

(2008) 01 GUJ CK 0094

In the Gujarat High Court

Case No : Special Civil Application No. 8401 of 1998

Sri Adarsh Sanskar Dham

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 09-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 1 GLH 777

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Vilas G. Goswamy, for the Appellant; Trusha Patel, Asst. Government Pleader for Respondents 1 - 2, for the Respondent

Judgement

K.M. Thaker, J.—In this petition, the petitioner has challenged order dated 22.7.1998 (Annexure - F) whereby the Secretary, Social Welfare Department, cancelled the recognition of the Ashram Sala, which was being run by the petitioner trust.

2. In the petition, while challenging the said order dated 22.7.1998, the petitioner has raised a contention in Paragraph 6(g) which, in nutshell is that for the same incident, the petitioner cannot be penalized twice.

2.1 Though the petitioner, has mentioned other grounds in the petition, at the time of hearing, the petitioner has mainly and essentially attacked the impugned order on the aforesaid ground.

2.2 Against the said contention, the counsel for the respondent submitted that the petition suffers from suppression of material facts and the petitioner, therefore, does not deserve any relief.

2.3 So as to consider the rival contentions it is necessary to take note of the factual background stated in the petition as well as the other relevant facts brought on record through respondent's affidavit with regard to the two orders dated 11.3.1998 and 22.7.1998.

3. It is stated by the petitioner that it had applied for permission to establish and run Ashram Shala and for grant-in-aid, pursuant to which, by order dated 8.7.1996, the petitioner trust was granted permission to run Ashram Shala, and recognition was granted by an order dated 16.9.1997 which was subject to the condition requiring the petitioner to comply with the prescribed terms and conditions. The petitioner has claimed that it had complied with all the conditions.

4. At this stage, it is required to be noted that one of the prescribed conditions required the petitioner to acquire, within specified time limit, land for the Ashram Shala. However, while considering petitioner's request for recognition and while passing the order dated 16.9.1997, it was noticed by the authorities that the petitioner trust had not acquired the land within specified time limit. Hence, the consequences for such failure were likely to follow. Thus, to avoid the consequences of such non-compliance, the petitioner trust had, at that time, assured the authorities that within a period of one year it would acquire necessary land. In light of the said assurance the order dated 16.9.1997 was passed.

4.1 It is a matter of fact, as admitted during the hearing, that even thereafter for considerable long time, the petitioner trust failed and neglected to acquire the land and it was only in July, 1999 (i.e., much after the impugned order) that the petitioner, as per its present claim, acquired the land.

4.2 The counsel for respondent submitted that on this count also the petition deserves to be rejected.

5. The Ashram Shala was visited by a team of Officers on 20.12.1997 and diverse irregularities were noticed by the said team. Therefore, a notice dated 17.1.1998 was issued and explanation from the petitioner trust was called for.

5.1 On examining the said notice it transpires that the alleged irregularities included couple of serious charges e.g. there was no stock of grains for the students and that a high school was also being run in the premises supposed to be for Ashram Shala and that the relevant record was not made available for inspection. The team also noticed that no students were present in the Shala.

5.2 The petitioner submitted reply dated 24.1.1998. After considering the said reply dated 24.1.1998, the authority i.e., Director, Social Welfare Department passed an order dated 11.3.1998 directing 5% deduction from the grant.

6. After narrating the aforesaid facts the petitioner has further stated that subsequently an order dated 22.7.1998 came to be passed by which the recognition of the Ashram Shala came to be cancelled.

6.1 It is the said order, which is impugned in the present petition.

6.2 Though belatedly, the respondent has filed reply affidavit dealing with the allegations in the petition and has also placed on record the copies of the notices dated 17.4.1998 and communication dated 25.6.1998 and petitioner's reply

dated 4.7.1998. The respondents have also brought on record an order dated 3.8.1992 granting permission in favour of the petitioner trust to start and run Uttar Buniyadi School.

7. The said reply affidavit is responded by the petitioner by filing a rejoinder stating, inter alia, that it purchased the land for Ashram Shala in 1999. The respondents, however, claim that the petitioner has acquired the land for Uttar Buniyadi School and not for the Ashram Shala.

