
(2011) 09 JH CK 0141
In the Jharkhand High Court
Case No : L.P.A. No. 484 of 2010

De Nobili School Mugma at Dhanbad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

Citation : (2011) 09 JH CK 0141

Hon'ble Judges : Prakash Tatia, J; P.P. Bhatt, J

Bench : Division Bench

Advocate : K.M. Joseph, T. Kabiraj and C. Mukherjee, for the Appellant; Indrajit Sinha, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.
2. We are deciding this bunch of four matters by taking facts of LPA No. 484 of 2010. Though the other appeals are arising out of separate orders and containing different amount of surpluses in the hands of Schools and different amount of fee hike, but the principal on which the Jharkhand Education Tribunal, Ranchi has decided the matters, is the same and learned counsel for the parties submitted that taking into account the facts of the case No. 32/2009(JET) of the Jharkhand Education Tribunal, Ranchi will serve the purpose for deciding all Letters Patent Appeals, therefore, all letters Patent Appeals are decided by this common order.
3. It appears that separate applications were filed by the students/parents in relation to the alleged unreasonable hike in the school fees for the year 2009-10, upon which initially a blanket order issuing some direction to all the schools in the State of Jharkhand was passed. However, the said interim order was set aside by the High Court and thereafter, the Tribunal proceeded to decide the issue vide order dated 10th April, 2010. It further appears from the impugned order dated 10th April, 2010 that roving inquiry was made by the Tribunal to find

out whether there is justification in the hike of fees of the schools run by, in these cases, one management i.e., in the case of De Nobili School. A plea was taken by the Management of the school that because of the revision of the pay due to the adoption of 6th Pay Revision Commission recommendation, heavy financial burden has come upon the school, therefore, they had to take a decision to increase the school fees. According to the management, the increase in the salary of the employees was to the extent of 59% of the existing salary resulting into increase in the burden of Rs. 76,00,000/- per annum whereas they have increased the fees to the extent of 49% only, which will generate income of Rupees about 64,00,000/-

4. The Tribunal after examining the accounts of the schools in details in para-15.2 observed that the revenue surpluses as on 31st March, 2009 were Rs. 59,74,407/- with the school management and there was cash reserve as on 1st April, 2007, 1st April, 2008 and 31st March, 2009 in excess of income over expenditure of Rs. 15,74,898/-, Rs. 42,35,271.52 and Rs. 33,00,804.21 respectively. Thus, when these figures are added up, the same reflected the cash reserve of the school-respondent to the tune of Rs. 91,10,977.73 as on 31st March, 2009. The Tribunal also was of the opinion that there might be increase in the salary putting a burden of Rs. 76.00 lacs upon the management, but in the opinion of the Tribunal the surplus revenue of the schools were not properly managed by the management and they have not been invested as it should have been invested in the light of the direction issued in the case of Supreme Court in. T.M.A. Pai Foundation case (2009 SCC 481). The Tribunal was also of the opinion that since there is surplus of Rupees about one Crore with the management and increase in the salary of the employees is by Rs. 76.00 lacs then there was no justification for increasing the education fee of the students. The Tribunal also was of the view that the entire property of the school is maintained by the Eastern Coalfields Ltd. (ECL) and, therefore, the school has no burden to maintain the school properties. The Tribunal also was of the, view that increase in the annual fee, activity-fee, exam fee, admission fee and development fee was also absolutely illegal. The Tribunal, while examining the financial management of the school, observed that the school has invested money in the Mutual Funds to the tune of Rs. 34.04 lacs apart from depositing the amount in the Fixed Deposits in the Bank, which, according to the Tribunal, was an instance of profiteering by the respondent-school management. The Tribunal also was of the opinion that Rs. 5.00 lacs was transferred by the respondent-school in favour of De Nobili School, Chandrapura while a sum of Rs. 15.00 lacs was transferred to school of the same name at FRI, Dhanbad (both are under same management) and that was a clear infringement of para-4 of the Terms of agreement between DVC, Maithan and the school management and is contrary to the judgment of the Supreme Court, rendered in T.M.A. Pai Foundation case.

