

(2017) 01 DEL CK 0067
In the Delhi High Court
Case No : W.P.(C) No.6021 of 2015

Gujeshwari Devi Chauhan

APPELLANT

Vs

NCT/Govt of Delhi

RESPONDENT

Date of Decision : 20-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 237 DLT 463

Hon'ble Judges : Gorla Rohini, CJ. and Ms. Sangita Dhingra Sehgal, J.

Bench : Division Bench

Advocate : Mr. D.K. Thakur, Advocate, for the Respondent No. 4; Mr. Naushad Ahmed Khan, ASC with Ms. Astha Nigam, Advocate, for the GNCTD; Mr. Manish Mohan, CGSC with Mr. Shivam Chanana, Ms. Shivangi Sinha and Ms. Manisha Saroha, Advocates, for the Union of India; Mr. L.B. Rai, Advocate, for the Respondent No. 6; Mr. Mukesh Kher with Mr. Priyanka Kher, Advocates, for the Respondent No. 7; Mr. Anil Kumar Jha with Mr. Alok Kumar Rai and Ms. Vijayalaxmi Jha, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Sangita Dhingra Sehgal, J. - The present Public Interest Litigation has been filed praying for the following reliefs:

"a) issue appropriate writ/writs, order/orders, direction/directions including the writ of mandamus, commanding the respondents, quash/ strike down, the order dated 18th May, 2015 passed by the respondent No.1 annexed herewith as annexure P-11;

b) issue appropriate writ/writs, order/orders, direction/directions including the writ of mandamus commanding the Respondents and direct the same to maintain the Secular character/image of the Uttar Pradesh Samaj Society, UPRAS Vidyalaya without least distortion i.e. no religious activity, directly or indirectly, either in express manner or in implied manner be permitted in the Society/ School in question, with further to maintain status quo as it was in 2010/2011

with ad-interim ex-parte order; and

c) Pass such other order/orders as the Hon"ble Court may deem fit and proper in the facts and circumstances of the case."

2. We have heard learned counsel for both the parties and perused the available material on record.

3. Facts as narrated by the petitioner in the writ petition are that the natives of Uttar Pradesh who migrated to Delhi, constituted a society namely Uttar Pradesh Samaj (hereinafter referred to as the UPRAS), a society registered under the Societies Registration Act, 1860 bearing registration No. S-752. The aims and objects of the Society are to preserve, promote and develop social, cultural, economic, academic issues of the natives of Uttar Pradesh residing in Delhi. In the year 1985, the UPRAS Society started a Senior Secondary Private/Unaided School affiliated to the CBSE up to standard XII namely UPRAS Vidyalaya governed by the Delhi School Education Act and Rules 1973. In 2011, one Mr. Nagendra Rai claimed to be the Executive President of the UPRAS. Subsequently, Mr. Nagendra Rai was replaced by Mr. Baleshwar Rai. In 2012, some persons with ulterior motive formed a new Executive Committee headed by one Mr. Mukesh Kher who forcibly took the management of the School under its control. Mr. Janardan Rai (Vice President of the Society since 2006 and manager of the said UPRAS School namely UPRAS Vidyalaya) filed writ petition No. 7187 of 2011 wherein this Court observed that there are two management committees. There are claims and counter claims, allegations and counter allegations, which can be adjudicated in a Civil Court/ Tribunal and after considering the facts and circumstances directed the Government of Delhi to take over the school. Mr. Vinod Rai, General Secretary of UPRAS, filed a declaratory suit C.S. (OS) 1679/2012, praying therein to declare the Central Executive Committee headed by Mr. Nagendra Rai as illegal and to declare the society headed by Mr. R.K. Singh as genuine and legal. The adjudication of the above mentioned suit is pending before this Court. The Executive Committee headed by Mukesh Kher filed a writ petition No. 6288 of 2012 before this Court challenging the order for taking over the management by Government of Delhi. Since Government of Delhi did not respond to the several representations made by the respondent No. 7 to it for changing the name of the UPRAS Vidyalaya to Bala Pritam Guru Harikrishnan International Public School, the committee headed by Mr. Mukesh Kher filed a writ petition No. 2556 of 2013 and sought permission of this Hon"ble Court to change the name of the School as stated supra. The learned Single Judge vide order dated 24.12.2014 allowed the writ petition No. 2556 of 2013 and directed Government of Delhi to dispose of the representation filed by the Executive Committee within 6 weeks by passing a speaking order. The relevant paras are as under:

"10. It may also be noticed that during the pendency of the matter, learned counsel for the respondent was repeatedly asked as to who is running the school, who is signing the cheques, operating the bank accounts and paying salaries to

the teachers and staff, as per their record.

