

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.02.2015

+ **W.P.(C) 7710/2013 & CM No. 16415/2013**

SUNHILL PUBLIC SCHOOL

..... Petitioner

versus

GOVT. OF NCT, DELHI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr R. K. Saini.

For the Respondents : Ms Ruchi Sindhwani, ASC, GNCTD,
Ms Bandana Shukla, Ms Megha Bhadana
with Mr Vinay Verma Dy. Education Officer/R-
1 to 3.
Mr Atul Kumar for R- 4/CBSE.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner impugns an order dated 04.09.2013 (hereafter the 'impugned order') passed by the Lieutenant Governor (Appellate Authority) rejecting the petitioner's appeal under Section 3(4) of the Delhi School Education Act, 1973 (hereafter the 'Act'). The said appeal was filed by the petitioner assailing an order dated 03.12.2012 passed by the Directorate of Education, Government of NCT withdrawing the recognition granted to the petitioner for upgradation from secondary school to senior secondary school (i.e. from Xth to XIIth Standard). The order dated 04.09.2013 passed by the Appellate Authority and the order dated

03.12.2012 passed by the Directorate of Education are referred to as the 'impugned orders'.

2. The recognition granted to the petitioner for continuing classes of XIth and XIIth grade was withdrawn, principally, for the reason that the petitioner did not conform to the prescribed land norms; the petitioner school exists on a plot of land measuring 243.90 sq. meters and according to Directorate of Education (hereafter 'DoE'), the said area is inadequate for running a senior secondary school (up to 12th standard).

3. The petitioner assailed the impugned orders withdrawing the upgradation as being contrary to a decision of Minister of Education, Government of NCT to grant provisional recognition to all schools, subject to structural stability, pending a final decision with regard to all schools that were functioning in Delhi prior to the CBSE norms. The petitioner stated that the earlier show cause notice issued, to the petitioner, for withdrawal of recognition was not pursued in view of the aforesaid decision. According to the petitioner, having once decided to continue with the provisional recognition, it was not open for DoE to review the same at a later date. The petitioner also contended that the recognition for upgrading the school was granted to the petitioner prior to any land norms being specified by the DoE. He submitted that, therefore, the recognition already granted could not be withdrawn.

4. The limited controversy to be addressed is whether an order withdrawing the petitioner's recognition for upgradation (from 10th standard to 12th standard) is sustainable on the ground of non-compliance

with land norms for running a secondary school? And, whether the DoE was precluded from taking such decision in view of the proceedings initiated in this regard earlier?

5. Briefly stated, the relevant facts necessary to address the controversy are as under:

5.1 The petitioner is a school, which is being run by an Educational Society registered under the Society Registration Act, 1860, namely, Sunhill Educational Society (hereafter also referred to as the 'society'). It was asserted that the petitioner school was established in 1982 and was, subsequently, upgraded from a middle school to a secondary school (i.e upto class 10th) with effect from the academic session 1986-87. Thereafter, the petitioner school applied for an upgradation to class 12th (commerce stream only) i.e. from a secondary school to a senior secondary school. Initially, the petitioner's application was rejected by DoE, *inter alia*, on the ground that sufficient land was not available with the petitioner. The petitioner appealed against the said rejection before the Appellate Authority. The Appellate Authority directed that the petitioner's request for upgradation be granted for a period of two years subject to the school authorities taking necessary steps for allotment of a plot of land. Pursuant to the aforesaid order dated 17.12.1997, the petitioner was granted an upgradation for a period of two years. This was, subsequently, extended from time to time till 2004-05.

5.2 On 23.02.2005, DoE issued a show cause notice calling upon the petitioner to show cause why the recognition granted should not be

withdrawn since the petitioner had failed to obtain the necessary land from DDA. The petitioner responded to the said show cause notice by a letter dated 28.02.2005, indicating the efforts made by the society to pursue DDA for an alternative site. The petitioner also requested for grant of conditional upgradation for further period. DoE declined this request by a letter dated 19.07.2005. Thereafter, DoE sent a communication dated 01.04.2006 stating that the students of class XIIth would be allowed to appear in the CBSE examination to be held in the year March 2007 on the condition that no student would be admitted in class XIth in 2006. The petitioner assailed the aforementioned communication dated 01.04.2006 before the Appellate Authority, *inter alia*, contending that a recognition once granted could not be withdrawn except in the manner as contemplated under Sections 4 and 6 of the Act. This contention found favour with the Appellate Authority and by an order dated 14.06.2006 the appeal was disposed of by setting aside the communication dated 01.04.2006 and granting liberty to the petitioner to present its case before the competent authority who would take further action in accordance with the provisions of the Act.

