(2014) 12 OHC CK 0072

In the Orissa High Court

Case No : Writ Petition (Civil) No. 12807 of 2013

Susanta Kumar Sahoo APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 21A, 38

Citation : (2014) 12 OHC CK 0072

Hon'ble Judges : Dr. B.R. Sarangi, J

Bench : Single Bench

Judgement

Dr. B.R. Sarangi, J.—The petitioners, who are claiming themselves to be the parents of some of the non-NTPC students of St. Mary''s School, Deepshikha, NTPC in the district of Angul, have filed this petition assailing the unusual hike of school fees for the session 2013-14, communicated with the notice dated 01.04.2014, vide Annexure-2 as in view of the judgment of this Court in Tapas Kumar Sahu and Others Vs. Union of India and Others, they are not liable to pay the enhanced fees.

2. St. Mary''s School, Deepshikha, NTPC in the district of Angul is a recognized unaided Christian Minority Institution (Primer Educational Institution) in the township of National Thermal Power Corporation (NTPC), Talcher, which was established on 14th August, 1989 under the Management of the "Handmaids of Mary", a Registered Religious Society, Sundargarh with classes from LKG to Class XII with Science stream in the Plus Two(+2) and was affiliated to the Central Board of Secondary Education(CBSE), New Delhi in 1994. Now more than 700 Students are prosecuting their study in the School, who have been admitted by fulfilling requisite admission criteria as envisaged by the institution and as such they are regular students of the School. The students are paying school fees including the Tuition fees, Examination fees, Admission fees, Annual fees, Smart Class fees etc. as per the "fee book" provided to them. But the students have been classified as NTPC and Non- NTPC (students whose parents are not working

in NTPC). Consequentially there is a "class within a class" amongst the students. The petitioners are the parents of some of the Non- NTPC students, who are against the creation of such "class within a class" and have ventilated their grievance before the school authority. In spite of such grievance, the school authority pursuant to the notice dated 01.04.2013 enhanced the school fees unilaterally for the session 2013-14 and compelled the students to pay the same w.e.f. 01.04.2013. By issuance of such notification, the guardians of Non- NTPC students have been put to financial pressure. Though this fact was brought to the notice of the Executive Director, NTPC/TSTPS, Kaniha, P.O-Deepshikha, Angul, by way of filing a representation, no action was taken. Enhancement of such fees structure had come up for consideration before this Court in respect of Vinsent Convent School, Balasore, in Tapas Kumar Sahu (supra) and this Court set aside the hike in free structure as it was contrary to the provision of Right to Education Act, 2009 and Orissa Education Act, and the Code framed thereunder. In spite of such fact being brought to the notice of the authorities, since no action has been taken, the petitioners have filed this petition.

3. Pursuant to notice, opposite parties have entered appearance but no counter affidavit is forthcoming from opposite party No. 1 to 6, though they are represented through their counsel Mr. A.K. Bose, Assistant Solicitor General for the Union of India. Mr. T.N. Pattnaik, is appearing for C.B.S.E., Mr. Sangram Das, Additional Standing Counsel is appearing for State and Mr. B.S. Tripathy-1 is appearing for opposite party Nos. 7, 8, & 9. Mr. B.S. Tripathy-1, learned counsel for opposite party Nos. 7, 8 & 9 has filed counter affidavit on behalf of opposite party No. 9. Opposite party No. 9 in his counter affidavit has specifically referred to Circular dated 17.07.2009 relating to quantum of fee chargeable from Non-NTPC wards. As a matter of fact, the said circular has been misinterpreted by the petitioners. Circular No. 6/2009 was issued by the Corporate HR Division on the subject of Education of children of project affected persons in NTPC Township Schools. The said circular stated that to encourage more and more children of the Project affected person to attend Schools in NTPC Township, a decision was taken to charge the same School fee from the children project affected as has been charged as is being charged from the children of NTPC employees. Paragraph.3.1 of the said Circular stipulates that for projects executed prior to June, 2005, NTPC policy on facilities be given to land oustees, 1980 shall be applicable and as per Clause.3.2 of the said Circular for projects executed after June, 2005 NTPC R&R Policy, 2005 shall be applicable. So far as NTPC, TSTPS, at Kaniha project is concerned the same was executed during 1985 i.e. prior to June, 2005 and as such Corporate Personnel Circular No. 53/1980 dated 19.06.1980 dealing with "Policy and Facilities to be given to land oustees" is applicable. The "land outsees" has been defined and so far as the present School is concerned no children of any project affected persons has been prosecuting his/her studies. In addition to that this School Management and/or Management of NTPC have so far not received any request from any children and/or their parents claiming Educational benefits in terms of Circular No. 56 of 1980 dealing

