities given to the petitioner trust, the permission was cancelled by order dated 17.8.1998. Since the petitioner did not comply with the conditions of the permission letter, there was no registration of the school by the Board and, therefore, without registration of the school, the petitioners could not have started classes. The school had not requested the Board for transfer of deposit from Gujarati medium to Hindi medium and that such request made to the DEO was of no avail. The school was granted permission only to run one class of Std. VIII and the school illegally started running two classes of Std. VIII and one class of Std. IX. The petition was also opposed on the ground of delay. In the subsequent affidavit dated 18.10.2004 filed by the Secretary of the Board, it was further stated that the officer of the Board had acted in collusion in calling upon the school management in the year 1999 to give the deposit of Rs.2 lakhs.

6. It appears that the petition remained pending before the learned Single Judge at the admission stage and the ad-interim relief was continued. The petitioner trust filed Civil Application No. 8446 of 2004 on 15.10.2004 stating that the Hindi medium secondary school of the petitioner trust had commenced Std. X and students were admitted to Std. X in June 2004; that their examination forms were required to be accepted by the Board for the SSC examination to be held in March 2005 and, therefore, appropriate interim directions were prayed for in this behalf.

6.1 The Board thereupon took strong exception to the commencement of Std. X without obtaining prior permission of the Board and submitted that such students who had not taken instructions in a registered school cannot be permitted to appear at the Board examination. It was stated that even there was no prior permission to run Stds. IX and, therefore, such students cannot be permitted to appear at the Std. X examination.

6.2 In the said Civil Application, the Court passed the following order on 3.1.2005 :-

"The applicants are directed to approach the appropriate Officer of the respondent Board with all the relevant documents of the students, including the Admission Forms, Admission Fee Receipts, Attendance Registers etc. in order to ascertain as to whether the students who are claiming to be studying in the applicant school, are studying with the said school, right from the beginning or

not. After verifying the documents of the students, they shall be admitted to the nearby recognized School/s. On this specific understanding, the students shall be permitted to appear in the 10th Standard Examination conducted by the respondent Board.

2. The applicant School shall produce documents as aforesaid before the appropriate Officer of the respondent Board during the course of the day i.e. on or before 6 p.m. today. The said students shall attend the classes of the new School/s regularly and on attending the classes for the required number of days as required by the Rules of the respondent Board, they shall be permitted to appear in the 10th Standard Examination which shall be subject to the Rules of the respondent Board."

The aforesaid order was passed in view of the undertaking that the school will not run Std. X class and will not grant any admissions to the said class without obtaining prior permission. It was made clear that the aforesaid exercise was to be undertaken subject to the result of the petition.

6.3 In compliance with the aforesaid order, the Managing Trustee of the petitioner school appeared before an officer of the Board in the evening of 3.1.2005. However, the officer found that all the relevant registers were not produced. It is the case of the petitioners that such registers were sought to be produced on 4.1.2005, but the officer was not available and, therefore, the petitioner had left a letter dated 4.1.2005 with the office of the Board alongwith the relevant material which fact is disputed on behalf of the respondent Board saying that only the letter was received without any material in the form of relevant registers. Ultimately, by order dated 7.1.2005, the Board rejected the petitioners' request to permit the students of Std. X of the petitioner school to appear at the SSC examination to be conducted in March, 2005. The petitioners, therefore, filed Misc. Civil Application No. 72 of 2005 challenging the said decision dated 7.1.2005.

7. It appears that the main petition as well as the aforesaid MCA were heard by the learned Single Judge and thereafter by order dated 5.3.2005, the learned Single Judge expressed the aforesaid view that the matter being of general public importance in the field of education and looking to the interests of the students at large, the matter was required to be heard by a Larger Bench. That is how the matter has been placed before us.

