

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

% Judgment delivered on: 10.10.2012

+ CONT.CAS(C) 1341-52/2006

**VAISHALI INTN'L SCHOOL TEACHERS
WELFARE ASSOCIATION & ORS. PETITIONERS**

VERSUS

VIJAY KUMAR & ORS. RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner : Mr. Sanjay Sharawat, Advocate
For the Respondent: Ms. Latika Chaudhary, Adv. for R-1
Mr. R.M. Sinha, Advocate for R-2 to 5

**CORAM :-
HON'BLE MR. JUSTICE RAJIV SHAKDHER**

RAJIV SHAKDHER, J (ORAL)

1. By this contempt petition, compliance is sought of judgment dated 18.08.2006 passed by this Court in LPA No.1721/2005. This is a classic case where the respondents have cocked a snook at the law by using every possible device, ostensibly under the guise of remedies available under the law, to avoid compliance of the directions issued by this Court vide the aforementioned judgment.

2. The background in which the aforesaid judgment came to be passed is as follows :-

2.1 The petitioner no.1 is an association, of which, petitioner nos.2 to 12 are members. Petitioner nos.2 to 12 were employed as teachers in Vaishali International School (hereinafter referred to as the School). The

said School was admittedly run by All India Siddharth International Educational Society (Regd.) [hereinafter referred to as the Society].

2.2. As per the amended memo of parties filed in this court, respondent no.1, is one, Mr. Vijay Kumar, Director of Education in the Directorate of Education, at the relevant point in time. The present incumbent is, however, Mr. Amit Singla. Respondent no.2, Mr. R.C. Bharti, was the President and Chairman of the Society; at the relevant point in time. Respondent no.3, Mr. Prem Shankar Gaur, was similarly, the General Secretary of the Society, at the relevant point in time. Respondent no.4, Sh. Gyan Prakash, was the treasurer of the Society, while respondent no.5, Mr. Ashok Kumar was appointed as the President in place of Sh. R.C. Bharti, at some point in time, which is why the amended memo of parties was filed.

2.3. The School, referred to hereinabove, was recognized by the Directorate of Education on 29.08.1991. To start with, the school ran classes for Grades I to VIII which, pursuant to an order dated 10.06.1996 got upgraded to Grade VIII to the Secondary stage. The upgradation was relevant for the academic year 1996-1997.

2.4 It appears that, on 05.12.1997, a special inspection was ordered by the Directorate of Education. Accordingly, the school was inspected on 09.01.1998, by the officers of the Directorate of Education. The purpose of the inspection was, inter alia, to examine the accounts and the financial records of the School for the previous five (5) years.

2.5 Pursuant to the inspection, a report dated 22.01.1998 was generated. Based on the record, Directorate of Education vide communication dated 22.03.1998, issued directions to the school, under section 24(3) of the Delhi School Education Act, 1973 (in short, DSE

Act), to adhere to the directions contained therein, and take remedial measures.

2.6 Instead of taking remedial steps, the School/Society acted inimically vis-à-vis the teachers, in as much as, nine teachers, who are now the members of the petitioner no.1/Association were suspended from service.

2.7 For this purpose, permission was sought by the School from the Directorate of Education. The Education Officer, East District, vide letter dated 03.04.1998, declined permission and as a matter of fact, directed revocation of the suspension. The School was directed to re-induct the teachers.

2.8 The Society which ran the School was aggrieved with the directions issued by the Directorate of Education vide communication dated 22.03.1998, whereupon a writ petition being: WP(C) 1638/1998 was filed in this court. This writ petition filed by the Society was dismissed by this Court on 07.08.1998.

2.9 In the interregnum, the Society, which was determined not to re-induct the teachers took an even more deleterious step, at least in so far as, the teachers were concerned, by ordering the closure of the School. This decision was communicated by the Society to the Directorate of Education vide letter dated 31.07.1998.

2.10 The Directorate of Education, however, vide communication dated 03.09.1998, rejected the request of the Society to close down the School. A specific direction was issued that the school be continued in accordance with the DSE Act.