5.3 Thereafter, the petitioner was issued a show cause notice dated 25.09.2007. The DoE alleged that the petitioner did not have the requisite infrastructure facilities as per the norms specified under Rule 50 and 51 of Delhi School Education Rules, 1973 (hereafter 'DSER, 1973'). The petitioner responded to the said show cause notice by a representation dated 10.10.2007.

5.4 The aforesaid show cause notice was not pursued by the DoE. The petitioner has obtained the relevant file notings, which indicate that there

were other similar cases and that the respondents were of the view that a decision would have to be taken in respect of all cases and not on case to case basis. However, no extension of upgradation was granted to the petitioner. The petitioner school by a letter dated 18.02.2008 requested that the issues be taken on a priority basis, however, the DoE did not respond to the said communication.

5.5 The petitioner was issued another show cause notice on 13.06.2012, *inter alia*, alleging that the petitioner had not complied with the condition of upgradation and had failed to procure land from the Government Agency. The petitioner was called upon to show cause as to why recognition for senior secondary level of the school may not be withdrawn under Section 4(6) of the Act read with Rule 45, Rule 50 (xviii) and Rule 56 of DSER, 1973.

5.6 The petitioner responded to the aforesaid show cause notice by a letter dated 11.07.2012. After considering the response of the petitioner, DoE passed the order dated 03.12.2012 withdrawing the recognition with effect from the academic session 2013-14. By the impugned order dated 04.09.2013, an appeal preferred by the petitioner against the said order dated 03.12.2012 was rejected by the Appellate Authority.

6. The learned counsel for the petitioner contended as under:

6.1 That no land norms were applicable for recognition of a school in 1982 - the year in which the school was established, therefore recognition could not be withdrawn on the said basis.

6.2 That there are similar schools which do not conform to the land norms and yet no action has been taken against the said schools and, therefore, the impugned orders are discriminatory and violative of Article 14 of the Constitution of India.

6.3 That the show cause notice dated 13.06.2012 is identical to the earlier show cause notice dated 25.09.2007, which was not pursued. In the circumstances, no fresh action against the same allegations could be pursued.

6.4 That the earlier show cause notice dated 25.09.2007 was not pursued on the basis of a decision that a uniform view would be taken with respect to all schools and the same would not be decided on case to case basis. It was contended that the impugned orders being contrary to this decision are liable to be set aside.

6.5 That DoE had not declared any land norms in 1997, that is, when the school was granted the recognition for upgradation. Thus, the recognition for upgradation could not be withdrawn on the basis of any land norms.

7. The learned counsel for the petitioner relied upon the decision of this Court in **Bal Vikas Public School vs Govt. of NCT of Delhi: 2003 AIR (Del) 125** and **Glory Public School & Anr. vs Lt. Governor, Govt. of NCT & Ors: 107 (2003) Delhi Law Times 662** in support of his contention that the norms as applicable on the date of application would be applied. The learned counsel contended that as no land norms were prescribed for recognition by DoE in 1997, therefore, no such norms could be enforced subsequently in respect of recognition that was granted in 1997.

8. The learned for the respondent disputed the contentions urged on behalf of the petitioner and contended as under:-

8.1 That the petitioner has failed to comply with the conditions as prescribed under Section 4(1), 4(4) and 4(6) of the Act.

8.2 That the petitioner did not comply with the necessary conditions as prescribed under Rule 50 of DSER, 1973.

8.3 That the recognition/upgradation was granted subject to certain conditions and since the conditions were not complied with, the petitioner school was liable to be derecognized.

8.4 That no negative equality could be claimed by the petitioner. And merely because any school may not have been proceeded against for de-recognition, would not entitle the petitioner to continue to be recognized despite failing to comply with the statutory conditions.

