

**HIGH COURT OF GUJARAT (D.B.)**

**BRAHMBHATT EDUCATION TRUST SACHALIT**

*Versus*

**STATE OF GUJARAT**

**Date of Decision:** 07 October 2011

**Citation:** 2011 LawSuit(Guj) 1242

**Hon'ble Judges:** [A L Dave](#), [J B Pardiwala](#)

**Case Type:** Special Civil Application

**Case No:** 6669 of 2011

**Subject:** Constitution

**Acts Referred:**

[Constitution Of India Art 226](#)

**Final Decision:** Petition dismissed

**Advocates:** [Krina Calla](#), [Mamta R Vyas](#), [R C Jani](#)

**J. B. Pardiwala, J.**

**[1]** This petition under Article 226 of the Constitution of India has been preferred by a Trust registered under the Public Trusts Act, praying for the following reliefs:-

A) Your lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the order dated 02.05.2011 canceling the recognition of the petitioner school and further be pleased to direct the respondents to permit the petitioner Trust to continue the school;

B) Pending admission, hearing and final disposal of this writ petition, Your lordships may be pleased to stay the operation, implementation and execution of the impugned order dated 02.05.2011 and further be pleased to restrain the respondents from making any efforts to stop the petitioner to run the school;

C) Be pleased to pass such other and further reliefs as may be deemed just and proper by Your Lordships in the fact and circumstances of the case.

**[2]** Facts relevant for the purpose of deciding this petition can be summarized as under:-

i) One Dindoyal Education Trust was running a school, namely, Sabras Vidhyalaya (Primary Section) at Bapunagar since 1989. At the same time, one Suhas Education Trust at Bapunagar was also running Suhas Secondary School at Nana Chiloda, Gandhinagar (standards 8 to 10).

ii) It appears that Suhas Education Trust requested for change of the venue of the school and, accordingly, the Education Department accorded permission to shift the school at Bapunagar, Ahmedabad. The Dindoyal Education Trust was already running Sabras Primary School, where Suhas Education Trust also shifted its school in the same premises, therefore, the premises had one primary school and one secondary school together.

iii) It appears that on account of disputes between the trustees, the main trustee of Dindoyal Education Trust left the trust and after some time he passed away.

iv) Record reveals that the staff of the school continued on their own to run the school by collecting fees etc.

v) Later on, it appears that the petitioner-Trust was granted permission to run the said primary school in the name of Shri Ami Vidhyalaya at the same place. It appears that the salary of the staff members was not being paid by the Trust and, therefore, the teachers of the said school preferred Special Civil Application No.3649 of 1999 before this Hon'ble High Court and the learned Single Judge of this High Court, by an order dated 12.05.1999 directed the Government to decide their representation. Pursuant to the said order, the Education Department heard the petitioner-Institution as well as the staff members of the Dindoyal Education Trust as both the schools were running in the same premises. Ultimately, the Government directed the petitioner Trust to absorb the staff of the Sabras Vidhyalaya, which was earlier being run and managed by Dindoyal Trust. However, the staff members of the Sabras Vidhyalaya were not ready and willing to work under the petitioner Trust and they formed a separate Trust at their own in the name of Royal Education Trust, which is respondent no.4 herein in this petition.

vi) It appears that in all these confusions, ultimately the recognition of the school (primary section) run and managed by the petitioner was ordered to be cancelled by order dated 02.05.2011 with retrospective effect from June 2010. The said order dated 02.05.2011 passed by the Deputy Secretary (Primary Education), Education Department is a subject matter of challenge before us in this writ petition.

**[3]** We have heard learned advocate Ms.Mamta R.Vyas appearing for the petitioner, learned AGP Ms.Krina Calla for respondent nos.1,2 and 3 and learned advocate Mr.R.C.Jani for respondent no.4.

