

Master Yashvir Singh Chauhan & Ors vs Bal Bharati Public School Rohini on 7 September, 2020

Author: Jayant Nath

Bench: Jayant Nath

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 6053/2020

MASTER YASHVIR SINGH CHAUHAN & ORSPetitioners
Through Mr. Khagesh B. Jha and Ms.Shikha
Sharma Bagga, Advs.

Versus

BAL BHARATI PUBLIC SCHOOL ROHINI Respondent
Through Mr. Sunil Gupta, Sr. Advocate with
Mr. Kamal Gupta, Mr.Nikhil Kukreja and Vaibhav
Mehra Adv. for R-1 & 2.
Mr. Gautam Narayan, ASC, GNCTD with Ms.
Dacchita Shahi and Mr. Adithya Nair, Advs. for
R-3.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH
ORDER

% 07.09.2020 This hearing is conducted through video conferencing. CM APPL. Nos.21761-21762/2020(exemption) Applications are allowed, subject to all just exceptions. W.P.(C) 6053/2020 & CM APPL. No.21760/2020

1. This writ petition is filed by the petitioners seeking the following reliefs:-

"(a) to pass an order or direction to respondent school to comply the Judgement dated 19.01.2016 passed by a division bench of this Hon'ble Court in W.P.(C) No.4109/2013 and restrain the respondent school from collecting any fee without prior sanction from Director of Education, GNCT of Delhi from the parents of petitioners.

(b) to pass an order or direction to respondent school to comply the directions of DOE order dated 18.04.2020, 14.08.2020 and 18.08.2020 and not collect any amount not permissible in the above orders.

(c) to pass an order or directions to respondents No. 1 & 2 to adjust/refund the excess

fees charged from the petitioners @ 9% interest per annum, qua orders of JADSC, DOE order dated 11.12.2018, excess of illegally hiked fees charged since FY 2016-17 till date, also the fees charged through forced charity on subsidizing education of 25% EWS children admitted in respondent school which has been the obligation of the respondent No. 2.

(d) to pass an order to the respondent No. 3 to determine the actual permitted fee of the school in parity with the Modern School Judgment."

2. Essentially the grievance of the petitioners pertains to the fees structure charged by respondent No.1/School from the academic years 2016- 2017 to 2019-20. The writ petition narrates the entire alleged legal position and the history of litigation pertaining regarding fixation of fees structure in NCT of Delhi. In the grounds, it is pleaded that respondent No.1/School has been hiking the fees every year without prior approval of DOE, which is mandatory and which is in contempt of the judgment of the Division Bench of this court passed in W.P.(C) 4109/2013.

3. I have heard learned counsel for the petitioners and learned senior counsel for respondent No.1/School and learned counsel for Govt. of NCT of Delhi.

4. Learned counsel appearing for the petitioners has vehemently urged as follows:-

i) He relies upon an order of the Division Bench of this court dated 19.01.2016 passed in W.P.(C) 4109/2013 to plead that prior approval of the fees structure for a school like respondent No.1/School which has an appropriate clause in the lease deed is mandatory.

ii) He further states that from the years 2016-17 to 2019-20, no prior approval has been received by respondent No.1/School and hence, respondent No.1/School cannot enhance the fee rates. It is pleaded that the petitioners who are the students in the school are only liable to pay school fees as existed in 2015-2016. It has been vehemently urged that large amounts of refund are due to the petitioners.

iii) It has also been pointed out that by order dated 11.12.2018, Govt. of NCT of Delhi has rejected the fees proposal of respondent No.1/School for the academic session 2017-18.

5. Learned senior counsel appearing for respondent No.1/School has denied the submissions of the petitioners as follows:-

i) Reliance has been placed on a judgment of a Co-ordinate Bench of this court in W.P.(C) 4374/2018 dated 15.03.2019, titled 'Action Committee Unaided Recognized Private Schools vs. Directorate of Education & Anr.' to plead that in a matter like the present one where there is an appropriate clause in the lease deed, the obligation of the school is to prior to the beginning of the academic year move an appropriate application seeking approval of enhancement of the fees. In case before

commencement of the academic session, Govt. of NCT of Delhi does not deal with the said application, the School is free to enhance the fees structure. He also states that in LPA No.630/2019 that was filed, this direction of the Co-ordinate Bench was not stayed. He further states that in the appeal on 03.04.2019, the Division Bench restrained respondent No.1/School to collect any amount constituting an interim fees hike in terms of the circular dated 17.10.2017 of Govt. of NCT of Delhi which pertains to the academic year 2017-18 only.

ii) It is further stated that regarding the order dated 11.12.2018 passed by DOE rejecting the fee hike proposal for the academic year 2017-18, a writ petition was filed before this court and appropriate interim orders have been passed in favour of respondent No.1/School.

iii) It is further pleaded that petitioners herein have to pay large outstanding fees which are pending for a long time. It is pleaded that the outstanding dues of petitioner No.1 and petitioner No.2 are approximately Rs.48,000/- each and for petitioner No.3, the approximate dues are Rs.16,000/-.

