
(1985) 08 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Petition No. 1187 of 1978

B.R. Mehta Vidya Bhavan

APPELLANT

Vs

The Delhi School Tribunal and Others

RESPONDENT

Date of Decision : 01-08-1985

Acts Referred:

Citation : AIR 1986 Delhi 173 : (1986) 1 ILR Delhi 14

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Advocate : S.C. Gupta, A.K. Gupta and B.I. Singh, for the Appellant;

Judgement

Sunanda Bhandare, J.

(1) In this writ petition under Article 226 of the Constitution of India the petitioner challenges the order of the Delhi School Tribunal, Delhi dated 13th October, 1978 in Appeal No. 8 of 1978 striking down the order of termination of respondent No. 2.

(2) The facts of the case lie in. a very narrow compass of handicapped mentally retarded and deaf children is run by the Servants of the People Society which is a society registered under the Societies' Registration Act (hereinafter referred to as the Society). The Society is running a higher secondary school called B. R. Mehta Vidya Bhavan Higher Secondary School at Lajpat Bhawan, Lajpat Nagar, New Delhi (hereinafter referred to as Higher Secondary School). The special section i.e., the petitioner herein, is located in the same premises though it has an independent Board of Management, a separate staff, separate budget and maintain separate accounts. This special section is run with the special assistance granted to institutions run for handicapped and mentally retarded children by the Central Government. The respondent No. 2 was appointed as a Typist-cum-Accounts Clerk in this special section w.e.f. 15th July, 1975. The conduct of the respondent No. 2 became a cause of concern for the petitioner and, Therefore, warnings were given to him but he showed no improvement. Since the

petitioner found that the respondent No. 2 was guilty of acts of misconduct, a charge-sheet was served on him on 24th October, 1977. An inquiry was conducted on the basis of the aforesaid charges and. Therefore, on 2nd January 1978, his services were terminated. The respondent No. 2 challenged the termination of his services by filing an appeal before the Delhi School of Tribunal u/s 8(3) of the Delhi School Education Act, 1973 (hereinafter referred to as the Act). The Tribunal held that the special section of the B. R. Mehta Vidya Bhawan is a wing and a mere department of the Higher Secondary School and since Higher Secondary School has been recognised, that recognition must extend to all its wings which are part of it and in view of that set aside the termination order on the ground that prior approval was not obtained before passing the termination order as required u/s 8(2) of the Act.

(3) It was contended by the learned counsel for the petitioner that though the special section is located in the same premises it is an independent and distinct institution having a separate entity of its own. It has an independent Board of Management, a separate staff, a separate budget etc", and though, recognition was asked for this institution as well, recognition was not granted by the Directorate. It was contended that on 22nd August, 1977 when the Society asked for recognition of the Higher Secondary school it also asked for recognition for the special class for handicapped children. However, the Directorate of Education on 30th December, 1977 granted extension of provisional recognition only to the school classes I to Xii and not to the special classes for handicapped. It was contended that after it was noticed that the respondent No. 2 was indulging in temporary embezzlement he was served with charge-sheet and regular inquiry was held before passing the order of termination and although no separate rules were framed for dealing with misconduct of employees of the special section procedure under Rule 119 of the Delhi School Education Rules, 1973 which is applicable to the employees of recognised schools was followed before terminating the service of resonant No. 2. It was contended that since the petitioner is not a recognised institution, prior approval of the Directorate of Education was not required u/s 8(2) of the Act. It was, Therefore, contended that the Tribunal had no jurisdiction to entertain the appeal filed by respondent No. 2 as he wax not an employee of a recognised school within the meaning of the Act. it was further contended that the Higher Secondary School run by the Society is a recognised school, however the respondent No. 2 was admittedly not an employee of that Society and, Therefore prior approval as prescribed in the Delhi School Education Act and Rules was not required. In support of his contention, the learned counsel referred to the extracts of a letter written by the Society to the Directorate of Education on 22nd August, 1977 and its reply dated 30th December, 1977 and also the letters dated 13th Sept., 1978 and 29th Sept. 1978 written by the Director of Education and the Education Officer respectively (Annexure "C" and "D" to the petition) in answer to a specific query in order to get clarification regarding the factual and legal position pertaining to the question of recognition to this special section. It was contended that the Education Officer

had clarified that the special running in the same premises wherein the Higher Secondary School which is recognised and aided is functioning, is neither recognised nor aided by the Directorate of Education, Delhi. It was contended that no aid is given to this section by the Delhi Admn. or the Central Govt. towards salaries of the employees of the special section. Even appointments, including the appointment of respondent No. 2 was made without the approval of the Directorate of Education. The special section gets aid from the Central Government under the Scheme for assistance to the voluntary organisations for the handicapped for which the institution need not be recognised. The learned counsel for the petitioner relied on : in support of his contentions.