**[4]** Learned advocate for the petitioner submitted that the impugned order has been passed without following the procedure of law as no notice or memo was issued by the Government, and without affording any opportunity of hearing, the order dated 02.05.2011 came to be passed in violation of the principles of natural justice. She further submitted that the Dindayal Education Trust could not pay the salary to his staff members and in fact the main trustee of the said Trust ran away in the year 1997 and the teachers were running the school illegally by collecting the fees. She submitted that as the situation deteriorated, the petitioner-Trust asked for a new school and thereby the recognition for Shri Ami Vidhyalaya was accorded vide order dated 29.04.1999. She submitted that the Sabras Vidhyalaya is closed since last ten years and Shri Ami Vidhyalaya has been granted recognition vide order dated 29.04.1999 and since then, the school is running in the same premises. She submitted that the grounds shown by the Government for cancelling the recognition of the school are not true and correct.

**[5]** Per contra, learned AGP, Ms.Krina Calla submitted that the order passed by the Education Department, cancelling the recognition of the petitioner's school is just and proper inasmuch as number of illegalities and irregularities were found by the authorities in running the school. She further submitted that after giving ample opportunity of hearing and time to file written reply, the impugned order has been passed and, therefore, the complaint as regards violation of principles of natural justice is without any merit. Learned AGP further submitted that the authorities noticed manipulations in the rent note of the building, in which the petitioner's school is located. Learned AGP, Ms.Calla has relied upon affidavit-in-reply filed on behalf of respondent no.2, Administrative Officer (Legal), office of the Director of Primary Education, Gandhinagar. In the affidavit-in-reply filed by the respondent no.2, the following averments have been made:-

"I submit that the order passed by the Education Department in cancelling the recognition of the petitioner's school is just and proper inasmuch as that there were number of illegalities and irregularities which were found out by the authorities and after giving the petitioner ample of opportunity of hearing and submitting its written reply as well as oral submissions impugned order was passed and, therefore, petition deserves to be dismissed.

I submit that there is a charted history of the shifting of management of the petitioner school since year 1999 and the dispute between trustees has become a

legal war since years together. In the backdrop of such dispute between the trustees, there has always been difference of opinion and as on today in absence of any responsible and duly appointed managing trustee of the trust of the school, the management of the school is not properly taken care of and number of illegalities and mal practice are found out and, therefore, it was one of the reason that the recognition of the school was required to be cancelled.

I submit that it was found out by the authorities that there were manipulations in the rent note of the building in which the present school of the petitioner is located. One of the reason assigned by the authorities for cancelling the recognition of the school is that in records it shows that appointment of new teacher is made from 01.06.2010 but it does not show as to how those teachers are appointed and why such appointments are made in the year 2010 and whether since last 10 years the teachers are changed or not? And hence it brings a cloud or suspicion in the mind of the authority as to what kind of activities would be going on in the management.

It is further submitted that as per the government program, teachers are required to be paid salary directly from the bank but in this case same is not done and therefore it also brings a doubt as to where does these amount of salary goes.

Another major reason for cancellation of recognition of the school is concerned that according to the records of the District Education Officer, the students in the school of the petitioner from standard 1 to 7 is 50 in number whereas the record shown by the petitioner school, 82 students are shown and, therefore, it is clear case where the school has produced false evidence before the authorities. Also according to the regulation of the Bombay Primary Education Regulation, 1949, the specific area of rooms of the schools are required to be maintained which in this case are not maintained.

Looking to these illegalities and irregularities and after giving ample of opportunity of hearing and written reply to the petitioner, the education department has come to the conclusion that recognition of the school is required to be cancelled and therefore the same is just and proper and same requires no interference by this Hon'ble Court.

I submit that the authorities have also taken care of the remaining students in the school as they may not suffer these students are absorbed in other primary education schools situated in nearby area and, therefore, students would not suffer on the cancellation of recognition of the school. In the backdrop of these, the recognition of the school is cancelled and the petition deserves to be dismissed."

**[6]** Having heard learned counsels for the respective parties and having perused the record of the case, we shall now proceed to consider the contention on their own merits.

