

(2009) 07 DEL CK 0065

In the Delhi High Court

Case No : Writ Petition (C) 4426-32 of 2006

Mrs. Anjali Sood and Others

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:

Delhi School Education Act, 1973 — Section 3, 4

Delhi School Education Rules, 1973 — Rule 44, 46, 47, 50, 59

Citation : (2009) 161 DLT 214

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : K.K. Sharma, in W.P. C 4426-32/2006, Jyoti Singh and Ankur Chibber, in W.P. C 555/200, for the Appellant; Vikas Verma, for Respondent No. 1, Jyoti Singh and Ankur Chibber for Respondent No. 2 and S.K. Shukla, in W.P. (C) 4426-32/2006 and Vikas Verma, in W.P. (C) 555/2007, for the Respondent

Judgement

Vipin Sanghi, J.—By this judgment I purpose to dispose of writ petition WP(C) No. 4426-32/2006 along with writ petition WP(C) No. 555/07. WP(C) No. 4426-32/2006 had originally been filed by seven petitioners to seek the quashing of the notice of retrenchment dated 30.12.2005 issued by the Management Committee, National Public School, Bela Road as being contrary to the provisions of Delhi School Education Act (the Act) and Rule 46 of Delhi School Education Rules (the Rules) and for issuance of a writ of mandamus directing the management of National Public School (NPS) to absorb the petitioners in any of the other two schools run by it, viz. NPS, Darya Ganj or NPS Kalindi vide order dated 11.12.2006 petitioner No. 5 was deleted from the array of petitioners.

2. On the other hand WP (C) No. 555/2007 has been filed by the Managing Committee, National Public School, Bela Road for issuance of writ of certiorari to seek the quashing of the direction given by Delhi School Advisory Board in its meeting held on 27.09.2006 to the management of National Public School, Bela Road to absorb the retrenched teachers in its other branches as aforesaid, before the permission for closure of school is granted.

3. National Public School [Respondent No. 3 in WP(C) No. 4426- 32/2006 and WP (C) No. 555/2007] is an educational society registered under the Societies Regulation Act and was running three unaided schools in Delhi as aforesaid. All these three schools were run (and two of them even now continue to be run) under the name and style of National Public School. The petitioners in W.P.(C) No. 4426-32/06 are all teachers who were working in National Public School situated at 7, Bela Road (in short "the school"). The school was being run from a rented premise. It appears that in 2001 the landlord of the premises filed a suit for possession, which was decreed in his favour. Against this order the school preferred an appeal. It is claimed by the Managing Committee of N.P.S. that as the Court was not inclined to interfere with the decree, the school opted for an out of court settlement with the landlord and in terms of the settlement the school handed over the possession of the premises of Bela Road School to the landlord on 29.04.2006. Consequent to this, Managing Committee of N.P.S. Bela Road in its meeting held on 30.11.2005 took a decision to close the school due to financial crisis and non-availability of land/building. Thereafter, the school retrenched its employee teachers from service w.e.f 31.03.2006 vide letter dated 30.12.2005. Managing committee of N.P.S., Bela Road vide its resolution passed in its meeting held on 21.01.06 proposed to approach its sister organization to accommodate the employees who were being retrenched, against any suitable future vacancies, as and when they arise. The students on roll of the N.P.S., Bela Road were given an option to get admission either in N.P.S. Darya Ganj or N.P.S. Kalindi.

4. The school sought the permission of the Directorate of Education (DOE) to close down the school at Bela Road. On 22.03.2006 the DOE passed an order under Rule 46 of the Rules granting conditional approval to the closure of the N.P.S. Bela Road subject to the following conditions:

1. All the employees & students of the school will be adjusted in National Public School, Dariyaganj & National Public School, Kalindi, Delhi as decided by the Managing Committee of National Public School, 7 Bela Road, Delhi in its meeting held on 21.01.2006.

2. The school authorities shall issue letters of adjustment to the individual employee & a copy of the same duly acknowledged by the concerned employee shall be submitted to the department.

3. The closure of the school will also be subject to the approval of the Advisory Board as provided in Rule 46 of DSEA&R 1973.

