

(2001) 08 GUJ CK 0043

In the Gujarat High Court

Case No : Special Civil Application No. 7802 of 1997

S.M. Education and Research Foundation

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 10-08-2001

Acts Referred:

Constitution of India, 1950 — Article 29, 30
Gujarat University Act, 1949 — Section 33

Citation : (2001) 08 GUJ CK 0043

Hon'ble Judges : M.S. Shah, J

Bench : Single Bench

Advocate : Prashant G. Desai, for the Appellant; P.R. Abichandani, AGP for Respondent No. 1, 3 and Nilesh Anjaria, for the Respondent

Final Decision : Allowed

Judgement

M.S. Shah, J.—The petitioner (Shrimati S.M.Education and Research Education) is a trust registered under the Bombay Public Trusts Act, 1950. The petitioner trust is a minority institution and there is no dispute about its status as a minority institution covered by the provisions of Articles 29 and 30 of the Constitution. The petitioner trust which is already running a high school at Khambhat in Anand District is desirous of establishing Arts & Commerce College for women at Khambhat. The petitioner, therefore, submitted an application to the Gujarat University for affiliation of the proposed college on 14.3.1996. The application was made for establishing the college for the academic year 1996-97 onwards. On 6.3.1997, the University however rejected the application on the ground that there was no need to establish another college at Khambhat when the existing Arts & Commerce College was sufficient to cater to the needs of the area. The petitioner challenged the said decision dated 6.3.97 by preferring an appeal before the State Government. By order dated 9.7.97, the Sate Government rejected the appeal. Thereupon, the petitioner filed the present petition challenging the orders of the State Government and the University and also prayed for a writ of mandamus to direct the respondents to grant permission

to open an Arts & Commere College for women at Khambhat.

2. The petition was admitted in the year 1997. During pendency of the petition, the petitioner moved this Court for certain interim orders to permit the petitioner institution to start the college. On 8.5.1998, this Court permitted the petitioner to make a representation to the State Government. However, the State Government was not deciding the representation and therefore, the petitioner was again required to move this Court by filing Civil Application No. 9778 of 1998 in which this Court again issued direction dated 13.4.99. Again order dated 2.5.2000 came to be passed by this Court directing the petitioner to produce before the Secretary, Education Department, all the relevant material and directed the Secretary to decide the matter after granting a personal hearing. The State Government rendered its decision dated 5.7.2000 reiterating its earlier view that there was no need for establishing another college in the area. The petitioner therefore, moved an amendment to the petition for challenging the said decision dated 5.7.2000. When the matter reached hearing before this Court on 28.3.2000, a grievance was made on behalf of the petitioner that the State Government's decision dated 5.7.2000 did not take into consideration certain vital aspects of the mater including the fact that the petitioner is a minority institution and that the petitioner wanted to establish a college for Muslim women and that the present Arts & Commerce College at Khambhat was a co-educational institution where conservative Muslim parents were not willing to send their daughters for higher studies. By order dated 28.3.2000, this Court thereupon directed the Secretary, Education Department to rehear the petitioner's representation without being influenced by its earlier decision dated 5.7.2000. The decision of the Secretary, Education Department in the form of a speaking order was required to be placed on the record of this petition. The hearing of the petition was posted on 11.6.2001.

3. Thereafter, the State Government through the Secretary, Education Department, passed order dated 11.6.2001 giving a finding that the stand of the University that there was no need for establishing an Arts & Commerce College for women at Khambhat was not acceptable and looking to the need, there was justification for establishment of a women's college at Khambhat by the petitioner. The Government also directed the University to take further decision regarding affiliation within 15 days.

