

(2003) 09 DEL CK 0146
In the Delhi High Court
Case No : Civil Writ No. 2276 of 2001

Dashmesh Education Society

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 22-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi School Education Act, 1973 — Section 4(1)
Delhi School Education Rules, 1973 — Rule 50, 51, 55, 55(1), 55(2)

Citation : (2003) 6 AD 533 : (2003) 107 DLT 301 : (2003) 70 DRJ 772 : (2003) RLR 107

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Jagjit Singh, Pramod Ahuja and Ruchika Ahuja, for the Appellant;
Avinish Ahlawat, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—The Petitioner has assailed the Order No. 2166 dated 29.3.2001 passed by the Directorate of Education (Act Branch), Government of NCT of Delhi, whereby the recognition granted to the Petitioner to run an unaided School has been withdrawn. The letter has been addressed to the Manager, Dashmesh Public School, Naraina Vihar, New Delhi (hereinafter referred as 'the School') and surprisingly, not to the School at its new location viz. WZ 572 J, Naraina Village, New Delhi. The Order dated 29.3.2001 is reproduced verbatim since its contents will largely determine its legality.

"GOVERNMENT OF NCT OF DELHI

DIRECTORATE OF EDUCATION

(ACT BRANCH)

OLD SECRETARIAT:DELHI-110054.

WHEREAS, Dashmesh Educational Society, Nariana Vihar, New Delhi, established the Dashmesh Public School at Gurudwara Nariana Vihar, New Delhi which was given recognition by the Directorate of Education vide order dated 31.03.1992 under the provisions of Delhi School Education Act & Rules, 1973;

2. AND WHEREAS, Dashmesh Educational Society, Nariana Vihar shifted the school from Gurudwara Nariana Vihar to WZ 572 J, Nariana Vihar, New Delhi without the approval of the Director of Education as is required to be done under rule 55 (1) of Delhi School Education Rules, 1973;

3. AND WHEREAS, rule 55 (1) of Delhi School Education Rules, 1973 provides among other things, that if a recognized school is shifted to a different locality without the previous approval of the appropriate authority, its recognition shall lapse on such shifting;

4. NOW, Therefore, the recognition granted to Dashmesh Educational Society, Nariana Vihar, New Delhi vide letter dated 31.3.1992 to run a school without aid from class I to class VIII in the name of Dashmesh Public School at Gurudwara Nariana Vihar, New Delhi has lapsed under rule 55(1) of Delhi School Education Rules, 1973, from the date the school was shifted from its original site to WZ 572 J, Nariana Village and the school is no longer recognized by the Directorate of Education, Delhi.

The Manager (GYANENDRA SRIVASTAVA) Dashmesh Public DIRECTor OF EDUCATION School, Nariana Vihar, New Delhi. Copy for information and necessary action to:

1. Dy.Director of Education (South-West)
2. Education Officer concerned (Zone-20)
3. Assistant Director of Education (Planning)
4. Assistant Director of Education (Capital Works)

(S.S.SHARMA)

ASSTT.DIRECTor OF EDUCATION (SCHOOL)"

2. Briefly stated, the facts are that the Petitioner, namely Dashmesh Educational Society (hereinafter referred to as `the Society") had been registered in October, 1982 under the Societies Registration Act. It has been running a primary school in approximately 500 sq. ft. area provided to it in the premises of Gurudwara Sri Singh Sabha, Naraina Vihar, New Delhi (hereinafter referred to as `the Sabha"). The Directorate of Education, Government of NCT of Delhi had granted recognition to the School through the Society from Classes I to VIII, vide its letter dated 31.3.1992.

3. It has been submitted that in 1996 certain members of the Managing

Committee of Sabha started threatening the Society that it will be forcibly dispossessed from the 500 sq. ft. area provided to it in Gurudwara precincts. This apparently necessitated the filing of Suit No. 86/96 on the Original Side of this Court in January 1996. The Sabha was restrained by the Court from taking possession of the School in any manner other than by due process of law, and was also directed not to interfere in the running of the School or from disconnecting water and electric supply provided to the school premises. The Sabha was further interdicted from blocking the ingress and egress of the Society, its officials, students, and the staff-members in the School to the premises during the School hours. These Orders have not been withdrawn. It has been alleged that despite these interim orders the Sabha broke into the Principal's office, but with the intervention of the Police, possession thereof was restored to the School. Some of the walls of the classrooms on the ground floor had been allegedly demolished and furniture and records removed during the closure of the School for the summer vacations. It has been repeatedly submitted that the Sabha wields inordinate and irresistible power not only in the Directorate of Education but also with the Police and, Therefore, the Petitioner has failed to obtain timely and complete redress from these Authorities.