8. At the hearing of this petition, Mr Yatin Oza with Mr NK Majmudar, learned counsel for the petitioners have vehemently submitted that the Board had already assessed the need for a Hindi medium secondary school in the area and the Board was satisfied with all the requisite conditions such as infrastructure and, therefore, the Board had granted the permission by letter dated 28.4.1997 with the only condition that the school was required to give a deed of declaration undertaking not to claim grant in future and thereafter the Board also required the petitioners to deposit Rs.2 lakhs to show its financial stability. It is submitted

that the petitioners had informed the Board about the deed of declaration being ready and had prayed for time to make deposit of Rs.2 lakhs. In any view of the matter when the petitioners came to learn about the Government Resolution dated 28.8.1998 (Annexure "R") that the security deposit of Rs.2 lakhs could be permitted to be withdrawn after expiry of two years and since the petitioner trust had already made such a deposit of Rs.2 lakhs in December 1996 for their Gujarati medium secondary school, in 1998 the said deposit could have been transferred as security deposit for the Hindi medium secondary school and that merely because the authorities did not accede to such request and that too by keeping the matter pending for a number of years, the petitioners cannot be penalized by cancelling the permission letter altogether and that too without giving the petitioners any opportunity of being heard and without even furnishing the petitioners a copy of such decision. The petitioner had no occasion or opportunity to challenge any such communication which was not received by them in the first place.

It is further submitted that as regards opening of second division of Std. VIII and division of Std. IX also, as per the aforesaid Government Resolution dated 28.8.1998, the petitioners were not required to obtain any permission from the Board, but only intimation was required to be given to the DEO which the petitioners had done. As regards opening of Std. X, it is submitted that the aforesaid resolution merely required the petitioners to give intimation to the Board and not to obtain prior permission. Therefore, the petitioners had not committed any illegality in opening Std. X without obtaining prior permission of the Board.

It is lastly submitted that since the students admitted to the petitioner school were not at fault, the authorities ought to have accepted the examination forms of Std. X students through the Hindi medium secondary school being run by the petitioners or atleast through their own Gujarati medium secondary school which is admittedly a registered school and about which there is no dispute. Reference was also made to the orders passed in October 2004 regarding students of four other schools which were also not granted permission to open Std. X and still the students of Std. X of such schools were permitted to submit their examination forms through other registered schools.

Reliance is also placed on the decisions of the Apex Court in *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, *Ashok Chand Singhvi Vs. University of Jodhpur and Others*, and also the last decision of the Apex Court in *Writ Petition (Civil) No. 19 of 2004* decided on 11.2.2005 in *Prof. Yashpal and Anr. v. State of Chattisgarh and Ors.*

9. On the other hand, Mr AD Oza, learned counsel appearing for the Gujarat Secondary and Higher Secondary Education Board has opposed the petition and submitted that since the school was never granted registration in the first place and the permission granted in April 1997 was conditional and the conditions were not complied with, the permission was rightly cancelled by the Board. The

petitioners had, therefore, started classes in Stds. VIII, IX and X without any registration whatsoever in favour of the petitioner institution for the Hindi medium school and such a school was, therefore, running illegally, in contravention of the relevant regulations and the students from such school could never be permitted to appear at the SSC examination. Strong reliance is placed on the various decisions of the Apex Court and also on the decisions of other Benches of this Court.

10. Before dealing with the rival submissions, it is necessary to refer to the relevant statutory provisions.

The Gujarat Secondary Education Act, 1972 has been enacted to provide for the regulation of Secondary education in the State of Gujarat and to establish a Board for that purpose. Section 17 thereof provides for powers and duties of the Board which are, inter alia, as under :-

17(7) to prescribe conditions to be fulfilled by the manager of a secondary school for getting the school registered;

(10) to lay down standards for testing students, for conducting examinations and for promotion of students from one standard to the next higher standard of a registered school;

(17) to register, in accordance with the prescribed procedure, secondary school for teaching such subjects in standards eight and onwards leading to the Secondary School Certificate Examination as it deems fit and to grant permission for opening higher standards or additional divisions of existing standards in such schools;

(18) to withdraw registration of secondary schools either in whole or in part after following the prescribed procedure;

(24) to cause academic inspection of registered schools by a person authorised by it and to take measures to ensure that proper standards of education are maintained therein and that adequate library and laboratory provisions are made therein;

(27) to lay down conditions for admission of regular and private candidates to the Secondary School Certificate Examination and such other examinations as may be decided upon by the Board or entrusted to it by the State Government (hereinafter referred to as "other examination");

(28) to conduct the Secondary School Certificate Examination and other examinations and award certificates to candidates passing the examinations;

Sec.31 (1) No person shall impart secondary education through a school unless such school is registered under the provisions of this Act;

(2) As soon as may be after the appointed day, the Board shall prepare and maintain thereafter, a register of Secondary Schools in accordance with the

provisions of this Act.

