
(2007) 09 DEL CK 0158

In the Delhi High Court

Case No : Writ Petition (C) No's. 11778, 11779, 11780, 11781, 11782, 11783, 11784, 11785, 11786, 11787, 11788, 11789, 11790, 11791, 11792 and 11793 of 2006

Ashok Kumar and Others

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-09-2007

Acts Referred:

Constitution of India, 1950 — Article 19(6), 21A, 226

Delhi School Education Rules, 1973 — Rule 46, 47, 47(1), 47(2), 47(3)

Citation : (2007) 09 DEL CK 0158

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Ram Singh Soni, for the Appellant; Ravinder Sethi, for Respondents 6 and 7, Latika Chaudhary, for Directorate of Education, Gaurav Duggal and Anjana Gosain and Sadique Fatima for NDMC., for the Respondent

Judgement

S. Ravindra Bhat, J.

Teaching is not a lost art, but the regard for it is a lost tradition - Jacques Martin Barzun

1. These proceedings under Article 226 of the Constitution of India have been preferred by teachers and members of the staff of the Gyan Mandir Middle School, Tis January Lane (hereafter called "the aided school"). They seek appropriate directions for the withdrawal of recognition of the "Indian School" managed by the fourth and fifth respondents, and other reliefs. Petitioner Nos. 2 to 16 are teachers and staff employed by the aided school.

2. The fifth respondent is a registered society; it started the aided R.K.K. Gyan Mandir Middle School at Tis January Lane, sometime in 1967. Later, the Delhi Administration (now the Government of National Capital Territory of Delhi, referred to as "GNCT") granted aid. The school occupied an area of 0.44 acres, in Tis January Lane; on 27-8-1975 the land was temporarily allotted to the

society. Apparently, the temporary arrangement was to end, since the society had applied for regular allotment of a plot in Sadiq Nagar. The allotment could not be finalized. Apparently considerable inter se correspondence took place between the society and the land owning agency, i.e. the Land and Development Office, Central Government (hereafter "L and DO"). A perpetual lease deed was executed between the society and the Land DO on 29-10- 1996, whereby 2.34 acres of land at Sadiq Nagar were demised on leasehold basis in favor of the former.

3. The temporary allotment of the Tis January plot ended on 31-3-1997. The society, which had secured possession of the plot in Sadiq Nagar, was asked to hand over possession. As the plot at Tis January housed the aided school, catering to the needs of about 500 students studying in the vicinity and employed several teachers, practical difficulties were encountered in handing over the site. The L and DO, conscious of this situation, held consultations with the society and the New Delhi Municipal Committee (NDMC). An offer was made to the NDMC that the school should be taken over by it on "as is where is basis" through a letter, dated 27-11-2001; an allotment letter to such effect was issued on 15-4-2002 by the L and DO.

4. The fourth and fifth respondents sought permission to construct a Senior Secondary School at Sadiq Nagar, in 2002. The local authorities (i.e. Delhi Development Authority? DDA and the Municipal Corporation of Delhi (MCD)) denied the request on the ground that the plot size was inadequate and that the land allotted was for the purpose of a Middle School. The society approached this Court, by filing WP 17889-90/2005 claiming the relief that it should be permitted to construct a building for a senior secondary school. The L and DO had, in the meanwhile, alleged that the society had constructed unauthorized structures on the land at Tis January Lane. The temporary allotment of the plot was surrendered and possession handed over by the society on 6th March, 2006 to the L and DO. This Court, by its judgment and order dated 16-3-2006, disposed the society's writ petitions, in relation to the plot of Sadiq Nagar. In the course of that order, it was inter alia, recorded that:

...Being desirous of upgrading the existing school to a senior secondary school, which required additional construction, petitioner sought the necessary sanction from the controlling authority, i.e. MCD which had to sanction the plans. This was declined for the reason permissible use of the plot as per lease entitled petitioners to maintain a middle school and not a senior secondary school.

31. Taking note of the position as culled out from Clause 8.1 of the Zonal Development Plan and the admitted position that the site in question is having land more than 2 acres, I see no impediment in the way of the petitioner upgrading the school to senior secondary school. I may note that the necessary permissions from the Directorate of Education have already been obtained by the petitioner evidenced by letter dated 20-11-2004 addressed by the Deputy Director of Education, District Sought, Zone-24.

