

(2003) 05 DEL CK 0009
In the Delhi High Court
Case No : CW 2126 of 2003

Glory Public School and Another

APPELLANT

Vs

Lt. Governor, Govt of NCT and Others

RESPONDENT

Date of Decision : 28-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi School Education Act, 1973 — Section 4(3)
Limitation Act, 1963 — Section 5

Citation : (2003) 8 AD 454 : (2003) 107 DLT 662 : (2003) 71 DRJ 161

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Avnish Ahlawat, for the Appellant; George Paracken, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—Rule. With the consent of the parties this writ petition is taken up for final disposal.

2. The petitioner, Glory Public School, Sarita Vihar, New Delhi, is a school which is up to the middle level i.e. up to class VIII. This school was granted recognition in 1995. The question involved in this petition relates to the upgradation of the school to class X. The only issue involved here is as to whether the writ petition is to be dismissed on the ground of laches or not.

3. In so far as the facts are concerned, they are not in dispute. By an application dated 19th March, 1997, the petitioner applied for upgradation of the school to secondary level i.e. up to class X. The application was made to the Director of Education (respondent No. 2 herein). The application of the petitioner was rejected on 6th July, 1998 and there were 23 grounds of rejection pointed out in the said rejection letter. However, amongst the 23 grounds, there was no objection with regard to the area necessary for running the school.

4. The petitioner being aggrieved, filed an appeal u/s 4(3) of the Delhi School Education Act, 1973 which was heard by the Lieutenant Governor and the Lieutenant Governor by an order dated 9.12.98, after observing that the petitioner had claimed to have removed all the 23 objections raised by the Directorate of Education, remanded the case to the Director of Education to reconsider the matter afresh on merits. He observed that it is for the Directorate to verify whether the school fulfills all the necessary requirements for upgradation.

5. Thereafter, by a letter dated 15.9.2000, the petitioner was informed by the Education Officer that the request for upgradation of the school was rejected. The sole ground for rejection was that as per the norms Secondary School should function on an area of 1000 sq. meters whereas the petitioner's school was functioning in an area of 865.90 sq. meters. It is pertinent to note that this objection had not been taken when the petitioner's application had earlier been rejected on 6.7.1998. In fact, it could not have been taken because the norms for a secondary school at that point of time was only 500 sq. meters. The norms were admittedly enhanced to 1000 sq. on 24.12.99.

6. Being aggrieved by this rejection, the petitioner once again filed an appeal before the lieutenant Governor who disallowed the appeal by an order dated 22.11.2000 in the following terms:

" I have heard both the parties and have carefully gone through the documents on record. The issue here is of providing adequate space and facilities to the children attending the school. That must be governed by reasonable norms, based on a perception of the minimum amenities that should be available to the children. The norms which have been adopted by the department from December, 1999, though an upgradation of the previous norms, are still quite modest. It is difficult to see how a secondary school may be run in a satisfactory way in premises less than 1000 sq. yards. I Therefore see no justification in interfering with the decision of Director of Education. The school should approach the department for upgradation as and when it acquires the minimum area prescribed by the department. The instant appeal is hereby dismissed."

7. From the above, it is apparent that because the new norms had come on 24.12.99, the Lieutenant Governor did not accept the appeal of the petitioner. Thereafter, the petitioner did not approach this court till the filing of the present writ petition on 18.3.2003. In other words, the writ petition has been filed after a little over two years from the date of the Lieutenant Governor's order dismissing the petitioner's appeal. It is the contention of the petitioner that although it was aggrieved by that order, it all the same, attempted to acquire more land, so as to comply with the said new norms. In the meanwhile, as stated in the additional affidavit filed by the petitioner, it is submitted that in a similar fact situation which has arisen in the case of Bal Vikas Public School, this court in CW.No. 3838/2000 had delivered a judgment dated 3.1.2003 wherein it categorically held that the new norms were mere executive instructions and did not partake

the nature of the statutory rules as envisaged in Section 28(2) of the said Act. It further held that there was no legal sanction for making these executive instructions applicable retrospectively. In view of the discussion in the said judgment which is placed on record at pages 45 to 53 of the paper book, this Court held the petitioner therein to be entitled to have his application for upgradation considered and decided based on the norms as were applicable in March, 1999 which was the date of the application in that case. This court categorically held that the impugned order therein, inasmuch as it applied the criteria given in the letter dated 24.12.99, could not be sustained and was accordingly quashed. The parties were directed to decide the case of the petitioner therein as per the norms applicable in March, 1999 within one month from the date of the judgment.

