

Delhi High Court Kathuria Public School vs Director Of Education And Anr. on 28 May, 2004 Equivalent citations: 113 (2004) DLT 703 Author: S K Kaul Bench: S K Kaul JUDGMENT Sanjay Kishan Kaul, J. 1. This writ petition raises an important issue about the effect of the judgment of the Constitution Bench of the Supreme Court in TMA Pat Foundation and Ors. v. State of Karnataka and Ors., on the provisions of the Delhi School Education Act 1973 (hereinafter referred to as 'the said Act') and Delhi School Education Rules, 1973 (hereinafter referred to as 'the said Rules'). 2. The factual matrix in the present case is limited. The respondent No. 2 was a Post Graduate Teacher with the petitioner school and was appointed as a Vice-Principal for a period of one year vide an order dated 4.3.2002 but allegedly on account of unsatisfactory performance was reverted back. However, that is not the issue which arises in the present petition since subsequently disciplinary proceedings were started against respondent No. 2 on the ground that the respondent No. 2 had failed to follow the code of conduct for teacher as contained in the said Act and the Rules, specially Rule 113 which prohibits a teacher to engage herself in any business. The disciplinary proceedings were initiated on the ground that respondent No. 2 had engaged herself in private business of metal wends ceramic guide etc. under the name and style of M/s Fundamental Anchors. Respondent No. 2 was alleged to have obtained even the Sales Tax Registration number in her name and was the proprietor of the business. The stand of respondent No. 2 was that it was her husband who was carrying on the business under her name for auspicious reasons but this stand was not accepted on account of the fact that respondent No. 2 was the sole proprietor of the business; the business was not titled under her name but under the name and style of M/s. Fundamental Anchors; respondent No. 2 had not shown that she was not enjoying the income there from or not showing that as part of her return. 3. The case of respondent No. 2 was referred by the petitioner to the Directorate of Education for approval of the imposition of major penalty of dismissal from service but the same was rejected vide the impugned order dated 30.9.2003 in the following terms: "Subject: Case of Mrs. Amita Dara, regarding approval of major penalty. Sir, With reference to your letter dated 4th July, 2003 on the subject cited above, the competent authority rejected the request of the management of the school regarding dismissal from service in respect of Mrs. Amita Dara in view of the following deficiencies. 1. The management of the school has not constituted a disciplinary action committee as required to be done under the provision of Rule 118 of Delhi School Education Act & Rules, 1973 and thus there had been no official nominee i.e. Education Officer of the concerned Zone i.e. Zone-20 on any of the proceedings dates of inquiry. 2. The teacher concerned has been suspended by passing a resolution in the Managing Committee of the school in the absence of DE's nominee on the Managing Committee of the school. 3. The management of the school has not sought the approval of the Competent Authority for the suspension of the employee as required under Section 8 read with Rule 115 of DSER, 1973. 4. A show cause notice dated 21.6.2003 has been served upon her and she has filed the reply on 30.6.2003, which has not been considered by the disciplinary action committee and also not by the Managing