32. Perpetual lease deed when executed was in harmony with the then existing norms, however the Zonal Development Plan now in force requires a change.

33. I accordingly issue a mandamus to DDA to upgrade the site in question as a senior secondary school site. I issue a mandamus to Land DO to execute a corrigendum or a supplementary deed to the existing perpetual lease deed dated 29-10-1996 incorporating therein that the site in question can be used as a senior secondary school....

5. The petitioners allege that with the handing over of possession to the L and DO, there is a likelihood of their displacement. It is contended on their behalf that the fourth and fifth respondents cannot disown their responsibility to manage the aided school. After securing an allotment in place of the temporary allotment which was used by the society for over two decades, it conveniently distanced itself from shouldering responsibility towards the petitioners and the students, who had sustained the institution all these years. As a result, the management's contribution for the last over a year, Constituting 5% of the salary and allowances payable to the employees, not been so far unpaid. The petitioners also feel insecure and it is alleged that their careers are dogged by uncertainties since there is no gainsaying whether the NDMC will continue with their services, or dispense them. It is contended that having managed an aided school all these years, the fourth and fifth respondents cannot escape their liability to continue the arrangement, by assimilating the teachers, staff and the students in the new locale, i.e. the Indian School at Sadiq Nagar. Reliance has been placed upon Rule 46 of the Delhi School Education Rules, 1974. It reads as follows:

46. Closing down of a school or any class in a school. - No managing committee shall close down a recognised school, not being an unaided minority school, or an existing class in such school without giving full justification and without the prior approval of the Director, who shall, before giving such an approval, consult the Advisory Board.

6. Learned Counsel for the petitioners submitted that the management acted irresponsibly, in utter violation of the employees' rights. The latter put in their sweat and toil to advance the educational needs and future of students who belong to less privileged sections of the society. As long as it suited the society and the management, the school's character as an aided institution was continued; indeed it obtained allotment of the Sadiq Nagar plot for a Middle school, which it was admittedly managing in Tis January Lane. However, the aided character of the school was altered; instead an unaided institution was set up and the petitioners were completely excluded; their positions were rendered untenable in stages, culminating in the handing over of the plot to the L and DO in 2006. Today the students and teachers have been abandoned, even orphaned. They face a grim prospect of de facto existence transforming into de jure closure, of the aided school.

7. The management has resisted the petitions. Mr. Ravinder Sethi, appearing on its behalf, refuted the allegation that the society has any intentions of abandoning the students of the aided school. He contended that the allotment at Tis January was temporary. The society had to surrender it upon allotment of the regular plot at Sadiq Nagar. Therefore, it committed no sin or illegality in establishing a new institution; all the requisite permissions and recognitions were secured from the concerned authorities, including the Directorate of Education. Counsel contended that the handing over of the land in 2006 had the practical effect of closure, though formal orders had not been issued.

8. Learned Counsel submitted that the society never intended to shirk its responsibility towards the students or the school. The present situation was the result of insistence by the L and DO that it had to vacate the plot at Tis January Lane. Counsel relied upon correspondence with philanthropic organizations, i.e. the Gandhi Smriti and the Lions Vidya Mandir Trust, to break the impasse. The Gandhi Smriti had evinced a keen desire to take over reins of the aided school, through letters dated 30-10-2003, 28-11-2003; 30-10-2004; 1-12-2004 and 7-10-2005.

9. Learned Counsel relied upon the pleadings filed in this case, in support of his submissions. He also relied upon an order made in these proceedings, on 1-2-2007. That order reads as follows:

