

(2011) 12 DEL CK 0216

In the Delhi High Court

Case No : Writ Petition (C) No. 1659 of 2011

Shishti Solkar and Others

APPELLANT

Vs

Mahavir Sr. Model School and Others

RESPONDENT

Date of Decision : 23-12-2011

Acts Referred:

Constitution (Eighty-Sixth Amendment) Act, 2002 — Article 21A
Constitution of India, 1950 — Article 226
Delhi School Education Act, 1973 — Section 10
Delhi School Education Rules, 1973 — Rule 158
Right of Children to Free and Compulsory Education Act, 2009 — Section 12

Citation : (2011) 12 DEL CK 0216

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : U.M. Tripathi, for the Appellant; Rakesh Kumar Khanna With Ms. Seema Rao, for Respondents 1 and 2, Ms. Koplin Kaur proxy Counsel for DOE, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—The petitioner no.1 who is a student of 10th standard and the petitioner no.2, the father of the petitioner no.1 have

invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India to seek directions to direct the respondent no.1/Mahavir

Senior Model School and the respondent no.2, the Manager of the said school to issue admit card of the petitioner no.1 for appearing in the Board

Examination of 10th class commencing from 15th March, 2011. The petitioners also seek directions to direct the respondents 1 and 2 to grant

entire fee concession to the petitioner no.1 for the academic session 2010-2011 and also for the future academic sessions.

2. The aforesaid directions have been sought by the petitioners based on the

facts that the petitioner no.1 was admitted in the respondent no.1 school in the year 1999 in the nursery class and at present she is studying in the 10th standard and was slated to appear in the forthcoming Board examination scheduled to be held from 15th March, 2011. The petitioner no.2 has claimed that he belongs to the economically weaker section of the society and also belongs to the scheduled castes category and thus his daughter is eligible for grant of fee concession. The petitioner no.2 has placed on record a copy of income certificate duly certified by the Office of the Deputy Commissioner (North West District) Delhi to show that his income is Rs.4,000/- . It is also the case of the petitioners that looking into the financial condition of the petitioner no.2, the respondent no.1 school had granted fee concession in favour of the petitioner no.1 to the extent of 50% since 2004 to 2007-2008. The petitioners have further stated that in the year 2009-2010 they had applied for full fee concession in the category of EWS as per the circular issued by the Directorate of Education granting fee concession to those whose earning is up to Rs.40,000/- annually, but since the fee concession was not granted by the respondent nos. 1 and 2, the petitioners filed a writ petition bearing W.P.(C) No. 12775/2009 before this Court and vide order dated 29.1.2010, the said petition filed by the petitioner was disposed of by this Court in view of the statement made by the counsel for the respondents that they had already granted 50% concession in terms of Rule 158 of the Delhi School Education Rules, 1973. It is also the case of the petitioners that the petitioner no.1 was promoted in 10th class but her name was struck off from the roll of the school as she was in arrears of the school fee and because of the alleged illegal act of the respondents 1 and 2, the petitioners preferred another writ petition bearing W.P.(C) No. 4707/2010 which was disposed of by this Court vide order dated 6.12.2010 and while disposing of the said writ petition, this Court left the option of the petitioners open to apply for claiming fee concession for the current academic year provided such an application is filed by the petitioner within a period of thirty days from the commencement of the then current academic session and in compliance of the said directions, the petitioners had applied for full fee concession for the present and future academic session. It is also the case of the petitioners that the said request made by the petitioners was rejected by the

respondent no.1 school vide their letter dated 15.1.2011. It is also the case of the petitioners that even on payment of the arrears of the fee amount

and of the current dues the respondent nos. 1 and 2 had withheld the admit card of the petitioner no.1 and being aggrieved by such acts of the

respondent nos. 1 and 2, the petitioners have filed the present petition.

3. A detailed counter affidavit was filed by the respondent nos. 1 and 2 taking various legal and factual objections. The respondents in their counter

affidavit have seriously disputed the income of the petitioner no.2. The respondents have also stated that there was an outstanding amount

Rs.59,574/- against the petitioners at the end of the academic year 2008-2009 and the said amount was not paid by them to the detriment of

respondent school which being a minority school is dependent upon the said earnings from fees as a source to run the school. The respondents

have also taken a stand that the petitioner no.2 is the owner of a house constructed on a plot of land measuring 200 sq. yards in a prime locality in

Delhi and he is also a professional teacher of painting and music and earns a good income by giving private tuitions to the students. The

respondents have also submitted that in the year 1999-2000 the petitioner no.2 had shown his monthly income to be at Rs.10,000/- p.m. and later

in the academic session 2009-2010 he had pretended his income to be Rs.4,000/- p.m. with a sole intent to evade and avoid payment of the

school fees. The respondents have also taken a stand that after coming into force the 6th Pay Commission the expenses of the school have

increased manifold and the financial burden on the school has also increased after the commencement of the Right of Children to Free &

