

St. Columbas School And Others vs Director Of Education on 27 July, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~18 (2021 Cause List)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 7048/2021

ST. COLUMBAS SCHOOL AND OTHERS

..... Petitioners

Through: Mr. Romy Chacko and Mr. Shakthi
Chand Jaidwal, Advocates

versus

DIRECTOR OF EDUCATION

..... Respondent

Through: Mr. Santosh Kumar Tripathi, SC
Civil, GNCTD for DOE

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 27.07.2021 The proceedings in the matter have been conducted through video conferencing.

CM APPLs. 22265-22266/2021 (exemption) Exemption allowed, subject to all just exceptions.

The applications stand disposed of.

W.P.(C) 7048/2021 with CM APPL. 22264/2021 (for stay)

1. Issue notice. Mr. Santosh Kumar Tripathi, learned Standing Counsel for GNCTD, accepts notice on behalf of respondent/Directorate of Education ["DOE"].

2. The petitioners are unaided minority schools recognized by the DOE. They have filed the present petition seeking the benefit of a judgment dated 31.05.2021 in W.P.(C) 7526/2020 [Action Committee Unaided Recognized Private Schools vs. Directorate of Education], rendered by a coordinate bench of this Court.

3. By way of the aforesaid writ petition, an association of unaided recognized private schools, had challenged two circulars issued by the DOE, dated 18.04.2020 and 28.08.2020, by which private unaided recognized schools were restrained from collecting a part of the fees [annual charges and development fees] in the wake of the COVID-19 pandemic. The petition was disposed of with the following directions:-

"49. There is no finding recorded by the impugned orders that the collection of Annual Charges and Development Fees tantamounts to profiteering or collection of capitation fees by private unaided recognized schools. A perusal of the impugned orders does not show that the entire body of private unaided recognized schools has indulged in profiteering or charging of capitation fees by seeking to collect Annual Charges and Development Fees in the stated facts and circumstances.

50. As noted, the private recognized unaided schools are clearly dependent only on the fees collected to cover their salary, establishment and all other expenditure on the schools. Any regulations or order which seek to restrict or in-definitely postpone their powers to collect normal and usual fees as is sought to be done by the impugned orders is bound to create grave financial prejudice and harm to the schools. Reference may be had to the observations of the Division Bench of this court in the case of Naresh Kumar vs. Director of Education & Anr., MANU/DE/0977/20220 where the Division Bench noted as follows:-

"..... Money does not grow on trees, and unaided schools, who received no funds from the Government, are entirely dependent on fees, to defray their daily expenses."

51. The respondent in the facts and circumstances has no power to indefinitely postpone the collection of Annual Charges and Development fees, as is sought to be done. The impugned acts are prejudicial to the said Schools and would cause an unreasonable restriction in their functioning. In the above facts and circumstances, clearly the impugned orders dated 18.04.2020 and 28.08.2020 issued by the respondent to the extent that they forbid the petitioner/postpone collection of Annual Charges and Development Fees are illegal and ultra vires the powers of the respondent stipulated under the DSE Act and the Rules. The orders to that extent are quashed.

52. The fact remains, as noted above, that the schools are affecting some savings on account of the fact that the school are presently physically shut. The Supreme Court has already dealt with the stated issue. The directions as passed by the Supreme Court in the case of Indian School, Jodhpur & Anr. vs. State of Rajasthan & Ors.(supra) would clearly apply to the present case mutatis mutandis. Relevant para of the said judgment reads as follows:-

"128. Ordinarily, we would have thought it appropriate to relegate the parties before the Regulatory Authority to refix the school fees for the academic year 2020-21 after taking into account all aspects of the matter including the advantage gained by the school Management due to unspent overheads/expenses in respect of facilities not availed by the students. However, that course can be obviated by the arrangement that we propose to direct in terms of this judgment. To avoid multiplicity of proceedings (as school fee structure is linked to school-school wise) including uncertainty of legal processes by over 36,000 schools in determination of annual fee structure for the academic year 2020-21, as a one-time measure to do complete justice between the parties, we propose the issue following directions:

(i) The appellants (school Management of the concerned private unaided school) shall collect annual school fees from their students as fixed under the Act of 2016 for the academic year 2019-20, but by providing deduction of 15 per cent on that amount in lieu of unutilised facilities by the students during the relevant period of academic year 2020-21.

(ii) The amount so payable by the concerned students be paid in six equal monthly instalments before 05.08.2021 as noted in our order dated 08.02.2021.

(iii) Regardless of the above, it will be open to the appellants (concerned schools) to give further concession to their students or to evolve a different pattern for giving concession over and above those noted in clauses (i) and (ii) above.

(iv) The school Management shall not debar any student from attending either online classes or physical classes on account of non-payment of fees, arrears/ outstanding fees including the installments, referred to above, and shall not withhold the results of the examinations of any student on that account.

(v) If any individual request is made by the parent/ward finding it difficult to remit annual fees for the academic year 2020-21 in the above terms, the school Management to consider such representation on case-to-case basis sympathetically.

(vi) The above arrangement will not affect collection of fees for the academic year 2021-22, as is payable by students of the concerned school as and when it becomes due and payable.

(vii) The school Management shall not withhold the name of any student/candidate for the ensuring Board examinations for Classes X and XII on the ground of non-payment of fee/arrears for the academic year 2020-21, if any, on obtaining undertaking of the concerned parents/students."

53. The above directions given in paras (i) to (vii) will apply to the petitioner schools mutatis mutandis. However, clause

(ii) has to be modified. The amount payable by concerned students will be paid in six monthly installments w.e.f. 10.06.2021."

(Emphasis supplied.)

