

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5073 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

( No. 1 to 5 NO )

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NILKANTH EDUCATION TRUST

Versus

STATE OF GUJARAT

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Appearance:

MR SHIRISH JOSHI for Petitioner

MR RM DESAI for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 31/07/98

ORAL JUDGEMENT

Rule. Ld. counsels Mr. Roshan Desai and Mr. M.C.

Bhatt waives service of rule for Respondent No. 1 & 2 respectively.

By the consent of Ld. counsels for the parties,  
matter is taken up for final hearing today. The

petitioner Trust has approached this Court under Article 226 of the Constitution, alleging that, the order of rejection against the application preferred by the petitioner trust is bad and arbitrary. Petitioner's application to grant permission for opening new school starting from 8th. standard is rejected by the respondent no.2 the Gujarat Secondary Education Board. The order of the Respondent no.2 Board was challenged before the Competent Appellate Authority, but the appeal of the petitioner trust was dismissed vide order dated 3-3-98. After hearing Ld. counsels appearing for the parties, it is satisfactorily established that, this matter requires to be remanded back to the concerned authority, namely the Respondent no.2 Board for a fresh consideration, irrespective of its previous findings on the application of the petitioner trust. It was pointed out to this Court that, in some cases, even at the time of deciding the appeal, the State on certain conditions has permitted certain institutions to start the school or to continue with the activity of the educational trust. Ld. counsel Mr. Roshan Desai appearing for the Respondent State clarifies that, the application preferred by the petitioner, if to be sent back for reconsideration, then, the request of the petitioner trust shall be considered from the academic year beginning from June 1999 only. Ld. counsel Mr. Joshi for the petitioner trust accepts that, as this academic year has already commenced, the trust would agree to the proposal that the permission to start new standard to be given from new academic year beginning from June 1999. Petitioner trust will be at liberty to represent afresh and shall try to comply with the requirements of the Board. The Board and the Appellate Authority should give an opportunity of being heard to the petitioner trust by serving a written notice, and the trust's representation if made should be considered sympathetically, considering all the statutory requirements or compliance of requirements under the relevant rules. The Board also have the right to initiate de-novo inquiry if it feels so.

Obviously, as the matter is to be sent back, the orders passed by the Respondent Board and the State require to be quashed and set aside. Same are accordingly quashed and set aside. The respondent Board and the Appellate Authority, if the occasion arises, should decide the matter without prejudice to the findings recorded at the time of passing the impugned orders which are under challenge before the Court. The concerned authorities are directed accordingly. The concerned authorities shall decide the application within

six months from the date of receipt of present order.  
Rule made absolute. No cost. Direct service permitted.

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