

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

Date of decision: 29th October 2010.

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W.P.(C) 7299/2010

CHAND RAM & ANR

..... Petitioners

Through: Mr. Baljit Singh & Mr. Ajai Kumar,
Advocates.

Versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Ms. Jyoti Singh with Ms. Rashi
Bansal, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner no.1 claiming to be the promoter of the petitioner no.2 Indira Public School at Village & Post Office-Nangali Sakrawati, Najafgarh, New Delhi had earlier filed W.P.(C) No.921-22/2006 in this Court seeking a direction to the respondent no.1 Govt. of NCT of Delhi and the respondent no.2 Directorate of Education, Delhi to withdraw recognition granted to the respondent no.3 Bholi Ram Public School in the same locality alleging that the recognition to the respondent no.3 Bholi Ram Public School had been granted in violation of the Delhi School Education Act & Rules, 1973. That

writ petition was disposed of vide order dated 7th December, 2009 with the direction to the petitioner to first make a representation to the Directorate of Education in this regard and with a direction to the Directorate of Education to after granting personal hearing to the petitioner as well as the respondent no.3 Bholi Ram Public School pass a reasoned order.

2. In pursuance to the aforesaid directions, the respondent no.2 Directorate of Education has passed an order dated 13th July, 2010 rejecting the representation of the petitioner no.1 for de-recognition of respondent no.3 Bholi Ram Public School and which order is impugned in this petition.

3. The petitioners aver the recognition granted to respondent no.3 Bholi Ram Public School to be in violation of Rule 50(ii) & (xi) of the Delhi School Education Rules, 1973 which are as under:-

“50. Conditions for recognition – No private school shall be recognized or continue to be recognized, by the appropriate authority unless the school fulfills the following conditions, namely:-

(ii) Subject to the provisions of clause (1) of article 30 of the Constitution of India, the school serves a real need of the locality and is not likely to effect adversely the enrolment in a nearby school which has already been recognized by the appropriate authority;

(xi) There is no thoroughfare or public passage through any part of the school premises;”

4. The Directorate of Education in the order dated 13th July, 2010 has held that respondent no.3 Bholi Ram Public School had in its reply to the representation denied that there was any thoroughfare or public passage

through any part of the school premises. It is further recorded that enquiries from the Sub Divisional Magistrate and Tehsildar reported that there was no thoroughfare or public passage in any part of the respondent no.3 Bholi Ram Public School.

5. The counsel for the petitioners has filed before this Court a layout plan of the Indira Park Colony where both the Schools are stated to be situated. It is stated that the Schools are not situated over agricultural land or in a village area but in a Colony and enquiries should have been made from the MCD not from the Sub-Divisional Magistrate or Tehsildar. With respect to the layout plan it is stated that the respondent no.3 Bholi Ram Public School is constructed over several plots on two sides of a public lane. On that ground, violation of Rule 50 (xi) supra is alleged.

6. This Court in exercise of writ jurisdiction would not ordinarily interfere with the decisions taken by the officials statutorily made responsible for taking the said decisions and to decide whether a particular school is to be recognized or not, unless *prima facie* a case of malafide or total arbitrariness on the face of record is made out.

7. The respondent no.2 Directorate of Education in the order dated 13th July, 2010 has noted that the respondent no.3 Bholi Ram Public School has been set up by the relatives of the petitioner no.1 and the petitioner no.1 is using the office of the Directorate of Education because of his personal rivalry and to settle his own disputes with his relatives. Even though no case

in the writ petition for interference with the order of the respondent no.2 Directorate of Education has been made out but I have still perused the layout plan aforesaid. Even if the averments of the petitioners are to be believed, the respondent no.3 Bholi Ram Public School having been established on all the plots on both sides of a lane which from the layout plan appears to be intended to serve only the occupants of the plots on both sides thereof, it cannot be said that the said lane is a thoroughfare or a public passage through the school premises. Thus, believing the case of the petitioner also, I am unable to find a case for interference in writ jurisdiction to have been made out.

8. The only other challenge to recognition is that the recognition to the respondent no.3 Bholi Ram Public School was granted after about one and a half years of recognition of the petitioners' School. It is contended that the recognition having been granted to the petitioners' School, there was no real need for another recognized school in the same locality and the grant of recognition to the respondent no.3 Bholi Ram Public School has adversely affected the enrolment of students in the petitioners' School situated near the respondent no.3 Bholi Ram Public School.

9. The respondent no.2 Directorate of Education has in the order dated 13th July, 2010 impugned in this writ petition stated that even before the grant of recognition to the respondent no.3 Bholi Ram Public School, the strength of the petitioners' School was less and never to the sanctioned

capacity. From the said record, it has been inferred that the petitioners' School has not been doing well since beginning and thus the strength of the students in the petitioners' School is meager due to the petitioners' School's own performance/policies rather than owing to grant of recognition to another School. It has further been held that the petitioners instead of adopting a positive approach and raising standard of their own School, are blaming the neighbouring School. It has further been contended that withdrawal of recognition to the respondent no.3 Bholi Ram Public School would not guarantee the healthy growth of the petitioners' School.

10. The petitioner in the writ petition has not given any particulars of the total number of houses in the locality, the number of residents, the number of school going children and other such facts from which it can be gathered whether there was any error in the order of respondent no.2 Directorate of Education in reaching a conclusion that there was or not a need for another School in the locality. In the absence of any such particulars, no challenge again to the decision of the respondent no.2 Directorate of Education to grant recognition can be made. The respondent no.2 Directorate of Education is right in stating that the petitioners for their own lack of business cannot blame another School.

11. The Directorate of Education has also held that owing to the Right to Education Act, establishment of more and more Schools of which there is scarcity, has to be encouraged.

12. The counsel for the petitioners during the hearing has stated that the respondent no.3 Bholi Ram Public School is luring parents and students by offering children free transport. From the same it appears that the said School is catering not only the nearby students but also to the residents of far away requiring transport; for this reason also it cannot be said that there is any error in the decision of the respondent no.2 Directorate of Education in granting recognition.

13. Even otherwise I find that the petitioner cannot throttle competition in a manner aforesaid. Schools play a vital role in formulating the growth of future citizens of the city and the country and even if one is affected by the other, I see no reason why the principle of survival of the fittest should not prevail.

14. There is no merit in the writ petition. The same is dismissed *in limine*.
No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

29th October, 2010
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