

(2013) 04 DEL CK 0428

In the Delhi High Court

Case No : LPA No. 500 of 2012 and CM No. 11726 of 2012

Managing Committee, Naval Public School

APPELLANT

Vs

Neera Chopra and Another

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

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

Citation : (2013) 136 DRJ 601

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

Bench : Division Bench

Advocate : Jyoti Singh, with Mr. Amandeep Joshi, for the Appellant; Chetan Lokur, Advocate for Mr. Viraj R. Datar, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—This intra Court appeal impugns the judgment dated 1st May, 2012 of the learned Single Judge of dismissal of W.P.(C) No. 5390/2011 preferred by the appellant School. The appellant School had preferred the said writ petition impugning the order dated 27th May, 2011 of the Delhi School Tribunal (Tribunal) allowing Appeal No. 41/2003 preferred by the respondent No. 1. The said appeal was preferred by the respondent No. 1 against the order dated 14th October, 2003 of the appellant School issued with the approval dated 8th October, 2003 of the respondent No. 2 Directorate of Education, GNCTD (DoE), imposing penalty on the respondent No. 1 of removal from service of the appellant School. The Tribunal having set aside the order imposing penalty of removal from service, directed reinstatement of the respondent No. 1 in service, with 50% of the back wages and all consequential benefits. Notice of this appeal was issued and subject to deposit by the appellant School in this Court of Rs. 5 lakhs, interim stay was granted. The said amount of Rs. 5 lakhs has been deposited by the appellant School. The counsels have been heard.

2. The Tribunal having set aside the order of removal from service on a technical ground only, the scope of this appeal and the arguments of the counsels were

confined to the said ground only and need is thus not felt to deal with the factual controversy save to state, (i) that the respondent No. 1 was employed as a Principal in the appellant School with effect from 14th January, 1998; (ii) that the respondent No. 1 was served with a charge sheet dated 14th January, 2003 issued by the Chairman of the Managing Committee of the appellant School; (iii) that an Enquiry Committee headed by Justice A.K. Srivastava (retired) was appointed; (iv) that the Enquiry Committee submitted a report dated 7th September, 2003 indicting the respondent No. 1 of some of the charges levelled against her; (v) that after issuing show cause notice and considering the response of the respondent No. 1 thereto, the appellant School vide order dated 14th October, 2003 imposed the penalty of removal from service on the respondent No. 1 with the approval dated 8th October, 2003 as aforesaid of the respondent No. 2 DoE.

3. The order dated 27th May, 2011 of the Tribunal records that the respondent No. 1 had filed the appeal inter alia on the ground, (a) that the charge sheet dated 14th January, 2003 which formed the basis of penalty was issued by the Chairman of the Managing Committee and not by the Disciplinary Committee; that the Disciplinary Committee was constituted on 17th January, 2003 i.e. after the issuance of the charge sheet; that though the charge sheet was circulated amongst the members of the Disciplinary Committee on 17th January, 2003 and the members of the Disciplinary Committee ratified the charge sheet dated 14th January, 2003 issued by the Managing Committee but in view of the mandatory provisions of Rule 118 of the Delhi School Education Rules, 1973 (Rules), the framing of charges by any authority other than the Disciplinary Committee constituted in terms of Rule 118 of Rules is contrary to the Rule 120 and vitiates not only the charge sheet but all proceedings conducted in relation thereto; (b) that four of the five members of the Disciplinary Committee constituted, were disqualified from being the members of the Disciplinary Committee, being inimical towards the respondent No. 1 and being cited as a witness in the enquiry; (c) that the respondent No. 1 was not given an opportunity to show cause as to why the penalty of removal of service be not imposed upon her; (d) that the Enquiry Officer failed to consider the detailed written submissions furnished by the respondent No. 1; and (e) that the respondent No. 2 DoE had failed to apply its mind prior to according approval.