(3) ... (4) Every person who desires to impart secondary education by establishing a school, shall, on an application in such form and on payment of such fee as may be prescribed, be entitled to have the name of the school entered in the register, subject to the fulfillment of the conditions prescribed by the Board for registration of secondary schools.

(5) ... (6) The Board shall consider and make an inquiry in respect of every such application for registration in such manner as may be prescribed and then decide it within a period of three months from the date of receipt of the application by the Board.

(7) ... (8) Every registered school shall be given a certificate of registration in the prescribed form.

(9) Where any person in charge of the management of a registered school has been, after due enquiry by the Board in the prescribed manner, found to have committed default in carrying out any of the obligations imposed on such person under this Act or the regulations, or any instructions issued to him by the Board, the Board shall, after giving to such person an opportunity of being heard, direct the name of the school to be removed from the register for such period as may be specified in the direction or to be removed from the register permanently.

(10) ... (11) The Board may, on sufficient cause being shown, direct at any time that the name of the school so removed shall be re-entered in the register on such condition and on payment of such fee as may be prescribed and on such further conditions as the Board may deem fit to impose.

(12) ... (13) The register shall be open to inspection by any person at all reasonable hours in the office of the Board.

In exercise of the powers conferred by Section 53, the Gujarat Secondary Education Board made the Gujarat Secondary Education Regulations, 1974. Regulation 9 lays down the procedure for registration of secondary schools by the Board and the relevant portion thereof reads as under :-

9. Procedure for registration of secondary schools by the Board.- (1) A person who desires to impart secondary education by establishing a school from an academic year, shall apply on or before the 1st December in the previous academic year to the Board in Form I as provided in clause (2).

(4) On receipt of the application, the Secretary shall forthwith forward one copy thereof to the officer for report indicating the date on or before with the report and recommendations of the Officer shall reach the Board's office. The report and the recommendations of the Officer along with the application shall be placed before the Executive Committee by the Secretary after due scrutiny, for approval.

(5) While forwarding his report under clause (4) the Officer concerned shall state

whether and on what conditions the school be registered.

(7) No secondary school shall be registered by the Board or continued to be registered unless it fulfills the following requirements, namely:-

(i) the management is in the opinion of the Board competent and reliable and is in hands of a properly constituted authority or management body and its financial stability is assured;

(iii) the school has in the opinion of the Board, furniture, laboratory, library, equipment, stationery and other articles for conducting the school of standard requirements laid down in regulation, has non-teaching and teaching staff of qualifications prescribed under regulation and has recreation and sanitary facilities for the students;

(15) No new school shall ordinarily be allowed to be opened unless the Board is satisfied that it will fulfill a felt need of the locality concerned. The body proposing to start a new school will have to give convincing proofs regarding the nature of the need.

Regulation No. 10 reads as under :-

10.(1) (A) No manager of a registered school shall open Std. X in such school except with the prior permission of the Secretary.

(B) No manager of a registered school shall open Std. XI or any additional divisions of the existing standard without prior permission of the Commissioner.

(2)(A) An application for permission to open a higher standard or higher standards should be submitted to the Commissioner at least 6 months before commencement of the academic year from which it is proposed to be opened.

(B) Similarly an application for the permission to open a new division or additional divisions of the existing standard should be submitted to the Commissioner within a month from the commencement of the academic year.

(3)(A) No permission to open Std. X shall be given by the Secretary unless he is satisfied that the management is ready and willing to make adequate provision in relation to additional class rooms, laboratory, library, furniture, equipments, stationery and other articles required for conducting Std. X.

(B) No permission shall be granted to open Standard X or additional division of existing standard unless the Commissioner is satisfied that the management is ready and willing to make adequate provisions in relation to additional class-rooms, laboratory, library, furniture, equipments, stationery and other articles required for conducting additional classes.

(4) ... (5) The manager, if permitted to open a higher standard or higher standards or additional divisions of an existing standard shall take necessary actions to effect alteration in the relevant entries in the register.

11. The Board has also prescribed the New Secondary School Certificate Examination Regulations, 1975. Chapter VI thereof provides for eligibility of schools and candidates for the examination. Regulations 26 and 27 thereof read as under :-

26. Schools eligible to send up candidates for the Examination : (1) All High Schools which are registered by the Board u/s 31(1) of the Act, shall be eligible to send up candidates for the Examination subject to such conditions as may be specified from time to time by the Board.

