
(2001) 09 GUJ CK 0059
In the Gujarat High Court

Case No : Special Civil Application No. 2262 of 1986 and 7405 of 1990

Smt. Ranjanben Rambhai Patel, President	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 24-09-2001

Acts Referred:

Citation : (2001) 09 GUJ CK 0059

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : Mukul Sinha and Subramaniam Iyer, in Special Civil application No. 2262 of 1986 and Mukul Sinha, in Special Civil application No. 7405 of 1990, for the Appellant; A.D. Oza, Government Pleader and Digant P. Joshi, AGP for Respondent No. 1, Tanna, Associates for Respondent No. 2, Jitendra M. Patel, for Respondent No. 3, Mukund M. Desai, in Special Civil Application No. 2262 of 1986 and Digant P. Joshi, Asstt Government Pleader for Respondent No. 1 in Special Civil Application No. 7405 of 1990, for the Respondent

Judgement

Ravi R. Tripathi, J.—These petitions raise an important and interesting question as to whether the children residing in the area of various local authorities which came to be merged in the city limits of Ahmedabad Municipal Corporation ("Corporation" for brevity) with effect from 23.2.1986 . Earlier in the area of these local authorities consisting of 19 villages the local bodies duly constituted under the provisions of Gujarat Panchayats Act, 1963, were running Balmandirs and were giving pre primary education to the children of the respective area. As set out in the petition the said Balmandirs were run with the help of respondent no.4, Ahmedabad District Samaj Kalyan Sangh and that the financial burden was borne by the State of Gujarat. It is nothing but an irony of the situation that on getting merged in the limits of the Corporation, instead of getting better facilities for education (pre primary), the children of that area are sought to be deprived of the pre primary education on the ground that the Corporation is not willing to run Balmandirs in question, meaning thereby the Corporation is not willing to discharge its Constitutional duty.

2. Both these petitions have a little chequered history inasmuch as Special Civil Application No.2262 of 1986 came to be filed by one, Smt. Ranajanben Rambhai Patel as the President, Ahemdabad District Pre Primary Teachers' Union (Parishad). It is set out in paras 1 to 5 of the said petition that in the area of 19 villages, Balmandirs were run and that the members of the petitioner union were appointed by respondent no.4, Sangh under the rules framed by the State of Gujarat, respondent no.1 herein, which were published on 5.6.1978 providing for recognition of the Balmandirs and giving of grant to such Balmandirs. It is also set out in para 5 of the petition that respondent no.1 had also decided the pay scales of the trained and untrained teachers, who are engaged in the activities of kindergarten institutions with effect from 1.4.1981 as per the recommendations of Sarela Pay Commission by its Resolution No. PPS 1070/ 70347/ 78, Annexure "D" to the petition.

3. It is further set out in the said petition that consequent on the merger of the areas of those 19 villages in the limits of the city of Ahmedabad under the relevant provisions of the Bombay Provincial Municipal Corporations Act, 1949 ("BPMC Act" for brevity), it is the duty of the Municipal Corporation to provide for pre primary education. It is also set out in para 8 of the petition that the Corporation is running similar other Balmandirs in the area other than the presently included areas of those villages. It is also set out in the same para that the Balmandirs in question were run in the buildings situated in the certain villages were constructed by the Gram Panchayats with the help and grant from the District Panchayat and State Govt., while in some of the villages, they were on rental basis and after inclusion of the area of the respective villages, the properties in question have vested in the Municipal Corporation. It is also set out in the petition that on an earlier, similar occasion of inclusion of the area of Dani Limda in the city limits of Corporation, the Balmandirs run in that area were taken over by the Corporation.

4. The petition, (Special Civil Application No.2262 of 1986) was filed on 21.4.1986 for the reliefs set out in para 19A and 19B, which read as under:

"19(A) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be granted directing the respondents nos.1 and 2 to protect the rights and liability of the members of the petitioner union and to treat them as the employees of the respondent corporation and to give all consequential benefits which they are entitled as per the provisions of the BPMC Act."

(B) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be issued directing the respondents to continue the said Balmandirs and its respective staff mentioned in Annexure "A".

5. At one stage these petitions came to be disposed of by the learned Single Judge of this Court by a judgement dated 6.10.1997, whereby the Court issued

certain directions as contained in para 9 of the judgement, which read as under :

"9. The interest of justice will be met in case these Special Civil applications are disposed of with the direction to the Govt. of Gujarat to decide the matter regarding the closure or continuation of Balmandirs earlier which were run by the respondent no.4 with the aid of the Govt. within a period of four months from the date of receipt of certified copy of this order and the petitioner association may be given full opportunity of hearing. Where any order adverse to the employees is made, then copy of the same may be sent to the petitioner and reasons may also be recorded therein. In that eventuality, liberty to the petitioner for revival of these Special Civil Applications is granted. The petitioners, the low paid employees, have unnecessarily been dragged in the litigation, and as such, in the first petition the respondent State is directed to pay to them R.5000/- by way of costs of this petition, the amount which has been incurred by these poor teachers in filing of this Special Civil Application. Both these Special Civil Applications and rule therein stand disposed of accordingly."

6. After the said directions, the petitioners were given an opportunity of hearing and after hearing, by an order dated 10.11.1998, the plea of the petitioner came to be rejected. The present petitions then came to be revived by filing Miscellaneous Civil Application No.2899 of 1998, on 26.2.1999. Thereafter, Special Civil Application No.2262 of 1986 came to be amended by filing a Civil Application No.3400 of 1999, which came to be allowed on 3.5.1999. Thereafter, Special Civil Application No.2262 of 1986 is amended by adding paras 16(a) and (b) and producing Annexures I(A) I(B) and I(C) on record. Additional grounds are also added being Grounds (i) to (v) and the prayer clause is also amended by adding clause (F) in para 19. The record shows that the Special Civil Application No.2262 of 1986 was dismissed for default on 10.8.1999, which came to be restored by an order dated 6.9.1999 in Misc. Civil Application No.1839 of 1999.

8. Dr. Mukul Sinha, the learned advocate for the petitioner submitted that this Court while issuing notice on on 24.4.1986 had passed an order protecting the possessions of Balmandirs. Thereafter, this Court by an order dated 7.5.1986 granted further ad interim relief to the effect that the employees (members of the petitioner union) not to be terminated. Finally on 24.7.1987, the Court issued rule and had ordered that,

"Interim relief granted earlier to continue. For further interim relief matter is adjourned to 31.7.87."