8.5 That the impugned orders have been passed in accordance with the provisions of the Act and therefore cannot be faulted.

9. Before proceeding to address the controversy, it would be necessary to refer to the relevant provisions of the Act. Section 4(1), 4(4) and 4(6) of the Act read as under:

“4. Recognition of schools— (1) The appropriate authority may, on an application made to it in the prescribed form and in the prescribed manner, recognise any private school:

Provided that no school shall be recognised unless—

- (a) it has adequate funds to ensure its financial stability and regular payment of salary and allowances to its employees;
- (b) it has a duly approved scheme of management as required by section 5;
- (c) it has suitable or adequate accommodation and sanitary facilities having regard, among other factors, to the number, age and sex of the pupils attending it;
- (d) it provides for approved courses of study and efficient instruction;
- (e) it has teachers with prescribed qualifications; and
- (f) it has the prescribed facilities for physical education, library service, laboratory work, workshop practice or co-curricular activities.

XXXX XXXX XXXX XXXX

(4). Where the managing committee of a school obtains recognition by fraud, misrepresentation or suppression of material particulars, or where, after obtaining recognition, the school fails to continue to comply with any of the conditions specified in the proviso to sub-section (1), the authority granting the recognition may, after giving the managing committee of the school a reasonable opportunity of showing cause against the proposed action, withdraw the recognition granted to such school under sub-section (1).

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(6). Every existing school shall be deemed to have been recognised under this section and shall be subject to the provisions of this Act and the rules made thereunder :

Provided that where any such school does not satisfy any of the conditions specified in the proviso to sub-section (1), the prescribed authority may require the school to satisfy such conditions and such other conditions as may be prescribed, within a specified period and if any such

condition is not satisfied, recognition may be withdrawn from such school.”

10. Rule 50 of DSER, 1973 mandates that no private school would be recognized until it fulfils the conditions as indicated therein. The relevant clauses of Rule 50 of DSER, 1973 are quoted below:-

“50. Conditions for recognition— No private school shall be recognised, or continue to be recognised, by the appropriate authority unless the school fulfils the following conditions, namely:-

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(vii) the building or other structure in which the school is carried on, its surroundings, furniture and equipment are adequate and suitable for an educational institution and, where there is any business premises in any part of the building in which such school is run, the portion in which the school is run adequately separated from such business premises;

(viii) the arrangements in the building or other structure and in the furnishings thereof meet adequately the requirements of health and hygiene;

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(x) the accommodation is sufficient for the classes under instruction in the school;”

11. Rule 51 of DSER, 1973 requires every private school seeking recognition to provide the facilities indicated therein. Such facilities include facility for physical education; library service; laboratory work; workshop practice and extra curricular activities. It is obvious that such facilities would require sufficient space. Physical education would require playgrounds; library service would require space for library and a reading room; laboratory work would require laboratories; workshop practice

would require a vocational workshop for conducting workshop practice; and co-curricular activities would also require suitable space. These facilities are in addition to the classes required for imparting tuitions.

12. Rule 56 of DSER, 1973 provides that if a school ceases to fulfil any of the requirement of the Act or any of the conditions specified in Rule 50 of DSER, 1973 or fails to provide the facilities as stated under Rule 51 of DSER, 1973, the recognition granted to such school may be withdrawn. Rule 56(1) of DSER, 1973 is quoted below:-

“56. Suspension or withdrawal of recognition— (1) If a school ceases to fulfil any requirement of the Act or any of the conditions specified in rule 50 or fails to provide any facility specified in rule 51, the appropriate authority may, after giving to the school a reasonable opportunity of showing cause against the proposed action, withdraw for reason to be recorded in writing, recognition from the school:

Provided that where the appropriate authority is satisfied that the deficiencies or defects are capable of immediate or early removal, it may, instead of withdrawing the recognition suspend the recognition for such period as it may think fit to enable the managing committee of the school to remedy the deficiencies or defects to the satisfaction of the appropriate authority:

Provided further that where the recognition of a school has been withdrawn or suspended, no appropriate authority shall grant recognition of such school whether run by the name by which it was known at the time of such withdrawal or suspension or by any other name, unless the school has removed the deficiencies or defects for which the recognition has been withdrawn or suspended.”