5. Aggrieved by their retrenchment, the teachers of the school have filed the writ petitions being WP (C) Nos. 4426-32/06 on 20.03.2006. On 19.05.2006, this Court in WP(C) No. 4426-32/2006, after taking note of the order issued by DOE on 22.03.2006, issued directions to the DOE Government of NCT of Delhi to ensure that the Advisory Board which is constituted for the purpose of considering the closure of NPS Bela Road, considers and issues its order on the

question of approval of the school's closure, within a period of six weeks. The court also passed an interim order for the payment of all the salary and allowances payable to the petitioners till the next date of hearing. This order has continued to remain in force.

6. Delhi School Education Advisory Board held its meeting on 27.09.06 and decided that the management of the school must absorb the remaining teachers in its other branches and permission to close down the Bela Road Branch may be given only after the management fulfills this condition. This report of Advisory Committee has been challenged by the management committee of the school in WP(C) No. 555/2007. By order dated 23.01.2007 this Court in WP(C) No. 555/07 has stayed the operation of the impugned direction dated 27.09.06.

7. On 23.02.07 the Managing Committee of N.P.S. Bela Road filed C.M. No. 2941/07 in WP (C) No. 4426/06 for vacation of the interim orders dated 19.05.06 and 6.07.06 whereby the school was directed to pay salaries to the petitioners. This C.M was heard on 26.07.07. This Court asked the DoE to report about the feasibility of absorption of the petitioners in the other two schools being run by the same management. However, the interim order was to be continued till next date of hearing.

8. By order dated 14.07.2008, the aforesaid two petitions were directed to be heard together.

9. The petitioner Management Committee of the N.P.S., Bela Road submits that it being a private unaided institute is not bound by the decision of the Advisory Board, as under Rule 47 of the Rules direction for absorption of surplus employees can only be given in case where the closure is of an aided school, or withdrawal of recognition is in respect of an aided school. It is submitted that though the three schools i.e. the school at Bela Road, Darya Ganj and Kalindi were set up by same Managing Society, but each of them is an independent school having its own Management Committee. Under the Act there is a clear distinction drawn between the society, which establishes the school and Managing Committee which runs the school. Managing Committee is empowered to run the school, supervise, control, and finance the services of the employee in the respective school besides having disciplinary powers and control over the employees and students of the particular school. Reference is made to Rule 59 read with Rule 98 to bring home the point that it is within the exclusive domain of the Managing Committee of the school to either run the school or to close it down. It is submitted that due to a Court decree, the rented premises where the Bela Road school was being run had to be vacated and no alternative site was available for running the school. The school also had been incurring heavy losses for the last more than 2 years and there was no improvement in the financial condition and, therefore, it was not possible to run the school any further. Therefore, the Managing Committee of the School took a policy decision to close down the school due to financial crisis as well as non availability of land, which was even conveyed to the Deputy Director of Education vide letters dated

30.11.05 and 22.12.05. It is argued that closure of an establishment is a managerial right and no direction can be sought from any Court or forum to the management to continue to run the establishment even if it is unable to do so for bonafide reasons or financial crisis.

10. Management Committee of the school further submits that it has made its best effort to adjust the retrenched teachers in its sister concern schools. In its resolution dated 21.02.06 it was decided that it would give preference to the teachers of its closing school in case vacancies arise in other schools. Even five teachers have been adjusted in other two schools on availability of vacancies. Moreover, it is argued that the appointment of these petitioners-teachers was not in pursuance of any statutory rules/regulations but, under a contract of employment and hence, it being totally private in nature, services could be terminated in terms of contract of employment. A fortiori no writ would lie to enforce a private right.

11. The retrenched teachers of the school i.e Respondents No. 4 to 9 in W.P.(C) No. 555/2007 [Petitioners in WP (C) No. 4426-32/2006] in their counter affidavit dispute that the NPS , Bela Road is an independent school. It is submitted that schools at Bela Road, Darya Ganj and Kalindi are three different branches of a same school. This is evident from the fact that the petitioner school, till the year 2005, was maintaining a joint seniority list of the staff members of the three schools and even inter-school transfers were being made.

12. It is submitted that after establishing the 3rd school at Kalindi, the Management Committee, Bela Road has been transferring the teaching and non-teaching staff from its Bela Road school to its Kalindi branch. The petitioners in para 25 of the petition have given the details of the inter-school transfer done from 01.06.2000 to 30.08.2004. This fact is not disputed by the Management Committee. In fact, it is admitted in para 24 of their counter affidavit filed in W.P. (C) No. 4426-32/2006 that employees were transferred from one school to another as per availability of post and vacancy.