8. Learned counsel appearing on behalf of the respondent raised two objections. His first objection was that this writ petition ought not to be entertained inasmuch as it is barred by laches. He points out that the order of the Lieutenant Governor dated 22.11.2000 has not been challenged by the petitioner prior to the filing of the present writ petition which was filed after a little over two years. Accordingly, he submits that the writ petition should be dismissed on the ground of delay. The second ground that the learned counsel for the respondent has submitted is that after remand by the Lieutenant Governor's order dated 19.12.98, the proposal for upgradation was rejected on 15.9.2000 and by that time the new norms required an area of 1000 sq. meters for a secondary school had already come into effect. Therefore, in any event of the matter, the petitioner was not entitled to upgradation.

9. In reply to these objections, learned counsel for the petitioner has cited four decisions of the Hon'ble Supreme Court being (i) State of U.P. and Others Vs. Raj Bahadur Singh and Another, ; (ii) Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s, ; (iii) Lt. Governor of Delhi and others Vs. Const. Dharampal and others, and (iv) K.C. Sharma and others Vs. Union of India and others, .

The first two judgments of the Supreme Court pertain to the question of delay. In the decision State of U.P. and Others Vs. Raj Bahadur Singh and Another, , the Supreme Court in para 2 thereof has observed as under:

" In our opinion the approach of the High Court is not justified. There is no time-limit for filing the writ petition. All that the court has to see is whether the laches on the part of the petitioner are such as to disentitle him to the relief claimed by him. But the High Court appears to have examined the matter as if it was a case u/s 5 of the Limitation Act, 1963. Apart from the above, we do not think that the proceedings should be prolonged any further."

In the second decision i.e. Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s, , the supreme Court has observed in para 2 as under:

" The plea of limitation based on this section is one which the court always looks upon with disfavor and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of Course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded , it has to be upheld by the court, but what we fell is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavialable."

From the aforesaid decision, it is apparent that there is no time limit for filing a writ petition. However, the court does have to see whether the laches on the part of the petitioner are such as to disentitle him to the relief claimed by him. This is a matter of discretion of the court. It is further observed by the Supreme Court that it was high time that the governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. The other two decisions cited by the learned counsel for the petitioner are not relevant for the controversy at hand.

10. While considering the general question of condensation of delay, the Supreme Court has in the case of G.Ramegowda, Major & Others v. Special land Acquisition Officer (1988) 2 SC 142 observed that

"It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

In the same judgment of the Supreme Court, it has been noted that delay should not be condoned where there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party. Thus, apart from these eventualities, since there is no time limit prescribed for approaching this court in Article 226 of the Constitution of India, this court would have to consider whether the party approaching the court under Article 226 has approached the court within reasonable time.

11. From the facts and circumstances of the present case, it appears that the first application for upgradation was made by the petitioner as far back as in 1997. This was rejected in July, 1998 pointing out 23 defects, none of which related to the objection qua area. On appeal, the Lieutenant Governor remanded the matter for reconsideration on 9.12.98. In all fairness, as mentioned in Bal Vikas Public School's case, the application ought to have been considered after remand within four months and that if the application had been considered and disposed of within four months of 9.12.98, the question of applying the new

norms would not at all have arisen in view of the admitted facts that the new norms of 1000 sq.meters came to be applied only on 24.12.99. The mere fact that the concerned authorities took almost 2 years to dispose of the remanded case cannot be held against the petitioner. This court in Bal Vikas Public School's case has already held that the new norms which were effective on 12.12.99 did not have any retrospective applicability. As such the same cannot be applied to the petitioner's case also. If that be the position, not granting the relief prayed for in this petition by the petitioner would amount to denying the petitioner what is due to it on merely technical grounds. This court will not come in the way of granting relief to the petitioner on technical ground, particularly, in view of the observations of the Supreme Court as noted above.

12. The Lieutenant Governor's order dated 22.11.2000 is quashed and respondent No. 2 is directed to decide the case of the petitioner as per the norms applicable prior to 24.12.99. The decision be taken within two months from today. The writ petition is allowed to this extent. No order as to costs.