

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

Date of decision: 16th December, 2011

+ LPA 892/2011

% WG. CDR. A.K. AGGARWAL (RETD.) Appellant

Through: Mr. Avijit Bhattacharjee, Adv.

Versus

AIR FORCE BAL BHARATI SCHOOL & ORS. Respondents

**Through: Ms. Rekha Palli & Ms. Punam Singh,
Advs. for R-1.**

**Mr. Sachin Datta & Mr. Abhimanyu
Kumar, Advs. for R-2.**

Mr. Navratan Chaudhary, Adv. for R-3.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the order dated 26.09.2011 of the learned Single Judge dismissing W.P.(C) 8297/2009 preferred by the appellant with

costs of ₹20,000/- to be deposited with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund.

2. The writ petition was filed by the appellant pleading, that he is a Air Force pensioner, now practicing as an Advocate in Delhi; that his three children have been studying in the respondent School and of which two have now passed out from the respondent School and one is still studying; that the respondent School is an aided School within the meaning of Section 2(d) of the Delhi School Education Act, 1973 and the Delhi School Education Rules, 1973 and receives aid from the Central Government by way of full time / part time deployment of personnel paid from the Consolidated Fund of India as also by way of government land on which the School is situated; that thus the fee and other charges which got levied by the respondent School are subject to prescription and Regulations under Section 17 of the Act; that the respondent School is also required to provide fee concession according to the Policy of the Indian Air Force. The writ petition impugned the fee hike effected by the respondent School for

implementation of the recommendations of the Fifth Pay Commission. It is the contention of the appellant that the said fee hike is in violation of Section 17 of the DSE Act. The writ petition also averred violation by the respondent School of Rules 157, 158 and 159 of the Rules providing for concession to be granted to brothers and sisters being in the same School. The petition further averred the respondent School to have wrongly relied upon Notification dated 11.02.2009 intended only for unaided schools. The writ petition thus sought the relief of quashing of Circular dated 17.03.2009 of the respondent School enhancing the Tuition Fee and further sought a direction to the respondent School to regard the appellant's children as children of Air Force Personnel and not in the non Air Force category and to allow them concession under the Rules aforesaid. The appellant also sought refund of the excess fee / charges extracted by the respondent School from the appellant.

3. The learned Single Judge has vide judgment impugned in this appeal held:

- (i) That as far as the aspect of fee hike was concerned, the same was subject matter of W.P.(C) No.7777/2009 before the Division Bench and vide orders wherein, a Committee headed by a former Judge of this Court had been constituted to go into the question of fee hike by recognized schools of Delhi.
- (ii) The claim of the appellant for 20% concession in fee on account of being a retired Air Force personnel was dismissed upon finding that with effect from 01.04.2004 such concession was withdrawn to the children of prematurely retired Air Force personnel and the said decision had been uniformly applied in the case of all the wards of prematurely retired Air Force personnel. It was further held that the appellant had been unable to show that any children of prematurely retired Air Force personnel, similarly situated as him / his children, were being given the said concession after 01.04.2004.

4. The appellant, on the aspect of fee hike, has contended that the Committee which has been constituted vide order in W.P.(C) No.7777/2009

is in relation to unaided schools while the respondent School is an aided School. Though it is the unrebutted plea of the respondent School that the respondent School is also a party to W.P.(C) No.7777/2009 and is participating in the proceedings before the Committee constituted vide order therein and one of us (Hon'ble the Acting Chief Justice) being a member of the Bench which had passed order in W.P.(C) No.7777/2009 is also able to recollect the respondent School being a party to that writ petition, but we have nevertheless heard the counsels on the aspect of respondent School being an aided School.

5. The DSE Act in Section 2(c) defines “aid” as

“(c) “aid” means any aid granted to a recognized school by the Central Government, Administrator, a local authority or any other authority designated by the Central Government, Administrator or a local authority.”

and “aided school” in Section 2(d) as:

“(d) “aided school” means a recognized private school which is receiving aid in the form of maintenance grant from the Central Government, Administrator or a local authority or any other

*authority designated by the Central Government,
Administrator or a local authority.”*

6. The respondent School in its counter affidavit before the learned Single Judge has denied that the respondent School receives any aid from the Central Government or Indian Air Force or that it receives any funds from Non Public Funds; it is pleaded that it's only source of income is the fee collected from students. We had on 31.10.2011 also asked the counsel for the respondent School to show to us the balance sheet of the respondent School for the last three years. The balance sheets for the year ending 2008, 2009 and 2010 have been produced before us and have also been examined by the appellant and his counsel. The same also do not show any aid being received by the respondent School. In the face of the same, we are unable to accept the plea of the appellant of the respondent School receiving any aid in the form of maintenance grant from the Central Government, Administrator, a local authority or any other authority. The respondent School in its counter affidavit before the learned Single Judge has also clarified that the respondent School is different from Unit Run Schools under the aegis of the

Indian Air Force Education and Cultural Society. The counsel for the respondent School has contended that such Unit Run Schools exist in Delhi also and the appellant who is raising objection to the fee in the respondent School is free to have his child still studying in the respondent School admitted into the said Unit Run Schools where the fee and other charges are minimal.

7. We are thus satisfied that the learned Single Judge was correct in holding that the challenge made by the appellant to the fee hike is to be dealt with in accordance with the orders in W.P.(C) No.7777/2009 (supra) and not separately by way of the writ petition and or this appeal.

8. The claim of the appellant for sibling fee concession is predicated on Rule 159 applicable to “Government or aided schools” in Delhi. We have already held the respondent School to be not an aided School. The question which arises is whether it can still be called a Government School as distinct from a private School defined in Section 2(r) of the Act as a School which is not run by the Central Government, Administrator, a Local authority and / or any other authority designated or sponsored by the Central Government,

Administrator or a Local Authority. The Act does not define a Government School. The expression “Government School” can thus only mean a School established and run by the Government. However there is absolutely nothing before us to show that the respondent School was established or is run by the Govt. Rather it is the un rebutted statement of the respondent that the respondent School was established by the Indian Air Force Educational and Cultural Society the presumption in law follows that it is being managed by the Managing Committee in terms of Section 5 of the DSE Act.

9. The appellant before us has also been unable to make out any case of Prematurely Retired Air Force Pensioner receiving any fee concession after 1st April, 2004 since when it has been discontinued. Once that is found to be the Policy of the respondent School which is being uniformly applied, the appellant has been unable to establish any right to such concession. Moreover, when the only source of income of the respondent School is the fee collected from the students, this Court would be loath to interfere with the Policy and which may adversely affect the finances of the respondent School prejudicially affecting a large number of other students and teachers

studying and teachers and other staff employed therein. The Division Bench in judgment dated 12.08.2011 in W.P.(C) No.7777/2009 (supra) also, relying upon *TMA Pai Foundation Vs. State of Karnataka* (2002) 8 SCC 481 observed that fee of unaided institutions cannot be regulated though commercial exploitation is not to be permitted. It having been held that the respondent School is an unaided school and no case of commercial exploitation in non grant of sibling concession being made out, even otherwise interference in such matters is impermissible.

10. The appeal is therefore without any merit and is dismissed. We refrain from imposing any further costs on the appellant. The appellant to comply with the order of the learned Single Judge qua payment of costs within four weeks of today.

RAJIV SAHAI ENDLAW, J

THE ACTING CHIEF JUSTICE

DECEMBER 16, 2011

‘gsr’