4. The DOE has challenged the aforesaid judgment by way of LPA No. 184/2021, which is presently being heard alongwith other appeals directed against the same judgment. Mr. Tripathi submits that the appeals are next listed on 30.07.2021 before the Division Bench.

5. By an order dated 07.06.2021, the DOE's request for stay of the judgment was declined. The order of the Division Bench records the following submission made on behalf of respondents in the appeal [the writ petitioners before the learned Single Judge]:-

"18. In conclusion, Mr Divan fairly submits that even though the managements of private unaided schools have been permitted under the impugned order to collect the entire fee/charges applicable for the academic year 2021-22, in view of the fact that this Court is examining the present challenge to the impugned judgment, the members of the respondent Committee, till the next date, will follow the same principles as set down for collecting fee/charges for the years 2020-21 as have been laid down by the impugned order."

6. The Division Bench thereafter went on to record the following findings:-

"22. On a perusal of this Rule, we are prima facie inclined to agree with the findings given by the learned Single Judge in the impugned order that the scheme of the DSE Act and Rules do not vest the Directorate with any power to issue the kind of directions contained in the orders/circulars impugned before it, considering that they have such far reaching financial implications upon the private unaided schools of NCT of Delhi. No doubt, the statute vests the Directorate with supervisory power to ensure that these private schools, chosen by students and their parents out of their own volition for the purpose of admission, do not indulge in commercialization and profiteering, however this right is salutary in nature and does not give any license to the Directorate to pass directions that it perceives would be in public interest, without any basis therefor.

23. The Directorate has also vehemently contended that the learned Single Judge has erred in mechanically applying the directions issued by the Supreme Court in Indian School, Jodhpur (supra) without noticing that the facts in the two cases are not pari materia. Even on this aspect, we are prima facie unable to agree.

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26. Ultimately, the managements of these unaided, private schools in the city, which do not receive any aid from the GNCTD and are solely dependent on the fee collected by them, would also need funds to sustain their operations and premises and continue imparting education online. Given the terrible exigencies of the pandemic, we have been forced to embrace new models for our institutions and virtual classes are our sole way of ensuring that the nation's children are being educated. Thus, one cannot gainsay the importance of these virtual classes and staying the impugned decision today without a deeper examination of the facts would only compromise with the ability of these schools to continue serving this critical function. That being said, insofar as the difficulties that may be encountered by the parents of the students are concerned, learned counsel for the respondents have already assured this Court that they would ensure that all Annual Charges and Development Fee levied for the year 2021-22 would be recovered on the same principles applicable to the academic year 2020-21 under the impugned judgment.

27. Needless to say, these observations are prima facie in nature and the respondent Committee shall remain bound by the undertakings recorded in Paragraphs 18 and 19 above."

(Emphasis supplied.)

7. In the meantime, the petitioners have approached this Court in view of a stand taken by the DOE that the impugned circulars dated 18.04.2020 and 28.08.2020 are continued to be applicable to schools which were not party to W.P.(C) 7526/2020. Mr. Romy Chacko, learned counsel for the petitioners herein, has referred me to a circular dated 01.07.2021 setting out the arrangements consequent upon the judgment dated 31.05.2021. The said circular has been made applicable only to the schools mentioned in the Annexure thereto, which were (through their association) party to the said petition.

8. Mr. Tripathi confirms that the stand of the DOE is that the judgment of the learned Single Judge is applicable only to those schools which are members of the petitioner-association in W.P.(C) 7526/2020. He draws my attention to paragraph 53 of the judgment, wherein it is mentioned that the directions set out in paragraph 52 of the judgment would apply to the "petitioner schools mutatis mutandis". According to Mr. Tripathi, the effect of the aforesaid directions is to confine the application of the judgment to the petitioner schools

9. Prima facie, I am unable to agree with Mr. Tripathi's submission. The judgment of learned Single Judge, in paragraph 51, records a conclusion with regard to the power of the DOE, and expressly quashes the impugned orders dated 18.04.2020 and 28.08.2020 to the extent mentioned therein. Once quashed, I am prima facie of the view that the order cannot be applied to other parties. This would, in my view, be destructive of the rule of law, and lead only to separate petitions having to be filed by each affected party.

10. The directions contained in paragraphs 52 and 53 of the judgment dated 31.05.2021 appear to be consequential directions in favour of the petitioners therein, pursuant to the declaration of law contained in paragraph 51 and the order quashing the impugned circulars to the extent mentioned therein.

11. In any event, the petitioners in the present case have also independently challenged the circulars dated 18.04.2020 and 28.08.2020. On this point, the conclusion recorded in the judgment dated 31.05.2021 is that the aforesaid orders, to the extent mentioned in paragraph 51, are ultra vires the powers of the DOE. A prima facie view to the same affect has also been taken by the Division Bench in paragraphs 22 and 23 of the order dated 07.06.2021. The reasoning adopted by the coordinate bench and the order of the Division Bench are sufficient to arrive at a prima facie conclusion in favour of the petitioners in the present case also.

12. Mr. Chacko submits that the petitioners in this petition would also abide by the statement recorded (on behalf of the writ petitioner in W.P.(C) 7526/2020) in paragraph 18 of the order of the Division Bench dated 07.06.2021.

13. In view of the aforesaid, it is directed that until the next date of hearing, the impugned orders dated 18.04.2020 and 28.08.2020 shall remain stayed, to the extent mentioned in the judgment dated 31.05.2021. The DOE is directed to apply the circular dated 01.07.2021 to the petitioner-schools also. The petitioners are bound to the statement recorded in paragraph 12 above.

14. Counter affidavits be filed within four weeks. Rejoinders thereto, if any, may be filed within two weeks thereafter.

15. List on 21.10.2021.

PRATEEK JALAN, J JULY 27, 2021/'j'