

Shree Damodar Kalvaibhav Education Society

Vs

Director of Education, Goa and another

Civil Appeal No. 4675 of 1998

(Mr. M. Jagannadha Rao and Mr. K.G. Balakrishnan, JJ.)

02.08.2000

JUDGMENT

Balakrishnan, J.:— The appellant-Society has been running a school by name Keshav Smriti School at Allo-Dabolim, Vasco Da Gama, Goa since the year 1994-95. The school began as a middle school with Vth standard and gradually every year permission was sought to start VIth and VIIth standard and approval was granted by the authorities. On 15.11.96, the appellant-Society applied for opening VIIIth standard in the school from academic year 1997-98. The appellant-Society was informed that permission to open VIIIth standard had been rejected on the ground that there were other three secondary schools within a radius of 5 kms. from the appellant's school and as the opening of a new higher secondary school would adversely affect the neighboring schools and there would be an unhealthy competition among the existing schools. The appellant was also informed by the impugned order that an action to start a new school within the radius of 5 kms. from the existing schools would lead to violation of Rule 31(3)(iii) of Goa, Daman and Diu School Education Rules, 1986 (hereinafter being referred as the 'Rules'). The appellant-Society filed a Writ Petition No. 275/97 before the Panaji Bench of the Bombay High Court challenging the order of rejection dated 14.5.97. The said writ petition was later withdrawn by the appellant pursuant to a statement made by the counsel for the Government that fresh guidelines were being framed regarding the starting of new schools. In pursuance of a decision of the High Court, certain guidelines were framed. A survey was conducted to find out the educational needs of the localities and to identify the localities where the school in different grades are required to be opened in the State of Goa. The appellant's case was examined and it was found that it was not desirable to allow the appellant-Society to start a new school and the Director, School Education passed an order on 26.11.97 and the appellant was informed that his request to open a new school in 1998-99 cannot be considered. The Order dated 26.11.97 was challenged by the appellant by filing Writ Petition No. 86/98 before the High Court of Bombay, Panaji. The said writ petition was dismissed. This appeal is directed against the decision.

We heard the appellant's counsel and also the counsel for the respondent. The contention of the appellant's counsel is that the Director of Education Government of Goa has wrongly rejected the claim of the appellant. The main thrust of the argument of the appellant's counsel is that the Rule 31 of the Goa, Daman and Diu Education Rules, 1986 has no application. According to the appellant, the request of the appellant was to start VIIIth standard which school have been considered in the light of Rule 32 of the said Rules. The contention of the appellant's counsel is that the appellant - Society is having an existing school and starting of VIIIth standard in that school does not amount to creation of a new school but rather an addition of one more standard to the existing school.

In order to appreciate the contention advanced by the appellant's counsel, it is necessary to look into

some of the relevant rules which are applicable to the starting of new school and opening of new classes. In the State of Goa, Daman and Diu, the schools are classified into five stage, namely, pre-primary stage, primary stage, middle stage, secondary stage and higher secondary stage. The primary stage consists of classes from 1st to 4th (both inclusive), the middle stage includes classes from 5th to 7th (both inclusive) the secondary stage includes classes from 8th to 10th (both inclusive) and the higher secondary stage includes classes above class 10th. The definition of the stages has been given in Rule 2 of the said Rules. While giving the definition of the secondary stage, the following definition which is given in Rule 2(1)(i) is as under:—

"Secondary stage" means stage of school education having VIII-X classes or V-X classes as the case may be; (both inclusive)."

The above definition indicates that even if in a particular school, both middle and secondary stage classes are there, it would not be known as secondary school.

Rule 31 deals with the guidelines relating to opening of new schools or classes or closure of the existing schools or classes. Proviso to Rule 31(3) says that no school shall be permitted more than one class at each stage, namely, primary, middle secondary or higher secondary and after recognition, no school shall be permitted to add one more higher class each year at each stage. Rule 31(3)(i) says that no primary school of that category shall be permitted within a radius of 1 Km. and Rule 31(3)(ii) says that no middle school of that category within a radius of 3 Kms. The third proviso to Rule 31(3) reads as follows:—

"No secondary school of that category within a radius of 5 kms. from the existing schools, unless the Director of Education is satisfied that the existing school is overcrowded and there is no scope for further expansion, or there is no easy access to the existing school due to natural barriers like forest area, rivers with running water, or the proposed school is entirely for the benefit of backward class community, scheduled caste or Tribal pupils.

Nothing contained in this provision shall apply to unaided minority schools".

Rule 32 deals with the opening of new classes in schools. The relevant provisos are as follows:

- (1) No recognised schools, not being an unaided minority school, without giving full justification, shall open any new class or division other than the ones which have received approval from the appropriate authority, without obtaining prior sanction of the Director of Education or any subordinate authority authorised by him.
- (2) In the case of unaided minority schools, opening of new classes/divisions shall be subject to such norms as may be specified by the Director of Education.
- (3) the norms for granting additional divisions in Middle and Secondary Schools shall to be as follows subject to any change on the recommendations of the Advisory Board.

I. XXXX

II. XXXX

Provided that permission to open additional divisions shall be granted by the Directorate of

Education after satisfying himself about the physical facilities available with the school and mere enrolment of students by a school shall not automatically make the school eligible for the additional divisions and if the additional division is opened by the School Management, without prior permission the additional liability shall not be borne by the Department.

