

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

+ **W.P.(C) No.682/2013**

% **6th December, 2013**

ANJNA SHARMA AND ORS. Petitioners
Through: Mr. Ashok Aggarwal, Advocate.

Versus

SHISHU BHARTI VIDYALAYA AND ORS. ... Respondents
Through: Mr. C.S. Gupta, Advocate for
respondent Nos.1 and 2.
Ms. Navratan Chaudhary, Advocate
for respondent No.3.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Certain litigants, as also the Advocates representing them, unfortunately play games of hide and seek with the Courts. It is time that Courts come down with very heavy hands on these litigants. I am observing this because this case was listed three days back on 3.12.2013 when arguments were advanced on behalf of respondent no.1/school as to the validity or otherwise of the order of the Director of Education dated 3.7.2012 filed as Annexure P-3 at page 81 of the paper book of this writ
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petition limited to the aspect of powers of the Director of Education under Rule 46 of the Delhi School Education Rules, 1973. By the order dated 3.7.2012, the respondent no.1-school was allowed to be closed, however only on compliance of certain conditions. It was argued before me on behalf of respondent no.1/school that provision of Rule 46 of the Delhi School Education Act and Rules, 1973 did not give power to the Director of Education to impose conditions while allowing closure of the schools. At that stage, after hearing counsel for the parties I passed the following order on 3.12.2013:-

- “1. Earlier counsel Mr. Bhawani Shankar Sharma, Advocate appears and prays for discharge and is discharged inasmuch as a new counsel appears for the petitioner.
2. Counsel for the parties have been heard. The issue in the present case is squarely covered in favour of the petitioners as per the judgment of a learned Single Judge of this Court in the case of **Anjali Sood and Ors. Vs. Director of Education and Ors. 161 (2009) DLT 214**. Let any of the parties to the present case get the appointment letters of the petitioners as teachers in the school.
3. List on 6th December, 2013.”
2. Today therefore arguments were to be restricted on the issue of the applicability of the ratio of the judgment in the case of **Anjali Sood and Ors. Vs. Director of Education and Ors. 161 (2009) DLT 214** and as to whether the same can be distinguished for not being applicable for deciding the present writ petition. Also, appointment letters were called to

find out whether the respondent no.1/school which is run by the society which has other schools had appointed the petitioners with terms and conditions as to whether or not they can or cannot be shifted to other schools run by the same society. This second aspect was only in addition to the aspect of applicability of *Anjali Sood's case (supra)* and is not material to decide this petition in view of *Anjali Sood's case (supra)*.

3. Before me, today in the morning session, counsel for the respondent no.1/school sought to distinguish the judgment in the case of *Anjali Sood (supra)* as not being applicable to the present case in view of para 14 of the judgment in the case of *Anjali Sood (supra)* which showed that the judgment had been passed only because of lack of efforts by the school in not absorbing teachers although vacancies existed. In my opinion, this argument which is urged on behalf of the respondent no.1/school is most clearly misconceived because the issue in the present case is only as to validity or otherwise and the consequential implementation of the order of the Director of Education dated 3.7.2012 and that what is only argued on behalf of the school is that either there can be issued directions under Rule 46 by the Director of Education while allowing the closure of the school or there cannot be an order of the closure of the school under Rule 46 with conditions. Para 14 of *Anjali Sood's*

case (supra) is not the ratio of this case and hence no benefit can be derived by the respondent no.1-school by reference to para 14 of the *Anjali Sood's case (supra)*.

4. Let us at this stage refer to the order of the Director of Education dated 3.7.2012, and the same reads as under:-

“GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI
DIRECTORATE OF EDUCATION: OLD SECRETARY:DELHI

No.F.15(23)/DE/Act/2012/2906

Dated: 03-07-2012

ORDER

Whereas an application has been received from Shishu Bharti Vidyalaya, a private unaided school recognized upto the middle level vide letter dated 10.02.2012 requesting for granting permission to close down the school on the grounds that the school is not able to meet the various terms and conditions of recognition and DSEAR, 1973 on account of major difference between income and expenditure;

Whereas it is seen that the Hon'ble High Court vide order dated 21.05.2012 in CWP no. 1603/2012 titled as Yogita Bajaj and Others v/s State (Govt. of NCT of Delhi) and Ors has directed the undersigned to take a decision on the application for closure filed by the School;

Whereas I have gone through the records adduced before me and I observe that the District Authorities have examined the matter and after going through the financial status of the school have recommended the case for closure of the school;

Whereas I observe that the school has an enrollement of 76 children and 15 teachers. The school is functioning from a Private land and the financial examination reveals that the school and the society are running in loss. I also observe that the school has given an undertaking that the students of this school would be adjusted in other schools run by the Society/Nyas, though regarding adjustment of teachers the same is subject to the availability of vacancy.

