

AIR 1984 SC 1110 : (1984) 3 SCC
384 : 1984All LJ 543 : 1984 Lab IC 900

14

K. R. Zaiwalla with Rajiv J Mane, for Petitioner: S. T. Tijoriwalla with D. D. Kapadia i/ by M/s. Dhebar and Shah, U. J. Makhija with K. J. Gandhi i/by Mulla and Mulla and Craigie Blunt and Caroe, S. G. Surana, for Respondents.

Judgement

1. G. H. GUTTAL, J. :- In Writ Petition No. 2053 of 1989 under Art. 226 of the Constitution of India, the petitioner, 12 years of age, impugned the validity of his expulsion from the educational institutions. Pratap, J. by his judgment dated 18th September, 1989, dismissed the, petition summarily. The petitioner appeals to us.

2. DadarAthornanMadresa - hereinafter referred to as "the Madresa" - a Public Charitable Trust registered under the Bombay Public Trusts Act, is an educational institution which trains ZorastrarianParsi Children between 6-14 years for initiating them into priesthood. It is a residential school - a seminary - having 45 inmates. The respondent Nos. 1 to 4 are the Trustees and the respondent No. 3 is the Principal of the Madresa. The respondent No. 5, an ex-student, is a tutor in the Madresa.

Dadar Parsee Youth Assembly School - hereinafter referred to as "the School" - is also a School run by a Public Charitable Trust. The respondents Nos. 7 to 11 are its Trustees and the respondent No. 6 is its Principal. The School imparts secular education up to S.S.C. Examination. Although, the Madresa is not formally affiliated to the School, all the inmates of the Madresa are admitted to the School. The inmates of the Madresa receive education in the School. The School is recognised by the Government of Maharashtra - Respondent No. 12. The respondents Nos. 13 and 14 are the Deputy Director of Education, Government of Maharashtra and the Education Inspector respectively.

3. In his petition under Art. 226 of the Constitution of India, the petitioner, aged 12 years, impugned the validity of his expulsion from the Madresa and the School and certain other acts of the respondents Nos. 1 to 11 and sought reliefs against the respondents Nos. 12 to 14.

4. The undisputed facts are as under:-

The petitioner was admitted in the Madresa and the School on 10th June, 1984. On 17th October, 1988, when he was expelled, the petitioner was reading in the 4th Standard.

On 9th September, 1987, Mr. Kerwala, a resident of Bharuch, pursuant to

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certain inquiries claimed to have been made by him, addressed to the respondents Nos. 1 to 4,

@page-Bom18

through an advocate Mrs. Patel of Baroda, a letter in which he made the following statements :-

(a) The children studying in Madresa who are between 6-9 years are subjected to severe beating by wooden rods, if they did not grasp the subject;

(b) The children are refused breakfast/ meals, and often locked up for 24 hours without food;

(c) The food supplied to the children was insufficient. When they asked for more food, they were beaten into silence;

(d) Whenever philanthropic zorastrians host dinner for the inmates and in case the host is absent, the children are denied food and it was sent elsewhere;

(e) Sometimes the teachers delegate the job of beating to the students of higher classes who then beat the junior students;

(f) Mr. Kerwala, personally interviewed some children and noticed marks of injury and frail bodies of the children;

(g) A Cyrus Sidhwa, who works in the institution, has specialised in injuring children by his fingernails.

Finally Mr. Kerwala requested the respondents Nos. 1 to 4 to take steps and stop the ill-treatment of the children.

5. The first written complaint about the conduct of the petitioner was made by the Principal of the School on 29th January, 1988. It was addressed to the respondent No. 3, the Principal of the Madresa. The substance of the complaint is this:-

(a) The petitioner does not sit down at all. When the teacher has his back to the class, the petitioner leaves his seat and sits with some other child;

(b) He talks or quarrels with other children;

(c) About a year ago, the hand of a child - Nawaz Khan was broken for which the petitioner was blamed. The police wanted to arrest the petitioner.

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In this letter dated 29th January, 1988, the Principal proceeded to convey his decision about the petitioner in these words :-

"I beg to bring it to your attention that in ensuing examination in month of April, whether Kobad passes or not, I will not keep him in School any longer."