4. An application for punishing the Executive Members of the Sabha for committing contempt of the Orders passed by this Court in Suit No.86/96 under Order XXXIX Rule 2(a) is stated to have been filed in those proceedings and is pending consideration.

5. It has also been alleged that the School continued to function from the First Floor of the Gurudwara premises, the Ground Floor having been illegally taken over by the Sabha. The Deputy Director, Directorate of Education, appears to have visited the premises in question on 31.7.1998 and the Office-Bearers of the Society had appeared in the Office of the Directorate on various dates in August 1998. It is further averred that on 7.8.1998 the Sabha locked the main staircase entrance leading to the First Floor of the School-building and thereupon the entry of the children and teachers to the School was completely stopped. Reports to the police have been duly made by the School/Society but with no avail. It is the Petitioner's case that since the studies of more than 400 students was thus abruptly halted, jeopardised and undermined in order to protect their future and careers, with prior intimation to the Directorate, the Society took a building on rent in August 1998 in the same locality at Naraina Vihar, at a distance of 100 meters from Gurudwara premises. It is not in controversy that the School has been running under the efforts and aegis of the Society from there ever since. The Society had brought all these facts to the notice of the Directorate of Education, along with Statements in compliance with the Delhi School Education Act and Rules.

6. I have perused the letter dated 21.8.1998 addressed by the Society to the Education Officer informing him of the circumstances leading to the change of the School premises. In particular the Chairperson of the Society has stated thus

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" I may point out that we were compelled to take this action under the present circumstances, and not a pre-planned action. Mrs. Manjit Kaur our Principal went to meet you personally and apprise you about the whole situations but unfortunately you were on leave due to some sad demise in your family. Now we would like to request you to advise further".

From the letterheads, it is evident that the address of the School thereafter and at present is WZ-572J, Club Road, Naraina, New Delhi-110028. It is also manifest from the records that there has been an exchange of numerous correspondence between the Directorate and the School from the new address, although, conspicuously the Order withdrawing recognition had been sent to the School at its erstwhile address at the Gurudwara.

7. The Education Officer by letter dated 11.11.1998 addressed to the General Secretary, Sri Guru Singh Sabha, Naraina Vihar Gurudwara, New Delhi-110028 with copies to the Chairman and the Secretary to the School and Society respectively, has stated thus -

" With reference to the correspondence resting with your letter dated 25.9.98, I am directed by the Competent Authority to inform you that since the recognition of Dashmesh Public School was granted by the department at Naraina Vihar at the premises of Sri Guru Singh Sabha, permission for the shifting of the school to some other place cannot be granted since it will be illegal. The School will continue to function at the same premises i.e. at the site where the recognition was granted, till the allotment of land by DDA. It is further informed that since the matter is subjudice in the court of law judicial pronouncement by the Hon"ble Court may be waited. As per the agreement dated 23.12.1983 Sri Guru Singh Sabha which is the parent body may provide all necessary co-operation for proper and smooth functioning of Dashmesh Public School".

The School/Society has replied to the said letter drawing attention, inter alia, to the fact that the Society and the Sabha and their Executive Bodies were two separate legal entities and that the Sabha could not be considered as the parent body of the School. It was also stressed that the Society had applied to the Delhi Development Authority for allotment of land which had not materialised till then despite their continuous efforts.

8. Rule 51 of the Delhi School Education Rules, 1973 (hereinafter referred to as 'the Rules') is reproduced for convenience of reference:-

51. Facilities to be provided by a school seeking recognition-- (1) Every private school seeking recognition shall provide for the following facilities, namely:-

(i) Physical education:

(a) suitable playground for the purposes of games, sports, materials for such games and sports;

(b) where no such playground is available due to the location of the school in an area where no suitable open space is available, the school shall make arrangement for a playground in a nearby area where students could be provided the facilities for games and sports;

(c) where no such arrangement as is referred to in clause (b) is possible, the school shall make arrangements for gymnastics or any other physical exercise;

(ii) Library service:

(a) (i) adequate library facilities, in the case of primary school, and

(ii) in the case of any other school, a separate room for the Library, to be used exclusively for the purpose and on no account such room shall be considered as accommodation available for class-teaching;

(b) a reading room attached or adjacent to the library, wherever possible;

