(2001) 09 PAT CK 0035

In the Patna High Court

Case No : C.W.J.C. No. 4865 of 2001

Pramod Kumar APPELLANT

Vs

National Thermal Power Corporation and Others RESPONDENT

Date of Decision : 25-09-2001

Acts Referred:

Citation : (2001) 09 PAT CK 0035

Final Decision : Dismissed

Judgement

Aftab Alam, J.—There is a single Petitioner in each of these two writ petitions and the children of both the Petitioners go to St. Joseph''s School and D.A.V. Public School set up and run by the management of the respective schools in the National Thermal Power Corporation project site (commonly known as Deepti Nagar Colony) in terms of agreements arrived at between the Corporation and the management of the respective schools. The Petitioner in C.W.J.C. No. 4865 of 2001 has no connection with the Corporation but the Petitioner in C.W.J.C. No. 972/99 was in ad-hoc employment of the Corporation and his service was terminated in the year 1994. He has a history of litigation with the Corporation.

2. The Petitioners are aggrieved by what is described as the dual rates of fees charged by the two schools, one at lower rates from the children/wards of the employees of the Corporation and the other at higher rates from the children/ wards of persons not in the employment of the Corporation.

3. It is not in dispute that school fees are realised from the children in the aforesaid two categories at different rates. St. Joseph''s High School, NTPC Kahalgaon last revised its rates of fees by letter, dated 16.3.1999 the relevant extract from which is as follows:

For NTPC Students

LKG & UKG: Old rate Rs. 50/- New rate Rs. 75/-

I-V: Old rate Rs. 70/- New rate Rs. 125/-

VI-XII: Old rate Rs. 70/- New rate Rs. 180/-

For Non-NTPC Students

LKG & UKG: Old rate Rs. 75/- New rate Rs. 150/-

I-V: Old rate Rs. 105/- New rate Rs. 250/

VI-XII: Old rate Rs. 105/- New rate Rs. 350/-

4. Similarly the DAV Public School, Deepti Nagar, NTPC, Kahalgaon last revised its rates of fees by a circular, dated 19.3.1999, the relevant extract from which is reproduced below:

Class NTPC Wards Non-NTPC Wards

LKG/UKG Rs. 75/- p.m. Rs. 150/- p.m.

1 to V Rs. 125/- p.m. Rs. 250/- p.m.

VI and above Rs. 180/- p.m. Rs. 360/- p.m.

5. In the aforementioned letters issued by the two schools there is a further stipulation that every year there will be increase in fee at least by 10% (to be rounded off to next higher multiple of five) for children of the NTPC employees and the fee for children of non-employees will be at the rate of twice the fee for children of the NTPC employees.

6. The Petitioners are aggrieved by the higher rates of fees for their children and are particularly aggrieved by the stipulation that henceforth the difference in the two rates of fees would be 100%.

7. At this stage it may also be noted that in terms of the agreements executed between the Corporation and the respective schools, the local management of the schools has the freedom to revise the tuition fees "on the recommendation of the managing committee and in consultation with NTPC".

8. Mr. Ganpati Trivedi, learned Counsel appearing for the Petitioner in C.W.J.C. No. 4865 of 2001 strongly submitted that it was impermissible for the schools to adopt a dual structure of fees and charge different fees from the two categories of children, one being the children/wards of NTPC employees and the other being children/wards of non-employees. Mr. Trivedi stated that a dual structure of fees was admitted and the fact that the two schools were levying fees on the children in the two categories at different rates was undeniable. This, according to him, was impermissible in law.

9. Mr. Trivedi submitted that the two schools were set up and are being run on the basis of massive financial aids, in-frastructural help and other facilities provided by the Corporation. According to him, therefore, in the running of the two schools there was substantial involvement of public funds. He also submitted that the two schools were engaged in imparting education which was held to be a

fundamental right under the Constitution. According to him, the dual system of fees must, therefore, be held to be discriminatory and violative of the equality guaranteed under Article 14 of the Constitution.