11. It could not be disputed that the petitioners herein were carrying on the day-to-day functions of the school and according to the petitioners they are duly elected members as per the elections held.

12. In view of above the present writ petition is allowed. The impugned order dated 16.4.2013 is set aside with a directions that the Director of Education will consider the request of the petitioner for change of name in accordance with law within six weeks from today by passing a speaking order."

The Director of Education/respondent No. 1 decided the request of the Executive Committee and vide order dated 18.05.2015 allowed the request of the Managing Committee of the school for the changing the name of the school from UPRAS Vidyalaya to Bala Pritam Guru Harikrishnan International Public School subject to certain conditions.

4. Mr. Anil Kumar Jha, the learned counsel appearing on behalf of the petitioners contended that the impugned order dated 18.05.2015 passed by respondent No.1 is illegal, unsustainable and without jurisdiction and is violative of Article 14, 21, 25, 28(3) of the Constitution of India. He further contended that in the present case, the respondent No.7 is a fake and forged Executive Committee of the Society which grabbed and took control over the Society by illegal means with an ulterior motive and started propagating the Sikh religion in the school like setting up gurudwara in the school premises and issuing circulars to compel students and staff members to follow and practise Sikhism.

5. The learned counsel for the petitioners further contended that the respondent No. 1 has misread the order dated 24.12.2014 passed in the W. P. (C) 2556/2013 to the effect that respondent No. 1 deemed it a direction of the Court to grant permission as sought by the Executive Committee. The learned counsel for the petitioners further submitted that respondent No. 1 vide order dated 18.05.2015 granted permission to the respondent No. 7 to change the name of the school without taking into consideration the constitution of the UPRAS.

6. On the converse, Mr. Mukesh Kher, the learned counsel appearing on behalf of the respondent No. 7 raised an objection on the maintainability of the present petition and submitted that the petitioners have no locus to challenge the order dated 18.05.2015 passed by the Directorate of Education by way of Public Interest Litigation. The learned counsel further contended that the petitioners have filed the present petition on the behest of Mr. Janardhan Rai who had captured the school in 2006 with an intent to create hindrance in the smooth and peaceful functioning of the school which is run by respondent No. 7.

7. The learned counsel for the respondent No. 7 further contended that order dated 24.12.2014 passed in W.P.(C) No. 6228/2012 and other connected petitions was challenged by Mr. Janardhan Rai by way of LPA No. 217/2015 which was dismissed by this Court and had attained finality and now the petitioners in

the garb of Public Interest Litigation cannot reagitate the issue which has already been decided by this Court.

8. Mr. Naushad Ahmed Khan, Additional Standing counsel appearing for GNCTD submitted that if the petitioners are aggrieved by the order passed dated 18.05.2015 by the Directorate of Education, they should have approached the appropriate authority under the Delhi Education Act and hence, the Public Interest Litigation is not maintainable.

9. We found from the records that by way of order dated 18.05.2015, the Directorate of Education has passed a detailed order covering various issues on which the parties are disputing, relevant portion of which is recapitulated as under :

" AND WHEREAS, this Directorate vide its recent letter dated 16.03.2015 requested Registrar of Society, Patparganj Industrial Area to ascertain the authenticity of the members of the Governing Body of the society and also provide a copy of the same. The said office vide letter dated 17.03.2015 informed that as per the record available with them, there are three lists of Governing Body's members for the years 2011-16. It has also been conveyed that none of these list is certified under the Societies Registration Act, 1860.

AND WHEREAS, it is evident from the report received from the O/o The Registrar of Societies that there is still ambiguity on the rightful claimant of the society which is managing the affairs of the Managing Committee of the school.