(4) On the other hand, the learned counsel for respondent No. 2 made a three-fold argument in opposition to the contention of the learned counsel for the petitioner. It was firstly contended that the order of termination was signed by the Manager. who was also a Manager of the school. It was contended that under sub-rule (r) of Rule 59(3) of the Delhi School Education Rules, 1973 (hereinafter referred to as the Rules"), a Manager in a recognised school cannot function as a Manager in any other institution and since the order of termination was signed by a Manager of the school, it was always understood that the special section was a part of the recognised school. It was, Therefore, contended that the Tribunal was light in holding that there was deemed recognition of the special section as well. It was contended that the fact that the special section is getting central aid also shows that it was always understood that the petitioner is also a recognised institution by the Directorate of Education. Secondly, it was contended that the affidavit filed Along with the petition is -not in accordance with the CPC and, Therefore, the petition is defective. Lastly, it was contended that while exercising jurisdiction under Article 226 of the Constitution of India this Court should not interfere with the finding of facts made by the Tribunal while holding that there was deemed recognition.

(5) The Delhi School Education Act, 1973 was enacted to provide for better organisation and development of school education in the Union Territory of Delhi and for matters connected therewith or incidental thereto. Chapter Iv of the Act provides for terms and conditions of service of employees of recognised private schools. Sub-section (2) if Section 8 of the Act provides that subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director of Education. Under sub-section (3) of Section 8 of the Act an employee of a recognised private school against whom an order of dismissal, removal or reduction in rank is passed is entitled to file an appeal against such order to the Tribunal u/s 11 of the Act.

(6) It is conceded and agreed to by both the sides that the main point for determination in this petition is whether the special section run by the Servants of the People Society in the premises of B. R. Mehta Vidya Bhawan Higher Secondary School at Lajpat Nagar, New Delhi is a recognised institution within

the meaning of the Act. If this special section was recognised or deemed to be recognised respondent No. 2 could challenge the termination order before the Tribunal u/s 8(3) of the Act and this Court would not interfere in the finding of facts made by the Tribunal, however, if it was not recognised then the Tribunal would not have jurisdiction to decide on the question of validity of the termination order.

(7) In order to determine whether the special section is recognised by the appropriate authority or not it may be useful to refer to certain provisions of the Act. Section 2 (t) of the Act defines recognised school as a school recognised by the appropriate authority. The expression appropriate authority is defined in Section 2(e). Section 2(u) defines school to include a primary, pre-primary, middle and higher secondary school including any other institution which imparts education or training below the degree level but does not include an institution which imparts technical education. Chapter II of the Act deals with the establishment, recognition and management and aid to schools. u/s 3(3) of the Act the establishment of a new class or the opening of a higher class or closing down of an existing class in any existing school in Delhi is subject to the provisions of the Act and the Rules made there under and any school or higher class established or opened otherwise than in accordance with the provisions of the Act shall not be recognised by the appropriate authority. Section 4 deals with recognition of schools. Sub-section (1) of Section 4 provides that the appropriate authority may on an application made to it in the prescribed form and in the prescribed manner recognise any private school provided certain conditions mentioned in the said section are complied with. Section 4 gives the power to the appropriate authority to withdraw recognition in certain cases. u/s 5 and 6 of the Act which deal with appointment of employees, admission of students to schools, fees to be charged, aid to be granted, facilities to be provided is also regulated. u/s 28 of the Act the Administrator can make rules to carry out the provisions of the Act and accordingly Rules were made. Chapter IV of the Rules deals with recognition of school. Rule 49 prescribes the manner of application for recognition. Rule 50 prescribes conditions for recognition. Rule 51 prescribes the facilities to be provided by a school seeking recognition. Rule 56 prescribes the mode for suspension or withdrawal of recognition. Rule 57 prescribes for restoration of recognition which is withdrawn or has lapsed. Rule 5 deals with the scheme of management in relation to recognised school. Sub-rule (r) of Rule 59(3) provides that a Manager for a recognised school shall not be at the same time the Manager of any other school and a person shall not be at the same time the Chairman of the Managing Committee and the Manager.