with policy and facilities to be given to the land oustees. None of the petitioners are coming under the land oustees as per the concerned Circular No. 53/1980 dated 19.06.1980. The School in question has been established in the Township of Kaniha primarily to meet the Educational requirement of the children of its employees. Consequence thereof it had approached the Bishop of Catholic Church of Sambalpur and executed an agreement on 29.11.1989 to set up the School initially for a period of 10 years and thereafter, through a fresh agreement entered on 10.11.1999 where the tenure of the agreement was extended for a period of 20 years with similar condition as was prevailing in the first agreement. In terms of the agreement the association of Handmaid''s of Mary would be entirely responsible for the administration of the School, which inter alia, include appointment of Principle, selection and temporary appointment of teaching and non-teaching staff, selection, Admission and promotion of the students according to regulations, collecting fees and administering all funds as per the approved budget. For the said purpose the School Managing Committee would be constituted taking into consideration requirement of CBSE Board Regulations. In addition to the same, the Managing Committee of the school shall run classes from LKG to Standard. X and Higher Secondary classes of XI and XII by opening additional sections in the existing classes as per the requirements in course of time. As per the agreement, NTPC shall provide School building including class rooms, Science demonstration laboratory, full-fledged Physics, Biology and Chemistry Laboratories as per the Syllabus for class-VIII and above and a well equipped and well furnished Library rooms and other curricular activities and purposes like Music room, Audio visual room, craft room, Indoor game, common room, Auditorium Hall, Play ground, etc for Prep-I to class-XII and any other areas that the Managing Committee may deem fit for providing for quality education with light, electricity, toilets and drinking water facilities for the students and staff of the School up to Class-XII and also provide furniture, Audio visual, play materials and other teaching aids and also provide repair and maintenance of the School building, Furniture, Equipments, Security, Sanitation, and Cleanness, Horticulture etc to Manage the School and also provide quarters for the teaching and Non-teaching Staffs of the School with electricity and water facilities for free of cost. The school shall continue to the affiliated to CBSC Board and shall follow the rules and regulations there under. So far as the School fees are concerned, it has been specifically indicated in Clause-12 of the agreement that the School will charge fees are decided by the School Managing Committee with the consent of the NTPC from time to time and the Principal of the School in consultation with NTPC/Managing Committee can extend fees concession to poor/ deserving students and any revision of School fees from time to time will be decided by the School Managing Committee with the consent of the NTPC. The NTPC has been providing 100% financial contribution to the School as the School preferentially met for the wards of NTPC employees and NTPC has been providing the entire School building with infrastructure and facilities for smooth running of the School with High Academic Standard. The wards of NTPC employees are being charged the School fees in a subsidized rate whereas the wards of Non-

NTPC employees are being charged a little higher than the wards of NTPC employees, without any objection from any quarters since beginning and such position cannot be by any stretch of imagination be termed as discriminatory. The expenditure borne by the School in respect of the salaries of the teaching and non-teaching staffs has been depending upon the fees received from the tuition fees, Admission fees, Special Fees, Examination fees etc. The school is purely an Unaided Private Educational Institution. The matter concerning the demand of teaching and non-teaching staffs of the School to hike their pay and D.A. and the hike in the fees structure and considered in the Parents Teachers Association (PTA) meeting held on 05.02.2013. Keeping in view the demand of teaching and non-teaching staff of the School, it was decided through an emergency School Managing Committee Meeting held on 16.03.2013 in the Chamber of AGM (F & A), NTPC Limited for finalization of the hike School fees as well as increase of salary of the teachers. Therefore, the fixation of the fees by the opposite parties is wholly and fully justified and does not discriminate anybody and thus, this Court should not interfere with the same. To substantiate its contention, Mr. B.S Tripathy-1 learned counsel for opposite party No. 7, 8, and 9 has relied upon the judgment of the apex Court passed in Management of DAV Public School and Others Vs. State of Orissa and Another .

4. The matter was heard at length and judgment was reserved vide order dated 4.8.2014. But before the judgment was delivered, an application was filed by learned counsel for opposite parties 7,8 and 9 bringing certain documents by way of affidavit to be taken into consideration for adjudication of the case. The matter was listed under the heading "To Be Mentioned" and opportunity was given to the petitioner to controvert such documents, which were filed by way of affidavit by giving adequate opportunity pursuant to the orders dated 5.9.2014 and 14.10.2014, 29.10.2014 and 7.11.2014, but no reply was forthcoming to the documents so filed by opposite parties 7,8 and 9. Thereafter, the matter was heard once again and judgment was reserved on 18.11.2014.

