
(2014) 07 OHC CK 0057
In the Orissa High Court
Case No : W.P. (Civil) No. 8349 of 2014

DAVIAN Parents Association

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:

Citation : (2015) 119 CLT 479 : (2014) 2 OLR 772

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Dr. B.R. Sarangi, J.—Challenging the hike of fee structure made by the Management of different DAV Public Schools dated 19.04.2014 in Annexure-5 series, the Parents' Association of different DAV Public Schools at Cuttack and Bhubaneswar have filed this writ petition.

2. The facts of the case in nut-shell are that DAV Public Schools at Cuttack and Bhubaneswar after receiving recognition/No Objection Certificate from the State Government and land for construction of School buildings were established, affiliated to the Central Board of Secondary Education and are regulated by the norms of guidelines issued from time to time by the said Board. Para-7 of the CBSE Bye-law deals with financial resources whereas Para-11 deals with Fees. Taking advantage of the Bye-law, the management of DAV Public Schools situated at Cuttack and Bhubaneswar have been enhancing fees each and every year continuously. When the management of different DAV Public Schools enhanced the fees in the year 2009 over and above the fees of the previous year, the parents associations of different DAV Public Schools including many parents individually approached this Court challenging the unilateral and arbitrary decision of fees hike. After due adjudication, this Court vide a common judgment dated 27.06.2011 disposed of the writ petition in Management of DAV Public School and Others Vs. State of Orissa and Another in Annexure-1 directing constitution of Managing Committees in accordance with the Orissa Education Act

within a period of 3 months from the date of communication of this order. So far as fee structure was concerned, learned single Judge directed constitution of a committee under the Chairmanship of Commissioner-cum-Secretary School and Mass Education Department to verify the facilities provided school-wise and accordingly determine the fees to be collected commensurating with such facilities. The said judgment passed by the learned single Judge under Annexure-1 was challenged by the DAV Management before a Division Bench of this Court in Writ Appeal No. 387 of 2011 and a batch of other connected matters and upon hearing, the Division Bench dismissed all the Writ Appeals and confirmed the judgment passed by the learned single Judge vide Annexure-2.

3. Being aggrieved, the Management-opposite party no. 5-Regional Director, Zone-II-cum-Principal of DAV Public School, Chandrasekharapur approached the apex Court in SLP (C) No. 31659/2011 wherein the apex Court directed the interim committee constituted as per direction of this Court to determine the quantum of fees on ad hoc arrangement basis by giving due opportunity of hearing to the parties. Pursuant to such direction, the said Committee directed the Management of DAV Public Schools to produce different documents for the purpose of determination of quantum of fees, but the Management of DAV Public Schools failed to produce necessary information and documents and therefore, the interim committee ultimately expressed helplessness before the apex Court and prayed for entrusting the task of determining fees structure of DAV Public Schools forming a committee headed by Justice K.P. Mohapatra, a retired Judge of this Court. In compliance with the same Justice K.P. Mohapatra Committee submitted a report on 02.05.2013, Annexure-3 and considering the same, judgment was passed on 16.04.2014 in Civil Appeal No. 4556 of 2014 (arising out of SLP (C) No. 31659 of 2011), Annexure-4. On receipt of the judgment passed by the apex Court, the DAV Public School Authority revised the fees as per the recommendation of the Fee Structure Committee, Odisha vide Annexure-5 series which has been challenged before this Court in this writ petition.

4. Mr. R.K. Rath, learned Senior Counsel appearing for the petitioners, submits that the notifications for hike in fees, vide Annexure-5 series, issued by the opposite parties are contrary to the judgment dated 16.04.2014 passed by the apex Court in Civil Appeal No. 4556 of 2014, vide Annexure-4, read with the recommendation made by Fee Structure Committee headed by Justice K.P. Mohapatra vide its report dated 02.05.2013-Annexure-3. He has specifically referred to paragraph-5 of the judgment, wherein the apex Court has observed as follows:

x x x x Therefore, the only surviving issue as per his submissions is whether a fee increase needs to be allowed for the DAV schools in Odisha to meet their liability due to implementation of 6th Central Pay Commission pay scales which had been admittedly introduced in these schools w.e.f. 01.06.2012 and therefore, the corollary requiring answer would be, if the fee is to be increased

what should be the quantum of structure".