13. It is submitted by the respondent teachers that Rule 46 of the Rules casts a mandatory duty on the managing committee of every recognized school (other than an unaided minority school) to take prior permission of the DOE before closing down a school. The main intention behind the aforesaid provision is to see that the interests of the teachers/employees/students are not adversely affected in case of closure of a particular school and to prevent a whimsical action of the management of a school to close down the school which serves the neighbouring community of students. In keeping with this aim the DOE/Advisory Board while giving permission to close a school has the authority and power to impose such incidental conditions that, in its view, will protect and further the interests of the employees and students of the closed school. Accordingly, it is submitted that Advisory Board keeping in view the welfare and interest of the respondent teachers and the students, has rightly imposed the impugned conditions.

14. It is further submitted that despite the vacancies existing in NPS Darya Ganj and NPS Kalindi, the petitioner Managing Committee has not made an effort to absorb the retrenched petitioner teachers.

15. Respondent teachers refute the policy decision of the management committee to close down the school due to financial crisis by arguing that the NPS, Bela Road is not a separate and independent school. The other two branches of the school are fully functional and have a huge turnover which can meet the expenses of the closed school.

16. Management committee of NPS, Bela Road has placed reliance on T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and Kathuria Public School and Ors. v. Director of Education and Anr. 2005 VI AD (DELHI) 893 to contend that any restriction requiring approval of the government in the management policies of the private unaided school is not permissible as it amounts to erosion of autonomy and interference in the functioning of school. Whereas, the respondent teachers have sought to put reliance on Vaishali International School Teachers Welfare Association Vs. All India Siddharth Int. Educational Society and Others, and decision of this Court in Management Of Green fields Public School v. Govt. Of NCT of Delhi and Anr. WP(C) No. 856-857/2006 decided on 01.08.2008 to advance their case.

17. The petitioners have placed on record their letters of appointment. The dates of issuance of these letters are as follows:

Mrs. Aruna Gupta 16.08.1974 Smt. Sheela Bannerjee 25.11.1982 Sh. G.C. Garg 13.07.1984 Ms. Shobha Rani Jain 18.07.1986 Ms. Rashmi Chaudhary 23.09.1989 Ms. Meena Saxena 28.09.1989

18. It is seen that the letters of appointment of Mrs. Aruna Gupta, Mrs. Sheela Banerjee and Mr. G.C. Garg were issued by the Managing Society, National Public School, Delhi. It appears that at the relevant time it was only the Bela Road School which was running. The appointment letters of Ms. Shobha Rani Jain, Mrs. Rashmi Chandna, Mrs. Meena Saxena were issued on a printed format by the Managing Committee, National Public School, Bela Road and signed by the Manager. Pertinently, the appointment letters issued to Ms. Shobha Rani Jain, Mrs. Rashmi Chandna and Mrs. Meena Saxena contained, inter alia, the following condition:

that your services may be transferred to any other school under the management Managing Society National School without any extra allowance or enhancement in your salary.

19. From the aforesaid it appears that when different branches of its schools came into existence the Managing Society, which was the employer, prescribed a condition that the services of the employees may be transferred to any other school under the management of the same society. This clearly shows that the managing society NPS did not intend to create water tight compartments of the

employees working in different branches and the employees could be transferred from one branch / school to another. The petitioners/teachers have also placed on record the combined seniority list circulated by the Managing Society, National School on 19.02.2002 in respect of the employees working in the schools run by the Managing Society. This seniority list was circulated to the Principal/ Head Mistress, National Public School, Bela Road / Kalindi / Darya Ganj. It contains the names of the various PGT, TGT and Assistant Teachers apart from librarians etc. No doubt, the seniority list in respect of the three schools were sought to be later on drawn school-wise. That, however, does not detract from the fact that at the time of their appointments, the six petitioners aforesaid were considered as employees of the society which has set up the three schools and their services were transferable. Office order dated 22.09.2003 has also been placed on record in respect of the petitioner No. 1 Mrs. Anjali Sood whereby she was transferred to National Public School, Kalindi, New Delhi w.e.f. 01.08.2003 from National Public School, Bela Road, Delhi, where she was serving earlier.