Arguments have been heard at length. Two important issues arise in this matter. One is the question of absorption of students and the other pertains to absorption of teachers and staff who were in the school run by members of the RKK Gyan Mandir Middle School being run at the Tis January Lane. The respondent No. 4 is the Gyan Mandir Educational Society which is running a school at Andrews Ganj on the land allotted in 1975 in lieu of the land which was allotted to the school being run at Tis January Lane. Insofar as the students are concerned, that dispute has been resolved inasmuch as the learned Counsel for the respondent Nos. 4 and 5 have stated that all those students who were studying at Tis January Lane can be accommodated in the school run by the respondent No. 4 at Andrews Ganj on free ship basis. If the fees are charged the same shall not be in excess of what they were paying already in the school at Tis January Lane. This, of course, is subject to the condition that the students want to seek admission in the school run by respondent No. 4 at Andrews Ganj. The only controversy that now remains is with regard to the teachers and staff of the school which was being run at Tis January Lane. It is the contention of all the parties other than the respondent Nos. 4 and 5 that they should be absorbed by respondent No. 4 in their school being run at Andrews Gunj on the same terms and conditions. The learned Counsel for the respondent No. 4 submits that these teachers and staff could be absorbed in any government aided school. However, he seeks time to take instructions on this aspect with regard to absorption of the teachers and staff in their school....

10. Learned Counsel next relied upon a letter written by the GNCT to the NDMC.

It reads as follows:

This is regarding matter pertaining to RKK Gyan Mandir Middle School, 30 January Lane. In this regard, I am directed to inform you that the Department is sending the following proposals for approval to the Hon"ble LG:

1. The above said school may be allowed to be closed down.
2. The employees of the school who would be then rendered surplus may be allowed to be absorbed under Rule 47 of Delhi School Education Act, 1973 and Rules in other Aided schools of Delhi Govt.
3. The children of the school may be allowed to be adjusted in neighbouring NDMC schools as per their proposal. It is further clarified that the above proposal are subject to the approval of the Hon"ble L.G. This information as desired by you is being sent with the approval of the Secretary (Education).

11. Counsel contended that the option of adjusting teachers in other aided school was the most feasible, under the circumstances. The Indian School, established at Sadiq Nagar, cannot accommodate the teachers of the aided school, because of an entirely different educational environment. Besides, the aided school was a Hindi medium institution; the Indian school is an English medium institution; Therefore, it would be impracticable and unfeasible to compel the society to absorb teachers from the aided school at Tis January Lane.

12. The position of the NDMC, which was imp leaded as a party respondent to these proceedings, is that though it has no objection to taking over infrastructure and managing the school, the cadre structure in its institutions does not visualize absorption of the petitioner-teachers. They were employed without recourse to procedures adopted by NDMC for recruitment of its teachers. Their assimilation in an NDMC management would be impossible.

13. The GNCT"s stated position is that the aided school was never closed, in terms of Rule 46; it continues its existence. No one controverter that the school is functioning as a reality and 95% of the salary, according to the terms of grant in aid, under the Delhi School Education Act and Rules, are paid to the teachers and employees. Ms Ahlawat, counsel for the GNCT contested the assertion of the society that the teachers could be absorbed under Rule 47 in other aided schools. It was submitted that such action could be visualized only if there is a valid closure of the school under Rule 46. Here, the school was never closed; permission for that action has not been granted. It was submitted that though the letter written to NDMC on 3-8-2006 did contemplate that option, no further action to that end was taken. Counsel submitted that having obtained land in lieu of the existing aided school, it was not open to the society to contend that it had altered the character of the institution into an unaided senior secondary school. It was submitted that if there is no valid closure in terms of Rule 46, the institution has to shoulder its responsibility of continuing the school, or at least continuing the activities with the existing students and teachers in the new

institution or locale.

14. The factual matrix is narrow. The society was beneficiary of a temporary allotment of land in the Tis January Lane, in the nineteen sixties; it established a middle school, which became an aided institution with the advent of the Delhi School Education Act. The school receives 95% teaching grant; the society is under obligation to pay 5% management share. The temporary allotment ended in 1997; the society had, in the meanwhile secured allotment of 2.24 acres of land at Sadiq Nagar/Andrews Ganj. The object of the allotment was setting up a middle school. Later, the society applied for upgrading the institution into a senior secondary school. After protracted engagement with the local authorities and a court litigation, that end was achieved. The court directed DDA and MCD to permit use of the plot for a senior secondary school. In March 2006, the L and DO insisted that the Tis January Lane plot should be surrendered; it was handed over possession. The school continues, as an aided institution; the petitioners, i.e. teachers and employees have not been paid the management share of their salaries for upwards of a year. They are justly apprehensive of their future. The NDMC has agreed to take over the school on as is where is basis, and continue with existing students, but it refuses to absorb existing teachers. The society agrees to continue imparting education in the Sadiq Nagar "Indian School" through free ship to existing students in the aided school. It does not wish to absorb the teachers in the aided school, as they can instruct in the Hindi medium. All parties, i.e. the society, NDMC, the L and DO are unconcerned about their fate. The society suggests that they cannot be accommodated in the new scheme of things; presumably their "unglamorous" profile as Hindi medium teachers does not seem appealing to the new institution.