7.1 At this stage, it is pertinent to note that even if the said submission of petitioner trust is accepted, then also it would be an admitted fact that as on the date of the impugned order (i.e., 22.7.1998) the land was not purchased and the breach of condition existed on the date of the order. In backdrop of such facts the order dated 22.7.1998 came to be passed and is now challenged in this petition.

8. Heard learned advocate Mr. V.G. Goswami, for the petitioner and Ms. Trusha Patel, learned AGP for the respondents.

9. The learned Counsel for the petitioner vehemently submitted that in connection with the lapses alleged against the petitioner, penalty of 5% cut in the grant was already imposed by virtue of the order dated 11.3.1998 passed pursuant to the notice dated 17.1.1998 and thus, the order dated 22.7.1998 could not have been passed. Mr. Goswami submitted that the notice dated 17.1.1998 made reference of the visit of a team of the officers on 20.12.1997. After stressing the particular date of visit, the counsel for petitioner submitted that the order dated 11.3.1998 was passed in light of the alleged irregularities said to have been noticed during the visit conducted on 20.12.1997 and then referring to the impugned order dated 22.7.1998 he submitted that in the said order also reference of the visit on 20.12.1997 has been made which establishes that the order is passed in connection with the visit on 20.12.1997. He also submitted that though no visit had taken place on 19.12.1997, the impugned order recites irregularity allegedly committed on 19.12.2007. After attempting to co-relate the said dates with the earlier notice dated 17.1.1998 and order dated 11.3.1998 vis-a-vis the order dated 22.7.1998, the counsel for petitioner submitted that the order dated 22.7.1998 amounts to imposing second penalty for the same acts of omission or commission. During his submissions Mr. Goswami, also reiterated the contention urged in ground 6(b), wherein it is, inter alia, stated that:

...the order dated 11.3.1998 was passed with regard to grant cut of 5%, it is not open for the respondent now to pass another order on the basis of same charge and cancel the recognition.... He also reiterated submission in ground 6(g), which reads thus,...after issuing the show cause notice dated 17.1.1998 has passed an order on 11.3.1998 with regard to grant cut of 5% and with further direction it is not open for the respondent to pass further order with regard to the same allegation....

The petitioner, in nutshell, contends that the order dated 22.7.1998 is hit by doctrine of double jeopardy.

10. The petitioner's counsel also submitted that though the said order dated 22.7.1998 also makes reference of the report dated 15.5.1998 and communication dated 25.6.1998, however, the same were not supplied to the petitioners. Except the said submissions, no other submissions are urged.

11. Ms. Patel, learned AGP, countering the said submissions and contentions, strenuously argued that the petitioner is neither right nor justified in claiming that the order dated 22.7.1998 is second penalty for the same incidence and, in fact, the petitioner is repeatedly found in defaults and the order dated 22.7.1998 is, in fact, passed pursuant to a notice dated 17.4.1998, which was issued after the visit of the team of officers on 3rd April, 1998. In her submissions, the petitioner is, therefore, not right in contending that two punishments have been imposed for the same alleged default. She emphasized that on perusal of the notice dated 17.4.1998, it becomes clear that the two orders are not in respect of the same incidence. She also stressed that the facts regarding the visit dated 3.4.1998 and about the irregularities noticed during said visit have not been stated by the petitioner. In her submission the petition, accordingly, suffers from suppression and thus, it deserves to be rejected on the said ground. In support of her said submission, Ms. Patel relied upon the judgments reported in *Laxmichand Mafatlal Heruwala Vs. State of Gujarat and Others*,

12. From the material available on record it transpires that the charges levelled against the petitioner in the notice dated 17.1.1998 and the details mentioned therein, were in respect of the visit made on 20.12.1997 and it ultimately culminated into an order dated 11.3.1998.

12.1 However, it is pertinent that after the visit dated 20.12.1997, another visit was conducted by the team of officers on 3rd April, 1998. The counsel for respondents, submitted that the details about the visit on 3.4.1998 are not mentioned in the petition. Which, inter alia, took note of absence of teachers and students during the said second visit also.