4. On 19.6.2001 with reference to the said order dated 11.6.2001, this Court noted that the State Government had instructed the University to grant affiliation to the petitioner college for the academic year 2001-2002 and to pass formal orders within 15 days. The University was therefore required to pass formal orders on or before 16.7.2001. The University moved Civil Application No. 6776 of 2001 for extension of time limit on the ground that the University is required to examine the `petitioner's application under the provisions of Section 33 of the Gujarat University Act, 1949 and therefore some more time was required. This Court rejected the application by order dated 16.7.2001 but granted the

University time upto 26.7.2001 to pass appropriate orders in light of the order dated 11.6.2001 of the State Government. Since the University did not grant affiliation to the petitioner college, Civil Application No. 8092 of 2001 came to be filed by the petitioner trust for the following prayer:-

"9(A) This Hon"ble Court may be pleased to allow the applicant Institution to start process of giving admission to the students in college and allow the applicant Institution to conduct the classes in the applicant college for the academic year 2001-2002."

5. After the above application was filed on 27.7.2001, the University filed Civil Application No. 8309 of 2001 on 2.8.2001 for the following prayer:-

"7(A) Your Lordships will be pleased to modify the order dated 19.6.2001 directing the University to grant affiliation to the original petitioner-respondent No.1 herein and be further pleased to pass appropriate orders in light of the facts and circumstances indicated in the present Civil Application."

The main thrust of the University in the aforesaid application is that the Local Inquiry Committee appointed by the University had inspected the facilities available with the petitioner institution, but the Committee did not find it possible to recommend granting affiliation to the petitioner college and that the report indicates that the conditions required to be satisfied in tune with Section 33 are not complied with and that the approach of the petitioner institution is not cooperative in the matter.

6. At the hearing of this petition and the applications, Mr.Prashant G Desai, Ld. Counsel for the petitioner trust has raised the following contentions:-

6.1. Once the State Government passed the order dated 11.6.2001, the University was duty bound to grant affiliation to the petitioner college without wasting any further time.

In any view of the matter, when the State Government had stipulated 15 days time limit for the University to pass formal orders of affiliation, the University ought to have complied with that direction.

6.2. Assuming that the University was required to hold an inquiry u/s 33 of the Act, the University was required to adopt a liberal approach in considering the application of the petitioner institution which is a minority institution and which wants to establish an Arts & Commerce college for Muslim women in a rural or semi-urban area like Khambhat where conservative Muslim parents are not willing to send their daughters for higher education in co-educational institutions. The only other Arts & Commerce college in Khambhat is a coeducational institution and therefore, there is need for a Muslim college where the conservative Muslim parents would like to send their daughters for higher studies. Strong reliance is placed on the decision of the Apex Court in The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, .

6.3. In any view of the matter, affiliation is being denied to the petitioner college on the ground of alleged non-compliance with two requirements i.e. the existing building is not sufficient and that the college did not produce the material to show its financial stability. It is submitted that at present the petitioner institution is already running a secondary school in the same building in the morning. The same building is to be used for running a college for women in the noon shift and within a couple of years, the petitioner institution proposes to construct a new building where the college can be shifted. Hence the Local Inquiry Committee and the University ought to have examined the matter in proper perspective.

6.4. As regards the financial capacity of the institution, it is stated that the petitioner institution is ready and willing to comply with all the requirements. The petitioner had already indicated that the petitioner institution has a Fixed Deposit of Rs.3 lacs and that the petitioner institution is prepared to deposit a sum of Rs.6 lacs immediately to show its financial stability.

