

(2014) 04 JH CK 0023

Jharkhand High Court

Case No: L.P.A. No. 433 of 2012

Shree Narbheram Hansraj
Gujarati M.E. School

APPELLANT

Vs

Shree Jamshedpur Gujarati
Samaj

RESPONDENT

Date of Decision: April 25, 2014

Acts Referred:

- Constitution of India, 1950 - Article 29, 30

Citation: (2014) 4 AJR 426

Hon'ble Judges: R. Banumathi, C.J; S. Chandrashekhar, J

Bench: Division Bench

Advocate: V.P. Singh, Sr. Advocate and A.R. Choudhary, Advocate for the Appellant;
Ananda Sen, Kaustav Panda, Advocates and R.K. Shahi, J.C. to G.A, Advocate for the
Respondent

Final Decision: Dismissed

Judgement

S. Chandrashekhar, J.

The appellant namely, Shree Narbheram Hansraj Gujarati M.E. School has preferred the present Letters Patent Appeal on the ground that without adding the appellant-school as a party-respondent in the writ proceeding and thus, without hearing the appellant-school, the learned Single Judge could not have made the following observation:

However, it is made clear that none of the observation made by the Director, Primary Education while passing the impugned order on the inter se dispute between the rival parties would have any effect upon issues of fact which may be pending adjudication between the parties before any other forum.

2. The appellant-school was established by Shree Jamshedpur Gujarati Samaj and the Government of Bihar has declared the schools run by the Shree Jamshedpur

Gujarati Samaj as "Linguistic Minority School". It is stated that after the city of Jamshedpur popularly known as "Steel City" came into existence and it developed as an industrial city, many Gujaratis started migrating to Jamshedpur and set-up their business there. One Hima Bhai Hira Bhain Amin formed Shree Jamshedpur Gujarati Samaj with an object to uphold the language and culture of Gujarati Samaj at Jamshedpur. He opened a school for Gujarati students in his residence in the year, 1922. Again, in the year, 1984 an English Medium School namely, Shree Narbheram Hansraj English Medium School was established by the Samaj. The Government of Bihar recognised both the Middle School and the High School which were established, controlled and managed by the Samaj. After certain disputes arose amongst the members of the Managing Committee, six members of the Managing Committee namely, Shri R.H. Amin, Shri H.S. Thakkar, Shri D.H. Dave, Shri T.M. Adesra, Shri P.C. Adesra and Shri B.K. Adesra requested the President of the Managing Committee to convene Annual General Body Meeting and subsequently, on 26.08.2002 the above named six members of the Managing Committee again requested the President of the Managing Committee for resolving the issues amicably. On 12.09.2002 a representation was made to the General Manager, Town Services, Tata Steel and subsequently, on 18.11.2002 a legal notice was served upon the respondent No. 5 namely, Sri Prafulla H. Gandhi, who was the Secretary of the Managing Committee. Aggrieved by the mal-administration by the Managing Committee run by the respondent No. 5, a delegation of above named six members of the Managing Committee submitted a representation to the District Superintendent of Education, East Singhbhum regarding the mal-administration in the school. Another representation was submitted on 20.02.2003. The District Superintendent of Education, East Singhbhum issued notices on 17.04.2003 to the Secretary of all minority educational institutions including the appellant-school to furnish the details of the election of the Managing Committee and some other details. By order dated 04.08.2003 the District Superintendent of Education, East Singhbhum (respondent No. 4) dissolved the Managing Committee of the appellant-school and an ad-hoc Committee was constituted by the respondent No. 4. Aggrieved by the dissolution of the Managing Committee, the appellant-school represented by Sri Prafulla H. Gandhi approached this Court in W.P.(C) No. 5773 of 2003 which was disposed of vide order dated 02.12.2003 with liberty to the appellant-school and Shree Jamshedpur Gujarati Samaj to file fresh representation before the Director of Primary Education and who was directed to pass a speaking order after hearing the parties. In the writ proceeding Shree Jamshedpur Gujarati Samaj represented through, Shri Chandulal P. Shah claiming himself President of Shree Jamshedpur Gujarati Samaj had filed the intervention application. In the meantime, the Area Education Officer, Jamshedpur had fixed the date of election of the Managing Committee and accordingly, on 02.12.2003 the election was held in presence of the Area Education Officer. In compliance of order dated 02.12.2003 of this Court, the respondent No. 3 heard the parties on 10.03.2004 and passed order dated 11.03.2004 which was challenged by the respondent No. 1-Samaj herein.