3. Once again, the Society approached this court, this time a challenge was laid to the order of the Directorate of Education dated 03.09.1998,

whereby the Society's request for closure of School was rejected. A writ petition bearing No. WP (C) 4855/1998 was filed in this court. A single judge of this Court vide order dated 25.05.2005, allowed the writ petition of the Society.

3.1 The petitioner no.1/Association being aggrieved by the judgment of the Single Judge preferred an appeal. It was this appeal, which was numbered as LPA 1721/2005. The said LPA, as indicated above, was disposed of by a Division Bench of this Court vide order dated 18.08.2006.

3.2 It is this order of which compliance is sought by the petitioners before me. It is important to note that the Division Bench was faced with a situation that pursuant to the decision taken by the society to close down the school on 31.07.1998, the teachers, who were now members of the petitioner no.1/Association were left in limbo. Recognizing this piquant situation, the following operative directions were issued :-

“...28. We are really concerned in this appeal with the plight of the teachers who, we believe, are entitled to some redress after so many years of struggle. No purpose would be served in directing their reinstatement, on account of the changed circumstances. However, they should all be paid their arrears of salaries and other statutory dues. Time bound directions to both the Society and respondent no.3 are called for. We accordingly, direct as under :-

(i). The impugned order dated 25.05.2005 of the learned Single Judge is set aside.

(ii). The School cannot be considered as having been closed down with effect from 31.07.1998 and the Society will be laible in law as a consequence thereof to pay all the statutory and other dues to the teachers and staff. Respondent no.3 is directed to take consequential steps on this basis forthwith.

(iii). The respondent no.1 Society shall pay all the teachers of the School, including those who are members of the appellant Association, within a period of four weeks from today and in any event not later than 30.09.2006, their entire arrears of salaries and other statutory dues calculated on the basis of their not having been terminated or suspended. The sums shall be paid together with interest at the rate of 9% per annum from the date of the illegal termination / suspension of their services till the date of payment.

(iv). The respondent no.3 Director of Education is directed to render all possible assistance to the teachers in having this judgment implemented in letter and spirit. Any further default by the Society is required to be dealt with severely and promptly by Respondent no.3.

(v). It would be open to the directorate of Education to constitute a panel of experts to have a special inspection of each of the schools run by the Respondent No.1 Society or its associate societies within the NCT of Delhi, and issue appropriate directions to correct the irregularities, if any, found in the running of any such school. Also, the Director of Education would be well advised to alert the public about the conduct of any such school which is being run in violation of the law. These warnings are required to be issued periodically and given the widest possible publicity.

29. Accordingly, this appeal is allowed with costs which are quantified at Rs.25,000/- which shall be paid by the Respondent No.1 Society to the appellant Association on or before 30.09.2006...”

3.3 Continuing with the narrative, it is important to note certain subsequent facts which followed the decision of the Division Bench. The Society finally filed a review petition with the Division Bench being Review Petition No.365/2006. This review was, however, dismissed. The review petition was filed on the basis of certain fresh documents which, according to the society had come to light and were not available.

The documents evidently were filed to show that the School in issue bore the denomination of minority institution. The Division Bench rejected the review petition saying that this aspect of the matter had been dealt with by it at least three times in its judgment dated 18.08.2006.

3.4 The Society did not rest with it, and challenged in a Special Leave Petition (SLP) being : SLP no.19195/2006, both the judgment of the Division Bench dated 18.08.2006 and the order passed in the review petition dated 13.10.2006. The Supreme Court dismissed the Special Leave Petition *in limine* vide order dated 01.12.2006.

3.5 The Society did not let the matter lie at this. A review petition, was not filed with the Supreme Court. The Supreme Court by order dated 20.02.2007, I am told, rejected this petition as well. This fact is not disputed by Mr. Sinha, learned counsel for respondent nos.2 to 5.

3.6 The Society took its chance once again with the Division Bench by filing an application with the Division Bench, which was styled as a clarification application, which in one sense, sought once again a review of the judgment of the Division Bench. The Division Bench after noting the same and hearing the learned counsel at length dismissed the said application, which was numbered as: CM No.5364-65/2007, by treating the same as a review petition. The order of dismissal was passed on 27.04.2007.

