
(2002) 05 GUJ CK 0043

In the Gujarat High Court

Case No : Special Civil Application No. 3285 of 2002

Solanki Pravinkumar Gagabhai

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 07-05-2002

Acts Referred:

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

Citation : (2002) 22 GLH 299

Hon'ble Judges : Anil R. Dave, J

Bench : Single Bench

Advocate : J.J. Yajnik for petitioner Nos. 1-25, for the Appellant; N.D. Gohil, A.G.P. for respondent No. 1, Mr. A.D. Oza for respondent No. 2, Mr. N.N. Prajapati for respondents No. 4-11, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Dave, J.—This is a petition filed by students studying in standard XII praying that respondent No. 2-Gujarat Secondary Education Board, be directed to accept the examination forms of the petitioners and permit the petitioners to appear at the examination. Notice was issued by this Court on 15th March 2002. In pursuance of the notice issued by this Court, learned Advocate Shri Deepak Dave for learned Advocate Shri A. D. Oza has appeared and has placed on record an affidavit-in-reply filed by Shri Balkrishna, Examination Secretary of respondent No. 2-Board. In the affidavit filed on behalf of the Board, it has been stated that respondent No. 3-school is not having any recognition or permission to conduct standard X or XII classes or in other words, it is not having permission to run Secondary or Higher Secondary School. In spite of the said fact, the school has given admission to the petitioner-students. It has also been submitted that in the past, when recognition of the school had been cancelled, the order whereby the recognition was cancelled was challenged by New Education Foundation, the trust which runs respondent No. 3-school, and not only this Court, but even the Hon"ble Supreme Court had upheld the order whereby recognition of the school

had been cancelled. Thus, there is no valid permission to run Secondary or Higher Secondary School with the trust.

2. Upon knowing the illegalities committed by the trustees of the trust, this Court had given certain directions to the District Education Officer, Ahmedabad (Rural) as well as the Charity Commissioner, Gujarat State to furnish certain information.

3. The Charity Commissioner, Gujarat State had placed on record balance sheets of the trust as on 31st March 1999, 2000 and 2001 alongwith the income and expenditure accounts for the relevant years. Statements of accounts which the trust was supposed to file with the Charity Commissioner had not been filed since 1982, but when the proceedings had been initiated before this Court, the trust filed its statement of accounts on 11th April 2002. It is deplorable that the trustees of the trust had shown carelessness with regard to submission of statement of accounts of the trust to the Charity Commissioner. Upon perusal of the income and expenditure account as well as the balance sheet, it appears that complete details with regard to the accounts have not been given. The trust has given loans to Jan Seva High School and Higher Secondary School. The amount of loan given to the said school exceeds Rs. 50 lakhs. The accounts maintained by respondent No. 3 school have not been placed on record and the said accounts have also not been submitted to the Charity Commissioner. Prima facie it appears that the school is run by the trust and, therefore, the accounts of respondent No. 3 school should also have been placed before the Charity Commissioner or the accounts of the school ought to have been incorporated in the accounts of the trust. This has not been done. I am sure that the Charity Commissioner shall initiate appropriate proceedings against the concerned trustees for the default committed by them in not maintaining the accounts properly and shall also call upon the trustees to place on record the accounts of respondent No. 3 school.

4. Prima facie, it appears that no permission has been obtained by the trust to manage the school. Moreover, the school has also not been registered under the provisions of the Gujarat Secondary Education Act, 1972 and, therefore, the trustees have acted in violation of the provision of Section 31 (1) of the Gujarat Secondary Education Act, 1972. The District Education Officer, Ahmedabad (Rural) should immediately initiate action against the concerned trustees.

5. Upon perusal of the contents of the petition and the replies filed, it is also found that the petitioner-students had undergone studies in a school which was illegally managed by the trustees. The students have not been permitted to appear at the examination as they had not been imparted education by a recognized school. In the circumstances, the petitioners have suffered and one important year of their life has been wasted, as they were not permitted to appear at the examination. They had to rush to this Court possibly because the students were not aware of the fact that the school managed by the trustees is not having requisite permission.

