

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

+ W.P.(C)No.5855/2012,C.M.No.16927/2012,
C.M.No.17566/2012 & C.M.No.12039/2012

% Reserved on: 1st November, 2012
Pronounced on: 23rd November, 2012

MANAGING COMMITTEE VIDYA BHAWAN
GIRLS SR. SEC SCHOOL . . . Petitioner
through : Ms. Jyoti Singh, Sr. Advocate along with
Ms. Tinu and Mr. Aman Joshi, Advocates.

VERSUS

DIRECTOR OF EDUCATION AND ANR. . . Respondent
through: Mr. J.C. Malik, Advocate for
Respondent.
Mr. Baldev Kishan in person in CM No.16927/2012.

CORAM :-
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

D. MURUGESAN, Chief Justice

1. The petitioner, the Managing Committee Vidya Bhawan Girls Sr. Sec. School has filed the above writ petition challenging the order dated 07.9.2012 passed by the Special Director of Education (ACT-II) wherein and whereby he communicated the decision and order of Hon'ble Lieutenant Governor of Govt. of NCT of Delhi to take over the management of the school under sub-Section (1) of Section 20 of Delhi School Education Act, 1973 (hereinafter referred to as 'the Act') for a period of two years with immediate effect.
2. After filing the writ petition, the petitioner school filed a petition seeking amendment of the prayer to quash sub-Section (4) of

Section 20 of the Act as unconstitutional, being violative of principles of natural justice and Article 14 and Article 21 of the Constitution of India. The petitioner school is a recognized private school receiving aid in the form of maintenance grant from the administrator and for that reason, it falls within the definition of Section 2(u) read with 2(d) of the Act and to this extent, there is no dispute. The Director of Education of the Govt. of NCT of Delhi issued a notice dated 23.7.2010 to show cause within 15 days from the date of the said notice as to certain irregularities and malpractices allegedly performed by the management of school. The school was further informed that in the event no reply was received appropriate action will be taken against the petitioner school as per Section 24(4) read with Section 20 of the Act. Show cause notice dated 23.7.2010 reads as under:

“Show Cause Notice

Whereas Vidya Bhawan Girls Sr. Sec. School, New Rajinder Nagar, Delhi is a recognized school (with Aid) by the Directorate of Education, Delhi under the provision of Delhi School Education Act and Rules-1973.

And whereas, it is specifically mentioned in the recognition letter that the school shall abide by the provision of the above Act and Rules, 1973 and directions issued by the Department of Education from time to time.

And whereas, there are a number of complaints against the school management regarding irregularities and malpractices allegedly being performed by the management of the school. The details of some complaints are as under.

1. A complaint has been received from Sh. Trilok Chand wherein has informed that he had got his daughter, Trisha, admitted last year in KG in Vidya Bhawan Girls Sr. Sec. School, New Rajinder Nagar and at that time, paid a donation of ₹25000/- to the school. But

this year, the school did not allow her to sit in class 1 unless be paid another ₹12,200/-. Though he paid this amount, yet the Head of School neither allowed the child to sit in class nor refunded the amount.

2. Mrs. Nandita Bhattacharya, who served as UDC in the school and took VRS two years ago, has complained that the school is yet to pay her leave encashment.
3. The school is running a pre-primary school in the same premises. This pre-primary school is unrecognized and the management has not taken any permission to run these classes. Even if this unrecognized school is run in the same premises, the fee schedule shows that it has been charging caution money of ₹2000/- which is a violation of the order dated 15-12-99 and 11-02-09.
4. Some parents approached the office of DDE (C/ND) and complained that their children failed in Class XII from Vidya Bhawan Girls Sr. Sec. School, New Rajinder Nagar and now Ms. Archana Tuli, HOS is forcing them to get their respective streams changed, else their names would be struck off. EO zone 28 sent a letter to HOS conveying that change of subject in class XII is not permissible as per CBSE norms and since the children belong to the same school, they should be admitted in the same stream in the school. But the HOS has not complied, thus jeopardizing the future of the children.
5. Directorate of Education had given the direction to the management of the school to revoke the suspension of Ms. Prem Malhotra, PGT (Physics), but till date management has not allowed her to join her duty.
6. Also, there was a new report in Times of India Newspaper that CBI laid a trap and caught one peon accepting bribe. As per report, Principal too appears to be involved.