20. The Act was enacted to provide for better organization and development of school education in Delhi and for matters connected therewith. The establishment of a new school and the opening of higher classes or the closing down of an existing class in any existing school in Delhi has been made subject to the provisions of the Act and the rules framed thereunder (see Section 3). Section 4 empowers the appropriate authority to recognize any private school.

21. The Delhi School Education Rules were framed under the Act in 1974. Rules 44, 46 and 47 are relevant for the present case. They read as follows:

Rule 44. Notices of intention to open a new school- (1) With a view to enabling the Administrator to arrange for the planned development of school education in Delhi, every individual, association of individuals, society or trust, desiring to establish a new school, not being a minority school, shall before establishing such new school, give an intimation in writing to the Administrator of his or their intention to establish such school.

(2) The intention, referred to in Sub-rule (1) shall contain the following particulars namely:

(a) the Zone in which the new school is proposed to be established, and the approximate number of students likely to be educated in such schools;

(b) the stage of education intended to be imparted in the new school;

(c) the number of schools of the intended stage in existence in the Zone where the new school is proposed to be established and the population of a Zone;

(d) whether the person proposing to establish the new school have any alternative Zone in view and if so, the particulars of such alternative Zone with respect to the matters specified in clauses (a) and (c);

(e) the particulars including measurements of the building or other structure in

which the school is proposed to be run;

(f) the financial resources from which the expenses for the establishment and running of the school are proposed to be met and whether any application is proposed to be made for any aid;

(g) the composition of the managing committee of the proposed new school until the new school is recognized and a new managing committee is constituted in accordance with the scheme of management made under the Act;

(h) the proposed procedure, until its recognition under the Act, for the selection of the head of the school and other teachers and non-teaching staff and the minimum qualifications for their recruitment;

(i) the proposed scales of pay for the head of the school and other teaching and non-teaching staff until the school is recognized under the Act;

(j) admission, tuition and other fees which would be levied and collected until its recognition under the Act, from the students of the proposed new school;

(k) any other facility which is proposed to be provided for the students of the proposed new school.

(3) The Administrator may, after considering the particulars specified in the intimation given to him under Sub-rule (2) and after making such inquiries as he may think fit, inform the person or persons by whom the intimation was given to him whether or not opening of the proposed new school would be, in the public interests:

Provided that the Administrator shall, if he is of opinion that the number of schools existing in the Zone where the new school is proposed to be opened is sufficient to meet the needs of the Zone, inform the person or persons, by whom the intimation was given to him that the opening of the new school in such Zone would be against the public interest and may indicate to such person or persons, any other Zone which, in his opinion, needs the establishment of a new school, and thereupon it would be open to such person or persons to open a new school in the Zone indicated by the Administrator.

Rule 46: Closing down of a school or any class in a school - No managing committee shall close down a recognized school, not being an unaided minority school, or an existing class in such school without giving full justification and without the prior approval of the director, who shall, before giving such an approval, consult the Advisory board.

Rule 47: Absorption of surplus (employee), etc.-(1) Where as a result of---

(a) the closure of an aided school or any class or classes in any aided school; or

(b) withdrawal of recognition from an aided school; or

(c) withdrawal of aid from an aided school, any student or employee becomes

surplus, such student or employee, as the case may be, may be absorbed as far as practicable, in such Government school or aided school as the Administrator may specify:

Provided that the absorption in Government service of any employee who has become surplus shall be subject to the availability of a vacancy and shall be subject further to the condition that the concerned employee possesses the requisite qualification for the post and has not been retrenched by the management of the aided school on any ground other than the ground of closure of the school or any class or classes of the school, or withdrawal of recognition or aid from the school:

Provided further that where any such surplus employee is absorbed in a Government school, he shall be treated as junior to all the persons of the same category employed in the Government schools on the date immediately preceding the date on which he is so absorbed, and where such surplus employee is absorbed in an aided school, he shall rank as junior to all the persons of the same category employed in that school on the date immediately preceding the date on which he is so absorbed.

