
(2012) 11 DEL CK 0176
In the Delhi High Court
Case No : LPA No. 737 of 2012

Delhi Public School and Another		APPELLANT
	Vs	
Shalu Mahendroo and Others		RESPONDENT

Date of Decision : 09-11-2012

Acts Referred:

Delhi High Court Act, 1966 — Section 10, 10(2)
Delhi School Education Act, 1973 — Section 8, 8(2), 8(4)

Citation : (2013) 5 AD 669 : (2013) 196 DLT 147

Hon'ble Judges : D. Murugesan, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Rakesh Tikku with Mr. Puneet Mittal, Mr. Ankur Aggarwal and Mr. Nitin Sharma, for the Appellant; V. Shekhar, with Ms. Shaveta Chaudhary for R-1 and Mr. Rajeev Sharma, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—This intra-court appeal impugns the order dated 30.10.2012 of the learned Single Judge to the extent it, while issuing notice of W.P.(C) No. 6646/2012 preferred by the respondent No. 1, staying till the next date of hearing i.e. 19.12.2012, the order of the Disciplinary Authority of the appellant School of placing the respondent under suspension. The respondent No. 1 impugned the order of suspension inter alia on the ground that the same had been made without obtaining the prior permission in writing of the Director of Education as required u/s 8(4) of the Delhi School Education Act, 1973. It was the contention of the counsel for the appellant appearing on advance notice before the learned Single Judge that no such approval was required, the appellant being an unaided School. Reliance in this regard was placed on the judgment of the Division Bench of this Court in The Managing Committee of Geeta Bal Bharti Senior Secondary School and Another Vs. Director of Education and Others, On the contrary, the counsel for the respondent No. 1 had relied on judgment of a Full Bench of this Court in Presiding Officer Delhi School Tribunal Vs. Govt. of Nct of Delhi, The learned Single Judge however, after noticing the

said contentions, granted ad-interim stay observing as under:

7. Heard Id. Counsel for the parties. Admittedly, Section 8 of Delhi School Education Act, 1973 has been complied, which is mandatory. Para 44 of Kathuria Public School (supra) has bearing in case of disciplinary proceedings not in case of suspension.

8. Therefore, till the next date of hearing, the operation of the impugned order dated 03.10.2012 shall remain stayed. I here make it clear that the respondent/school may continue with the departmental enquiry, if any, against the petitioner.

9. The respondents shall file their response to the instant application within a period of four weeks with an advance copy to the other side. Rejoinder thereto, if any, shall be filed within two weeks thereafter.

The counsels admit the typographical error, and the learned Single Judge to have held "Admittedly, Section 8 of Delhi School Education Act, 1973 has "not" been complied, which is mandatory".

2. The senior counsel for the appellants has contended that the learned Single Judge has wrongly held that the judgment of the Division Bench in Kathuria Public School supra, has bearing in the case of disciplinary proceedings and not in the case of suspension. It is argued that not only does the said judgment specifically refer to suspension but even otherwise suspension is a part of disciplinary proceedings and once the learned Single Judge held the judgment of the Division Bench in Kathuria Public School to be applicable in the case of disciplinary proceedings, he erred in holding the same to be having no application in case of suspension.

3. The senior counsel for the respondent No. 1 on the contrary has i) challenged the very maintainability of the present appeal; ii) contended that the judgment of the Division Bench in Kathuria Public School stands overruled by Presiding Officer Delhi School Tribunal supra, of the Full Bench; and iii) contended that the judgment of the Division Bench in Kathuria Public School is contrary to Section 8(4) supra and is solely based on the judgment of the Supreme Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and has misread the judgment of the Supreme Court.

4. However, the learned Single Judge, as will be obvious from the aforesaid, has neither held the judgment of the Division Bench to have been overruled by the Full Bench nor could the learned Single Judge have held the Division Bench to be not laying down the correct law. We are however not inclined to enter into the said controversy if at all open to be urged, in this appeal. This appeal, as aforesaid is against the ad-interim order of stay of the order of the Disciplinary Authority of suspension, made on the very first date of hearing even before the appellant who is the respondent in the writ petition has had the opportunity to file counter affidavits/replies. It will be open to the respondent No. 1 to, during the hearing of the writ petition before the learned Single Judge, urge all the

aforesaid points. Suffice it is for us to only prima facie observe that the Division Bench in Kathuria Public School has unequivocally laid down that the prior approval of the Director of Education is not required in the case of unaided Educational Institutions and the reference to the Full Bench though emanating from Kathuria Public School was not on the said aspect. The Full Bench thus was not concerned with the said part of the judgment of the Division Bench. We may also notice that the senior counsel for the respondent No. 1 had contended that even if prior approval was not required, post suspension approval was necessary for continuance of suspension beyond a period of 15 days. However again, the Division Bench in Kathuria Public School in Para No. 44 of the judgment has held not only prior but also ex post facto approval for disciplinary proceedings provided for u/s 8(2) and 8(4) of the Act and Rules 115(2) and (5) and 120(1)(d) (iii) and (iv) and 120(2) of the Delhi School Education Rules, 1973 to be not applicable to unaided schools.