Compulsory Education Act 2009, which act as per Section 12 mandates every school to provide free and compulsory education to 25% students

at the entry level and due to that the financial condition of the school has deteriorated to the extent that the school is no longer in a position to

provide any more fee concessions. The respondents have also taken a stand that their bona fides can be gauged from the fact that on the very first

date fixed before this Court they had brought the admit card of the petitioner no.1 so that she could appear in her Board Examination, but the

petitioners have been avoiding to pay the outstanding amount of school fee and a sum of Rs. 16,570/- is still outstanding against the petitioners.

4. In the aforesaid backdrop of facts, arguments were addressed by both the parties. The petitioners were represented through Mr. U.M. Tripathi, learned advocate while arguments on behalf of respondents were led by Mr. Rakesh Kumar Khanna, learned Senior Advocate. No counter affidavit was filed by the respondent nos. 3 and 4 except placing on record the necessary circulars and orders and that too when directions to this effect were given by this Court.

5. I have heard Learned Counsel for the parties at great length and given my thoughtful consideration to the arguments advanced by them.

6. The present is yet another addition to the consecutive writ petitions filed by the petitioner no.2 for claiming fee concession for his daughter.

Expressing displeasure on the filing of this writ petition two months after his application for fee concession was rejected and just one day before the commencement of the Board Examination, this Court vide order dated 14.3.2011 showed its disinclination to entertain this writ petition, but taking into consideration the future of the child, directions were given to the petitioner no.2 to deposit a sum of Rs.2,500/- with the respondent no.1 on the same day and another sum of Rs.2,500/- on 30.3.2011 for the release of the admit card of the petitioner no.1, which directions were complied by the petitioners and the admit card released.

7. Thus, now the controversy that remains to be laid to rest is that whether the petitioner no.1 is entitled to the fee concession or not. The

respondent no.1 school is an unaided private school duly recognized under the Delhi School Education Act. Under Rule 158 of Delhi School

Education Rules, 1973, there exists a provision for the grant of fee concession and the said rule for better appreciation is reproduced as under:

158. Fee Concession-(1) The head of the school may exempt deserving students, whose parents or guardians are not financially solvent to pay the

fees specified by these rules, from payment of the whole or one-half of such fees for a period of twelve months commencing from the 1st day of

May of each year or from the date of admission of the child or ward, whichever is later, and such exemption shall be regulated in the manner

specified in sub-rule(3).

(2) Exemption made to any student under sub-rule(1) shall, so long as the conditions for eligibility for exemption are fulfilled and the student

continues in the school, be renewed from year to year.

(3) Up to a limit of twenty per cent of the total number of students on the rolls of the school in all the classes in the [Secondary or Senior

Secondary stage} as on the 7th day of May of the year may be exempted from the payment of the whole or one-half of the fees, and where any

student is admitted after the 7th day of May but before the 31st day of August of that year, up to a limit of twenty per cent of the students so

admitted may be exempted from the payment of the whole or one-half of the fees.

(4) The proportion of the students receiving exemption from the payment of the whole or one-half of the fees may be varied in any of classes in the

2{Secondary or Senior Secondary stage} at the discretion of the head of the school, so however, that the number of students enjoying exemption

from payment of the whole of the fee shall not exceed fifteen per cent, of the students at any time of the year.

(5) The percentage of the students receiving exemption from payment of the fee shall be calculated on the total number of students in all the classes

in the 2{Senior or Senior Secondary stage} reduced by the number of students granted exemption from payment of fee under the provision relating

to:

(a) the concessions to students belonging to the Scheduled Castes or Scheduled Tribes;

(b) students having brothers or sisters studying in the same school or a school under the same management;

(c) students who are wards of teachers.

(6) In calculating the number of exemptions, the fraction of one-half or more shall be treated as one.

(7) The number of exemptions from payment of the fee shall not be altered during the year except where, owing to the departure from the school

of any student enjoying exemption, a vacancy arises, it shall be permissible to pass on the exemption enjoyed by the student so departing, to any

other deserving student of the school.

(8) Where the number o students eligible for receiving exemption from payment of fee is in excess of the number of students to whom exemption is

admissible under these rules, the exemption shall be made in order of merit on

the basis of the results of the immediately previous annual examination or, if necessary, on the basis of a special competitive examination held to determine the order of merit of the eligible students.