4. The Tribunal however further records that the main plea raised by the respondent No. 1 was, as recorded under challenge (a) above and the order of the Tribunal does not show the respondent No. 1 School having argued the grounds (b) to (d) above. It has also not been the case of any party that any other grounds were pressed before the Tribunal.

5. The contention of the appellant School before the Tribunal in opposition to ground (a) above was, that the Managing Committee of a School itself is the Disciplinary Authority as held by a learned Single Judge of this Court in judgment dated 27th January, 2004 in CWP No. 4694/2003 titled Mohan Lal Saran Vs.

Union of India and that the charge sheet in any case had been ratified by the Disciplinary Committee and reliance in this regard was placed on Maharashtra State Mining Corporation Vs. Sunil Pathak, .

6. The Tribunal considered itself not bound by the dicta of this Court in Mohan Lal Saran (supra) owing to certain observation in the order dated 23rd September, 2004 in Writ Appeal No. 155/2004 preferred there against. The Tribunal on its own interpretation concluded that the scheme of the Delhi School Education Act & Rules, 1973 clearly provides for two different bodies; the Managing Committee is a body vested with the duties and powers of managing the School and its constitution is provided in Rule 59; the constitution of the Disciplinary Committee is provided separately under Rule 118 and the Disciplinary Committee exercises power while framing charges on the basis of allegations against an employee and other powers vested in it. It was further held that had the Legislature intended the Disciplinary Committee and the Managing Committee to be one and the same thing, there was no need of two separate committees with separate constitution and separate roles to play. It was yet further held that charges framed by the Managing Committee are therefore illegal and non-est and void ab initio and incapable of ratification. Maharashtra State Mining Corporation (supra) was held to be a case where both the authorities had the same functions and duties to discharge and it was thus held by the Tribunal that the principle of ratification adopted in the said judgment was in the said context and not in the context where the action is illegal and non-est .

7. The learned Single Judge, in the impugned judgment has agreed with the reasoning of the Tribunal and thus dismissed the writ petition of the appellant School challenging the same.

8. The senior counsel for the appellant School, to meet an observation of the learned Single Judge in the impugned judgment that the charge sheet was signed by the Chairman only and not by the Managing Committee and that there was no resolution of the Managing Committee on record, has at the outset handed over a copy of the Minutes of the Extraordinary Meeting of the Managing Committee held on 13th January, 2003 approving the charge sheet and authorizing the Chairman of the Managing Committee to serve the charge sheet on the respondent No. 1. The senior counsel for the appellant School has next invited attention to the Minutes of the Meeting of the Disciplinary Committee held on 17th January, 2003 recording that the members of the Disciplinary Committee were informed that a charge sheet has been served on the respondent No. 1 by the Managing Committee; that the said charge sheet was circulated amongst the members of the Disciplinary Committee and the members adopted the resolution to ratify the said charge sheet.

9. The senior counsel for the appellant School has next contended that the Tribunal erred in not following the dicta of this Court in Mohan Lal Saran and the learned Single Judge having not considered the said aspect. It is argued that the efficacy of the judgment of the learned Single Judge as a precedent was not

effected by the observations of the Division Bench of this Court in appeal there against.