In view of the above, the Manager of Vidya Bhawan Girls Sr. Sec. School, New Rajinder Nagar, New Delhi is hereby directed to Show Cause as to why action should not be taken as per section 24(4) read with section 20 of DSEA 1973 against the school. The school Manager is further directed to submit his reply along with prrf of –

- rectification of deficiencies mentioned at S. No.1, 2 and 3 above.
- Compliance of directions mentioned at S. No.4 and 5 above and
- also submit the report of action taken by the management committee of the school in matter mentioned at S.No.6 above.

The reply should reach to the office, within 15 days from the date of issue of this Show Cause Notice, failing which appropriate action in the matter as per section 24(4) read with section 20 of DSEA 1973, as deemed fit, will be taken against the school.”

3. The petitioner school sent a reply dated 07.8.2010 to the show cause notice denying the alleged irregularities and malpractices.
4. Not satisfied with the reply, the following order dated 20.7.2010 was communicated by Special Director of Education (ACT-II) to the School:

“Consequent upon the approval of the Hon’ble Lieutenant Governor of Delhi vide U.O. No.12588 dated 26/06/2012 and in compliance of the Hon’ble High Court Order dated 21/05/2012 in matter of LPA 348/2012 “**Vidya Bhawan Girls Sr. Sec. School V/s Govt. of GNCT of Delhi**”, the Vidya Bhawan Girls Sr. Sec. School is hereby taken over with immediate effect under the provision of **section 20(1) of Delhi School Education Act, 1973 for a period of two years.**”

5. The petitioner school questioned the said order in W.P.(C) No.4517 of 2012 on the ground that it was cryptic in nature and non-speaking without giving any reason. At the time, the writ petition was heard,

it was submitted by the learned counsel for the respondents, on instructions, that a detailed order will be passed in a period of two months from that date. Hence, the learned Judge disposed the petition with such directions by order dated 07.8.2012. The learned Judge also directed that “till the speaking order is passed, the impugned order shall be kept in abeyance”. Thereafter, the impugned order dated 07.9.2012 came to be passed by the Special Director Education (ACT-II) and the said order reads as under:

“**WHEREAS**, the High Court, Delhi, in Civil Writ Petition No.4517/2012 in the matter of “**Managing Committee V/s Director of Education and Anr**” has passed an order on 07/08/2012 as under:-

“...that the respondent will pass a speaking order within a period of two weeks from today and till the speaking order is passed the impugned order dated 20/07/2012 shall be kept in abeyance. Respondents shall be bound by the stand taken by their counsel in Court today.” ”

AND WHEREAS, it is seen that Vidya Bhawan Girls Sr. Sec. School, New Rajinder Nagar, New Delhi is a school recognized and aided by the Directorate of Education, GNCT of Delhi and should as such abide by all the provisions of the Delhi School Education Act and Rules 1973 and all the instructions/directions issued by the Directorate of Education from time to time.

AND WHEREAS, a Civil Writ Petition No.4241/2010 was filed by Smt. Prem Malhotra against the management of the said school for quashing the disciplinary charges against her.

AND WHEREAS, another Civil Writ Petition No.1213/2010 was filed by a number of staff members for taking over of the above said school.

AND WHEREAS, the Civil Writ Petition No.4241/2010 came on hearing on 30/04/2012 in which it was directed by the Hon’ble High Court that:-

“Presently, there are three managements of the respondent school. In my considered opinion, Director of Education is directed to take over the management of Vidya Bhawan Girls Sr. Sec. School, New Rajinder Nager, New Delhi-110060 with immediate effect. The decision on the enquiry report of the petitioner shall be taken within four weeks from today falling which her retirement benefits shall be disbursed thereafter, failing which, the petitioner shall be entitled for 8% interest on a belated payment accordingly. I hereby make it clear tht if the Director of Education/Disciplinary disagrees with the report submitted by the enquiry officer, he is at liberty to proceed further, otherwise, the decision shall positively be taken, as directed above, and thereafter within two weeks, all her dues shall be disbursed accordingly.”