It would be seen from the above rule that up to a limit of twenty percent of the total number of students in all the classes can be exempted from the payment of the whole or one half of the fees and the discretion to grant such exemption vests with the head of the school and such a discretion is exercised by the head of the school in deserving cases of the students whose parents or guardians are not financially solvent to pay the fees specified by the said rules. There is no quarrel with the fact that the grant of fee exemption is not a matter of right and it is for the parents to satisfy the head of the school that he/she is not financially solvent enough to bear the expenses of his/her wards towards the school fees and taking into consideration the material placed before the head of the school, decision is to be taken by the head of the school to grant full fees concession or the concession for one half of the fees. Apart from the already existing Delhi School Education Act, 1973 which is applicable to Delhi only, another central legislation which aims to fulfill the much desired goal of the right for education for all within this country is the Right of Children to Free & Compulsory Education Act 2009, wherein a provision u/s 12 has been made for the grant of free and compulsory education to the economically weaker sections of the society and the children belonging to the disadvantaged group subject to a minimum of 25%. After the commencement of this new Central Statute, every school has a legal obligation to provide free education at the entry level to the children belonging to the weaker sections and disadvantaged group subject to the minimum of 25%. The Directive Principles of State Policy enumerated in our Constitution lay down that the State shall provide free and compulsory education to all children upto the age of 14 years. Later on, through the 86th Constitutional Act, 2002, Article 21A was inserted with a view to achieve the said objective of providing free and compulsory education to children in the age group of 6-14 years as a Fundamental Right and through the said Central Act, that is, Right of Children to Free & Compulsory Education Act 2009, free elementary education has been made available to the extent of 25 per cent of the strength of the class of those children

who belong to economically weaker and disadvantaged sections of the society.

8. As is seen from the abovesaid two enactments, free seats to the extent of 25 per cent upto the level of elementary education is taken care of

under the Right of Children to Free & Compulsory Education Act 2009 and so far as Delhi School Education Act, 1973 is concerned, Rule 158

of the same takes care of providing free seats to the students of all levels which would mean even Secondary and Senior Secondary level. The

petitioner, who is now a student of Xth standard is eligible for the grant of free seat under Rule 158 of the Delhi School Education Rules, 1973 and

not under the Right of Children to Free & Compulsory Education Act 2009. Indisputably, the petitioner no.1 was granted the advantage of fee

concession by respondent no.1 school but the petitioner no.2, father of the petitioner no.1, had not been depositing the amount of the outstanding

fee from the Academic Year 2004-2005 till 2009-2010 and thus a total amount of Rupees 59,574/- was outstanding against the petitioner no.2

towards the school fee. The petitioner has earlier filed two writ petitions before this Court for claiming fee concession which were disposed off by

this Court with the necessary directions.

9. The grant of freeship or fee concession as per rule 158 of the DSER, 1973 is a discretion exercised by the head of the school and cannot be

necessarily exercised in each and every case. The scheme envisaged forming part B of the said rules details as to how the number of students to be

granted the said benefit are to be calculated and thus every parent canvassing himself to be unable to pay the fees cannot claim the discretion to be

exercised in his or her favour. There are various circulars and notifications issued by the Directorate of Education to define the parameters of

income of the parents to make them eligible for the grant of such benefit. In the case at hand, it is pertinent to mention that two distressing facts

have come to light regarding the petitioner no.2. The first is that petitioner No.2 has not been consistent in disclosing his proper income. In the year

1999 he had disclosed his income at Rupees 10,000/- per month and in the forms submitted by him to claim fee concession for the Academic

Year 2010-2011, he has disclosed his income to be Rupees 4,000/- per month. this Court, vide order dated 22.7.2011, gave directions to

petitioner no.2 to file an affidavit to disclose his exact assets, moveable and

immoveable and in compliance thereof, the petitioner no.2 had filed his affidavit dated 26.8.2011 wherein he has taken the stand that he does not own any immoveable property in his name; that for his day-to-day needs, he imparts dance training to the students and through these dance classes, he earns about Rupees 48,000/- per annum. In the reply affidavit filed by the respondent school on 7.9.2011, it has been pointed out that the petitioner no.2 is also carrying on another profession of slaughtering pigs, which fact is fortified from the First Information Report (FIR) filed by petitioner no.2 against one Mr. Puran Chand leveling allegations of threatening him when he tried to stop them from slaughtering pigs. On 20.3.2007, in the said FIR, petitioner no.2 had also disclosed that he was imparting education of music, painting and folk dance. The respondent no.2 has further taken a stand that in the said case, the petitioner no.2 has given evidence as PW2 on 10.8.2010 where he took a stand that he had studied upto B.A. and he is a private tutor of painting and music and used to go to teach at Ashok Vihar, Deepali, Model Town, Saraswati Vihar, Subhadara Colony and Gur Mandi for the last 30 years. Respondent no.2 has also taken a stand that a music teacher teaching in Delhi is not charging less than Rupees 500/- per hour and going by the admission of petitioner no.2 in the case referred above, if he has been teaching for 3 hours a day, then his income would not be less than Rupees 45,000/- per month. Be that as it may, the fact that is crystal clear from the aforesaid is that the petitioner no.2 has not come forward to truthfully disclose his correct income and has not even given any rejoinder to the reply affidavit of respondent no.2. It cannot be accepted that the Petitioner no.2, who has studied upto B.A. and is imparting private tuition of dance and music is earning a meager amount of Rupees 4,000/- per month.