6. A written complaint by the Madresa about the conduct of the child was made by the letter dated 6th February, 1988, addressed to the petitioner's father. A general reference to "various mischiefs" was made. So also it was stated that "right from the beginning" complaints about the petitioner were received. Although a reference to the receipts of complaints "from the beginning" is made, it is admitted that no written communication of such complaints was ever made prior to 6th February, 1988. No specific incident of misbehaviour in the Madresa was set out. The Madresa refers to the letter dated 29th January, 1988 from the School and states-

"It has been stated in the letter that Kobad would not be allowed in the School after the month of April."

After setting out what the School stated in the letter dated 29th January, 1988, the Madresa records its decision"you can make some other arrangement about him".

7. In his letter dated 18th February, 1988, the petitioner's father requested the Madresa to treat the child with sympathy and correct him.

8. The petitioner's father replied through his advocate on 12th March, 1988. He asserted that the letter by Kerawala's advocate was not inspired by him and denied that the petitioner committed the acts alleged by the School and Madresa.

On 19th July, 1988, the Principal of the School addressed another letter to the Principal of the Madresa. For the first time, she complained of petitioner's misbehaviour alleged to have been committed about 1.1/2 years ago. This was not stated, in the letter dated 29-1-1988. She records these facts :-

(a) The petitioner fooled about with his classmate Sarfaraz. Khan 1.1/2 years ago in

@page-Bom19

1986-87 and threw him down which caused the fracture of his hand. His father lodged complaint to Matunga Police Station;

(b) After closing the matter with the police, petitioner was permitted to sit in the

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class;

(c) The petitioner leaves his seat. Once he broke the nib of the pen of another boy Roshan Rajput, sprinkled ink on his shirt, pushed him and beat him.

(d) Recently the petitioner bit Roshan Rajput whose nib he had broken making his eyes further defective.

A copy of this letter was sent to the petitioner by a letter dated 9th August, 1988 by the Madresa. In this letter, the Madresa makes generalised statements about the "misbehaviour" of the petitioner such as changing his seat, dozing and beating other children, which are reproductions of the complaint by the School. No specific act committed in the Madresa finds place in this letter.

9. The letter dated 5th September, 1988, by the Madresa to the petitioner's father needs a reference. The Madresa wrote-

" the D.P.Y.A. High School would not

be keeping your son Kobad any more, we might give him priestly training at the Madresa as a last opportunity to him".

The letter proceeds to call upon the petitioner's father to decide whether-

"you would like your son Kobad to have priestly training at the Madresa or whether you would be making some other arrangements".

10. The Madresa by its letter dated 2nd October, 1988, informed the petitioner's father that a meeting of the trustees and the members of the Managing Committee of the Madresa will be held on 10th October, 1988 to discuss the conduct of the petitioner. The petitioner's father was invited to attend the meeting and "say Whatever you have to state, as also to express your views on matters, concerning the Madresa": the petitioner's, father was represented at the meeting by another trustee and also an advocate.

By the letter dated 17th October, 1988, the Madresa informed the petitioner that at the meeting held on 10th October, 1988, the trustees passed a resolution to "remove and dismiss" the petitioner from the Madresa.

11. While the Madresa resolved to expel the petitioner, the case of the School is somewhat different. The petitioner's father who is a priest lives in Navsari. He had, therefore, appointed the respondent No. 3 - the Principal of Madresa - as the local guardian for the purpose of the matters connected with the School. On 13th October, 1988, three days after the expulsion from the Madresa and before the petitioner's father was informed about the expulsion, the respondent No. 3,

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a Trustee of the M.adresa, in his capacity as the "guardian" applied to the School for the School Leaving Certificate of the petitioner which the School promptly issued on the same day. Therefore, the School does not concede that it dismissed or expelled the petitioner. In his arguments also, Mr. Makhija asserted that since the "guardian" applied for the School Leaving Certificate, the School merely granted the certificate. Yet, in the letter dated 6th July, 1989 written by the petitioner's father, Dr. M. Mowji, the Principal of the School, suggests something more than mere issue of School Leaving Certificate; she says -

"I regret to inform you that your son's case was decided by the School Management and I have to abide by the same".

According to Dr.Mowji, there was a "case" which was "decided" by the Management. The letter suggests that the "Management" was involved in the decision making.

