

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

% *Judgment Reserved on : January 13, 2015*
Judgment Pronounced on : January 19, 2015

+ **LPA 436/2009**

MANAGING COMMITTEE NATIONAL
PUBLIC SCHOOL

..... Appellant

Represented by: Dr.Bipin Kr.Dwivedi, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Represented by: Ms.Purnima Maheshwari, Advocate
for R-1 & R-2
Ms.Indrani Ghosh, Advocate for R-6
Mr.K.K.Sharma, Sr.Advocate
instructed by Ms.Bhanita Patowary,
Mr.Angshuman Khound, Mr.Rajiv
Bakshi, Advocates for R-7

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CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Since WP(C) No.4426-32/2006 filed by respondents No.4 to 9 of LPA No.437/2009, and WP(C) No.555/2007 filed by the appellant in the two above captioned appeals have been disposed of by a singular order dated July 01, 2009, which is in challenge in the two appeals, we are disposing of the two appeals by a singular order.

2. Relief claimed by the respondents No.4 to 9 in LPA No.437/2009, who were the writ petitioners in WP(C) No.4426-32/2006 along with another co-petitioner named Shobha Rani Jain in which prayer was to quash the notices retrenching them, dated December 30, 2005, served upon them by the appellant; with mandamus to be issued to the appellant to absorb them in any other school established by the appellant on the basis of a common seniority list drawn up. The relief claimed by the appellant in WP(C) No.555/2007 filed by it was to quash the decision dated September 27, 2006 passed by the Delhi School Educational Advisory Board and permit the appellant to allow it to close the school established by it at Bela Road. The permission was to close the school subject to the condition the staff at Bela Road School was absorbed in any other branch of the school either at Daryaganj or Kalindi Kunj.

3. The parties are not very clear on the name of the society which established National Public Schools, but it appears that a society which came to be known as Managing Society, National Public School initially set up a school at Bela Road and two others thereafter in Daryaganj and Kalindi

Kunj. The schools were up to the senior secondary level and on an application filed by the society were granted recognition by the appropriate authority as per the requirement of the Delhi School Education Act, 1973.

4. Under Section 3 of the Delhi School Education Act, 1973, the administrator of the Union Territory of Delhi is empowered to regulate education in all the schools in Delhi, and vide Section 4 thereof, on an application submitted by a private individual and if found to be fulfilling the conditions prescribed in Section 4, the appropriate authority is obliged to grant recognition to the school. Once a school is recognized under the Act by the appropriate authority, the running of the school including its closure is regulated by the Act and the Delhi School Education Rules, 1973 framed thereunder.

5. In the decision reported as AIR 1993 SC 2178 Unni Krishanan J.P. & Ors. vs. State of A.P. & Ors. the Supreme Court opined that the establishment of an education institution cannot be called a business or a trade or a profession. It may fall under the category of occupation provided no recognition is sought from the State; to bring home the point whether a private unaided educational institution can be subjected to a State regulation. Thus, if an educational institution obtains recognition for its existence from the State, its affairs could be regulated by law.

6. Rule 44 of the Delhi School Education Rules, 1973 gives flesh and blood to the skeleton structure of the Act with regards to matters concerning establishing a school. Rule 46 of the Rules gives flesh and blood to the skeleton structure of the Act with regards to matters concerning closing down of a school and Rule 47 of the Rules gives flesh and blood to the

skeleton structure of the Act with regards to matters concerning absorption of surplus employees on the closure of an aided school.

7. Since the impugned decision has referred to the said Rules, and while interpreting Rule 46 has taken colour from Rule 47 and the expression used in para 31 of the impugned decision by the learned Single Judge is that one *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*, it would be advisable, if before noting the relevant facts we reproduce Rule 44, Rule 46 and Rule 47 of the Delhi School Educational Rules, 1973. They read as under:-

“Rule 44. Notices of intention to open a new school-

(1) With a view to enabling the Administrator to arrange for the planned development of school education in Delhi, every individual, association of individuals, society or trust, desiring to establish a new school, not being a minority school, shall before establishing such new school, give an intimation in writing to the Administrator of his or their intention to establish such school.

