

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
#25

+ **LPA 1307/2007**

GYAN MANDIR SOCIETY & ANR. Appellants
Through Mr.Rohit Choudhry, Advocate

versus

ASHOK KUMAR & ORS. Respondents
Through Ms. Avnish Ahlawat with Ms. Simran,
Ms. Latika Chaudhary and Mr.Saurabh,
Advocates for Dte. Of Education
Ms.Madhu Tewatia and Mr.Asutosh Lohia with
Ms.Sidhi Arora and Ms.Kanika Agnihotri,
Advocates for NDMC
Mr.Gaurav Duggal, Advocate for UOI

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

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

% **ORDER**
20.07.2009

1. This Letters Patent Appeal is directed against a common judgment and order dated 20th September, 2007, passed by the learned single Judge in a batch of writ petitions filed by the teachers and staff of Gyan Mandir Middle School, Tis January Lane, New Delhi. The petitioners in the said writ petitions sought appropriate directions for recall of the recognition granted to the 'Indian School' run by the first and second appellants and also for other reliefs. Respondent Nos. 1 to 16 are teachers and staff employed by the Gyan Mandir Middle

School.

2. The first appellant is a registered society and the second appellant is the Chairman of the said society. The appellant society started the aided RKK Gyan Mandir Middle School at Tis January Lane some time in 1967. Later, the Delhi Administration granted aid to the said school. The school occupied an area of 0.44 acres of land at Tis January Lane. On 27th August, 1975 this land was temporarily allotted to the society. It appears that the temporary allotment was to end since the society had applied for regular allotment of a plot of land in Sadiq Nagar. It is also seen from the original records of the Land & Development Office of the Central Government (L&DO for short) produced before us that the application for land at Sadiq Nagar was in lieu of the land at Tis January Lane. The allotment, however, could not be finalized for quite some time and apparently a lengthy correspondence took place between the society and the L&DO. Finally, a perpetual lease deed was executed between the society and the L&DO on 29th October, 1996 whereby 2.284 acres of land at Sadiq Nagar was demised on leasehold basis in favour of the society. Letter dated 16th May, 2006 issued by the Deputy Land and Development Officer to General Manager, Gyan Mandir Society also shows that the society was allotted 2.284 acres of land in Sadiq Nagar in lieu of the 0.44 acres of land at Tis January Lane.

3. The temporary allotment at Tis January Lane ended on 31st

March, 1997. A plot of land in Sadiq Nagar had been allotted to the appellant society and it was asked to handover possession of the land at Tis January Lane. Since the school was catering to the needs of about 500 students and employed several teachers, practical difficulties were encountered in handing over the site. The L&DO, conscious of the situation, held consultation with the society and the New Delhi Municipal Committee (NDMC). An offer was made to the NDMC through letter dated 27th November, 2001 that the school should be taken over by it on “as is where is basis” and allotment letter to the said effect was issued on 15th April, 2002 by the L&DO. It appears that a meeting was also convened by the Chief Minister of NCT of Delhi on 27th February, 2003 where both the NDMC and the Additional Director of L&DO were asked to obtain entire details pertaining to the said school so that taking over of the school can be considered. Thereafter L&DO called upon the appellant to hand over physical possession of the school to the L&DO and accordingly possession was handed over to L&DO on 8th March, 2006. The L&DO in turn handed over physical possession of the school building on 8th March, 2006 itself to NDMC.

4. In the meantime, the first and second appellants sought permission to start a senior secondary school at Sadiq Nagar in 2002. Local authorities i.e. DDA and Municipal Corporation of Delhi denied the request on the ground that the plot size was inadequate and that the land allotted was for the purpose of a

middle school. A writ petition being WP(C)17889-90/2005 was filed by the society claiming the relief that it should be permitted to construct a building for a senior secondary school. This Court by its judgment and order dated 16th March, 2006 issued a direction to the DDA to upgrade the site in question as a senior secondary school site. L&DO was directed to execute a corrigendum or a supplementary deed to the existing perpetual lease deed dated 29th October, 1996 incorporating therein that the site in question can be used as a senior secondary school. In the said proceedings the appellant's counsel made a categorical statement before this Court that all those students who were studying in the Tis January Lane school can be accommodated in the school run by the appellant at Andrews Ganj on freeship basis and if the fees are charged, the same shall not be in excess of what they were paying in the Tis January Lane school.