(2) Where any surplus employee is absorbed under sub-rule(1)-

(a) the salary and other allowance last drawn by him at the school from which he has become surplus shall be protected;

(b) his provident fund account shall be transferred to the school in which he is so absorbed, and thereupon such provident fund shall be governed in accordance with the rules and regulations in force in that school in relation to provident fund; and

(c) the period of his qualifying service in the school in which he had worked before such absorption and any previous period of qualifying service, if any, in any recognized aided school in Delhi shall be taken into account for the purpose of computing his pension and other retirement benefits.

(3) Without prejudice to the provisions of sub- rules (1) and (2), where an employee becomes surplus by reason of the closure of any class or section thereof or the discontinuance of the teaching of any subject, such employee may be absorbed in the first instance, as far as practicable, in such Government or aided school as the Administrator may specify, and if the class or section which was closed is reopened by the former school or if any new class or section thereof is opened by such school or if the subject, the teaching of which was discontinued, is re-introduced by such school, or strength of the staff of the former school is increased, such employee shall be reabsorbed in the former school; but if such re- absorption does not take place within a period of five years from the date of absorption of such employee in the Government or aided school, such employee shall be regularly absorbed in such Government or aided school, as the case may be.

(4) Re-absorption of an employee in a former school shall not affect his continuity of service or his seniority in relation to that school or his emoluments, provident fund, gratuity and other retirement benefits.

Explanation - For the purposes of sub-rules (3) and (4), 'former school' means the school from which an employee has become surplus.

22. From the aforesaid provisions of the Act and the Rules quoted above, it appears that the authority to regulate and decide issues concerning the setting up of schools, starting of classes therein and the closing down of schools vests with the administrator.

23. Rule 59 of the Rules lays down the aspects with which the scheme of management of recognition school shall deal. It provides for the constitution of a managing committee which would have control over appointments, disciplinary action and control on staff. The managing committee under the scheme is charged with various responsibilities. The scheme should, inter alia, provide that the Managing Committee shall be subject to the control and supervision of the Trust or Society by which the school is run (Rule 59 (2) (q)). Rule 98 defines the appointment authority. The purpose of Rule 98 is merely to define the appointing authority in respect of employees of the school. By virtue of Rule 59 and 98, the Managing Committee of the school is made the appointing and disciplinary authority. Rule 50 lays down the conditions for recognition of a private school. The very first condition laid down is that the school should be run by a society registered under the Societies Registration Act or a Public Trust constituted under the law.

24. From the aforesaid, it is seen that it is the registered society / trust which runs the school. The Managing Committee is only an instrumentality / arm of the society / trust. It is the Managing Committee which is entrusted with the executive power to administer a particular school. The Managing Committee constituted by the society / trust is not a legal entity which can sue or be sued. It is only a committee constituted by the society/trust. The overall control however, vests with the registered society / trust which runs the school. Reliance placed by learned Counsel for the Managing Committee National Public School, Bela Road on Rule 59 read with Rule 98 of the rules, therefore, appears to be misleading. Therefore, I find no merit in the submission of learned Counsel for the Managing Committee of National Public School, Bela Road that each of the three schools namely National Public School Bela Road, National Public School, Kalindi and National Public School, Darya Ganj are wholly independent and autonomous schools. The overall control and supervision is that of the Managing Society, National Public School.

25. In *MCD v. Children Book Trust* 47 (1992) DLT 424 (SC) the Supreme Court has held as follows:

That the Delhi School Education Act does not create the school entity a specific juristic entity different from the society. Where under Rule 59(2)(q) of the Rules

it is provided that the managing committee shall be subject to the control and supervision of the society by which the school is run, it means that school is a part and parcel of the society. Where, therefore, the funds are transferred, even calling the contributions from the school to the society, would be nothing more than transfer of oneself. In fact, we do not find under the Delhi School Education Act any provision by which the school is made a separate juristic entity.

26. In *Vaishali International* (supra) a Division Bench judgment of this Court has emphasized on the imperative nature of Rule 46 and has held that no school can be shut down without permission of the Directorate. In *Ashok Kumar v. Union of India* 2007 (9) AD (Delhi) 550 it has been held that norms such as Rule 46 have been put in place to achieve a larger social objectives of ensuring that school, which are the building blocks of the future of our country are not closed down on whims and fancies of their founders or promoters.

