

## THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 23.10.2007

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**WP (C) 6290-94/2006**

**SETH BENI PERSHAD JAIPURIA  
CHARITABLE TRUST (REGD) & ORS.**

...Petitioner

- versus -

**GOVERNMENT OF NCT OF DELHI & ANR**

...Respondents

### **Advocates who appeared in this case:**

For the Petitioner : Mr Neeraj Kaul, Sr. Advocate with Mr Sanjiv Sachdeva

For the Respondent Nos.1 & 2 : Ms Avnish Ahlawat

For the Respondent Nos. 3-15 : Mr Ashok Aggarwal with Mr Anuj Aggarwal

### **CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the Reporter or not?                                | YES |
| 3. Whether the judgment should be reported in Digest?                    | YES |

### **BADAR DURREZ AHMED, J**

1. An interesting but difficult question arises in the present case. Can a school, which has been receiving aid from the government, be permitted to stop taking aid? The petitioners, which are Seth Beni Pershad Jaipuria Charitable Trust (Regd) and its trustees, are running a recognized and aided school under the name of "Beni Pershad Jaipuria Girls Senior Secondary School" (hereinafter referred to as the said School). The petitioners do not want to receive any aid from the

government and thereby want to change the status of the said school from an aided to an unaided school.

2. In this connection the petitioner No.1 (the trust) sent a letter dated 28.12.2005 to the Deputy Director of Education, Government of NCT of Delhi. It was stated in the letter that the trust was running the said school and was availing grant-in-aid from the Director of Education. It was further stated that the trust had decided not to avail of any grant-in-aid in future and to run the said school as an unaided school. Necessary directions were sought from the Department of Education. In response to this letter, the Director of Education issued a letter dated 06.02.2006 whereby the proposal for converting the said school from an aided to an unaided school was rejected in the following manner:-

“In this regard, attention of the Trustee is drawn to the fact that the school was established as an aided school in the best interests of education of neighbourhood and for better organization and development of the school education in Delhi. The attitude of the Trustee of the school management evinces its intention to close down the aided school, which has been catering to the needs of poor children and run a public school in its place. It only goes to show that the MC of the school does not have any commitment towards the interest of education of poor children as its priority, rather its focus is on gradually converting it into a Public School to attract

children of affluent classes. The Department, which is entrusted with responsibility towards education of poor children, cannot allow such a proposal, and it is therefore, rejected.”

Thereafter the petitioner trust sent a letter dated 11.04.2006 to the Lieutenant Governor of Delhi, who is the Administrator under the Delhi School Education Act, 1973 (hereinafter referred to as the DSE Act). In that letter it was pointed out that the trust runs the said school (Beni Pershad Jaipuria Girls Senior Secondary School) which is an aided school and that it also runs an unaided school under the name and style of “Rukmani Devi Jaipuria Public School” on an adjacent plot. It was further stated in the said letter that the trust was the owner of freehold plots of land bearing No.23-25, Rajpur Road, Delhi having received the same by way of donation from the trustees. No grant or concession of any sort was availed of by the trust for acquisition of the said lands. The said school was started in the year 1961 on plot No. 25, Rajpur Road, Delhi and was recognized by the competent authority in the same year. It was also granted aid by the government. The other school ( Rukmani Devi Jaipuria Public School) on the adjoining plot (23, Rajpur Road, Delhi) was started in the year 1975 and was given recognition under the DSE Act in 1979. That school is being run as an unaided public school.

3. Earlier, as indicated in the said letter, there was a proposal to merge the two schools and also to forgo the grants-in-aid being received from the government in respect of the said school. By a letter dated 20.12.2004 the Deputy Director of Education refused to grant permission for the proposal on the ground that there was no provision for amalgamation of an aided school with a recognized unaided school run by the same trust. In clarification, it was pointed out in the said letter that the trust had not intended to merge an aided school with a private school but the intention was to forgo the aid from the government and run both the schools as unaided schools. There is then reference of the letter dated 28.12.2005 and the rejection by the Director of Education on 06.02.2006. It was stated in the letter that the trust cannot be forced to accept grants-in-aid and it cannot be compelled to run an aided school in perpetuity. It was further stated that the intention of the trust is to provide education to children but the trust is not obliged under any law to continue to receive aid from the government against its wishes. It was also stated that the trust was ready and willing to bear all the fees of the existing students of the said school till they pass out or leave the school of their own accord. In this background, the Lieutenant

Governor, being the Administrator under the DSE Act, was requested to issue necessary directions to the appropriate authorities to stop the grants-in-aid to the said school and to permit the trust to run the said school as an unaided school. It was also requested that till the application of the trust was disposed of, the Director of Education be directed not to take any coercive steps against the trust and the said school.