AND WHEREAS, the management of the said school filed LPA vide no.348/2012 against the judgment of Hon’ble Court dated 30/04/2012 which was heard on 21/05/2012 in which Hon’ble Division Bench of Delhi High Court disposed off the said LPA with the following order:

“In view of the aforesaid facts we need not go into the question as to whether Court can pass such directions or not as the respondent Government itself has initiated the action by issuing show cause notice dated 23rd July, 2010 and the matter is placed before the Administrator to pass appropriate orders. The Administrator may pass orders within one week from today. In case order is to take over the management, it would be open to the appellant to challenge that order in appropriate proceedings. Giving this liberty to the appellant, the appeal is dismissed.

AND WHEREAS, a show cause notice dated 23/07/2010 was served upon the management of the said school under section 24(4) read with section 20(1) of DSEA, 1973 highlighting various irregularities in the affairs of management of the school. The reply of the manager of the school was received vide letter dated 07/08/2010, which was found unsatisfactory.

AND WHEREAS, subsequent to the reply of the school dated 07/10/2010 various new irregularities have also come to notice like dispute of management, existence of three

management and two societies claiming the management of the said school etc.

AND WHEREAS, it was not found feasible to issue further show cause notice as different groups were claiming to be the members of the school managing committee.

AND WHEREAS, the matter was placed before the Lt. Governor, Delhi who has gone through the facts and records of the case.

NOW THEREFORE, considering the above stated facts and circumstances, the Hon'ble Lt. Governor of NCT of Delhi has ordered to take over the management of Vidya Bhawan Girls Sr. Sec. School, New Rajinder Nagar, New Delhi under sub-section (1) of section 20 of Delhi School Education Act, 1973 for a period of 02 years with immediate effect. It has also been ordered under sub-section (3) of section 20 of Delhi School Education Act, 1973 that the school shall be managed through the Director of Education of Govt. of NCT of Delhi or any other person authorized by him in this behalf."

6. The above order is put in issue in this writ petition on the ground that though certain irregularities and malpractices were alleged against the school, on the date when the show cause notice dated 23.7.2010 was issued there was no inspection as contemplated under Section 24 of the Act. In fact, the inspection was carried out by the Department of Education only on 26.7.2010 and the inspection report was communicated to the Manager of the School on 31.7.2010. Hence, in the absence of any inspection report, irregularities and malpractices alleged in the show cause notice, are baseless. That apart, in spite of the specific direction of this Court in its order dated 07.8.2012, the impugned order has been passed again without any reason and is non-speaking. It is the further case of the school that in any case, the impugned order refers to various new irregularities like dispute in management, assistance of three

management and two societies claiming the management of the school. Those alleged irregularities have been relied upon without their being an opportunity to the petitioner. Lastly, it was contended that inasmuch as the impugned order has been passed on the basis of order of the Administrator under Section 20(1) of the Act, and a provision of appeal is made under Section 20(4) of the Act to the Administrator himself, the Administrator cannot be the appellate authority over his order. In such event, Section 20(4) is unconstitutional being violative of principles of natural justice under Articles 14 and 21 of the Constitution.

7. Before we dwell upon the contentions on merits, we are inclined to consider the challenge to the provisions of Section 20(4) of the Act. Chapter VII of the Act relates to taking over the management of school. Section 20 (1) and (4) read as under:

“20. Taking over the management of schools. - (1) Whenever the Administrator is satisfied that the managing committee or manager of any school, whether recognised or not, has neglected to perform any of the duties imposed on it by or under this Act or any rule made thereunder and that it is expedient in the interests of school education to take over the management of such school, he may, after giving the managing committee or the manager of such school, a reasonable opportunity of showing cause against the proposed action, take over the management of such school for a limited period not exceeding three years :

Provided that where the management of a school has been taken over for a period of three years or less, the Administrator may, if he is of opinion that in order to secure proper management of the school it is expedient that such management should continue to be in force after the expiry of the said limited period, he may, from time to time, issue directions for the continuance management of such management for such period not exceeding one year at a time as he may think fit, so however, that the total period for

which such management is taken over shall not, in any case, exceed five years.

