
(2015) 02 RAJ CK 0124
In the Rajasthan High Court
Case No : Civil Writ Petition No. 353/2015

Meera Jha

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 02 RAJ CK 0124

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : Mahesh Bora, Senior Advocate assisted by Nishant Bora, for the Appellant; P.S. Bhati, A.A.G and S.S. Rathore, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner, a parent challenging the action of the respondent-State in merging Government Upper Primary School, Kamla Nehru Nagar ("K.N. School"), Government Upper Primary School, Nayaon Ki Bagechi ("NKB School") and Government Primary School, Rajeev Hattha ("Rajeev Hattha School") with Government Higher Secondary School, Siwanchi Gate, Kamla Nehru Nagar, Jodhpur ("Adarsh School").

2. The petitioner has, inter alia, averred in the petition that her three children are studying in NKB School, while her son is a Class-VIII student, her twin daughters are studying in Class-VI; the Government formulated a Scheme of establishment of Adarsh (Model) Schools and, for which, certain Schools have been merged into the said Adarsh Schools; in this regard an order dated 14.08.2014 was passed, wherein, the K.N. School, NKB School and Rajeev Hattha School have been directed to be merged with the Adarsh School; the School is located at Chopasani Housing Board; the parents of the students studying in the School represented against the merger essentially based on the fact that there were sufficient number of students, staff and other facilities

available at to be merged Schools; certain other possible difficulties/problems were also pointed out; another representation pointing out the infrastructural difficulties in the new School/space constraint was also pointed out; it is claimed that on various objections being raised, an order dated 20.10.2014 was passed again shifting back the three merged Schools to their original place; it is also claimed that there are 350 students in NKB School, 150 students in K.N. School and 30 students in Rajeev Hattha School and merging of the 3 Schools with the Adarsh School would result in huge infrastructural problems for the small children; it is then claimed that pursuant to the order dated 28.10.2014, the Schools were shifted back to the old premises, however, the Principal, Siwanchi Gate School by letter dated 26.12.2014 required the handing over of the keys of the Schools back and order was passed by the District Education Officer handing over of the premises to the Government College, Jodhpur on a temporary basis; reliance has been placed on a clarification dated 19.09.2014 issued by the State Government indicating that if the number of students are more than 150 then the School should not be disturbed.

3. Based on the above facts, it was submitted that there is no justification for the State Government to violate its own guidelines and merge the 3 Schools in the Adarsh School and, therefore, the action is bad in law; it is further submitted that after the order dated 20.10.2014 passed by the State, the Schools started running appropriately at the old sites and the possession of the Schools has been handed over to the College during winter vacations forcefully; on account of the merger many students may drop their studies and allegations have been made regarding inadequacy of the premises; ultimately, it is prayed that the orders passed by the respondent-State be quashed and set aside.

4. A reply to the writ petition has been filed by the respondents; it is, inter alia, contended that petitioner's son is not studying in any of the Schools as claimed; the merger of the schools is under a policy decision of the Government to bring qualitative reform in education and the petitioner has no locus standi to challenge the same; the access of petitioner to the various documents and correspondence has also been questioned; it is, inter alia, indicated that the Adarsh School is situated merely at a distance of about 200 meters from the 3 Schools, which are located in one premises; the receipts of representations have been denied; it is further indicated that in the 3 to be merged Schools, for the students of Classes I to VIII of KN School - 3 Teachers were available, for the students of Classes I to V of Rajeev Hattha School - 1 Teacher was available and for the students of Classes I to VIII of NKB School - 8 Teachers were available with 3 Class-IV employees; in each of the 3 Schools, 1 Teacher each was looking after the administrative work as Head Master/Principal; in one premises consisting of 26 rooms, 3 persons were looking after the administrative work; in the Adarsh School having classes from VI to XII standard, it is claimed that there are about 34 rooms and a vacant field of 550x150 ft.; 19 Teachers were available with a office for Head Master along with other administrative staff and, therefore, to bring qualitative reform, better management in available resources/facilities,