7. On the other hand, Mr.Nilesh V Anjaria, Ld. Counsel for the Gujarat University has opposed the petition and submitted that the order dated 11.6.2001 of the State Government merely required the University to reexamine the matter. The State Government has not given any clear-cut finding about the need for having another college in the area. Assuming that the Government order can be said to have given a finding that there is need for another college in the area, the matter does not rest there as the University is required to examine whether the petitioner institution complies with conditions for affiliation stipulated in Section 33 of the Gujarat University Act. Mr.Anjaria further submits that the Local Inquiry Committee had visited the premises of the petitioner institution and found that the existing building and facilities were not sufficient to grant the proposed college affiliation. It is further submitted that inspite of opportunity given by the Local Inquiry Committee, the petitioner did not submit the necessary documents with regard to the building plans for the existing building and for the proposed building nor did the petitioner institution submit any papers to show its financial capacity. Hence, this Court need not grant any relief to the petitioner institution. It is only when the petitioner institution satisfies the University authorities about full compliance with all the conditions as set out in Section 33 of the Act that the University would grant affiliation but this Court cannot grant any relief to the petitioner. Strong reliance has been placed on the decision of the Apex Court in the case of Managing Board of The Milli Talimi Mission, Bihar, Ranchi and Others Vs. State of Bihar and Others, in support of the contention that even a minority institution does not have a fundamental right to get affiliation from a University.

8. In rejoinder, Mr.Prashant G Desai has submitted that if appropriate orders are not passed at this stage and if the matter is merely sent back to the University for reconsideration, one valuable year will be lost, as all these years the respondent authorities have been dragging the matter by not even recognising the need for establishing a women's college at Khambhat, although there is no

other women's college in that town or taluka and women in the area, particularly Muslim women, have been denied their right to pursue higher studies in Arts and Commerce College. It is submitted that if the petitioner is not permitted to admit students at this stage, there will be difficulty about their not being able to have sufficient attendance for grant of terms and for appearing at the 1st year examination.

9. Having heard the Learned Counsel for the parties, it appears to the Court that while granting affiliation to the College is the function of the University u/s 33 of the Gujarat University Act, looking to the manner in which the petitioner's application for affiliation has been considered all these years, it appears to the Court that any direction which merely stops at requiring the University to consider/reconsider the petitioner's application for affiliation will only retard the cause of women's higher education in Khambhat area and particularly that of Muslim women merely, because the University has not applied the parameters of affiliation with the sensitivity expected of them and the University appears to have overlooked the principles laid down by the Hon'ble Supreme Court in The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, and particularly the following observations:-

"A liberal, generous and sympathetic approach is reflected in the Constitution in the matter of the preservation of the right of minorities so far as their educational institutions are concerned.... The broad approach has been to see that nothing is done to impair the rights of the minorities in the matter of their educational institutions and that the width and scope of the provisions of the Constitution dealing with those rights are not circumscribed....."

10. It appears that pursuant to the order of the State Government, the University appointed a Local Inquiry Committee to examine the petitioner's request for affiliation to ascertain whether the conditions for affiliation as stipulated in Section 33 of the Act are complied with or not. The Committee visited the premises of the petitioner institution on 9.7.2001. It also appears that since the Managing Trustee of the petitioner institution is at Ahmedabad, the petitioner institution could not produce the following documents before the Local Inquiry Committee in the evening of 9.7.2001.

- a. Consent letter of the owner of the building for running college in the premises where a school is being run.
- b. The plan for proposed building and measurement of rooms in the existing school building.
- c. Documents in support of the existing financial stability of the trust such as Bank Balance, True copies of Fixed Deposit Receipts.

It is the case of the petitioner institution that the consent letter given by the petitioner trust itself (which runs the school in the same building) that the College is also to be run in the same building as well as the Banakhat

(agreement to purchase) for the land for putting up a new building opposite the existing building and also the plans for the proposed building behind the existing building were sought to be produced before the Local Inquiry Committee at Ahmedabad on 10.7.2001. However, the Committee members declined to accept the said papers on the ground that they were not sufficient compliance with the requirements under the Rules. It appears that again on 18.7.2001, the Local Inquiry Committee had required the petitioner institution to produce the necessary documents. The petitioner institution informed the Committee that since the engineer was out of station, the plans for the proposed construction on another land in front of the college and the map for the existing construction could not be produced, however, the same would be produced after consultation with the other trustees and the Learned Advocate for the petitioner institution.

