

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6615-6616 OF 2001

TRIMURTI MANAV KALYAN SHIKSHAN S. & ANR.

Appellant (s)

VERSUS

ANNAJI RAUT SHIKSHAN SANSTHA & ORS.

Respondent(s)

(With appln(s) for urging addl. grounds)

Date: 31/10/2007 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR
HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mr. Shekhar Naphade, Sr.Adv.
Mr. Shivaji M. Jadhav,Adv.

For Respondent(s)

Mr. Manish Pitale, Adv.
Mr. V.N. Raghupathy,Adv.

For State of
Maharashtra

Mr.S.S.Shinde, Adv.
Mr. Arun Pednekar, Adv.
Mrs. Asha G. Nair, Adv.

UPON hearing counsel the Court made the following
ORDER

The appeals are allowed in terms of the signed order.

(Sukhbir Paul Kaur)
Court Master

(Neeru Bala Vij)
Court Master

(Signed Order is placed on the file)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6615-6616 OF 2001

TRIMURTI MANAV KALYAN SHIKSHAN S. & ANR. Appellant(s)

Versus

ANNAJI RAUT SHIKSHAN SANSTHA & ORS.

Respondent(s)

ORDER

We have heard learned counsel for the parties.

These appeals by special leave are directed against the
judgment and order passed by the Division Bench of the Bombay
High Court, Nagpur Bench dated 4th April, 2001 in Writ Petition

No.146 of 1992 whereby the Division Bench allowed the Writ Petition and quashed the order of 30th September, 1991 whereby the Respondent No.4 was granted permission to run a school in village Sindhi, District Nagpur. The Division Bench set aside the order dated 30th September, 1991 and took the view that the permission was wrongly granted in violation of Clause 3.2(1) of the Secondary School Code. It is alleged that the respondent despite service did not appear before the High Court.

Thereafter, a review application was filed which was also dismissed by the Division Bench on 24th April, 2001. Hence the present Special Leave Petitions against both these orders.

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We have heard learned counsel for the parties and perused the record.

Learned counsel for the appellant has submitted that he is running a school right from the year 1991 and he has complied with all the provisions. The permission was granted to him by the authorities in accordance with the rules but unfortunately, he could not appear before the High Court. Therefore, all these facts could not be brought before the High Court.

Learned counsel for the respondent submits that the appellant was served by the High Court and he has invited our attention to the bailiff's report dated 17 th February, 1992 whereby it is stated that the bailiff took the notice of service on Respondent No.4 but nobody was available in the house and hence he pasted the copy of the notice on the door of the house of Respondent No.4. So far as service on respondent No.5 is concerned, the bailiff offered the same to Respondent No.5 but he declined to accept it. On the basis of this report the High Court treated the service of notice complete on both the respondents.

The school is running from a very long time and it is imparting education to the students of that area. As per the reply filed by the State, it shows that a number of students are studying there and there is a good

progress in the school. It is pointed out that on account of starting a new school near the school of the appellant, the strength of the staff of school of the respondent has not been reduced and it has not seriously affected the enrollment of the students in the respondent's school.

Be that as it may, we are not going into these aspects. Suffice it to say that the appellant despite service did not appear before the High Court, and hence he had to undergo agony of approaching this Court. Though it is the appellant who is responsible for not appearing before the High Court, however, in the interest of justice, we feel that one opportunity should be given to the appellant so that they can represent their case effectively before the High Court but we cannot condone the negligence of the appellant entirely since they did not appear despite service. However, the negligence can be condoned by levying costs on the appellant. Therefore, we levy a cost of Rs.10,000/- on the appellant.

In the facts and circumstances of the case, we set aside the impugned orders of the Bombay High Court, Nagpur Bench dated 4.4.2001 in Writ Petition No.146 of 1992 and dated 24.4.2001 in Civil Application No.2078 of 2001 in Writ Petition No.146 of 1992 and remit this matter

back to the High Court. The appellant shall pay the cost of Rs.10,000/- to Respondent No.1 within a period of six weeks from today and on payment of the cost, it will be open for the appellant to file a return before the High Court and the High Court shall decide the matter in accordance with law after hearing the parties.

The appeals are accordingly, allowed. Both the impugned orders of the High Court are set aside.

.....J.
(A.K.MATHUR)

.....J.
(MARKANDEY KATJU)

New Delhi,
October 31, 2007.