10. learned Counsel formulated his submissions as follows:

(i) the right to receive education being a fundamental right the two schools though under private management were also discharging a public duty and hence, there should be no difficulty in issuing writ IO those schools if their actions were found violatve of any constitutional or legal provisions.

(ii) the two schools, admittedly receiving in large measures financial aid and assistance from the Corporation, a Public Sector Undertaking, the schools cannot be allowed to adopt a policy of discrimination between the students admitted there for receiving education. Any categorisation of the students on the basis of their parents/guardians being in the Corporation''s employment was wholly unreasonable, unfair and arbitrary.

11. Mr. Trivedi advanced detailed submissions on issues like:

(i) the maintainability of the writ petition against the schools under private management.

(ii) the right to education being a fundamental right, and

(iii) the inherent discrimination in the policy of the schools in adopting a dual structure of fees.

In support of his submission he relied upon decisions of the Supreme Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, and VST Industries Limited (2001) 1 SCC 298.

12. I have noted Mr. Trivedi''s submission for the sake of the record but I see no need to discuss them in any detail as I am convinced that none of these issues really arise in this case. I do not even see the need to make any pronouncement on the issue of maintainability of these two writ petitions claiming reliefs against two private schools. This is for the simple reason that to my mind the whole case seems to be based on misconceived and unfounded premises. Once the real nature of the cash payments and assistance in other forms extended by the Corporation to these schools is clearly understood the whole controversy will dissolve itself and the so-called dual structure of fees would appear nothing but an illusion.

13. I would like to begin by pointing out that what is being described as financial aid, infrastructural support and other assistance provided by the Corporation to the schools is in reality subsidy given by the Corporation towards the education of its employees'' children.

14. It may be borne in mind that the Corporation is not a provider of education and it has no obligation, constitutional or legal, to provide education to the children of Kahalgaon. But at the same time the Corporation being a modern day employer and an employer in public sector owes it to its employees to provide facilities for education of their children and the facilities may also include subsidized school education for the children of its employees. All that the Corporation used to give to the two schools by way of cash reimbursement (which system is now stopped due to financial stringencies in the Corporation itself) and whatever infrastructural support and other facilities are being provided by the Corporation to the two schools are to be viewed not as any aid and assistance to the two schools but as subsidy towards the educational expenses of the children of its employees. Seen in this view the so called anomaly of a dual structure of fee would completely disappear.

15. An illustration may explain the position better. Assuming the cost of education of each child in the school comes to Rs. 100/- per month which the school must realise from every child. The sum of Rs. 100/- per month is, therefore, paid by the non-employees whose children are studying in the school. But the Corporation may have an understanding/agreement with the school that the school should realise from the children of its employees only Rs. 25/-per month and the balance of Rs. 75 for every child of its employees would be paid by the Corporation. This subsidy can be paid monthly or for the sake of convenience annually. Further, depending upon the agreement/understanding between the Corporation and the school the amount of subsidy may be paid in cash or by way of capital investment, infrastructural support or by providing/ other forms of assistance and facilities. Thus it would be seen that both the children of the Corporation''s employees and the non-employees are paying to the school Rs. 100/- per month but in the care of a child of the Corporation''s employee, the parent of the child is required to pay only Rs. 25/- and the balance comes from the Corporation. Seen in this light, there would be no duality in the structure of fees and it is this basic fact which is being overlooked by the two Petitioners.

16. On going through the counter affidavit filed by the Corporation one finds that this is exactly the position. Mr. Mihir Kumar Jha, learned Counsel appearing for the Corporation submitted that the Kahalgaon project was not an exception and this policy was being followed by the Corporation in all its projects/units nil over the country. Mr. Jha explained that for setting up a super thermal power station it is needed to bring to the site highly qualified engineers, technocrats and experts in many other allied fields apart from the supporting staff. Mr. Jha further stated that employees of the Corporation, some of them highly qualified, would be very reluctant to come to the Jungles of Rajmahal for setting up the Super Thermal Power Station, which was so badly needed by the country, and one of the most discouraging factors for them would be the lack of proper educational facility for their children. In those circumstances, it was the uniform policy of the Corporation to have branches of good and reputed schools set up at its project