12.2 During the said visit also, the officers had noticed various shortfall, insufficiency and defaults on the part of the petitioner trust in running the Ashram Shala. The observations and remarks culminated in the subsequent i.e. second notice dated 17.4.1998. Which, inter alia, took note of absence of teachers and students during the said second visit also.

12.3 The petitioner had submitted a reply to the said notice vide communication dated 24.4.1998 which, however, is not on record. Thereafter, the notice dated 25.6.1998 intimating that the hearing was scheduled for 4.7.1998 was issued.

12.4 It is pertinent that in the petition, though a passing reference of reply dated 4.7.1998 is made, it is, however, made without stating anything about visit dated 3.4.1998 and / or its reply dated 24.4.1998 and also without producing the

copies of the said notice dated 17.4.1998 or reply dated 24.4.1998.

12.5 It also transpires from the petitioner's response to the notice dated 17.4.1998 that the petitioner had tried to explain the absence of the students and faculty stating that they were not present in the school premises on 3.4.1998 because they were on tour to Balaram, Ambaji and Abu. However, no cogent evidence to substantiate the explanations in connection with any of the three charges in the notice dated 17.4.1998 was produced.

12.6 The hearing in connection with the said notice dated 17.4.1998 was held on 4.7.1998. It appears from the record that during the said hearing on 4.7.1998 the petitioner's representative did not make any reference of its reply dated 24.4.1998. The petitioner submitted another reply dated 4.7.1998. After the said hearing on 4.7.1998, the order dated 22.7.1998 came to be passed.

12.7 From the perusal of the record and from the aforesaid discussion it becomes clear that the order dated 22.7.1998 is in respect of the visit made on 3.4.1998 and the irregularities noticed during the said visit, whereas the earlier order dated 11.3.1998 was passed in respect of visit made on 20.12.1997 and the irregularities noticed during the said visit. The contents of the notice dated 17.4.1998 (which makes reference of visit dated 3.4.1998 and the irregularities noticed during the said visit on 3.4.1998) read with the explanation and reply given by the petitioner vide communications dated 24.4.1998 and 4.7.1998 conclusively separate and distinguish the order dated 22.7.1998 from the earlier order dated 11.3.1998.

12.8 The order dated 11.3.1998 and the penalty mentioned therein i.e. cut of 5% grant is made in respect of the notice dated 17.1.1998 whereas, the penalty for which the order dated 22.7.1998 came to be passed has been passed pursuant to the notice dated 17.4.1998 issued after the visit on 3.4.1998.

12.9 Thus, it cannot be said that the respondents have imposed second penalty on the petitioner for the same incident for which already an action was taken and it also cannot be said that the order dated 22.7.1998 is hit by the doctrine of double jeopardy.

12.10 In this view of the matter, the contention of the petitioner that for the same incident and alleged defaults, the petitioner has been visited with second penalty, fails.

12.11 The counsel for respondent Ms. Patel has referred to another aspect connected with the said visit dated 3.4.1998 and the order dated 22.7.1998. Ms. Patel submitted that in its reply dated 24.4.1998, in response to notice dated 17.4.1998, the petitioner had given explanation that on 3.4.1998 neither the faculty nor the students were present because they were out on tour to Abu Ambaji, however, during the hearing the petitioner, interestingly, did not urge that explanation and instead referred to the earlier visit of 20.12.1997 and thereby the petitioner, in her submissions, not only tried to confuse the authority

but also tried to misdirect the authority. Since petitioner did not refer to the replies submitted by it, the order cannot be faulted on the ground that the replies submitted by the petitioner were not considered.

12.12 Ms. Patel appears justified in her submission that though petitioner was responding to the notice dated 17.4.1998, it did not refer to its explanation in that regard but brought in picture visit of 20.12.1997.

12.13 It further appears that with regard to the visit dated 3.4.998 and notice dated 17.4.1998 the petitioner has not come out with clean hands either before the authority during the hearing or during the hearing of present petition. Actually, during the initial hearing of present petition, until the respondents filed the reply affidavit the petitioner had not even mentioned anything about the visit dated 3.4.1998 or reply dated 24.4.1998.