27. Eligibility of candidates- (1) Except with the special permission of the Board no candidate shall be admitted to the examination to be held in March/April unless, he has attended the top standard of one or more registered High Schools for not less than 180 days in the aggregate during the period from the first day of the firm term of the year or 15th June of the year (whichever is earlier) to 15th of the month preceding the month of Examination

12. A bare perusal of the aforesaid statutory provisions indicates that a person cannot impart secondary education through a school unless such school is registered under the Act. For such registration, detailed procedure is provided in Section 31 of the Act and Regulation 9. An analysis of the aforesaid statutory provisions also indicates that the following criteria have to be applied by the Board while considering the case of opening a new secondary school -

(i) the new school will fulfill a felt need of the locality concerned.

(ii) the school has the building, library, furniture, equipments and sanitary facilities for a secondary school.

(iii) the management is competent and reliable and is in the hands of a properly constituted authority or a managing body.

(iv) the financial stability of the management of the school is assured.

The other sub-clauses of clause (7) of Regulation 9 provide for the requirements that the school has to fulfill for continuance of its registration.

The aforesaid criteria are set out in the order of their importance and, therefore, if the first criterion is not fulfilled, the question of applying subsequent criteria would not arise. Similarly if the second criterion is not fulfilled, the question of considering the remaining two criteria would not arise.

It is clear from the facts narrated in the earlier paragraphs of this judgment that the Board was satisfied that the petitioners were fulfilling the first three criteria and that is why the Board issued the permission letter dated 23.4.1997.

13. Coming to the fourth criterion, although the Board has not produced any instructions of the Board laying down the requirement of deposit of Rs.2 lakhs, the condition can be easily traced to Regulation 9(7)(i) which lays down that the financial stability of the management should be assured. The learned counsel for

the Board was at pains to point out that it was necessary for the Board to insist that the school management should deposit Rs.2 lakhs in a joint account with the DEO so that in case there is non-payment of salary to the teaching and non-teaching staff of the school, some funds are available with the authorities to fall back on in case of any financial crisis and the teaching and non-teaching staff of the school do not have to suffer without salary.

14. What is challenged in the present petition is the decision of the Board to cancel the permission letter dated 23.4.1997 on the ground that the petitioners had not made the deposit of Rs.2 lakhs in a joint account with the DEO. The Board has, however, not placed on record any notice of the Board calling upon the petitioners to show cause why the permission letter should not be cancelled nor have they placed any evidence to show that the letter dated 17.8.1998 communicating the decision to cancel the permission was communicated to the petitioners. From the report dated 8.1.2004 of Mr JR Jhala, Assistant Education Inspector, at Annexure "I" to the further affidavit in reply dated 9.2.2005 also, it appears that the DEO's Office also had not received any communication from the Board regarding cancellation of the permission. In our view, therefore, the cancellation of the permission letter dated 23.4.1997 by the impugned communication dated 17.8.1998 cannot be said to be legal or valid.

15. We may also refer to the decision of the learned Single Judge in *Madresa-E-Garibnawaz v. State of Gujarat* AIR 2005 GUJ 65 wherein the institution had applied for registration of a school. The application was not accepted by the Board, but the State Government allowed the appeal and granted permission to open the school. The Board acted upon the said decision and communicated permission to the petitioner. Subsequently, the Board communicated to the petitioner the State Government's decision to cancel the permission. The Court struck down such cancellation on the ground that the cancellation was made without giving an opportunity of hearing to the petitioner. Cancellation of permission has such serious consequences that the duty of giving opportunity of hearing has to be implied and the Board or the Government cannot cancel permission granted without giving specific opportunity of hearing to show cause why the permission should not be cancelled. Mere letters or communications requiring the institution to comply with the conditions cannot amount to giving such opportunity of hearing to show cause against cancellation of the permission.

16. Once it is held that cancellation of permission made on 19.8.1998 was void ab initio and non est, the said decision will have to be quashed and set aside. The question is whether the respondent-Board should now be permitted to go for fresh cancellation of the permission letter dated 23.4.1997 after giving the petitioners an opportunity of being heard. In our view, the following facts and circumstances are sufficient to dissuade us from granting any such permission to the respondent-Board and, therefore, we are inclined to direct the respondent-Board to consider the petitioner's case for registration of their school on the basis that permission letter dated 23.4.1997 subsists and in the background of

the facts highlighted hereinafter.

