

**(2004) 08 GUJ CK 0093**

**In the Gujarat High Court**

**Case No :** Special Civil Application No's. 3059, 3060, 3061, 3062 and 3201 of 2004

Surat Education Society

APPELLANT

Vs

State of Gujarat

RESPONDENT

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**Date of Decision :** 17-08-2004

**Acts Referred:**

**Citation :** (2004) 08 GUJ CK 0093

**Hon'ble Judges :** Jayant M. Patel, J

**Bench :** Single Bench

**Advocate :** H.J. Nanavati in Special Civil application No. 3059 of 2004, for the Appellant; H.D. Dave, Ld. AGP for Respondent Nos. 1-3 and Dipak R. Dave, for Respondent Nos. 4-5 in Special Civil Application No. 3059 of 2004, for the Respondent

**Final Decision :** Allowed

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## Judgement

Jayant Patel, J.

1 Rule. Mr.D.A.Dave, learned Counsel appears and waives service of rule for respondent teachers in the concerned petitions and Mr. H.D.Dave, learned AGP appears and waives service of rule for respondent authorities in the concerned petitions.

With the consent of the parties the matter is taken up for final hearing today.

3. The short facts of the case are that the petitioners applied for closure of certain classes in different schools which are mentioned in the respective petitions. Such permission was initially granted during the period June-August, 2000. However, the teachers of the Schools challenged the said decision for granting permission for closure by preferring Special Civil Application before this Court. It is the case of the respondent teachers that the learned Single Judge of this Court in the said petition relegated the petitioners to the remedy of approaching before the Education Tribunal and the respondent teachers

concerned, as such, approached the Tribunal. It further appears that the respondent teachers challenged the decision of the learned Single Judge by carrying the matter before the Division Bench of this Court in LPA and the Division Bench directed that the Tribunal to decide the application preferred by teachers and ultimately the Tribunal, by the impugned order, has not only set aside the decision of the Director granting permission for closure of the classes, but has further directed for resconcisation after giving the hearing to the teachers concerned. It appears that thereafter the matter was once again considered by the Director, Primary Education as per the impugned orders and it was found by the Director, Primary Education that no fresh decision is required to be taken, but if for the academic year 2004-05, the requisite number of students are not available and if the Management is desirous to close the classes, fresh proposal be made through the District Education Officer, Surat for appropriate decision. It is under this circumstances the petitioners have approached this Court challenging the order passed by the Director, Primary Education as well as the orders passed by the Tribunal in the petition preferred by the concerned teachers.

4. Upon hearing the learned Counsel appearing for the parties, it appears that there is no dispute on the point that the matter was to be considered by the Director, Primary Education. However, Mr.Dave, learned Counsel appearing for the respondent Teachers submitted that the closure of the School is an artificial one in as much as the same Management has opened another Primary School and he submitted that if the fresh proposal is submitted, the Director, Primary Education shall be in a position to consider the material and also the remarks of the District Education Officer and, therefore, he submitted that the matter can be considered as directed by the Director, Primary Education.

5. It appears that respondent No.2, in view of the direction given by the Tribunal, had to consider the merits and demerits of the proposal made by the petitioners after hearing the concerned teachers. While considering the merits of the said proposal made by the petitioners, respondent No.2, if found that the details are not sufficient as prevailing now or some additional details are required for the subsequent period, could have called for such details, but passing the order by clarifying that no further decision is required to be taken, in my view, appears to be a non-application of mind on the merits and demerits of the proposal, more particularly when once the proposal was already sanctioned and the matter came to be remanded because the concerned teachers were not heard. It appears that since the merits and demerits of the proposal made by the petitioner Management is not considered by respondent No.2, Director, Primary Education and as he has stated that no further fresh decision is required to be taken on the proposal, the Director, Primary Education has passed the order in an arbitrary manner without considering the spirit of the order passed by the Tribunal and the duty assigned to him to decide the merits and demerits of the proposal. Under the circumstances, the order passed by the Director impugned in the concerned petitions cannot be sustained in the eye of law and deserves to be quashed and

set aside and direction deserves to be issued to respondent No.2 to consider the merits of the proposal made by the School and to render the decision.

6. In view of the aforesaid, as the matter is to be remanded to the Director for examining the proposal and to render the decision on merits, it may not be necessary for this Court to examine at this stage, the issue as to whether the Tribunal exercising power under Bombay Primary Education Act read with the relevant Rules, had the jurisdiction to examine the legality and validity of the decision of respondent No.2 for granting permission to close down certain classes or not.

7. In view of the aforesaid, I find that the following directions shall meet with the ends of justice:

7.1) The impugned orders passed by the Director are quashed and set aside. It is further directed that respondent No.2, Director, Primary Education shall give opportunity of hearing to the petitioners as well as to concerned teachers who are respondents in the respective petition and shall decide the merits and demerits of the proposal, by specifically concluding as to whether the permission for closure of the classes as prayed by the petitioners in the proposal deserves to be granted or not. While examining the said aspects, it would be open to the petitioners or to the concerned teachers to place on record the relevant material as prevailing after the academic year 1999-2000 and the position prevailing now for justifying or genuineness of the closure, as the case may be.

7.2) It would be also open to the Director, Primary Education to call for the remarks of the District Education Officer, in case he finds for such purpose.

7.3) The aforesaid exercise shall be completed as early as possible, preferably within a period of three months from the date of receipt of the writ of this Court.

8. Petitions are allowed. Rule made absolute to the aforesaid extent. Considering the facts and circumstances of the case, no order as to cost. Direct service is permitted.