3. In the writ proceeding a counter-affidavit was filed on behalf of the respondent No. 5 claiming himself to be the Secretary of Shree Jamshedpur Gujarati Samaj and also the Secretary of Shree Narbheram Hansraj Gujarati M.E. School, Jamshedpur. It is stated that Shri Chandulal P. Shah is not the President of actual Shree Jamshedpur Gujarati Samaj (referred as Gujarati Samaj-1) rather, he is the so-called president of the parallel body created in the same name (referred as Gujarati Samaj-2) with a view to grab the management and control of the school -which is being managed by the Gujarati Samaj-1. It is further stated that the said Shri Chandulal P. Shah was earlier member of the Gujarati Samaj-1 and he was also a member of the Managing Committee however, on 11.07.1998 he resigned from the Managing Committee and subsequently in connivance with other members of the Gujarati Samaj-1 and some outsiders who are not the members of the Gujarati Samaj-1, the said Shri Chandulal P. Shah formed another body in the name and style of Shree Jamshedpur Gujarati Samaj (referred by the respondent No. 5 herein in his counter-affidavit in the writ petition as Gujarati Samaj-2). It is stated that in view of letter dated 19.04.1973 of the Director, Primary Education, Government of Bihar and the protection under Article 29 and 30 of the Constitution of India, the State Government has no power to dissolve the Managing Committee and/or to constitute ad-hoc Committee for minority schools and thus, the order dated 04.08.2003 dissolving the Managing Committee and constituting the working Committee of the School was illegal and without jurisdiction. Supporting the order dated 11.03.2004, it is stated that the writ petition was fit to be dismissed.

4. Noticing that by the time the writ petition was heard on 02.07.2012, the term of the Managing Committee constituted after the order dated 11.03.2004 passed by the Director, Primary Education must have expired, the learned Single Judge dismissed the writ petition as infructuous. However, the learned Single Judge clarified that the observation made by the Director, Primary Education would not have any effect on issues of fact which may be pending adjudication between the parties before any other Forum. As noticed above, aggrieved by this observation in the writ petition, the appellant-school has approached this Court.

5. We have heard the learned counsel appearing for the parties and perused the documents on record.

6. Mr. V.P. Singh, the learned Senior counsel appearing for the appellant-school had submitted that earlier a writ petition was filed by the appellant-school and on 10.03.2004 the Director, Primary Education heard the parties in compliance of order passed by this Court. The Director, Primary Education by order dated 11.03.2004 held that the order dated 04.08.2003 passed by the District Superintendent of Education, East Singhbhum was void, ab initio. Since the Director, Primary Education in order dated 11.03.2004 has made certain observations and recorded certain findings in presence of the parties, the observation made by the Director, Primary Education in order dated 11.03.2004 could not have been nullified by the learned

Single Judge without hearing the appellant herein. It is thus, submitted that since order dated 11.03.2004 was passed by the Director, Primary Education at the instance of the appellant-school, without hearing the appellant-school the learned Single Judge could not have expunged the observations made by the Director, Primary Education. It is further submitted that even an objection as to non-joinder of the school as a party-respondent was taken before the writ Court however, the respondent No. 1-writ petitioner did not join the appellant-school as a party-respondent in the proceeding of W.P.(C) No. 4631 of 2004.

7. Per-contra, Mr. Ananda Sen, the learned counsel appearing for the respondent No. 1 submitted that although W.P.(C) No. 5773 of 2003 was filed in the name of the appellant, in fact the writ petition was filed through one Sri Prafulla H. Gandhi who was the Secretary of the Managing Committee and he has been made a party-respondent in the present proceeding being W.P.(C) No. 4631 of 2004 and therefore, the objection taken by the appellant-school is not tenable. It is further submitted that since the observation in order dated 02.07.2012 against which the grievance has been raised by the appellant-school, was passed in presence of counsel appearing for the respondent No. 4 (in the W.P.(C) No. 4631 of 2004), apparently the present Letters Patent Appeal has been filed at the behest of some vested interest with certain oblique motive.