(c) the library has a stock of book specified by the Director as also books specified by the Affiliating Board and such other books as may meet the needs of the students and of the teachers;

(d) the library has also books suitable for the use of teachers in their professional work and reference work;

(iii) Laboratory work:

(a) in the case of a school up to the middle level, a laboratory for teaching science, equipped according to such specifications as may be laid down from time to time, by the appropriate authority;

(b) in the case of a school above the middle level, intending to run either science course or courses in subjects which involve practical work, accommodation, equipment and apparatus according to such specifications as may be laid down, from time to time, by the Affiliating Board or the Director for the laboratory for each subject;

(iv) Workshop practice:

(a) a room or a workshop for conducting workshop practice or such other vocational activities as may be specified by the appropriate authority for different classes;

(b) the workshop is equipped according to such specifications as may be laid down, from time to time, by the appropriate authority for each subject;

(v) Co-curricular activities:

As many co-curricular activities, as may be possible, so as to give to every student an opportunity of participating in one or more of the following activities, namely:

- (a) debates;
- (b) recitation or elocution;
- (c) dramatics;
- (d) music (including folk songs), dancing (including folk dances);
- (e) hobbies of different types;
- (f) model parliament;
- (g) house system;
- (h) prefactorial system;
- (i) class competition;
- (j) junior wing of the National Cadet Corps;
- (k) scouting and guiding;
- (l) activities providing for social service; and
- (m) any other co-curricular activity."

9. I have heard counsel for the parties, including Mr. Pramod Ahuja for the Intervenor Sabha. It would be relevant to mention that the application for impleadment filed on behalf of Sabha by Mr. Ahuja had been rejected by Orders dated July 23, 2002 passed by Hon'ble Justice Manmohan Sarin. Mr. Ahuja had, in the course of arguments, also submitted that the Sabha is running an unrecognised School in the Gurudwara premises and it had applied to the Directorate for recognition but its papers had not been accepted by the Directorate on the grounds that they were incomplete. It has also been submitted by Mr. Ahuja that the writ petition is not maintainable in view of Rule 56 (4) of the Rules which envisages the filing of the appeal and reads as under:

"56(4). Any managing committee aggrieved by the withdrawal of recognition of the school managed by it may, within thirty days from the date of communication to it of the withdrawal of recognition, prefer an appeal against such withdrawal to the authority specified in Rule 58."

This objection, however, has not been raised by the Respondents and there is merit in the submission of Mr. Jagjit Singh, counsel for the Petitioner that this technicality should not be entertained at this very late and final stage. It is the Petitioner's contention that the Sabha has evinced an interest in the School only on learning of the imminence of the decision of the DDA to allot land to the School. It is contended by Mr. Jagjit Singh that likelihood of allotment of land by the DDA is the only reason that has motivated the Sabha to start its School.

10. I have reproduced verbatim the impugned Order at the threshold of this judgment for the reason that Ms. Ahlawat had strenuously submitted that the

Directorate has carried out an inspection of the School run by the Society at the new location and had discovered sundry deficiencies therein, which had been duly conveyed to the Society. It is however trite to state that the legal propriety of any administrative or quasi judicial decision must be judged only on the touchstone of the reasons and grounds adumbrated in the Order itself. This proposition has been lucidly and succinctly laid down in the following passage from the celebrated judgment of the Apex Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, of which reads as follows:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, :

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of Explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older. A Caveat".

11. On the application of the ratio in the *M.S. Gill's* case (supra) it will be palpably clear that since there is no mention in the impugned Order of alleged deficiencies in the running of the School from its new location, this cannot constitute the basis or justification for the withdrawal of recognition to the School. This line of argument is Therefore rejected so far as the present petition is concerned. It is made clear that the Directorate will be free to pursue any action proposed on account of the alleged deficiencies, if, pursuant to sufficient opportunity of hearing having been granted by it to the School/Society, the objections and deficiencies are not satisfactorily rectified. Action in accordance with law may then be taken. It is necessary to further observe that it is not expected of the Directorate to adopt a partisan or biased approach, or enter upon controversies with which it has no concern. The disputes between the School/Society on the one hand and the Sabha on the other can appropriately be pronounced upon and decided by a Civil Court. The Directorate is not called upon to decide whether the Sabha is the parent body of the School/Society and it should refrain from making observations in this context without undertaking a thorough and meticulous enquiry, if this is expected of it under the Delhi School Education Act and Rules. It must proceed strictly on the basis of its records. From the submissions made before me by Mr. Ahuja, learned counsel for the

Sabha, to the effect that an unrecognised school is presently being run by the Sabha from the Gurudwara premises, the only conclusion possible at the present stage is that the School and Society are distinct from the Sabha; and that the subject School is being run by the Society and not the Sabha. It Therefore cannot be understood or appreciated that the crucial correspondence and Orders emanating from the Directorate were dispatched to the Sabha when, indubitably, the Directorate was fully aware that the School has shifted to its present location. If this were not so, the impugned Order would be wholly without any basis whatsoever.

