(2003) 02 DEL CK 0112

In the Delhi High Court

Case No : C.W. No. 2370 of 2001

N.R. Choudhary APPELLANT

Vs

Ministry of Human Resource Development and Others RESPONDENT

Date of Decision : 03-02-2003

Acts Referred:

Citation : (2003) 3 AD 307 : (2003) 103 DLT 389

Hon'ble Judges : Usha Mehra, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Sidharth Yadav, for the Appellant; S.K. Taneja Puneet Taneja and Rajesh Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J. 1. By way of the present petition, a challenge has been made to the decision taken by respondent No. 3 to levy a differential tuition fee from the students studying in the Kendriya Vidyalaya NTPC, Badarpur.

2. The case of the petitioner is that there are nearly 874 Kendriya Vidyalayas all over the country and a few overseas which are uniformly run by the respondent No. 2. That respondent No. 1 funds those Kendriya Vidyalayas. According to the petitioner, no other Kendriya Vidyalaya is charging any tuition fee and it is only the Kendriya Vidyalaya, NTPC, Badarpur which has decided to charge tuition fee from the students studying in the school. The petitioner alleges that the levy of tuition fee is arbitrary, without any justification and prior notice and hence is liable to be quashed. It is further the case of the petitioner that there can be no discrimination between the students studying in the school and on that account also, the differential fee sought to be charged is unjust and arbitrary.

3. The issue of differential fee arises because the school has proposed to charge the tuition fee at a lower rate from the wards of the employees of NTPC and charge a higher fee from the students who are not the wards of the NTPC employees.

4. The case of the respondents is that there are four types of Kendriya Vidyalayas running in the country. There are Kendriya Vidyalayas in civil sectors which are set up and run by respondent No. 2 under the aegis of respondent No. 1. Then there are Kendriya Vidyalayas in defense sector which are located at different army cantonments and are meant for the wards of the defense personnel. Thirdly, there are Kendriya Vidyalayas in public sector. Fourth category of Kendriya Vidyalayas are institutions of higher learning which are not concerned with the education in the schools i.e. up to senior secondary level. According to the respondents, the Kendriya Vidyalayas in public sector differ in their nature and character from the general Kendriya Vidyalayas. The Kendriya Vidyalayas established in different project sites of public sector undertakings have to be sponsored by the concerned public sector undertaking which makes available the land and bears the cost for the construction of the school building. Further, the concerned public sector undertaking has to bear the recurring and non-recurring expenditure in running and maintaining the schools from time to time each year. These schools are meant primarily for the wards of employees working in the concerned public sector undertaking and for the wards of persons associated with the functioning of the public sector undertaking viz. security personnel, bank employees, post office etc. The Kendriya Vidyalaya, NTPC, Badarpur is a Kendriya Vidyalaya in public sector and has been established on the request of the NTPC and the entire expenditure for establishing, running and maintaining the school is borne by NTPC.

5. Respondent No. 3 has made good its pleadings in reference to the terms and conditions for opening Kendriya Vidyalayas framed by respondent No. 2. The petitioner also does not dispute that Kendriya Vidyalaya, NTPC, Badarpur falls in the category of a Kendriya Vidyalaya maintained and established by a public sector undertaking. In this view, there is no question of equating the working and functioning of respondent No. 3 with other Kendriya Vidyalayas because admittedly, the Kendriya Vidyalayas do not form a single homogeneous group but, as noted above, are classified into four different categories.

6. Justifying the decision to levy tuition fee and that too at a differential scale i.e. less for the wards of NTPC employees and more for other students, it has been brought out by the respondents that the project Kendriya Vidyalayas, were opened on specific request from public sector undertakings with the clear understanding that the sponsoring agency would meet the running and maintenance expenditure of the Kendriya Vidyalaya. In some cases, these schools were facing practical problems due to financial constraints. The said problem had been receiving active consideration of the officers of respondent No. 2. A decision was, Therefore, taken vide order No. F. 6-1 /90-KVs/Budget dated 12th November, 1999 permitting these Kendriya Vidyalayas i.e. project sector Kendriya Vidyalayas to have a fee structure that could generate revenue to run the school. The said decision of respondent No. 2 permitted the project Kendriya Vidyalaya to charge lesser fee from the wards of the employees of the concerned public sector. Pursuant thereto, respondent No. 3 decided in the Managing