12. Another parent Brach Goolestan, by his letter dated Nil September, 1987, complained of injury on the person of his son Mehernosh. He named a teacher by name Cyrus Sidhwa as the assailant. In his letter dated 8th April, 1988, he recalled that the respondent No.3 asked him to remove Mehernosh from the Madresa. The School and Madresa asked him to take the child out of the School which he did.

13. Counsel took us through all the facts and

@page-Bom20

mutual allegations. We do not propose to adjudicate upon the truth or otherwise of the allegation of assault and ill-treatment of the children. Similarly, we do not decide whether the petitioner committed the acts set out in the letters of the Madresa and the School. These are the facts seriously disputed by the parties. Such an exercise is beyond the scope of this appeal; as indeed it was beyond the scope of the inquiry in the Writ Petition out of which this appeal arises.

Nevertheless, the accusations made by some parents are grave and, if true, must shock public conscience.

14. The first question is whether the expulsion of the petitioner from the Madresa is illegal. Admittedly, the Madresa, by its Resolution dated 10th October, 1988, removed and dismissed the petitioner. The correspondence which we have set out in paragraphs 4 to 9 of this judgment leaves no doubt, that the expulsion followed the accusations of misconduct. However, minor the acts complained of are, they attach stigma of misbehaviour. The principles of natural justice demand that the petitioner is given an opportunity of showing

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cause against the accusations and that there was a genuine consideration of the petitioner's version not only about the misconduct but also in respect of the proposed penalty of expulsion. Aware of this requirement of law, the Madresa called the petitioner's father at the meeting of the Trustees. This was the formal compliance with the requirement of notice to show cause against the accusations and the proposed action. But, we do not believe that the respondents Nos. 1 to 4 ever intended to consider the petitioner's case. The recourse to the external form of hearing was a farce - not a recourse to the principles of natural justice. In such cases, we cannot accept the notice to appear at the meeting as sufficient compliance with the principles of natural justice: without going below the surface and finding out the substance of the matter. This is the essence of the law laid down by the Supreme Court in *Inder Pal Gupta v. Managing Committee, Model Inter College, Thora*, (1984) 3 SCC 384: (AIR 1984 SC 1110). Until 6-2-1988, the Madresa never made a written report about the petitioner's conduct to the petitioner's father or anyone. Although the letter refers to certain complaints received "right from the beginning" they were not conveyed prior to 6-2-1988. As stated in the letter by the School dated 29-1-1988, a decision to remove the petitioner was taken much earlier. Before 6-2-1988 the School had decided to remove the petitioner from the School. Consider what the Madresa told the petitioner's father on 6-2-1988. He was asked to make "some other arrangements about him (petitioner)". In the context of the rapidly moving events and decisions "some other arrangement" means taking the child to another Madresa. Thus, on 6-2-1988, the Madresa hinted at the removal of the petitioner. The same suggestion was made in the letter of the Madresa dated 5-9-1988 by expressing reluctance to keep the petitioner in the Madresa. The suggestion implied by the words "Whether you would be making some other arrangements" means only one thing. The Madresa did not want to keep the petitioner as a pupil. Thus, the decision to remove the petitioner from Madresa was taken as early as 6-2-1988 following a similar decision by the School on 29-1-1988.

The show cause notice dated 2-10-1988 followed these events. The petitioner was not called upon to answer a specific complaint. But the notice required the petitioner's father to "say whatever you have to state" about the conduct of the petitioner. These words do not suggest the intention to examine the conduct of the petitioner with an open mind. It sounds as if the Madresa said "we have taken a decision. You may say whatever you have to state".

Again, it must be noted that the notice suggests that the complaint by Kerawala was the motivating force behind the action. The action against the petitioner was initiated because the Madresa assumed that Kerawala's letter was instigated by the petitioner's father. If the supposed connection between Kerawala's letter and the removal of the petitioner was not the motivating factor, the notice' need not have asked the petitioner's

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@page-Bom21

father to state his views "on matters concerning the Madresa". These words establish such connection. The accusations of "misconduct" made by the Madresa and those made by the School are substantially the same. Indeed, the Madresa has merely repeated them. The fact that the Madresa chose to expel the petitioner following the letter from the School, establishes the identity of motives. The very first letter communicating the acts of "misconduct" was written by the Madresa on 9th August, 1988, admittedly against the background of the statements in the letters dated 29th January, 1988 and 6th February, 1988. There was no written communication about "misconduct" prior to 9th August, 1988 so far as the Madresa is concerned. In this letter also, the Madresa asked the petitioner's father to write "as to what arrangement you intend to make about your son Kobad".