Committee of the school, which was required to be done before submitting the case for the approval of the Competent Authority. Therefore, the request of the Managing Committee has been rejected by the Director of Education for want of above action and for conducting the disciplinary proceedings against the charged official without observing the proper norms. Sd/- (V.K. SHARMA) DY. DIRECTOR OF EDN. DISTT. SOUTH WEST(A) VASANT VIHAR, N.D.” 4. The services of respondent No. 2 were, however, terminated soon thereafter and the respondent No. 1 issued a letter to the petitioner dated 3.12.2003 rejecting the request for approval of termination of her services. It may be noticed that the initial consent was sought by the petitioner on 4.7.2003 but the reply was received only on 30.9.2003. 5. The petitioner has filed the present petition impugning both the orders dated 30.9.2003 and 3.12.2003 primarily on the ground that the action of respondent No. 1 was contrary to the judgment in TMA Pai’s case (supra) which is the law of the land as laid down by the Supreme Court. 6. In order to appreciate the controversy, it is necessary to reproduce some of the provisions which have a direct bearing in the present case. Section 8 of the said Act forms a part of Chapter IV and deals with the terms and conditions of service of the employees of recognized private schools. Petitioner is such a recognized private school which is unaided. The said provision is as under: “8. Terms and conditions of service of employees of recognised private schools—(1) The Administrator may make rules regulating the minimum qualifications for recruitment, and the conditions of service, of employees of recognised private schools: Provided that neither the salary nor the rights in respect of leave of absence, age of retirement and pension of an employee in the employment of an existing school at the commencement of this Act shall be varied to the disadvantage of such employee: Provided further that every such employee shall be entitled to opt for terms and conditions of service as they were applicable to him immediately before the commencement of this Act. (2) Subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director. (3) Any employee of a recognised private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted under Section 11. (4) Where the Managing Committee of a recognised private school intends to suspend any of its employees, such intention shall be communicated to the Director and no such suspension shall be made except with the prior approval of the Director: Provided that the managing committee may suspend an employee with immediate effect and without the prior approval of the Director if it is satisfied that such immediate suspension is necessary by reason of the gross misconduct within the meaning of the Code of Conduct prescribed under Section 9, of the employee: Provided further that no such immediate suspension shall remain in force for more than a period of fifteen days from the date of suspension unless it has been communicated to the Director and approved by him before the expiry of the said period, (5) Where the intention to suspend, or the immediate suspension of an employee is com-

municated to the Director, he may, if he is satisfied that there are adequate and reasonable grounds for such suspension, accord his approval to such suspension.” 7. It may be noticed that Sub-section (4) of Section 8 deals with the act of the Managing Committee of the school to suspend its employees which requires prior approval of the Director provided that the Managing Committee may suspend an employee with immediate effect without such prior approval, if it is so required, but must apply for approval and unless the approval is granted within 15 days, the suspension is not to remain in force, 8. The relevant rules dealing with this matter are contained in Rule 115 to Rule 121. Rule 118 specifies the disciplinary authorities in respect of the employees and is as under: “118. Disciplinary authorities in respect of employees.—The disciplinary committee in respect of every recognised private school, whether aided or not, shall consist of— (i) the Chairman of the Managing Committee of the school; (ii) the manager of the school; (iii) a nominee of the Director, in the case of an aided school, or a nominee of the appropriate authority, in the case of an unaided school; (iv) the head of the school, except where the disciplinary proceeding is against him and where the disciplinary proceeding is against the Head of the School, the Head of any other school, nominated by the Director; (v) a teacher who is a member of the Managing Committee of the school; nominated by the Chairman of such Managing Committee.” 9. A reading of the impugned order dated 30.9.2003 shows that there are four specified reasons for the refusal to grant approval. The second and third reason relate to the act of the Managing Committee in passing a resolution suspending respondent No. 2 in the absence of the representative of the Directorate of Education and not seeking approval in terms of Section 8 of the said Act read with Rule 115 of the said Rules. In this behalf, it is stated that the constitution of the Managing Committee is provided in Rule 59 and is as under: “59. Scheme of management of recognised schools— (1) The scheme of management in relation to a recognised school shall provide that— (a) the Managing Committee of a recognised aided school shall consist of not more than fifteen members; and the Managing Committee of a recognised unaided school shall consist of not more than twenty-one members; (b) subject to the total number of members specified in Clause (a), every Managing Committee shall include the following, namely— (i) the head of the school; (ii) one parent, who is a member of the Parent-Teachers’ Association of the school, constituted in accordance with such instructions as may be issued by the Administrator, and is elected by that Association; (iii) two teachers of that school, to be elected by the teachers of that school from amongst themselves; (iv) two other persons (of whom one shall be woman), who are, or have been, teachers of any other school or of any college, to be nominated by the Advisory Board; (v) two members, to be nominated by the Director, of whom one shall be an educationist and the other an officer of the Directorate of Education, Delhi, not below the rank of the Principal of a Higher Secondary School; (vi) the remaining members to be nominated or elected, as the case may be, in accordance with the rules and regulations of the society or trust by which the school is run.” 10. The contention of the petitioner in this behalf is that notices are sent duly to the members of the Managing Committee and if the representative of

