

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

+ **W.P.(C) No.1092/2013**

% **February 20, 2013**

SANGEETA BAJAJ Petitioner
Through: Mr. Raj Kumar Sherawat, Advocate.

versus

SCHOOL MANAGEMENT OF SRI GURU NANAK PUBLIC SCHOOL
AND ANR. Respondents
Through: Ms. Ferida Satarawala, Adv. for
GNCTD.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. One notices a tendency, these days, that, in a number of cases persons are approaching the Court to scuttle the enquiry proceedings which are still pending pursuant to a charge sheet which is issued. Of course, each case has to be seen on its own facts and in a particular case where the charge sheet is issued without jurisdiction or the enquiry proceedings are grossly malafide or lacking in some vital aspects, Courts can and do exercise

discretion to stay the enquiry proceedings, however, that does not mean that ordinarily enquiry proceedings should be allowed to be scuttled at the initial stage. Also may be in the past, the present petitioner may have been harassed, however that cannot mean, and nor has the judgment of this Court dated 18.7.2011 in C.M.(M) Nos.444/1998 and 446/1998, observe that in case the petitioner is guilty of future misconduct, yet never any charge sheet will be issued against the petitioner.

2. The charge sheet in the present case which is issued against the petitioner is that as given at Annexure P1 from pages 22 to 33 of the paper book. There are various articles of charges against the petitioner. With respect to para 2 at page 2, and running page 24, names have been mentioned of various students whose note books show negligence in the correction of the work by the petitioner. These students are Karan Puri, Riya Arora, Nidhi, Yash, Gurpreet Singh, Tanisha Garg, Anchita Kakaria, Bhuvak, Dev Saluja and Jasleen Kaur. Other charges against the petitioner include misconduct in non-compliance of orders of the school. There are also charges of the petitioner defaming the school and being a non-serious and non-dedicated teacher.

3. Of course, a reference to the charge sheet shows that indeed

there are some charges which are vague, however, equally there are charges which are specific. The specific charges besides contained in para 2 of the statement of allegations, are also contained in paragraph 3 wherein names of other students i.e Zaheer Ansari, Mayank, Karan Puri and Riyanshu have been mentioned. In Karan Puri's note book which is checked, he has answered Bhutan as one of the State that lies in East of India and which is taken as correct. With respect to English notebook of Zaheer Ansari, it was noticed that the basic punctuation marks were missing and there were various grammatical errors which were not corrected. In the English notebook of Mayank, questions framed had been wrongly done by him but was incorrectly examined. The charge sheet also mentions about the petitioner calling police by dialling the number 100 whereby the police had come and which is said to have defamed the school.

4. Counsel for the petitioner seeks to place reliance upon two judgments. The first judgment is the judgment of the Supreme Court in the case of *Union of India and Ors. Vs. J. Ahmed AIR 1979 SC 1022*. The second judgment is the judgment of the learned Single Judge of the Calcutta High Court in the case of *Dr. A.K. Chakravarthy Vs. Jagannath Kishore College and Ors. (1982) IILLJ 427 Cal.*

5. A reference to the judgment of the Supreme Court in the case of ***J. Ahmed (supra)*** shows that the same does not pertain to grant of stay of enquiry proceedings or staying of the charge sheet. The same deals with what is or is not misconduct. Whether or not the petitioner is guilty of misconduct in the facts of the present case is an issue of merits and not of jurisdiction and issues of merits will have to be addressed by the petitioner before the enquiry officer inasmuch as this Court is neither the enquiry officer nor the disciplinary authority or for that matter, even the Delhi School Tribunal where the orders of the disciplinary authority can be challenged under the Delhi School Education Act, 1973.

6. So far as the judgment of the learned Single Judge of Calcutta High Court in the case of ***Dr. A.K. Chakravarthy (supra)***, the said judgment does stay the operation of the charge sheet, however, in the said case there were found charges which showed existence of gross allegations of mind being made up by the disciplinary committee, and there also existed gross malafides of the disciplinary committee. There was also an issue of the charge sheet not having been framed by the appropriate authority. It is in these circumstances that in the case of ***Dr. A.K. Chakravarthy (supra)*** the learned Single Judge of the Calcutta High Court stayed the operation of the

charge sheets. It is however to be seen that whether there exists such issues in the present case on facts for the enquiry proceedings to be stayed.

7. In the present case, as already stated above, some charges appear to be vague and possibly motivated against the petitioner, however, it is not as if all the charges are such which can be found to be ex facie misconceived for the enquiry proceedings to be stayed by the Court. It will always be open to the petitioner to urge before the enquiry officer that there exists bias or malafides in issuing the charge sheet because of previous litigation of the petitioner with the school management, and in which litigation petitioner had succeeded by getting reinstatement with all consequential benefits, and which aspects will be duly considered by the enquiry officer and the disciplinary committee.

8. Counsel for the petitioner states that pursuant to the earlier order of reinstatement amounts have not been paid to the petitioner, however, that admittedly is the subject matter of independent proceedings which the petitioner has filed and I need not comment upon the same, however, all these aspects of malafides and malice, if correct can be asserted and proved by the petitioner before the enquiry officer.

9. Learned counsel for the petitioner finally argued that the charge

sheet dated 7.2.2013 has not been issued in accordance with Rules 118 and 120 of the Delhi School Education Rules, 1973 inasmuch as it has not been issued by the disciplinary committee.

10. In this regard, the petitioner places reliance upon first two lines of the charge sheet which state that the managing committee proposes to hold an enquiry against the petitioners, however, when we refer to the signature portion of the charge sheet it becomes clear that charge sheet is signed by the member of the disciplinary committee on behalf of the disciplinary committee. Therefore I cannot agree that mere existence of first two lines in the memorandum of charge sheet of the managing committee proposing to hold an enquiry will in any manner affect the charge sheet which has been issued on behalf of the disciplinary committee. As a matter of abundant caution however, in view of the possible inconsistency in the memorandum of charge sheet dated 7.2.2013, I direct that the petitioner will be entitled to raise these issues before the enquiry officer and the issue with respect to the charge sheet being in compliance or non-compliance of Rules 118 and 120 will be decided by the enquiry officer/enquiry committee at the outset.

11. Finally, I must note that merely because there is a history of

litigation so far as the petitioner is concerned cannot mean that it in itself will show that there is absolutely no substance to any of the factual charges made against the petitioner. There may be merits in some charges and there may not be merits in some other charges, however, Courts are indeed wary right at the inception, where there are factual aspects yet to be determined, to stay the entire proceedings itself, even though the petitioner will be at complete liberty in the enquiry proceedings to take all factual defences as also other defences on merits including the defences of law.

12. In view of the above, the writ petition is dismissed, subject to the above observations, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

FEBRUARY 20, 2013

ib/Ne