
(2011) 07 DEL CK 0067

In the Delhi High Court

Case No : Letters Patent Appeal No. 478 of 2011

T.P. Singh Saini and Others

APPELLANT

Vs

Guru Harkrishan Public School and Others

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Delhi School Education Act, 1973 — Section 10, 10(1), 24(4)

Citation : (2011) 07 DEL CK 0067

Hon'ble Judges : Dipak Misra, C.J.;Sanjiv Khanna, J

Bench : Division Bench

Advocate : Raj Kumar Sherawat, for the Appellant; Alok Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The Appellants, 79 in number, are aggrieved by the decision of the learned single Judge dated 20th April, 2011 passed in Writ Petition (Civil) No. 971/2011, T.P. Singh Saini and Ors. v. Guru Harkrishan Public School, Fateh Nagar and Ors. in which the following directions have been made:

10. In my opinion, no further direction can be issued to the Respondent No. 5 Directorate of Education in the present petition. Once it is held that the writ against the Respondent No. 5 Directorate of Education does not survive, in my opinion the writ against the Respondent No. 1 School or Chairman of its Managing Committee or its Principal or against the Delhi Sikh Gurudwara Managing Committee stated to be apex body controlling the said school and impleaded as Respondents No. 2 to 4, would not lie.

11. I am unable to accept the contention of the counsel for the Petitioners that merely because at the time of institution the writ was maintainable for the reason of claiming relief against a party against which the Petitioners had a right of relief in writ remedy, would mean that even after the body/authority against whom writ was maintainable has performed its obligation, the other reliefs for

which the writ does not lie can also be granted. Upon de-recognition of the Respondent No. 1 School by the Respondent No. 5 Directorate of Education, the only grievance of the Petitioners which survives is as to the arrears claimed to be due to them and for which relief in any case ordinarily a writ petition does not lie and the Petitioners have alternative remedies for their claims if any of recovery against the Respondents No. 1 to 4. It is a settled principle of law that a writ remedy is not intended to be a substitute for the ordinary remedies if any of recovery of monies claimed to be due. It does not make any difference whether de-recognition has been effected before the institution of the writ petition or during the pendency of the writ petition.

12. In the circumstances, the date fixed of 6th September, 2011 in the writ petition is cancelled and the writ petition is disposed of with the following directions:

- i. That notwithstanding the disposal of this writ petition, the Petitioners shall have liberty to approach the appropriate Fora in accordance with law for recovery of dues alleged against the Respondents No. 1 to 4;
- ii. In the event of the Respondent No. 1 School approaching the Respondent No. 5 Directorate of Education for re-calling of the order of de-recognition, the Respondent No. 5 Directorate of Education to in this regard issue notice to the Petitioners also and to hear the Petitioners also and to, if re-calling the order of de-recognition, consider the interests of the Petitioners.

No order as to costs.

2. The contention of the Appellants is that even if the Respondent No. 1 school has been derecognised by the Directorate of Education, the writ Court in exercise of their extraordinary jurisdiction should have directed the said Respondent to pay arrears of salary as payable pursuant to the Sixth Pay Commission.

3. The Respondent No. 1 school was recognized under the Delhi School Education Act, 1973 (Act, for short) and the relevant rules. As per Section 10 of the Act, they are obliged to pay salary to the teachers at the same scale as payable to teachers in the Government schools. Pursuant to the recommendations made by the Sixth Pay Commission, the Director of Education vide order dated 11th February, 2009 had directed all recognized schools to release salary and pay arrears. It is apparent that the Respondent No. 1 school did not pay the enhanced salary and the arrears as stipulated in the order dated 11th February, 2009 issued by the Director of Education.

4. As noticed by the learned single Judge, the Director of Education had issued show cause notice to the Respondent No. 1 school and vide their order dated 11th April, 2011 and had withdrawn the recognition of the Respondent No. 1 school u/s 24(4)(b) of the Act and the relevant rules. The operative portion of the said order reads as under:

AND WHEREAS, vide a "Show Cause Notice" No. 15/DE/ACT/821-23

dated:17.02.2011 issued under the provisions of Rule 56 read with Section 24(4) (b) of Delhi School Education Act & Rules-1973, the Managing Committee of Guru Harkrishan Public School, Fateh Nagar, New Delhi, was given an opportunity to show cause as to why the recognition of the school should not be withdrawn on the ground of violation of the provisions of Section 10(1) of the Delhi School Education Act-1973. It was clearly specified in the "Show Cause Notice" dated 17.02.2011 that if reply to the show cause notice with documentary evidence to the effect that the Managing Committee has complied with the provisions of Section 10(1) of the Delhi School Education Act-1973 is not received within stipulated time of 15 (fifteen) days of the issue of the Show Cause Notice, action of withdrawal of recognition under the provisions of Section 24(4)(b) of Delhi School Education Act & Rules, 1973, shall be taken without further notice.