3.7 While at aforementioned ill advised steps were being taken by the Society, the petitioners, in the meanwhile in 2006, had filed the captioned contempt petition seeking compliance with the judgment of the Division Bench dated 18.08.2006. The contempt petition was moved before this Court on 01.11.2006.

3.8 It appears that on 30.04.2007, in the contempt petition, an offer was made on behalf of the respondents that they will deposit a sum of Rs.4.80 Lakh, in this court. It is not in dispute that the said amount was deposited with the Registrar of this court and has been disbursed in favour of petitioner nos.2 to 12. There were also offers to sell a piece of land admeasuring 232 sq. yds., having market value of Rs.12.80 Lakh approx, at the relevant point in time. This position emanates from the proceedings of 15.05.2007, in the captioned contempt petition. I am told this land is situate at Village Chandrawati, Shahdara. I am also told that this is the very land on which, the aforesaid School is situate. It appears that an agreement to sell was executed by the Society with the proposed buyer and earnest money received, to the tune of Rs.2 Lakh was deposited in this court. Mr. Sinha says that a conveyance in respect of the same could not be consummated. This aspect is recorded in this court's proceedings held on 10.09.2007, in the present petition.

3.9 I may also note that in the proceedings of 06.05.2009, in the captioned petition, the court had recorded that as on 27.08.2007, respondent nos.2 to 4 were liable to pay petitioner-teachers a sum of Rs.1,32,14,863/- .

4. It is pursuant to this proceeding that, apparently the petitioners had negotiated a settlement with the respondents herein, in the presence of the Directorate of Education, whereby it was agreed that in compliance with the order of this court dated 18.08.2006, the petitioner nos.2 to 12 would be paid a sum of Rs.98 Lakhs. This aspect is recorded in the proceedings of 03.02.2010; held in the captioned petition.

4.1 Undisputedly, the petitioners have not been paid any amount pursuant to the settlement. Mr. Sinha says that the settlement was subject

to the approval of the Society. Since the Society did not approve it, no money was paid to the petitioners.

4.2 Coming back to the narrative, the Society thereafter filed yet another application with the Division Bench being: CM No.12265/2010. This application was filed when one of the judges which comprised the Division Bench, i.e., Mr. Justice Mukul Mudgal was no longer Judge of this court. The reconstituted Division Bench, in which one of the members who was party to the judgment dated 18.08.2006 i.e., Dr. Justice S. Muralidhar, dismissed the said application vide order dated 16.07.2010.

4.3 The Society now took another chance in the Supreme Court by assailing the orders dated 16.07.2010, passed in CM No.12265/2010, by the Division Bench, by filing yet another Special Leave Petition being : SLP No.25909/2010. This Special Leave Petition was permitted to be withdrawn, with liberty to challenge the order of the High Court rejecting the review petition. This order came to be passed on 18.10.2010.

4.4 Pursuant to the leave given by the Supreme Court vide order dated 18.10.2010, the Society preferred a fourth (4th) Review petition being: CM No. 474/2010, before the Division Bench. This review petition was dismissed by this Court on 26.11.2010.

4.5 The Society was evidently still not satisfied and hence, approached the Supreme Court for the third time by way of yet another Special Leave Petition being: SLP (C) No.627/2011. Notice in the aforementioned Special Leave Petition was issued, on 21.01.2011 when, an interim order staying the operation of the judgment of this Court dated 18.08.2006, passed in LPA 1721/2005.

4.6 The aforementioned Special Leave Petition, however, was finally dismissed by the Supreme Court vide its order dated 16.04.2012. To be noted, the Special Leave Petition was dismissed *in limine*.

5. In the background of the aforesaid facts and circumstances, Mr. Sharawat says that the petitioners before this court have been trying to seek recovery of its dues, in accordance with judgment of this court dated 18.08.2006, for the past six (6) years. Instead of the money being paid, the respondents have made them to run from one court to another. The disobedience of the order of this court is writ large.