It is submitted that by virtue of the aforesaid order, as on today, the Balmandirs are running in the same premises, but as neither respondent no.4, nor the State Government is giving them any financial assistance, the teachers of their own by collecting a token amount of Rs.15.00 from each child are running these Balmandirs.

9. Dr. Sinha vehemently submitted that the action of the Govt. of rejecting the

plea of the petitioner to continue them in employment as well as to continue the Balmandirs by and under the Corporation only on the short ground that neither the Corporation nor Ahmedabad Municipal School Board were willing to administer and manage the Balmandirs which were situated in the areas outside the city of Ahmedabad prior to merger of these areas in the city limits of Ahmedabad in the year 1986, is absolutely illegal, arbitrary and unconstitutional on the grounds set out in the amendment, which are as under:

(i) A duty is cast upon the State under Article 45 of the Constitution of India to endeavour to provide within a period of ten years from the commencement of this Constitution, for free and compulsory education. Article 45 of the Constitution of India reads as under :

Provision for free and compulsory education for children -- The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

It is also submitted that the intent of this Article is to make the State and all other instrumentalities of the State, primarily responsible for providing free education for the children upto the age of 14 years. It is submitted that this would include both, pre primary as well as primary education. It was further submitted that this is the fundamental duty cast upon the State as well as its instrumentalities and in this regard Dr. Sinha relied upon the judgement of the Hon"ble the Supreme Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., .

(ii) The authorities like Village Panchayats, Municipalities or Municipal Corporations are local entities and/ or the instrumentalities of the State and therefore, along with the Govt. of Gujarat, all these entities are jointly responsible for discharging their Constitutional duty of imparting education to the children below the age of 14 years. With all vehemence at his command Dr. Sinha submitted that in light of this clear provision of Article 45 of the Constitution of India, these authorities cannot be permitted to pass buck on each other in order to avoid discharging their Constitutional duty. Dr. Sinha submitted he may be pardoned for using a harsh phrase that, "The order of the Govt. dated 10.11.1998 essentially makes a mockery of the Constitutional scheme, which the framers of the Constitution have envisaged and engrafted under Article 45 of the Constitution."

(iii) The State of Gujarat had acted as per the directives of Article 45 of the Constitution and by bringing out Resolution dated 5.6.1978, the Govt. has actually made the provision for imparting pre primary education and that the said Resolution is well within the executive powers of the State under Article 162 of the Constitution. That under Entry No.25 of Schedule VII of the Constitution of India, education is a matter in respect of which the State can legislate and therefore, the Resolution dated 5.6.1978 was within its powers to promulgate

law on the subject. Dr. Sinha submitted that similar duty stands imposed on the Gram Panchayats, Municipalities and Municipal Corporations by the Constitution of India.

(iv) Dr. Sinha submitted that in Schedule- I of the Gujarat Panchayats Act, 1993 an item no.(3) entitled "In the sphere of education and culture, entry (h) reads as under :

"Pre primary education and child welfare activities."

Therefore, it is the duty of the Village Panchayats to provide pre primary education to the children.

(v) Dr. Sinha also referred to the similar provisions made for providing education to the children by the Taluka Panchayat as well as by the District Panchayats. Dr. Sinha submitted that it is not open to any of the authorities to contend that the duty to provide pre primary education is purely discretionary on their part or that such a duty is not enforceable by a writ petition under Article 226 of the Constitution of India. Dr. Sinha submitted that thus, when an area is merged in the limits of the Corporation, the duty of the State to provide and continue to provide pre primary education does not come to an end and the State cannot be allowed to close down the Balmandirs.

(vi) Dr. Sinha, the learned advocate submitted that all the Balmandirs were getting grant from the State Govt. as per the rules made in this regard (Annexure "C", Govt. Resolution No.5678). That it is also an admitted fact that all the Balmandirs are conducted in the premises owned by the Village Panchayats and that the role of respondent no.4, Ahmedabad District Samaj Kalyan Sangh was formal and it was working essentially as an extended limb of the State. That for all practical purposes, the Balmandirs were run by the State as the finance was provided by the State and they were within the administrative jurisdiction of Village Panchayats through School Boards. Dr. Sinha submitted that in that view of the matter, after the areas in question are merged with the city limits of Corporation, it had become the bounden duty of the Corporation to take over the administration and management of the Balmandirs and continue to run the same in view of the fundamental duty of the Corporation to continue with the pre primary education of the children below the age of 14 years. It was also submitted that the Corporation, therefore, cannot refuse or decline to take this responsibility and any refusal by the Corporation would amount to a clear breach of the fundamental duty cast upon the local authority under Article 45 of the Constitution.

(vii) Dr. Sinha , in the alternative, submitted that the State Govt. cannot resile from its original decision since it was giving full grant for the functioning of the Balmandirs. Dr. Sinha submitted that irrespective of the fact that the Balmandirs were situated in particular Village Panchayats or within the limits of the Corporation, the responsibility of the State Govt. to pay and continue to pay the grant remains intact and only the ground of merger of the area of a Village

Panchayat into the Municipal Corporation can never be a ground to discontinue the grant and that such a stoppage of grant is required to be held as wholly arbitrary, illegal and contrary to the provisions contained in Article 45 of the Constitution of India.

(viii) Dr. Sinha submitted that he may be pardoned for his bitterness in his argument that when advancement of the society requires merger of a village area into an urban area of the Corporation, the residents of that village area cannot be deprived of their right to education. In fact the Govt. and the Corporation, both were expected to come forward of their own to improve the conditions of the Balmandirs, which were run in village areas to see that the children taking their education in those Balmandirs get better education than what they were getting previously.

(ix) Dr. Sinha also submitted that the village areas came to be merged with the city limits of the Corporation by the Govt. Resolution dated 22.2.1986. Subclause (a) of clause (1) of the said Notification reads as under,

"Transfer, in whole, of all assets, rights and liabilities of the specified local authorities (including the rights and liabilities under any contract made by any of the specified local authorities) to the Municipal Corporation of the city of Ahmedabad (hereinafter referred to as "the Corporation")"

Dr. Sinha submitted that under this clause the duty to impart pre primary education which may be considered to be a liability of a Panchayat is to be shouldered by the Corporation. These Balmandirs were run in the properties situated on the Gram Panchayat properties, namely, the properties were vested in the Corporation and in that view also these Balmandirs cannot be disowned by the Corporation, if the properties wherein these Balmandirs are run are accepted by the Corporation under the Govt. Notification dated 22.2.1986.

(x) Dr. Sinha submitted that Article 45 of the Constitution falls in part IV, which lays down the directive principles of the State and that the said Article 45 is to be read with Article 37 of the Constitution of India, which reads as under :

"37. Application of the principles contained in this Part -- The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."

