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

+ W.P.(C) 2756/2008, CM No.5298/2008 (for stay), CM No.10961/2011 (for dismissal of petition) & CM No.6854/2015 (for filing addl. documents)

PT.SHRADHA RAM TRUST COMMITTEE & ORS Petitioners
Through: Mr. D. Verma & Ms. Aparna Iyer,
Advs.

Versus

DIRECTORATE OF EDUCATION & ORS. Respondents
Through: Mr. Peeyoosh Kalra with Ms. Mahua
Kalra & Mr. Ankit Khurana, Advs.
for R-1 to 3.
Mr. Anil Sapra, Sr. Adv. with Dr.
Harsh Pathak, Mr. Sidharth & Ms.
Deepika, Advs. for R-4 to 18.

AND

+ W.P.(C) 5367/2013, CM No.12001/2013 (for stay), CM No.12283/2013 (for impleadment), CM No.6038/2015 (for direction) and CM No.7197/2015 (for filing addl. documents)

SRSD SENIOR SECONDARY SCHOOL Petitioner
Through: Mr. Anil Sapra, Sr. Adv. with Dr.
Harsh Pathak, Mr. Sidharth & Ms.
Deepika, Advs.

Versus

GOVERNMENT OF NCT & ORS. Respondents
Through: Mr. Naushad Ahmed Khan, Adv. for
GNCTD.

Mr. D. Verma & Ms. Aparna Iyer,
Advs. for R-5&7.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

07.01.2016

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1. Both the petitions concern the S.R.S.D. Senior Secondary School, an aided school, within the meaning of the Delhi School Education Act, 1973 and Delhi School Education Rules, 1973, situated at Lajpat Nagar, New Delhi.

2. W.P.(C) No.2756/2008 has been filed impugning the order dated 29th February, 2008 of the Directorate of Education (DoE) of Government of NCT of Delhi (GNCTD). The said order came to be passed in pursuance to the order dated 28th November, 2007 in W.P.(C) No.2046/2003 earlier filed by the petitioner in W.P.(C) No.2756/2008.

3. It appears that disputes and differences had arisen as to the management of the aforesaid School and DoE had accepted / recognized one set of management and challenging which decision of the DoE, W.P.(C) No.2046/2003 was filed. Finding that the DoE had not given any reason for accepting one set of management over the other, vide order dated 28th November, 2007 in W.P.(C) No.2046/2003, the DoE was directed to pass a

fresh order after hearing all the parties and stating reasons.

4. The DoE in pursuance thereto passed the order dated 29th February, 2008 *supra* (reiterating that the Managing Committee of the School constituted in 2003 was in accordance with the Act, Rules and the Scheme of Management of the School sanctioned by DoE) impugned in W.P.(C) No.2756/2008. The said writ petition was accompanied with an application for interim relief but no interim relief was granted though the petition was entertained and pleadings have been completed.

5. During the pendency of W.P.(C) No.2756/2008, DoE, finding that the Managing Committee which had been accepted by it was also mismanaging the School, vide order dated 10th January, 2012 in exercise of powers under Section 20 of the School Act *supra* took over the management of the School. A statutory appeal before the Lieutenant Governor was preferred thereagainst which also did not find favour and impugning which decision W.P.(C) No.5367/2013 has been filed.

6. An application for interim relief was filed along with W.P.(C) No.5367/2013 also. Though initially there was some ambiguity whether the management of the School had been taken over or not but it was subsequently resolved and as of today it is the admitted position that in

pursuance to the order dated 10th January, 2012, the management of the School has been taken over and the School is now being administered by the DoE and which order is valid till 31st January, 2016.

7. The counsel for the respondent GNCTD informs that the file has already been moved for extension of the said take over for a further period.

8. The counsels have been extensively heard.

9. The School Act and the School Rules only recognize the Managing Committee of the School even though schools are established by Societies or by Trusts.

10. In the present case, there is a dispute as to which is the sanctioned Scheme of Management of the subject School, with the petitioner in W.P.(C) No.2756/2008 relying upon one Scheme of Management and the petitioner in W.P.(C) No.5367/2013 relying upon another Scheme of Management. Without it being determined as to which is the Scheme of Management in pursuance where to the School aforesaid was established, the dispute as to who should constitute the management of the School cannot be resolved. It appears that the DoE in the order impugned dated 29th February, 2008 in W.P.(C) No.2756/2008 has found the Scheme of Management relied upon by the petitioner in the said petition to be the approved Scheme of

Management, even though the order is against the said petitioner.