Director of Education does not attend the meeting, that does not imply that no action can be taken in this behalf against an employee. Insofar as seeking prior approval is concerned, reliance was once again placed on the judgment in TMA Pai's case (supra). 11. The fourth reason given is that the reply filed by respondent No. 2 has not been properly considered. 12. Learned Counsel for respondent No. 1 fairly stated that there cannot be much relevance of the aforesaid reasons in view of the fact that the issue of suspension is in the past and has resulted now in a disciplinary action of dismissal of service. He further contended that insofar as the merits of the matter are concerned, respondent No. 2 has already filed an appeal before the Tribunal constituted under the said Act and it is for the said Tribunal to analyze the matter. 13. However, insofar as the first reason is concerned, the same arises from the requirement to have a disciplinary committee. The contention advanced on behalf of the petitioner is that such a committee is only to assist the Managing Committee which is the larger part of the whole and thus a decision taken by the Managing Committee in this behalf cannot be negated merely on the ground that a disciplinary committee was not constituted. 14. On the other hand, the contention of the learned Counsel for the respondents is that it is only the disciplinary committee which can take the action and in this behalf learned Counsel for the respondents emphasized the fact that a nominee of the appropriate authority in the case of an unaided school forms part of such a disciplinary committee. This is sought to be distinguished from the composition of the Managing Committee on the ground that though under Rule 59 there are representatives of the Directorate of Education, one of them is an educationist while the other is an officer of the Directorate of Education not below the rank of a Principal of a Higher Secondary School. The Principal is stated to be of the rank of Deputy Director. Under Rule 118, it has to be nominee of the appropriate authority in the case of an unaided school. 15. Contention was also sought to be advanced on the ground that the ratio of the composition of the disciplinary committee and the Managing Committee is different. 16. The original records were also produced by the respondents and learned Counsel for the petitioner sought to advance the contention that the grant or refusal of approval cannot be in the manner as was done by respondent No. 1 since the entire aspect of the matter was not even considered. 17. TMA Pai's case (supra) dealt with the matter of the control of education including aspects of fee, discipline of employees, minority institutions, etc. Insofar as unaided private schools are concerned, a part of the judgment has referred to this aspect including in respect of matters of discipline. Paras 48 to 66 of the TMA Pai's case (supra) are under the heading "Private Unaided Non-Minority Educational Institutions". The importance of the growth of private education was emphasised specially in the absence of the ability of the Government to provide education of an appropriate level. In this behalf, the aspect of right of the private institutions to constitute their own governing body and manage matters including in respect of the staff was emphasized. It was thus observed that it would be objectionable if the State retains the power to nominate specific individuals on the governing bodies. In respect of unaided private schools, the emphasis on maximum autonomy was placed and on the

issue of disciplinary enquiry, it was held that the management would be entitled to take appropriate action and the Supreme Court found no reason why the management of a private unaided educational institution should seek consent or approval of any governing authority before taking any such action. 18. It may be noticed that subsequently on the issue of the fee structure, the matter was examined by a three-Judge Bench of the Supreme Court in *Modern School v. Union of India and Ors.*, 2004 (5) Scale 170 where the rights under the Act and the Rules to regulate fee structure were approved following certain observations made in TMA Pai's case (supra) which is an 11-Judge Constitution Bench judgment. 19. The decision in *Modern School's* case (supra) was taken by a majority of the Judges. However, in so far as the issue of the discipline of the staff is concerned, there are no observations in *Modern School's* case (supra). 20. It would be useful to reproduce some of the observations in TMA Pai's case (supra) and it may once again be emphasized that in the said case it was observed by the Supreme Court that insofar as the setting up of a reasonable fee structure is concerned, the element of profiteering was not acceptable in Indian conditions. It was observed as under: "54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-administration by those in charge of management. The fixing of a rigid-fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions. 63. 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 governmental 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. 64. An educational institution is established only for the purpose of imparting education to the students. In such an institution, it is necessary for all to maintain discipline and abide by the rules and regulations that have been lawfully framed. The teachers are like foster-parents who are required to look after, cultivate and guide the students in their pursuit of education. The teachers and the institution exist for the students and not vice versa. Once this principle is kept in mind, it must follow that it becomes imperative for