13. It is clear from the above that recognition to any private school is conditional upon the school having the requisite infrastructure and facilities and the said recognition can be withdrawn if the school ceases to fulfil the necessary conditions.

14. Much stress was laid by the learned counsel for the petitioner on the fact that the petitioner school had been granted recognition on the basis of the infrastructure that was existing at the material time. He emphasized that such recognition could not be read as conditional or provisional as that issue was settled by the Appellate Authority by an order dated 14.06.2006 whereby the Appellate Authority had referred to the decision of this Court in **The Digamber Jain Society for Child Welfare (Regd.) v. The Delhi Administration and others**: (Civil Writ No. 333 of 1977) and held that a recognition cannot be revoked except in the manner as contemplated by Sections 4 and 6 of the Act.

15. In my view, it is necessary to examine the context in which orders had been passed for granting recognition to the petitioner school. Although, the petitioner had applied for upgradation from secondary level to senior secondary level (from class 10th to class 12th commerce stream) on 12.01.1996 and had also admitted students to class XIth in the academic session 1996-97 in anticipation of being recognized, the interaction between the petitioner school and the DoE continued for almost 18 months thereafter. Finally, the petitioner's request was rejected by DoE on 30.07.1997. This decision was appealed before the Appellate Authority, *inter alia*, on the ground that the authorities had failed to appreciate the special circumstances in which the petitioner school was operating from its

current premises. It was pointed out that the school had been running on a plot of land allotted by DDA, however, it was later discovered that the title of the plot in question was disputed and the petitioner was dispossessed of the said land. The petitioner also represented that it had requested for an alternate site, which was being considered. The petitioner also cited instances of other similarly situated schools, who had been granted upgradation. The Appellate Authority took note of the circumstances in which the petitioner was operating the school from its current premises. The Appellate Authority also took note of the efforts made by the petitioner for securing an alternate site from DDA. In addition, it was noted that the DoE had unduly delayed taking a decision on petitioner's application which was required to be taken within four months. Keeping in view these special circumstances, by an order dated 17.12.1997, the Appellate Authority was persuaded to hold as under:-

“In view of the above discussion and the special circumstances in which the school has been forced to operate from the present premises, I am inclined to take a liberal view in the matter and allow the appellant's request for upgradation to Senior Secondary level for commerce stream only, for a period of two years subject to the condition that the school authorities shall within these two years, take necessary steps to have a proper plot of land allotted to them by the DDA so that they can move out of this difficult situation. I order accordingly.”

16. A bare perusal of the above order indicates that the petitioner did not fulfil the mandatory conditions and yet the Appellate Authority had directed grant of recognition for upgradation in expectation that the petitioner would comply with the necessary conditions and secure sufficient

land for running the school. The recognition was also limited to only two years.

17. The petitioner had accepted the above order dated 17.12.1997 passed by the Appellate Authority without any protest. In the normal course, the petitioner would have been estopped from challenging the conditions as indicated in the said order i.e. recognition would be limited only for a period of two years and subject to the condition that the school authorities would take necessary steps to secure a proper plot of land.

18. Concededly, the petitioner failed to comply with the condition subject to which the recognition was granted. The recognition granted for upgradation was not extended beyond the academic session 2004-05 and by a communication dated 01.04.2006 the petitioner was directed not to admit any student in class XIth in the academic session commencing from 2006. The petitioner successfully appealed against this communication, which was set aside by the Appellate Authority by an order dated 14.06.2006. The operative part of the said order dated 14.06.2006 passed by the Appellate Authority reads as under:

“I am inclined to agree with the appellant’s contention that the requisite procedure must be followed before the actual withdrawal of the recognition. The appellant will be at liberty to present its case before the competent authority, who shall take further action in accordance with the provisions of the Act only. The impugned order is set aside accordingly.”