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) Where the management of any school has been taken over under sub-section (1), the managing committee or manager of such school may, within three months from the date of taking over, appeal to the Administrator, who may after considering the representation made by the managing committee or the manager, pass such orders, including an order for the restorations of the management or for the reduction of the period during which the management of such school shall remain vested in the Administrator, as he may deem fit.”

8. A reading of the provisions of Section 20(1) shows that whenever the administrator is satisfied that the Managing Committee or Manager of any school falling under the provisions of the Act has neglected to perform any of the duties imposed by or under the Act or any Rule made thereunder, may order taking over the management of the school for a limited period not exceeding three years. By virtue of the said provision, the taking over of the management need not necessarily be for a period of three years as it may be a lesser period as well. By virtue of the proviso to the said section, if the administrator is of the opinion that in order to secure proper management of the school, it is expedient such management should continue to be in force after the expiry of the said limited period, may from time to time issue directions for such period not exceeding one year at a time. Again, by virtue of the proviso, the total period for which a management is taken over shall not in any case exceed five years. A combined reading of both the provisions of Section 20(1) and the proviso would show that the administrator has power to order taking over of the management of the school up

to a period of five years, but such order shall not exceed three years at a time.

9. Section 20 with sub-Section (4) of the Act makes a provision for appeal to the administrator in the event an order is passed under Section 20 (1) of the Act. It is the contention of the learned Senior Counsel appearing for the petitioner that sub-Section (4) of Section 24 of the Act is unconstitutional as it takes away the valuable right of appeal while it contemplates a provision of appeal to the administrator against his own order. This submission of the learned Senior Counsel is liable only to be rejected for the following reasons:

It is true that Section 20(4) of the Act employs the words “appeal to the Administrator”. Having regard to Chapter VII dealing with taking over the management of the school, the provisions of sub-section (4) of the Section 20 should be understood to mean that it is only a review. We have our own reasons for the above said conclusion. Section 20(1) empowers the administrator to pass order taking over the management of the school for a period not exceeding three years. However, the proviso empowers the administrator to either pass an order taking over the management for a period of three years or for a lesser period. That proviso also empowers the administrator to issue direction for continuation of the management for such a period not exceeding one year at a time, if he thinks fit. In the event, the administrator passes an order taking over the management for a period not exceeding three years and simultaneously does not issue direction for the continuance of such management in terms of proviso to the said section, the school will have an opportunity to approach the administrator by invoking the

provisions of sub-Section (4) of Section 20 for reconsideration of the earlier order. Further, in case, if the administrator passes an order taking over for a limited period, the school may approach the administrator to reconsider the decision and satisfy him not to extend the order taking over the management beyond that period. The provisions of sub-Section (4) of Section 20 should be read in the manner to give effect to the meaning of the Act itself.

10. The Delhi School Education Act, 1973 was enacted to provide for better organisation and development of school education in the Union Territory of Delhi and the matters connected therewith or incidental thereto. Chapter II of the said Act deals with establishment, recognition, management of, and aid to, schools. Section 3 of the Act contemplates the power of administrator to regulate education in schools. By the provisions of sub-Section (1) of Section 3 of the Act, the administrator may regulate education in all schools in Delhi in accordance with the provisions of the Act and the rules made thereunder. Sub-Section (2) of Section 3 of the Act empowers the administrator to establish and maintain any school in Delhi or may permit any person or local authority to establish and maintain any school in Delhi, subject to compliance with the provisions of the Act and the rules made thereunder. In order to establish and maintain a school, the recognition by an appropriate authority is necessary in terms of Section 4 of the Act. Once the school is recognised, the said school shall be subject to the provisions of the Act and the rules made thereunder. Section 5 of the Act contemplates the scheme of management and by that provision, a Managing Committee shall be constituted and the same shall frame a scheme of management with the prior approval of the