6. On the other hand, Mr. Sinha, who appears for the respondent nos.2 to 5 made the following submission:-

- (i). the respondents have paid the dues of the petitioners till 31.07.1998, and thus, complied with the judgment of this Court;
- (ii). in so far as any liability which is sought to be foisted on the respondents for period post 31.07.1998, the same cannot be mulcted on to the respondents as there is no such direction in the judgment of this court dated 18.08.2006; and
- (iii). Lastly, a perusal of judgment of the Division Bench, more particularly, the observations made in paragraph 28(ii) would show that there is no liability imposed. In other words, the judgment is ambiguous on this aspect of the matter, and therefore, no proceedings for contempt would lie against the respondents. Mr. Sinha's attempt has been to contend that since there is no direction, this Court in contempt jurisdiction cannot seek compliance of, what is not part of the judgment. In respect of these submissions, Mr. Sinha placed reliance on the following judgments:-

- (i). Jhareswar Prasad Paul and Anr. Vs. Tarak Nath Ganguly & Ors., 2002 V AD (S.C.) 273;
- (ii). Mrityunjay Das and Anr. Vs. Sayed Hasibur Rahaman and Ors., 2001 III AD (S.C.) 256; and
- (iii). Director of Education, Uttaranchal and Others Vs. Ved Prakash Joshi and Others, 2005 VI AD (S.C.) 336

7. I have heard learned counsel for the parties and perused the record. The facts obtaining in the case have been sketched out above. What is quite evident that the Society has used every legal stratagem to defeat the cause of the petitioners. The Society has made four attempts after the passing of the judgment dated 18.08.2006, to seek a review of the directions issued by this court. Apart from this, three attempts were also made with the Supreme Court, on three different occasions. The Society has failed at each and every step, despite which, there is no recognition of the fact that the Society and / or the respondents are required to comply with the judgment of this Court. As noted by me above, even in the captioned petition, half-measures, have been taken by the respondents to pay the dues of the petitioners. The petitioners to date apart from a sum of Rs.4.80 Lakhs have not been paid any other sum. This is despite the fact that, the settlement arrived at, way back in 2010, as noticed by me above, was for a sum of Rs.98 Lakhs. The petitioners had scaled down their demands from Rs.1,32,14,863/- to Rs.98 Lakhs. The dues pegged at Rs.1,32,14,863/- were quantified as on 27.08.2007.

8. The contention of Mr. Sinha that there is no liability on the Society to pay any money to petitioner nos.2 to 12, post 31.07.1998, is completely erroneous, and is, if I may say so, deliberately misunderstood. The entire case proceeded before the Division Bench on the point, as to

what relief could be made available to petitioner nos.2 to 12 post the attempted closure of the School by the Society. Since the petitioners could not be reinstated, therefore, the Division Bench directed the Society to pay the petitioner Nos.2 to 12 their entire arrears of salaries and other statutory dues on the basis that their services were not terminated or suspended with interest at the rate of 9% p.a. from the date of their illegal termination/suspension till the date of payment. This is quite clearly borne out from the observations made out by this court in paragraph 28. The Court being conscious of this particular fact, quite clearly directed that, “*..the school cannot be considered as having been closed down w.e.f. 31.07.1998 and the society will be liable in law as a consequence thereof to pay all the statutory and other dues to the teachers and staff..*”. Nothing could be more clear than what the Division Bench has observed above. As a matter of fact, a direction was issued to the Directorate of Education to take consequential steps in that behalf with immediate effect. Therefore, the submission of Mr. Sinha cannot be accepted. This aspect has been agitated by the Society before every forum by way of review petitions and special leave petitions. The Society has obviously failed to convince both this court and the Supreme Court with respect to this plea. It is because of this perhaps that the Society took some measures towards compliance by depositing a sum of Rs.4.80 Lakhs in this regard which, as noticed by me above, was disbursed in favour of petitioner nos. 2 to 12. A further sum of Rs.2 Lakhs was also deposited; a fact which I have noticed above, ostensibly to pay the dues of the petitioners nos.2 to 12.

9. Having regard to the above facts, I have no doubt in my mind that the Respondent nos.2 to 6 have deliberately sought to misunderstand the directions issued by the Division Bench of this Court.