12.14 The aforesaid discussion also brings out and demonstrates that the petitioner has not stated in the petition that a team had visited on 3.4.1998 and various irregularities were noticed during said visit on 3.4.1998 also. The petitioner has also failed or ignored to expressly mention the specific date of the notice dated 17.4.1998 and that it had given reply dated 24.4.1998. The copies of the said notice dated 17.4.1998 and the reply dated 24.4.1998 also are not placed on record by the petitioner.

12.15 The fact that the said aspects are not mentioned in the petition, cannot be ignored. Besides this, if the overall view of the matter is taken then it also comes out that the petitioner has been repeatedly found in diverse defaults, some of which are found in two successive visits as can be seen from the notices dated 17.1.1998 and 17.4.1998 and orders dated 11.3.1998 and 22.7.1998.

13. The aforesaid details and discussion brings in picture and substantiates the respondent's submissions that there is suppression of facts by the petitioner and therefore, the petitioner does not deserve any relief. In such facts and circumstances, granting of the reliefs prayed for would not be justified as held in the judgments reported in Laxmichand Mafatlal Heruwala Vs. State of Gujarat and Others,

13.1 Once the aforesaid facts are established, then, nothing further would be required to be examined, particularly, in view of petitioner's conduct of not stating all relevant facts clearly and completely.

14. However, since Mr. Goswami, learned advocate for petitioner urged the contentions raised in grounds 6(c) and 6(d), the impugned order is further examined to consider whether the said order dated 22.7.1998 is unjustified as claimed by petitioner and whether it calls for the relief prayed for.

14.1 In this regard one aspect which is required to be taken into account is the premise on which the impugned order rests i.e. the condition requiring purchasing land for Ashram Shala.

14.2 It is pertinent to note that the order dated 22.7.1998 takes note of the fact that the petitioner trust had failed and neglected to comply with the condition regarding infrastructure (acquiring land which was one of the primary conditions) and it is in view of its non-compliance that the said order came to be passed and the recognition came to be cancelled.

14.3 It is pertinent to recall at this stage that the petitioner trust failed and neglected to acquire the land which was required to be acquired by the petitioner trust (as part of the conditions of permission and recognition) even after assuring the authorities at the time when the order dated 16.9.1997 was passed.

14.4 This shows that the petitioner believes that the conditions can be breached with impunity.

14.5 The petitioner was required to acquire the land as per the prescribed condition. In spite of such requirement the petitioner trust committed breach and despite such breach the petitioner was given another chance on its assurance that the needful will be done by the petitioner trust and the land will be acquired within the period of one year.

14.6 Even after such second chance the petitioner neglected to fulfill the said condition and then the impugned order came to be passed on 22.7.1998. Meaning thereby, by the time the order came to be passed another year had expired since the said assurance and yet the land was not acquired.

14.7 Actually the petitioner's admission has now come on record that the land came to be purchased only in 1999 i.e. after the order dated 22.7.1998. Even that version of the petitioner is disputed by respondents by claiming that actually the said land is purchased for complying with the condition for the permission for Uttar Buniyadi School.

14.8 Without entering into the said controversy, even if the petitioner's claim is believed then also the non-compliance of the condition for permission - recognition is established by petitioner's admission that the land came to be purchased in 1999. This demonstrates that even on the day when the order 22.7.1998 came to be passed, the land was not purchased. Hence, the ground of challenge in Paragraph 6(C) also fails.

14.9 Further, the impugned order is not challenged on the ground that the authority erred in resting the order dated 22.7.1998 on premise of petitioner's neglect and failure in acquiring land while passing the impugned order. The said ground is neither taken in the petition nor urged at the time of hearing. Under the circumstances, it should not detain the Court inasmuch as the petitioner has chosen not to urge it.

15. This brings in picture the last submission by Mr. Goswami. He submitted that two documents viz. communications dated 15.5.1998 and 25.6.1998 were not supplied to the petitioner before passing the order. In this regard, it is relevant to note that after the notice dated 17.4.1998 (about which petitioner has not stated

in the petition) the petitioner had forwarded its explanation ? reply dated 24.4.1998 and after receiving and considering the petitioner's reply dated 24.4.1998 the Director, Social Welfare Department, had addressed a communication dated 15.5.1998 to the Joint Secretary. The reference of the said two documents is made in the preamble of the order.