appropriate authority. The establishment of the Managing Committee is for recognized private school as defined under Section 2(t) of the Act. The management of the school shall therefore vest only in the Managing Committee for all purposes. Nevertheless, the school shall abide by the provisions of the Act and the rules made thereunder. The exception to the above would be the provisions of Sections 20 and 24 of the Act. In the event, the management of the school is taken over by the administrator in exercise of power under Section 20(1) of the Act, the management shall deliver possession of the school property to the administrator or any officer authorized by him. Nevertheless, the administrator, in terms of sub-Section (3) of Section 20, may arrange to manage the school through the Director or any other person authorized by the Director in that behalf who shall be known as “authorized officer”.

11. For completion of the discussion on Section 24 of the Act, we may also refer that by that provision, every recognized school shall be inspected at least once in each financial year. The Director may also arrange special inspection subject to the jurisdiction of any school on aspects of its working as may, from time to time, be considered as necessary by him. In the event, any defects or deficiencies are found at the time of inspection or otherwise in the working of the school, the Director may give directions to the Manager to rectify them. In the event, the management fails to comply with the defects or deficiencies, the Director may order stoppage of and withdrawal of recognition. The provision does not limit the period of action taken by the Director. However, the Director cannot pass orders on his own for taking over the Management as for the power is restricted to the provision of Section 20. Perhaps only for that

reason, sub-Section (1) of Section 20 read with proviso to the said Section limits the power of the administrator to take over the management only upto the maximum period of five years. In the event, the management is able to satisfy the administrator within a period limited by the administrator, it should have an opportunity to approach the administrator for variance of the said order and only for that reason, a provision is made under sub-Section (4) of Section 20 of the Act. Therefore, the power under sub-Section (4) of Section 20 of the Act cannot strictly be construed as one of appeal, but rather it should be considered to be one of the review or for that matter, an opportunity to the school to approach the administrator by way of representation to reconsideration the earlier order. That apart, as to how a provision is to be applied, be it review or representation, cannot be a ground to declare the said provision as unconstitutional merely because it implies the word “appeal to the administrator”.

12. In view of the above, the challenge to the provisions of sub-Section (4) of Section 20 is liable to be rejected. Accordingly, the same is rejected.
13. In this context, we may also refer the judgment of the Division Bench of this Court in the case of ***Preet Public Secondary School & Ors. Vs. The Administrator of NCT of Delhi (Lt. Governor of Delhi) & Ors.*** reported as 59 (1995) DLT 482. Those provisions were not elaborately discussed, the Division Bench has categorically made the following observations with reference to sub-Section(4) of Section 20 of the Act:

“2.....In case the Administrator (Lt. Governor) is of the opinion that in order to secure proper management of the school it is expedient that such management should continue

to be in force after the expiry of the period of three years or less, as the case may be, he may from time to time issue directions for continuance of such management under him for such period not exceeding one year at a time, total period for such management not exceeding five years in any case. Even after the management of the school has been taken over, the Administrator can still review his decision on a representation made to him as provided under Sub-section (4) of Section 20.”

14. This takes us to the challenge to the order of taking over on merits. It is true that on an earlier occasion, this Court vide orders dated 20.7.2010 directed the respondent to pass a detailed order. It is the contention of the petitioner that in spite of the said direction, an order without reason has been passed. Further, it is the contention that the order relies upon certain irregularities/malpractices on the basis of subsequent events for which the petitioner school was not given any opportunity. It is the further contention that in any event, the irregularities/malpractices are not supported by any inspection under Section 24 of the Act. Since the challenge is on the basis of violation of principles of natural justice and failure of the Director to conduct inspection, the scope of inspection under Section 20(4) of the Act and the consequence thereof could be mentioned once again. As already observed that one should not mix up the power of administrator with the management enshrined under Section 20 of the Act with the power of the Director to stop the aid, withdrawing the recognition or taking over the management of the school under Section 24 of the Act. Section 24(1) of the Act relates to inspection of a school. In the event, either on the basis of inspection carried on under Section 24(1) or a special inspection is carried under Section 24(2) of the Act, any defects or deficiencies are noted, the Manager of the school is entitled for an opportunity to rectify such defects or

