
(2008) 03 GUJ CK 0003

In the Gujarat High Court

Case No : Special Civil Application No. 2835 of 2008

Shri Vivekanand Vikas Mandal

APPELLANT

Vs

State Of Gujarat and Another

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Gujarat Secondary Education Act, 1972 — Section 33, 33(1)

Citation : (2008) 3 GLR 2170

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : A.J. Shastri, for the Appellant; Shivang Shukla, AGP for Respondent 1, for the Respondent

Judgement

Jayant Patel, J.—Rule. Mr.Shukla, learned AGP waives notice of Rule for respondents Nos. 1 & 2. With the consent of the learned advocates appearing for both the side, the matter is finally heard today.

2. The only question required to be considered in the present petition is that whether the Government could retain the administration of the school exceeding the period of 5 years or not?

3. The short facts which may have the relevance for the purpose of deciding the petition are as under.

4. The petitioner is a registered Trust and was running a school in the name of K.R. Bhandari Vidhyalaya. It appears that certain irregularities were found, whereas, as per the petitioner, the DEO wanted to bring about illegal pressure for extraneous consideration.

5. But as it may, it is an admitted position that on 15.10.2001, the State Government passed the order for taking over the management of the Trust u/s 33 of the Gujarat Secondary Education Act, 1972 (hereinafter "the Act" for short). The petitioner challenged the said action by preferring Special Civil Application No. 10283/01 and this Court admitted the petition and had granted

interim relief, but thereafter, the said Special Civil Application was dismissed on 27.03.2002.

6. It appears that as per the respondent authority, on 04.09.2002, the management came to be taken over by drawing a panchnama, copy whereof is produced at Annexure-H. It appears thereafter, vide order dated 31.08.2004, the management of the school was entrusted by the Government to one Jaljivan Foundation, Nanakotda, for a period of 3 years. The same also became subject matter of challenge in the proceedings of Special Civil Application No. 6517 of 2005 and the declaration was made before this Court on 07.09.2005 in the proceedings of Special Civil Application No. 6517 of 2005 that the order for entrustment of the administration to any trust is withdrawn. Therefore, the Court accordingly, disposed of the petition. It appears that thereafter, the management of the school has remained with the Government and the same is an undisputed position. The petitioner made repeated requests to re-entrust the administration of the school. However, it did not materialise.

7. Section 33 of the Act, which is relevant for the purpose of this petition reads as under:

33. (1) Notwithstanding anything contained in any law for the time being in force, whenever it appears to the State Government that the manager of any registered private secondary school has neglected to perform any of the duties imposed on him by or under this Act or the regulations, and that it is necessary in the public interest to take over the management of the school, it may, after giving to the manager of such school a reasonable opportunity of showing cause against the proposed action and after considering the cause, if any, shown by him, take over the management of the school for such period as the State Government may, from time to time fix, so however, that such period shall not exceed five years in the aggregate.

(2) Where the management of any school is taken over under Sub-section (1) the State Government shall manage the school in such manner as not to curtail any educational facilities which the school afforded immediately before such taking over.

(3) Where before the expiry of the period fixed under Sub-section (1), the State Government is of opinion that it is not necessary to continue the management of the school by the State Government, the management of the school shall be restored to the manager of the school, and in any case on the expiry of the period so fixed or at the end of the period of five years referred to in Sub-section (1) such management shall stand restored to the manager of the school.

(4) Where under Sub-section (3) the management of a school is to be restored or stands restored to the manager of the school, the State Government may after making such inquiry, if any, as it deems fit, by order in writing, specify the person (hereinafter in this section referred to as "the specified person") to whom the management and possession of the school shall be handed over, and shall

hand over the management and possession of the school to such specified person. Such handing over shall be a full discharge of all liability of the State Government in respect of such handing over but shall not prejudice any right in respect of the school which any other person may be entitled by due process of law to enforce against the person to whom the management and possession of the school is so handed over.

(5) Where the specified person cannot be found or has no legal agent or other person empowered to accept the management and possession of the school on his behalf, or the specified person or his legal agent does not accept such management or possession, the State Government shall cause to be published in the Official Gazette a notice declaring that the management and the possession of such school shall be deemed to have been handed over the specified person and shall also cause such notice to be affixed on some conspicuous part of the building of the school.

(6) When the notice referred to in Sub-section (5) is published in the Official Gazette,-

(a) the property specified in such notice shall, on and from the date of such publication, cease to be subject to the control and management of the State Government.

(b) possession of such school and its properties shall be deemed to have been delivered on such date to the person entitled to the possession thereof, and

(c) the State Government shall not be liable for any rent, compensation or any other claim in respect of such school and its properties for any period after the said date.

(7) Nothing contained in this section shall apply to any educational institution established and administered by a minority, whether based on religion or language.

8. If the date of the order for taking over of the management is considered, it is an admitted position that the period of 5 years has expired.

9. Even if the date of actual taking over of the management is considered from 04.09.2002, then also, the period of 5 years has expired.

10. The learned AGP is not in a position to dispute the factual position that period of 5 years has expired from the taking over of the management either from the date of the order or from the actual taking over of the management.

11. As per Section 33(1) of the Act, the State Government has the power to take over the management of any registered school for the period not exceeding 5 years in aggregate. As per the Scheme of Section 33 of the Act, if the Government is satisfied that during the said period of 5 years, the management should be re-entrusted or upon the expiry of the period of not exceeding 5 years, the management should be re-entrusted to the Trust, it may exercise such

power. However, it is apparent that the action or the order for retaining the management in any case shall not exceed 5 years in aggregate. Therefore, as the period of 5 years has expired, the Government cannot retain the management of the school and is required to be re-entrusted to the petitioner Trust who had established the school.

12. As such, no affidavit-in-reply has been filed for opposing the factual position and the learned AGP had declared that the period of 5 years has expired and the Government has not passed any order. Therefore, in view of the expiry of the period of 5 years, the further action of retention of the management by the Government can be said as without authority and in any case, the Government shall be required to re-entrust the management to the petitioner-Trust in view of the language provided u/s 33(1) of the Act for the maximum period of 5 years.

13. Hence, the respondent State Government is directed to entrust the management of K.R. Bhanderi Vidhyalaya to the petitioner Trust as early as possible, in any case not later than the period of one month from the receipt of the order of this Court.

14. Petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs.