

(2011) 06 DEL CK 0001

In the Delhi High Court

Case No : Writ Petition (C) No. 8721 of 2010

Mamta

APPELLANT

Vs

School Management of Jindal Public School and Others

RESPONDENT

Date of Decision : 01-06-2011

Acts Referred:

Delhi School Education Act, 1973 — Section 2, 4, 5, 8(4)

Delhi School Education Rules, 1973 — Rule 115, 116(2), 118, 120, 120(1)

Citation : (2011) 5 AD 630 : (2011) 124 DRJ 12

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Raj Kumar Sherawat and Naresh Kumar Sharma, for the Appellant; Prag Chawla and Saurabh Shokeen for R-1 to 3, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The challenge by each of the Petitioners employed with the Respondent School is to the charge sheet and to the order placing them under suspension. Notice of the writ petitions was issued and vide order dated 10th February, 2011 further proceedings in respect of the impugned charge sheets were stayed.

2. The counsel for the Respondent School informs that before 10th February, 2011 inquiry in pursuance of the charge sheets in all the three cases had been completed and report filed with the Disciplinary Authority of the Respondent School and now only the decision by the Disciplinary Authority on the basis of the said report remains to be taken. It is further stated that the services of the Petitioner in W.P.(C) No. 8722/2010 already stood terminated prior to 10th February, 2011.

3. The counsel for the Petitioners controverts the aforesaid.

4. Though this Court is of the opinion that writ petitions impugning the charge sheet are not to be entertainable and the challenge ought to be made to the final order only but the counsel for the Petitioners refers to State of Punjab v. V.K.

Khanna AIR 2001 SC 343 though also observing that the justifiability of the charges at the stage of initiation of disciplinary proceeding cannot be delved into by any Court but also holding that if a strong case of bias is made out which would establish the inquiry to be farcical, it is permissible to interfere at that stage also.

5. It is not in dispute that the Respondent School is an unaided recognised School governed by the provisions of the Delhi School Education Act, 1973 and the Delhi School Education Rules, 1973.

6. The contention of the Petitioners inter alia is that neither have the charge sheets been issued nor inquiry intended to be conducted by the Disciplinary Authority within the meaning of Rules 118 & 120 which are as under:

118. Disciplinary authorities in respect of employees-The disciplinary committee in respect of every recognised private school, whether aided or not, shall consist of-

(i) the Chairman of the Managing Committee of the school;

(ii) the manager of the school;

iii) a nominee of the Director, in the case of an aided school, or a nominee of the appropriate authority, in the case of an unaided school;

(iv) the head of the school, except where the disciplinary proceeding is against him and where the disciplinary proceeding is against the Head of the School, the Head of any other school, nominated by the Director;

(v) a teacher who is a member of the Managing Committee of the school; nominated by the Chairman of such Managing Committee.

120. Procedure for imposing major penalty -

(1) No order imposing on an employee any major penalty shall be made except after an inquiry, held, as far as may be, in the manner specified below:

(a) the disciplinary authority shall frame definite charges on the basis of the allegation on which the inquiry is proposed to be held and a copy of the charges together with the statement of the allegations on which they are based shall be furnished to the employee and he shall be required to submit within such time as may be specified by the disciplinary authority, but not later than two weeks, a written statement of his defence and also to state whether he desires to be heard in person;

(b) on receipt of the written statement of defence, or where no such statement is received within the specified time, the disciplinary authority may itself make inquiry into such of the charges as are not admitted or if considers it necessary so to do, appoint an inquiry officer for the purpose;

(c) at the conclusion of the inquiry, the inquiry officer shall prepare a report of

the inquiry regarding his findings on each of the charges together with the reasons therefor;

(d) the disciplinary authority shall consider the record of the inquiry and record its findings on each charge and if the disciplinary authority is of opinion that any of the major penalties should be imposed, it shall -

(i) furnish to the employee a copy of the report of the inquiry officer, where an inquiry has been made by such officer;

(ii) give him notice in writing stating the action proposed to be taken in regard to him and calling upon him to submit within the specified time, not exceeding two weeks, such representation as he may wish to make against the proposed action;

(iii) on receipt of the representation, if any, made by the employee, the disciplinary authority shall determine what penalty, if any, should be imposed on the employee and communicate its tentative decision to impose the penalty to the Director for his prior approval;

(iv) after considering the representation made by the employee against the penalty, the disciplinary authority shall record its findings as to the penalty which it proposes to impose on the employee and send its findings and decision to the Director for his approval and while sending the case to the Director, the disciplinary authority shall furnish to him all relevant records of the case including the statement of allegation charges framed against the employee, representation made by the employee, a copy of the inquiry report, where such inquiry was made, and the proceedings of the disciplinary authority.

(2) No order with regard to the imposition of a major penalty shall be made by the disciplinary authority except after the receipt of the approval of the Director.

(3) Any employee of a recognised private school who is aggrieved by any order imposing on him the penalty of compulsory retirement or any minor penalty may prefer an appeal to the Tribunal.

7. The charge sheets in the present case have been issued by the "Chairman" of the Respondent School and charges the Petitioners with major misconduct inviting major penalty of termination of service.

8. Attention of the counsel for the Petitioners was on 23rd May, 2011 invited to the judgment dated 26th April, 2011 in W.P. (C) No. 10628/2009 titled Samarth Shiksha Samiti (Regd.) v. DOE holding that owing to the words "as far as may be" in Rule 118 there is no flaw in the charge sheet being not issued by the Disciplinary Committee constituted under the said Rule and it is open to the Disciplinary Committee to ratify the same. The counsel for the Petitioners had then sought time to examine the matter.

9. The counsel for the Petitioners had yesterday also contended that in the present case, not only charge sheets have not been issued by the Disciplinary Authority constituted under Rule 118 but even the inquiry is sought to be

conducted or as per the Respondents has been conducted by an authority other than the said Disciplinary Authority. In the circumstances, the counsel for the Respondents had yesterday sought time to produce the record relating to the issuance of the charge sheet and the holding of the inquiry. I may notice that no counter affidavits/replies have been filed inspite of opportunity.

10. The counsel for the Respondents has today produced the record and from which it transpires that the Managing Committee of the Respondent School constituted under Rule 59 authorized the Chairman of the Respondent School to issue the charge sheet and an Inquiry Officer was also appointed by the Chairman. The counsel for the Respondent School has contended that the members of the Managing Committee are the same as the members of the Disciplinary Committee prescribed under Rule 118. He has with reference to the minutes of the meeting of the Managing Committee where the decision aforesaid was taken shown that the Chairman of the Managing Committee of the School, the Head of the School i.e. Principal as well as a teacher who is a member of the Managing Committee of the School, were present in the said meeting of the Managing Committee. It is further stated that the nominee of the DOE was informed of the meeting and having not opted to attend the meeting is deemed to be present; that there is no Manager of the Respondent School. It is thus contended that the Managing Committee which took the decision to issue the charge sheet to the Petitioners and to hold the inquiry is also the Disciplinary Authority/Committee.

11. The question which thus arises for adjudication is that if, the Managing Committee includes all the persons who are to constitute the Disciplinary Authority/Committee, whether it can be said that the Managing Committee is also the Disciplinary Authority/Committee.

12. Rule 59(1)(a & b) is as under:

59. Scheme of management of recognised schools-

(1) The scheme of management in relation to a recognised school shall provide that:

(a) the Managing Committee of a recognised aided school shall consist of not more than fifteen members; and the Managing Committee of a recognised unaided school shall consist of not more than twenty one members;

(b) subject to the total number of members specified in Clause (a) every Managing Committee shall include the following, namely:

(i) the head of the school;

(ii) one parent, who is a member of the Parent-Teachers" Association of the school, constituted in accordance with such instructions as may be issued by the Administrator, and is elected by that Association;

(iii) two teachers of that school, to be elected by the teachers of that school from

amongst themselves;

(iv) two other persons (of whom one shall be woman), who are, or have been, teachers of any other school or of any college, to be nominated by the Advisory Board;

(v) two members, to be nominated by the Director, of whom one shall be an educationist and the other an officer of the Directorate of Education, Delhi, not below the rank of the Principal of a Higher Secondary School;

(vi) the remaining members to be nominated or elected, as the case may be, in accordance with the rules and regulations of the society or trust by which the school is run.

13. I also find that Section 2(k) of the Act defines the "Head of School" as the principal academic officer of the School and Section 2(m) defines the "Manager" as the person entrusted under the scheme of management of School made u/s 5, with the management of the affairs of the School. "Managing Committee" is defined in Section 2(n) as the body of individuals entrusted with the management of the School. Section 4 makes the existence of a duly approved scheme of management as required by Section 5 a precondition for grant of recognition to the School. Section 5 requires the Managing Committee of the School to in accordance with the Rules and with the previous approval of the appropriate authority, make a scheme of management for the School.

14. Rule 59(2) while prescribing as to for what all the scheme of management to be prepared shall provide for, in Clause (e) requires the scheme of management to provide for the "duties, powers and responsibilities of the Managing Committee, which shall include control over appointments, disciplinary action and control on staff". Chapter XV of the Rules deals with "other duties and responsibilities of Managers and Managing Committees of Schools" but is not found to be relevant for the present purposes.

