

(1997) 04 DEL CK 0006

In the Delhi High Court

Case No : C.W.P. No. 4345 of 1995, CM No's. 7249 of 1995 2555 and 3481 of 1996

Adhey Sham Sharma

APPELLANT

Vs

Lt. Governor

RESPONDENT

Date of Decision : 23-04-1997

Acts Referred:

Citation : (1997) 04 DEL CK 0006

Hon'ble Judges : Y.K. Sabharwal, J;D.K. Jain, J

Bench : Division Bench

Advocate : Mr. Ravi Gupta, for the Appellant; Mr. A.K. Nigam and Mr. Rajiv Nayyar, for the Respondent

Judgement

Y.K. Sabharwal, J.—The petitioners are teachers in respondent No.4 School. The school is managed and run by respondent No.5 - Society. Earlier too, there was litigation between the petitioners and the school. It was subject-matter of Writ Petition No.4203/94. In that petition the allegations of the teachers were that they were forced to refund the amount of salaries paid to them by account payee cheques and they had been forced to give resignation letters. The alleged resignation letters were, however, not found in the record of the respondents 4 and 5. The Court, Therefore, while disposing of that petition on 5th July, 1995 directed that in view of the fact that no resignation letters have been found in the record of the respondents, the respondents will not be able to use any such alleged resignation letters. It was further observed that even otherwise such resignation letters cannot be accepted by the respondents without approval of the Directorate of Education under the Delhi Education Act and the Rules.

2. The main prayer in the present writ petition is that respondents 1 to 3, namely, Director of Education etc. be directed to exercise power u/s 20 of Delhi Education Act to take over the management of the school and the same shall be run by the said respondents i.e. respondents 1 to 3. The petitioners have alleged serious acts of omission and commission by the school management. On 20th

November, 1995 the same Bench which had disposed of the earlier writ petition on 5th July, 1995, while issuing notice to respondents to show cause why rule nisi be not issued, directed the school to release the salary of the petitioners which is due to them according to the school. On 10th April, 1996 on C.M.2555/96 this Court directed respondents 4 and 5 not to close the school without the prior approval of Directorate of Education. On or about 10th May, 1996 the petitioner filed C.M. 3481/96 seeking directions to respondents 4 and 5 to open the school and run the same forthwith failing which respondents 2 and 3 be directed to take over the control and management of the school and run the same in future. It has been, inter alia, pleaded by the petitioners that before alleged closure of the school no approval was sought by respondents 4 and 5 from the Directorate of Education. In fact, there is no dispute that such an approval was not taken. The case of respondents 1 to 3 also is that no approval was accorded by them for the closure of the school. The case of the school also is not that any such approval was granted by respondents 1 to 3. Their case at the highest is that vide communication dated 1st March, 1996 they had informed the Directorate of Education regarding closure of the school with effect from 31st March, 1996 and this letter was followed by another letter dated 29th March, 1996. The receipt of these communications is being disputed by Directorate of Education. The Delhi Education Act and the Rules framed there under require prior approval of Directorate of Education before closure of the school. On 10th April, 1996 we also directed respondents 4 and 5 not to close the school without such prior approval. The case made out that the school was closed prior 10th April, 1996, prima facie, seems to be wholly misconceived. The school could not be closed without receipt of approval from Directorate of Education. Further, the respondents 4 and 5 in regard to the property wherefrom the school was being run has taken the stand that its possession was handed over to owner on 1st April, 1996. The person to whom the possession is alleged to have been handed over is none other than the wife of Manager of the school. On a letter purported to have been sent by husband to the wife and bearing the date 29th March, 1996 the endorsement is said to have been made by the wife that she has taken over possession of the building on 1st April, 1996.

3. The case of the Directorate of Education is that the alleged closure of the school by respondents 4 and 5 is illegal. On 26th September, 1996 we adjourned the matter to 29th October, 1996 so that the respondents 1 to 3 may consider what action can be taken against respondents 4 and 5 under the circumstances aforesaid. In that order, we have also said that "The contention of the petitioner that the alleged closure with effect from 31st March, 1996 was illegal and void, since admittedly, no approval as contemplated by Rule 46 was obtained and that the teachers continue to be in employment of the school and the alleged fraudulent handing over of the possession of the school by respondent No. 4 to the landlady which is none other than the wife of the Manager of the school and has no consequence in law, would be considered after the Administrator passes an order, if any, u/s 20 of the Act". We, however, directed in the said order that

no interest would be created in the premises in which school was being run.

4. On behalf of Directorate of Education, in answer to question as to what action is proposed to be taken against the management, it has been stated that in the facts of the case the school not being in existence the only action taken by the respondents is to treat the recognition of the school as lapsed under Rule 55 of the Rules. Regarding the fate of the students and teachers the affidavit states that students who have approached have been given admission in other schools but the teachers cannot be accommodated as the school being unaided public school, there is no provision under the Act to accommodate the teachers. It is nobody's case that unaided school cannot be taken over under the provisions of Delhi Education Act. The ground that school is not in existence because of its alleged closure from 1st April, 1986 will have to be examined in the light of facts and circumstances noticed hereinbefore.

5. Considering the aforesaid circumstances, we issue rule in the writ petition.

6. Having regard to facts noticed above, prima facie, it appears that respondents 4 and 5 are trying to hoodwink everyone concerned. The conduct of the school and the effect of the alleged closure is that students had to take admission elsewhere; the teachers are without job and the Director of Education says that the teachers cannot be accommodated. The manner of alleged handing over of the school property to wife so also the manner of the alleged closure has already been noticed above and for the present we would say no more. Prima facie, we are unable to accept the contention that the school is not in existence. Under these circumstances, we direct that as interim measure the Director of Education shall take over the management of the school as also of the movable and immovable properties and funds of respondent school. All the properties of the school as were in existence prior to 31st March, 1996 shall be handed over to Director of Education within a period of three weeks. The custody of the Director of Education would be deemed to be the custody of the Court. As an interim measure, respondents 1 to 3 would run the school from the premises in question. Hopefully, there would be no difficulty in school getting the students from the forthcoming academic session. In case Directorate of Education finds it difficult to run the school, the same would be run by the petitioners-teachers. The decision to this effect shall be taken by the Directorate of Education within a period of six weeks. These interim directions are without prejudice to the rights and contentions of the parties. From the assets of the school every possible attempt will be made to pay the past salary of the petitioners. The observations made herein will not affect the merits of submissions made when the writ petition is finally argued. Cms. 7249/95, 2555 and 3481 of 1996 are disposed of in the above terms. A copy of the order be given dusty to Counsel for the parties.