27. In *Management of Green Field Public School v. Government of NCT of Delhi* WP (C) No. 856-57/2006 decided along with other connected writ petitions on 1st July, 2008 by a learned Single Judge of this Court, the Court was concerned with Rules 46 and 47 of the Rules. The Green Fields Education Society, established a school, which was recognized in 1971. It functioned in Naveen Shahdara. In 1976, it secured a two acre plot at Vivek Vihar where it had to shift. It did shift the school to Vivek Vihar. Yet some teaching activities continued at Naveen Shahdara. In 1985, on the petitioners request a plot was allotted by the DDA with the stipulation that the existing school should entirely shift to the new premises and the existing school is closed down. In 1988, the Director issued a letter acceding to the petitioners request to shift the entire school to Dilshad Garden. One of the conditions imposed was that the present school shall be closed down and no class shall be held at Vivek Vihar. Yet the school did not shift entirely or substantially, as only class 9 to 12 were shifted and others were shifted piecemeal, and not completely. This breach of the conditions led to litigation. The teachers at the left behind school at Vivek Vihar were not being paid salaries. The Director of Education issued a show cause notice dated 02.12.2005 followed by an order dated 10.01.2006 withdrawing recognition to the school. The learned Judge took note of *Vaishali International School Teachers Welfare Association* (supra) which emphasis the imperative nature of Rule 46 and prescribes that no school can be shut down without permission of the Directorate. In Paragraphs 37 and 38 the learned Single Judge observed as follows:

37. *Vaishali International School Teachers Welfare Association v. All India Siddharth International Educational Society and Ors.* was a Division Bench judgment emphasizing the imperative nature of Rule 46, which prescribes that no school can be shut down without permission of the directorate. Similarly, establishment of a school is a matter entirely covered by the Act; as underlined in *Social Jurist* by the Division Bench, it is exclusively governed by Rule 44. The establishment of the school at the new locale, i.e Dilshad Garden and the closure

at the old locale, i.e at Vivek Vihar, were the exclusive domain of regulatory power of the Director. This provision is cast in imperative terms. It is well settled that when a statute requires a thing to be done in a particular manner, it must be done in that manner or not at all (Ref. Nazir Ahmed v. King Emperor; Ramchandra Keshav Adke v. Govind Joti Chavare (1975) 1 SCC 915; Morgan Stanley Mutual Fund v. Kartick Das). Therefore, the argument that there was a de facto continuation of the school, which the court has to respect, cannot be countenanced.

38. The order of the Director, requiring the shifting of the school, staff and students, on 17-11-1988, from Vivek Vihar to Dilshad Garden, is unambiguous and admits of only one interpretation; the petitioner had no choice but to relocate the entire establishment. Yet, this direction was flouted; the petitioner continued a large part of its establishment in Vivek Vihar. These events led to a denouement when the Director had to intervene, in 1995, and constitute a special committee, to recommend corrective measures. The committee did recommend measures. Show cause notice was issued, to rectify the deficiencies; the steps taken included termination of teachers and employees; they approached the court.

28. The Court specifically dealt with Rules 44 and 46 and the argument of the petitioner management school to disown the liability in respect of teachers who were left behind in the Naveen Shahdara School in the following words:

46. The last argument of the petitioner was that the Director has also fastened liability in respect of teachers of the Navin Shahdara school who were teaching unrecognized sections, and that the MCD had granted independent recognition to the institution in 1997. They were not aggrieved. Thus, the Director should not have fastened any liability in that regard.

47. Between them, Rules 44 and 46 fully occupy the field of opening and closure of schools. These provisions were used by the Director, when, at the request of the Petitioner, he permitted shifting of the school to Dilshad Garden in 1988. Shifting implied simultaneously opening the school at the new location, and closure at the old location. The terms of the order say as much. Also, the order directed that the "present school" was to be closed down and no recognized classes could be held at Vivek Vihar. The order also directed that no branch of the school could be run under the name of recognized school. Yet, the petitioner does not deny that complete closure did not take place; it did not shift its activities; it also did not shift its teachers. There is also no contest to the observations of the Committee, in 1995, that complete shifting from Navin Shahdara was not done, and teachers working there were posted also at Vivek Vihar. That report had recommended the absorption of such teachers in Dilshad Garden; the order of 09.02.2005 and the later order of the Director, dated 21.09.2005, similarly determined that such teachers were entitled to be deployed in Dilshad Garden. In these circumstances, its responsibility continued vis-à-vis such teachers who were "left behind" without reason, and certainly for none of

