
(2013) 07 GUJ CK 0038

In the Gujarat High Court

Case No : Special Civil Application No. 9879 of 2013

Vraj R. Parmar

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Citation : AIR 2013 Guj 258 : (2014) 1 GLR 510

Hon'ble Judges : Bhaskar Bhattacharya, C.J.;J.B. Pardiwala, J

Bench : Division Bench

Advocate : Masoom K. Shah, for the Appellant; P.K. Jani, Govt. Pleader, Ms. Shruti Pathak, Parth Bhatt and Vandan Baxi, Asst. Govt. Pleaders, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, C.J.—These three writ-applications were heard together and are disposed of by this common judgment as the main prayer in all these writ-applications is to declare Rule 8 of the Right of Children to Free and Compulsory Education Rules, 2012 [the Compulsory Education Rules, 2012, hereafter] as ultra vires the Constitution of India and also the Right of Children to Free and Compulsory Education Act, 2009 [RTE Act, 2009 hereinafter]. The petitioners have also prayed for a direction upon the respective schools to refund the fees for the academic year 2012-13. For discussion of facts, Special Civil Application No. 9879 of 2013 is taken as the lead matter and the facts leading to the filing of the said petition may be summed up thus:

1.1 The petitioner was born on 14th August, 2009. The petitioner was admitted in the Junior KG in the respondent No. 3 School on 13th December, 2011 and paid the fees for such admission. According to the report card given to the petitioner by the school, because of the Rule 3(1) of the Compulsory Education Rules, 2012 made by the State of Gujarat, he shall not be given admission in the Senior KG in this year. However, according to the petitioner, the said Rule 3(1) of the Compulsory Education Rules, 2012 is for admission to first standard and has

nothing to do with the admission in the Senior KG.

1.2 In most of the schools, the admission to the Junior KG was completed by December 2011-January 2012 and in the case of the petitioner also, the admission was completed prior to the month of February 2012. It appears that the Compulsory Education Rules, 2012 made by the State of Gujarat was published in the month of February 2012, and as such, those cannot be applied retrospectively unless the specific intention of the legislature is manifested to that effect.

1.3 The petitioner has, therefore, filed the petition contending that the various notifications/circulars/office orders issued by the Government has created three classes of children, i.e., the children completing 5 years prior to 1st June, 2013, the children completing 4 years as on 1st June, 2013 and the children failing to complete 4 years as on 1st June, 2013 but shall complete 4 years as on 31st August, 2013, and, according to the petitioner, the children who fail to complete 4 years as on 1st June, 2013 are discriminated and their precious one education year is ruined by the notifications/circulars/office orders issued by the Government.

2. The grievance of the petitioner in this application is that the petitioner was admitted in the school for Junior KG for the academic year 2012-13 on 13th December, 2011 when the Rules were not enacted, as a result, the school authority also admitted him in Junior KG in the said year. After successful completion of Junior KG, the school authority has, however, refused to promote him to the Senior KG on the ground that the petitioner was born on 14th August, 2009 and, therefore, has not completed the age of 4 years on the date of admission in Senior KG. As a result, the petitioner is required to repeat the said course of Junior KG. The petitioner complains that he having already been admitted to the Junior KG before the promulgation of the Rules, his accrued right to continue uninterruptedly cannot be taken away.

3. This application is opposed by the State of Gujarat by contending that by virtue of the provisions contained in the parent Act known as RTE Act, 2009, the petitioner cannot get admission in the 1st Standard unless he attains the age of 5 years on 1st June 2014, and thus, the Compulsory Education Rules, 2012 cannot be said to be either ultra vires the parent Act or any of the provisions of the Constitution. Mr. Jani, the learned Government Pleader, further contends that in the RTE Act there being a specific bar of admission of a student who has not completed the age of 6 years on the date of admission in 1st Standard, the State Government has been forced to enact the Compulsory Education Rules, 2012 by directing that a student who has not completed 3 years at the commencement of the session, which is in the month of June, should not be admitted. He, therefore, submits that there is no conflict between the parent Act and the Rules framed thereunder by the Government.

4. In order to appreciate the submissions made on behalf of the parties, it would

be profitable to refer to the following relevant provisions of the RTE Act, the Compulsory Education Rules, 2012 and various amendments thereto.

4.1 Sections 11 and 38 of the RTE Act read as under:

11. Appropriate Government to provide for pre-school education.--With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free preschool education for such children.

38. Power of appropriate Government to make rules.--

(1) The appropriate Government may, by notification, make rules, for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:--

(a) the manner of giving special training and the time-limit thereof, under first proviso to section 4;

(b) the area or limits for establishment of a neighbourhood school, u/s 6;

(c) the manner of maintenance of records of children up to the age of fourteen years, under clause (d) of section 9;

(d) the manner and extent of reimbursement of expenditure, under sub-section (2) of section 12;

(e) any other document for determining the age of child under sub-section (1) of section 14;

(f) the extended period for admission and the manner of completing study if admitted after the extended period, u/s 15;

(g) the authority, the form and manner of making application for certificate of recognition, under sub-section (1) of section 18;

(h) the form, the period, the manner and the conditions for issuing Certificate of Recognition, under sub-section (2) of section 18;

(i) the manner of giving opportunity of hearing under second proviso to sub-section (3) of section 18;

(j) the other functions to be performed by School Management Committee under clause (d) of sub-section (2) of section 21;

(k) the manner of preparing School Development Plan under sub-section (1) of section 22;

(l) the salary and allowances payable to, and the terms and conditions of service of, teacher, under sub-section (3) of section 23;

(m) the duties to be performed by the teacher under clause (f) of sub-section (1) of section 24;

(n) the manner of redressing grievances of teachers under sub-section (3) of section 24;

(o) the form and manner of awarding certificate for completion of elementary education under sub-section (2) of section 30;

(p) the authority, the manner of its constitution and the terms and conditions therefore, under sub-section (3) of section 31;

(q) the allowances and other terms and conditions of appointment of Members of the National Advisory Council under sub-section (3) of section 33;

(r) the allowances and other terms and conditions of appointment of Members of the State Advisory Council under sub-section (3) of section 34.