(8) Thus, it is clear that under the Act and the Rules recognition is required to be specifically applied and expressly granted. It will, Therefore, have to be seen whether in the present case recognition was applied for by the management of the special sector and whether the same was granted by the authority under the Act.

(9) It appears that the Society had applied to the Directorate of Education for having the institution recognised vide letter dated 22nd August, 1977 which reads thus :--

"PRIMARY and (10+2) pattern of New Education Scheme including Special Classes for handicapped children under scheme of integration."

The Director of Education vide letter dated 31st December, 1977 though granted recognition to primary and secondary school did not in express terms grant recognition to the special section. This position was further clarified by the Director of Education vide letter dated 29th September, 1978 which reads thus

SUB: Appeal filed in the Delhi School Tribunal Case No. 8 of 1978 in the matter of Shri Rakesh Paliwal vs. Principal, Balvantray Mehta Vidya Bhawan. Hr. Secondary School, Lajpat Bhawan, Lajpat Nagar, New Delhi & Ors. Sir, With reference to your letter No. BVB/81/157 dated 19th September, 1978, I am authorised by the Director of Education to certify that the Special Section running in the same premises wherein the Hr. Secondary School which is recognised and is functioning ,is neither recognised nor aided by the Directorate of Education, Delhi.

There can, Therefore, be no doubt that the special section was not expressly recognised by the Directorate.

(10) The next question that arises for determination is whether there was deemed recognition given to the special section in view of the fact that the Higher Secondary School and the Primary School was recognised and the special section was being run in the same premises. Under Rule 98(2) the Director of Education has to approve appointment of employees of a recognised institution. Under Rule 45 a new class cannot also be started unless specific approval is granted by the appropriate authority. The Act and the Rules do not contemplate the concept of deemed recognition. In the present case, the special section is run by a separate Board of management. The scheme of management" of a recognised institution has to confirm to the requirements of the Act and the Rules. It appears that neither a nominee of the Director of Education, nor of the Advisory Board is on the Board of the Management of the special section. If this special section was a part of the Higher Secondary School or the Primary School it would not have been necessary to have a separate board of management and separate accounts, separate staff etc. Under the Act and the Rules the appointment of employees of a recognised institution has to be approved by the Director of Education. The contention of the learned counsel for respondent No. 2 that the petitioner is a part of the Higher Secondary and the Primary School is also without substance because the appointment of respondent No. 2 was not approved by the Director of Education as required under the Act. If he was part of the primary school such an approval would have been necessary. The fact that the manager of the Higher Secondary School signed the order of termination cannot make the special section a recognised institution. Under sub-rule (r) of

Rule 59(3) the manager of a recognised school cannot work in any other school. The special section gives vocational training to the handicapped and if the rule was violated at best it would have been open to the Directorate to take action under Rule 50 and withdraw recognition granted to the Higher Secondary School. This fact alone cannot be construed to mean that there was deemed recognition given to the special section. The contention Of the learned counsel for respondent No. 2 that the petitioner always considered itself to be recognised and, Therefore, held an inquiry as required by a recognised institution is also without any substance. Just because rules of natural justice were complied with and a proper inquiry was held this fact cannot be held against the petitioner.

(11) There is no force in the contention of the learned counsel for respondent No. 2 that the petition should be dismissed because the affidavit Along with the writ petition is not in accordance with the Civil Procedure Code. The petition is supported by an affidavit signed by one Shri Basant Lal Chopra who has affirmed that the averments made in the petition are true and correct to the best of his knowledge and belief. This affidavit has also been duly verified. In any event, the CPC is not strictly applicable to a writ petition under Article 226 of the Constitution of India.

(12) As regards the third contention it is true that the Court would not interfere in the findings of fact made by the Tribunal but the question of deemed recognition is a question of law which has to be decided by this Court.

(13) In view of the above position the order of the Tribunal dated 13th October, 1978 holding that the petitioner was deemed to be recognised has to be set aside. Since the petitioner institution was not recognised the Tribunal had not jurisdiction to entertain an appeal u/s 8(3) of the Act. The writ petition is allowed and the order of the Tribunal dated 13th October, 1978 is set aside.

(14) At the end of the hearing, of the case it was pointed out that during the pendency of the writ petition the petitioner had deposited Rs. 11,250 in this Court which respondent No. 2 was permitted and withdraw on furnishing security. It is in the interest of justice that this amount which respondent No. 2 has withdrawn is not now recovered by the petitioner from the dismissed employee. There will be no order as to cost.