Thereafter on 6.8.2001 the Managing Trustee of the petitioner institution has filed an affidavit stating that the 3 documents (consent letter, agreement to purchase the land in front of the existing building and plans for proposed construction behind the existing building) were not accepted by the members of the Local Inquiry Committee of the University. The averments made therein are not controverted by any affidavit.

11. At the hearing before the Court, the Learned Counsel for the petitioner institution has produced the documents which were sought to be produced by the trustees before the Committee on 10.7.2001 and also the building plans for the proposed building opposite the existing building and also a sketch showing the existing building with 10 rooms.

12. The Learned Counsel for the respondent University however submits that it is for the University to examine these matters., the report of the Local Inquiry Committee indicates that the existing school building is not suitable for running a college as there is only one staircase, there is no independent access to each of the rooms and there are only two bathrooms.

13. It appears tha the Local Inquiry Committee has not looked at the matter with the perspective with which the matter was required to be examined, particularly when the petitioner institution intends to establish a college for women particularly Muslim women in a semi-urban area like Khambhat. There is already an existing building where the school is being run with benches, black-boards and other facilities required by an educational institution. Mr.Desai for the petitioner trust states that the petitioner rust is going to construct a new building either behind the existing building or on the vacant land opposite the school building and that the proposed building will be constructed latest within 2 years. It is however submitted that once the college starts running, it will be possible for the petitioner trust to get substantial donations from the community people who are all ready to give donations once the College starts running. Mr.Desai also points out from the affidavit dated 6.8.2001 that in the past the Gujarat University has granted affiliation to colleges which were first started in small premises and congested areas like R.C.High School at Delhi Chakla, Ahmedabad.

Similarly, the Som-Lalit Institute of Business Administration which is presently housed in a ultramodern building opposite St.Xaviers College in Navrangpura area of Ahmedabad was initially permitted to be started in the premises of L.J.College Commerce College in Vastrapur area which is also a comparatively small building without any facilities like a play ground. It is vehemently submitted by Mr.Desai that it is only when a business group comes out to establish a college that they can think of establishing the college in a new building with all the modern facilities and run it on self-finance basis to recover the huge investments made earlier, but for the petitioner trust which is keen to see that women in the Muslim community are properly educated and which is going to run with the help of donations from members of the community cannot be expected to start with a fancy pompous modern building. At the initial stage, such an institution should be permitted to start the college in an existing school building which has as many as ten rooms.

10.8.2001.

14. Having regard to the objects and conditions of affiliation and having regard to the fact that the petitioner institution has come out with the laudable object of imparting higher education to women in a semi-urban area like Khambhat, and that too women in the Muslim community which community has so far been lacking, and lagging behind in getting encouragement for education in general and women's education in particular and having regard to the fact that the petitioner institution has filed an undertaking that they will construct another building for the college within 2 years from today and that the petitioner institution is also going to deposit the requisite amount (which is stated to be Rs.6 lacs) within 10 days from today, the Court considers that it will be just and proper to permit the petitioner institution to conduct classes in Ist year of Arts & Commerce Faculty subject to the condition that the petitioner institution shall comply with both the aforesaid statements in the undertaking filed today and that the petitioner institution shall also comply with the following provisions of Section 33 of Gujarat Universities Act i.e.

a. that the College shall be under the management of a governing body which shall include amongst its members, the principal of the college, a representative of the University to be nominated by the Vice-Chancellor and three representatives of the teachers of the college and atleast one representative each of the members of the non-teaching staff and the students of the college, to be elected respectively from amongst such teachers, members of the non-teaching staff and students, in so far as these provisions are applicable to a minority institution.

b. that the strength and qualifications of the teaching staff and the conditions governing their tenure of office are such as to make due provision for the courses of instruction, teaching or training to be undertaken by the college, in so far as these provisions are applicable to a minority institution.

c. that due provision shall be made for a library.

d. that for recruitment of the Principal and members of the teaching staff of the college there shall be a selection committee of the college as per the provisions which are applicable to a minority institution.

e. that the college shall comply with the Statutes, Ordinances and Regulations providing for conditions of service including salary scales and allowances of the teaching and other academic and non-academic staff of an affiliated college, in so far as such conditions are applicable to a minority institution.

