

(2011) 03 JH CK 0049
In the Jharkhand High Court
Case No : A.C. (S.B.) No. 11 of 2010

Principal, Delhi Public School

APPELLANT

Vs

Syed Mohammad Sharfullah and Others

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Citation : (2011) 2 JCR 180

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Poonam Srivastav, J.—Heard Shri A.K. Mehta, learned Counsel appearing on behalf of the Appellant Delhi Public School (DPS) and Shri Deepak Roshan, learned Counsel appearing on behalf of Respondent No. 1.

2. The instant appeal is preferred against the judgment and order dated 19.03.2010 passed by the Jharkhand Education Tribunal (JET), Ranchi in Case No. 26 of 2009. The petition preferred by opposite parties was partly allowed holding that the hikes in Tuition fee and Admission fee for financial year 200910 are to be kept at the level of only 15% more with reference to such rates in the immediately preceding year 200809. A number of similar cases were filed before the Jharkhand Education Tribunal (JET) against the Delhi Public School of different branches, challenging the decision of the Institution within the State of Jharkhand challenging the revision of respective fee structure for the academic session, 200910. The escalation in the school fee was to be implemented with effect from 01.04.2009. The hike in the fee was challenged to be arbitrary and abnormally high and inconsistent with the relevant laws/byelaws/instructions etc., specifically, the affiliation byelaws of the Central Board of Secondary Education (CBSE). The petition was filed before the Tribunal allegedly on the ground that there was huge protest and voices to resist the implementations of hikes in the fee.

3. The instant appeal pertains to the Delhi Public School, DPS Dhanbad. The opposite party is the father of one Arham Nabil (student of Class 6th of DPS at Dhanbad). He filed an application challenging the fee structure whereby the Annual Tuition fee was enhanced from Rs. 820/per month to Rs. 1190/per month which was calculated to be an increase by 45%. The challenge was that the hike in the fee was unreasonable and exorbitant and without seeking permission from the State Government.

4. The case of the Appellant is that DPS, Dhanbad is a joint venture of the Delhi Public School Society registered under the Society Registration Act, 1860 with the prime object of extending quality education and other curricular activities for all round development. The agreement with Bharat Coking Coal Limited, which is a Government of India undertaking, a trust registered in the name of Coalfield Education Trust, runs the school. The DPS, Dhanbad, is affiliated with the Central Board of Secondary Education and it is a private unaided educational Institution. The Government of India recommended revision of pay scales in confirmation of the 6th Pay Commission recommendations, which was duly approved by the Central Government and was given effect to from 01.01.2006. In parlance to the said recommendations, the DPS Society had taken a decision to implement the 6th Pay Commission recommendations in the Institution as well. Annexure 2 to the writ petition is a communication bearing Ref. No. DPSS/ Admn/5198 dt. 27.02.09 of the Secretary, DPSS addressed to the Pro Vice Chairman, DPS Schools. Pursuant to the said letter, a decision was taken to implement the 6th Pay Commission in its meeting dated 31.03.2009. This meeting of Managing Committee was also participated by two parents' representative members and finally, it was duly approved by Pro Vice Chairman, Delhi Public School, Dhanbad. After due approval was granted, the escalation of the fees as decided or implemented, was challenged before the JET (order of the JET dated 19.03.2010 is in Case No. 26 of 2009) passed a detailed judgment and the three points for consideration before the Tribunal are enumerated below:

(a) whether the Respondent school, Delhi Public School, Dhanbad has acted arbitrarily while deciding on and implementing its revised school fee structure with effect from 01.04.2009 for the academic session, 2009-10,

(b) whether such fee hike was abnormal that tantamount to not being commensurate with the factors attached therewith,

(c) whether such fee hike had any profiteering motive implicitly built in; and

(d) whether while deciding on such fee hike, the provisions as contained in relevant rules, instructions, directions etc. were duly followed.