15. The events set, out above leave no doubt that the Madresa had decided to expel the petitioner as early as 6th February, 1988, and had repeated their intention to expel him in the letters dated 5-9-1988 and 9-8-1988. Against the background of these events, the notice dated 2-10-1988 inviting the petitioner's father at the "discussion" was an endeavour to fulfil the external form of the principles of natural justice. Since the decision to remove the petitioner had been taken eight months ago, the "discussion" for which the petitioner's father was invited was an empty exercise. It represented the external shell of natural justice without the grain of substance, In our opinion, the expulsion of the petitioner from the Madresa, which left the stigma of misconduct is contrary to the principles of natural justice. The supposed connection of the petitioner's case with the allegation made by Kerawala was always at the back of the mind of the Madresa. The Madresa wanted to teach a lesson to the petitioner by expulsion; for, it believed that Kerawala's letter was inspired by the petitioner's father. Therefore, the expulsion is the result of extraneous considerations and not for misconduct. This explains why the notice called upon the petitioner's father to express his "views on matters concerning the Madresa".

The petitioner's father did not ask for an inquiry into the affairs of the Madresa. He was concerned with the expulsion of his son. The words quoted above reveal that the Madresa always had in mind the belief that Kerawala's letter contained grave accusations against the Madresa was instigated by the petitioner's father. This belief and not the misconduct of the petitioner motivated the expulsion. This also explains why the drastic step of expulsion was resorted to as a punishment for trivial acts which children between 6-10 years commit.

16. We are of the opinion that the Madresa did not follow the principles of natural justice before taking the drastic action which attached stigma to the petitioner's conduct. The acts like changing seat, breaking nib, quarreling, are so trivial that no school would expel a child for committing such acts unless there is

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some extreme, oblique purpose, as the Madresa indeed have. In our opinion, the petitioner's expulsion from the Madresa is illegal.

17. The question of the validity of the expulsion from the School raises different questions.

The first question is whether the School expelled the petitioner. If it did, was there an element of stigma of misconduct?

The letters from the School dated 29-1-1988 and 19-7-1988 bring out its decision to remove and dismiss the petitioner for acts set out therein. There is a clear statement of what the School considered to be acts of misconduct. The Principal of School made no secret of his intention to remove the petitioner after the examination in April, 1988. Therefore, we are certain that the School accused the petitioner of misconduct. The eventual removal from the School was, therefore, expulsion with the stigma of misconduct.

But, surprisingly, the School urged that it merely issued a School Leaving Certificate on the request of the "guardian". The "guardian" was the respondent No. 3, a Trustee of the Madresa and not the petitioner's father. The petitioner's father was constantly engaged in an effort to avoid removal of his child. He

@page-Bom22

did not ask for the School Leaving Certificate. The local "guardian", a party to the illegal expulsion from the Madresa, secured the removal of the petitioner from the School. It was not an innocent act of issue of School Leaving Certificate. That is why the Principal does not say so. In the letter dated 6-7-1989, the Principal of the School stated that the Management had decided the case. What was the "case"? The answer is expulsion for misconduct. The Management of a School need not be concerned with innocent issue of School Leaving Certificate. Therefore, there is no doubt that the issue of School Leaving Certificate was a trick devised to outwit and deceive the petitioner's father. The School got rid of the petitioner, as, according to them, he committed the acts listed in the letters to which we have referred earlier. They did this because they believed, he was guilty of acts, trivial by any token, but characterised by the School as misconduct. No notice was issued, no explanation was sought. The expulsion is, therefore, tainted with breach of the elementary rules of natural justice. It is illegal.

18. The school has committed another illegality in expelling the petitioner. The petitioner was reading in the Vth Standard on the date of his expulsion. The School Leaving Certificate issued on 13-10-1988 records "studying in Std. V (fifth)" since June, 1988. The Secondary Schools Code - the Code for brevity - which applies to the School defines a Secondary School as a School which

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provides a course in general education leading to the Secondary School Certificate examination at the end of Standard X*. The School by definition, is a Secondary School. The School is recognised by the Government. Therefore, the affairs of the School must conform to the Code**. Elaborate, nearly exhaustive, provisions in regard to management, admissions and withdrawal of pupils, health of pupils and rules of discipline have been laid down. Different officers like Director of Education, Dy. Director of Education and Education Officer have been designated as Competent/ Appropriate Authority to exercise control over the School and ensure the obedience to the Code***. We are concerned with Section VIII of Chapter II of the Code titled "Principles of discipline for pupils" which the School is in law bound to follow.