(4) XXXX"

The above provisions say that for starting a new class in a school or to open an additional division of a class, the school authorities shall make available certain physical facilities whereas starting of a new school is subject to satisfactory completion of several criteria. The Director of Education must be satisfied himself that the number of schools existing in the locality or in the neighbouring area where the new school is proposed to be opened, is sufficient to meet the needs of that locality. The Director of Education is also to consider whether the opening of a new school would be against the public interest or not. It is specifically stated that while permitting new schools, the Director of Education shall adopt the norms that no secondary school of that category within the radius of 5 kms. shall be there and unless the Director Education is satisfied that the existing school is overcrowded and there is no scope for further expansion and there is no easy access to the existing schools due to natural barriers like forest area, rivers with running water, or the proposed school is entirely for the benefit of backward class community scheduled caste or Tribal pupils.

The contention of the counsel for the appellant is that the appellant society wanted only to have a new class in the existing school, therefore, the norms laid down under Rule 31 are not applicable and Rule 32 alone should have been looked into by the Director, Education. This contention is not tenable for various reasons. Admittedly, the appellant started the school as a middle school and the Vth standard was started in the year 1994-95. VIIth standard was started in 1995-96 and the permission to open the VIIth standard was given during the year 1996-97. The present request is to start VIIIth standard in that school which would convert the school to a secondary school. Even though the request of the appellant is to have a new class in the existing school but the real demand of the appellant is to have a secondary school as the existing school is only upto VIIth standard and if the school is to become a secondary school, norms laid down under Rule 31 are to be necessarily followed. The contention of the learned Counsel for the appellant that starting of a new class does not amount to a new school cannot be accepted for the reason that rigorous criteria prescribed under Rule 31 are to be followed for starting a new school. For opening a new class in the existing school, the appellant society need only satisfy the authorities that there are certain physical facilities available with the school and that there are sufficient students for starting a class. Whereas under Rule 31, the authorities have to take into consideration various other aspects and find out whether the opening of a new school is necessary to meet the educational needs of that area.

It was contended on behalf of the appellant that in view of the definition of the secondary stage mentioned in Rule 2(1)(i), the appellant school shall be deemed to be a secondary school and, therefore, starting of the VIIIth standard in the school does not amount to the starting of a new school. Under Rule 2(1)(f), middle stage of the school is specifically mentioned as the stage of school education from class Vth to VIIth (both inclusive). As regards 'Secondary Stage', an inclusive definition is given so as to take in standards Vth to VIIth also, within the secondary stage and that would only indicate that even if a school is having a middle stage consisting of classes IVth to VIIth still it would be deemed as secondary stage if there are classes from Vth to Xth. As regards the appellant's school is concerned, there are classes only from Vth to VIIth. It does not fall within any other category and it has to be held as a middle school. If it is converted into a secondary school by addition to standard VIIIth, we are of the view that the guidelines under Rule 31 of the 'Rules'

are to be followed as it amounts starting of new school having "Secondary stage".

The counsel for the appellant drew our attention to a decision of the Division Bench of the High Court of Judicature, Bombay at Goa in **Vidya Prasarak Samaj vs. Director of Education (Writ Petition No. 26/94 decided in 25.7.94)** where it was held that Rule 31 has no application while starting of new class in higher stage. That was a case where the starting of standard VIIIth, IXth and Xth in neighbouring school was challenged and the challenge was negated on the ground that distance rule under Rule 31 has not application and it was held that opening of classes for higher standards cannot be said to be opening of new school. We do not think that the Division Bench has correctly interpreted the Rule. If such interpretation is adopted it would only defeat Rule 31 and primary school can gradually ripen into Higher secondary school stage by stage contravening the mandate contained in Rule 31. By the proposed new class, the school is upgraded and then it amounts to starting of a new school and is not a mere addition of one more class to the existing school.

However, in the instant case, the first respondent, i.e., Director, Education has not adverted to various other relevant circumstances while passing the impugned order. The counsel for the appellant had specifically contended that the appellant school catered to the needs of the students from the lower middle class families and out of the three neighbouring schools within a radius of 5 kms. one is a Naval school which exclusively caters to the children of navy personnel and the second school is a convent school and it is not normally possible to get admission to the students from the ordinary families. As regards the third school also, it is stated that there are sufficient number of students in the standard VIIIth of that school and there would not be any unhealthy completion in case the appellant is allowed to open standard VIIth in their school. These aspects are not seen to have been considered by the Director of Education while passing the impugned order. It is not known whether these relevant factors are taken into consideration while passing the order. Therefore, on the facts and circumstances of this case we are inclined to set aside the impugned order and direct the first respondent to consider the matter afresh.

The appellant is directed to submitted fresh application before the first respondent. The application shall be submitted within three weeks from the date of this Order. The first respondent shall pass the revised order having due regard to the relevant circumstances and, if necessary, shall give notice to the representatives of the neighbouring schools which are likely to be prejudicially effected by the order, if any, to be passed by the Director, Education. Further, the Director has to consider whether the students who complete standard VIIth in this school can get admission in the other schools and whether there would be adequate vacancies in the standard VIIIth in the other schools, after accommodating their own promotes from standard VIIth. The order shall be passed sufficiently before the commencement of the new academic year.

The appeal is disposed of. Parties to bear the costs.