(xi) Dr. Sinha submitted that Article 37 of the Constitution casts a duty upon the State and for that reason, all its limbs to enforce/ apply the directive principles contained in Part IV.

(xii) Dr. Sinha submitted that as it is already submitted that under item (h) of clause 3 of Schedule I of the Gujarat Panchayats Act, it is the duty of the Panchayat to impart pre primary education and undertake child welfare activities, the same is to be read in light of the provisions of sec. 99 of the said Act. Sec.99 of the said Act reads as under :

"99. Administrative powers of Panchayats -Subject to the provisions of this Act it shall be the duty of each Panchayat to make in the area within its jurisdiction, and so far as the fund at its disposal will allow, reasonable provisions in regard to all or any of the matters specified in Schedule I."

(xiii) Dr. Sinha submitted that it is not the case of the Govt. in its impugned order dated 10.11.1998 that the Govt. is not having funds. In the alternative, Dr. Sinha submitted that even paucity of funds cannot be a ground for not discharging fundamental duties cast upon the State under Article 45 of the Constitution of India.

(xiv) Dr. Sinha then submitted that even Chapter VI of the BPMC Act provides for the duties and powers of the Municipal authorities and officers. Item 15 of sec. 63 provides,

"maintaining, aiding and suitably accommodating schools for primary education."

Dr. Sinha submitted that as stated above, the term "primary education" does include "pre primary education" also and that his submission draws strength from the earlier incident of merger of the area known as "Dani Limda". In that case when the said area came to be merged with the city limits of the Ahmedabad Municipal Corporation, the Balmandirs of this area were included and all protections and benefits were given to the employees of the said Balmandirs. The facts to this effect are set out in para 7 of the petition.

(xv) Dr. Sinha further submitted that the Balmandirs in question existed prior to the merger of the areas in the limits of the Corporation. These Balmandirs were run in the buildings which belonged to the local bodies and by virtue of the Notification dated 22.2.1986 these buildings now vest in the Corporation. The teachers and the non teaching staff were paid salaries and the same were revised under Government Resolution dated 5.6.1978 by an order No. PPS/70347/78/F, Annexure "D" to the petition.

(xvi) Dr. Sinha submitted that earlier respective village areas were outside the limits of the Corporation. The State Govt. was discharging its duty to provide for pre primary education through the District Panchayats and other local bodies. The said duty of providing pre primary education cannot get extinguished on the merger of that area into the limits of the Corporation. Mr. Sinha submitted that the Govt. has simply tried to shirk its responsibility by recording in its order dated 10.11.1998 that, "Ahmedabad Municipal Corporation and Ahmedabad Nagarik Prathamik Shikshan Samiti are the autonomous bodies. As per the reply given by the Corporation and Ahmedabad Municipal School Board, they are not ready and willing to take over the work of administration of the Balmandirs situated in the eastern zone which were earlier managed by the Ahmedabad District Samaj Kalyan Sangh and not ready to accept the employees of the said Balmandirs as employees of either Ahmedabad Municipal Corporation or the employees of Ahmedabad Municipal School Board. This decision is in consonance with the decision dated 26.2.1996 of the Urban Development and Urban Housing

Department, Govt. of Gujarat."

(xvii) Dr. Sinha also submitted that even under the Budget Estimates 2000-2001, the Govt. has provided for maintenance grant for primary education to the tune of Rs.90 crores and that the Govt. has also provided for assistance to local bodies for secondary education maintenance grant to the tune of Rs.45 crores. The submission was that paucity of funds can never be the basis for shirking the responsibility cast upon as a fundamental duty under the provisions of Article 45 of the Constitution of India. Dr. Sinha also submitted that even the Central Govt. has come out with a new scheme titled "Education for All" so as to see that by the year 2003 all the children are educated.

(xviii) Dr. Sinha then submitted that in light of this, the prayer in terms of para 19(F) be granted and that the order dated 10.11.1998 passed by the Deputy Secretary, Education Department be quashed and set aside and it may be declared that both the State Govt. as well as the Corporation are jointly and/ or severally liable to run the Balmandirs and continue to employ all the teachers and other staff who were working in the said Balmandirs prior to merger and treat such teachers and other employees as the employees of the Corporation at par with the teachers of Dani Limda area who were taken over by the Corporation on account of merger of Dani Limda area into the limits of the Corporation in 1974.

10. The petition was contested on behalf of respondent no.2, the Corporation and also Ahmedabad Municipal School Board. Mr. B.P. Tanna, the learned Senior Counsel arguing on behalf of Ahmedabad Municipal Corporation, the respondent no.2, submitted that the respondent no.2 does not have any liability qua the petitioners, that the present petition is not filed on behalf of the students. Therefore, all the arguments advanced by Dr. Sinha on the basis of the duty cast upon the State and the other limbs of the State cannot be accepted in the present petition. He also submitted that the present petition is not filed as Public Interest Litigation and hence the petition is required to be rejected. The members of the petitioner union cannot be given any relief in the name of discharging fundamental duty even assuming for the sake of argument that a duty is cast upon the State as submitted by the petitioner and that the same is enforceable in the Court of law. In the alternative, Mr. Tanna submitted that the duty which is submitted to have been cast upon the State under Article 45 of the Constitution is a misconceived notion inasmuch as Article 45 is in Chapter IV of the Constitution of India and it clearly laid down in Article 37 that, "The provisions contained in this Part shall not be enforceable by any court, ... ". Mr. Tanna also submitted that even if the Balmandirs in which the members of the petitioner union were teaching were run in the buildings of the local body, but they were appointed by respondent no.4, i.e., Ahmedabad District Samaj Kalyan Sangh and that the grant was given by the State Govt. and therefore, if at all any relief can be pressed for by the petitioners, the same can be pressed only against respondent no.4. Mr. Tanna submitted that as is mentioned in para 13 of

the petition, the petition is directed against an order dated 27.3.1986 issued by respondent no.4, whereby respondent no.4 has terminated the services of the members of the petitioner union, without following any procedure. Therefore, the petitioners are necessarily seeking relief against respondent no.4. Mr. Tanna also submitted that the relief sought for against the State and the Corporation cannot be entertained in view of the submissions made hereinabove. That the relief which is sought for by the amended prayer clause also cannot be entertained. That the order dated 10.11.1998 is required to be upheld.

21.07.2000 :

11. Mr. Digant P. Joshi, learned Assistant Govt. Pleader appearing on behalf of the Secretary, Education Department, Gujarat State submitted that so far, on behalf of the State Government no reply is filed and in absence of the reply, he adopts the arguments advanced by Mr. Tanna, the learned Senior Counsel.