*Chapter I Definitions - Secondary Schools Code - Revised Edition, 1979.

**Chapter 11, Section I - Recognition, - Organisation and Management of Schools.

***Appendix Twenty four and clause (15) of the Definitions.

Rule 56.5 provides that a pupil may be "expelled permanently or removed from the School for a specified period". The grounds on which these steps may be taken are -

- a) Persistent insubordination; or
- (b) malpractices in connection with examination; or
- (c) act of serious indiscipline/misbehaviour; or
- (d) has, in the opinion of the Head of the School, an unwholesome influence on the fellow-pupils.

It is unnecessary to go into the disputed question whether the petitioner's acts fall in any of these grounds of expulsion. We assume that one or the other ground existed when the School expelled him. But the School cannot expel a pupil merely upon proof of one of such grounds. The makers of the Code, aware of the abuse of authority by Schools, have insisted upon two safeguards. Firstly, the School is bound to record "the reason therefor" in writing; secondly "the matter should be reported immediately by the Head to the appropriate authority" in no case later than seven days of expulsion. These safeguards designed to check arbitrary and unreasonable expulsion are, in our opinion, mandatory. No doubt, the word "should" and not "shall" has been employed in relation to the compliance with these requirements. If the safeguards are merely directory, their existence makes no sense; for, a School may expel without any reason and the pupil will be told that the compliance with these requirements is not mandatory. The requirement though enabling in form is mandatory in substance. But the Code prescribes the mode

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of expulsion of pupils. This means that a pupil may not be expelled in any other mode. In other words, when the Code recognised the power to expel a pupil, it also limited the exercise of such power to specified circumstances and pointed out the only mode in which the power may be exercised⁺⁺ Then the Code provides for the consequence. If a pupil is expelled without following the prescribed mode, a breach of the Code is committed. This entails withdrawal of recognition of the School. In our opinion, compliance with Rule 56.5 is mandatory. The whole aim and object of the Rule 56.5 will be defeated if the particular mode of expulsion is construed to mean a mere direction.

⁺⁺ Craies on Statute Law -Seventh Edition P. 287.

19. In our opinion, the School has failed to comply with the mandatory directives laid down in Rule 56.5 of the Code. Although the letters written by the School accused the Petitioner of certain acts of misconduct, in the affidavit of Dr. (Mrs) Mowji, the Principal, it is claimed that the School merely issued the School leaving certificate. No misconduct is alleged. We are certain that the Petitioner was expelled for the supposed misconduct set out in the letters written by the School. Since no reasons for the expulsion have been recorded and since the expulsion was not communicated to the Director of Education, the expulsion is contrary to Rule 56.5 of the code. For the same reason, the School has violated the conditions of its recognition by the Government.

20. For all these reasons the Petitioner's expulsion from the School is illegal,

21. The next question is whether a writ or order under Art. 226 of the Constitution of India can be issued against the madresa and the School. The Madresa is a Public Trust governed by the Bombay Public Trusts Act. The School is not only governed by the Public Trusts act but also the Secondary Schools 'Code.

In Sri AnandiMukta, Shri AnandiMukta 'Sadguru Shree MuktajeeVandasjiswamiSuvarnaJayantiMahotsavSmarak Trust v. V.R. Rudani, AIR 1989 SC 1607, the teachers of a private College run by a Public Trust sought a writ under Art. 226 of the Constitution of India directing the Trustees to pay the arrears of salary and allowances. The Supreme Court laid down the principles governing issue of writs/orders under Article 226 of the constitution of India against private bodies which are not instrumentalities of State. The principles are :-

(i) A writ under Art. 226 cannot issue to enforce rights "purely of a private character" and no public duty is attached to such rights.

(ii) Where, however, the private educational body is subject to Governmental control as by financial aid or supervision by the University, the rights are "not devoid of any public character".

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(iii) The words "any person or authority" used in Art. 226 of the Constitution of India are not confined to statutory authorities and instrumentalities of the State. They cover any "other person or body performing public duty". (Paragraph 19).