He has also referred to paragraphs 12 and 13 of the judgment wherein the apex Court has specifically directed as follows:

x x x Hence, it is directed that the appellant and the concerned educational institutions represented by it shall be entitled to revise their fee structure with immediate effect as per recommendation of the Fee Structure Committee, Odisha dated 02.05.2012. We further clarify that the existing Managing Committee as constituted under the CBSE bye-laws shall continue to manage the concerned schools.

x x x x it is not possible to assess the injury caused to the schools nor is it possible to award any compensation by allowing revised fees to be realized from any earlier date such as 01.06.2012 as prayed on behalf of the appellant. However, it is satisfying to note that the State of Odisha has not raised any objection to the recommendations of the Fee Structure Committee, Odisha and therefore, there is no legal impediment of any substance in allowing this appeal.

Referring to the above paragraphs, Mr. Rath, learned Senior Counsel appearing for the petitioners, strenuously urged that the apex Court has clarified the position stating that for any revised fee structure, that should be given immediate effect, means, from the date of passing of the judgment, which is prospective one. He further urged that there is no question of allowing revised fee to be realized by the opposite parties 5 to 9 with effect from 01.06.2012. Therefore, the apex Court has set at naught the realization of arrear dues from the students, rather as per the dictum of the Supreme Court any revision of fees structure has to be made in consonance with the recommendation made by the Fee Structure Committee headed by Justice K.P. Mohapatra pursuant to its report dated 02.05.2013 with immediate effect, i.e., prospectively and not retrospectively.

It is further contended by Mr. Rath that applicability of the recommendation of the Fee Structure Committee as per the report dated 02.05.2013 means that it should be given effect to from the academic session 2014-15 and not from the session 2012-13 and that should be in consonance with the judgment of the apex Court whereas the opposite parties have notionally fixed the fee structure enhancing the fee by 25 % interpreting the recommendation made by the Fee Structure Committee to have been for the session 2012-13, thereby causing great prejudice to the children of the petitioners and other children prosecuting studies in the said institutions. In other words, he submitted that what the authorities could not do directly, by applying this method, they are doing indirectly which is not permissible under law.

5. Mr. A.K. Pandey, learned Standing Counsel for the School and Mass Education Department has referred to paragraphs-8 to 13 of the counter affidavit filed by opposite party no. 1 which read as follows:

8. Pursuant to the observation of the Hon"ble High Court in OJC No. 2951/1993, the Government in School and Mass Education Department, keeping in view of the rapid growth of the private educational institutions, imparting teaching in English and other medium in the State which are affiliated to CBSE and ICSE have issued appropriate guidelines vide Resolution No. 30720 dated 23.09.1996 of School and Mass Education Department under Annexure-A/1. As per the said Guidelines, any organization/individual seeking No Objection Certificate from the State Government to open any unaided school to be affiliated to the ICSE/CBSE shall be required to fulfil the terms and conditions and satisfy the requirements prescribed there under.

9. That, it is pertinent to mention here that, if the organization"s/individual"s institutions are violated the terms and conditions as enumerated in the guidelines vide Resolution dated 23.09.1996 of School and Mass Education Department, the HPC shall be competent to review the NOC/Recognition issued in favour of the institution and shall be competent to withdraw the same if it is satisfied that the terms and conditions as specified in the Resolution for the purpose are violated.

10. That, as per the Clause-7(B) of the Resolution dated 23.09.1996 of School and Mass Education Department, proceedings for withdrawal of recognition/NOC shall be initiated at the level of Government in case the schools are found guilty of any of the followings after reasonable notices and refer the same to the HPC for consideration:

(i) not paying salaries and allowances to the teachers and other employees, at least at par with the employees of State Government.

(ii) Financial irregularities including channeling of funds for purpose other than those provided for in the bye-laws of ICSE/CBSE.

(iii) Engagement in activities prejudicial to the interest of the State, including or promoting feelings of disloyalty or disaffection against the Government established by law.

(iv) Encouraging or tolerating disharmony/hatred between different sections of the Society.

(v) Non-fulfilment of conditions laid down regarding deficiencies to be removed, even after due notice.

(vi) Disregard of rules and conditions of affiliation even after receiving warning letters.

(vii) Hindrance in smooth functioning of the school on account of dispute between rivalries within the school management.

(viii) Absence of approved terms and conditions of service, or frequent dismissal of teachers from service.

(ix) Poor academic performance of the school for three consecutive years is not being able to keep at least 50% of passes of the general pass percentage.

(x) Non-availability of proper equipment/space/staff for teaching a particular subject.

(xi) Any other misconduct in connection with the admission/examination/any other are which in the opinion of the Government warrants immediate derecognition of the school.