12. So far as the objection to the maintainability of the writ petition is concerned I have already noted that no such objection had been articulated by the Respondent. It was voiced for the first time at the final hearing of the writ petition and that too by Mr. Ahuja the learned counsel appearing for the Intervenor. Rule 56(4) of the Rules has been reproduced above and it undoubtedly provides the remedy of an appeal. As has already been seen, the order of withdrawal of recognition was not served directly on the School; nay it was not served at all on the School. Since a period of limitation is specified in the Rule itself, this remedy may not have been available to the Petitioner. Be that as it may, it is trite to state that the availability of an alternative remedy is not an absolute and determinative bar to the exercise of jurisdiction under Article 226 of the Constitution of India. I cannot countenance an objection of this nature at the final stage of the petition. The objection is, Therefore, rejected.

13. Reliance is placed by Ms. Ahlawat on Rule 55 of the Rules which reads thus:-

"55. Lapse of recognition in other cases--(1) If a recognised school ceases to function or is shifted to a different locality or is transferred to a different trust, society, individual or a group of individuals without the previous approval of the appropriate authority, its recognition shall lapse on such ceaser, shifting or transfer, as the case may be, and it shall, for the purpose of future recognition, be treated, as a new school.

(2) Where one or more of the conditions of recognition, specified in sub-section (1) of section 4 or in rule 50, are not complied with by any recognised school, the appropriate authority shall, by a written notice, draw the attention of the school to such non-compliance; and, if within sixty days from the date of service of such notice, any such condition for the recognition is not complied with, the recognition granted to such school shall, on the expiry of the said period of sixty days, stand lapsed."

14. In the first place it cannot be controverted that inasmuch as notices have not been directly dispatched to the School at its new address and location, there has been no compliance with sub-rule (2) of Rule 55. This is sufficient reason to strike down the decision of dercognition. So far as sub-rule (1) of Rule 55 of the Rules is concerned it is my considered opinion that the interpretation given by the Director is far too narrow and pedantic, with the result that miscarriage of

justice occasioned. The rules are not pointless punctilio; they have been inserted with good and sound reason. A School cannot ordinarily be allowed to shift to a far removed locale since that it is certain to be deleterious to the convenience of the students. But this is not inflexible. From the narration contained above it will be evident that the School/Society had informed the Directorate of the reasons which had necessitated and compelled the shifting of the School to its new location. To recollect, it was a consequence of the disputes that had erupted between the School/Society and the Sabha which, despite interim orders passed from time to time in the civil suit pending before this Court, had stopped the ingress and egress of the students as well as teachers and functionaries of the School. In these circumstances the shifting of the School was not voluntary, and this factor must exist before Rule 55 of the Rules comes into play. I cannot subscribe to the submission advanced by learned counsel for the Respondent Directorate that the lapse of recognition, as envisaged in Rule 55, is automatic. This Rule itself mandates the issuance of a notice and the grant of a hearing. No doubt sub-rule (2) of Rule 55 does not mention the grant of any hearing to the party concerned but this is implicit and must be read there into in order to save the Rule from being struck down as being contrary to the principles of natural justice. Furthermore, it is certainly open to argument whether the School has actually shifted to a different locality since it is the stance of the School/Society that the School is presently located approximately 100 meters from the Gurudwara precincts. Prior notice or simultaneous notice, keeping the exigencies and the problems being faced by the School/Society in perspective, had been given and if the situation was so detrimental to the interest of students as warranting the withdrawal of recognition, the Directorate ought to have acted forthwith. Withdrawal of recognition after the passage of several years appears to me to be specious. It lends credence to the submission of the Society that the Directorate has succumbed to the pressure that has been brought to bear on it by the Sabha. The Order cannot be sustained for these manifold reasons. In these circumstances the writ petition is allowed and the impugned Order dated 29.3.2001 is quashed.

15. Parties to bear their own costs.