12. An affidavit in reply is filed on behalf of respondent no.4, Ahmedabad District Samaj Kalyan Sangh. Learned advocate, Mr. M.M. Desai, appearing for respondent no.4 submitted that the present petition is filed by the President of the Pre- primary teachers union and the same is not maintainable inasmuch as the said union is not a recognised one. That the same is not registered under the relevant provisions of the Act. It was also submitted that unless all the primary teachers shown in the schedule are joined as petitioners, no relief can be granted. That the primary teachers are not entitled to any benefit(s). He also contended that there are no sufficient facts on record pertaining to the primary teachers who are alleged to have been affected. Mr. Desai also contended that the present petition is also not maintainable on the ground that now the Tribunal has been constituted for primary teachers of the State Govt. under the relevant provisions of the Act and that in view of the constitution of the Tribunal, this Court may not grant any relief to the petitioner union or the teachers affected by any order or the action of the respondents. It was his contention that the teachers can approach the said Tribunal, which is constituted for redressing their grievances and that will be the real and proper forum available to them. He prayed that in view of the aforesaid facts, the petition be dismissed on that ground alone. It was also the contention of Mr. Desai appearing on behalf of respondent no.4 that the schools mentioned in the schedule are now covered within the extended limits of the Ahmedabad Municipal Corporation and thus, respondent no.4 has no duty or authority to do anything in the matter. He also submitted that in view of the orders passed by the Govt. under the provisions of the Act, the petitioners are not entitled to get any relief in this matter.

13. Dr. Sinha , learned advocate for the petitioner has filed an affidavit dated 24.3.2000, a copy of which is already served to the Clerk of Messrs Tanna Associates on 23.3.2000 and also to the Clerk of Mr. M.M. Desai, learned advocate for respondent no.4. Said affidavit is filed with a view to bring certain facts to the notice of the Court and also to meet with the arguments advanced by the learned advocate for respondent no.2, i.e. Ahmedabad Municipal Corporation.

It is stated in the said affidavit that,

"it is not true to suggest that Ahmedabad Municipal Corporation is not running Balmandirs (i.e. pre primary schools)."

It is also stated in the said affidavit that,

"as on today, there are 182 Balmandirs managed by Ahmedabad Municipal Corporation through Ahmedabad Municipal School Board. All these Balmandirs are situated in the city of Ahmedabad at different places within the limits of Ahmedabad Municipal Corporation."

It is further stated in the said affidavit that,

"It is not true that the Corporation does not have sufficient funds for managing the Balmandirs. I say that the Corporation has sufficient funds. According to my information, the Corporation has surplus funds. I say that Rs.5.75 crores earmarked for Balmandirs have remained unutilised. I crave leave to produce herewith a copy of newspaper report published in local daily Gujarat Samachar on 19.2.2000 at page 12 and mark the same as Annexure- A1."

It is mentioned in the said newspaper report that during the discussion on the Municipal School Board budget, it transpired that earlier there were 240 Balmandirs in the city. As against that there are only 182 Balmandirs and thus there is a reduction of 58 Balmandirs. It is also reported in the said newspaper report that an amount of Rs.5.75 crores has remained unutilised from the budget of the School Board, which is a serious matter. More particularly, when the condition of the schools is "Bismar" (a word from vernacular, i.e. dilapidated condition) and the drop out of the students is also on increase.

14. It is also stated in that the Municipal School Board has made sufficient provisions for starting new centres and new Balmandirs and that this decision of the respondent was reported in a local daily, Gujarat Samachar dated 6.1.2000, a copy of which is also annexed to the said affidavit. Said newspaper report mentions that more child centres and Anganwadis for pre primary will be started and that attention is focussed on the students and educational activities to keep them at the centre of the budget. The affidavit further proceeds to mention that there are teachers working in the Balmandirs managed by Ahmedabad Municipal School Board and they are paid salary in the pay scale of Rs.4000-- 6000/-, whereas Tedagarbai is paid salary in the pay scale of Rs.2550-3200/-. To support this submission made in the affidavit, pay slips of primary teacher(s) and Tedagarbai(s) are annexed.

15. Though a copy of the said affidavit was served on 23.3.2000 to the learned advocates appearing for the respondents, no counter is filed to this affidavit. Dr. Sinha submitted that this affidavit replies the arguments advanced on behalf of respondent no.2-Ahmedabad Municipal Corporation on whose behalf it was submitted that:

"the respondents do not have any liability qua the petitioners and that the duty cast upon under Article 45 of the Constitution of India in Chapter IV is not enforceable in the court of law."

Dr. Sinha submitted that the State Government in the budget for the year 1999--2000, allocated an amount of Rs.33.90 crores towards "maintenance grant" for primary education while an amount of Rs.40 crores was allocated under the head "assistance to local bodies for secondary education." These figures were further increased in the revised estimate for the year 1999- 2000. In the year 2000- 01, an amount of Rs.90 crores is allocated for "maintenance" grant" for primary education, and an amount of Rs.45 crores is earmarked for "assistance to local bodies for secondary education" (maintenance grant). Dr. Sinha also invited attention of the court to the objects to be achieved set out in the budget. It is specifically mentioned that by the year 2003, it is intended that all the children be covered in the new scheme entitled, "Sarva Shiksha Abhiyan".

16. In support of his argument, Dr. Sinha relied upon the judgement of the Honourable the Supreme Court of India in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . Dr. Sinha submitted that it is not necessary that in order to recognise "right to education" as a "fundamental right" it should necessarily be so stated in Part III of the Constitution of India. He submitted that new rights can be read in Part III of the Constitution of India and same can be inferred from the rights stated in Part III. Dr. Sinha relied upon para 132 of the judgement, which reads as under :

"132. Right to education is not stated expressly as a fundamental right in Part III. This court has, however, not followed the rule that unless a right is expressly stated as a fundamental right, it cannot be treated as one. Freedom of Press is not expressly mentioned in Part III, yet it has been read into and inferred from the freedom of speech and expression - Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, . More particularly, from Art. 21 has sprung up a whole lot of human rights jurisprudence viz., right to legal aid and speedy trial Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, to A.R. Antulay (1992) 1 SCR 225 : (AIR 1992 SCW 1872), the right to means of livelihood Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, , right to dignity and privacy Kharak Singh Vs. The State of U.P. and Others, , right to health (Vincent v. Union of India (: AIR 1987 SC 990 : (1987) 2 SCR 468)), right to pollution free environment M.C. Mehta Vs. Union of India (UOI) and Others, and so on. Let us elaborate.