5. Not only so, we are also of the opinion that there could be no ex parte or ad-interim stay of order of the Disciplinary Authority of suspension except in the rarest of rare cases. No such finding has been returned by the learned Single Judge. Reference in this regard can be made to Uttar Pradesh Rajya Krishi Utpadan Mandi Parishad Vs. Sanjiv Rajan 1993 Supp (3) SCC 483 laying down that orders of suspension should not be interfered with by the Courts and to State of U.P. and Others Vs. Sandeep Kumar Balmiki and Others, holding that interim order staying the order of termination ought not to be passed inasmuch as it tantamounts to automatically allowing the writ petition without permitting the parties to place their respective cases at the time of final hearing of the writ petition; it was observed that the High Court had "fallen in grave error in staying the order of termination during the pendency of the writ petition" and that "final relief could not be granted at the interim stage". However, we refrain from giving any final opinion on this aspect also since the application for interim relief is still pending consideration before the learned Single Judge and has not been disposed of.

6. For all the aforesaid reasons, we are of the opinion that the order of the learned Single Judge granting ad-interim stay of the order of the Disciplinary Authority of the appellant School of suspension cannot be sustained.

7. The senior counsel for the respondent No. 1 has however ultimately challenged the very maintainability of this appeal. It is contended that no appeal lies against such an ad-interim order. It is highlighted that the appeal has been filed u/s 10 of the Delhi High Court Act, 1966 as well as under the Letters Patent. With reference to the judgment of the Division Bench of the Himachal Pradesh High Court in State of Himachal Pradesh Vs. Ajit Kumar ILR 1976 5 HP 24 stated to have been approved in R.J. Shah and Co. Vs. H.P. State Electricity Board, it is contended that Section 10(2) of the Delhi High Court Act, 1966 is not a source of appellate power and Clause 10 of Letters Patent cannot be invoked to appeal from an interim stay order granted by a Single Judge in Civil Writ petition which

is by way of Extra Ordinary Civil Jurisdiction.

8. Attention of the senior counsel for the respondent is however invited to the recent judgment dated 19.10.2012 of the Full Bench of this Court in FAO (OS) No. 684/2010 titled Jaswinder Singh Vs. Mrigendra Pritam Vikram Singh Steiner laying down that an order passed by a Single Judge, in exercise of Ordinary Original Civil Jurisdiction, and which under the CPC is non-appealable, but which meets the test of a "judgment" i.e. decides matters of moment or affects vital and valuable rights of parties and which works serious injustice to the parties concerned, an appeal to the Division Bench would lie u/s 10 of the Delhi High Court Act and not under Clause 10 of the Letters Patent. It was further held that Clause 10 of the Letters Patent refers to an appeal from the Single Judge to a Division Bench, when writ jurisdiction is exercised as Extra Ordinary Civil Jurisdiction and against a judgment as defined in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, an order deciding valuable rights of the parties or order of the moment.

9. We are of the opinion that an order granting ad-interim stay of the order of the Disciplinary Authority of suspension would certainly be an order of the moment or an order affecting the valuable rights of the parties in the facts of the present case inasmuch as the same enables the respondent No. 1, whom the Disciplinary Authority of the appellant has deemed appropriate to suspend, to report for work and enter the appellant School and when granting of such interim orders has been deprecated by the Supreme Court. We therefore do not find any merit in the said plea also of the respondent No. 1. Even otherwise, it has been held by the Division Bench of this Court in Prakash Atlanta JV and Others Vs. NHA and Others that an LPA lies against such an order. We accordingly allow this appeal and set aside the order dated 30.10.2012 of the learned Single Judge staying the operation of the order of the Disciplinary Authority of the appellant of placing the respondent No. 1 under suspension. We however leave all other pleas, save to the maintainability of this appeal, open for the parties to urge before the learned Single Judge and for decision of the learned Single Judge. Needless to state that any observations made herein shall not come in the way of the learned Single Judge dealing with the application for interim relief or preferably the writ petition itself in accordance with law.