**[7]** Firstly, we took notice of the fact that the petitioner was heard by the Deputy Secretary (Primary Education), Education Department before passing the impugned order. This is evident from the fact that the authorities have recorded the contentions raised on behalf of the petitioner-Trust in its order dated 02.05.2011. Therefore, the contention of the learned advocate that the petitioner-Trust was not heard and without giving any opportunity of hearing the impugned order has been passed, does not appear to be correct. Beside this, we have noticed that the findings which have been recorded by the authority reveal many illegalities and irregularities in running the school and having considered the findings, we are of the view that no case has been made out by the petitioner-Trust for any relief. The gist of the findings recorded by the authority are as under:-

"The Brahmbhatt Education Trust conducted Ami Vidhyalaya Primary School and Royal Education Trust conducted hereinafter closed Sabras Vidhyalaya, Primary School in running or starting the said school both the office bearers do not have any interest. The cause of the dispute that arises is that in the absence of the original owner it appears that they want to maintain the illegal occupation of the building No.69/70, Sarvamangal Society, Lilanagar Char Rasta, Bapunagar.

Brahmbhatt Education Trust has produced the rent note receipt of 10.07.2010, the name of the receiver appears to signed by Mr.A.C.Vora, who is the Trustee of the Suvas Education Trust. Thus, the original land owner or in his absence, the legal heirs have not issued any such rent receipt.

The original Trustee Prashantbhai C. Brahmbhatt of the Brahmbhatt Education Trust has expired and, thereafter, regarding appointment of any new Trustee, there is no approval by the Charity Commissioner or the copy of PTR is not produced by the Trust. Thus, the present office bearers of the Trust have illegally taken charge of the Trust.

The approval to the Brahmbhatt Education Trust was granted from 1989, but in the August 2010, muster details except Dhumaben Brahmbhatt the appointment of all the teachers was made on 1.06.2010. The advertisement was given and the recruitment / appointment was made. There are no such evidences produced. This, there are reasons to believe that the teachers are changed every year.

The direct salary is not paid to the teachers through the bank as per the government rules and regulations. Rs.1700 to Rs.2000 monthly salary is paid.

The Brahmbhatt Education Trust has produced the number of the students studying in standard 1 to 7 vide the institution letter dated 08.08.2010, which is as stated herebelow.

<b>Standard</b>	<b>Number of students</b>
1	23
2	13
3	12
4	10
5	11
6	06
7	07
<b>TOTAL</b>	<b>82</b>

As per the report produced by the District Education Officer, Ahmedabad City dated 04.08.2010, in Ami Vidhyalaya in standard 1 to 7 there are 50 students. Thus, the institution has shown the wrong number of students.

The area of the classes in Ami Primary School are as herebelow.

Cellar

5 rooms 13 x 20 sq.ft.

Ground Floor

2 rooms 10 x 22 sq. ft.

2 rooms 10 x 15 sq. ft.

2 rooms 10 x 22 sq. ft.

2 rooms 10 x 12 sq. ft.

First Floor

2 rooms 20 x 20 sq. ft.

1 room 15 x 20 sq. ft.

2 rooms 12 x 22 sq. ft.

1 room 11 x 20 sq. ft.

As per the above details the areas of the rooms is not sufficient.

ORDER::

For the reasons recorded in the findings although the Brahmbhatt Education Trust conducted Ami Vidhyalaya was granted recognition in 1989 then also as on date as per the Mumbai Primary Education Rules, 1949, there are no rules followed. Brahmbhatt Education Trust, Royal Education Trust and Suvas Education Trust conducted respectively Ami Primary School, Sabras Primary School and Suvas Vidhyalaya (Secondary School) are running in the same building. And, there are disputes going on since long time. There is no settlement between Ami Primary School and Sabras Primary School. Thus, it does not appear that the Brahmbhatt Education Trust conducted Ami Vidhyalaya students will get sufficient space. Therefore, the recognition of the school for standard 1 to 7 is cancelled from June 2010, and the students of standard 1 to 7 in the said school will have to be absorbed in the nearby primary school by the District Education Officer, Ahmedabad (City). The Present teachers in the institution will have to be paid the retrenchment allowance as per the Rule 13 Schedule Chh of the Mumbai Primary Education Rules, 1949.

Sd/-

[S.B.Garasiya]

Deputy Secretary

[Primary Education]

Education Department.

**[8]** In the above view of the matter and in absence of any merit in the petition, no relief can be granted in favour of the petitioner. The petition is rejected with no order as to cost. Notice is discharged.