4. There was no response from the Lieutenant Governor to this letter. On the other hand, the said school was the recipient of a memorandum dated 22.04.2006 issued by the office of the Deputy Director of Education whereby the head of the school was directed not to refuse admission to any of the students, till the enrollment is reached to its maximum limit in all the classes, failing which appropriate action under the DSE Act and the Delhi School Education Rules 1973 (hereinafter referred to as the DSE Rules) would be initiated against the said school. This was followed by an order dated 24.04.2006 issued by the Deputy Director of Education, District North, Delhi issued in purported exercise of powers under Section 16 of the DSE Act read with Rule 131 of the DSE Rules whereby a committee was constituted to

regulate admission to the said school with immediate effect. At this juncture, it would be relevant to note that students had been admitted for the 2006-07 session as well as for the current session, i.e., 2007-08. By way of this writ petition the petitioners also seeks the quashing of the said letter dated 06.02.2006, memorandum dated 22.04.2006 and the order dated 24.04.2006. The key issue, however, is whether the respondents (Government of NCT of Delhi and the Director of Education) can refuse the proposal of the petitioners to stop taking aid in respect of the said school and insist that the said school continues to receive aid from the government?

5. Mr Neeraj Kishan Kaul, Senior Advocate, appeared on behalf of the petitioners and submitted that there is a difference between recognition and aid. He submitted that recognition to a school is granted under the DSE Act under Section 4 whereas aid is granted to a recognized school under Section 6 of the DSE Act. He submitted that grant of recognition and the grant of aid are two separate issues. While aid cannot be granted unless and until a school is recognized under the DSE Act, a recognized school has the option of asking or not asking for aid. Therefore, there are two categories of recognized schools—aided

and unaided. He submitted that it is nowhere provided in the Act or in the Rules that once a school is aided, it must retain that status in perpetuity. He submits that just as an unaided school may at a subsequent point of time become an aided school, there is no bar for an aided school changing its status to an unaided school. It is not at all necessary for a recognised school to receive aid. Though, before aid is granted by the government, recognition of the school is a prerequisite. He further submitted that the petitioners are not asking for the closure of a school. It is only asking for permission to stop receiving aid. He made a clear statement that all the children who are students of the said school at present would continue their education in the said school and the expenses for which would be borne entirely by the petitioners. Therefore, the said children would not suffer any disruption in their education. He also submitted that the teachers and staff of the said school have the option of either continuing in the same school or being absorbed in some other school run by the Delhi Government. He submitted that in case they opted to continue with the said school their salaries would not be less than the salaries of similar staff in the other school ( Rukmani Devi Jaipuria Public School) and that their seniority would also be protected.

6. Ms Avnish Ahlawat, who appeared on behalf of the respondents 1 and 2 (Government of NCT of Delhi and Director of Education) submitted that since the very inception, that is, from 1961, the said school has been run as a recognized and aided school. This implies that 95% of the funds which go towards teachers' salaries, library etc. have been provided by the government and only 5% by the trust. She submitted that withdrawal of aid to the said school would imply closure of the school. She also referred to the earlier proposal of amalgamation of the two schools and to the rejection of the said proposal. Relying upon Rules 46 and 47 of the DSE Rules, she submitted that before a school or any class in a school could be closed down, prior approval of the Director of Education was necessary. Ms Ahlawat submitted that altering the status of the school from an aided to an unaided school would mean, *inter alia*, that the said school would now be in a position to charge admission fees and tuition fees at a level much higher than what it was permitted to an aided school. This would, according to her, necessarily mean that poorer children would not be able to seek admission in the said school and the same would only be available for children from richer families. So, although the school itself



would appear to continue, in effect it would amount to closure of a school insofar as the poor children of the locality are concerned. She submitted that before a school could be closed an elaborate procedure had to be followed and prior approval of the Director is required. The Director has already rejected the proposal and, therefore, this Court ought not to interfere with the same.