5. Be that as it may, in sub and substance, in the opinion of the Tribunal, firstly, the management has surplus fund to meet with the burden of increase in the salary due to the revision of the pay structures of the employees due to the

adoption of 6" Pay Revision Commission recommendation and secondly, the fund of the school has been utilized for profiteering and thirdly, the fund has not been properly invested and has been invested in contravention to the guideline., given in the T.M.A. Pai Foundation case. Taking into account all these grounds, enhancing of fee from Rs. 570/- per month to Rs. 850/- per month has been declared illegal as unreasonable and set aside the said fee hike.

6. The appellant preferred appeals before this High Court under the provisions of Jharkhand Education Tribunal Act and one of such appeal being A.C. (S.B.) No. 14 of 2010, which has been dismissed vide order dated 23rd July, 2010, after considering the guideline in the T.M.A. Pai Foundation case. Hence, this appeal.

7. Learned counsel for the appellant drew our attention to the findings recorded by the Tribunal and submitted that Tribunal failed to take note of the fact that in last about 50 years the institution-management could be able to reach surplus fund of Rupees less than one Crore, which has been duly accounted and have been invested and that amount or any part thereof has not been invested, so as to convert it into the profit of anybody, including of the management. Keeping a surplus fund to meet with the contingency, which may arise in future cannot be termed to be profiteering. It is also submitted the there is an increase of the salary to the extent of 59% resulting into burden of Rs. 76.00 lacs annually upon the management and for that only provision has been made to put burden upon the students only to the tune of 49%. i.e., of Rupees about 64,00,000/- only.

It is also submitted that if, the order under challenge is given effect to then the entire surplus fund of Rupees less than one Crore of the institution will go in one, year as the management will have to. pay Rs. 76.00 lacs in one year due to the increase in the salary of the employees of the institution and no provision will be there even for next year to meet with the additional burden of increase in the salary of (he employees It is also submitted that the Court should not interfere in the matter of management of the institution and, therefore, the Tribunal, instead of finding out the justification for the increase in the tuition fees for students from Rs. 570/- to Rs. 850/- proceeded to hold inquiry with respect to the other aspects of the financial management of the institution and influenced by some irrelevant facts declared the hike in fee unjust. It is also submitted that increase in the fees cannot be said to be in higher side much less to be a shockingly high," so as to warrant any intervention by the Tribunal.

8. Learned counsel for the respondents vehemently submitted that the Tribunal has carefully considered each and every aspects of the matter and has followed the decisions given by the Hon"ble Supreme Court in T.M.A. Pai Foundation case. It is submitted that all facts and figures have been taken into consideration by the. Tribunal which were provided by none else than the appellant itself and the figures given in the order neither have been disputed nor can be disputed. It is submitted that it is clear case of profiteering by the school management as in one school only the Management could earn to the extent of Rupees one Crore. From analysis of the last three years of the accounts, it is clear that every year

the management is earning profit in millions of rupees and not only one or two lacs, rupees. It is also submitted that the entire burden of increase in the salary of employee cannot be put upon the students of one year or two years. It is also submitted that the building is maintained by the Eastern Coalfields Ltd. and, therefore, the school has additional benefit, of no recurring expenditure for the building and its maintenance even then the high fees has been charged. Learned counsel for the respondent also submitted that from the chart submitted by the appellant in the Letters Patent appeal itself, it is clear that the appellant has increased the fee periodically every year in past and, therefore, it is not a case where there was stagnant fee, which has been sought to be increased by such shocking high amount,