(Emphasis supplied).

(iv) The form of the body against whom writ/ order under Art. 226 is sought is not very much relevant. What is relevant is the nature of the duty imposed on the body. (Para. 9).

(Emphasis supplied).

(v) The duty referred to in (iv) above must be judged in the light of positive obligation owed by the person or authority to the affected party. (Paragraph 19).

22. Thus, the existence of public duty is fundamental to the exercise of jurisdiction under Art. 226 of the Constitution of India. The question, therefore, is, whether the Madresa, is, a private body, owes a public duty to its inmates. The external form of the organisation of the Madresa is not important. The nature of its duty towards the inmates and the community has to be considered.

There are only two Madresas in Bombay -one at Andheri and the other at Dadar. Both are run by the Trust known as "the AthornanMandal". It is a religion-cum

@page-Bom24

educational institution not founded by any donor but supported entirely by donations from the ZoroastrianParsi Community. Since every rupee received and spent by the Madresa belongs to the community, the community has an interest in the affairs of the Madresa.

Secondly, there being only two Madresas in Bombay, the members of the community have to choose either of them for their children. Since both are run by the AthornanMandal, the authority of the Trust is monopolistic. This leaves no alternative to an expelled pupil to seek admission to the other Madresa also run by the same Trustees.

The third feature of the Trust is its subjection to the provisions of the Bombay Public Trusts Act. No doubt, the Madresa is not subject to public control through financial aid by the Government but it is subject to the authority of the public functionaries created by the Bombay Public Trusts Act. We will presently examine the nature of this control.

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The Trustees are obliged to submit annual budgets to the Charity Commissioner of Maharashtra. The budget shall make adequate provision for carrying out the objects of the Trust^{*}. The accounts shall be kept in a form prescribed by the Charity commissioner and shall contain the particulars prescribed by him^{**}. The Charity Commissioner has the power to direct a special audit of the accounts of any public trust^{***}. The Trustees are not free to invest the Trust funds wherever they like[#]. A significant control of the Charity Commissioner is in S. 36A. A Trustee is bound to apply the funds inter alia in accordance with the directions of the Charity Commissioners.^{##}The Charity Commissioner and other officers may inspect the premises of the Trusts, its books of accounts, demand statements, inquire into misconduct of the Trustees and find out whether the objects of the Trust are properly carried out⁽⁺⁾. The Charity Commissioner has the statutory authority to inquire into a wide ranging subjects which may, cover the complaints made by Kerawala⁽⁺⁾⁽⁺⁾. The Charity Commissioner is empowered to exercise control over the administration of the Trust by issuing directions to "ensure that the trust is properly administered". It shall be the duty of every Trustee to comply with such directions⁺. Failure to comply with such directions is an offence⁺⁺, Neglect of duty, disobedience of the Order of the Charity Commissioner or improper dealing with Property, of the Trust entail suspension or dismissal of Trustees^{*}.

*Section	31A	-	Bombay	Public	Trusts	Act.
**Section	32	-	Bombay	Public	Trusts	Act.
***Section	33(4)(a)	-	-Bombay	Public	Trusts	Act.
#Section	35	-	Bombay	Public	Trusts	Act.
##Section	36A(1)	-	Bombay	Public	Trusts	Act.
(+)Section	37	-	Bombay	Public	Trusts	Act.
(+)(+)See the	Questionnaire set out in the Commentary on the Bombay Public " Trusts act by					
KesrichandNemchand	Shah.	Seventh	Edition	-	1988,	Page 462.
+Section	41A	-	Bombay	Public	Trusts	Act.
++Section	67	-	Bombay	Public	Trusts	Act.

*Section 41D -- Bombay Public Trusts Act.

23. It is thus clear that the Charity Commissioner who exercises statutory authority in respect of the Madresa wields power of a wide magnitude for the purpose of securing compliance with the objects of the Trust. The object of the Trust which runs the Madresa is to prepare the children through religious education for priesthood. This object is fulfilled with the aid of funds donated by the ZoroastrianParsi Community. Therefore, the Community has the ultimate right to have its children trained properly, treated as human beings should be treated, they generally bring them up as priests. This right of the Community necessarily casts a duty on the Trust to administer the Madresa in accordance with the objects it is expected to fulfil. The public control is exercised through the machinery created by the Bombay Public Trusts Act.