11. That, it is humbly submitted that as per provisions under clause-7(C) of the Resolution dt. 23.09.1996 of School and Mass Education Department, adequate time and opportunity shall be provided to the management of the school served with a "show Cause Notice" up to a maximum of six months for adequate compliance/removal of defects failing which the HPC may withdraw the No Objection Certificate issued in its favour and also derecognize the school. In such an event the CBSE or the ICSE, as the case may be, shall be recommended by the Government to withdraw the affiliation of the concerned school.

12. That, it is humbly submitted that, the Orissa Education (Establishment, Recognition and Management of Private High Schools) Amendment Rules, 1997 in Rule-2(f-i) defines that "High School" means a school preparing candidates for the High School Certificate Examination conducted by the Board or an equivalent examination conducted by the Central Board of Secondary Education or the Indian Council for the Secondary Education established by the Union Government or a Madhyama Examination conducted by Sri Jagannath Sanskrit University established under the Orissa Universities Act, 1980".

13. That, it is humbly submitted that, as per Clause-4(i) of the Resolution dated 23.09.1996 of School and Mass Education Department, as regards Fees, the following are stipulated:

(i) Fees-Fees and Charges should be commensurate with the facilities provided by the institution, Fees should normally be charged under the heads prescribed by the Department of School and Mass Education. No capitation fee or voluntary donations for gaining admission in the school or for any other purpose should be charged/collected in the name of the school. In case of such malpractices the Government may take drastic action leading to withdrawal of No objection Certificate of the school.

6. Mr. A.K. Parija, learned Senior Counsel appearing for opposite party nos. 5 to 9 submits that whatever steps have been taken by the management are in consonance with the judgment passed by the apex Court read with the recommendation made by the Fee Structure Committee vide its report dated 02.05.2013. He has also relied upon the observations made by the apex Court in paragraphs-6, 9 and 10 of the judgment. Since paragraph-5 has already been quoted above, the observation made in paragraphs-9 and 10 are quoted below:

on a careful perusal of the various objections highlighted before the Fee

Structure Committee, we find that the objections were not at all substantial and they have been dealt with appropriately by the Committee. We also find no merit in the objection with regard to competence or expertise of the Fee Structure Committee, Odisha. This Court entrusted the task in question to the Committee out of necessity in the presence of learned counsel for the parties and no one raised any objection. The only objection, which required some thought was that in 2009 the proposed fee hike was of 50-57% based upon requirement for payment of salaries as per recommendations of 6th Central Pay Commission whereas on the basis of income and expenditure figures and relevant information for the year 2012-2013, the Committee has recommended revised fees which for some schools are alleged to be in the vicinity of increase of about 200%.

In the aforesaid context, it was successfully explained on behalf of the appellant that in 2009 the fee increase was calculated on the basis of 22% D.A. prevalent at that time but the average D.A. in 2012-2013 had increased to 72.25%. Further, due to lapse of three years, the annual increments of 3% would add to a total of 9%. The combined effect would be an increase of more than 200% of the original 2009 fees. It was also pointed out that increase in fees, as recommended by the Committee, ranges only from 46% to 119% for different schools over and above the present unrevised fee structure.

Referring to the above paragraphs, Mr. Parija, learned Senior Counsel submitted that whatever action has been taken by the management the same is in conformity with the judgment passed by the apex Court and there is no deviation with regard to fixation of the fee structure on the basis of the recommendation made by the Fee Structure Committee vide its report dated 02.05.2013 as the apex Court has accepted the recommendation of the said Committee in toto. More specifically he has relied upon clause xxvii of the recommendation of the Committee, which is quoted below:

(xxvii). The fee fixed for these schools made be increased by 10% for 2013-14 except for DAV Tulsipur and DAV Raja Bagicha by 12.5% as these two schools have cost more than the fee proposed to be collected in 2012-13. Such increase is restricted is in view of stiff hike in fee for 2012-13 over 2011-12. However, the school may cap the increase of fee to 15% from 2014-15 to meet its increased cost.

It is further stated that in view of the aforesaid recommendation made by the Fee Structure Committee, the Management has increased the fee by 10% for the session 2013-14 and 15% for the session 2014-15 over and above the fee structure recommended for the session 2012-13 and the management has fixed the fee structure notionally vide Annexure-5 series. Therefore, according to him, no illegality or irregularity has been committed by the Management in fixing such fee structure pursuant to the impugned notifications under Annexure-5 series.

7. Mr. P. Panda, learned counsel for opposite party no. 5 supports the contentions raised by Mr. A.K. Parija, learned Senior Counsel appearing for opposite party

nos. 6 to 9.