5. On perusal of the judgment, it transpires that question No. (a) was decided in favour of the Institution, holding that the DPS Management Committee did not act arbitrarily while enhancing the fee structure. The decision on question No. (b) was also in favour of the Institution coming to a conclusion that since the school was running in a financial deficit for past many years and, therefore, the financial

constraints cannot be termed as an abnormal phenomenon, though it was on the higher side. Conclusion of question No. (c) was also unequivocal that the Institution had no intention or motive of profiteering and there was no inbuilt intention to make any illegal gain behind the hike of tuition and annual fee. However, while deciding the question No. (d), the JET was of the view that the DPS Society or the Respondent Institution made no effort to follow the relevant provisions of the CBSE bylaws and finally allowed the case in favour of the Respondent granting hike in the fees for financial year 200910 at the level of only 15% more with reference to such rates immediately in the preceding year 200809. Thus, the increase in fee structure was considerably reduced. Evidently, the JET while holding that the DPS Society was at fault for not having followed the relevant provisions of the CBSE bylaws, has failed to examine the bylaws visavis, the challenge made by the Respondent. The bylaws is titled as:

Central Board of Secondary Education

"AFFILIATION BYELAWS".

6. The Byelaws is only with regard to affiliation given by the CBSE to the various Institutions and also pertaining to the withdrawal, refusal of affiliation, up gradation or any matter arising in respect of anything pertaining to affiliation with any school or any other person, society, company or organization, as mentioned in Chapter I 1 Sub-rule (3) of the said byelaws. Chapter VI Rule 19 deals with the Role/Aims of Society/Trust and for a ready reference, the specific Rule on which the JET has placed reliance while coming to a conclusion against the Appellant is enumerated:

1. The Society/Trust running the school has a critical and key role to play in providing a good and healthy climate to the school to fulfill its aim and objects, to enable the staff provide quality education and to be a centre for educational excellence. To achieve this aim, the role and responsibilities of the Society/Trust are defined as under:

* It shall have control over the school management committee and shall approve the budget/tuition fees and annual charges etc. for the school.

* It shall generate funds for the needs of the school whether it is recurring or nonrecurring.

7. I proceed to examine the impugned judgment/order visavis, the Rule relied upon by the JET to come to a conclusion whether the interpretation of the Rule while holding enhancement of fees excessive was liable to interference, is correct or not?

8. The approach of the Tribunal appears to be only on the basis of Clauses (v) and (vii), which provides that the CBSE shall have control over the school management shall approve the budget, tuition fee and annual charges etc. of the school as well as shall also ensure that the Institution is able to generate funds for the need of the school whether it is recurring or nonrecurring. The Rules since

relate to affiliation of the Institution and, therefore, in my view, the only question that arises before the CBSE Board is to either grant affiliation or after grant of affiliation, withdraw the said affiliation or any other decision relating to affiliation of the particular Institution alone. Interpretation by the JET that it will have the control over the management is absolutely wrong since the management is the sole authority to take decision in the affairs of the Institution including enhancement of fees etc. and, therefore, in my view, the hike in fees is also an exclusive domain of the management. I have also examined the impugned order and it is evident that the JET was of the view that the Institution did not act arbitrarily or there was an implicit inbuilt profiteering motive in its decision while enhancement of fees. Since the finding of the Tribunal in respect of question Nos. (a), (b) and (c) is in favour of the Institution and the finding on point (d) is that the Society was at fault for not having followed the relevant provisions of the CBSE bylaws, cannot be sustained. The Appellant Institution is an unaided private Institution and, therefore, the management should have complete authority to regulate the facets of administration. The regulatory measure of control should be minimal, though conditions of recommendation as well as of affiliation to the Board has to be complied with. In the day today matter, the management should not be hampered by interfering in the administrative control. It should have the freedom to manage the various affairs of the Institutions and there should not be any external controlling agency. In the circumstances, the judgment/order of the JET is illegal and it exceeded its jurisdiction trying to control and fix the fee structure which the Institution can ill afford. Each 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. It is also settled law that the management of such Institutions should be given the liberty to generate some surplus funds which can be used for the betterment and growth of the educational Institutions.