the 3 Schools were merged in Adarsh School, resulting in a School having 25 Classes, 31 Teachers and an administrative office; the policy of merger is in public interest and for proper utilization of Government resources; further, it has been indicated that for better management of Classes, the School is now running in two shifts, while students of Classes IX to XII are studying in first shift and Classes I to VIII are studying in second shift; qua the order dated 20.10.2014, it is submitted that the order is not for demerger, but is merely enabling the demerger in case of requirement; it was indicated that on account of the premises having become vacant on account of merger of the three Schools with the Adarsh School, the same has been made available to the Government College; the guidelines dated 19.09.2014 were general in nature; ultimately, it is prayed that the order of merger does not call for any interference and the petition deserves to be dismissed.

5. In the rejoinder the petitioner has admitted that her daughters only were studying in NKB School, the running of School in two shifts has also been questioned; the rooms claimed in the reply in the Adarsh School are also alleged as incorrect; there are 14 Teachers in the second shift; the student teacher ratio also stands disturbed; the facilities at the previous premises were adequate; averments have been made questioning the validity of communication regarding availability of the premises for being handed over to the Government College and passing of the orders by the authorities in one day; ultimately, the averments made in the writ petition have been reiterated and it is prayed that the writ petition be allowed.

6. It is submitted by learned counsel for the petitioner that the entire sequence of events clearly indicates that the action of merging the 3 Schools in the Adarsh School is apparently mala fide; the Schools were being run in the existing premises quite conveniently and there was apparently no reason for merging the Schools into Adarsh School; the action of the respondents clearly indicates that the entire exercise has been conducted only with a view to make the premises available to the Government College, Jodhpur which action is ex facie against the interest of the students; several pleas were raised questioning the validity of the merger; it was pointed out that earlier there were 14 Teachers for about 530 students, now with the merger of the Schools, for about 730 students there are still 14 Teachers only, resulting in a poor teacher student ratio; the 3 Schools taken together had around 530 students and they have been merged into Adarsh School, which cannot be said to be a proper exercise of discretion, if at all it vests in the respondents; the action of the respondents in now running the School in two shifts is clearly against the interest of students; various submissions were made regarding the manner, in which, the orders passed by the State dated 20.10.2014, 19.09.2014 and 24.12.2014, which pertained to merger of the Schools, were being flouted by the respondent authorities themselves; it was submitted that from a over all view of the matter, it is apparent that the exercise sought to be undertaken is not in the interest of the students and is essentially a result of providing accommodation to the

Government College.

7. Vehemently opposing the submissions made by learned counsel for the petitioner, learned Addl. Advocate General submitted that the petition has been filed by a solitary parent, whose 2 children were studying in the NKB School and now are studying in Adarsh School, the maximum distance between the two Schools is less than 200 meters; the Adarsh School is having adequate facilities for catering to the needs of the children; the School has sufficient infrastructural and academic facilities and the petition having not been filed in the nature of a public interest litigation, the petitioner has essentially no locus standi to question the action of the respondents in merging the Schools; the filing of the petition itself smacks of vendetta.

8. Replying to the submissions made by learned counsel for the petitioner regarding the issues pertaining to the facilities, it was submitted that in all there were around 350 students in the three Schools and though it is claimed that there were 14 Teachers, in fact out of the 14 Teachers, 3 Teachers were undertaking the duties of Head Master/Principal of the 3 Schools, which effectively brings the available Teachers at 11, with the merger of the Schools in the Adarsh School and adding the 153 students of the Adarsh School, the total number of students now for Classes I to VIII are 506 having 15 Teachers and, therefore, the plea raised regarding the poor teacher student ratio is baseless.