Now therefore after going through the facts of the case and in exercise of the powers conferred upon me under rule 46 of the DSE Rules, 1973,I hereby grant approval for closure of Shishu Bharti Vidyalaya, Mangal Bazar, Lakshmi Nagar subject to the condition that the society shall adjust the already enrolled children of the school in other recognized

schools run by the same society. Further the society shall also adjust the teachers employed in the school in other schools of the same society and continue to pay their pay and perks drawn as on date.

(AMIT SINGLA)
DIRECTOR (EDUCATION)”

5. A reading of the aforesaid order shows that permission was given to the respondent no.1/school to close the school being Shishu Bharti Vidyalaya; Mangal Bazar; Lakshmi Nagar, subject to conditions that enrolled children would be absorbed in other recognized schools run by the society and society will also adjust the teachers employed in the school in other schools of the same society and continue to pay their pay and perks. The issue with respect to whether or not Director of Education while passing an order under Rule 46 can or cannot impose conditions on closure, is categorically decided in the case of *Anjali Sood (supra)* wherein it has been held that conditions can be imposed. The relevant paras of this judgment are paras 29 to 31, 36 and 37 and which read as under:-

“29. In my view, the ratio of the above decisions applies to the cases in hand. The decision of the Supreme Court in T.M.A. Pai Foundation (supra) and Kathuria Public School (supra), in my view do not throw much light on the issue before me. Firstly, I may notice that the managing committee of National Public School, Bela Road has not impugned Rule 46 in the present petition as being ultra vires. The said rule carries with it the presumption of constitutionality. The Division Bench of this Court in Kathuria Public School

(supra) following the decision of the Supreme Court in T.M.A. Pai Foundation (supra) held that the provisions in the Act and the Rules dealing with prior approval and post facto approval in respect of disciplinary matters of teachers and employees are not applicable to unaided non minority educational institutions. The present is not a case involving prior approval or post facto approval in respect of disciplinary matters of teachers and employees. The present is a case concerning the closure of one of the schools by the society and the rights of the teachers and employees of such a school in the light of the orders issued by the DOE and the Advisory Board. As aforesaid, Vaishali International School Teachers Welfare Association (supra) and Ashok Kumar v. Union of India (supra) have held that Rule 46 seeks to achieve a social objective of ensuring that a school, which is a building block of the future of our country should not be closed down at the whims and fancies of the founders or the promoters. Keeping in view the aforesaid objective of Rule 46, the same cannot be compared with the provisions of the Act and the Rules dealing with the prior and post facto approval in respect of disciplinary matters of teachers and employees of schools. It cannot be said that Rule 46 encroaches on the autonomy of the society running the school.

30. The power to grant approval/permission carries with it the incidental power to lay down reasonable and germane conditions. Considering the fact that the NPS, Bela Road was the first school set up by the managing society, National Public School and the six petitioner teachers were appointed either even before the other two branches/schools were set up, or with the condition that their services were transferable, and the fact that petitioner No. 1 was even transferred to NPS, Kalindi, coupled with the fact that a combined seniority list of teachers and employees was being maintained till as late as the year 2002, it cannot be said that the conditions imposed by the DOE and the Advisory Board requiring the absorption of the six petitioner teachers in the other two branches / schools being run at Kalindi and Darya Ganj was unreasonable or arbitrary.

31. Rule 47, no doubt, deals with aided schools and per se is not applicable in respect of unaided private schools. However, the DoE and the Advisory Board can legitimately take a leaf out of Rule 47 and impose the same condition while granting permission under Rule 46 for closure of school as a pre condition if the facts and circumstances of the case so warrant. Rule 47 provides a guideline for the exercise of the discretionary power vested by Rule 46.

36. I find no force in this submission for two reasons. Firstly, admittedly some if not all students of NPS, Bela Road have been absorbed in other branches/schools of the respondent society. These students continue to pay the fee. Secondly, eventually it is the liability of the society to pay the fee from its accruals whether or not a particular branch, in respect of which the

teachers have been laid off is operational or not. Learned Counsel for the petitioner teachers have vehemently argued that it was from out of the earnings derived from the original school situated at Bela Road that the respondent society had generated enough income to set up the other two schools at Darya Ganj and Kalindi. Since the Bela Road school/branch was the oldest, I am inclined to accept the said submission.