(2) The intention, referred to in sub-rule (1) shall contain the following particulars namely:

(a) the Zone in which the new school is proposed to be established, and the approximate number of students likely to be educated in such schools;

(b) the stage of education intended to be imparted in the new school;

(c) the number of schools of the intended stage in existence in the Zone where the new school is proposed to be established and the population of a Zone;

(d) whether the person proposing to establish the new school have any alternative Zone in view and if so, the particulars of such alternative Zone with respect to the matters specified in clauses (a) and (c); (e) the particulars including measurements of the building or other structure in which the school is proposed to be run;

(f) the financial resources from which the expenses for the establishment and running of the school are proposed to be met and whether any application is proposed to be made for any aid;

(g) the composition of the managing committee of the proposed new school until the new school is recognized and a new managing committee is constituted in accordance with the scheme of management made under the Act;

(h) the proposed procedure, until its recognition under the Act, for the selection of the head of the school and other teachers and non-teaching staff and the minimum qualifications for their recruitment;

(i) the proposed scales of pay for the head of the school and other teaching and non-teaching staff until the school is recognized under the Act;

(j) admission, tuition and other fees which would be levied and collected until its recognition under the Act, from the students of the proposed new school;

(k) any other facility which is proposed to be provided for the students of the proposed new school.

(3) The Administrator may, after considering the particulars specified in the intimation given to him under sub-rule (2) and after making such inquiries as he may think fit, inform the person or persons by whom the intimation was given to him whether or not opening of the proposed new school would be, in the public interests:

Provided that the Administrator shall, if he is of opinion that the number of schools existing in the Zone where the new school is proposed to be opened is sufficient to meet the needs of the Zone, inform the person or persons, by whom the intimation was given to him that the opening of the new school in such Zone would be against the public interest and may indicate to such person or persons, any other Zone which, in his opinion, needs the establishment of a new school, and thereupon it would be open to such person or persons to open a new school in the Zone indicated by the Administrator.

x x x x

Rule 46: Closing down of a school or any class in a school -
No managing committee shall close down a recognized school, not being an unaided minority school, or an existing class in such school without giving full justification and without the prior approval of the director, who shall, before giving such an approval, consult the Advisory board.

Rule 47: Absorption of surplus (employee), etc.—(1) Where as a result of---

(a) the closure of an aided school or any class or classes in any aided school; or

(b) withdrawal of recognition from an aided school; or

(c) withdrawal of aid from an aided school, any student or employee becomes surplus, such student or employee, as the case may be, may be absorbed as far as practicable, in such Government school or aided school as the Administrator may specify:

Provided that the absorption in Government service of any employee who has become surplus shall be subject to the availability of a vacancy and shall be subject further to the condition that the concerned employee possesses the requisite

qualification for the post and has not been retrenched by the management of the aided school on any ground other than the ground of closure of the school or any class or classes of the school, or withdrawal of recognition or aid from the school:

Provided further that where any such surplus employee is absorbed in a Government school, he shall be treated as junior to all the persons of the same category employed in the Government schools on the date immediately preceding the date on which he is so absorbed, and where such surplus employee is absorbed in an aided school, he shall rank as junior to all the persons of the same category employed in that school on the date immediately preceding the date on which he is so absorbed.

(2) Where any surplus employee is absorbed under sub-rule(1)—

(a) the salary and other allowance last drawn by him at the school from which he has become surplus shall be protected;

(b) his provident fund account shall be transferred to the school in which he is so absorbed, and thereupon such provident fund shall be governed in accordance with the rules and regulations in force in that school in relation to provident fund; and

(c) the period of his qualifying service in the school in which he had worked before such absorption and any previous period of qualifying service, if any, in any recognized aided school in Delhi shall be taken into account for the purpose of computing his pension and other retirement benefits.

