

Master Divyam Bhateja Through Father Mr ... vs Bhai Parmanand Vidya Mandir And Ors on 27 May, 2022

Author: Vipin Sanghi

Bench: Sachin Datta, Vipin Sanghi

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 8466/2022

MASTER DIVYAM BHATEJA THROUGH FATHER MR VINOD

BHATEJA

..... Petitioner

Through: Mr. Khagesh B. Jha, Adv

Versus

BHAI PARMANAND VIDYA MANDIR AND ORS..... Respondents

Through: Mr. Santosh Kumar Tripathi, SC

along with Mr. Arun Panwar, Mr.

Siddharth Krishna Dwivedi, Mr.

Aditya S. Jadhav, Mr. Pradyumn Rao

Mr. HF Sachdeva and Ms. Savita

Sethi, Advs. for DOE.

Mr. Kamal Gupta, Mr. Sparsh

Aggarwal, Ms. Sonakshi and Mr.

Ryan Sinha, Advs. Resp/School.

Mr. Shobhana Takiar, SC for R-4

/DDA.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

% 27.05.2022 Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 8466/2022 & CM APPL. 25532/2022

1. The instant petition has been preferred by the petitioner seeking the following reliefs:

"a. Pass an order to declare rules 35 and 167 of Delhi School Education Rules, 1973, ultravires to article 19(1)(a), 21 and 21A of constitution of India read with provisions of Right of Children to free and compulsory Education Act, 2009 and contrary to the provisions of section 75 of Juvenile Justice care and Protection Act, 2015.

b. Pass an order to declare the impugned order dated 18.04.2020 passed by the director of education along with subsequent circulars reiterating the same to facilitate the private schools of Delhi to collect the tuition fee without filing of the revised statement of fee and charging for the expenses neither occurred nor any probability of occurring during the lockdown ultra vires to section 17(3) and 18 of Delhi School Education Act, 1973 and also ultravires to rule 165 of Delhi School Education Rules, 1973.

c. to pass an order writ or direction to quash the impugned communication of striking down the name of petitioner from the role of school in the violation of undertaking given by the school through their association and in the deliberate disobedience of direction issued by the division bench of this Hon'ble court based on fee bill generated contrary to the provisions of rule 165 of Delhi School Education Rules 1973.

d. To pass an appropriate writ order or direction to quash the demand of fee without prior sanction of director of education government of NCT of Delhi and without following the orders passed by the division benches of this Hon'ble court in LPA No. 230 of 2019 & W.P.(c) No. 11265 of 2017 and order passed by Ld. Single Judge in W.P.(c) No. 6161 of 2019.

e. to pass an appropriate order writ or direction to direct the respondent school not to force the petitioner for charity by paying the fee for the education of children belonging to weaker section and disadvantage group which is being already funded by the appropriate government and direct there is provision of arrangement of fund from sources other than the school fee mentioned under rule 175 of Delhi School Education Rules, 1973 f. pass an appropriate writ order or direction to direct the respondent director of education and the Delhi Development authority to ensure that the school should not be allowed to increase the fee without prior sanction from the Director of Education govt of NCT of Delhi and initiate appropriate action against the school management for the violation of terms of allotment of the land allotted to them at highly concessional rates.

g. Pass an order directing the respondent comptroller and auditor general of India for the timebound audit of the account of the respondent school and determine the fee to be payable by the petitioner.

h. Allow the writ petition with cost."

2. At the outset, we must note that with regard to prayers (b)-(h) reproduced herein above, a Single Judge of this court is already seized of an identical matter in Writ Petition No.3330/2022. It has been brought to our attention that the challenge in the said Petition is to the fees demanded by the same school qua another child of the father of the petitioner herein. We, thus feel that it would be appropriate that prayers (b) - (h) be considered alongwith Writ Petition No.3330/2022.

3. We now proceed to examine prayer (a) of the petitioner with regard to the validity of Rule 35 and 167 of the Delhi School Education Rules, 1973.

4. Rules 35 and 167 of the Delhi School Education Rules are reproduced below:-

"35. Striking off the name from the rolls (1) The name of a student may be struck off the rolls by the head of the school on account of:

(a) non-payment of fees and other dues for 20 days after the last day for payment:

Provided that nothing in this rule shall apply in case students of class VIII and below, studying in Government or aided schools, or in schools run or aided by the appropriate authority, except where such students have attained the age of fourteen years;

(b) continued absence without leave for six consecutive days by a student who has attained the age of fourteen years.