8. In the above contentions of the parties and in view of paragraph-5 of the judgment passed by the apex Court, the only surviving issue is whether a fee increase needs to be allowed for the DAV Schools in Odisha to meet their liability due to implementation of 6th Central Pay Commission pay scales which had been admittedly introduced in these schools w.e.f. 01.06.2012. The corollary question that arises is, if the fee is to be increased what should be the quantum of structure. The apex Court has observed in paragraphs-9, 10 and 11 of the judgment as follows:

9. on a careful perusal of the various objections highlighted before the Fee Structure Committee, we find that the objections were not at all substantial and they have been dealt with appropriately by the Committee. We also find no merit in the objection with regard to competence or expertise of the Fee Structure Committee, Odisha. This Court entrusted the task in question to the Committee out of necessity in the presence of learned counsel for the parties and no one raised any objection. The only objection, which required some thought was that in 2009 the proposed fee hike was of 50-57% based upon requirement for payment of salaries as per recommendations of 6th Central Pay Commission whereas on the basis of income and expenditure figures and relevant information for the year 2012-2013, the Committee has recommended revised fees which for some schools are alleged to be in the vicinity of increase of about 200%.

10. In the aforesaid context, it was successfully explained on behalf of the appellant that in 2009 the fee increase was calculated on the basis of 22% D.A. prevalent at that time but the average D.A. in 2012-2013 had increased to 72.25%. Further, due to lapse of three years, the annual increments of 3% would add to a total of 9%. The combined effect would be an increase of more than 200% of the original 2009 fees. It was also pointed out that increase in fees, as recommended by the Committee, ranges only from 46% to 119% for different schools over and above the present unrevised fee structure.

11. On carefully going through the facts and figures available on record and those considered by the Committee, we find no good reason to take exception to the fee structure recommended by the Fee Structure Committee, Odisha through its Report dated 02.05.2013.

9. Therefore, the apex Court has accepted the recommendation of Fee Structure Committee, Odisha through its report dated 02.05.2013 in toto. In paragraph-12 of the judgment, the apex Court has directed the management as well as the concerned educational institutions to revise their fee structure with immediate effect as per recommendations of the Fee Structure Committee Odisha dated 02.05.2013. In paragraph-13, the apex Court has specifically stated that it is not possible to assess the injury caused to the schools nor is it possible to award any compensation by allowing revised fees to be realized from any earlier date such as 01.06.2012 as prayed for on behalf of the Management.

10. In view of such direction, there is no dispute with regard to the acceptance of the recommendation of the Fee Structure Committee Odisha dated 02.05.2013 and as such there is no dispute with regard to the competence of the authority to enhance the fees as per the recommendation of the Fee Structure Committee. But, the only controversy is whether the realization of fees can be made prospectively or notionally fixed from a retrospective date.

Mr. A.K. Parija, learned Senior Counsel submits that the entire judgment is about fixation of fees and realization thereof. So far as the fixation of fees is concerned, there is no ambiguity in view of the judgment itself. The only question is with regard to realization thereof. If the apex Court has accepted the recommendation of the Fee Structure Committee dated 02.05.2013 in toto in paragraph-11, as per Clause (xxvii) the fee has been increased by 10% for session 2013-14 and by 15% from 2014-15 whereas Mr. R.K. Rath, learned Senior Counsel for the petitioner referring to paragraph-13 of the judgment submits that the revision of fees cannot be realized from any earlier date such as 01.06.2012. Therefore, computing the notional fees on the basis of recommendation of the Fee Structure Committee, is not justified.

11. In the aforesaid facts and circumstances, the observation made in para-13 of the judgment so far as realization of fees part is concerned, it requires clarification/modification for which this Court refrains from adjudicating the issue though it is stated by Mr. Rath, learned Senior Counsel for the petitioner that it requires interpretation of the observation made in paragraph-13 i.e.-

It is not possible to assess the injury caused to the schools nor is it possible to award any compensation by allowing revised fees to be realized from any earlier date such as 01.06.2012 as prayed for on behalf of the appellant".

It is further stated by him that the prayer of the Management to allow revised fees to be realized from an earlier date i.e. 01.06.2012 has been declined, meaning thereby that the Management cannot realize the fees with effect from 01.06.2012 notionally fixing the revised fees save and except the fees as fixed by Fee Structure Committee on 01.06.2012 prospectively from 2014-15.

12. In that view of matter, since the judgment to the extent mentioned above requires clarification/modification, this Court refrains from making any observation, rather gives liberty to the parties to approach the appropriate forum for the said purpose.

With the above observation and direction, the writ petition is disposed of.