5. It appears that a letter was written on 3rd August, 2006 by the Director of Education to the Secretary, NDMC wherein it was mentioned that the Department was sending a proposal for approval of the Lt. Governor proposing to close down the Gyan Mandir School and adjustment of the staff under Rule 47 of the Delhi School Education Rules, 1974 (hereafter referred to as the Rules) and of the children in the neighbouring NDMC schools. Admittedly no such proposal was sent to the Lt. Governor as the land in question at Sadiq Nagar was allotted in lieu of Tis January Lane land. The proposal was therefore

rejected. Surprisingly however, the society took the stand that handing over of the land in 2006 had the practical effect of closure of the school though formal orders had not been issued under Rule 46 of the Rules. It was contended by the society that the allotment at Tis January Lane was temporary and the society had to surrender it upon allotment of the regular plot at Sadiq Nagar; therefore it committed no irregularity in expansion of the school and all the requisite permissions and recognitions were secured from the concerned authorities including Directorate of Education and that the school is not liable to absorb the staff who were working in the Middle School at Tis January Lane.

6. The teachers and staff then moved writ petitions in this Court contending inter alia that the appellant society cannot disown the responsibility to manage the aided school and that after securing allotment in place of the temporary allotment which was used by the society for over two decades, it cannot be absolved from its responsibility towards the staff and the students who had sustained the school all this while. It was contended that having managed the aided school for all these years, the appellant society is duty bound to assimilate the teachers, staff and the students in the new school i.e the Indian School at Sadiq Nagar. Reliance was placed on Rule 46 of the Rules which mandates that no managing committee shall close down a recognised school, not being an unaided minority school, or an existing class in such school without

giving full justification and without prior approval of the Director, who shall, before giving such an approval, consult the Advisory Board. It was pointed out that no such permission was obtained by the management for closure of the school and, therefore, the petitioners are entitled to be absorbed in the new school at Sadiq Nagar. A notice of the writ petition was also issued to NDMC, which was impleaded as a party respondent to these proceedings. It took the stand that though it has no objection to the taking over of infrastructure and management of the school, but the cadre structure in its institutions does not visualize absorption of teachers and staff. It was stated that they were employed without recourse to the procedure adopted by the NDMC for recruitment of its teachers and, therefore, their assimilation in an NDMC management would not be possible.

7. Learned single Judge came to the conclusion that there was a systematic attempt by the society to wriggle out of its responsibilities. It secured a temporary allotment and used it for setting up an aided school. Having gained from the experience, it used the regular allotment, made in lieu of the temporary allotment of the Tis January Lane plot, to set up a school. All the while it made no attempt to absorb the teachers or the students. The learned single Judge rejected the submission of the society that the GNCT of Delhi should apply Rule 47 and absorb teachers and staff in other aided institutions. The learned single Judge pointed out that Rule 47

caters to the situations where employees are declared surplus as a result of closure of the school or classes in a school or withdrawal of recognition of an aided school. The objective of the rule is to protect the employment of teachers in such institutions as it undeniably constitutes a pool of talent and experience as well as a precious resource for the benefit of the society. Its scope, however, is limited; it operates only in the eventuality of closure of a school, or sections of it, or withdrawal of recognition to an aided school. Neither situation exists in the present case. No party has asserted that the GNCT of Delhi ever consented to and approved closure in accordance with Rule 46. Consequently, Rule 47 has no application to the facts of the present case.

8. Learned single Judge then proceeded to discuss the legal obligation of the society to absorb the teachers and staff thus:

“23. The next question is what then is the obligation of the society. Its main argument is that the present pattern of private, unaided education in the “Indian school” pursued by it, does not allow room to absorb the petitioner employees. No rule, regulation or norm was cited in support of this contention. Presumably, it is premised upon some inherent management right. To put it mildly, the argument is astonishing; it is also alarming. Astonishing because the society is saying that though it might be under an obligation to continue teachers, it is choosing not to do so, as it is not *convenient* to it; alarming because it is unrepentant conscious disregard of a binding norm. To me, there is no doubt that the petitioners who stand before this court had acquired a certain status, as teachers and employees of a government aided school. The character of that school was sought to be changed, into an unaided one, by securing allotment in lieu of the existing temporary allotment of the site at Tis January Lane. So long as the society continued its obligation,

towards these teachers, there was no difficulty. However, now that it asserts that the aided school has been closed – when it is not so in law – the logical and inevitable consequence has to be that these employees are to necessarily be absorbed in the new institution. Any other conclusion would be contrary to Rule 46; it would place a premium on unlawful behavior. Education, even unaided education, should be inclusive. These teachers and employees before the court are not at fault that the society chose a pattern of education it characterizes as incompatible with their background and experience. They face an uncertain, even, bleak future.