the teaching and other staff of an educational institution to perform their duties properly, and for the benefit of the students. Where allegations of misconduct are made, it is imperative that a disciplinary enquiry is conducted, and that a decision is taken. In the case of a private institution, the relationship between the management and the employees is contractual in nature. A teacher, if the contract so provides, can be proceeded against, and appropriate disciplinary action can be taken if the misconduct of the teacher is proved. Considering the nature of the duties and keeping the principle of natural justice in mind for the purposes of establishing misconduct and taking action thereon, it is imperative that a fair domestic inquiry is conducted. It is only on the basis of the result of the disciplinary inquiry that the management will be titled to take appropriate action. We see no reason why the management of a private unaided educational institution should seek the consent or approval of any governmental authority before taking any such action. In the ordinary relationship of master and servant, governed by the terms of a contract of employment, anyone who is guilty of breach of the terms can be proceeded against and appropriate relief can be sought. Normally, the aggrieved party would approach a Court of law and seek redress. In the case of educational institutions, however, we are of the opinion that requiring a teacher or a member of the staff to go to a civil Court for the purpose of seeking redress is not in the interest of general education. Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs. It would, therefore, be appropriate that an educational tribunal be set up in each district in a state – the object being that the teacher should not suffer through the substantial costs that arise because of the location of the tribunal; if the tribunals are limited in number, they can hold circuit/camp sittings in different districts to achieve this objective. Till a specialized tribunal is set up, the right of filing the appeal would lie before the District judge or Additional District Judge as notified by the Government. It will not be necessary for the institution to get prior permission or ex post facto approval of a governmental authority while taking disciplinary action against a teacher or any other employee. The state government shall determine, in consultation with the High Court, the judicial forum in which an aggrieved teacher can file an appeal against the decision of the management concerning disciplinary action or termination of service.” 21. If the aforesaid observations of the Supreme Court in TMA Pai’s case (supra) are taken to its logical conclusion, it would imply that there should be no such requirement of prior permissions or subsequent approval in matters of discipline of the staff. Thus, whether it is for suspension or disciplinary action, the educational institutions would have a free hand. The safeguard provided is for a judicial Tribunal to be set up to examine the cases. In the present case, of course, such a Tribunal already exists as provided for under Section 11 of the said Act. 22. The question thus arises is whether the provisions as contained aforesaid in the Act and the Rules relating to matters of discipline of teachers which require permission of the Government authorities can still be said to be binding and enforceable in law despite the observations of the Constitutional Bench of the Supreme Court in TMA Pai’s case (supra). It may be noticed that

the view taken by the Supreme Court is in view of the Constitutional mandate under the Constitution of India. If these provisions cannot be permitted to prevail in view of the clear mandate in TMA Pai's case (supra), then these provisions have to be struck down as ultra vires. 23. It may, however, be noticed that in the writ petition, there is no specific challenge to the provisions of the Act and the Rules but the relief claimed for by the petitioner would imply that these provisions of the Act and the Rules have to be struck down as ultra vires to bring them in conformity with the directions contained in TMA Pai's case (supra). This would require consideration of this matter by a Division Bench of this Court since the Act and the Rules are statutory in nature. 24. I am, thus, of the considered view that present petition is liable to be placed before an appropriate Division Bench to be constituted by Hon'ble the Chief Justice and the matter be placed accordingly before the Hon'ble Chief Justice for necessary directions. 25. The matter be thereafter listed for directions before the Division Bench so constituted by Hon'ble the Chief Justice on 16.7.2004.