

(2008) 04 SHI CK 0026
In the High Court Of Himachal Pradesh

Parents Association (DAV Public School) and Another	APPELLANT
Vs	
State of H.P. and Others	RESPONDENT

Date of Decision : 07-04-2008

Acts Referred:

Citation : (2008) 3 ShimLC 455

Hon'ble Judges : Rajiv Sharma, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—This petition has been filed in a representative capacity on behalf of the parents of the students who are pursuing their studies in respondent No. 3 school primarily on two grounds: firstly, the school lacks basic infrastructure as per the norms laid down by the Central Board of Secondary Education and secondly, the fee charged by the respondents No. 2 and 3 from the students is exorbitant. The respondent No. 1 has filed a very short reply stating therein that the respondent No. 3 school is affiliated to C.B.S.E. stream and no grant was ever given to D.A.V. Public School, Rampur. The respondents No. 2 and 3 have filed a detailed reply, whereby it is specifically denied that the school lacks in providing basic infrastructure. It is also denied that the school is charging exorbitant fees from the students as alleged by the petitioners.

2. Mr. Bimal Gupta, learned Counsel appearing for the petitioners had strenuously argued that the school lacks the basic facilities of science laboratories, school building, extra curricular activities etc. He had also argued that the school is charging exorbitant fees from the students, which is contrary to the norms laid down in the bye laws framed by respondent No. 4 governing the affiliation of the school. Mr. K.D. Sood, learned Counsel appearing for respondents No. 2 and 3 had argued that the school has the basic infrastructure and the fees charged from the students with effect from 1997-98 till 2000-2001 is reasonable.

3. We have heard the learned Counsel for the parties and have gone through the record of the case carefully.

So far as the contention put forth by Mr. Bimal Gupta with regard to raising of loan by the school is concerned, it has come in the reply that the loan raised by the school from the parents for construction of new building was returned to them except to 2/3 parents who had not come forward to collect the same. It has also come in the reply of the respondents No. 2 and 3 that the school has provided 8 computers and their science laboratory is also fully equipped as per the prescribed norms. Mr. K.D. Sood had also drawn the attention of this Court to the reply whereby it has been specifically stated that the school staff is fully trained and qualified as per the norms laid down by the C.B.S.E. It is evident from the reply filed by respondents No. 2 and 3 that the school is also having regular extra curricular activities.

4. Now we have to consider on the basis of the material placed on record by the parties whether the fee charged by the school from the students with effect from 1997-2001 is exorbitant or not. Mr. K.D. Sood had drawn our attention to the Annexures R-3/5 and R-3/6 to substantiate his plea that the increase in fee for the 4 years is marginal. We have carefully gone through these annexures and are of the considered opinion that taking into consideration the inflation, the construction of new building, raising of necessary infrastructure, wherewithal and the pay scales the school Management has to pay to the teachers at par with the teachers appointed in the Government schools, the increase is marginal. The over all hike in the fee is about 56.51% for four years against the increase in salary by 175% for the last four years. The school management has also to take into consideration the improvements to be made for future by investing huge amount for buying new books, new instruments for science laboratory, furniture construction of building and its maintenance, the salaries to be paid to the teachers and the supporting ministerial staff. The teacher pupil ratio in the school is 1.26 in comparison to 1.30 prescribed by the C.B.S.E. It is also evident from the reply that the students of the school had secured highest average marks in all the D.A.V. institutions throughout India for the academic year 1999-2000. The student of respondent No. 3 school Rampur has topped all the C.B.S.E. affiliated schools by getting 92% marks in 10th standard examination. The students of the school have also brought laurels to it in the field of sports. The school has to raise necessary building funds for the construction of new building and for that purpose charging of Rs. 500/- per annum from each students cannot be termed as exorbitant. The annual amount of Rs. 500/- charged from the students to meet the expenses of examination, medical aid sports, games etc. is also not on the higher side. The school funds are audited by the Auditors of the respondent No. 2 Management.

5. Their Lordships of the Supreme Court have recently held in Islamic Academy of Education and Another Vs. State of Karnataka and Others, , that each educational institution must have the freedom to fix its own fee structure taking

into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. Their Lordships have held by majority as under:

Question No. 1.

So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structure by the Government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise.

(Hon^{ble} Justice Sinha's views)

The fee structure, thus, in relation to each and every college must be determined separately keeping in view several factors, including facilities available, infrastructure made available, the age of the institution, investment made, future plan for expansion and betterment of the educational standard etc. The case of each institution in this behalf is required to be considered by an appropriate Committee. For the said purpose," even the books of accounts maintained by the institution may have to be looked into. Whatever is determined by the Committee by way of a fee structure having regard to relevant factors, some of which are enumerated hereinbefore, the management of the institution would not be entitled to charge anything more.

While determining the fee structure, safeguard has to be provided for so that professional institutions do not become auction houses for the purpose of selling seats. Having regard to the statement of law laid down in paragraph 56 of the judgment, it would have been better, if sufficient guidelines could have been provided for. Such a task which is a difficult one has to be left to the Committee. While fixing the fee structure the Committee shall also take into consideration, inter alia, the salary or remuneration paid to the members of the faculty and

other staff, the investment made by them, the infrastructure provided and plan for future development of the institution as also expansion of the educational institution. Future planning or improvement of facilities may be provided for. An institution may want to invest in an expensive device (for medical colleges) or a powerful computer (for technical college). These factors are also required to be taken care of. The State must evolve a detailed procedure for constitution and smooth functioning of the Committee.

While this Court has not laid down any fixed guidelines as regards fee structure, in my opinion, reasonable surplus should ordinarily vary from 6% to 15%, as such surplus would be utilized for expansion of the system and development of education.

6. Their Lordships of the Supreme Court have recently held in *Superstar Education Society Vs. State of Maharashtra and Others*, that it is the duty of the State Government to provide access to education and unless new schools in the private sector are permitted it will not be possible for the State to discharge its constitutional obligation. Their Lordships have held as under:

It is the duty of the State Government to provide access to education. Unless new schools in the private sector are permitted it will not be possible for the State to discharge its constitutional obligation. Permission has been granted to 1495 new schools under the Order dated 16.5.2006 on permanent no-grant basis without any financial commitment or liability on the part of the State Government, even in future, and at the same time ensuring that the schools follow the parameters and conditions prescribed by the Education Code, reserving liberty to the authorities to take appropriate action, should there be any violation. The said Order does not contravene any provision of law. It was not even the case of the writ petitioner that the schools permitted did not fulfil the conditions, and requirements relating to such schools.

7. In view of the above discussion we are of the considered opinion that the school does not lack basic facilities while imparting education to the students. The fee charged by the school from the students with effect from 1997-2001 is reasonable and also conforms to the norms laid down by the Hon'ble Supreme Court in case *Islamic Academy of Education and Anr. v. State of Karnataka and Ors.* (supra). Consequently there is no merit in this petition and the same is dismissed. However, there shall be no order as to costs.