15. The Respondent School has not placed before this Court its scheme of management. Thus it cannot be said as to what the same provides qua "disciplinary action and control on staff". I have wondered whether, since disciplinary action and control on staff is to be within the scheme of management of the School to be prepared by the Managing Committee, it can be said that as long as the constituents of the Disciplinary Committee as per Rule 118 are also constituents of the Managing Committee, it can be said that the Disciplinary Committee is the same as the Managing Committee. Moreover, under Rule 98 the Appointing Authority of every employee of a School is the Managing Committee and the general view appears to be that the power to appoint comprehends the power to remove.

16. I am of the opinion that the Managing Committee cannot be held to be the Disciplinary Authority/Committee for the following reasons:

(i) had the intent been to constitute the Managing Committee as the Disciplinary

Authority/Committee also, there was no need in Rule 118 to prescribe the constitution of the Disciplinary Authority/Committee and it would have been sufficient to merely provide that the Managing Committee of the School shall also be the Disciplinary Authority/Committee;

(ii) while under Rule 59(1)(b)(v), of the two members of the Managing Committee to be nominated by the DOE, one is required to be an educationist and the other an officer of the DOE, Delhi, under Rule 118(iii), the member of the Disciplinary Authority/Committee is required to be either a nominee of the DOE in the case of an aided School or a nominee of the "appropriate authority" in the case of unaided School. "Appropriate Authority" is defined in Section 2(e) of the Act as, in the case of a School recognized by the Delhi Administration, as the Respondent School is, the Administrator or any other officer authorized by him in this behalf. Moreover, there is no qualification for such nominee, either of the DOE or of the Appropriate Authority as is in the case of the nominees of the DOE in the Managing Committee;

(iii) in some of the other cases coming before this Court, it has been seen that the DOE has been appointing nominee in the Disciplinary Authority/Committee expressly and did not take a stand that the nominee appointed to the Managing Committee would also be a nominee for the Disciplinary Authority/Committee;

(iv) though vide Rule 59(2)(e) the scheme of management is to also provide for the disciplinary action and control on staff but in view of the specific Rule 118 dealing with the Disciplinary Authority/Committee and further in view of Section 5 supra requiring the scheme of management to be in accordance with the Rules, the scheme of management qua disciplinary action and control on staff cannot be contrary to Rule 118.

(v) Managing Committee under Rule 59 is a much bigger Body than a Disciplinary Authority/Committee under Rule 118. To hold the two to be the same would tantamount to vesting the powers of the Disciplinary Authority/Committee also in persons other than those provided under Rule 118; Rule 118 does not permit presence in the Disciplinary Authority/Committee of persons other than those mentioned therein.

(vi) In the face of the Rules which are statutory in character expressly providing separately for Managing Committee and the Disciplinary Authority/Committee and further in face of Rule 120(1)(d) expressly empowering the Disciplinary Authority/Committee constituted under Rule 118 to also impose major penalty, it has to be necessarily held that the Rules have taken away the power under the general law of the Managing Committee as the Appointing Authority to take disciplinary action for and to impose a major penalty on the employee of the School.

Thus, it follows that notwithstanding the presence of a nominee of the DOE in the Managing Committee of the School and notwithstanding the Administrator, Delhi even if has delegated powers as an appropriate authority to the DOE, the

Managing Committee cannot be treated as the Disciplinary Authority/Committee.

17. I find that the Division Bench of this Court in P.K. Bansal Vs. Union of India (UOI) and Others, also held that the Managing Committee has no power to review the decisions of the Disciplinary Authority/Committee constituted under Rule 118. I may however mention that the subsequent Division Bench of this Court in The Managing Committee of Geeta Bal Bharti Senior Secondary School and Another Vs. Director of Education and Others, without noticing the earlier Division Bench, in para 39 generally observed that the ultimate power vests in the Managing Committee and the constitution of the Disciplinary Authority/Committee does not in any manner take away the powers of the Managing Committee to take necessary action in matters of discipline relating to teachers and employees. With due respect to the Division Bench, I am humbly of the opinion that it is not so reflected in the Rules. Moreover, the said observation came to be made in the context of the delay by the DOE in nominating the members to the Disciplinary Authority/Committee and for which a time period of two weeks was laid down by the Division Bench. The Supreme Court in Steel Authority of India, Successor of Bokaro Steel Limited Vs. Presiding Officers, Labour Court at Bokaro Steel City, Dhanbad, and Another, held that where under the Service Rules the Personnel Manager was the Disciplinary Authority, the Resolution of the Board of Directors of the Company and the orders of the Managing Director of the Company delegating the powers for disciplinary action to another officer would be of no avail. Thus, the observations aforesaid of the Division Bench in Kathuria Public School (supra) of the ultimate power vesting in the Managing Committee is contrary to what has been held by the Apex Court.