6. Learned standing counsel for Govt. of NCT of Delhi/respondent No.3 has pointed out that on 10.05.2019 a show cause notice was issued to respondent No.1/School for withdrawal of the recognition or taking over the management of the School. He submits that the proceedings in this regard are pending.

7. I may only refer to the judgment of a Co-ordinate Bench of this court in W.P.(C) 4374/2018 dated 15.03.2019, wherein in para 192, the Bench held as follows:-

"192. Proceeding, now, to the merits of the impugned Order, i.e., to the validity of the objection, by the DoE, regarding non- obtaining, by the petitioner, "prior approval" of the DoE, before enhancing its fees, it would become apparent, from a reading of the discussion hereinabove, and the law laid down by the various decisions cited in that regard, that, in the matter of fixation of fees, the distinction, between the rights of unaided non-minority schools, and unaided minority schools, is practically chimerical. In both cases, the schools are entitled to complete autonomy in the matter of fixation of their fees and management of their accounts, subject only to the condition that they do not indulge in profiteering, and do not charge capitation fee, thereby "commercialising" education. There is no requirement for the school to take "prior approval", of the DoE, before enhancing its fees. The only responsibility, on the School, is to submit its statement of fee, as required by Section 17(3) of the DSE Act. Mr. Gupta is right in his submission that, having done so, the schools could not be expected to wait ad infinitum, before the said statement of fees, submitted by them, was examined and verified by the DoE. Any such examination and verification, too, it is clarified, would have to be limited to the issue of whether, by fixing its fees, or enhancing the same, the school was "commercialising" education, either by charging capitation fee or by indulging in profiteering. If, therefore, pending the decision of

the DoE on its Statement of Fee, the school decided to commence charging the enhanced fee from the beginning of the next academic session, it cannot be said that the school had, in any manner, infringed the provisions of the DSE Act or the DSE Rules."

8. In view of the above, it would follow that the responsibility of respondent No.1/School was to file an appropriate application for fees enhancement prior to the academic year. In case Govt. of NCT of Delhi is unable to deal with the said application for some reason, the School is free to increase the fees. This particular direction, I am informed, has not been stayed by the Division Bench.

9. Learned counsel for the petitioners has however vehemently urged that respondent No.1/School has to give refund to the petitioners but is threatening to terminate the students in case the fees are not paid.

10. It was put to the learned counsel for the petitioners that these are issues which are regulated by Govt. of NCT of Delhi and it would be appropriate that these issues may be referred to Govt. of NCT of Delhi as a representation to be dealt with as per law. However, learned counsel for the petitioners insists that Govt. of NCT of Delhi is not taking appropriate steps and that this writ petition would hence be maintainable.

11. Issue notice.

12. Learned counsel for respondents No.1 & 2 and respondent No.3 accept notice. Counter affidavit be filed within four weeks. Rejoinder, if any, be filed within four weeks thereafter.

13. List on 01.12.2020.

14. Though a lot of hue and cry has been raised by the learned counsel for the petitioners about the outstanding dues claimed by the respondent School, however, details of the alleged arrears have not been stated in the present writ petition. Learned counsel for the petitioners despite several requests is unable to show to the court the amount due and payable by the petitioners as per the fee bills of respondent No.1/School.

15. I may only note that the learned senior counsel for respondent No.1/School has pointed out that the approximate outstanding dues of petitioner No.1 and petitioner No. 2 are Rs.48,000/- each and the approximate outstanding dues of petitioner No.3 are Rs.16,000/-. For the time being, subject to further orders of this court, let petitioners No.1 and 2 deposit a sum of Rs.24,000/- each and petitioner No.3 deposit a sum of Rs.8,000/- towards the arrears of the fee bills of the petitioners. In case these amounts are deposited within three weeks from today, no coercive steps shall be taken by respondent No.1/School against the petitioners for the alleged previous dues payable by the petitioners.

SEPTEMBER 07, 2020/v/rb

JAYANT NATH, J.