5. Mr. S.K. Mohanty, learned counsel for the petitioners strenuously urged that once the judgment was reserved, the same could not have been reopened by filing subsequent documents by opposite parties 7,8 and 9 and to substantiate his contention, he has relied upon the judgment of the apex Court in Arjun Singh Vs. Mohindra Kumar and Others, and Municipal Corporation of The City of Jabalpur Vs. State of Madhya Pradesh, .

6. Mr. B.S. Tripathy, learned counsel for opposite party Nos. 7, 8 and 9 strenuously urged that after the judgment is reserved and before the judgment is delivered if any document which has bearing on the case is brought to the notice of the Court by the parties, the same can be considered by the Court after affording opportunity to the other party and therefore the contention raised by the petitioners cannot be sustained. To substantiate such contention, he has relied upon the judgment in B.N. Das and Others Vs. Bijaya Ketan Mohanty, .

7. In the preliminary counter affidavit filed by opposite parties 7 and 8, the

contention of the petitioners with regard to the power and authority for enhancing the fees and also the applicability of the judgment in Tapas Kumar Sahu (supra) has been seriously disputed. Opposite parties 7 and 8 have stated that the details of the expenditure borne by the school in respect of salaries of teaching and non-teaching staff are depending upon the fees received from the Tuition Fees, Admission Fees, Special Fees, Examination fees etc. The school being a purely unaided Private Educational Institution keeping in view the payment of teaching and non-teaching staff of the school, it was decided in an emergency meeting of the school Managing Committee held on 16.03.2013 to revise the school fees as well as increase in the salary structure of the teachers. In the said meeting it was decided to hike the school tuition fees by 15% for wards of NTPC employees and by 35% for the wards of Non-NTPC employees. So far as annual fee is concerned, the same was hiked by 5% for the wards of NTPC employees. It was also decided to pay 72% DA to the teachers for the academic session 2013-14. The matter concerning hike in the fees structure was also considered in the Parent Teachers Association (PTA) meeting held on 5.2.2013. It has also been urged that the petitioners have no locus standi to approach this Court.

8. In the additional rejoinder affidavit filed by the petitioners, reliance has been placed on Annexure-A/9, the policy on facilities to be given to the land oustees dated 19.6.1980, which is not applicable to the present project concerning the present school. As per the documents collected from the website of the NTPC, NTPC, Talcher, Kaniha is one of the projects where R & R has been addressed as per NTPC, R & R Policy, 1993 but not as per 1980 Policy. On perusal of Annexure-9 series, it appears that one of the key initiatives in education is running of 48 schools at stations out of which 23 schools are predominantly for nearby community benefiting about 20,000 such students and rehabilitation and re-settlement has been addressed as per NTPC R & R Policy, 1993 in which Talcher-Kaniha, Orissa has been indicated. In view of such policy, the non-NTPC wards are not liable to pay the enhanced fees because they have to be rehabilitated and re-settled in view of the policy of 1993.

9. In view of the pleadings available on record, the following questions arise for consideration:

"(i) Whether the authorities are competent to enhance the

fees of the students?

(ii) Whether the enhancement of fees creating discrimination between the wards of NTPC employees and non-NTPC employees ?"

10. The question with regard to enhancement of fees by the authorities came up for consideration before this Court in The Management of DAV Public School, Chandrasekharpur (supra), wherein this Court has observed that the school has to be conscious of the fact that it has to be very reasonable and it cannot and should not change the parent more than what is absolutely essential and, on the

other hand, it has to meet the variety of expenditure on different activities, tasks and programmes as illustrated therein so that education of high quality and for all round development of the children is imparted. Similar view has also been taken in Tapas Kumar Sahu (supra). Referring to T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , the apex Court in the case of D.A.V. College Managing Committee Vs. Laxminarayan Mishra and Others, has held as follows :