16.1 From the facts narrated in the earlier paragraphs of this judgment, it is clear that the Board was satisfied that Hindi medium secondary school to be established by the petitioner trust was going to fulfill felt need of the locality concerned. It is the case of the petitioner trust that the locality concerned is Khokhara which is pre-dominantly a labour area and that Hindi speaking labourers from the other States reside in the locality and that their children need a secondary school with Hindi medium. This need was also quite obvious because the petitioner trust is also running a primary school in Hindi medium from June 1992 and the said school has 18 divisions of Std.I to VII, which fact is apparent from the record and, therefore, the students passing out from such primary school called Rachna Primary School (Hindi Medium) from June 1992 would definitely need to go to a secondary school for studying in Stds. VIII to X and, therefore, the petitioner trust had applied for opening such school.

16.2 It is also the case of the petitioners that the secondary school in Gujarati medium run by the petitioner trust is in the morning shift and, therefore, the same infrastructure and facilities are available for running the secondary school in Hindi medium during day time. There appears, therefore, to be considerable substance in the submission made on behalf of the petitioners that the Board was already satisfied with the infrastructural facilities required for running such a school by the petitioner trust.

16.3 Since the permission letter was already issued by the Board on 28.4.1997, it can be safely inferred that the Board had already formed the opinion that the management is competent and reliable and is in the hands of a properly constituted authority or a managing body. It also needs to be noted at this stage that the petitioners' case that their Gujarati medium secondary school had put up good performance at the SSC examination with 76% result has not been disputed by the Board or the DEO.

16.4 The only relevant conditions which were not complied with by the petitioners were the deed of declaration that the school will not claim grant in future (about compliance with which not much dispute is raised by the Board, as the Deed of Declaration was already given) and that the management was to deposit a sum of Rs.2 lakhs in a joint account of the DEO with the school management. This requires some discussion.

16.5. It appears from the facts relating to the petitioners' Hindi medium secondary school as well as the Gujarati medium secondary school that while the aforesaid three criteria appear to have been fulfilled by the school management before issuance of any permission letter, the fourth criterion relating to proof of financial stability was not considered so important that the board would not issue a permission letter before being satisfied about the financial stability. The Gujarati medium secondary school of the petitioners was granted such permission letter in June 1995, but the deposit of Rs.2 lakhs to show its financial

stability was made in December 1996. In the meantime, the petitioners were permitted to open Std. VIII class in Gujarati medium in June 1995 and Std. IX in June, 1996. Similarly, the permission letter for the Hindi medium secondary school of the petitioner was issued in April 1997 for opening Std. VIII in June 1997 and the Board itself had granted time to the petitioners to produce the proof of financial stability later on. It, therefore, appears that the respondent-Board has not treated the deposit of Rs.2 lakhs as a condition precedent for running classes. Moreover, the petitioners' case, for explaining the delay, that they are running the nongrantable school in a labour area and are charging meagre fees of only Rs.25 to Rs.30 per month per student deserves consideration in proper perspective.

16.6 While accepting that the condition for deposit of Rs.2 lakhs was not such that it could be waived for all time to come, the case of the management is that under the Government Resolution dated 28.8.1998 the deposit was required to be made compulsorily for a period of two years and thereafter on review of the performance of the school, such deposit could be refunded and, therefore, the deposit made by the Gujarati medium secondary school of the same petitioner trust in December 1996 was available after December 1998 and, therefore, there were no mala fides in their request for adjusting the deposit of the Gujarati medium secondary school against the requisite deposit for the Hindi medium secondary school. It appears that, according to the Board, there is litigation challenging the said Government Resolution in so far as the resolution provides for refund of deposit after two years. Even if there be such litigation or stay, nothing prevented the authorities from conveying to the petitioners that the request of the petitioners to make such adjustment of the deposit could not be granted on account of such stay or for any other reason. It was only on 17.12.2003 that the DEO specifically rejected such request. Of course, it appears that in July/August 2003 the petitioners appeared to have been orally informed about such stand of the authorities. Thereupon, the petitioners made the deposit of Rs.2 lakhs in the joint account with the DEO on 11.8.2003. As already indicated earlier, the petitioners had already kept the deed of declaration for not claiming grant in future ready and informed the Board about the same as far back as in June 1997. Hence, the question is whether the delay in deposit of the amount of Rs.2 lakhs was so fatal to the petitioners' claim for registration for their Hindi Secondary School that the permission letter issued in April 1997 was required to be cancelled.