Committee Meeting held on 21st March, 2001 to levy fee from the students for the session 2001-2002 onwards. The tuition fee proposed from the wards of NTPC employees ranged from Rs. 120/- per month to Rs. 180/- per month for different classes and for non-NTPC employees'' wards, the proposed fee ranged between Rs. 270/- per month to Rs. 400/- per month. The proposal to levy the aforesaid fee was communicated on 22nd March, 2001 to respondent No. 2 and as per the counter affidavit filed on behalf of respondent No. 2 it had no objection for the school to charge the said fee.

7. From the fact that the Kendriya Vidyalaya established by the public sector undertakings, respondent No. 1 neither bears the capital cost incurred for establishing the school nor meets the annual expenditure for running and maintaining the school, the decision taken to allow these schools to charge fee from their students, to meet the cost of running the school, cannot be said to be arbitrary or unreasonable. There is no legal obligation upon any public sector to impart free education. As part of its larger social obligation, if a public sector undertaking establishes a school, it would be fully entitled to charge fee from the students of the school. Further, a decision clubbing the students of the school into two categories i.e. wards of the NTPC employees and wards of non-NTPC employees cannot be said to be arbitrary. The classification is fair and reasonable and is based on a valid criteria.

8. Similar challenge was made to another public sector Kendriya Vidyalaya running in the State of Kerala. The Division Bench of the High Court of Kerala in CW No. 1905/2000 by its judgment dated 31st August, 2000 upheld the levy of tuition fee and further upheld the levy of tuition fee at a differential rate. We are in respectful agreement with the said judgment.

9. Counsel for the petitioner contended that the judgment of Hon''ble Supreme Court T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , was not considered in the judgment pronounced by the Kerala High Court and contended that in view of the said judgment and also due to the fact that the Parliament was seized of a bill to make free and compulsory education up to the age of 14 years a fundamental right, the matter had to be looked from another angle, which Counsel for the petitioner frankly conceded was not urged in the writ petition. He further argued that the writ petition was in the nature of a public interest litigation and, Therefore, technicalities should not come in the way of the Court granting relief. We agree with the basic problems that where a petition raises an issue of public importance, Courts should not apply strict rule of pleadings but should proceed to adjudicate upon the issues from the point of view of public interest. However, the question arises whether the petitioner would be entitled to any relief based on the aforesaid argument. In the judgment of T.M.A. Pai Foundation (supra), we may note that the Supreme Court disagreed with its decision in Unnikrishnan''s case and recognised that private institutions are free to have a fee structure to enable the institution to sustain itself. The Court over-ruled the decision in Unnikrishnan''s case and allowed the private

institutions to determine their fee structure, but laid down certain guidelines for governmental superintendence in a limited sphere on the working of these educational institutions. Further, the issue whether every child has a fundamental right to free education up to the age of 14 years would have to be considered in the context of the obligation of the State to make provisions so that the fundamental right to free education is made available to the children. This obligation, can by no stretch of imagination, be fastened upon the public sector undertaking. We find that far from supporting the case of the petitioner, the judgment in T.M.A. Pai Foundation (supra), supports the stand of the respondents. Another submission of the Counsel for the petitioner that this Court has laid down guidelines for schools to enhance their tuition fee, in that it has been directed that the issue of tuition fee should not be decided by the management of a school but in the meting of its Managing Committee where parent representatives should be present. It was contended that respondent No. 3 school has violated the said direction, in that, parents were not associated when the fee structure was proposed. We may note that this grievance, if at all, has to be raised before the Fee Anomaly Committee, which has been constituted by the Director of Education on the direction issued in a public interest litigation by this Court. We may also note that the fee which was to be charged and is being charged at present, as no stay was granted, is still subsidised and as compared to the fee being charged by the other public schools in Delhi is far too less. In any case, it would be open to the petitioner to make a representation to the Fee Anomaly Committee set up by the Director of Education. If such a representation is made, it would be duly considered by the Fee Anomaly Committee.

10. We find no merits in the writ petition. The same is accordingly dismissed. However, there shall be no order as to costs.