"13. Before parting with the matter, we would like to caution the concerned authorities that if a private educational institution has met all the requirements of obtaining No Objection Certificate and affiliation etc. then its claim for revision of fees should be considered expeditiously on permissible parameters. Objections, if any, should be entertained only from the parent''s representatives and not from individual parents. An individual may at times be reckless and may harm the educational prospects of all the students of the school. If a claim for revision of fees is stalled for long due to meritless objections, it can affect academic standards on account of disgruntled staff and teachers who may even quit the institution for want of appropriate salary and perks. Such state of affairs with regards to the concerned schools has been highlighted on behalf of the appellant. The selected parent''s representatives, on the other hand, are expected to be more responsible as a body. In the present case, only some individual parents have prevented the schools from realizing revised fees since 2009. It is not possible to assess the injury caused to the schools nor is it possible to award any compensation by allowing revised fees to be realized from any earlier date such as 1.6.2012 as prayed on behalf of the appellant. However, it is satisfying to note that the State of Odisha has not raised any objection to the recommendations of the Fee Structure Committee, Odisha and, therefore, there is no legal impediment of any substance in allowing this appeal. Contempt petitions and other pending petitions shall stand disposed of. The appeal is allowed as indicated above. No costs."

11. In view of aforesaid provision of law, the power of the authority to enhance the fees no more remains res integra which is subject to compliance of the requirements as discussed above. The case in hand stands on a different footing than that of others to the extent that the wards of NTPC employees and non-NTPC employees presently prosecuting their studies in the same school paying different fees. The documents, which have been filed as Corporate H.R. Circular No. 663 of 2009 dated 16.9.2009, deals with revision of perquisites and allowances of executive category wherein an executive is entitled to 50% of revised basic pay towards perquisites per month out of which 3% would be deducted and accounted for towards recurring expenditure for running the infrastructure facilities of such schools, hospitals, clubs etc. Similar provision has also been made applicable vide H.R. circular to non-executive category as has been stated in the petition by way of affidavit whereunder they are entitled to get 47% of the revised basic pay towards perquisites and allowance per month and deduction of 3% has been made for recurring expenditure and running of

infrastructure facilities such as, schools, hospitals etc. NTPC is providing land, building and other infrastructures to the institution. But so far as payment of teachers are concerned, they have to depend upon the fee structure received by the school organization to be paid to them. The infrastructural benefits have been extended to the school in question by the NTPC for which deduction has been made from the salary of the employees @ 3% irrespective of the fact that the wards of any NTPC employees is prosecuting his studies or not, such deduction shall be applicable. Therefore, considering these aspects of the fact if the fee structure for the NTPC employees has been fixed at lower rate than that of the non-NTPC employees, whose wards have been allowed to prosecute their studies in the institution and who have no contribution for the infrastructural development of the school and they are only admitting their students to get quality education, the wards of the non-NTPC employees are to pay the fees as fixed by the competent authority. There is no dispute with regard to the competence of the authority in enhancing the fees. But the only dispute is whether the wards of NTPC vis-?-vis non-NTPC are to pay different fee structure as has been decided by the authority concerned. It is stated that in a homogeneous working condition, the wards of NTPC and non-NTPC employees should not be discriminated in the matter of fixation of fees for their wards to prosecute their studies. In T.M.A. Pai foundation (supra), in paragraphs 56, 61 and 62, it has been held as follows :

"56. An educational institution is established for the purpose of imparting education of the type made available by the institution. Different courses of study are usually taught by teachers who have to be recruited as per qualifications that may be prescribed. It is no secret the better working conditions will attract better teachers. More amenities will ensure that better students seek admission to that institution. One cannot lose sight of the fact that providing good amenities to the students in the form of competent teaching faculty and other infrastructure costs money. It has, therefore, to be left to the institution, if it chooses not to seek any aid from the Government, to determine the scale of fee that it can charge from the students. One also cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. We have been given to understand that a large number of professional and other institutions have been started by private parties who do not seek any governmental aid. In a sense, a prospective student has various options open to him/her where, therefore, normally economic forces have a role to play. The decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the Government.

61. In the case of unaided private schools, maximum autonomy has to be with the management with regard to administration, including the right of appointment, disciplinary powers, admission of students and the fees to be charged. At the school level, it is not possible to grant admissions on the basis of merit. It is no secret that the examination results at all levels of unaided private

schools, notwithstanding the stringent regulations of the governmental authorities, are far superior to the results of the Government-maintained schools. There is no compulsion on students to attend private schools. The rush for admission is occasioned by the standards maintained in such schools, and recognition of the fact that state-run schools do not provide the same standards of education. The State says that it has no funds to establish institutions at the same level of excellence as private schools. But by curtailing the income of such private schools, it disables those schools from affording the best facilities because of a lack of funds. If this lowering of standards from excellence to a level of mediocrity is to be avoided, the State has to provide the difference which, therefore, brings us back in a vicious circle to the original problem, viz., the lack of State funds. The solution would appear to lie in the States not using their scanty resources to prop up institutions that are able to otherwise maintain themselves out of the fees charged, but in improving the facilities and infrastructure of State-run schools and in subsidizing the fees payable by the students there. It is in the interest of the general public that more good quality schools are established; autonomy and non-regulation of the school administration in the right of appointment, admission of the students and the fee to be charged will ensure that more such institutions are established. The fear that if a private school is allowed to charge fees commensurate with the fees affordable, the degrees would be "purchasable" is an unfounded one since the standards of education can be and are controllable through the regulations relating to recognition, affiliation and common final examinations.