15. As regards Mr.Anjaria's contention that it is for the University Authorities to grant or not to grant affiliation and that the Court passing such an order would be usurping the functions of the University, the contention is misconceived. It is required to be noted that the petitioner institution has been struggling to get permission from the authorities for establishing a college for women and particularly Muslim women in a semi-urban area like Khambhat where there is no such women's college. The existing college is a co-educational college where persons of minority community are not very keen to send their daughters for higher studies. The petitioner institution has been trying to get such permission since 1995. The Government also has recognised the need for opening such a college for women as per the order dated 11.6.2001. The Government even impressed upon the University to complete the formalities within 15 days but somehow the precious time between 11.6.2001 and 9.7.2001 was unnecessarily wasted because it was for the first time on 9.7.2001 that the Local Inquiry Committee of the University went for personal inspection of the premises and the Committee appears to have applied standards which would be applicable to colleges in big cities like Ahmedabad expecting very good building facilities. As per the affidavit filed on behalf of the petitioner institution, the three important documents which were sought to be furnished by the petitioner institution to the Local Inquiry Committee on 10.7.2001 were not accepted during the course of the hearing (this statement made in the affidavit dated 6.8.2001 is not controverted) and whatever other documents the Local Inquiry Committee required have been produced but no affidavit is filed on behalf of the University for contending that those documents are not sufficient compliance with the requirements for affiliation. In this set of circumstances, the Court does not propose to pass any order granting affiliation to the petitioner institution but permits the petitioner institution to admit women students and to start the Ist year classes in Arts & Commerce so that students are not confronted with the prospect of being denied the permission to appear at the examination only on the ground that they did not have sufficient attendance to their credit, even though the University ultimately may grant affiliation for the year 2001-2002.

16. In view of the aforesaid discussion, the petition is allowed in terms of the following directions:-

(1) Respondent No.2 Gujarat University shall consider the petitioner's application

for grant of affiliation as application for the year 2001-2002 in light of the observations made in this judgement expeditiously, preferably within one month from the date of receipt of the writ of this Court or a certified copy of this judgement, whichever is earlier, provided that if the University finds any shortcoming, the petitioner institution shall be granted a reasonable opportunity of remedying the same.

(2) The respondent shall permit the petitioner institution to admit students to the 1st year Arts & Commerce classes in the existing building where Lok Jagruti High School is being run by the petitioner institution at Khambhat subject to the condition that the petitioner institution complies with the undertaking which has been filed today for depositing the amount of Rs.6 lacs with the respondent University within 10 days from today and also the undertaking that a new building will be constructed for the college within 2 years from today. The petitioner institution shall also fulfil the conditions which are enumerated in Para 14 hereinabove.

(3) Admissions to be granted by the petitioner institution to the women students to the 1st year Arts & Commerce Classes at Khambhat shall abide by the final outcome of the proceedings of affiliation and the college shall inform the students accordingly at the time of granting admissions.

17. This petition is accordingly allowed. Rule is made absolute to the aforesaid extent. All the Civil Applications are also disposed of in terms of the aforesaid directions.

18. At this stage Mr.N.V.Anjaria, Ld. Counsel for the Gujarat University prays that the operation of this order may be stayed for some time to enable the University to have further recourse in accordance with law as admissions once granted to students would create new equities.

Mr.Prashant G Desai, Ld. Counsel appearing for the petitioner states that the petitioner institution will not grant any actual admissions to the students till 24.8.2001.

In view of the above statement coming from Mr.P.G.Desai and the conditions imposed in para 16(3) hereinabove, it is not necessary to stay the operation of this order.