132A. In Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, it has been held :

"The freedom of speech comprehends the freedom of press and the freedom of speech and press are fundamental and personal rights of the citizens."

17. Dr. Sinha , learned counsel with all vehemence at his command submitted that the Apex Court has made clear that even when a right is not expressly

stated as a fundamental right, it can be treated as one and that "right to education" is one such right and in the present case the children residing in the areas of local authorities, which happened to be merged in the limits of Ahmedabad Municipal Corporation cannot be deprived of such a right by closing down the Balmandirs and thus denying the right to "pre primary education". Dr. Sinha also submitted that the "right to education" includes "primary education" and "primary education" necessarily includes "pre primary education". He submitted that, "pre primary education" is the foundation and if "pre primary education" is not imparted, "primary education" will also suffer a set back. It was submitted that once the "primary education" is referred to in the relevant provisions which are narrated hereinabove, "pre primary education" is also included in the same provisions by inevitable implication. Dr. Singh submitted that in the present case by providing "pre primary education" to the children, neither the respondent corporation nor the Govt. is going to have an additional burden inasmuch as even prior to merger of the areas in which these Balmandirs were run it was the Govt. who was incurring the expenditure for the same. It was only the modality which is getting changed. Earlier it was through respondent no.4, Ahmedabad Dist. Samaj Kalyan Sangh, these Balmandirs were run, which are now required to be run through the respondent Municipal Corporation.

18. Dr. Sinha submitted that the argument advanced on behalf of the respondent Municipal Corporation that the "directive principles" are not enforceable in the court of law is not worth accepting inasmuch as the "fundamental right" and "directive principles" are supplementary and complementary to each other as is clearly stated in Part IV of the Constitution :

" but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."

It was next submitted that "right to education" is implicit and it flows from the "right to life" guaranteed under Article 21 of the Constitution of India. It was submitted that right to receive education is flowing from fundamental right -- right to life. In support of his submission, Dr. Sinha relied upon the judgement of Unni Krishnan (supra). In this regard he quoted para 142 which reads as under :

"In *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, this court held that the right to life guaranteed by Article 21 does take in "educational facilities". (The relevant portion has been quoted hereinbefore). Having regard to the fundamental significance of education to the life of an individual and the nation, and adopting the reasoning and logic adopted in the earlier decisions of this Court referred to hereinbefore, we hold, agreeing with the statement in *Bandhua Mukti Morcha*, that right to education is implicit in and flows from the right to life guaranteed by Article 21. That the right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world. In *Mohini Jain (AIR 1992 SCW 2100)*, the importance of education has been duly and

rightly stressed. The relevant observations have already been set out in para 7 hereinbefore. In particular, we agree with the observation that without education being provided to the citizens of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail. We do not think that the importance of education could have been better emphasised than in the above words. The importance of education was emphasised in the "Neethishatakam" by Bhartruhari (First Century B.C.) in the following words :

"Translation :

Education is the special manifestation of man;

Education is the treasure which can be preserved without the fear of loss;

Education secures material pleasure, happiness and fame;

Education is the teacher of the teacher;

Education is God incarnate;

Education secures honour at the hands of the State, not money.

A man without education is equal to animal."

The fact that right to education occurs in as many as three Articles in Part IV, viz., Articles 41, 45 and 46 shows the importance attached to it by the founding fathers. Even some of the Articles in Part III viz., Articles 29 and 30 speak of education."

19. It was next contended that in light of the provisions of Articles 21, 41, 45 and 46 of the Constitution a conclusion be drawn that it is the right of every child to get free education upto 14 years of age. After 14th year of age the right gets circumscribed by the limitations on account of "economic capacity" of the State. Dr. Sinha submitted that the Apex Court judgement of Unni Krishnan (supra) in paragraphs 145, 148 and 149 has said in so many words. These paragraphs read as under:

"145. In the above state of law, it would not be correct to contend that Mohini Jain (AIR 1992 SCW 2100) was wrong in so far as it declared that "the right to education flows directly from right to life." But the question is what is the content of this right? How much and what level of education is necessary to make the life meaningful? Does it mean that every citizen of this country can call upon the State to provide him education of his choice? In other words, whether the citizens of this country can demand that the State provide adequate number of medical colleges, engineering colleges and other educational institutions to satisfy all their educational needs? Mohini Jain seems to say, yes. With respect, we cannot agree with such a broad proposition. The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution. So

far as the right to education is concerned, there are several articles in Part IV which expressly speak of it. Article 41 says that the "State shall within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want." Article 45 says that "the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years." Article 46 commands that "the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation." Education means knowledge and "Knowledge itself is power". As rightly observed by Johan Adams, "the preservation of means of knowledge among the lowest ranks is of more importance to the public than all the property of all the rich men in the country" (Dissertation on canon and feudal law, 1765). It is this concern which seems to underline Article 46. It is the tyrants and bad rulers who are afraid of spread of education and knowledge among the deprived classes. Witness Hitler railing against universal education. He said: "Universal education is the most corroding and disintegrating poison that liberalism has ever invented for its own destruction." (Rauschnig, The voice of destruction: Hitler speaks). A true democracy is one where education is universal where people understand what is good for them and the nation and know how to govern themselves. The three articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these articles that the content and parameters of the right to education have to be determined. Right to education understood in the context of Articles 45 and 41, means. (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years, and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development. We may deal with both these limbs separately.

Right to free education for all children until they complete the age of fourteen years (45-A). It is noteworthy that among the several articles in part IV, only Article 45 speaks of a time-limit; no other article does. Has it no significance? Is it a mere pious wish, even after 44 years of the Constitution? Can the State flout the said direction even after 44 years on the ground that the article merely calls upon it to "endeavour to provide" the same and on the further ground that the said article is not enforceable by virtue of the declaration in Article 37. Does not the passage of 44 years more than four times the period stipulated in Article 45 convert the obligation created by the article into an enforceable right? In this context, we feel constrained to say that allocation of available funds to different sectors of education in India discloses an inversion of priorities indicated by the Constitution. The Constitution contemplated a crash programme being undertaken by the State to achieve the goal set out in Article 45. It is relevant to

notice that Article 45 does not speak of the "limits of its economic capacity and development" as does Article 41, which inter alia speaks of right to education. What has actually happened is more money is spent and more attention is directed to higher education than to-- and at the cost of primary education. (By primary education, we mean the education, which a normal child receives by the time he completes 14 years of age). Neglected more so are the rural sectors, and the weaker sections of the society referred to in Article 46. We clarify, we are not seeking to lay down the priorities for the government-- we are only emphasising the constitutional policy as disclosed by Articles 45, 46 and 41. Surely the wisdom of these constitutional provisions is beyond question. This inversion of priorities has been commented upon adversely by both the educationists and economists.