16.7 The petitioner's case for registration of their school on the basis of the permission letter dated 23.4.1997, therefore, deserves consideration in light of the aforesaid facts and circumstances. The regulatory agency like the Education Board cannot be oblivious of the fact that its function is not only to enforce discipline and ensure compliance with the procedural formalities, but also that it should ensure that the school fulfilling a felt need of the concerned locality, having the requisite infrastructural facilities and being managed by a competent and reliable body is not faced with closure only on the ground that it did not

produce the proof of its financial stability at the relevant time. Moreover, apart from the deposit of Rs.2.25 lakhs in August 2003, the petitioners have also deposited a further sum of Rs.2 lakhs pursuant to this Court's order dated 26.12.2003 which would more than compensate for the loss of interest on the deposit which was to be made in June 1997.

Sense of proportion, sense of priorities, positive balanced approach and empathy are as much expected from executive authorities as from the Courts.

17. Coming to the next question whether the petitioners had committed any illegality in opening a second division of Std.VIII or opening Std. IX, Mr Oza has heavily relied on the provisions of Regulation 10(2) which provides that an application for permission to open a higher standard should be submitted to the Commissioner at least six months before commencement of the academic year from which it is proposed to be opened and that similarly an application for permission to open a new division or additional division of the existing standard should be submitted to the Commissioner within a month from the commencement of the academic year. Mr Oza has submitted that the statutory regulations framed by the Board cannot be superseded by the Government Resolution, particularly sub-regulation (2) of Regulation 10.

18. As far as the opening of additional division of an existing standard is concerned, the application is required to be made within a month from the commencement of the academic year which would mean that the application is not to be made for prior permission. It is only when a higher standard is to be opened that an application has to be made for prior permission six months from the commencement of the academic year. As regards the said provisions, the learned counsel for the petitioners has heavily relied on the Government Resolution dated 28.8.1998 which provides that a non grantable secondary school is not required to obtain any prior permission of the authorities, but the concerned DEO and the Joint Director of Education, Gandhinagar shall be informed about opening of a new standard or additional division of an existing standard within thirty days.

19. While an analytical mind may find that the Government Resolution dated 28.8.1998 was issued for the purpose of diluting the stringent requirements of the Grant-in-Aid Code, if the petitioners gathered an impression that the Resolution diluted the provisions of the regulations for obtaining prior permission for opening Std.IX, the action on the part of the petitioners in opening new division of Std. IX with all the infrastructural facilities already available in the school, it cannot be said that the petitioners were out to defy the law. The entire matter is required to be considered in the background of the fact that the petitioners belong to a scheduled caste, who were granted permission in April 1997 for running a school in a labour area for children of the labourers coming from Hindi speaking areas and also the fact that the authorities in the past also did not raise any objection to the petitioners opening additional divisions of Std.VIII or opening a new division of Std.IX.

20. When it comes to Std. X, the regulations apart from specifically providing that no manager of a registered school shall open Std. X except with prior permission of the Secretary, further provide through regulation 10(3) that no permission to open Std. X shall be given by the Secretary unless he is satisfied that the manager is ready and willing to make adequate provision in relation to additional class-rooms, laboratory, library, furniture, equipments, stationery and other articles required for conducting Std. X. Moreover, the New Secondary School Certificate Examination Regulations, 1975 also specifically provide for the eligibility for appearing at the examination and only schools which are registered by the Board u/s 31(1) shall be eligible to send up candidates for the examination subject to such conditions as may be specified from time to time by the Board. Regulation 27 also provides that except with the special permission of the Board, no candidate shall be admitted to the examination unless he has attended the Std.X of one or more registered High Schools for not less than 180 days in the aggregate.

It is, therefore, obvious that only those students who have studied in a registered school with Std. X recognized by the Board are eligible for appearing at the examination. In view of the aforesaid statutory provisions of the Act and various Regulations, the words "Except with special permission of the Board" referred to in Regulation 27 of the Examination Regulations, 1975 would give discretion to the Board to waive minimum requisite attendance and not the requirement that the students should have studied in a registered school.