7. Mr Ashok Aggarwal, who was permitted to intervene on behalf of the parents of the children who were admitted to various classes in the said school on 25.04.2006 and thereafter in the current academic year, submitted that the petitioners want to either close or merge the said school with the other school. He submitted that the said school was an aided school and the intention behind refusing aid is of closing down an aided school. He submitted that the interest of poor children would be prejudiced and it is for this reason that the proposal was rejected by the impugned letter dated 06.02.2006. Mr Aggarwal referred to Section 3 of the DSE Act and submitted that the Administrator has been empowered to regulate education in all the schools in Delhi in accordance with the provisions of the DSE Act and the DSE Rules. He submitted that after the commencement of the said

Act and Rules, the establishment of a new school or closing down of an existing school is subject to the provisions of the Act and the Rules. He also referred to Rule 43 of the DSE Rules to indicate that the Administrator may, if he is of the opinion that in the interest of school education in Delhi it is necessary so to do, issue such instructions in relation to any matter, not covered by the rules, as he may deem fit. Mr Aggarwal referred to this provision to indicate that the Administrator had residuary powers to issue instructions in respect of matters which were not otherwise provided for in the DSE Rules. Such instructions could be issued if it were in the interest of school education in Delhi. He then referred to Rule 44 (3) of the DSE Rules to submit that permission to open a new school is to be granted by the Administrator only if it is in public interest. He submitted that the rejection of aid from the government would translate into the said school altering its status from an aided to an unaided school. Consequently, the said school would be free to charge admission fee and tuition fees at a much higher level, which would mean that the said school would no longer be an avenue for poor children seeking education. The new school would be for paying students coming from richer families and this, in his opinion, amounted to the establishment of a new school which, according to him, must only

be in public interest. The respondents 1 and 2 have already indicated by virtue of the impugned letter dated 06.02.2006 that it would not be in public interest and, therefore, the proposal of the petitioners of not receiving any further grant-in-aid was rightly rejected.

8. It must also be pointed out at this juncture that several members of the staff of the said school had also attended the hearings in Court and they had also vented their grievances with regard to the said proposal. The staff members who were aggrieved by the proposal comprised of four teachers, two lab assistants, 2 clerks, 1 *safai karamchari* and two other part time employees. In the context of these staff members, Mr Aggarwal submitted that Rule 47 which pertains to absorption of surplus employees could not be availed of by them inasmuch as they did not fall under the three classes mentioned in Rule 47. The classes being, (1) closure of an aided school, (2) withdrawal of recognition from an aided school and (3) withdrawal of aid from an aided school. In response Mr Kaul submitted that Rule 47 only provides for what is to be done and how are the surplus employees to be absorbed in the aforesaid three eventualities. There is no bar to absorption in other cases. He submitted that it is public knowledge that

there are thousands of vacancies in government schools yet they are not willing to absorb these employees and there is no basis or justification for the same. He further submitted that all the employees apart from the part time employees, had completed 20 years of service and they could take voluntary retirement and avail of all the gratuity and pensionary benefits and at the same time opt for continuing in their present positions in the said school and the salaries that would be paid to them would be not less than the salaries paid in the other school (Rukmani Devi Jaipuria Public School) and that their seniority would also be protected. Therefore, according to Mr Kaul, the said staff would in no way be prejudiced by the proposal.