8. From the pleadings before the writ Court it appears that there are serious disputes between the parties with respect to control over the Managing Committee of Shree Jamshedpur Gujarati Samaj. Order dated 11.03.2004 passed by Director, Primary Education would disclose that the appellant-school was represented through Sri Prafulla H. Gandhi as (disputed) Secretary of the School and another set of persons referred to as intervenor were represented through Shri Chandulal P. Shah claiming himself to be the (disputed) President of Shree Jamshedpur Gujarati Samaj. The appellant-School is a linguistic minority school which is run by a society called "Shree Jamshedpur Gujarati Samaj" however, a serious dispute has arisen between the parties as to who represents the Samaj. It is apparent that the writ petition being W.P.(C) 5773 of 2003 was filed by Sri Prafulla H. Gandhi in his capacity as Secretary of the appellant-school and he is the person who represented the school before the Director, Primary Education who has passed order dated 11.03.2004. It is also seen that the said Sri Prafulla H. Gandhi has been made a party-respondent in W.P.(C) No. 4631 of 2004. The impugned order dated 02.07.2012 in W.P.(C) No. 4631 of 2004 was passed in presence of the counsel appearing for the respondent No. 4 (in the W.E(C) No. 4631 of 2004), namely Sri Prafulla H. Gandhi. It is pertinent to note that the counsel representing the respondent No. 4 in W.P. (C) No. 4631 of 2004 is the counsel who has filed the present Letters Patent Appeal also for the appellant-school. Since the dispute between the parties is confined to the membership and control over the Managing Committee, the learned counsel appearing for the writ petitioner has rightly submitted that the appellant-school was not the necessary party and therefore, it was not made party-respondent in the writ

petition. Besides this, the appellant-school's objection as to non-joinder of party is only technical in as much as, the respondent No. 4 in the W.E(C) No. 4631 of 2004 is the person who had earlier moved this Court in W.P(C) No. 5773 of 2003 and he is the person who represented the school before the Director, Primary Education and thus, the objection taken by the appellant-school is frivolous.

9. We further find that the issue which was adjudicated by the Director, Primary Education by order dated 11.03.2004, was the validity of order dated 04.08.2004 of the District Superintendent of Education whereby an ad-hoc Committee was constituted to manage the school. Therefore, the findings recorded by the Director, Primary Education with respect to membership of the Samaj was not relevant for deciding the issue before him. On a pointed query by the Court to the counsel appearing for the appellant-school as to what are the pending litigation before the parties in the Letters Patent Appeal, it is stated that a suit has been filed in the Court of the Subordinate Judge-1 at Jamshedpur being Title Suit No. 99 of 2005, a copy of which was filed by the respondent No. 5 herein before the writ Court along with the supplementary affidavit dated 08.03.2010. We find that the Title Suit No. 99 of 2005 has been filed seeking a declaration that the registered deed of Trust dated 20.07.2004 bearing deed No. 3783 is illegal, void, inoperative and against the provisions of Indian Trust Act. It further appears that none of the parties in the Title Suit No. 99 of 2005 are party before this Court either in the proceeding of W.P.(C) No. 4631 of 2004 or in the present proceeding. The learned Single Judge taking note of the plea of the respondent No. 1 - writ petitioner that the observation made by the Director, Primary Education relating to constitution of the Committee was extraneous and not warranted for deciding the issue before him, has rightly observed that such observations would not have any effect on issues of fact, which may be pending adjudication between the parties before any other Forum. We are of the view that since the learned Single Judge has observed that the findings of the Director, Primary Education would not effect the "pending adjudication between the parties" before any other Forum, the appellant-school cannot have any grievance with respect to the impugned observation made by the learned Single Judge.

10. We find substance in the contention of the respondent No. 1 that the present Letters Patent Appeal has been filed at the instance of some vested interests, who want to take undue benefit of the observation made by the Director, Primary Education in order dated 11.03.2004. Even though the W.P.(C) No. 5773 of 2003 was filed on behalf of the appellant-school, we are of the view that the appellant-school in its independent capacity was not required to be made a party in the present proceeding and we do not find any infirmity or procedural error committed by the learned Single Judge in making the impugned observation in absence of the appellant-school. Moreover, as noticed above, Sri Prafulla H. Gandhi who represented the school in earlier proceedings was made a party in the present proceeding and the observation which has been impugned by the appellant-school was made in presence of the counsel for the respondent No. 4 (in the W.P.(C) No.

4631 of 2004) namely, Sri Prafulla H. Gandhi. The respondent No. 4 (in the W.P.(C) No. 4631 of 2004) has not filed any appeal questioning the observation made by the learned Single Judge.

11. In the result, we find no merit in the Letters Patent Appeal and accordingly, it is dismissed.