18. Once it is held that the Disciplinary Authority/Committee under Rule 118 is distinct from the Managing Committee, the action if any taken by the Managing Committee would not be in accordance with law and of no avail.

19. In the circumstances, it is felt that non-interference with the charge sheet at this stage would only result in further delays and in a decision which would not be in accordance with law.

20. The counsel for the Respondent School faced with the aforesaid, has expressed apprehension that the Petitioners may utilize the fresh proceedings by Disciplinary Authority/Committee constituted under Rule 118 as a dilatory measure.

21. The counsel for the Petitioners has assured that the Petitioners will participate diligently in the inquiry by a duly constituted Disciplinary Authority/Committee and shall not do anything to delay the same.

22. The Petitioners have also challenged the suspension order contending the same to be violative of Section 8(4) of the Act and Rule 115. However, the Division Bench of this Court in Kathuria Public School (supra) has held that the said provisions do not apply to an unaided recognized School as the Respondent School in the present case is. Even though the said judgment of the Division

Bench has been overruled by the Full Bench in judgment dated 27th August, 2010 in O. Ref. No. 1/2010 titled Presiding Officer, Delhi School Tribunal v. GNCTD but only on the aspect of the orders appealable before the Tribunal and not on the said aspect.

23. The counsel for the Petitioners has contended that the view aforesaid taken in Kathuria Public School is no longer good law in view of para 17 of G. Vallikumari Vs. Andhra Education Society and Others, . However, neither has the judgment of the Division Bench of this Court in Kathuria Public School been considered by the Apex Court nor did the aforesaid question arise for consideration before the Supreme Court. It thus cannot be said that the view aforesaid of the Division Bench of this Court in Kathuria Public School stands overruled.

24. The counsel for the Petitioners has also contended that since the order of suspension does not state that the subsistence allowance will be paid to the Petitioners, it is liable to be struck down on this ground alone. Reliance is placed on B.S. Verma v. Delhi Administration 1992 Lab. I.C. 2447. However, the said judgment is not applicable. In that case, it was found that the order of suspension did not indicate that any disciplinary proceedings were contemplated or pending and it was for this reason that the same was quashed. Else, the order of suspension is not required to state that the subsistence allowance will be paid inasmuch as the provision therefor is made under Rule 116 and Sub-rule (2) thereof provides the remedy of appeal to DOE for non-payment of subsistence allowance in accordance with the Rule. There is thus no merit in the said contention. No error can be found with the order of suspension and the challenge thereto is dismissed.

25. Accordingly, the writ petitions are partly allowed and it is directed:

(a) that the Respondent School shall constitute a Disciplinary Authority/Committee in accordance with Rule 118 supra including by seeking nomination of a nominee from the Administrator, Delhi;

(b) even though the Respondent Govt. of NCT of Delhi and the DOE though parties to these writ petitions and served with notice have not been appearing but they are directed to, upon being so approached by the Respondent School make nomination to the Disciplinary Authority/Committee within two weeks of so being approached;

(c) the Disciplinary Authority/Committee so constituted, shall take a decision whether to proceed on the basis of the charge sheet already issued or to issue a fresh charge sheet to the Petitioners;

(d) as far as the inquiry stated to have already been concluded is concerned, the same having been conducted by an Inquiry Officer not appointed under Rule 120(1)(b) by a Disciplinary Authority/Committee constituted under Rule 118, cannot be given effect to. Accordingly, the said proceedings shall be of no avail

and the Inquiry Officer appointed by the Disciplinary Authority constituted as directed above, shall proceed with the inquiry in accordance with law;

(e) the Petitioners are bound by their assurance aforesaid and it is further directed that the inquiry proceedings shall be concluded within three months of the first hearing before the Inquiry Officer.

(f) the Respondent School shall within four weeks hereof pay the unpaid salary if any upto the date of suspension letter and the arrears of suspension allowance;

(g) the Petitioners shall hand over charge to the Principal of the Respondent School on 9th June, 2011 at 1100 hours;

(h) the Petitioners, till the conclusion of the disciplinary proceedings shall not enter into the premises of the School unless called upon by the Inquiry Officer/Disciplinary Authority/Disciplinary Committee/Managing Committee in writing;

(i) it shall be open to the Petitioners to take all pleas including those taken in these proceedings in the inquiry/disciplinary proceedings aforesaid.

The writ petitions are disposed of. No order as to costs.