9.1 Each one of the judgments cited by Mr. Sinha proceeds on the basis that a court in exercise of contempt jurisdiction cannot add or subtract from the judgment of which compliance is sought, from the alleged contemnors. One cannot quibble with this proposition. The question is, is there ambiguity in the directions issued by this Court in its judgment dated 18.08.2006. In my view, there is no ambiguity and therefore, none of the judgments can help the cause of the respondents herein.

9.2 Accordingly, in my view, there is no choice but to conclude that respondent nos.2 to 6 have willfully disobeyed the directions issued by this court vide judgment dated 18.08.2006. As pointed out by Mr.Sharawat, quite correctly, a perusal of the provisions of the settlement, to which reference has been made hereinabove, would show that the representatives of the Society, who were present at the meeting held on 21.07.2009, in the office of the Directorate of Education, categorically agreed that they will pay the arrears of salary to the petitioner nos.2 to 12, on the basis of last drawn salary upto 18.08.2006 (i.e., the date of judgment), with interest at the rate of 9% p.a. till date of actual payment. In addition, gratuity as admissible under the Gratuity Act, was also agreed to be paid.

9.3 Mr. Sinha, had tried to counter this aspect by submitting that the terms of settlement were not agreed to by the Society. I, quite categorically, reject this submission of Mr. Sinha on the ground that the Society is a juristic entity, which cannot but be represented by its duly

elected office bearers. It is not the submission of Mr. Sinha that, those who entered into the said settlement, with the petitioners, were not at the relevant point in time, the office bearers of the Society. The Society is, therefore, bound by its representatives actions, and the provisions of the settlement arrived at inter se the parties.

10. In view of the above, respondent nos.2 to 5, as per the amended memo of parties, are found guilty and are hence convicted of contempt of judgement of this Court dated 18.8.2006.

10.1 To be noted, Mr. Prem Shankar Gaur (respondent no.3), Mr. Gyan Prakash (respondent no.4), and Mr. Ashok Kumar (respondent no.5) are present in Court.

10.2 Since Mr. R.C. Bharti (respondent no.2) and Mr. Prem Shankar Gaur (respondent no.3) were not present in court, despite the orders of this court dated 09.10.2012, in the forenoon today, I had issued non bailable warrants against them to secure their presence. While Mr. Prem Shankar Gaur (respondent no.3) has made himself available, Mr. R.C. Bharti (respondent no.2) is not available and in his place, his son Mr. Shashi Kant Bharti, is present in court. SI Vipin Kumar, who has been present in court, informs me that he has been unable to execute the warrant qua Mr. R.C. Bharti (respondent no.2). Mr. Sinha informs me on instruction of Mr. Shashi Kant Bharti that Mr. R.C. Bharti is not present as he is, undergoing chemotherapy for cancer, because of which he is confined to bed.

11. Having regard to the conduct of the respondents, I am of the view that the respondents should be appropriately sentenced. This is more so as, at no stage, have respondent nos.2 to 6 expressed remorse or contrition. Accordingly, Mr. Prem Shankar Gaur (respondent no.3), Mr.

Gyan Prakash (respondent no.4) and Mr. Ashok Kumar (respondent no.5) are sentenced to simple imprisonment for a period of two months. A fine of Rs.2,000/- is imposed on each one of them. Similar sentence is imposed on Mr. R.C. Bharti (respondent no.2), which would be kept in abeyance in view of his stated medical condition. Mr. Sinha will file requisite documents to establish his medical status within two weeks. In case, I were to come to a different conclusion, the sentence passed today will get triggered. List for compliance after two weeks. It is, however, made clear that respondent no.1 shall be free to take action, for recoveries of the dues owed to the petitioner nos.2 to 12, by taking recourse to powers that may be available to it under the statute or otherwise.

12. Furthermore, Registry shall disburse the sum of Rs.2 lakhs said to be deposited in Court, along with accrued interest, if any. For this purpose, list the matter before the Registrar within ten days from today with notice to the learned counsel for the parties. With the aforesaid observations, the contempt petition is disposed of.

13. The sentence passed today shall remain suspended for a period of 10 days from today, to enable the contemnors to prefer an appeal.

RAJIV SHAKDHER, J

OCTOBER 10, 2012

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