(3) Every rule made under this Act and every notification issued under sections 20 and 23 by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

(4) Every rule or notification made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislatures.

4.2 Rules 3(1) and 8 of the Compulsory Education Rules, 2012 notified on 18th February, 2012, read as under:

3. (1) Admission of pupils: No Elementary School shall normally admit a child who has not completed 6th year of age on the date of admission. However if a child is desirous to be admitted on completion of 5 years of age he shall be admitted, provided he has completed 5 years of age as on 1st June of that year.

8. Admission Procedure:

(1) No pre-school shall admit a child who has not completed 3 years of age as on 1st June of the year. The extended period of admission shall be six months from the date of commencement of the academic year of the school.

(2) No school shall take donations for admission, or shall take interview of parents and/or take test of the children.

(Emphasis given by us)

4.3 Thereafter, by a notification dated 26th June 2012, the Education Department of the State of Gujarat has amended Rule 3 of the Compulsory Education Rules, 2012 by framing the Right of Children to Free and Compulsory Education (Amendment) Rules, 2012 [hereinafter referred to as the Compulsory Education Amendment Rules, 2012]. The said amendment provides as under:--

3. In the said rules, in Rule 3,--

(1) to sub-rule (1), the following proviso shall be inserted, namely:--

Provided that for the admission in the academic year 2012-2013, a child who has completed five years of age on or before the 31st August, 2012 shall be admitted.

4.4 Subsequently, by another notification dated 9th May, 2013, the Education Department of the State of Gujarat has further amended Rule 3 of the Compulsory Education Rules, 2012 by adding one more proviso by way of framing the Right of Children to Free and Compulsory Education (Amendment) Rules, 2013 [hereinafter referred to as the Compulsory Education Amendment Rules, 2013]. The said amendment provides as under:--

2. In the Gujarat Right of Children to Free and Compulsory Education Rules, 2012, in Rule 3, for sub-rule (1), after the first proviso, the following proviso shall be added namely:--

Provided further that for the admission in the academic year 2013-2014, a child who has completed five years of age on or before the 31st August, 2013 shall be admitted.

(Emphasis supplied by us).

5. After hearing the learned counsel for the parties and going through the materials on record, we find the sole object of these petitions is to overcome the restriction of admission imposed by the State of Gujarat in admission of the students below the age of 5 years as on June 1, of that year in the standard 1 which is the commencement of the session and also the consequent, restriction of admission below 3 years in the preparatory class of junior KG and 4 years at the senior KG level as on June 1 of that year.

6. As pointed out by the constitutional bench of the Supreme Court in the case of *Bihari Lal Batra Vs. The Chief Settlement Commissioner and Others*, , every law must have a beginning or time from which, it operates, and no rule which seeks to change the law can be held invalid for the mere reason that it effects an alteration in the law. It is sometimes possible to plead injustice in a rule which is made to operate with retrospective effect, but the view that a rule which operates prospectively is invalid because thereby a difference is made between the past and the future, is one which is untenable.

7. In the case before us, the amended rule imposing such prohibition was enacted in the month of February 2012 thereby giving effect to the same from the forthcoming Session starting from June 2012. Since, prior to such change,

there were already two batches of student studying in the KG Junior and KG Senior, who had completed 3 years and 4 years as on August 31 of the year at the time of admission in Junior KG and Senior KG respectively in accordance with the then Rule, the Rules were amended to give benefit to those two batches of student by introduction of two provisos to the Rules as pointed out earlier. According to the case made out in these applications, some students were admitted well in advance before the enactment of the Rule in the month of February, 2012 for the sessions commencing from June 2012 in Junior KG and thus, they should not be affected by the new Rules.

8. We are afraid, we are not impressed by such contention for the simple reason that the moment the Rules of 2012 were published, it was the duty of those schools, which admitted students in advance, to return the admission fees to those students who had been admitted in violation of the Rules and there was patent illegality on the part of the schools in permitting them to continue and at the same time, the guardians are also to be blamed for sending their children to pursue studies in Junior KG in clear violation of the new restriction imposed.

9. Since before the commencement of actual session from the month of June, the school authority and the guardians were well aware of the change of law and notwithstanding such change, decided to continue with the studies of the concerned children in violation of the Rules already in existence for regularizing the illegality, the Rules cannot be branded as violative of either the parent statute or any of the provisions of the Constitution. We, thus, find that the points raised in these applications are devoid of any substance. The question whether the fees taken by the School should be refunded or not cannot be decided in these applications. Such disputes can be resolved in a civil suit because the fate of the claim of the guardians depends upon various questions of fact as to whether the guardians insisted on the school authority to continue or whether the school authority persisted on continuation of their studies in violations of Rules with the assurance of regularization. We make it clear that we have not gone into such questions.

9.1 These applications are consequently dismissed. No costs.