16. As regards the said contention it is worth noting that one of the two documents viz. the communication dated 25.6.1998 is the notice intimating the date of hearing to be held on 4.7.1998. It is a matter of record that the petitioner had attended the said hearing and had also submitted a written reply-submissions. Thus, the grievance regarding the alleged non-supply of said document has no merits or relevance.

16.1 Now coming to the grievance regarding the second document i.e. the document dated 15.5.1998 it is to be noted that the respondent has maintained silence in connection with the petitioner's allegation. Thus, the petitioner's grievance has to be believed. Once the said grievance is believed then it would follow that the petitioner was deprived of the opportunity to deal with it. In such situation, normally, the order, (in which reference of a document is made without supplying it to the notice,) would stand vitiated on the ground of violation of principles of natural justice and would be required to be set aside. The petitioner has assailed the order with the said submission. Ms. Patel in this regard submitted that in view of the facts of present case the petitioner does not deserve such equitable relief. She further submitted that since the impugned order is passed on account of petitioner's default viz. breach of condition for permission recognition, the order may not be set aside. Ms. Patel also submitted that non-availability of the said document did not cause any prejudice to the petitioner.

16.2 A glance at the said document shows that it is a communication from Director, Social Welfare to the Joint Secretary and is regarding petitioner's reply dated 24.4.1998. The said communication dated 15.5.1998 is, in substance, director's comments on petitioner's reply dated 24.4.1998. However, at this stage, what is relevant to be noted is that the petitioner has, interestingly, neither referred to nor relied on its said reply dated 24.4.1998 during the hearing before the authority.

16.3 Besides this, as submitted by the respondent, the order has been passed on account of breach of condition by the petitioner. In this view of the matter, it deserves to be noted that when the order is passed on account of and in view of the neglect and default of the petitioner to fulfill the condition, then the said omission i.e. the non-supply of the copy of communication dated 15.5.1998 would not have material bearing causing prejudice to the petitioner, particularly when the petitioner itself has not even referred to and relied on its own reply in connection with which the said communication was made.

16.4 It is relevant to note that the petitioner has not even urged, much less

demonstrated and established, any prejudice i.e. it is not established by the petitioner in any manner that for want of said document and on account of its non-availability any prejudice was caused, which was necessary for it to urge and prove. Besides this, even in the petition the petitioner has not mentioned about or relied upon the said reply dated 24.4.1998.

16.5 Further, it lies ill in the mouth of a petitioner, who has chosen not to put on record of the petition all relevant facts clearly and completely, to pray for quashing of the order on ground of breach of principles of natural justice, and that too without establishing any actual prejudice. He who does not put all relevant facts clearly and completely on record would not be justified to claim equitable relief.

16.6 Nonetheless, even if it is assumed that the non-availability did cause prejudice to the petitioner and on the said ground the order should be set aside, then also the question which stares in the face is whether the petitioner is entitled to and whether it would be justified to grant, in the facts of the case, the relief of restoration of school's recognition. It is pertinent that the petitioner has prayed for quashing of the order dated 22.7.1998. Hence, if the said order is set aside then it would obviously mean restoration of recognition for Ashram Shala.

16.7 Thus, before proceeding further, it is appropriate to refer to decisions of this Court in the cases of Narendra Bhimabhai Patel and Ors. v. State of Gujarat and Anr. and Laxmichand Mafatlal Heruwala v. State of Gujarat and Ors. reported in 1984 (2) GLR 1404 and Laxmichand Mafatlal Heruwala Vs. State of Gujarat and Others, This Court has, in the case of Narendra Bhimabhai Patel v. State of Gujarat held that, Petitioners who invoke the extraordinary jurisdiction of the High Court under Article 226 and/or Article 227 of the Constitution are required to exercise utmost care, inform themselves fully of every stage of the proceedings that have taken place upto the date the petition is filed, give a full and true account of those proceedings, file all the necessary documents in support of their averments and then claim relief on the basis of facts disclosed in the petition. It is not open to a petitioner under Article 226 or Article 227 of the Constitution to pick and choose his own facts or to determine in advance what is relevant and material, omit to mention all material facts and proceedings and orders and then claim that he has acted bona fide even though he has made untrue statements, omitted to inform the Court of all the proceedings and the orders passed at different stages in the proceedings upto date and claim indulgence. Vide S.H. Motor Transport Co. Vs. Motilal and Others, , and in the case of Laxmichand Mafatlal Heruwala v. State of Gujarat it is held that, Non-disclosure or concealment of any material and vital fact from this Court would amount to the attitude of suppressio veri on the part of the petitioner. It cannot be gainsaid that the jurisdiction of this Court inter alia under Article 226 is discretionary in nature. It is designed to grant inter alia equitable reliefs to the petitioning litigant. The basis principle of equity is that the petitioner has to come to the Court of equity with clean hands. It would mean that he has to disclose all