19. In my view, the said order cannot be read as absolving the petitioner from complying with the conditions as specified under the Act or DSER,

1973. The petitioner has sought to read the order dated 14.06.2006 passed by the Appellate Authority to mean that the recognition granted earlier was absolute and unconditional. This, in my view, is clearly erroneous. The facts clearly indicate that the petitioner did not have the necessary infrastructure and yet had been granted recognition in the expectation that the petitioner would secure the necessary plot of land. In my view, the order dated 14.06.2006 passed by the Appellate Authority must be read as only directing the DoE to follow the due procedure as prescribed under the Act, for withdrawal of recognition. The import of the said order is that an automatic withdrawal of recognition for non-compliance of the condition could be inferred and the due process under the Act was required to be followed.

20. In compliance with the above direction, a show cause notice dated 25.09.2007 was issued to the petitioner. Admittedly, the said show cause notice was not pursued by the DoE and the file notings produced by the petitioner indicate that the DoE and the Education Minister, Govt. of NCT took the view that a decision would be taken in respect of all similar cases and not on case to case basis. Apparently, the files were sent back to be called as and when required. In my view, the file notings do not, in any manner, create any right in favour of the petitioner or preclude the DoE from examining whether the petitioner had failed in complying with the mandatory conditions under the Act or DSER, 1973. The notings only indicate that at the material time the authorities did not take a final decision on the show cause notice that was issued. It has been argued at length that once a decision was taken to consider all similar cases together, the

petitioner's case could not be taken up separately. I find it difficult to accept this contention. The file notings merely indicate the deliberations between various authorities and the same cannot be construed as an estoppel against the DoE from considering the petitioner's case thereafter. The DoE is duty bound to ensure that the mandatory provisions of the Act and DSER, 1973 are implemented.

21. The next issue to be examined is whether the petitioner did comply with the necessary requirements for grant of recognition. The learned counsel for the petitioner has urged that no land norms were in vogue at the material time in 1996-97 and therefore recognition for upgradation could not be withdrawn on account of land norms, which were notified later. Although DoE had not specified any land norms prior to 24.12.1999, it has been affirmed that the DoE followed the land norms as prescribed by CBSE. The relevant noting filed by the DoE are as quoted below:-

“Before 24.12.1999, there were no land norms set by the Directorate of Education for recognition of schools. The Directorate used to follow land norms of CBSE for affiliation which are as follows:-

-250 sq. m of area + 1 sq. m for every student on the rolls for a middle level.

- 500 sq. m of area + 1 sq. m for every student on the rolls for a secondary level.

-750 sq. m of area + 1 sq. m for every student on the rolls for a senior secondary school.”

22. In the above said circumstances, it would not be accurate to contend that no land norms were being followed at the material time. As per the

land norms prevalent at the material time, the petitioner was required to have an area of 750 sq. metres + 1 sq. metre for every student for being recognized as a Senior Secondary School. On 24.12.1999, DoE prescribed the land norms which required that a minimum area of 3000 sq. metres would be required for a school to be recognized at the Senior Secondary Level with a maximum of two streams. Concededly, the petitioner school is on a plot of land measuring 243.90 sq. meters. In my view, the decision that the said land is inadequate for running a senior secondary school cannot be faulted.

23. In my view, the decisions of this Court in ***Bal Vikas Public School*** (*supra*) and ***Glory Public School & Anr.*** (*supra*) do not assist the petitioner in any manner as the petitioner did not comply with the land norms even at the time of applying for upgradation.

24. The petitioner's contention that no action could be taken against the petitioner because similar action has not been initiated against other schools which are similarly situated also cannot be accepted.

25. Indisputably, the conditions as prescribed under DSER, 1973 have not been complied with; thus, there is no infirmity with the view of DoE that the petitioner's recognition is liable to be withdrawn. Even if it is accepted that there are other similarly placed schools against which no action has been taken, the same would not create any rights in favour of the petitioner. The Supreme Court in the case of **State of Bihar and others vs. Kameshwar Prasad Singh and another**: AIR 2000 SC 2306 had reiterated the well settled principle in the following words:-

“The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them.”

26. It is well settled that no mandamus can be issued to perpetuate an irregularity and a relief can be granted to the petitioner only when it is established that the petitioner’s claim is just and legal.

27. I find no infirmity with the impugned orders dated 03.12.2012 and 04.09.2013 and, therefore, the petition is dismissed. The pending application stands disposed of. No order as to costs.

FEBRUARY 19, 2014
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VIBHU BAKHRU, J