9. It is further indicated that much submissions have been made regarding the fact of running of the Adarsh School in two shifts, however, even the earlier merged 3 Schools used to run in two shifts, whereby, NKB School used to run in first shift and K.N. School and Rajeev Hattha School used to run in second shift and, therefore, there is no substance in the said submissions as well; qua the order dated 20.10.2014, it was submitted that the order was only enabling order and it did not indicate any direction, inasmuch as, all the 26 Adarsh Schools, in which, the merger was to take place, was indicated in the order dated 20.10.2014 and it was for the concerned authorities to take a decision in this regard and it is claimed that out of the 42 Schools to be merged, the mergers whereof were ordered by order dated 14.08.2014 only in 9 Schools, the de-merger has taken place, rest all the Schools are running in merged condition with Adarsh Schools; it is submitted that the decision to provide the vacant premises to the Government College is well within the domain of the respondents and the petitioner essentially has no locus standi to question the same on any of the grounds; the allegations made in this regard are devoid of any substance; it was prayed that the writ petition filed by the petitioner be dismissed.

10. I have considered the rival submissions made by learned counsel for the parties at the Bar.

11. At the outset it may be noticed that out of 530 students alleged by the petitioner and 353 students accepted by the respondent State, studying in the 3 to be merged Schools, the present writ petition has been filed by only a single

parent of two students only; the challenge, inter alia, is regarding the merger of schools and handing over of the premises of the Schools to the Government College as well.

12. The apparent concern of a parent/student qua the School can be the distance from one's place of residence, the academic atmosphere and the infrastructural facilities available at the School; the student/parent apparently cannot have/should not have much concern regarding the procedural aspects of the exercise having been undertaken by the authorities regarding the shifting/merging/utilization of the building of the School as questioning the said aspects essentially takes out the writ petition from the purview of a personal litigation into the realm of a public interest litigation and for which the petitioner has to comply with the requirements of provisions for filing such petition as provided in the High Court Rules.

13. From the material placed on record and the submissions made by learned counsel for the petitioner and the learned Addl. Advocate General for the State, it is apparent that so far as the distance between the 2 Schools is concerned, the same is less than 200 meters and, therefore, the location of the Adarsh School cannot be a matter of any concern in the present case.

14. The objection regarding running of the Adarsh School in two shifts, apparently has no substance, inasmuch as, the 3 to be merged Schools were also running in two shifts and, therefore, various submissions made by learned counsel for the petitioner indicating the benefits of running the School in one shift, were apparently not available even at the existing pre-merger stage and, therefore, the petitioner cannot place any reliance on the said aspect.

15. The issue of student teacher ratio sought to be emphasized by the petitioner taking the total number of Teachers at 14, also appears to be misplaced, inasmuch as, the requirement of the Teachers having to look after the administrative work as Head Master/Principal of the respective Schools cannot be over looked.

16. The learned Addl. Advocate General made statement at Bar that there were in all 34 rooms available at the Adarsh School, in which, once the School is being run in the two shifts, large number of rooms in each shift remain vacant and there is sufficient accommodation available for all the Classes for being run in a efficient manner.

17. On the other hand, there is substance in the submissions of learned counsel for the respondents that with the merger of Schools as the previous Schools being upto VIII standard only, the students would now be studying in a School having Classes upto 12th obviating any necessity for them to seek admission in any other School after their passing of Class VIII and availability of services of many qualified Teachers teaching higher classes, for the students in case of any requirement.

18. In view of the submissions made, so far as the issues regarding academics, infrastructure and distance, which as noticed hereinbefore, can be of concern to a student/parent, apparently no ground has been made out by the petitioner requiring any interference by this Court in the merger of the Schools.