15. The analysis of facts reveals a stage by stage attempt by the society to wriggle out of its responsibilities. It secured temporary allotment and used it for setting up an aided school. Having gained from the experience, it used the regular allotment, made in lieu of the temporary allotment of the Tis January Lane plot, to set up a middle school. All the while it made no attempt to absorb the teachers, or the students. It attempted to upgrade the newly established institution into a senior secondary school. However, it was unsuccessful; it had to seek judicial intervention; eventually this Court mandated that the plot could be used for setting up a senior secondary school. The society gradually started distancing itself from the aided school; it handed over the plot at Tis January Lane, to the L and DO.

16. The Supreme Court, in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , held that setting up an managing an educational institution is not a business, though it is an occupation or profession. This was echoed later in P.A. Inamdar and Others Vs. State of Maharashtra and Others, ; the court held there that:

As of now, imparting education has come to be a means of livelihood for some professionals and a mission in life for some altruists. Education, accepted as a

useful activity, whether for charity or for profit, is an occupation. Nevertheless, it does not cease to be a service to society. And even though an occupation, it cannot be equated to a trade or a business.

17. Profit or the pursuit of wealth cannot be the guiding factor, in our Constitutional scheme, in the educational sector. As Rabindranath Tagore dreamt (Gitanjali), we all are to awaken to a world of light, where knowledge is free. This goal is also enacted in Article 21-A; every child is assured basic education. Therefore, the course of this litigation has to embrace the constitutional dimension. This is the more relevant, since the school at Tis January Lane was an aided school; its functioning is through pervasive control of the State, acting through the Directorate of Education, GNCT.

18. The society's position about its liability is that since the aided school has all but closed down, the GNCT should apply Rule 47 and absorb the teachers in other aided institutions. This contention is to some measure inspired by the GNCT letter to the NDMC, dated 3-8-2006. To appreciate this argument, it would be necessary to quote Rule 47 at this stage; it is as follows:

47. Absorption of surplus (employees) etc.

(1) Where as a result of:

(a) the closure of an aided school or any class or classes in any aided school; or

(b) withdrawal of recognition from an aided school; or

(c) withdrawal of aid from an aided school, any student or employee becomes surplus, such student or employee as the case may be (may be absorbed) as far as practicable, in such Government school or aided school as the Administrator may specify;

Provided that the absorption in Government service of any employee who has become surplus shall be subject to the availability of a vacancy and shall be subject further to the concerned employee possesses the requisite qualifications for the post and has not been retrenched by the management of the aided school on any ground other than the ground of closure of the school or any class or classes of the school or withdrawal of recognition or aid from the school. Provided further that where any such surplus employee is absorbed in a Government school, he shall be treated as junior to all the persons of the same category employed in the Government schools on the date immediately preceding the date on which he is so absorbed, and where such surplus employee is absorbed in an aided school, he shall rank as junior to all the persons of the same category employed in that school on the date immediately preceding the date on which he is so absorbed.

(2) where any surplus (employee) is absorbed under Sub-Rule (1):

(a) the salary and other allowances last drawn by him at the school from which he has become surplus shall be protected;

(b) his provident fund account shall be transferred to the school in which he is so absorbed, and thereupon such provident fund shall be governed in accordance with the Rules and Regulations in force in that school in relation to provident fund; and

(c) the period of his qualifying service in the school in which he had worked before such absorption and any previous period of qualifying service, if any, in any recognised aided school in Delhi shall be taken into account for the purpose of computing his pension and other retirement benefits.