material and vital facts to the Court and he should not be guilty of suppressio veri or suggestio falsi.

16.8 So far as breach of condition regarding acquiring land for Shala is concerned, it is an admitted position that at least until 1999 the condition was not complied with. Similarly the absence of students from school premises appears to be frequently noted phenomenon. All these, coupled with the charge of running high school in the building of the Ashram Shala, demonstrates that the petitioner shows scant regard to rules and conditions.

16.9 Ms. Patel has also submitted that at the time of admission of the petition, the interim relief prayed for by the petitioner was not granted and in that view of the matter, the authorities have subsequently granted permission to another establishment for establishing and running Ashram Shala and the facility of grant-in-aid is also extended to the said other Ashram Shala. According to the respondents, such other Ashram Shala is presently running.

16.10 In light of the above referred judgments, it deserves to be noted that even if the order dated 22.7.1998 is set aside on the ground of non-availability of document dated 15.5.1998 then also in view of the facts that,

(1) the petitioner, as vehemently stressed by Ms. Patel for respondent, did not mention, i.e. suppressed relevant fact, about the visit dated 3.4.1998 and also suppressed the details and contents of the notice dated 17.4.1998 and the explanation given in reply dated 24.4.1998;

(2) the petitioner, during the hearing on 4.7.1998, did not even refer to the explanation given in reply date 24.4.1998 and instead reverted to the incidence of 20.12.1997;

(3) the petitioner did not produce any cogent evidence in support of any of its explanations and failed to disprove the charge of indulging in irregularities;

(4) except advancing unsubstantiated explanations, petitioner has failed to give any tenable explanation and to substantiate it or to disprove any of the charges with the help of cogent and satisfactory evidence;

(5) some of the irregularities mentioned in the notices were noticed in successive visits;

(6) the irregularities mentioned in notice were of serious nature such as, non-availability of stock of grains and absence of students and/or faculty at the time of visits;

(7) and above all these, in view of the fact that despite the second opportunity vide order dated 16.9.1997 and inspite of its assurance, the petitioner did not fulfill and neglect the condition that land must be acquired within prescribed time and continued the breach of said condition coupled with the fact that;

(8) the petitioner trust is already running two schools viz. one High School and

one Uttar Buniyadi School in the said area,

the relief of restoration of recognition for the Ashram Shala does not deserve to be granted, and in light of the facts of the case the grant of such a relief would not be justified.

16.11 Thus, on overall consideration of the matter, even if the order dated 22.7.1998 is set aside, it would not be justified, in the facts of present case, to grant the relief of quashing the order dated 22.7.1998 and thereby, as a consequence, to restore the recognition. Hence, the said relief is refused.

17. Before concluding it is necessary to mention that the petitioner claimed that pursuant to the order dated 22.7.1998, it had made a representation on 21.8.1998 and it has not been conveyed any reasoned order in that regard, though by a communication dated 4.9.1998 it has been informed that the representation did not find favour with the authority. In view of said communication dated 4.9.1998, it is urged that the response is very cryptic. The said reply or decision is not the matter of challenge in this petition. It is, however, clarified that the proceedings and the controversy involved in the petition will not come in the way of the petitioner for making any representation application for permission for Ashram Shala.

18. With the aforesaid clarification, petition is disposed of. Rule discharged. No order as to costs.