

(2014) 04 GUJ CK 0044

In the Gujarat High Court

Case No : Special Civil Application No. 588 of 2014

Vyas Abhisekh Prashantkumar and 88 Ors.

APPELLANT

Vs

State of Gujarat and 3 Ors.

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Right to Information Act, 2005 — Section 11, 12, 14, 15, 18

Citation : AIR 2014 Guj 152

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

Bench : Division Bench

Advocate : Masoom K. Shah, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, C.J.—By this Special Civil Application, the petitioners, 89 students in number, represented by their respective guardians, have prayed for the following reliefs:-

19. The petitioner therefore most respectfully prays to this Hon"ble Court that:

(a) Be pleased to declare Rule 3(1) and Rule 8 of Right of Children to Free and Compulsory Education Rules, 2012 as ultra vires the Constitution and the Parent Act. Or in alternative

(a) Be pleased to direct the Respondent State Government to exempt the Petitioners from application to Rule 3(1) of the Right of Children To Free And Compulsory Education Rules, 2012.

(b) Be pleased to read the Rule 8 of the Right of Children To Free And Compulsory Education Rules, 2012 so as to apply from the batch of 2015 for first standard and not to apply to the batch of 2014, for first standard.

(c) Be pleased to direct the Respondent Schools to give admission to the Petitioners in First Standard.

(d) Pending hearing, admission and Final Disposal of this petition be please to direct Respondent No. 2 and/or 3 to enroll/admit in First Standard.

(e) Costs.

(f) Any other relief which Hon"ble Court may deem just, fit and equitable.

The case made out by the petitioners may be summed up thus:-

1.1 The petitioners, who were born between 1st June 2009 and 31st August 2009, were eligible for admission to pre-primary school at the time of their admission on the basis of their respective birth-dates. The admissions took place prior to 18th February 2012 when the impugned Rules came into existence. According to the petitioners, at the time of admission, the students who completed 3 years on the deadline of 31st August of that year, were given admission in pre-primary school. Therefore, the petitioners, on the dates of their admissions, were eligible for pre-primary school. The rules impugned were enacted subsequently on 18th February 2012 and prior to that date, the admissions of the petitioners had taken place.

1.2 According to the petitioners, the pre-primary education is the entry point in the education and it can be seen from the Rules that for the admission in the school, a child is required to complete 3 years as on 1st June for pre-primary and 5 years as on 1st June for first standard. The petitioners contend that the difficulty has arisen because earlier the students were allowed for pre-primary education and the first standard on completing 3 years as on 31st August and 5 years as on 31st August respectively. The petitioners submit that the Rules can operate prospectively and cannot affect the rights of students in retrospective mode.

1.3 According to the petitioners, although the Rules were enacted in the year 2012, for the first two batches, i.e. for the years 2012 and 2013, two different notifications were issued by virtue of which the application of the Rules for those batches were exempted. The petitioners contend that by virtue of the amended law, three batches would be affected and if the first two batches were exempted from application of the Rules, there is no reason why the same principle should not be followed to the third batch. Hence, this application.

2. In order to appreciate the submissions made on behalf of the petitioners, it would be profitable to refer to the following relevant provisions of the RTE Act, the Compulsory Education Rules of 2012 and the various amendments thereto:-

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

11. Appropriate Government to provide for preschool 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 appropriated 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

therefor, under subsection (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 preschool 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)

3. After hearing Mr. Shah, the learned advocate appearing on behalf of the petitioners and after going through the materials on record, we find that similar prayers were made by another batch of students, who were similarly placed with these petitioners, in Special Civil Application No. 9879 of 2013 decided by this very Bench on 3rd July 2013 when we overruled the selfsame grievance. The only difference between these two petitions is that in the said application Rule 8 of Compulsory Education Rules, 2012 was challenged and in the present case, both Rule 3 and Rule 8 have been challenged.

4. While rejecting the said application, we made the following observations:-

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.

10. 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.

5. For the selfsame reasons assigned by us in our judgment in the previous Special Civil Application No. 9879 of 2013, we also dismiss this Special Civil Application. Rule 3 of the Right of Children to Free and Compulsory Education Rules, 2012 cannot be held to be illegal for the selfsame reasons for which we upheld Rule 8. It appears that when the amended Rules were enacted in the month of February, 2012 only two batches of the existing students viz. Junior KG and the Senior KG were going to be affected because only those two batches of student had been studying based on the old Rules which permitted admission of the students who had completed 3 years as on August 31 on the date of the commencement of the session and for that reason, the exemption of the new age restriction imposed by the amended Rules were given to them. But according to the petitioners, although they were not studying on the date of coming into force of the new Rules, yet, ahead of time, they were admitted for the session to be commenced on 1st June, 2012. For the reasons given by us in our judgment in the earlier Special Civil Application quoted above, such contention is not tenable. This application is, thus, devoid of any substance and is summarily dismissed.

FURTHER ORDER:-

After the judgment was pronounced, Mr. Shah, the learned advocate appearing

on behalf of the petitioners, prays for certificate for leave to appeal.

In view of what has been stated above, we find no reason to grant the prayer.
The prayer is rejected.