24. The society has stated before this court about its willingness to accommodate the students in the aided school in its unaided school (the Indian School) on freeship basis. In view of my above findings, it can do no different as far as the petitioner Nos. 2 to 16 here are concerned. They are admittedly teachers of an aided school; their status as such has to be preserved and protected, by the management.”

9. The learned single Judge, in the light of the aforesaid findings, directed the appellants to ensure that the teachers and staff are accommodated appropriately in its unaided school i.e Indian School, and also to take steps to effectuate their statement about assimilating all the existing students from the aided school at Tis January Lane in the new school on freeship basis. It was further directed that the said students shall not be required to pay any amount over and above what has been paid by them all this while and they shall be provided free transportation to the unaided school and back to Tis January Lane area as long as they study in the Indian School. A direction was also issued to the Government of NCT of Delhi to sanction additional sections, wherever required in the unaided

school to accommodate the students from the aided school as well as teachers and employees from there. The society was also directed to pay 5% contribution for 2006 in addition to the amount of Rs. 1 lac volunteered to be paid by the society.

10. Learned counsel appearing for the appellants has raised before us only two submissions. The first submission is that the learned single Judge has erroneously proceeded on the ground that the land was allotted to the appellant society at Sadiq Nagar in lieu of land at Tis January Lane and that the said finding is contrary to the records. The submission is stated only to be rejected. Counsel for the GNCT of Delhi has placed on record the entire correspondence between the society and the L&DO. It is seen that the application for the allotment of land was made by the society on 15th September, 1969 wherein it was clearly stated that the society is running a primary school by the name of Gyan Mandir Primary School, recognised by the Education Department, on the temporary land allotted to the society. It was further stated in the said letter that the society proposes to raise the school to higher secondary level and the society would like to have a permanent plot of land in the vicinity of NDMC area so that proper steps for raising the institution and necessary arrangements be made for the Higher Secondary School. In fact, letter dated 7th January, 1972 by the Deputy Director of Education, Delhi, forwarding an application by the society makes it clear that the society is running a primary and middle

school which is recognised by the Department and that they would like to run a proper higher secondary school. In the same letter it has been further mentioned that the school is serving a public cause and its demand for a pucca building is quite genuine and that there is no other primary school in the said area to meet the educational demands of the public. The Deputy Director recommended that the society may be allotted a site on concessional rates in accordance with the Zonal Development Plan of the Aurangzeb Road Area for construction of a new pucca building so that small children on the rolls of the school do not suffer the inconveniences of the tented accommodation. Correspondence thereafter makes it clear that Sadiq Nagar land was allotted in lieu of Tis January Lane land and, therefore, it was not a case of a closure of the school but it was of expansion of the existing school at Sadiq Nagar premises. The first submission of the learned counsel therefore has to be rejected.

11. The learned counsel for the appellants then submitted that since the taking over of the school by NDMC was on 'as is where is' basis pursuant to the agreement arrived between the NDMC and L&DO, it is the responsibility of the NDMC to absorb the staff in the existing school. The learned counsel was, however, unable to show any legal provision by which the NDMC can be fastened with the responsibility of absorbing the teachers and staff who were employed by the appellant society for the purpose of running the middle school at Tis

January Lane. The teachers were employed in the school of the society and after shifting of the school to Sadiq Nagar it was the responsibility of the society to absorb the teachers and staff in the newly started school in the name "Indian School". In our opinion, no interference is warranted with the well considered judgment and order of the learned single Judge. The appeal is dismissed. The appellant society is directed to pay costs of the respondents, quantified at Rs.75,000/-, to be apportioned equally among the Union of India, the Government of NCT of Delhi and the NDMC.

CHIEF JUSTICE

MANMOHAN, J

JULY 20, 2009
"v"