their fault. Following the ratio of the Division Bench in Vaishali International (supra) this Court holds as insubstantial and unfeasible, the argument of the petitioners disclaiming their liabilities towards such teachers. For these reasons, there is no merit in the contention regarding treating two sets of teachers characterized as unequals, equally, on the basis of their being in different institutions, i.e one recognized and the other, recognized. That was the consequence of the petitioners' illegality, and therefore, cannot be the basis of their disclaimer of liability.

29. In my view, the ratio of the above decisions applies to the cases in hand. The decision of the Supreme Court in T.M.A. Pai Foundation (supra) and Kathuria Public School (supra), in my view do not throw much light on the issue before me. Firstly, I may notice that the managing committee of National Public School, Bela Road has not impugned Rule 46 in the present petition as being ultra vires. The said rule carries with it the presumption of constitutionality. The Division Bench of this Court in Kathuria Public School (supra) following the decision of the Supreme Court in T.M.A. Pai Foundation (supra) held that the provisions in the Act and the Rules dealing with prior approval and post facto approval in respect of disciplinary matters of teachers and employees are not applicable to unaided non minority educational institutions. The present is not a case involving prior approval or post facto approval in respect of disciplinary matters of teachers and employees. The present is a case concerning the closure of one of the schools by the society and the rights of the teachers and employees of such a school in the light of the orders issued by the DOE and the Advisory Board. As aforesaid, Vaishali International School Teachers Welfare Association (supra) and Ashok Kumar v. Union of India (supra) have held that Rule 46 seeks to achieve a social objective of ensuring that a school, which is a building block of the future of our country should not be closed down at the whims and fancies of the founders or the promoters. Keeping in view the aforesaid objective of Rule 46, the same cannot be compared with the provisions of the Act and the Rules dealing with the prior and post facto approval in respect of disciplinary matters of teachers and employees of schools. It cannot be said that Rule 46 encroaches on the autonomy of the society running the school.

30. The power to grant approval/permission carries with it the incidental power to lay down reasonable and germane conditions. Considering the fact that the NPS, Bela Road was the first school set up by the managing society, National Public School and the six petitioner teachers were appointed either even before the other two branches/schools were set up, or with the condition that their services were transferable, and the fact that petitioner No. 1 was even transferred to NPS, Kalindi, coupled with the fact that a combined seniority list of teachers and employees was being maintained till as late as the year 2002, it cannot be said that the conditions imposed by the DOE and the Advisory Board requiring the absorption of the six petitioner teachers in the other two branches / schools being run at Kalindi and Darya Ganj was unreasonable or arbitrary.

31. Rule 47, no doubt, deals with aided schools and per se is not applicable in respect of unaided private schools. However, the DoE and the Advisory Board can legitimately take a leaf out of Rule 47 and impose the same condition while granting permission under Rule 46 for closure of school as a pre condition if the facts and circumstances of the case so warrant. Rule 47 provides a guideline for the exercise of the discretionary power vested by Rule 46.

32. Reliance placed by learned Counsel for the school on Avas Vikas Sansthan and Another Vs. Avas Vikas Sansthan Engineers Assn. and Others, appears to be misplaced in the facts of the present case. In that case the employees had been granted, and they had accepted alternative employment and thereafter were seeking to challenge the terms of such employment. That is not the case in hand. In the present case, the petitioners though presumably ranking higher in seniority [considering that they had been appointed between 1974 and 1989, and belonged to the oldest of the three schools run by the Managing Society (NPS)] have been retrenched, while retaining others who were, at the relevant time, serving in the other two schools i.e. NPS Darya Ganj and NPS Kalindi. Their retrenchment does not take into account the relative seniority of the petitioners vis-à-vis those who continue to serve in the other two schools. For these reasons, the decision in Avas Vikas Sansthan (supra) has no relevance to the present case.