6. Learned A.G.P. Shri Gohil has placed on record an advertisement given by Shri R U. Yagnik, who is the managing trustee of the trust. The said advertisement was published in Shri Kankai Publicity and Graphics on 19th September 2001. By virtue of the said advertisement, the managing trustee had invited students to appear at the Board examination by pretending that Jan Seva High School, of which he is managing trustee, is having requisite permission to run the school. Possibly in pursuance of such an advertisement given earlier, the students who are before this Court or other students might have attended the school. Prima facie this appears to be a case where the students have been duped.

7. In the circumstances, by an order dated 18th April 2002, the trustees were directed to deposit a sum of Rs. 1,36,000/- with this Court, so that the said amount can be given to the petitioners and other authorities by way of costs. It is pertinent to note that the petitioners have wasted one very important year of their life. Cost of loss of their one year can never be Rs. 5,000/- and the said amount which is to be given to the petitioners would not be by way of total damages. It would be open to the petitioners to file suit for damages against the trustees if they think it so proper.

8. Out of the amount deposited with this Court, the Registry of this Court shall give Rs. 5,000/- to each of the petitioners by account payee cheques. The said amount shall be paid to the petitioners upon due identification by a lawyer practising in this Court. The lawyer identifying the student shall take due care while identifying the students so as to see that no mistake in identity of the student is made. A sum of Rs. 5,000/- shall be paid to the Charity Commissioner towards costs, as the Charity Commissioner has to look into the financial affairs of New Education Foundation and a sum of Rs. 5,000/- shall be given to the District Education Officer, Ahmedabad (Rural) so as to meet with the expenditure already incurred by his office. The balance amount of Rs. 1,000/- shall be kept by the Registry of this Court towards costs as notices were issued in the matter without payment of process fees as directed by this Court.

9. At the time when the order with regard to payment of costs was being dictated, learned Advocate Shri B. S. Supehia has submitted that the petitioners have not made any prayer for costs and, therefore, the amount of costs should not be awarded to the petitioners. In my opinion, the said submission is not correct for the reason that the petitioners have prayed that this Court "... may be pleased to pass such other and further order/s as deemed fit, just and proper, in the interest of justice." Looking to the facts of the case, in my opinion, the amount which is being awarded to the petitioners is a very meagre amount. The amount of costs has been awarded to see that the petitioners are compensated to certain extent. This order should also have a deterrent effect on other management which are managing schools without getting their Educational Institutions recognized by the Competent Authority. District Education Officer, Ahmedabad (Rural) shall see that the building which was being used by respondent No. 3 school for imparting education to the students is not used

again by respondent No. 3 unless respondent No. 3 school is given recognition by the Competent Authority for conducting classes for Secondary or Higher Secondary studies.

10. It is also pertinent to note that Hon''ble Supreme Court has observed in the case of Maharshi Dayanand University v. MLR Saraswati College (2000) 7 S.C.C. 746 that if a student's one year is wasted on account of non recognition of the institution, he should be compensated. It has been submitted by learned Advocate Shri B.S. Supehia that the Hon''ble Supreme Court has not given a specific direction that the compensation must be given in all cases. In my opinion, the submission of learned Advocate Shri B. S. Supehia is not correct, because the Hon''ble Supreme Court has expressed its view that so as to curtail such activities and so as to compensate the aggrieved students, amount of costs should be given to the concerned students. In my opinion by awarding costs, this Court is making an effort to see that at least the cost which the students have incurred in approaching this Court is paid to them as stated hereinabove. It would be open to the concerned petitioners to file a suit for the damages as their one valuable year of life has been spoiled only on account of illegal activity of the trustee. The amount which has been deposited with this Court shall not be paid by the New Education Foundation trustee but shall be paid personally by the trustees and in no case, the trustee shall make effort to recover the said amount by way of reimbursement. In view of the fact that examination is over and as the petitioners are not entitled to appear at the examination in view of the fact that respondent No. 3 school is not recognized, the petition is rejected, subject to the above directions. Non-bailable warrant issued for procuring the presence of Shri P. B. Thakor, Shri P.R. Makwana and Shri B.S. Patel, is hereby cancelled.