21. In a number of decisions, some of them as follows, the Apex Court has held that the students of an unregistered school cannot be permitted to appear at the examination to be conducted by a public body like University or Secondary Education Board and the practice of admitting students by unauthorised institutions and then seeking permission for appearance of students at the examination is deprecated.

(i) A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another,

(ii) State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another,

(iii) State of Maharashtra Vs. Vikas Sahebrao Roundale and others,

(iv) Guru Nanak Dev University Vs. Parminder Kr. Bansal and another,

(v) Controller of Examinations and Ors. v. G.S. Sunder, 1993 (Suppl) 3 SCC 82

(vi) Central Board of Secondary Education Vs. Nikhil Gulati and Another,

(vii) C.B.S.E. and Another Vs. P. Sunil Kumar and Others,

(viii) Council for Indian School Certificate Examination Vs. Isha Mittal and Another,

- (ix) Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others,
- (x) SCA No. 1940 of 2001 decided on 22.3.2001 (Akhil Bharat Paryavaran Sureaksha Parishad Education Trust v. Gujarat Secondary Education Board)
- (xi) LPA No. 220 of 2001 in SCA No. 1940 of 2001 decided on 28.3.2001 (Akhil Bharat Paryavaran Sureaksha Parishad Education Trust v. Gujarat Secondary Education Board)
- (xii) LPA No. 216 of 2003 decided on 20.3.2003 (Gujarat Higher Secondary Education Board v. Shree Zalawad Education Trust)
- (xiii) SCA No. 1380 of 2003 dated 4.3.2003 (Adarsh Charitable Trust v. State of Gujarat)

22. As against the weight of above legal dicta, the learned senior advocate Mr. Oza appearing for the petitioner relied upon the observations of the Apex Court in favour of the hapless and unwary students in several judgments. It is observed in Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, that the students should not suffer for the sins of the management. Hence, the students were allowed to continue their studies in respective engineering colleges who were not at fault. It is observed by the Supreme Court in Ashok Chand Singhvi Vs. University of Jodhpur and Others, that when the Vice Chancellor directed admission of certain candidates, such admission could not be by way of a mistake and even if it was through mistake, the students not being at fault, the admission could not be withheld. Similar observations were made by the Supreme Court in Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, Recently, in PROF. YASHPAL AND ANR. v. STATE OF CHATTISGARH AND ORS. AIR [2005 (2) SCW 1168] decided on 11.2.2005, the Supreme Court was pleased to protect the interests of the students who might have actually studied in the institutions established by private Universities and the State Government was directed to take measures to have such institutions affiliated to the existing State Universities in Chhatisgarh. What the Supreme Court found fault with was not an individual institution, but with the system itself permitted by the Legislature for mushrooming of more than hundred Universities in a State like Chhatisgarh.

23. However, in light of the aforesaid statutory provisions and the principles laid down in the decisions of the Apex Court, it is not possible to accept the submission made by Mr YN Oza for the petitioners that the students of Std.X who were imparted instructions in the petitioner-school have to be permitted to appear at the new SSC Examination commencing from today - i.e. 14th March 2005 (This petition was listed for hearing before this Bench for the first time on 9.3.2005 and was heard on 9th and 10th March 2005). Even though we are holding that the action of the petitioners in running Stds.VIII and IX in the Hindi medium secondary school was not such as to be incapable of being regularised, the fact remains that the petitioners had never obtained prior permission before opening Std.X class. In view of the specific statutory provisions referred to

hereinabove, opening Std.X stands on a different footing than opening additional divisions of existing standard VIII or opening Std.IX classes. As far as Stds. VIII and IX are concerned, the petitioners were already running those classes and divisions and the Board or the DEO had not taken any action to prevent the petitioners from running those classes. The petitioners were, however, not absolved from statutory obligation to apply for prior permission for opening Std. X. Since this was not done and for the first time the petitioners opened Std.X in the academic year 2004-05, any direction to the respondent Board to accept the examination forms of the students who have received instructions in Std. X run by the petitioners will amount to directing the respondent-Board to commit breach of the aforesaid statutory provisions and also well settled principles laid down in a catena of decisions of the Hon"ble Supreme Court. To quote Justice Chinnappa Reddy in A.P.CHRISTIAN MEDICAL EDUCATIONAL SOCIETY v. GOVERNMENT OF A.P. (supra): "We cannot imagine anything more destructive of the rule of law than a direction by the Court to disobey the laws". We, therefore, reject the request for such a direction to the Board for permitting the students from the petitioner-school to appear at the ensuing SSC examination commencing from 14th March 2005.