33. I may also take note of the fact that the Managing Committee of NPS Bela, Road has not responded to the supplementary affidavit filed by the petitioners dated 1st July, 2007. In the said affidavit, the petitioner teachers had tabulated the vacancies that existed in NPS, Kalindi and NPS, Dariyaganj against which the petitioners could be absorbed. The vacancy position indicated by the petitioners in this supplementary affidavit is as follows:

S.No

Name

Place of occurrence of vacancy

Subject

Date of occurrence of vacancy

Reason of occurrence of vacancy

1.

Anjali Sood

Kalindi

TGT

Aug, 2006

Shri. Srivastava retired in and the petitioner was transferred to the Ka li n di branch. However, later Sh. Srivastava was allowed to join on ad hoc

basis and the petitioner was transferred back to Bela Road branch.

2.

Rashmi Chandna

Kalindi

PGT (Business Studies)

2004

Only one teacher for Accounts and the vacancy for PGT (Business Studies) exists.

3.

Arun Gupta

Daryaganj

S. Studies

31.01.07

Mrs. Pathak retired.

4.

G.C. Garg

Kalindi

S.U.P.W.

-

No teacher

5.

Sheela Bannerjee

Kalindi Branch

TGT Biology

31.08.05

Mrs. Bhutani retired but later re-absorbed as an ad hoc teacher

6.

Meena Saaxena

Daryaganj/K alindi

Librarian

-

Only 1 junior librarian in Ka li n di which is against CBSE affiliation bye laws. No librarian in Daryaganj. This is in violation of the provisions of the Delhi School Education Act, 1973.

34. The aforesaid tabulation finds support from the status report filed by the DOE dated 28th November, 2007 in compliance of the order dated 26.07.2007. By that order the court had directed the DOE to report whether the petitioner teachers could be absorbed in the other two branches of NPS. As per this report the total number of seats which were then available in NPS, Dariyaganj alone was 41/2 teachers apart from two posts in NPS, Kalindi. It appears that the respondent society is using the closure of the school/branch at Bela Road merely as a ruse to retrench and get rid of the petitioners despite having vacancies in the other two schools/branches where they could be absorbed.

35. As noticed hereinabove, the Court had issued a direction to the respondent school as early as on 19th May, 2006 that the school shall pay all the salary and allowances to the six petitioners till the next date of hearing. That direction was not vacated. The interim direction was continued on 6th July, 2006 and by order dated 26.07.2007 it was directed that the interim orders shall continue. The orders were continued thereafter from time to time and even by the order dated 14th July, 2008, it was directed that the interim orders shall continue. The respondent school has, however, not complied with the directions on the ground that since the Bela Road branch has been closed, there is no collection of fee from the students.

36. I find no force in this submission for two reasons. Firstly, admittedly some if not all students of NPS, Bela Road have been absorbed in other branches/schools of the respondent society. These students continue to pay the fee. Secondly, eventually it is the liability of the society to pay the fee from its accruals whether or not a particular branch, in respect of which the teachers have been laid off is operational or not. Learned Counsel for the petitioner teachers have vehemently argued that it was from out of the earnings derived from the original school situated at Bela Road that the respondent society had generated enough income to set up the other two schools at Darya Ganj and Kalindi. Since the Bela Road school/branch was the oldest, I am inclined to accept the said submission.

37. The respondent school clearly breached the order dated 19.05.2006 and has acted in defiance of the said order. There is merit in the submission of the petitioner teachers that the respondent school cannot be heard in these circumstances. In any event, I have considered all the submissions made by the respondent school and I find no merit to any of these submissions.

38. Accordingly, writ petition No. 4426-32/2006 filed by the six petitioner teachers is allowed and writ petition No. 555/2007 filed by the Managing

Committee NPS Bela Road is dismissed. A writ of certiorari is issued quashing notice of retrenchment dated 30.12.2005 issued by Managing Committee, National Public School, Bela Road, Delhi to each of the six petitioners. The petitioners-teachers would be entitled to back wages and allowances and continuity in service throughout. The back wages and allowances shall be paid by the respondent school/Managing Society i.e. respondent No. 3 within four weeks. A further direction is issued to the respondents to absorb each of the six petitioner teachers in any of the other two NPS situated in Kalindi and Darya Ganj while maintaining the seniority of the petitioners from the date of their respective initial appointments. Each of the six petitioners-teachers would be entitled to combined costs of Rs. 20,000/- in the two petitions.