Gunnar Myrdal the noted economist and sociologist, a recognised authority on South Asia, in his book "Asian Drama" (abridged Edition published in 1972) makes these perceptive observations at page 335:

"But there is another and more valid criticism to make. Although the declared purpose was to give priority to the increase of elementary schooling in order to raise the rate of literacy in the population, what has actually happened is that secondary schooling has been rising much faster and tertiary schooling has increased still more rapidly. There is a fairly general tendency for planned targets of increased primary schooling not to be reached, whereas targets are over-reached, sometimes substantially, as regards increases in secondary and, particularly, tertiary schooling. This has all happened in spite of the fact that secondary schooling seems to be three to five times more expensive than primary schooling, and schooling at the tertiary level five to seven times more expensive than at the secondary level.

What we see functioning here is the distortion of development from planned targets under the influence of the pressure from parents and pupils in the upper strata who everywhere are politically powerful. Even more remarkable is the fact that this tendency to distortion from the point of view of the planning objectives is more accentuated in the poorest countries, Pakistan, India, Burma and Indonesia, which started out with far fewer children in primary schools and which should therefore have the strongest reasons to carry out the programme of giving primary schooling the highest priority. It is generally the poorest countries that are spending least, even relatively, on primary education, and that are permitting the largest distortions from the planned targets in favour of secondary and tertiary education."

In his other book "Challenge of World Poverty" (published in 1970) he discusses elaborately in chapter 6 "Education" the reasons for and the consequences of neglect of basic education in this country. He quotes J.P. Naik, (the renowned educationist, whose Report of the Education Commission, 1966 is still considered to be the most authoritative study of education scene in India) as saying "Educational development..... is benefiting the "haves" more than the "have

nots". This is a negation of social justice and "planning" proper" and our constitution speaks repeatedly of social justice (Preamble and Article 38(1)). As late as 1985, the Ministry of Education had this to say in para 3.74 of its publication "Challenge of Education a policy perspective". It is stated there:

"3.74. Considering the constitutional imperative regarding the universalisation of elementary education it was to be expected that the share of this sector would be protected from attribution. Facts, however, point in the opposite direction. From a share of 56 per cent in the First Plan, it declined to 35 per cent in the Second Plan, to 34 per cent in the Third Plan, to 30 per cent in the Fourth Plan. It started going up again only in the Fifth Plan, when it was at the level of 32 per cent, increasing in Sixth Plan to 36 per cent, still 20 per cent below the First Plan level. On the other hand, between the First and the Sixth Five Year Plans, the share of university education went up from 9 per cent to 10 per cent."

Be that as it may, we must say that at least now the State should honour the command of Article 45. It must be made a reality at least now. Indeed, the "National Education Policy 1986" says that the promise of, Article 45 will be redeemed before the end of this century. Be that as it may, we hold that a child (citizen) has a fundamental right to free education up to the age of 14 years."

"148. The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development. By saying so, we are not transferring Article 41 from Part IV to Part III we are merely relying upon Article 41 to illustrate the content of the right to education flowing from Article 21. We cannot believe that any State would say that it need not provide education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State."

"149. In the light of the above enunciation, the apprehension expressed by the counsel for the petitioners that by reading the right to education into Article 21, this Court would be enabling each and every citizen of this country to approach the courts to compel the State to provide him such education as he chooses must be held to be unfounded. the right to free education is available only to children until they complete the age of 14 years. Thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity and development. Indeed we are not stating anything new. This aspect has already been emphasised by this Court in Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and Others, . While elaborating the scope of the right guaranteed under Article 21, this Court stated:

"But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes right to live with human dignity and all that goes along with it viz., the bare necessities of life such as adequate

nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about the mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must in any view of the matter, included a right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the humankind."

20. It was next submitted that the Apex Court has held in no uncertain terms that "right to education" means a citizen has a right to call upon the State to provide "educational facilities" within the limits of its "economic capacity" and development. It was submitted that in the present case the question of "economic capacity" does not arise inasmuch as, prior to the merger of the areas of the local authorities it was the State Government, was incurring the expenditure on these Balmandirs. After merger also the State Government is to incur the expenditure of running these Balmandirs, only the agency through which the duty of providing pre primary education was discharged is changed. Earlier it was through respondent no.4-- Ahmedabad Dist. Samaj Kalyan Sangh that the pre primary education was provided by running those Balmandirs which is now to be provided through the respondent Municipal Corporation. Emphasis of Dr. Sinha was on the point that by granting the reliefs as prayed for in the present petition, it is not going to cause any additional burden on the respondents.

21. Dr. Sinha relied upon the decision of the Honourable Apex Court in the case of The Chandigarh Administration and Others Vs. Mrs. Rajni Vali and Others, . Dr. Sinha submitted that the Apex Court has held that non grant of salary at par with the teachers of the other aided schools on the ground of conditional grant of permission to open higher secondary classes and the paucity of funds cannot be a valid ground. Dr. Sinha relied upon the observations made by the Honourable Apex Court in para 6 of the said judgement, which reads as under :

"The position has to be accepted as well settled that imparting primary and secondary education to students is the bounden duty of the State Administration. It is a constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends. In line with this principle, the State has enacted statutes and framed Rules and Regulations to control/ regulate establishment and running of private schools at different levels. The State Govt. provides grant in aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high standard of teaching in any educational institution. Keeping in mind these and other relevant factors this Court in a number of cases has intervened for setting right any discriminatory treatment meted out to teaching and non teaching staff of a particular institution or a class of institutions. To notice a few such decisions on

the point, we may refer to the case of Haryana State Adhyapak Sangh and Others Vs. State of Haryana and Others, , in which this Court issued a direction that the State Govt. will also take up with the Management of the aided schools the question of bringing about parity between the teachers of aided schools and the teachers of Govt. schools for the period following that to which the thirty five instalments relate, so that a claim for payment may be evolved after having regard to the different allowances claimed by the petitioners. In the case of Haryana State Adhyapak Sangh and Others Vs. State of Haryana and others, , a Bench of three learned Judges of this Court clarifying the judgment in Haryana State Adhyapak Sangh v. State of Haryana (supra), issued a direction, inter alia, that the parity in the pay scales and dearness allowance of teachers employed in aided schools and those employed in Govt. schools shall be maintained and with that end in future the pay scales of teachers employed in Govt. schools shall be revised and brought at par with the aided schools and dearness allowance payable to the teachers employed in Govt. schools with effect from January 1st, 1986."