10. We have gone through the judgment of the learned Single Judge as well as the order of the Division Bench in the case of Mohan Lal Saran. The contention of Sh. Mohan Lal Saran was that the Managing Committee of a School has no authority in matters pertaining to disciplinary proceedings and it is only the Disciplinary Authority as per Rule 120 of the Rules which can decide on the penalty which can be imposed and the Managing Committee had no authority to deliberate on the enquiry report or to proceed under Rule 120. It was in the context of such a challenge that the learned Single Judge on a conspectus of various Rules held that the Disciplinary Authority contemplated by Rule 120 would be the Managing Committee of the School and that it is the Managing Committee of the School which is the competent body to take disciplinary action. However having held so, the learned Single Judge disposed of the writ petition directing reappointment of an Enquiry Officer to hold enquiry into the charge sheet as per Rules. Sh. Mohan Lal Saran preferred appeal against the said judgment and the Division Bench finding that the order of the learned Single Judge had been implemented by reappointing the Enquiry Officer and that fresh enquiry in which Sh. Mohan Lal Saran had participated had already been conducted and fresh punishment order had been passed, disposed of the appeal giving liberty to Sh. Mohan Lal Saran to challenge the new order. However, upon the counsel for Sh. Mohan Lal Saran expressing apprehension that dismissal of appeal would tantamount the interpretation given by the learned Single Judge of the Rules becoming final and coming in the way of Sh. Mohan Lal Saran in challenging the new order, the Division Bench observed that it shall be open to Sh. Mohan Lal Saran to take advantage of whatsoever grounds may be available to him including his interpretation of the Rules and the decision thereon would be uninfluenced by the interpretation given by the learned Single Judge.

11. The contention of the senior counsel for the appellant School before us is that the Division Bench did not express any doubts as to the correctness of the interpretation given by the learned Single Judge of various Rules and concluding the Managing Committee to be the Disciplinary Authority and the observations aforesaid were made only to enable Sh. Mohan Lal Saran in that case to make a fresh challenge. She has thus argued that the Tribunal erred in not following the judgment of the learned Single Judge.

12. The senior counsel has also invited attention to the judgment of one of us (Rajiv Sahai Endlaw, J.) in Samarth Shiksha Samiti Vs. Directorate of Education and Another, in that case the charge sheet was signed by the Manager of the School on behalf of the Managing Committee of the School and the Tribunal in appeal had similarly as in the present case held that charges had not been framed by the Disciplinary Committee constituted under Rule 118 and the Disciplinary Committee having been constituted after the issuance of the charge sheet, disciplinary proceedings were vitiated. On challenge being made to the

order of the Tribunal, on a reading of Rule 120, the relevant portion whereof is as under:

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.

It was held that the use of the words "as far as may be" suggests that strict compliance of the procedure prescribed therein is not to be insisted upon and deviations as per necessity are permissible and the principle of ratification would apply. Though in that case, there was no express ratification by the Disciplinary Committee, as in the present case, but it was held that the actions of the DoE of appointing nominees in the Disciplinary Committee with the knowledge of the charge sheet having been issued and of the Disciplinary Committee proceeding on the basis of charge sheet and appointing the Enquiry Officer to enquire into the charge sheet and considering the report of the Enquiry Officer on the said charge sheet were sufficient ratification of the charge sheet. Reliance in this regard was placed on Maharashtra State Mining Corporation. It was further noticed that though the Apex Court in *Marathwada University Vs. Seshrao Balwant Rao Chavan*, has held that the principle of ratification to be not applicable with regard to exercise of powers conferred under statutory provisions but in the light of the words "as far as may be", the principle of ratification in the present case would apply. Reliance in this regard was also placed on *Goa Shipyard Ltd. Vs. Babu Thomas*, where after considering both *Marathwada University* and *Maharashtra State Mining Corporation*, the principle of ratification was extended to service law also. Paras 24 and 25 of the judgment in *Samarth Shiksha Samiti* may be produced here in below:

24. Had the intent of the legislature been that the procedure prescribed in Rule 120 was to be strictly followed before imposition of any major penalty on an employee of the School, the legislature would not have used the words "as far as may be" in the said Rule. The Supreme Court recently in *High Court of The High Court of Judicature for Rajasthan Vs. Veena Verma and Another*, interpreted the words "as far as possible" as meaning that there is no hard and fast rule and such words give a discretion to the authorities and the Court cannot interfere with this discretion unless it is palpably arbitrary. Similarly a Seven Judge Bench of the Apex Court in *In Re: Presidential Poll*, held the words "as far as practicable" to be indicative that in practice, there may be no uniformity owing to various other factors. A Division Bench of this Court also in *Subhash Chander Vs.*

Rehmat Ullah, held that the words "as far as may be" are distinct from the words "shall apply" and further held that such expressions are obviously designed to free the proceedings from technicalities and rigours of a strict application.