AND WHEREAS, the school authorities of Guru Harkrishan Public School, Fateh Nagar, New Delhi has furnished a reply to the "Show Cause Notice" dated 17.02.2011, relevant parts of the reply are reproduced hereunder:

As a tragedy has happened in our school i.e. sudden collapse of major portion of School Building located in Fateh Nagar, the school had to be temporarily shifted to an alternative site as a safety measure of the students and staff under the orders of our Parent Body i.e. Delhi Sikh Gurdwara Management Committee. As a result of sudden shifting of school to another site, the strength of students in the school had gone UNBELIEVABLY low as parents did not wish to get admission in the school where classes were shifted.

These facts were communicated to the Department well in time and the team of officers of Directorate of Education also visited the site where a major portion of school had collapsed.

As a result of sudden decrease in strength of students by more than 500, the main source of income had depleted substantially and the school had to face financial crisis.

The School is likely to be shifted back in the near future in the new building and the Managing Committee is hopeful of getting enough admission in the school located in Fateh Nagar as we are flooded with enquiries from the parents for admission of their ward in Fateh Nagar School.

The Management of school stands committed to the implementation of orders of VI Pay Commission and Arrears to the Staff as soon as financial position....

AND WHEREAS, on perusal of the reply of Guru Harkrishan Public School, Fateh Nagar, New Delhi, it is crystal clear that the school authorities continue to violate the provisions of Section 10(1) of the Delhi School Education Act-1973 and continue to disobey the lawful orders of the Directorate of Education including implementation of the provisions of 6th Pay Commission despite a clear "Show Cause Notice" for withdrawal of recognition.

NOW THEREFORE, in the circumstances described above, I, P Krishnamurthy,

Director of Education, Delhi hereby order to withdraw the recognition of Guru Harkrishan Public School, Fateh Nagar, New Delhi under the provisions of Section 24(4) of the Delhi School Education Act & Rules, 1973 with immediate effect.

Giving paramount importance to the interests of the students, the present students of Guru Harkrishan Public School, Fateh Nagar, New Delhi shall be granted admission in various Govt. Schools of the Directorate of Education, Delhi as per availability of vacant seats. The Principal, Guru Harkrishan Public School, Fateh Nagar, New Delhi is hereby called upon to submit class wise and gender wise lists of students desirous of seeking admission in the Government and Government Aided Schools in the office of the Deputy Director of Education, District West-A.

5. Once a school has been derecognised the Act and the applicable Rules are not applicable. Directorate of Education does not have any control over the school. In fact the school cannot function and operate as is clear from the reply given by the Respondent No. 1 school that they have closed the same after the wall collapsed and the strength of the students became low. No doubt in appropriate cases directions for payment of money can be issued by a writ Court exercising jurisdiction under Article 226 of the Constitution but in the facts of the present case and once a school has been derecognised we do not think it will be appropriate for us to issue any such mandamus in the nature of a money decree and decide the inter se claim between the Appellants and the Respondent No. 1. It is also correct that writ petition under Article 226 can be filed against private individuals for enforcement of fundamental or statutory rights and, therefore, private bodies or individuals, who are not statutory authority or instrumentalities of the State are covered but in the present case the Respondent No. 1 stands derecognised and, therefore, the provisions of the Act are no longer applicable. The question raised is what is the effect of the circular/order. In these circumstances, the learned single Judge has refused to exercise the writ jurisdiction and left all issues open, including the issue whether or not any right had accrued in favour of the Appellants pursuant to the circular/order issued by the Directorate of Education.

6. In view of the aforesaid reasoning, we do not find any merit in the present appeal and the same is dismissed. It is, however, clarified that the observations made by the learned single Judge and this Court in the present order will not be construed as observations on merits on the effect of the circular/order dated 11th February, 2009 relied upon by the Appellants and whether or not under the said circular/order any right had accrued in favour of the Appellants. No costs.