(3) Without prejudice to the provisions of sub-rules (1) and (2), where an employee becomes surplus by reason of the closure of any class or section thereof or the discontinuance of the teaching of any subject, such employee may be absorbed in the first instance, as far as practicable, in such Government or aided school as the Administrator may specify, and if the class

or section which was closed is reopened by the former school or if any new class or section thereof is opened by such school or if the subject, the teaching of which was discontinued, is re-introduced by such school, or strength of the staff of the former school is increased, such employee shall be reabsorbed in the former school; but if such re-absorption does not take place within a period of five years from the date of absorption of such employee in the Government or aided school, such employee shall be regularly absorbed in such Government or aided school, as the case may be.

(4) Re-absorption of an employee in a former school shall not affect his continuity of service or his seniority in relation to that school or his emoluments, provident fund, gratuity and other retirement benefits.

Explanation – For the purposes of sub-rules (3) and (4), —former school means the school from which an employee has become surplus.”

8. It is not clear as to the date when the society established the National Public School at Bela Road, but the admitted position is that the school at Bela Road was the first of the three to be established in a building taken on rent by the society from the owner thereof. Two other schools were thereafter established at Daryaganj and Kalindi Kunj. The landlord of the premises at Bela Road obtained a decree for ejectment which was upheld in appeal and since the decree for ejectment attained finality, the society as well as Management of the school was left with no option but to surrender possession of the building at Bela Road to the landlord. As regards the students of the school, an option was given to the parents to get their wards admitted in the National Public School, either at Daryaganj or Kalindi Kunj. A few staff members (and probably the ones who were dear to the Management of the society or were otherwise influential) were adjusted in

the two schools at Daryaganj and Kalindi Kunj and in terms of Rule 46 permission of the Director of Education was sought to close down the school at Bela Road and retrench the teaching as well as the non-teaching staff.

9. On March 12, 2006 the Director of Education granted the permission; but on terms. The communication addressed to the Managing Committee of the school and the society which established the school reads as under:-

“1. All the employees & students of the school will be adjusted in National Public School, Dariyaganj & National Public School, Kalindi, Delhi as decided by the Managing Committee of National Public School, 7 Bela Road, Delhi in its meeting held on 21.01.2006.

2. The school authorities shall issue letters of adjustment to the individual employee & a copy of the same duly acknowledged by the concerned employee shall be submitted to the department.

3. The closure of the school will also be subject to the approval of the Advisory Board as provided in rule 46 of DSEA&R 1973.”

10. As indicated in the communication itself the permission was subject to the approval of the Advisory Board, for the reason Rule 46 of the Delhi School Education Rules, 1973 warrants a consultation with the Advisory Board.

11. Reference being made to the Advisory Board, it considered the matter at the meeting of the Board held on September 27, 2006 and accorded permission for the school at Bela Road to close down; noting that the premises had already been vacated. The Advisory Board noted that a few employees in the teaching and non-teaching branches were adjusted in other

schools established by the society and seven were left out who had filed a writ petition in this Court. The Advisory Board directed that the permission to close down the school at Bela Road would be subject to the society absorbing these seven employees in any one of the two or both the schools established by the society at Daryaganj and Kalindi Kunj.

12. The notices of retrenchment dated December 30, 2005 had already been issued when no permission, as warranted by Rule 46 of the Delhi School Education Rules, 1973 was accorded, either to the management of the school or to the parent society which had established the school. W.P.(C) No.4426-32/2006 had already been filed when the Advisory Board met and took the decision.

13. The grievance of the writ petitioners, the first six of whom were teachers and the seventh a librarian was that their services could not be terminated and they could not be retrenched, and as a matter of fact the school at Bela Road could not be closed without the approval of the Director of Education and in consultation with the Advisory Board. In the writ petition filed by the appellant which was registered as W.P.(C) No.555/2007, the challenge was to the condition imposed by the Director of Education while permitting closure of the school and as imposed by the Advisory Board in its meeting held on September 27, 2006.