37. The respondent school clearly breached the order dated 19.05.2006 and has acted in defiance of the said order. There is merit in the submission of the petitioner teachers that the respondent school cannot be heard in these circumstances. In any event, I have considered all the submissions made by the respondent school and I find no merit to any of these submissions.”

(underlining added)

6. No doubt, some of the observations in the case of *Anjali Sood (supra)* are not as per the facts of the present case, however, ratio of a judgment is the law which is laid down in the said case and law which is laid down is clear from paras 30 and 31, which have been reproduced above, that, it is permissible for the Director of Education while passing an order for closure of the school under Rule 46 to impose conditions. Whether the conditions imposed are justified or not in the facts of a particular case is a totally separate aspect than the issue as to whether conditions can or cannot be imposed. Before me respondent no.1 has only argued that no conditions can be imposed under Rule 46 by the Director of Education and not that the conditions are to be set aside because of certain factual aspects. I may note that conditions which were imposed in the case of *Anjali Sood (supra)* were also similar to the conditions which have been

imposed in the present case with respect to the absorption of teachers and students of the school which is being allowed to be closed, in other schools run by the society. Therefore, the ratio of the judgment in the case of *Anjali Sood (supra)* squarely applies to the facts of the present case and I reject the argument urged on behalf of the respondent no.1/school that Director of Education is not empowered to impose conditions while passing an order of closure of the school under Rule 46 of the Delhi School Education Rules, 1973.

7(i) Counsel for the respondent no.1/school further argues before me that at best once the order of the Director of Education is not complied with, then the Director of Education can only withdraw recognition but the Director of Education is not empowered to issue any other directions for compliance of its orders. Attention of this Court is invited by respondent no.1 in support of this argument to Section 4 of the Delhi School Education Act, 1973 which deals with recognition of the schools.

(ii) Even this aforesaid argument urged on behalf of the respondent no.1/school that at best only recognition of the school can be withdrawn and conditions imposed in terms of the order dated 3.7.2012 cannot be implemented by the Director of Education or be enforced by the Director of Education or by the Court is a futile argument because now a

Division Bench of this Court in the case of *Social Jurist, a Civil Rights Group Vs. GNCT & Ors. 147 (2008) DLT 729* has categorically held that Delhi School Education Act and Rules, 1973 will apply to all schools in Delhi, whether they are recognized or whether they are not recognized. Therefore, even if I take as correct the argument of the respondent no.1/school that the school will at best be de-recognized, yet at best even if respondent no.1 becomes an unrecognized school, the same yet cannot mean that order of the Director of Education dated 3.7.2012 will not be applicable/enforceable. The Director of Education has jurisdiction qua all schools in Delhi, whether recognized or unrecognized, in view of the ratio in *Social Jurist's case (supra)*. Also, orders passed by statutory authorities are not passed in futility, and this Court can always pass directions under Article 226 of the Constitution of India for enforcement of the orders passed by the statutory authorities.

8. Finally, on behalf of respondent no.1/school by reference to the prayer clauses of the writ petition it was sought to be argued that as of today the only effect of the order of the Director of Education dated 3.7.2012 is that when the school complies with the conditions, the said order entitling closure of the school will come into force, however, as of today since the conditions are not complied with by the respondent

no.1/school the only status as of today can be that the closure order will not have effect. Really the argument contains more than what is sought to be frontally argued because essentially what the respondent no.1/school really seeks to argue is that in spite of finality of the order dated 3.7.2012, neither the Director of Education nor this Court can implement and enforce that order allegedly because the order is 'declaratory' only in its nature. In my opinion, once it is agreed and urged before me in terms of this argument by the respondent no.1/school that the order dated 3.7.2012 stands as it is, therefore, all the reliefs in the writ petition are hence deemed to be admitted and not disputed besides the fact that a Court can always pass directions for enforcement of orders passed by statutory authorities. Therefore each of the reliefs which are prayed for in the writ petition including with respect to withdrawal of the closure order, issuing of a common seniority list in case of the closure of the respondent no.1 and absorbing the petitioners in other recognized schools, these reliefs can be disposed of on principles akin to and invoking Order 7 Rule 7 CPC that Courts are always empowered to pass directions and orders as per the position which emerges independent of the limited language of the prayer clauses, with the order and direction that prayers (b) and (c) as of today need not come into implementation and the same will be implemented