22. Replying to the contention raised by the respondents regarding maintainability of the present petition at the instance of the petitioner union, Dr. Sinha relied upon the decision of the Honourable Apex Court in the case of K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, . It was submitted that,

"When there is an interest created by Govt. in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart the education, get an element of public interest in the performance of their duties. The element of public interest requires to regulate conditions of service of those employees at par with government employees. Such employees are entitled to parity of pay scales as per executive instructions of Government. State has obligation to provide facilities and opportunities to people to avail of right to education. Private institutions cater to the needs of education opportunities. A teacher duly appointed to a post in a private institution is entitled to seek enforcement of orders issued by Govt. When an element of public interest is created and the institution is catering to that element, the teacher, the arm of the institution is also entitled to avail of remedy provided under Article 226; the jurisdiction part is very wide. It would be a different position if the remedy is a private law remedy. They cannot be denied the same benefit which is available to others. it is therefore held that writ petition is maintainable. Appellants are entitled to equal pay on a part with government employees under Article 39(d) of the Constitution."

23. Special Civil Application No.2262 of 1986 was filed on 21.4.1986 and this Court on 24.4.1986 passed an order as under :

"Notice to respondents returnable on 29.4.86. Direct service. Ad interim relief re. possession of Balmandir not to be disturbed till then."

Thereafter on 7.5.1986, this Court passed the following order,

"Further ad interim relief to the effect that the employees (members of the petitioner union) not to be terminated. S.O. to 14.7.86."

Thereafter on 24.7.1987 this Court was pleased to pass an order to the effect that,

"Rule. Interim relief granted earlier to continue. For further interim relief matter is adjourned to 31.7.87."

Thereafter, on 22.3.1988, this Court passed an order as under :

"This petition has already been admitted as per order dated 24.7.87 (Coram : I.C. Bhatt, J.). For the following reasons interim relief refused.

1. Grant of interim relief at this stage would amount to allowing the petition without adjudicating the issues involved in the petition. Such a course is not warranted in this case.

2. By way of interim relief it is prayed that respondent corporation be directed not to close down the Balmandirs and not to recruit any other staff in place of the members of the petitioner union. Such interim relief, if granted at this stage may affect the educational facilities sought to be provided to different areas. Such consequence cannot be permitted to be ensued as far as possible and that too, by an interim order of the court.

3. Balance of convenience is also not in favour of the petitioner.

In the above view of the matter interim relief refused."

24. It is submitted by Dr. Sinha that by the said order dated 22.3.1988, the relief to the effect that the respondent corporation be directed not to recruit any other staff in place of the members of the petitioner union was refused as this Court was of the opinion that if such an interim relief is granted, that may affect the educational facilities sought to be provided to different areas and therefore, the said relief was not granted, but the relief granted earlier against the closure remained as it is and as a matter of fact the Balmandirs are working as on date. Dr. Sinha submitted that in the order dated 24.7.1987, this Court, after issuing rule said that,

"Interim relief granted earlier to continue. For further interim relief matter is adjourned to 31.7.87."

Thereafter, further interim relief was refused by order dated 22.3.1988 It is also submitted that in fact the Balmandirs are continuing till today. Therefore, this Court while deciding these matters on 6.10.1997 observed in para 9 as under :

"The interest of justice will be met in case these special civil applications are disposed of with the direction to the Govt. of Gujarat to decide the matter regarding the closure or continuation of Balmandirs earlier which were run by the

respondent no.4 with aid of the Govt. within a period of four months from the date of receipt of certified copy of this order and the petitioner association may be given full opportunity of hearing. Where any order adverse to the employees is made then copy of the same may be sent to the petitioner and reasons may also be recorded therein. In that eventuality, liberty to the petitioner for revival of these special civil applications is granted. The petitioners, the low paid employees, have unnecessarily been dragged in the litigation and as such, in the first petition the respondent State is directed to pay to them Rs.5000/- by way of costs of this petition, the amount which has been incurred by these poor teachers in filing of this special civil application. Both the special civil applications and rule therein stand disposed of accordingly."

25. Thereafter, these petitions are revived by an order dated 26.2.1999, passed in Misc. Civil Application No.2899 of 1998 and thereafter, the petition came to be amended by filing Civil Application No.3400 of 1999 so as to challenge the order passed by the Govt. dated 10.11.1998.

26. Thus, by this petition, the petitioner is challenging the order dated 10.11.1998 whereby the reliefs sought for by the petitioner are rejected. The operative part reads as under:

"Taking into considering the aforesaid facts, it is clear that the teacher of the Balmandirs were working under Ahmedabad Jilla Samaj Kalyan Sangh. Therefore, the teachers working under Ahmedabad Jilla Samaj Kalyan Sangh in Balmandirs in the villages adjoining to the city of Ahmedabad, cannot be considered to be the employees of the Govt. of Gujarat or the employees of local body like Gram Panchayat. The notification dated 22.2.86 issued by the Urban Development Department of the Govt. of Gujarat cannot be made applicable to these teachers because the teachers of these Balmandirs are not the employees of either Govt. of Gujarat or any local governmental body like Gram Panchayat."

27. From the reading of order dated 10.11.1998, it is clear that in the areas adjoining the city of Ahmedabad pre primary schools were managed by the Ahmedabad District Samaj Kalyan Sangh and in the year 1986, by notification no. KV/ 71-- 8--- WRA-- 1084-- 107-P dated 22.2.1986 the areas situated at the eastern side of Ahmedabad city were included within the limits of Ahmedabad Municipal Corporation. A perusal of that notification which is at Annexure "B" to this petition makes clear that by virtue of clause (1), subclause (a), all the assets, rights and liabilities of the specified local authorities including the rights, liabilities under any contract made by any of the specified local authority stood transferred to the Municipal Corporation of the city of Ahmedabad, and under subclause (c) of clause (1), all the employees of the specified local authorities, who were in the employment of the specified authorities on 5.11.1985 and immediately before 23.2.1986 stood transferred to the corporation on the same terms and conditions, which govern them on 5.11.1985. It is thereafter, that on 27.3.1986 the Ahmedabad District Samaj Kalyan Sangh informed the teachers of

all the Balmandirs (pre primary schools) that their villages were included in the limits of Ahmedabad Municipal Corporation. Therefore, the schools were to be closed with effect from 1.4.1986. Thereafter, by virtue of the orders of this Court those Balmandirs continued till date. It is clear from the Resolution of the Govt. dated 5.6.1978, a copy of which produced at Annexure "C" that they have published rules. It is also the case of the petitioners that thereafter the State of Gujarat had decided the pay scales of trained and untrained teachers engaged in the activity of kindergarten institutions with effect from 1.4.1981 as per the recommendations of Sarela Pay Commission by its Resolution No. PPS/ 1070/ 70347/ 78/Ka produced at Annexure "D". The impugned order records the submissions made on behalf of the petitioners and thereafter records as under :

"In view of the aforesaid facts, the Balmandirs functioning in the aforesaid 28 villages and the school buildings of which were owned by the Village Panchayats, were transferred to Ahmedabad Municipal Corporation by virtues of aforesaid Notification. ..."