14. The parties debated the issue before the learned Single Judge in the two writ petitions on Rule 59 of the Delhi School Education Rules, 1973, for the reason the said Rule requires every recognized school to be run as per a scheme of management, requiring a Managing Committee to be formed, and the employee-employer relationship being between the Managing Committee of the School and the employee. Reliance was placed

on Section 4 of the Act, as per which it was a recognized school which had to be treated as a juristic entity. To put it pithily, the case of the society and the management of the National Public School Bela Road was that the school in question was a separate entity vis-à-vis the schools at Daryaganj and Kalindi Kunj.

15. Whereas the society and the management of the school pitched their case before the learned Single Judge in law, the seven teachers argued that whether or not law as propounded could be attracted was contingent upon the relevant facts. The seven relied upon their letters of appointment which would show that they were not appointed as teachers in any specific school. In a cleverly worded letter offering appointment, the appointment was offered by : **‘MANAGING COMMITTEE NATIONAL PUBLIC SCHOOL’**, condition No.5 of the letter offering appointment stipulated :-

“That your services may be transferred to any other school under the management managing society National School without any extra allowance or enhancement in your salary.”

16. The seven teachers relied upon the same, to urge that lifting the veil, the three schools at Bela Road, Daryaganj and Kalindi Kunj were akin to three branches of the same tree. They also relied upon common seniority lists maintained of all teachers in the three schools wherefrom promotions were being effected and therefrom urged that the management could not, under the garb of closing one school, retrenched the staff at its whims. Though not pleaded, it is apparent that the intention was to argue on the principle of last come first go if the management of an institution found that it had surplus hands at work. With respect to the stand taken by the management that it did it best to absorb such number of extra hands which it

could in the schools at Daryaganj and Kalindi Kunj, the seven provided data, which remained uncontroverted, which data has been noted by the learned Single Judge in a tabular form in paragraph 33 of the impugned decision, and we reproduce the same as under:-

<i>S. No.</i>	<i>Name</i>	<i>Place of occurrence of vacancy</i>	<i>Subject</i>	<i>Date of occurrence of vacancy</i>	<i>Reason of occurrence of vacancy</i>
1.	Anjali Sood	Kalindi	TGT	Aug, 2006	Shri Srivastava retired in and the petitioner was transferred to the Kalindi Branch. However, later Sh.Srivastava was allowed to join on ad hoc basis and the petitioner was transferred back to Bela Road branch.
2.	Rashmi Chandra	Kalindi	PGT (Business Studies)	2004	Only one teacher for Accounts and the vacancy for PGT (Business Studies exists.)
3.	Arun Gupta	Daryaganj	S.Studies	31.01.07	Mrs.Pathak retired.
4.	G.C.Garg	Kalindi	S.U.P.W.	-	No teacher
5.	Sheela Bannerjee	Kalindi Branch	TGT Biology	31.08.05	Mrs.Bhutani retired but later re-absorbed as an ad hoc teacher
6.	Meena Saxena	Daryaganj/ Kalindi	Librarian	-	i. Only 1 junior librarian in Kalindi which is against CBSE affiliation bye

					<i>laws.</i> <i>ii. No librarian in Daryaganj. This is in violation of the provisions of the Delhi School Education Act, 1973.</i>
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17. The data would evince that there were at least six vacancies against which if not all seven, at least six writ petitioners of W.P.(C) No.4426-32/2006 could be absorbed.

18. With respect to the decision taken by the Director of Education, to which concurrence was accorded by the Advisory Board, the seven teachers argued before the learned Single Judge that the Director of Education and the Advisory Board rightly opined that the seven were required to be adjusted in either of the two schools at Daryaganj or Kalindi Kunj because concededly vacancies existed in said schools and further for the reason the writ petitioners were much senior in the seniority list to other teachers employed and continued to be employed.

19. The management did not defend its action on fact but simply urged that Rule 46 infringed upon the freedom of a private unaided school and amounted to an erosion of its authority and hence fell foul with the law declared in the decision reported as AIR 2003 SC 355 T.M.A.Pai Foundation Vs. State of Karnataka, a plea not urged in the pleadings for the reason the same would have required the vires of the Rule to be challenged, which has not been challenged as a matter of fact. During arguments the stand was taken.