62. It was submitted that for maintaining the excellence of education, it was important that the teaching faculty and the members of the staff of any educational institution performed their duties in the manner in which it is required to be done, according to the rules or instructions. There have been cases of misconduct having been committed by the teachers and other members of the staff. The grievance of the institution is that whenever disciplinary action is sought to be taken in relation to such misconduct, the rules that are normally framed by the Government or the university are clearly loaded against the Management. It was submitted that in some cases, the rules require the prior permission of the Government authorities before the initiation of the disciplinary proceeding, while in other cases, subsequent permission is required before the imposition of penalties in the case of proven misconduct. While emphasizing the need for an independent authority to adjudicate upon the grievance of the employee or the Management in the event of some punishment being imposed, it was submitted that there should be no role for the Government or the university to play in relation to the imposition of any penalty on the employee."

12. From the Constitution Bench judgment of the apex Court mentioned supra, it is clear that autonomy has been granted to private unaided professional colleges as well as undergraduate colleges with regard to managing the said institution as well as prescribing the fees to be collected from the students. The fee structure in respect of High Schools and Higher Secondary Schools is to be considered on

the basis of their requirements for getting quality education including the children with disabilities have a basic human and fundamental right to receive good quality education in the mainstream schools as guaranteed to them under Articles 14, 21, 21A 38 of the Constitution of India read with the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation)Act, 1995, Right to Children to Fee and Compulsory Education Act, 2009 and UN Convention on the Rights of Persons with Disabilities (2008). In T.M.A. Pai (supra), the apex Court recognized the right of unrecognized schools an essential facet of their constitutional right.

13. So far as applicability of Siddhu Matriculation Hr. Secondary School Vs. K. Shyam Sunder and Others, is concerned, this case relates to validity of the provisions contained in T.N. Uniform System of School Education Act, 2010. The validity of the said Act has been upheld but Sections 11, 12, 14 have been struck down. Section 3 of 2010 Act provides the commencement date of the Act. The new academic session was to commence on 1.6.2011. The new Government passed T.N. Uniform System of School Education (Amendment) Act, 2011 amending Section 3 of the 2010 Act so that the commencement date in Section 3 was kept in abeyance till further notification and the old system was revived. The amendment Act, 2011 was challenged. The apex Court while modifying the decision of the High Court dated 14.6.2011 on the said Amendment Act directed besides other things constitution of a Committee of Experts and the Expert Committee was constituted and after having several meetings a joint report was submitted to the High Court. The High Court by order dated 18.7.2011 found fault with the Expert Committee report and struck down the 2011 Amendment Act and issued direction to the State authorities to implement the provisions of Act, 2010 commencing on or before 22.7.2011. The apex Court confirmed the direction of the High Court and dismissed the appeal. Therefore, the said fact is not applicable to the present context as the present case stands on a total different footing than the case, which has been referred to.

14. In view of the aforesaid facts and circumstances and the law laid down by the apex Court, fixation of enhanced fee remains with the domain of the management and the reasons for fixation of two separate fee structure of the students prosecuting in the same class under the opposite party Nos. 7 and 8 institution is well explained. It is a fact that the NTPC employees are contributing 3% of their basic pay towards infrastructural development in addition to the fees fixed by the management irrespective of the fact whether the ward of such employee is prosecuting the same studies in the same institution or not. Therefore, the bulk of expenditure is being borne by the NTPC on the contribution made by its employees. So far as non-NTPC employees are concerned, no such infrastructural expenditure is being collected from them and it is to be deducted from the salary of the employee. Therefore, the fee for them has been fixed at higher rate than that of the wards of the NTPC employees in order to meet the expenditure incurred to provide quality education. This Court is of the opinion that such fixation of fees cannot be construed to be unreasonable,

arbitrary and violative of Article 14 of the Constitution, rather it is in the interest of quality education that two separate fee structures have been prescribed for the wards of the NTPC and non-NTPC employees. Therefore, this Court is not inclined to interfere with the decision of the authorities. The writ petition fails and the same is dismissed. No cost.