The impugned order after recording the submissions/ contentions on behalf of the petitioners has also recorded the contentions raised on behalf of the Ahmedabad Municipal Corporation. After referring to the contentions of both the sides, it has rejected the reliefs sought for by the petitioners by the operative part, which is reproduced hereinabove. The perusal of the impugned order reveals that the contentions raised on behalf of the petitioners are not dealt with contentionwise and the same are not considered in the said order, namely, the first contention raised on behalf of the petitioners was as under :

"1. That it is mandatory for the Village Panchayats to provide pre primary education in their villages as per the provisions of sec.88 of the Gujarat Panchayat Act, 1961. Accordingly, the Village Panchayats concerned were running the Balmandirs through Ahmedabad District Samaj Kalyan Sangh with financial aid provided through Ahmedabad District Education Committee and Taluka Panchayat, for which the administrative funds were deposited with Samaj Kalyan Sangh and school buildings were provided by the Village Panchayats."

In the present petition also Dr. Sinha submitted that though the contention was raised before the authorities it has neither dealt with nor replied to the said contention. On perusal of the provisions of sec.88 of the Gujarat Panchayats Act, relevant provisions of the Constitution of India and other material pointed out by the learned advocate for the petitioners, there is no doubt that it is mandatory for the Village Panchayats and for that reason the local authority of the area, which in the present case will be the respondent Corporation, to provide "pre primary education" and that authority cannot shirk its liability of providing the same. The authority passing the impugned order has erred in recording that,

"... Ahmedabad Municipal Corporation and Ahmedabad Municipal School Board, they are not ready/ willing to take over the administrative management of the Balmandirs situated in east zone which were earlier managed by Ahmedabad Jilla

Samaj Kalyan Sangh and it is further stated in their reply that they are not ready to accept the employees of the said Balmandirs as the employees of either Ahmedabad Municipal Corporation or as the employees of Ahmedabad Municipal School Board and this decision is in consonance with the decision dated 22.2.86 by notification issued by the Urban Development and Urban Housing Deptt. of the Govt. of Gujarat."

28. The impugned order then leaves the petitioners to the mercy of the Ahmedabad Municipal Corporation or the Municipal School Board by recording that,

".. .. Still, however, the applicants may once again make a representation with their demands to Ahmedabad Municipal Corporation or Ahmedabad Municipal School Board. The Ahmedabad Municipal Corporation and Ahmedabad Municipal School Board being autonomous bodies may take appropriate decision in the matter within a particular time limit and inform the same accordingly."

This is nothing but shirking the responsibility cast upon the State under the relevant provisions and therefore, the said impugned order is required to be quashed and set aside to that extent. So far as the liability to provide primary education including the pre primary education, it ought to have been considered separately than considering the teachers to be treated as employees of the Ahmedabad Municipal Corporation or Ahmedabad Municipal School Board. Only with a view to see that the local body is not required to shoulder the liability arising from the teachers, the local body cannot deny to discharge its duty of providing primary education including pre primary education. It is not the case of the respondent Corporation before this Court that they have made any other alternative arrangement to provide primary education or pre primary education in that area.

29. During pendency of this Special Civil Application for judgement and orders, the applicant, original petitioner in Special Civil Application No.2262 of 1986 had filed Civil Application No.6909 of 2001 with two prayers, viz. (a) that the circular issued by Nagar Prathmik Shikshan Samiti (Municipal School Board) of opponent no.2 dated 8.6.2001, a copy of which is produced at Annexure "I" in this Civil Application be taken on record and the same should be taken into consideration while passing judgement and order in Special Civil Application; and (b) that during pendency and final disposal of Special Civil Application No.2262 of 1986, opponent no.2 be restrained from making any recruitment pre primary school teachers in pursuance of circular at Annexure "I".

30. Said Civil Application was granted so far as prayer in clause (a) of para 5 is concerned on 9.7.2001. So far as prayer clause (b) of para 5 is concerned it is declined being premature at that stage and the Civil Application was disposed of. Dr. Sinha , learned advocate appearing for the petitioner submitted that by the said circular dated 8.6.2001, the case of the respondent Corporation that the Corporation has no liability to run pre primary classes is negated. He submitted

that when the respondent Corporation is going to start such pre primary classes, it will be in the interest of justice, if the teachers who were serving in such pre primary schools (Balmandirs) are accommodated. Dr. Sinha , learned advocate also submitted that in view of the said circular, reliefs as prayed for are required to be granted.

31. In view of the submissions made by both the sides and in view of the discussion hereinabove these petitions are required to be partly allowed. This Court is of the opinion that the State Government as well as Ahmedabad Municipal Corporation are under an obligation to impart pre primary education and as the State Government was funding and running all the Balmandirs there is no question of any new financial burden being created by this order. It will be the joint and/ or several liability of the State and Ahmedabad Municipal Corporation to run these Balmandirs.

32. In the result, the following directions are issued.

(i) Respondents no.1 and 2 shall see that the Balmandirs which were continued prior to inclusion of the area of 19 villages in the city limits of Ahmedabad by Notification dated 22.2.1986 are continued.

(ii) Respondents no.1 and 2 shall see that the Balmandirs mentioned in Annexure "A" are not closed down and they are continued so as to impart pre primary education to the children living in that area.

(iii) Respondent no.2, Ahmedabad Municipal Corporation shall not recruit any other staff in place of the members of the petitioner union in Special Civil Application No.2262 of 1986 and shall protect the rights of the members of the petitioner union and shall treat them as employees of the respondent Corporation and shall give all consequential benefits which they are entitled to as per the provisions of Bombay Municipal Corporations Act subject to adjustment of the amount which these members have received.

(iv) These directions will apply to the petitioner in Special Civil Application No.7405 of 1990 also as the prayers sought for are identical.

33. Both the petitions are partly allowed with the above directions. Rule is made absolute with no order as to costs.