25. In the present case, the charges against the Respondent No. 2 are grave. Need must have been felt to immediately proceed against him. The charge sheet appears to have been issued without noticing Rules 118 and 120. However, immediately after the objection in this regard being taken by the Respondent No. 2, steps for constitution of the Disciplinary Committee in accordance with Rule 118 were taken and Disciplinary Committee constituted and which did not choose to frame a fresh charge sheet and decided to proceed on the basis of the charge sheet already issued. The same is found to be sufficient/contextual compliance of Rule 120 (supra). The Tribunal does not appear to have considered the matter in the aforesaid context.

13. Per contra the counsel for the respondent No. 1 has relied on Marathwada University (supra) laying down that the principles of ratification do not have any application with regard to exercise of powers conferred under statutory provisions and the statutory authority cannot travel beyond the power conferred and any action without power has no legal validity and is ab initio void and cannot be ratified. He has also contended that it is not permissible for the appellant School to at this stage in this appeal introduce new document i.e. Minutes dated 13th January, 2003 of the Managing Committee and the learned Single Judge was right in observing that the charge sheet is not even by the Managing Committee but by the Chairman alone. It is also contended that in the light of the observations of the Division Bench in appeal, the judgment of the learned Single Judge in Mohan Lal Saran was rightly not held to be binding by the Tribunal. It is also contended that the other grounds urged before the Tribunal and noticed in the order of the Tribunal, have not been decided neither by the Tribunal nor by the learned Single Judge. Attention in this regard is invited to the Memorandum of Appeal filed before the Tribunal urging the said grounds.

14. We find that LPA No. 21/2012 was preferred against the judgment in Samarth Shiksha Samiti and in which notice was issued on the statement of the appellant employee therein that upon the punishment being converted from that of dismissal to compulsory retirement, he would not litigate further and the said appeal was disposed of on consent terms vide order dated 15th March, 2012.

15. We are of the view that the Tribunal cannot be said to be in error, in the light of the observations in the order in appeal, in considering itself not bound by the judgment of the Single Judge in Mohan Lal Saran. If the said judgment was not to come in the way of Sh. Mohan Lal Saran in making a challenge to the fresh order against him, it will be unfair to say that the said judgment can come in the way of other school employees.

16. We have de novo examined the Rules.

17. Chapter VIII of the Rules deals with Recruitment and Terms and Conditions

of Service of Employees of Private Schools other than Unaided Minority Schools and Rule 115 thereunder empowers the Managing Committee of a School to place an employee under suspension, where disciplinary proceedings are contemplated or pending or where a case against him in respect of any criminal offence is under investigation or trial or he is charged with embezzlement or where he is charged with cruelty towards any student or employee of the school or where he is charged with misbehavior towards parents or where he is charged with breach of any other code of conduct. Rule 117 prescribes the penalties which can be imposed upon an employee and classifies the same into minor and major penalties. Rule 118 prescribes the composition of the Disciplinary Authority. Rule 119 prescribes the procedure for imposing minor penalties. Rule 120 prescribes the procedure for imposing major penalty.