when the order of the Director of Education dated 3.7.2012 is implemented in toto, however, so far as prayer (a) is concerned which contains a prayer for payment of all monetary emoluments to the petitioners/teachers, the same is enforced by this Court in exercise of its powers under Article 226 of the Constitution of India, and the respondent no.1/school cannot laugh away the order of the Director of Education dated 3.7.2012 by raising specious arguments at the same time agreeing and disagreeing to the finality of the terms and conditions contained in the order of the Director of Education dated 3.7.2012.

9. At this stage, I may note that petitioners have filed an application to bring on record that two petitioners, namely Ms. Sunita Arora and Ms. Geeta Pandey i.e petitioner nos.3 and 5 have been transferred by the respondent no.1's society to a school in Jammu. In this regard it is observed that so far as the transfers of petitioner nos.3 and 5 to a school outside Delhi is concerned, the transfer orders would be illegal because an employee/teacher of a school in Delhi is governed by the provisions of the Delhi School Education Act and Rules, 1973 and has statutory protections thereof, and therefore such a person cannot be made to lose the statutory protections; whether of services or monetary emoluments as provided under the Delhi School Education Act and Rules,

1973 by making them employees of schools not governed by Delhi School Education Act and Rules, 1973. I may state that I have passed judgments on this issue. One of such judgment is in the case of ***T.P. Singh Vs. School Management of GHPS, Fateh Nagar and Ors.*** in W.P.(C) No.4655/2012 decided on 1.5.2013 wherein I have held that an employee of a school is an employee of that very school and no other school unless a common seniority list is maintained, and hence leaving aside the issue of transfer of an employee of a school in Delhi to a school outside Delhi, there cannot even be transfer of an employee of one school in Delhi to another school in Delhi. I have also in the subsequent judgment in the case of ***Army Public School and Anr. Vs. Narendra Singh Nain and Anr.*** in W.P.(C) No.1439/2013 decided on 30.8.2013 held by reference to the judgment of the Supreme Court in the case of ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors., (2005) 7 SCC 472*** that teachers of the schools in Delhi including minority schools, have statutory protections of the services and such teachers/employees cannot be removed except by following the procedure contained in Rules 118 to 120 of the Delhi School Education Rules, 1973 and by transferring petitioner nos.3 and 5 to a school in Jammu these provisions are violated. Therefore, transfer of the petitioner nos.3 and 5 to a school outside Delhi is

held to be illegal and the action of the respondent no.1/school of the transferring them outside Delhi is quashed.

10. In view of the above, the writ petition is allowed with respect to petitioner nos.3, 5 and 6 (other petitioners have compromised with the respondent no.1/school) and it is directed that respondent no.1/school will within a period of six weeks from today make payments of the entire monetary emoluments (including arrears from the date of non-payment) which are payable to these teachers as they continue to remain employees/teachers of the respondent no.1/school after passing of the order of the Director of Education dated 3.7.2012. Transfers of the petitioner nos.3 and 5 to a school outside Delhi i.e to a school in Jammu are quashed. The order of the Director of Education dated 3.7.2012 will stand affirmed and will stand implemented as of today to the extent that the closure of the respondent no.1/school has not become enforceable and petitioners continue to remain the employees of the respondent no.1/school and are entitled to all monetary emoluments as teachers/employees of the respondent no.1/school and which monetary emoluments be paid within six weeks from today. Since the order of the Director of Education dated 3.7.2012 is being implemented to the extent that respondent no.1/school was not to be closed on account of non-compliance by the respondent

no.1/school of the directions contained in the order dated 3.7.2012, so far as the reliefs (b) and (c) are concerned, for the present they need not be considered/granted and which issues/aspects/reliefs will be considered if the order of the Director of Education dated 3.7.2012 for closure of the respondent no.1/school is complied with by the respondent no.1/school in terms of the conditions imposed in the order dated 3.7.2012. Each of the petitioner nos.3,5 and 6 will also be entitled to costs of Rs.25,000/- each payable by the respondent no.1/school and which costs shall also be paid within a period of six weeks from today.

11. Writ petition is accordingly allowed and disposed of in terms of aforesaid observations.

DECEMBER 06 , 2013
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VALMIKI J. MEHTA, J.