(3) without prejudice to the provisions of sub-Rules (1) and (2) where an (employee) becomes surplus by reason of the closure of any class or section thereof or the discontinuance of the teaching of any subject, such (employee) may be absorbed in the first instance, as far as practicable, in such Government or aided school as the Administrator may specify and if the class or section which was closed is reopened by the former school or if any new class or section thereof is opened by such school or if the subject, the teaching of which was discontinued, is reintroduced by such school, or the strength of the staff of the former school is increased such teacher shall be re-absorbed in the former school; but if such re-absorption does not take place within a period of five years from the date of absorption of such employee in the Government or aided school, such (employee) shall be regularly absorbed in such Government or aided school as the case may be.

(4) Re-absorption of an (employee) in a former school shall not affect his continuity of service or his seniority in relation to that school or his emoluments, provident fund, gratuity and other retirement benefits. Explanation - For the purposes of Sub rules (3) and (4) "former school" means the school from which an (employee) had become surplus.

19. The rule caters to situations where employees are declared surplus, as a result of closure of the school or classes in a school or withdrawal of recognition of an aided school. The objective of the rule is to protect the employment of teachers in such institutions, as it undeniably constitutes a pool of talent and experience as well as a precious resource for the benefit of the society. Its scope, however is limited; it operates only in the eventuality of closure of a school, or sections of it, or withdrawal of recognition to an aided school. Neither situation exists in this case. No party has asserted that the GNCT ever consented to and approved closure, in accordance with Rule 46 (quoted in the earlier portion of the judgment). No doubt, a proposal was mooted at one stage as seen from the letter dated 3-8-2006; however that did not mature. During the hearing, counsel for the GNCT contended that approval for that proposal was not forthcoming.

20. The position of a school which has not received formal approval for closure as well as liability of its management was explained in a recent judgment of the Division Bench of this Court, in Vaishali International School Teachers Welfare Association Vs. All India Siddharth Int. Educational Society and Others, :

23. The third reason why the Society's writ petition ought to have been dismissed was that the refusal by the Respondent No. 3 to permit the School to close down was, in the above circumstances, perfectly justified. There is nothing on record in the form of any document or order to indicate that the minority status claimed by the Society was ever granted by the Director of Education. In the circumstances, the attempt of the Society to first close the school and then write to the Directorate of Education stating that it was merely informing the latter of its decision to close down the school was in clear violation of Rule 46 of the Rules, which reads as under:

Rule 46: Closing down of a school or any class in a school. - No managing committee shall close down a recognised school, not being an unaided minority school, or an existing class in such school without giving full justification and without the prior approval of the Director, who shall, before giving such an approval, consult the Advisory Board.

The only way the society could have avoided the mandate of Rule 46 was to show that it was an unaided minority school. Therefore, initially the Society desperately sought to contend that it was a minority school and kept maintaining this even in the writ petition, as noticed hereinabove. That plea was palpably false and quite rightly the Director of Education by letter dated 3.9.1998 rejected the so called "closure" of the said school and directed it to be continued to be run in accordance with the provisions of the Act and Rules.

21. It is apparent from the above quotation that there can be no lawful closure of a school or a class without giving justification and without prior approval of the Director, who in turn has to consult the Advisory Board. This provision is cast in imperative terms. It is well settled that when a statute requires a thing to be done in a particular manner, it must be done in that manner or not at all Ref. AIR 1936 253 (Privy Council) Ramchandra Keshav Adke v. Govind Joti Chavare (1975) 1 SCC 915 ; Morgan Stanley Mutual Fund Vs. Kartick Das, . Therefore, I find no merit in the argument that there is a de facto closure of the school, which the court has to respect.

22. After TMA Pai Foundation, it is possible to contend that individual citizens have the right to carry on the profession of establishing or promoting educational institutions. Yet, that right is subject to regulation, through enacted law, under Article 19(6). Rule 46 is an attempt at legislative intervention in the field. The analysis of facts in the preceding part of this judgment shows that no approval was ever secured, in its terms, before the society cut itself off, as it were, from the management of the aided school. There was, thus no closure of that school. The result Therefore, has to be no different from what was enjoined in the Vaishali International School Teacher's case. Norms such as Rule 46 have been put in place to achieve a larger social objective of ensuring that schools, which are the building blocks of the future of our country, are not closed down on whims and fancies of their founders or promoters. Here they were not followed. The consequence is that there can be no question of applicability of Rule 47,

which presupposes a valid closure of school or a section, or withdrawal of recognition of a school. The contention of the society and the fourth respondent Therefore, fails.