9. We have considered the submissions of the counsel for the parties and perused the facts of the case. It is true that the Tribunal took note of the increase in the salary and also increase in the tuition fee and while doing so the Tribunal has observed that there is surplus fund of Rs. 91,10,977.73 with the school management (in the case of De Nobili School, Magma, Dhanbad) but if we look into the considerations, which have been taken into account by the Tribunal, then we may find that the Tribunal was fully aware that the school is running since last 33 years i.e., from 1977. The school management had surplus fund in total of Rs. 91,10,977.73. The Tribunal also took into account the annual increase in burden upon the institution to the extent of Rs. 76.00 lacs and in para-20(a) even after taking note of the fact that if, this increase is denied in total to the school management then in one year only that amount of management will have to pay Rs. 76.00 lacs out of total savings of Rs. 91,10,977.73 saved in about 30 years which may include the interest earned by the management periodically on the savings. Nothing has been observed what will happen to even next year, much less to thinking for at least, next five years. In the entire order, there is no reference of any other liability of the school, which in all circumstances is natural and a major component of which is the gratuity amount of the employee, which, according to the learned counsel for the appellant, the appellant has to pay the amount of gratuity to the employee on retirement. Therefore, the order as such cannot be given effect to in any manner, so as to wipe out all the savings of the management in one year, rendering the management of the institution without there being any money to meet the expenditure of even next year.

10. So far as observation of the Tribunal in para-18.2 that in the statements of account of the three financial years commencing from 2006-07, there appears to be some items of expenditure, which, according to the Tribunal, do not fall within the ambit of admissibility, in light of the accepted norms in view of the decision of the Supreme Court in the case of T.M.A. Pai Foundation case. The Tribunal has not mentioned how much is the such amount of expenditure, which has not been found admissible by it. At this juncture, the Tribunal failed to notice that an expenditure may not be admissible for the accounting purpose but so far as spending of the amount, it cannot be nullified by mere observation that it was not admissible expenditure. An expenditure which is not admissible, is also

expenditure in fact and because of that reason only a fact which could have been taken note of is that fund is not available with the management for meeting with the expenses on the day of consideration and it was a wrong expenditure then on that count, an action could have been taken against the Management, if law permits, but the amount which has been spent cannot be treated to be in the hands of the management for the purpose of meeting the expenses.

11. In totality of, facts, it appears that the Tribunal was more influenced with the total availability of the (sic) availability, of the surplus fund without making any hike in the fees but the Tribunal ignored the material and relevant fact of the burden of even one year to the extent of wiping out all the savings of even 33 years of the management, if the hike in fee is totally denied. In our considered opinion, even if the institution had surplus fund with it, then the Tribunal should have sought further information from the management with respect to future planning of the schools in meeting with, the expenses, even if entire amount of the available surplus amount of the school is required to be adjusted in one year. If the entire surplus amount of the management is to be exhausted in one year then certainly in next year the school may have to increase the fees more than what has been increased in the current year and that will be putting a burden upon the students of the next years instead of sharing of the burden by the students of various years.

12. In view of the above reasons, in our opinion, looking to the public interest and to meet with the allegation of the unreasonable profiteering of the schools in the field of education, contrary to the theme and object of running and establishing the school by charitable institution, the equity requires that the matter be considered by the Tribunal afresh. Consequently, the orders passed by the Tribunal, which have been upheld by the learned Single Judge vide order dated 23rd July, 2010, without noticing the facts and issues which referred above, are set aside and matter is remanded to the Tribunal to again do the exercise and find out the way by which the burden of increase in the salary as well as escalation in price of other facilities of the school can be met with.

13. Meanwhile, status quo shall be maintained and for the year 2009-10. The students, to whom the fees have been returned, that may not be demanded by the management, and the students who have paid the fees, they may not be refunded the amount, till the decision of the Tribunal,

The Tribunal is expected to decide the matter on or before 31st January, 20.12.,

14. It is made clear that we have taken into consideration the facts of one case and, as we have already observed, issue of the other matters are similar and there might be difference in the amount referred, which have been considered above. Therefore, Letters Patent Appeals are allowed. All the impugned orders passed, are set aside and all matters are reinvented to the Tribunal for fresh decision, in accordance with law, after adequate hearing of parties.