AND WHEREAS, the Hon"ble High Court in its Order dated 24.12.2014 in W. P. (C) 2556/2013 held that the petitioners herein are carrying on day to day activities vis-a-vis signing the cheques, operating the bank accounts and paying salaries co the teachers/staff, as per their records and are functioning as duly elected members as per the election held.

NOW THEREFORE, giving reliance on the observations of Hon"ble High Court in the preceding paras, the request of the Managing Committee of the school for change of name from "UPRAS Vidyalaya" to "Bala Pritam Guru Harkishan International Public School, Vasant Marg, New Delhi" is hereby allowed subject to the following conditions:

1. That there will be no change in the Managing Committee of the school, after the change of name.
2. That it is only the change of name of the school from "UPRAS Vidyalaya" to "Bala Pritam Guru Harkishan International Public School, Vasant Marg, New Delhi" and character of the school will remain unchanged.
3. That the change of name of the school from "UPRAS Vidyalaya" to "Bala Pritam Guru Harkishan International Public School, Vasant Marg, New Delhi" is under the same society i.e. "Uttar Pradesh Samaj, Delhi (regd.)". There is no transfer from teh society to another society.

4. That the school shall get the scheme of management changed in new name.
5. That by the proposed change, there will be no change in the liability of the society or management.
6. That the society will get public notification of change in the name of the school in at least two leading newspapers of Delhi within a week time.
7. That the change of name of school shall also be intimated to the office of the Registrar of Societies of Delhi immediately.
8. That the Directorate of Education shall not be responsible for any dispute due to change of name of school.
9. The liabilities (if any) of ""UPRAS Vidyalaya" will be the liability of "Bala Pritam Guru Harkishan International Public School, Vasant Marg, New Delhi" in future.

This issues with the prior approval of the Competent Authority."

10. We have at the outset enquired from the counsel for the petitioner whether he can file a Public Interest Litigation challenging the order of the Directorate of Education. The answer to our query was negative.

11. The Principle relating to entertainment of Public Interest Litigation as culled down by the Hon"ble Supreme Court in W.P. (C) 24388 of 2011 in case of Raghuvir and Ors. v. State of Haryana & Ors. reads as under:

"Public Interest Litigation is an important jurisdiction conferred on the constitutional Courts to be exercised with great circumspection and caution as there is every possibility of this jurisdiction being misused by interested persons, who, in the garb of this litigation, can make an effort to settle their personal scores. As the name itself suggests this jurisdiction is to be exercised for the benefit of the general public and that too, primarily where the benefit is being sought for the section of the society, who are not able to approach the courts and, therefore, predominantly to provide access to justice to the poor, deprived, vulnerable, discriminated and marginalized sections of the society. Public Interest Litigation can be termed as one where any interested person, in the welfare of the people, who is in an disadvantageous position, knocks the doors of the Court for protection of the fundamental rights of such section of the disadvantaged people. The common rule of locus standi is relaxed for a person who complaints on their behalf for redressal of their grievance so that their rights can be protected and their rightful claims granted to them but this extraordinary jurisdiction cannot be put into effect to settle the dispute between the two warring groups, which dispute falls purely in the realm of private law and the same thus, cannot be allowed to be agitated as a Public Interest Litigation.

It is also, by now, well settled that this sacrosanct jurisdiction of Public Interest Litigation should be invoked very sparingly and that too, in favour of vigilant litigant and not for persons, who invoke this jurisdiction after an inordinate,

unexplained delay when much water has flown since the cause of action had arisen and further not for persons, who invoke this jurisdiction for the sake of publicity or for the purpose of their private ends. This jurisdiction is meant for the purpose of coming to the rescue of the down trodden and not for the purpose of serving private ends. Therefore, the Court should not exercise this jurisdiction lightly but should exercise in very rare and few cases involving genuine public cause(s) of a large number of people, who cannot afford litigation and are made to suffer at the hands of authorities. "

12. Keeping in mind the principle laid down by the Hon"ble Supreme Court in entertaining the Public Interest Litigation as well as in the light of the facts of the present case, in our considered opinion, the present Public Interest Litigation challenging the order dated 18.05.2015 passed by the Directorate of Education, is not maintainable. The petitioners are at liberty to challenge order dated 18.05.2015 passed by the Directorate of Education before the appropriate authority under the Act.

13. Accordingly, the writ petition is dismissed.

14. No costs.