

(2016) 02 DEL CK 0223

In the Delhi High Court

Case No : LPA 857/2015, C.M. Appl. 28682/2015, LPA 1/2016 & C.M. Appl. 1/2016

Samarth Shiksha Samiti and Others

APPELLANT

Vs

Shakuntala Maggo and Others

RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:

Delhi School Education Act, 1973 — Section 10, Section 2(t), Section 2(u), Section 20, Section 3, Section 3 (6), Section 3(1), Section 3(2), Section 3(3), Section 4, Section 8

Citation : (2016) 229 DLT 1

Hon'ble Judges : S. Ravindra Bhat and Deepa Sharma, JJ.

Bench : Division Bench

Advocate : Puneet Taneja and Shaheen, Advocates, for the Appellant;

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—1. The appellant impugns two orders of learned Single Judge; the question urged is a common one relating to the applicability of the Delhi School Education Act, 1973 (hereafter "the Act") to its unrecognized private primary school.

2. In W.P.(C) 9942/2015 (hereafter "Sachdeva's case") the appellant's challenge was to the order dated 10.08.2015 of the Delhi School Tribunal ("Tribunal"), which held that superannuation of the respondent teacher at the age of 58 years was illegal. In W.P.(C) 8805/2015 too, the issue was with respect to retirement of the respondent teacher upon her attaining the age of 58 years; there the Tribunal had set aside the order of retirement as well.

3. The appellant urged, before the learned Single Judge, in the two writ petitions preferred by it, that the provisions of the Act were inapplicable and the terms and conditions stipulated or prescribed, could not be imposed upon it. The argument made by it was that in contrast to its secondary and senior secondary school establishments, which were recognized by the Govt. of NCT of Delhi and affiliated to one Board or the other and hence regulated by the Act, the primary

school was an unrecognized establishment and consequently beyond the pale of recognition. Therefore, the stipulation that the terms of employment of the appellant's primary school had to be aligned with those of employees in schools of the Govt. of NCT of Delhi did not arise.

4. The learned Single Judge, in the two separate - though identically reasoned judgments assailed before this Court, followed a previous learned Single Judge's ruling in *Mrs. Geeta Radha Krishnan v. St. Anthony's Girls Senior Secondary School*, [W.P.(C) 6850/2012, decided on 07.08.2013]. That decision- as well as the two impugned judgments in these appeals had also relied on a previous Division Bench judgment in *Social Jurist, a Civil Rights Group v. Govt. of NCT & Ors.*, 2008 (101) DRJ 484.

5. Mr. Puneet Taneja, learned counsel appearing for the appellant/Samiti, urges that the learned Single Judge fell into error in straying from the text of the Act, whose plain terms oblige only recognized private schools to comply with its provisions and not schools that are refused or have not sought recognition from the Govt. of NCT of Delhi's Directorate of Education. It was highlighted that the terms of Section 3 of the Act clearly showed that its provisions were meant to apply only to recognized and not unrecognized schools. Likewise, counsel relied on the phraseology adopted by Sections 8 and 10 to highlight that the obligation to maintain parity in regard to terms of employment and pay as well as emoluments as between private schools and those set up and managed by the Govt of NCT of Delhi was only vis-A -vis recognized schools. It was highlighted that the decision in *Social Jurist* (supra) was considered later in a later Division Bench judgment in *Shaheed Udham Singh Smarak Shiksha Samiti & Ors. v. Smt. Santosh Verma & Anr.* [LPA 825/2013 and connected cases, decided on 12.08.2013].

6. Mr. Satyakam, learned counsel for the Govt. of NCT of Delhi and counsel appearing on behalf of the employees of the school opposed the submissions of the appellant. They urged that the entire scheme of the Act had been examined in *Social Jurist* (supra), which had conclusively ruled that the statute applied to both recognized and unrecognized schools. They highlighted that the definition of "school" makes no distinction between recognized ones and unrecognized ones- Section 2(u) defines

"school" as follows: "school" includes a pre-primary, primary, middle and higher secondary school, and also includes any other institution which imparts education or training below the degree level, but does- not include an institution which imparts technical education".