9. Section 3 of the DSE Act empowers the Administrator (i.e., the Lieutenant Governor) to regulate education in all schools in Delhi in accordance with the provisions of the DSE Act and the DSE Rules. Recognition to a school is granted under Section 4 of the Act. There are various conditions prescribed for recognition of a school such as adequacy of funds, financial stability, duly approved scheme of management, suitable or adequate accommodation, approved courses of study and efficient instruction, teachers with prescribed qualifications

and facilities for physical education, library service, laboratory work, workshop practice or co-curricular activities. There is an elaborate scheme provided for application for recognition, grant or refusal of recognition and appeal in case of refusal. Sub- Section (6) of Section 4 of the DSE Act provides that every existing school shall be deemed to have been recognized under the Section and shall be subject to the provisions of the Act and the Rules. The proviso to this sub-Section stipulates that where any such school does not satisfy any of the conditions specified in the proviso to sub-Section (1), the prescribed authority may require the school to satisfy such conditions and such other conditions as may be prescribed, within a specified period and if such condition is not satisfied recognition may be withdrawn from such school. The said school was an existing school inasmuch as it was established in 1961. Therefore, recognition was automatic under Section 4 (6) of the DSE Act, 1973. However, its continued recognition is subject to the provisions of Section 4(6). The question of recognition of schools, therefore, is dealt with entirely by Section 4 of the DSE Act and by Chapter IV of the DSE Rules which contains Rules 49 to 58. On the other hand, the issue of aid to recognized schools is governed by the provisions of Section 6 of the DSE Act. Aid can, however, only be

granted to recognized schools. Sub-Section (2) of Section 6 of the DSE Act stipulates that the authority competent to grant aid may stop, reduce or suspend aid for violation of any of the conditions prescribed in this behalf. Sub-Section (3) provides that aid may cover such part of the expenditure of the school as may be prescribed and in sub-Section (6) it is stipulated that no unrecognized school shall be eligible to receive any aid or any benefit made available to private schools by the Administrator or any agency of the Administrator. Apart from Section 6, the procedural aspects of grant-in-aid are dealt with under Chapter VI of the DSE Rules which contains rules 60-92. Section 17 of the DSE Act deals with fees and other charges. Sub-Section (1) clearly stipulates that no aided school shall levy fee or collect any other charge or receive any other payment except those specified by the Director. Chapter XIII of the DSE Rules deals with fees and other charges in aided schools. Rule 146 pertains to admission fees and it clearly stipulates that no admission fees shall be charged or collected by an aided school for admission to any class up to class VIII. Rule 147 pertains to tuition fees and it provides that subject to alterations in the fees as may be made by the Director from time to time, the rate of tuition fees for all classes in aided schools shall be as indicated in the table given in the said Rule. A

perusal of the table clearly indicates that insofar as classes I to VIII are concerned, the tuition fees is nil. As regards other classes also, i.e., classes IX to XII, the tuition fees prescribed is nominal. It is also stipulated that no tuition fee shall be charged for any class from any student who belongs to the Scheduled Caste or the Scheduled Tribe.

10. A brief survey of the above mentioned provisions indicates that recognition and aid are two separate and distinct concepts. While it is necessary that before a school is granted aid, it must be a recognized school, it is not at all necessary that a recognized school must necessarily receive aid. It has also been noticed that the power to grant aid also includes the power to stop, reduce or suspend aid in case of any violation of the conditions prescribed in respect of the said grant of aid. There is no provision in the Act or the Rules which speaks of a situation where a school which was hitherto aided, proposes not to receive any further aid. This, obviously means that there is no specific provision under the Act or the Rules whereby the competent authority has the power to reject such a proposal.

11. In this context, it would be instructive to examine the categories of aid. Rule 73 of the DSE Rules recognizes two categories, namely:- (a) maintenance grant; and (b) building grant. Maintenance grant is also of two kinds, namely:- (a) recurring maintenance grant; and (b) non-recurring maintenance grant. Rule 73 (3) of the DSE Rules specifies as to what is meant by recurring maintenance grants. They are:- (a) staff grant; (b) provident fund grant; (c) pension and retirement benefit grant; (d) medical benefit grant; (e) benefits specified in Chapter X; (f) grants for the purposes of books and journals which are essential for the library; and (g) grants for the acquisition of essential equipments of the school. Rule 74 prescribes that recurring maintenance grant shall be given to aided schools at the rate of ninety-five percent, of the difference between the approved expenditure on the items in relation to which recurring maintenance grant may be made and the income from fees and such other items as may be specified by the Director. It is obvious that the balance 5% has to be funded by the aided school itself. In the present case the said school has been receiving recurring maintenance grant in the shape of salaries of teachers and other staff and library expenses to the extent of 95% from the government. The balance 5% is provided by the petitioner trust. The aid, therefore, that is being