10. The other fact which has come forth to cast a shadow of doubt on the bonafides of the petitioner no.2 is that in the year 1999, at the time of admission of petitioner no.1, the admission was under the general category while in the enrolment form for the year 2010-11, the petitioner no.2 has claimed himself to be belonging to the Scheduled Caste category thus claiming fee concession for his daughter. A caste certificate dated 29.9.2011 issued by the Office of the Deputy Commissioner (North West District) has been annexed as Annexure P2, wherein in the column of

the caste to which the petitioner no.2 belongs is left blank, which goes on to show that the said certificate has been obtained fraudulently and cannot be believed. The caste of a person is inherent and whether he belongs to the Scheduled Caste or not is known to him and it cannot be the case that a person belonging to the general category can be converted to the reserved category. However, it can be the case that the person belonging to the reserved category does not claim the benefit and does not disclose the same, but in that case he himself forfeits his benefits, which however is not the case made out by the petitioner and thus cannot be acceded to.

11. Reliance has also been placed by the petitioner on the notification dated 07.1.2011 issued by the Directorate Of Education for providing fee concession to the students belonging to the weaker section of the society and disadvantaged group. The said notification however would not aid the petitioner in any way as it is only applicable to the students at the entry level till elementary education and the petitioner no.1 being a student of class Xth cannot be given the advantage of the said notification.

12. this Court, however, finds merit in the contention of the Respondent no.2 school that it being an unaided private school has the burden of giving salaries of staff according to the 6th Pay Commission and the grant of fee concession as per the Delhi School Education Rules is also to be met from the fee income only. Undoubtedly, the respondent no.2 cannot run its School efficiently and effectively if it lacks proper financial resources.

The School generates financial resources only through the school fee and if schools are deprived of the payment of school fee, then such schools will not be in a position to provide proper education and recruiting meritorious teachers, who, after the VIth Pay Commission, are entitled to a handsome amount of salary at par with the Government teachers in term of Section 10 of the Delhi School Education Act, 1973.

13. Before parting with the judgment, this Court would like to observe that the concept of fee concession and freeship as envisaged in the two statutes is with the aim and object that those who do not have the means to give education to their children are not deprived, as education has become the necessity for survival in this day of cut throat competition. Education is a right not a luxury in our country and the statutes are to

abridge the gap between the goal and the reality. The country has gone through a long struggle to put itself on the world map and be known for its brilliantly trained minds, but this has not been without the struggle that the parents go through for making every possible endeavour to educate their child. Today, education is empowerment and with a view that the economically weaker sections and the disadvantaged groups are not left behind, a social obligation has been cast upon the private unaided schools to provide fee concession to the deserving students, but this does not mean that the parents who have the prime responsibility to provide education to their child put the burden on the school. The parents cannot in any manner shirk away from their duty in the garb of belonging to the weaker section of society and as a matter of right demand concessions from the schools. Indians today are highly aware and informed citizens and the demand for inclusive education has never been as fervent as it is today, and for the State to fulfil the expectation of every common man for providing a better tomorrow to his child through education should no doubt be the ambition of this country, but the chasm that exists between achieving this goal and the reality cannot be overlooked and shied away from. The present is a classic example of the parent, petitioner no.2 herein, who is educated and is in a profession, but does not wish to pay for the education of his child, and falsely claims to be a man of no means and wants to realize the education of his child through the portals of law, is nothing but an exploitation of the beneficial social legislations and an abuse of the court of law, besides an assault on the opportunities of the ones truly deserving these concessions. The petitioner no.2 is a compulsive litigator, who has not come to the court with clean hands, coupled with his recalcitrant attitude of not paying the outstanding arrears of fee to respondent no.2 discredits him from any relief by this Court.

14. In the light of the aforesaid discussion, this Court does not find petitioner no.1 eligible for the grant of fee concession in terms of Rule 158 of the Delhi School Education Act, 1973. Petitioner No.2 is accordingly directed to pay the entire outstanding amount of the School fee for the current academic session, failing which the School is entitled to take steps for non-payment of fees as per the Delhi School Education Rules, 1973.

15. In the light of the above, there is no merit in the present petition and the same is hereby dismissed.