7. Furthermore, Section 3(3) categorically enjoins that after commencement of the Act, the establishment of schools would be subject to provisions of the Act. Reliance was also placed on Rule 44 of the Delhi School Education Rules (hereafter "Rules"). It was submitted that in *Shaheed Udham Singh Smarak Shiksha Samiti* (supra) that the Court had proceeded on a concession that

employees could not approach the Delhi School Education Tribunal, if they had a grievance in respect of actions of an unrecognized schools. Moreover, argued counsel, the said Division Bench overlooked the substantive declarations as to the effect of Section 3 and Rule 44, which had been dealt with in *Social Jurist* (supra). Learned counsel also pointed out that Section 20, which confers upon the Government (i.e. Administrator) the power to take over a school management, applies equally to recognized and unrecognized schools.

8. This Court does not propose to extract the provisions of the Act and Rules; they have been dealt with elaborately in the main judgment, in *Social Jurist* (supra). In that decision, the Court, after extracting and analyzing relevant provisions, held as follows:

"24. A plain reading of the above provisions especially Section 3(1) supra would show that the administrator has the power to regulate education in all the schools in Delhi. The expression "all the schools in Delhi" is significant and leaves no manner of doubt that the Act is not limited in its application only to recognized schools. The term "recognized school" and "school" have been separately defined by the Act in Section 2(t) and 2(u) in the following words : 2(t) "recognized school" means a school recognised by the appropriate authority; (u) "school" includes a pre-primary, primary, middle and higher secondary schools, and also includes any other institution which imparts education or training below the degree level, but does not include an institution which imparts technical education.

25. The language employed in Section 3 and the definition of the term "school" in 2(u) supra would therefore make it manifest that the power of the administrator to regulate education extends to not only recognized but all schools whether the same are recognized or unrecognized. We have therefore no hesitation in rejecting the contention urged by Mr. Sinha that the Act is confined in its application to only recognized schools.

26. Coming then to the question of establishment of a new school. The provisions of sub-section 3 to Section 3 make it clear that on and from the commencement of the Act, the establishment of any new school or the opening of a higher class in an existing school or the closing down of any existing class in an existing school can be subject to the provisions of the Act and the Rules only. This implies that from the date of commencement of the Act, while the existing schools were deemed to be recognized and hence allowed to continue subject to their fulfilling the requirements of recognition, new schools could be established only in accordance with the Act. The establishment of a new School could in turn take place only with the permission of the administrator. This is evident from Section 3(2) of the Act which authorizes the administrator to permit the establishment of any such school. We may as well refer to Rule 44 of the Rules framed under the Act which makes a provision regarding the opening of new schools.

32. It is evident from a reading of the above provision that the take-over of the Management of the Schools whether recognized or not is also envisaged only in cases where the Managing Committee or the Manager has neglected to perform any of the duties imposed upon it by or under the said Act or the Rules made thereunder. The occasion to take over would also arise only if the School was established with the permission of the administrator. In the instant case, unrecognized schools have been established without the permission of the administrator required under Section 3(2) of the Act. No notice of intention to open the school in terms of Section 34 has ever been given by these institutions nor have these institutions been subjected to any inspection or evaluation to determine whether they fulfill the bare minimum requirements for running an institution in terms of Rules 50 and 51 of the Delhi School Education Rules, 1973. As a matter of fact, for some inexplicable reason, the Government and the Directorate of Education have been under the impression that neither any permission nor any intimation in terms of the provisions mentioned above is necessary for starting a school and that it is none of their business or responsibility to regulate the setting up of such institutions or their continuance in Delhi. That impression, as already noticed earlier, is against the specific provisions of the Act and the scheme underlying the same. The result is that there is a total breakdown of the machinery which the Act had envisaged for regulating and organizing planned development of school education in Delhi. The situation is not however totally irremediable. While the schools may have, on account of the inaction of the authorities, come up and functioned all these years, there is no reason why the same cannot be brought under the regulatory control of the authorities under the Act. A direct and ruthless approach to that issue may have called for a mandamus to the authorities to shut down such institutions. Keeping however in view the fact that a very large number of students are admitted to such institutions and are likely to get displaced by any such direction, a more realistic and workable solution shall have to be found out by which both the objectives, namely, the establishment of the supremacy of the law as enacted by the Parliament and the protection of the interest of the students at large can be achieved. That can, in our opinion, be done by giving to the institutions established without due and proper authority of the administrator an opportunity to make such applications and seek recognition within a specified period by fulfilling the requirements stipulated under Section 4 of the Act read with Rules 50 and 51 of the Delhi School Education Rules, 1973. Such of the institutions as satisfy the requirements of the said provisions could then be recognized upon a proper evaluation of their infrastructure as stipulated by the statutory provisions. Such of the others as do not satisfy the requirements of the statute or fail even to seek waiver of compliance with the said provisions in terms of Rule 52 of the Rules could then be identified and their cases referred to the local authority concerned for taking appropriate action by way of closure of the institutions in accordance with the relevant statutory provisions having due

regard to the user prescribed for the premises from which they are operating in terms of the Master Plan and the requirements of safety measures stipulated for running an educational institution of a public character."