18. Though Section 8(4) of the Act requires the Managing Committee to make suspension only with the approval of DoE but the decision to suspend has to emanate from the Managing Committee. This Court in *B.S. Verma Vs. Delhi Administration and Others*, has held that the basic power to suspend is conferred on the Managing Committee. For taking such decision, the Managing Committee has necessarily to form an opinion as to the charge against the employee inasmuch as it is only for charges of certain kind that the power to suspend can be invoked and not for all kinds of charges. Similarly, the decision of the proposed penalty also has to be of the Managing Committee only i.e. whether to propose a minor or a major penalty for the misconduct of which the employee is accused. The Disciplinary Authority of a School does not appear to be a permanent or a standing body and is a body to be constituted each time when the School proposes to impose a penalty. This is obvious from the fact that even though the Managing Committee under Rule 59 and which is a permanent or a standing body is to comprise of the nominees of the DoE also, Rule 118 separately provides for composition of Disciplinary Authority. One of us (Rajiv Sahai Endlaw, J.) in *Mamta Vs. School Management of Jindal Public School and Others*, and against which no appeal is found to have been preferred, has held that merely because a nominee of the DoE also exists on the Managing Committee cannot be read as making the Managing Committee the Disciplinary Authority also. The practice prevalent also has been of the School, as and when need arises, approaching the DoE for nomination on the Disciplinary Authority. The Disciplinary Authority is thus constituted after the Managing Committee of the School has formed an opinion of the charges against the employee against whom major penalty proceedings are contemplated and whether or not to place him under suspension. The Scheme of the Rules thus permits the Managing Committee of the School to, before constitution of the Disciplinary Authority at least form an opinion of the nature of the charges against an employee guilty of misconduct. It thus cannot be said that the action of the Managing Committee of the School in framing the charges is *ex facie* illegal or contrary to the Rules.

19. Rule 120(1)(a) provides for the Disciplinary Authority to frame "definite charges" on the basis of the allegation on which the enquiry is proposed to be

held. The use of the expression "definite charges" is also indicative of "tentative charge" having already been framed, as aforesaid, under the scheme of the Rules, by the Managing Committee. Once it is found that in the scheme of the Rules, the Managing Committee of the School before seeking nomination on the Disciplinary Authority has already proposed the charges, we see no reason for holding that it is not possible for the Disciplinary Authority to, if of the opinion that the charges proposed or tentatively framed by the Managing Committee are appropriate, to adopt the same charges. Just like the Disciplinary Authority can ignore the charges proposed by the School and frame its own charges, similarly if the Disciplinary Authority is satisfied with the charges proposed by the School and on the basis whereof the Managing Committee has taken decision under Rules 115, 117 and 118, to hold that the Disciplinary Authority is necessarily required to frame fresh charges would be an exercise in futility.

20. Seen in that light, we do not find the present to be a case where the ratio in Marathwada University can be applied. We are therefore in agreement with what has been laid down in Samarth Shiksha Samiti.

21. We may add that a Single Judge of this Court in Abha Pathak Vs. Gyandeeep Education Society and Others held the principle of ratification to be applicable to the grant of approval of the DoE under Rule 120(2) of the Rules also and held that without it being shown that the result would have been any different had the approval been prior rather than post facto, the order imposing punishment could not be interfered with. LPA No. 1/2012 preferred against the said judgment was dismissed vide order dated 13th January, 2012 observing that the stipulation in Rule 120 of seeking approval from DoE is a safety valve to ensure that the action of the School is proper and that the procedure has not been violated and once approval has been given, even though post facto rather than prior, it clearly signifies that the DoE was satisfied about the justification of the action taken by the School. The said principles equally apply to the present situation also.

22. We are therefore unable to agree with the reasoning of the Tribunal not interfered with by the learned Single Judge.

23. Axiomatically, the sole ground on which the Tribunal set aside the order of the Disciplinary Authority does not survive.

24. Though the counsel for the respondent No. 1 has argued that the Tribunal and the learned Single Judge have not considered the other pleas raised by the respondent No. 1 in the appeal before the Tribunal, but in the face of the Tribunal having held that the main plea raised by the respondent No. 1 was qua the illegality of the charge sheet only and the respondent No. 1 having not called upon the Tribunal to decide other aspects, we do not deem it appropriate to remand the matter to the Tribunal for consideration of the other challenges. Accordingly, the appeal is allowed and the orders of the learned Single Judge and of the Tribunal are set aside. The amount of Rs. 5 lakhs deposited by the appellant in this Court as a condition for grant of interim stay be now refunded

together with interest accrued thereon, to the appellant. However in the facts and circumstances, no costs.