24. Since we have held that late compliance with the condition regarding deposit of Rs.2 lakhs in a joint account with the DEO was not so fatal as to permit the Board to cancel the permission letter dated 23.4.1997 and, therefore, the permission letter shall be treated as subsisting, the respondent-Board shall have to consider the petitioner's case for registration in light of the permission letter dated 23.4.1997 and the subsequent compliance with the condition to deposit the amount of Rs.2 lakhs and furnishing of the deed of declaration as also in light of the facts and circumstances highlighted in para 16 hereinabove.

25. There were two objections raised by the Board for not accepting the forms submitted by the students who have studied in STd.X run by the petitioners, the first was that the school itself was not registered and that the permission letter granted in favour of the petitioners in April 1997 was cancelled on 19.8.1998 and secondly, that the petitioners had not obtained the permission to open Std.X. We have already quashed and set aside the communication dated 19.8.1998 as void-ab-initio and non est and we have also directed that the petitioners case for registration of their school shall be considered on the basis that permission letter dated 23.4.1997 subsists and in the background of the facts and circumstances highlighted in para 16 hereinabove. Once the petitioners are granted registration of school on that basis the first objection would not survive. As far as the second objection is concerned, in view of the object of the various statutory provisions and our finding that the petitioners' case for registration of their Hindi medium secondary school was required to be considered, it would be open to the petitioners to make an application or to pursue an application, if already made, for permission to open Std. X in Hindi medium secondary school being run by the petitioner w.e.f. June 2004 and the Board shall consider such application within one month from the date of receipt of the application, and if such application is

granted, the Board shall also consider accepting examination forms for the students of Std.X for appearing at the SSC examination to be held in July 2005, as every year the Board has been conducting the SSC examination in July for students who fail to pass the examination conducted in March.

26. It is lastly submitted that at the hearing before the Officer of the Board on 3.1.2005, the registers for only Std.X were taken and not the registers for Std.XIII and IX as the controversy was about permitting the students of Std.X to appear at the SSC examination. When the petitioners" sought to produce the same on 4.1.2005, the Officer was not available and, therefore, while considering the petitioners" application for permitting the students of Std. X to appear at the SSC examination in July 2005, the authorities should decide the matter afresh without being influenced by the said order dated 7.1.2005.

27. Since the occasion for hearing on 3.1.2005 took place pursuant to the orders dated 3.1.2005 necessitated on account of absence of registration of the petitioner-school and further on account of absence of permission to open Std.X and now the petitioners propose to get over those objections, it would be in the fitness of things to direct the authorities to consider the petitioners" request for permitting the students of Std.X of Rachana Hindi Medium Secondary School to appear at July 2005 examination without being influenced by the said order dated 7.1.2005 and if required by the authorities, the petitioners shall be given an opportunity to produce the material which may be required by the Board.

28. The petition is accordingly allowed in the following terms:-

(i) The communication dated 19.8.1998 from the Gujarat Secondary Education Board purporting to cancel the permission letter dated 23.4.1997 is quashed and set aside. By 20.4.2005, the Board shall consider the petitioner"s case for registration of their school on the basis that the permission letter dated 23.4.1997 subsists and such consideration shall be made in light of the observations made in paras 16.0 to 16.7 hereinabove.

(ii) If any application has been made for opening Std. X for academic year 2004-05 or if such application is hereafter made to open Std.X Hindi medium secondary school of the petitioners for academic year 2004-05, the Secretary of the Board shall consider such application and communicate the decision thereon within one month from the date of receipt of the application;

(iii) If the Board grants such permission to open Std. X, the Board shall consider accepting examination forms for the students of Std.X for appearing at the SSC examination to be held in July 2005.

29. The petition is accordingly allowed in terms of the aforesaid directions. Rule is made absolute to the aforesaid extent with no order as to costs.

30. Since the main petition is allowed, the Misc. Civil Application does not survive and is disposed of accordingly.

Direct Service is permitted.