20. With reference to Rule 47, which requires absorption of surplus employees when an aided school is closed, the view taken by the learned Single Judge is that while interpreting Rule 46, one 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.

21. On facts, keeping in view the language of the letter offering appointment and combined seniority lists maintained and in the past teachers being transferred from one school or the other, the learned Single Judge has opined that it was apparently a case where different branches of the same school came into existence for the reason if the employee-employer relationship was between, as claimed by the appellant, the Managing Committee of the every school and the employee, this was not permissible in law.

22. A reasoning of the learned Single Judge with which we agree for the reason an employee is not a serf. An employer can direct the employee to do any work under him i.e. the employer, but not under any other employer for the reason the employer does not own the employee. A master owns a serf and can direct the serf to work under him or any other master. Since the management had admittedly, in the past, taken recourse to a course of conduct which showed that the employees were common to the three branches of the school and were being transferred from one school to the other and common seniority lists were maintained, out of which promotions were effected; and further the letter offering appointment clearly indicated that the employee could be made to serve in any school, estoppel would

prevent the appellant from urging anything to the contrary which is destroyed by its past conduct.

23. In what manner the vires of Rule 46 was attacked has to be pleaded in the writ petition. As noted above, in Unni Krishanan's case (supra) the Supreme Court held that where a private individual establishes an educational institution and obtains recognition from the State, the individual would be bound by the law on the subject framed by the State.

24. Even before us during argument in the appeal, in what manner Rule 46 was ultra-vires either of the Parent Act or the Constitution was not demonstrated.

25. The contention that the learned Single Judge has held that while interpreting Rule 46, leaf could be taken from Rule 47, was premised on the known principle of construction of statutes : if the language of a statute was plain and clear and admitted of no two meanings, under the garb of interpretation it was impermissible to vary the language of the statute.

26. The argument merits acceptance because the golden rule of interpretation consistently followed by the Courts in India is that if the words used in a statute are capable of one construction only, it would not be open to the Court to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the law. Words have to be read in their ordinary, natural and grammatical meaning. Reference could be made to the opinions reported as AIR 1957 SC 907 Kanailal Sur Vs. Paramnidhi Sadhu Khan, (2013) 3 SCC 117 Mr. Justice Chandrashekaraiah (Retd.) Vs. Janekere C. Krishna & Ors. etc. and 2013 (8) SCALE 541 Maharshi Mahesh Yogi Vedic Vishwvidyalaya Vs. State of M.P. & Ors..

27. But, that would not mean that while exercising power under Rule 46, the only option to the Director of Education is to grant approval to close a school or refuse to grant approval to close a school. The power to grant approval to the closure of a school would include the power to impose a condition while granting closure to a school, or to put it differently, to accord a permission contingent upon a condition.

28. Of course, if a power is abused, exercised mala-fide, in law or as a matter of fact, or is otherwise unreasonably exercised, the same can be challenged as arbitrary and hence violative of Article 14 of the Constitution of India.

29. The appellants have not been able to show that the power has been exercised mala-fide, unreasonably or of the kind.

30. Concededly the appellant had absorbed some teaching and non-teaching staff at Bela Road by transferring them to the school either at Daryaganj or Kalindi Kunj. With some the issue was settled amicably. As regards the seven writ petitioners, notwithstanding they pointing out existence of vacancies in the school either at Daryaganj or Kalindi Kunj and notwithstanding that the dates of their appointment were much prior to the staff retained and notwithstanding common seniority lists being maintained and teachers being made to work in one school or the other i.e. transferred inter-se the schools and notwithstanding the letters offering appointment to them clearly indicating that they could be made to work in any branch of the National Public School, the seven were retrenched, and in view of the fact that the appellants have not been able to controvert the findings of fact recorded by the learned Single Judge, we are left with no option but to dismiss the appeals maintaining the impugned order dated July 01, 2009

dismissing W.P.(C) No.555/2007 filed by the appellants and allowing W.P.(C) No.4426-32/2006 filed by the seven writ petitioners thereof.

31. There shall be no order as to costs in the appeals.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JANUARY 19, 2015
mamta/skb