Is this the public duty that the Supreme Court referred to? In order to answer this question, the meaning of the word "public" needs to be understood. The word "public" does not admit of precise definition. It is a term of uncertain

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import and must be limited

@page-Bom25

by the context in which it is used. It does not mean the inhabitants of the entire country or the amorphous mass of humanity. In the context of the facts of this case, the "public" means the members of the ZoroastrianParsi Community only: for the simple reason that the Madresa exists only for that community. It means the ZoroastrianParsi Community as an aggregate.

Where is the line to be drawn between a purely private duty and a public duty? In our opinion, the extent of the involvement of the interests of the Community furnishes a, useful guide. Does the duty of the Trust / Madresa involve the interests of the Community to such an extent that makes state regulation something to be expected? Therefore, State regulation is a relevant factor in determining whether the duty of the Madreas goes beyond the narrow barriers of private duty. If provision has been made for control by the State, the duty, performance of which the Charity Commissioner supervises through his directions, inspection and inquiry, is public duty. In our opinion a public duty is one in the discharge of which the public - In this case the ZoroastrianParsi Community - has an interest as affecting their legal rights and liabilities.

24. We, therefore, hold that the Madresa owes a public duty to the Petitioner and other inmates. The inmates of the Madresa have a public right to compel obedience to the rules of natural justice and fair play. The reasons are: -

(i) The ZoroastrianParsi Community is the 'public' as distinguished from the amorphous mass of Indians. In the context of the objects of the Trust, the Madresa exists for the community which is a section of the larger Indian society. Viewed in this perspective the ZoroastrianParsis constitute the "public".

(ii) The interests of the community in the religious education of its children made it necessary for the State to supervise the administration through the Bombay Public Trusts Act. The Charity Commissioner, in addition to his general powers, has the authority to inquire whether the objects of the

Trust are properly carried out and issue mandatory directions, the disobedience of which is an offence. The directions may relate to fair treatment of the children in the Madresa, observance of rules of fair play in expulsion, supply of adequate food and so on.

(iii) The observance of the principles of natural justice in expulsion from the Madresa, or from any educational institution, is a part of Indian jurisprudence. The State through its judicial system can enforce obedience to these principles.

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(iv) The Madresa is supported by the funds of the community, the use of which is supervised by the public machinery created by the Bombay Public Trust Act.

(v) Illtreatment of children by beating or starving is negation of the duty towards the public because such practices are not conducive to the creation of responsible priesthood. The expulsion from the Madresa without following the principles of natural justice or for ulterior motives shakes the confidence of the public - the Community -in the Madresa which they support. The Madresa owes a duty to the Community to refrain from such practices.

25. Our conclusions on this point are:-

Although the Madresa is a private body in relation to the general run of the humanity, it is "public" in relation to the ZorastrianParsi Community. It was created and it exists for a section of the public - the ZorastrianParsi Community as an aggregate. Its activity reflected in its objects is subject to State regulation through the Bombay Public Trusts Act. The Madresa rests wholly on public donations which evidences the public interest in the Madresa. The discharge of the duty -the fulfilment of the objects of the trust -affects the legal rights and liabilities of the members of the Community. Therefore, the totality of these facts prove that the Madresa owes public duty. The community has a public right in the proper administration of the objects of the Trusts. Consequently, the members of the Community and the pupils have a public right to compel obedience to the rules of natural public fair play.

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It is competent for this Court to issue a writ under Art. 226 of the Constitution of India against the Madresa.

26. Maintainability of the petition under Art. 226 of the Constitution of India against the School will have to be considered in the light of Francis John, Francis John v. The Director of Education, AIR 1990 SC 423, and Shri AnadiMukta, Shri AnadiMuktaSadguru Shree MuktajeeVandasjiswamiSuvarnaJayantiMehotsavSamarak Trust v. V. R. Rudani, AIR 1989 SC 1607. As we have mentioned in paragraph 21 above, Shri AnadiMukta, Shri AnadiMuktaSadguru Shree MuktajeeVandasjiswamiSuvarnaJayantiMahotsavSamarak Trust v. V. R. Rudani, AIR 1989 SC 1607, the case of a private college, laid down the test of public duty of the college. Francis John, Francis John v. The Director of Education, AIR 1990 SC 423, was the case of dismissal of a head-master of a School governed by the Grant-in Aid Code issued by the Government in exercise of its executive power and not under a statute. Yet the Supreme Court held that the Grant-in Aid Code is a part of the Public Law of the land, Francis John v. The Director of Education, AIR 1990 SC 423, paragraph 5. The second finding of the Supreme

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Court is that the Director of Education is a public functionary who discharges governmental functions as an authority constituted for this purpose. The third conclusion was that in the circumstances of the case, the decision was not "of a just private management governed by private law. It was the part of the process of the public law which affects public exchequer", Francis John v. The Director of Education, AIR 1990 SC 423, paragraph 5.