9. Social Jurist (supra) was a public interest litigation. The operative directions, towards enforcement of the Act, were quoted in the later Division Bench in Shaheed Udham Singh Smarak Shiksha Samiti (supra). However, the substantive declaration quoted above, were not seen or considered. In Social Jurist (supra), the Division Bench, by a later order (dated 07.05.2015), reiterated its declaration of law, based on interpretation of provisions of the Act:

"11. This Court, in judgment dated 8th February, 2008 in this petition, has held, (i) that the School Act empowered the Administrator, Delhi to regulate education in all the schools in Delhi; thus the operation of the School Act is not limited to recognized schools only; (ii) that a new school can be established only with the permission of the Administrator and subject to the fulfilment of the requirements stipulated in the School Act and the Rules framed thereunder; and, (iii) that the GNCTD had however failed to enforce the provisions of the School Act resulting in there being a larger number of unrecognized and unauthorized schools in Delhi than those that are authorized and recognized."

The fact remains that the latter portion, i.e existence of unrecognized schools which are "unauthorized" by law, is a reality. The question is does this "reality" blind the Court from its duties to enforce the law as it sees it? Shaheed Udham Singh Smarak Shiksha Samiti (supra) appears to suggest that; we, however, respectfully disagree.

10. High Courts, and indeed all Courts, are tethered to precedent which is essential to ensure consistency and stability in the administration of law. The alternative, i.e. each Court being left free to pursue its views regardless of previous judgments of Courts of co-ordinate composition, or Benches of greater numbers, in a hierarchal system, would result in chaos and uncertainty about the law. Here, one recollects the caution administered in *Broom v. Casse II & Co.*, [1972] 1 AER 801 that:

"it will never be necessary to say so again, that in the hierarchical system of courts which exists in this country, it is necessary for each lower tier, including, the Court of Appeal, to accept loyally the decisions of the higher tiers".

11. The rule was again explained in *Davis v. Johnson*, (1978) 2 WLR 152 in the following words:

"Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules."

12. The Supreme Court, speaking through Krishna Iyer, J. in *Ambika Prasad Misra v. State of U.P.* , (1980) 3 SCC 719 : AIR 1980 SC 1762 explained that

even though a decision might be based on faulty reasoning or might be unsatisfactorily argued, if it is of a higher Court and consequently binding, it has to be necessarily followed. The following observations in Salmond's "Jurisprudence", page 215 (11th edition) was referred to:

"A decision does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned."

13. This Court is of the opinion that Shaheed Udham Singh Smarak Shiksha Samiti (supra) cannot be regarded as a binding authority for more reasons than one. First, it did not examine, closely - at least a reading of the judgment does not establish so- the reasoning which led the previous Division Bench in Social Jurist (supra) to hold that unrecognized schools too were regulated by the Act. Apart from the definition of "schools", Section 3, Section 52, Rule 44 and Rule 50, that judgment also noted that the power of taking over management, applied widely to all schools, regardless of recognition. This was a clear pointer to the overarching State interest in ensuring that schools secured recognition. Even the provision in Section 3 (6) brings home this concern: "(6) Every existing school shall be deemed to have been recognised under this section and shall be subject to the provisions of this Act and the rules made thereunder".

14. Apart from the binding nature of Social Jurist (supra), the declaration in which has attained finality, it seems abhorrent to this Court, that when the State has assured every child education, which is guaranteed as a fundamental right no less, and the fruition of which has led to the enactment of an elaborate mechanism under a special Parliamentary legislation (Right to Education Act), it can nevertheless be considered perfectly reasonable to say that some institutions which choose to not be regulated, can be held to be so. Compliance with the law is the norm, and violation is deemed deviant, inviting penal sanction. However, allowing such "outlaws" is to undermine those that abide by the law. In the vital area of education, it is not possible to countenance the submission of such outlaws that they stand outside the pale of regulation and are to be "let alone" to do what they please, by way of imparting what they deem to be education, in whatever terms they choose and through personnel holding such qualifications that they (and not the law) deem appropriate.

15. For the above reasons, it is held that these appeals are unmerited; they are consequently dismissed.