sites (residential colonies) for providing educational facilities for the children of its employees. Now, the management of those schools would also not come, without certain inducements, to set up their schools in jungle, far away from thickly populated areas. The Corporation, therefore, provided them school building, space and many other facilities which were treated as subsidy towards the educational expenses of its employees. Apart from capital investment towards the school building, residential quarters for the school staff and other similar facilities, the Corporation also used to make good the losses of the schools by giving them cash reimbursement at the end of the year. This also was treated as subsidy towards the educational expenses of its employees. Later on, however, the policy of giving cash reimbursement was discontinued due to the financial stringencies "laced by the Corporation and also taking into consideration that after a number of years those schools also started attracting a substantial number of pupils and had crossed over the difficulties faced by a newly set up school. In those circumstances and with a view to reduce the amount of subsidy the Corporation advised the managements of the schools to make an increase @ 10% per annum in the fees chargeable from the children of the Corporation''s employees and to fix the fees of children of non-employees at twice that rate because that was the actual cost of education of a child in that school.

17. From documents Mr. Mihir Kumar Jha showed that at Kahalgaon a Corporation employee was paying the same school fees for his children as was being paid by other employees posted at Vindyachal, Korba, Frakka or Singrauli. Mr. Jha pointed out that there was complete uniformity in the rates of fee payable by the employees of the Corporation posted at its different project sites all over the country and all the schools at different project sites of the Corporation were run and managed under a uniform policy. In fact the Corporation could not afford to have different rates of fees or different standards of education at is different project sites because that would lead to many other personnel related problems.

18. Mr. Ram Balak Mahto, learned Sr. Counsel appearing for the Petitioner in C.W.J.C. No. 972 of 1999 submitted that leaving aside the issue of discrimination, the fees charged by the St. Joseph''s School at NTPC, Kahalgaon from the children of non-employees were unconscionably high. Mr. Mahto submitted that the Government had regulatory powers in such matters and in case the State Government found that a private school was charging unduly and unconscionably high fee, it could certainly make and enforce regulatory measures. Mr. Mahto urged that this Court should also take notice of the unconscionably high fees being charged by the St. Joseph''s School and issue remedial directions. learned Counsel submitted that in the town of Bhagalpur which is the nearest town from Kahalgaon, the school was charging a much lower fee than what was being charged from the children of non-employees at Kahalgaon.

19. It is debatable whether this Court could itself take over regulatory control

even in case it was found that a private school was in fact charging arbitrary and unreasonably high fees. this Court has no means to find out the current rates of fees being charged by different schools and this Court has no agency to have the necessary fact finding survey done nor it has any enforcement agency of its own.

20. Apart from this Mr. Nawal Kishore Agarwal, learned Sr. counsel appearing on behalf of St. Joseph''s School, Kahalgaon seriously disputed that the fees being charged from the children of non-employee were much higher in comparison than the fees being charged at Bhagalpur. Mr. Agarwal produced before me a statement of fees being charged by different schools in Bhagalpur.

21. From this statement one finds that the total fees being charged, under different heads, at Bhagalpur is much higher than what is being charged at Kahalgaon. It is true that the tuition fee at Bhagalpur is Rs. 250/- per month which comes to Rs. 3000/- per annum and the tuition fee at NTPC, Kahalgaon is Rs. 360/- per month which comes to Rs. 4320/- per annum but other levies and charges under different heads at Bhagalpur add up to Rs. 6385/- per annum whereas the total charges at NTPC, Kahalgaon add up to only Rs. 4485/- per annum. Thus it cannot also be said that the charges at the Kahalgaon school are TO unreasonably high that this Court must interfere.

22. For all these reasons I find no merit in these writ petitions and no relief, therefore, can be granted to the Petitioners. These two writ petitions are accordingly dismissed. However, there will be no order as to costs.