27. We are aware of the fact that in Francis John, Francis John v. The Director of Education, AIR 1990 SC 423, the School was recipient of financial aid from the Government. In the case before us, the School does not receive grant from the Government. But this fact does not take away the public law character of the Secondary Schools Code which admittedly governs the School. While the element of financial aid from the public exchequer is absent, there are other determinative factors which make the Secondary Schools Code, what the Supreme Court characterised as "a part of the public law of the land".

The Government's recognition is dependent on the School conforming to the Code^{*}. Admissions to the School, promotions from standard to standard and conditions of service of employees shall be in accordance with the instructions of the Education Department of the Government^{**}. The number of pupils in a class and reservation of seats for the backward classes etc are covered by the Code^{***}. The measures required to be taken by the School for Health and well being of pupils are elaborately laid down.⁺The principles of discipline are subject to the control of the Director of Education appointed by the Government⁺⁺. An employee cannot be dismissed for misconduct without following the procedure for inquiry laid down by the Code[#]. The Deputy Director of Education exercises appellate authority in cases of dismissal^{##}.

*Rule 1 - Section I, Chapter II of the Code.
**Rule 3.2 - Section I, Chapter II of the Code.
Rule 67.1 - Section II, Chapter III of the Code.
***Rule 13.1 - Section III, Chapter II of the Code.
+Section V, Chapter 11 of the Code.
++Section VIII, Chapter 11 of the Code.
#Rule. 77.3- Section 111, Chapter III of the Code.
##Rule 77.3 - Section 111, Chapter III of the Code.

These are some of the factors which spell out in unmistakable terms, the Governmental control on recognised Schools. Since the recognition can be withdrawn for breach of any of the provisions of the Code, it follows that as long as the recognition lasts, the School is under a legal obligation to act in conformity with the Code. The constant continuous subjection to the provisions of the Code and the supervision and control of the Director of Education, signifies the public character of the Code. Since the Code binds the School, and the School is obliged to obey

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its provisions, it is law of the land. The rights of the pupils against the Management of Schools are of a public character. It follows, therefore, that the Secondary Schools Code is, as the Grants-in Aid Code in the case of Francis John was, a part of the public law of the land.

28. Since the expulsion of the Petitioner is in contravention of Rule 56.5 of the Code, a part of the public law, a writ/ order under Art. 226 of the Constitution can be issued by the Court.

29. We, therefore, set aside the Order of Pratap J. whereby he dismissed the Writ Petition No. 2053 of 1989. We allow the Appeal and make the following order:

(i) The Respondents Nos. 1 to 4 and the appropriate authority of the AthornanMandal shall forthwith admit the Petitioner in the DadarAthornanMadresa in the standard/grade in which the Petitioner was studying on 10th October, 1988.

(ii) The Petitioner's parents shall fill in the requisite forms, if any. The Respondents Nos. 1 to 4 shall supply such forms to the Petitioner.

(iii) The Respondents Nos. 6 to 11 and the Committee of the D.P.Y.A. School, Dadar, concerned with admissions of pupils shall forthwith admit the Petitioner in Standard V of the School. They shall supply admission forms, if necessary, which the Petitioner/his parents shall fill in and submit to the School.

(iv) The Respondents Nos. 1 to 4 and the Respondents Nos. 6 to 11 shall take forthwith all steps necessary for compliance with the order made at (i), (ii) and (iii) above.

(v) The Respondents Nos. 12, 13 and 14 shall provide every aid and assistance to the Petitioner to secure compliance with the orders made above. They shall also ensure compliance with the Secondary Schools' Code:

(vi) Liberty to apply in case of any difficulty.

(vii) The operation of this Order is stayed till 22nd May of 1990.

Appeal Allowed.