9. In view of this, the findings recorded by the JET is liable to be set at naught, since it amounts to interference in fixation of the fee structure, specially when the Tribunal was satisfied that on account of escalation in the salary in proportion to the 6th Pay Commission, the Institution is facing financial crunch. It is absolutely illegal to interfere in the decision of the management, as it has been done in the instant case. Besides, various decisions of the Apex Court has clearly laid down the principle decrying interference in the regulatory authority of the management of such Institutions.

10. Learned Counsel has placed reliance on a number of decisions of the Apex Court first, in the case of Cochin University of Science and Technology and Another Vs. Thomas P. John and Others, as under:

A reading of the aforesaid judgments would reveal that the broad principle is that an educational institution must be left to its own devices in the matter of fixation of fee though profiteering or the imposition of capitation fee is to be ruled out

and that some amount towards surplus funds available to an institution must be permitted and visualised, but it has also been laid down by inference that if the broad principles with regard to fixation of fee are adopted, an educational institution cannot be called upon to explain the receipts and the expenses as before a Chartered Accountant. We find that the observations of the Division bench of the High Court that no rational basis for the fixation of a higher fee for two years had been furnished lays down an onus on the educational institution, which would be difficult for it to discharge with accuracy.

11. The other decisions relied upon are in the case of *T.M.A. Pai Foundation v. State of Karnataka* 2003 (1) JLJR 1 (SC) and in the case of *Islamic Academy of Education and Another Vs. State of Karnataka and Others*,

12. Thus, on the face of the fact that the Tribunal itself is of the view that there was no profiteering and the escalation is on account of constraints which the Institution was facing since a long time and in the present setup whether salary structure has to be escalated, the enhancement of fees is inevitable and, therefore, the Institution had no other option. There can be no rigid fixing of fee structure by the government. The Institution must have the freedom to fix its own fee structure, taking into consideration the need to generate fund to run the Institution and to provide facilities for the benefit of the student. The various Datas and the Charts provided in this Appeal by the Petitioner to establish the deficiency in the DPS, Dhanbad, was by 45% and, therefore, there was no other option but to enhance the fee structure. The Tribunal was altogether wrong while bringing down the rate of enhancement on the basis of CBSE Affiliation Rules. The Contabular Chart showing fee structure of various DPS Institutions such as, Bhagalpur, Patna, Dwarka Delhi, Jamshedpur, Bokaro, Dhanbad, Ranchi, Bindnagar Madhya Pradesh etc. are sufficient proof of the fact that the Appellant is not indulging in profiteering.

13. The learned Counsel has been successful in establishing that the fee structure at Dhanbad is at the lowest whatsoever, in view of the hike in the fee structure in parlance with the 6th Pay Commission and in the face of financial constraints, it is apparently justified.

14. The learned Counsel for the Respondent has placed reliance on a number of decisions of this Court in the case of *De Nobili School Mugma, Dhanbad v. Satish Kumar and Ors.* 2011 (1) JCR 61 (Jhr). In the said case, the hike in tuition fee was found to be unwarranted and, therefore, this Court declined to interfere.

15. I am of the view that the aforesaid decision has no applicability to the facts of the present case where the Tribunal was of the view that the hike in the tuition fee was necessary. It was not a case of profiteering as well as there was no demand of capitation fee. Besides, hike has been made under financial constraints and cannot be termed as an abnormal phenomenon. Therefore, once the Tribunal itself taken a view in favour of the Institution but has decreased the escalation in fees, without taking into consideration the relevant reasons and the

charts as well as the deficiency and loss which the Institution was facing since last many years and only as a last alternative, the fee was escalated especially, on account of the actual additional annual financial burdens consequent upon the implementation of the recommendations of the 6th Pay Revision.

16. In view of what has been stated above, the judgment impugned in the instant Appeal on the face of it is illegal and liable to be quashed. The escalation in the enhancement of the fee is fully justified and the Tribunal could not have decreased it by means of the impugned order. Accordingly, the Appeal succeeds and the order under challenge stands quashed.