deficiencies. In the case of failure to rectify the defects or the deficiencies, the Direction is not complies with, the Director may stop the aid or withdraw the recognition of the school. We are concerned about the taking over of the school under Section 20 of the Act. It is true that Clause (c) of sub-Section (4) of Section 24 of the Act contemplates taking over of the school. As against the power to order stoppage of the aid and withdrawal of the recognition, the Director cannot pass order taking over the school invoking Clause (c) of sub-Section (4) of Section 24 of the Act, since such order could be passed only in terms of Section 20 of the Act by the administrator. The inspection contemplated under Section 24 of the Act is also relevant for the purpose of making a report to the administrator as to the failure on the part of the Manager to rectify any defects or deficiencies found at the time of inspection. The report shall be the basis for the administrator to satisfy himself as to whether provisions of Section 20(1) of the Act should be invoked or not. For the purpose of violation of principles of natural justice, it is to be noticed that after the inspection was carried on and in case of deficiency or defect was noticed, an opportunity is contemplated to the school as the Director will give opportunity to the Manager to rectify deficiency or defect under sub-Section (3) of Section 24 of the Act. In this context, we refer that a show cause notice dated 23.7.2010 was issued to the school earlier with regard to certain irregularities and on the said date, there was no inspection as the inspection was carried on only on 26.7.2010. Nevertheless, deficiency/defect noted in the inspection was communicated to the school on 31.7.2010. The school also replied to the said show cause notice dated 07.8.2010. The school had an

opportunity to explain the irregularities/malpractices. The report was made available to the administrator and the same has been referred to by him in the impugned order dated 07.9.2012 wherein the administrator had applied his mind to the earlier show cause notice dated 23.7.2010 and the reply of the school dated 07.8.2010. The administrator has also referred to the subsequent reply of school dated 07.10.2010 as well. As against an opportunity provided under Section 24 of the Act, we do not find any opportunity is contemplated under Section 20 of the Act. Of course, the provision of sub-Section (1) of Section 20 of the Act requires the administrator to satisfy himself that the Managing Committee or the Manager or school has failed to perform any of the duties imposed on it by or under this Act or any rule made thereunder and such satisfaction should be supported by materials. On the date when the first show cause notice dated 23.7.2010 was issued, there were irregularities as could be seen from the very show cause notice itself. Relevant materials were available before the Administrator as to the various irregularities referred to in the said show cause notice, which were vital and serious. To this extent, there is no controversy. In fact, the petitioner school had the opportunity to send a reply dated 07.8.2010. Hence, the petitioner school cannot have any grievance as to non-compliance of principles of natural justice.

15. As to the contention that no opportunity was given insofar as the subsequent events which were referred to in the impugned order is concerned, it is to be noticed that the impugned order in taking over the Management of the school would be sustained on the basis of irregularities mentioned in the show cause notice dated 23.7.2010. That apart, the irregularities relating to the subsequent events are

concerned, they are only mentioned in addition to the irregularities referred to in the show cause notice dated 23.7.2010. Except a reference to the subsequent events relating to the dispute in Management, etc. was made in the order, those irregularities were not be the basis for the decision taken by the Administrator to take over the Management. In that view of the matter, the contention of the petitioner that the school was not given the opportunity in respect of subsequent events referred to in the impugned order merits no consideration.

16. For all the above reasons, we are of the considered view that the impugned order does not suffer on the ground that non-speaking order of the petitioner was issued with the said order without any opportunity to explain the subsequent events or for that matter, the inspection was not carried on before the impugned order was passed under Section 20 of the Act.
17. For all these reasons, writ petition fails and the same is dismissed.

CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

NOVEMBER 23, 2012

pmc