(2) In the case of absence of any student who has not attained the age of fourteen years, from a school without leave for six consecutive days, the head of school shall intimate such absence to the parent or guardian of such student. (3) In respect of payment of fees, however the head of school may grant not more than 10 days' of grace in deserving cases on application by the parent or guardian.

(4) Notwithstanding anything contained in sub-rule (1), no student's name shall be struck off the rolls except after giving the parent or guardian of such student a reasonable opportunity of showing cause against the proposed action.

167. Name of the student to be struck off for non-payment of fees and contributions.

If a student omits or fails to pay the fees and contributions due to a school together with the fine due thereon by the last working day of the month in which they are due, his name shall be struck off the rolls of the school on the last working day of the month and may be re-admitted on payment of all school dues including fresh admission fee:

Provided that in the case of non-payment of fees for the month of May in which the school closes in the middle of the month for long vacation, the name of the student shall be struck off on the last working day of the month of July, if the fees remains unpaid up to that day."

5. The challenge of the petitioner is premised on the submission that the aforesaid Rules impinge upon the operation of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred as, RTE Act).

6. At the outset, we may notice that the Delhi School Education Act, 1973 was enacted for better organisation and development of school education in the Union Territory of Delhi and for matters connected therewith or incidental thereto. The very object and purpose of this enactment is to improve the standard and management of school education.

The rule making power in the said Act is contained in Section 28 (2). The rule making power extends to a wide gamut of areas, all concerned with meeting the prescribed standards of education and to ensure good governance practices in schools on Delhi.

7. The RTE Act was enacted in 2009 to give effect to the fundamental right inserted via Article 21A of the Constitution of India. The main purpose of the RTE Act is to provide for free and compulsory education to all children of the age of 6-14 years. To achieve the same, various provisions have been inserted in the said enactment. Section 12 of the said Act delineates the extent of responsibilities of the school for free and compulsory education qua government schools, aided schools and un-aided schools.

8. The RTE Act is a self contained legislation and the operation thereof is unhindered by the Delhi School Education Act and Rules framed thereunder. As a matter of fact, there are independent Rules framed under the RTE Act, namely, the Right of Children to School and Compulsory Education Rules, 2010. The concerned Act along with the Rules contain self- contained provisions for effectuating and achieving the purposes of the Act and assigns responsibilities to schools, parents, the concerned local authorities, the concerned appropriate government, which all are within the ambit of the Act.

9. Given the independent and distinct framework of Delhi School Education Act and the Rules framed thereunder, and the RTE Act and the rules framed thereunder, there can be no question of Rules 35 and 167 of Delhi School Education Rules impinging upon the operation of the RTE Act. The RTE Act guarantees the right to education. However, it nowhere provides that the said right can be unconditionally enforced against a private unaided school. The petitioner is free to take admission in a government school if he cannot afford to pay the fee of the private unaided school. If he is entitled to admission in the EWS category, he may apply under that category to seek waiver of the school fee. If the claim of the petitioner were to be allowed, it would mean that even a private unaided school would not be able to charge any fee even though they have to meet all their expenses from their own resources and accretions. This is completely untenable.

10. Likewise, the impugned Rules 35 and 167 of Delhi School Education Schools do not impinge upon or affect in any manner the operation of Sections 75 of Juvenile Justice Act. The said provision has been enacted in a completely different context and reads as under:

"75. Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with

imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees."

11. There is no repugnancy whatsoever between the aforesaid Section 75 of the Juvenile Justice Act, 2015 and the impugned Rules 35 and 167 of the Delhi School Education Rules, 1973.

12. In the light of the aforesaid position, we reject the challenge to the vires of Rules 35 and 167 of the Delhi School Education Rules, 1973. As far as the other prayers of the petitioner are concerned, the matter be listed before the concerned court, which is seized of the W.P. No.3330/2022 on the date already fixed.

13. Needless to say, the prayers "(b)-(h)" raised by the petitioner shall be examined by the Ld. Single Judge on their own merits. All rights and contentions of the parties with regard thereto are left open.

VIPIN SANGHI, ACJ SACHIN DATTA, J MAY 27, 2022/cl