19. So far as other pleas based on the several orders passed by the respondents themselves and alleged violation of the said orders are concerned, it would be noticed that the order was passed for merger of the 3 Schools with Adarsh School on 14.08.2014 (Annexure-1), wherein, hundreds of Schools have been indicated as Adarsh School and few hundred other Schools have been directed to be merged in the said Adarsh Schools; the order indicates 26 Adarsh Schools and a merger of 42 Schools in the respective Adarsh Schools for Jodhpur city. To allege that as on 14.08.2014 such large number of mergers were proposed only for the so called oblique motive by the respondents i.e. to hand over the premises to Government College is on face of it baseless. So far as the order dated 20.10.2014 is concerned, the submissions made by learned counsel for the respondents have substance that the order dated 20.10.2014 indicated all the 42 Schools to be merged in 26 Adarsh Schools and the order dated 20.10.2014 was merely enabling order and was not a order directing de-merger as claimed by the petitioner. The fact that the order was passed by the Principal of the Adarsh School on 28.10.2014, though the same has not been denied by the petitioner, loses significance in view of the fact that by the time the present petition came to be presented before this Court, the School had already been shifted back to the Adarsh School. Once the order dated 14.08.2014 was put in operation, the further orders dated 19.09.2014 providing for the number of students to be at a merged School, is essentially in the nature of guidance only and the same by itself cannot be treated to be a statutory provisions providing a cause to the petitioner to question the same on the touch stone of the said guidelines dated 19.09.2014 so as to make the merger illegal. It would also be seen that once the order dated 14.08.2014 was passed, indicating merger of Schools in Adarsh Schools, based on the experience and/or the grievances, representations and practical difficulties faced in the process of merger, various subsequent orders dated 19.09.2014, 20.10.2014 and 24.12.2014 were issued, however, the said orders were essentially enabling orders/guidelines and depending on the facts and circumstances of a given case, the power of merger/de-merger could be exercised by the respondents and the same essentially without anything more are not enforceable.

20. Hon"ble Supreme Court in *Raj Shiksan Prasarak Mandal v. State of Maharashtra and Ors.* : (2001) 10 SCC 75 while dealing with a similar nature issue observed as under:-

"3. The grievance of the appellant is that on consideration of all relevant materials, the appropriate authorities having accorded permission for shifting of the school from Mallapur to Ardahpur and the same having been cancelled because of issuance of a contempt notice by the High Court, the appropriate

authorities having exercised their jurisdiction vested in law and having focussed their attention to the relevant materials, the impugned order of cancellation is not in accordance with law. It is undisputed that the order of cancellation emanated because of issuance of a notice under the contempt proceeding. The shifting of the school from one place to the other or having an ashram school at one place is not governed by any statutory rules and it is in fact a policy decision of the Government. So long as the government decision is not actuated with any malice or is not the outcome of an arbitrary and whimsical act, the same should not be interfered with by a court of law under Article 226 of the Constitution of India. This being the position and on the relevant materials, the appropriate authority having considered the interest of the public at large and having allowed the shifting of the school from Mallapur to Ardahpur, the same could not have been cancelled on the pretext that the High Court issued a notice of contempt in the matter. In that view of the matter, the order of cancellation has to be set aside and we accordingly quash the same. Since the parents of the students studying in the ashram school at Mallapur had made a grievance, the appropriate authority may reconsider their grievance and, if it is found that they are justified in their grievance, may pass appropriate orders with regard to the prayer for cancellation of the permission granted. This may be done within a period of three months from today and until final orders in that respect are passed, the school which is now functioning at Mallapur school be allowed to continue at Mallapur. The appropriate authority should also consider the question whether the recognition granted should be allowed to continue or not. The appeals stand disposed of accordingly." 21. From what has been discussed hereinbefore, it is apparent that the act of the respondents in merging the Schools with the Adarsh School, running the Adarsh School in two shifts and providing adequate infrastructural and academic facilities cannot be said to be arbitrary and/or whimsical, so as to require any interference by this Court.

22. In view of the above discussion, the facts and circumstances of the case do not call for any interference by this Court in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India and the writ petition is, therefore, dismissed. No order as to costs.