received by the said school, is of a recurring nature. It is quite distinct from a building grant or a non-recurring maintenance grant which would be of an enduring and/ or permanent nature. This distinction is material because if the government had given grant-in-aid in respect of the building of the school, then the school would not be in a position to suddenly turn back and say it is not an aided school merely by stopping to receive any recurring maintenance grant. This is so because the building is of an enduring nature and the government having aided in the setting up and construction of the building, would always have a stake in the same. The element of aid would be built into the building itself and, therefore, although the school may stop receiving recurring maintenance grants, it could still be styled as an aided school. The facts of the present case are somewhat different. The land and buildings have been provided by the petitioner trust. It has only been receiving recurring maintenance grant from the government. Therefore, if such recurring maintenance grant is stopped, then the nature of the school would immediately change from being an aided school to an unaided school.

12. This discussion makes it clear that there is nothing in the Act or the Rules which prevents the said school from refusing to accept

further aid from the government. There is also nothing in the Act or the Rules which permits the authorities therein to compel the school to receive aid against its wishes. Therefore, I am of the view that the impugned letter dated 06.02.2006 is without the authority of law and is liable to be quashed. As a consequence the school would be permitted to alter its status from being an aided school to an unaided school and, therefore, the memorandum dated 22.04.2006 and the order dated 24.04.2006 would also have no further operation. The petitioners have already undertaken, and they are bound by it, that all the students, who are presently studying in the said school, would continue their education entirely at the cost of the petitioners and in the same manner as if the said school had continued to be an aided school. It would also be open to the teachers and the other staff of the said school to opt for continuing with the said school in terms of the offer made by the petitioners. The respondents 1 and 2 are also directed to consider absorbing the said staff members in their schools provided there are vacancies, in case the said staff members do not opt to continue with the said school.

13. I have pointed out above that there is a distinction between the question of recognition and the issue of grant-in-aid. Consequently,

the fact that the petitioners are permitted not to receive aid does not mean that the petitioners can ignore stipulations with regard to recognition. For example, Rule 50 of the DSE Rules specifically provides the conditions for recognition. One of the conditions is that the school must serve a real need of the locality. This is provided in Rule 50 (ii). Another condition, which ought to be kept in mind, is prescribed in Rule 50(iv) that the school is not run for profit to any individual, group of association of individuals or any other persons. Another important condition is given in Rule 50(v) and that is that admission to the school is open to all without any discrimination based on religion, caste, race, place of birth or any of them. It would be necessary for the sake of completeness to also refer to Rule 56 of the DSE Rules which makes provision for suspension or withdrawal of recognition. If a school, *inter alia*, ceases to fulfill any requirement of the Act or any of the conditions specified in Rule 50, the appropriate authority is empowered, after giving to the school a reasonable opportunity of showing cause against the proposed action, to withdraw for reasons to be recorded in writing, recognition from the school. These factors have been pointed out by me specifically so as to make the petitioners as well as the respondents aware, in case they weren't, that stoppage of aid and the consequent

alteration in the status of the said school from aided to an unaided one, does not absolve the said school of its responsibilities under the said Act and the said Rules and that in case it wants to retain its recognition, the conditions for such recognition have to be complied with at all points of time. In case of any non-compliance, it shall be open to the respondents to take action under Rule 56 of the said Rules.

14. In view of the foregoing discussion, the petitioners are permitted to stop receiving aid from the respondents 1 and 2 and the respondents 1 and 2 are directed not to provide any further aid to the said school. The status of the said school would change from being an aided school to an unaided school. The letter dated 06.02.2006 stands quashed and the memorandum dated 22.04.2006 and the order dated 24.04.2006 have no further effect. The petitioners shall not disturb any of the students who are presently enrolled in the said school and their entire education shall be completed in the said school, if the students so wish, as if the said school had continued to be an aided school. The members of the staff referred to above, shall be given the options indicated above.

This writ petition and all pending applications being CM Nos. 5161/2006, 8983/2006 and 5856/2007 stand disposed of. There shall be no order as to costs.

**BADAR DURREZ AHMED  
(JUDGE)**

**October 23, 2007**  
*SR*