23. The next question is what then is the obligation of the society. Its main argument is that the present pattern of private, unaided education in the "Indian school" pursued by it, does not allow room to absorb the petitioner employees. No rule, regulation or norm was cited in support of this contention. Presumably, it is premised upon some inherent management right. To put it mildly, the argument is astonishing; it is also alarming. Astonishing because the society is saying that though it might be under an obligation to continue teachers, it is choosing not to do so, as it is not convenient to it; alarming because it is an unrepentant conscious disregard of a binding norm. To me, there is no doubt that the petitioners who stand before this Court had acquired a certain status, as teachers and employees of a government aided school. The character of that school was sought to be changed, into an unaided one, by securing allotment in lieu of the existing temporary allotment of the site at Tis January Lane. So long as the society continued its obligation, towards these teachers, there was no difficulty. However, now that it asserts that the aided school has been closed - when it is not so in law - the logical and inevitable consequence has to be that these employees are to necessarily be absorbed in the new institution. Any other conclusion would be contrary to Rule 46; it would place a premium on unlawful behavior. Education, even unaided education, should be inclusive. These teachers and employees before the court are not at fault that the society chose a pattern of education it characterizes as incompatible with their background and experience. They face an uncertain, even, bleak future.

24. The society has stated before this Court about its willingness to accommodate the students in the aided school, in its unaided school (the Indian School) on free ship basis. In view of my above findings, it can do no different as far as the petitioner Nos. 2 to 16 here are concerned. They are admittedly teachers of an aided school; their status as such has to be preserved and protected, by the management.

25. Now an epilogue. Each success story, every individual achievement celebrated in our society has an unsung hero, an invisible persona in the form of a teacher who made it possible. A society which ignores their needs and scorns their dignity does so at its peril. A teacher's position in society is unique; traditionally, he was organically bound to the community and enjoyed a high status and, with it, a considerable degree of respect. That is all but gone. And whatever is left will surely vanish, as this case has demonstrated, if we pursue policies that will aid relentless commercialization of education.

26. In the light of the above discussion, these petitions have to succeed. The following directions are issued:

(1) The Respondent Nos. 4 and 5 shall ensure that the Petitioner Nos. 2 to 16 are

accommodated appropriately in its unaided school, i.e. Indian School, within four weeks from today; the said teachers shall be absorbed on permanent basis; their salary, allowances and other conditions shall be preserved with continuity of service. The arrears of 5% contribution for the last one year, payable to the petitioner Now. 2 to 16, shall be paid by the society within 6 weeks, to them. This shall be over and above the Rs. 1,00,000/- amount volunteered to be paid by the society, as a good will gesture to them. That amount too shall be paid, if not already paid.

(2) Simultaneously, the said respondents shall take steps to effectuate their statement about assimilating all the existing students (from the aided school in the Tis January Lane) in the Indian school, on "free ship basis". The said students shall not be required to pay any amount over and above what has been paid by them all this while.

(3) The society and fourth respondent shall ensure that the students of the aided school are given free transportation to the unaided school, and back to the Tis January Lane area as long as the students of the aided school study in the Indian school. It shall do all things necessary to meaningfully assimilate such children in the Indian school.

(4) The GNCT shall ensure compliance with the above directions; if necessary, it shall sanction additional sections, wherever required in the unaided school, to accommodate the influx of the students from the aided school as well as teachers and employees from there. It shall continue to preserve and protect the status of the petitioner employees as employees of an aided school.

(5) A status report disclosing due compliance with the above directions, and action taken in that regard shall be filed within 6 weeks, before this Court, by the fourth and fifth respondents, and GNCT.

27. The writ petitions and pending applications are allowed in the above terms; the fourth and fifth respondents shall pay Rs. 20,000/- as costs of these proceedings to the petitioners, within 6 weeks.