11. The dispute pervades even deeper. The Scheme of Management relied upon by both the petitioners provides for the Management Committee of the School to comprise *inter alia* of nominees of one Pt. Shradha Ram Trust Committee (Regd.). The said Trust was created vide Will of one Tulsi Dev and which Will also describes the constitution of the Pt. Shradha Ram Trust Committee (Regd.). While according to the Scheme of Management of the petitioner in W.P.(C) No.2756/2008, the Managing Committee of the School is to comprise of seven nominees of the aforesaid Trust Committee, according to the Scheme of Management relied upon by the petitioner in W.P.(C) No.5367/2013, the Managing Committee of the School is to comprise of only two members of the Trust Committee; as per the said Scheme of Management, the Managing Committee of the School is to also comprise of nominees of Akhil Bhartiya Brahman Mahasabha (Regd.) / All India Brahman Mahasabha (Regd.) and which finds no mention in the Scheme of Management relied upon by the petitioner in W.P.(C) No.2756/2008.

12. The position is compounded further by the existence of a Society registered under the Societies Registration Act, 1860 viz. the Managing

Committee of Shradha Ram Sanatan Dharam High School. According to the senior counsel for the petitioner in W.P.(C) No.2756/2008, the said Society has no role in the constitution of the Managing Committee of the School. However, according to the counsel for the petitioner in W.P.(C) No.5367/2013, the Managing Committee of the School is itself registered as a Society. The same however does not appear to be permissible under the School Act and the School Rules which do not provide for the Managing Committee of the School to be a Society.

13. The question for consideration in W.P.(C) No.2756/2008 is the correctness of the order impugned therein rejecting the claim of the petitioner therein to be managing the School and upholding the claim of the petitioner in W.P.(C)No.5367/2013 to manage the School.

14. The counsel for the petitioner in W.P.(C) No.2756/2008 has of course contended that the order impugned in W.P.(C) No.2756/2008 is also without any reason and the matter be remanded to the DoE for decision afresh.

15. In view of the aforesaid factual controversy, I have enquired from the counsels as to how the said factual controversy can possibly be resolved by the DoE and whether not the said factual controversy can only be resolved either in a suit, whether under Section 92 of the CPC or otherwise, or in an

arbitration.

16. The DoE under the School Act has jurisdiction only over the Managing Committee of the School. Though the DoE, to a limited extent, can adjudicate, who is entitled to constitute the Managing Committee but the Managing Committee as per the Scheme of Management relied upon by both the parties is to comprise of also the nominees of the Trust Committee aforesaid. The decision as to the Managing Committee would also depend upon who are the nominees of the Trust Committee. The DoE cannot be directed to extend its jurisdiction to determine the constitution and nominees of the Managing Committee supra. Similarly, the DoE cannot be called upon to decide the role of the Society aforesaid. I am therefore of the opinion that the disputes as to who all the Managing Committee of the subject School is to comprise of and which is the proper body to nominate members to the Managing Committee and who are those nominees cannot be ordered to be decided by the DoE. The parties necessarily have to be relegated to a civil suit or an arbitration for the said purpose.

17. As far as W.P.(C) No.5367/2013 is concerned, the challenge therein to the order of takeover of the School, is on technical grounds. It is argued that no proper show cause notice was given, no hearing given and the

principles of natural justice were also not complied with. It is contended that the documents used for take over of the School were not even supplied to the Managing Committee earlier managing the School.

18. I have perused the order impugned in W.P.(C) No.5367/2013. The same, besides giving the reason of tussle between two factions of the management with regard to control of the School, also records the following deficiencies having been found on inspection of the School:

- “• Despite the clarification given by National Council for Teacher Education to the effect that the course of ‘Shiksha Visharad’ done by Mrs. Radhika Sharma from ‘Hindi Sahitya Sammelan, Allahabad is not recognized as B.Ed. for appointment as PGT (Hindi) and the consequent approval accorded by Director (Education) to cancel the appointment of Mrs. Radhika Sharma, she continues to be in the school.

The Managing Committee of the school was directed to cancel her appointment vide letter dated 17.06.2010 with immediate effect and the manager was asked vide letter dated 8.8.2010 about the compliance of the letter dated 17.06.2010. But he failed to comply with the directions communicated vide letter dated 17.06.2010. Further, the Manager of the school was, once again directed to comply with the orders dated 17.06.2010 vide letter dated 01.10.2010. However, Mrs. Radhika Sharma is still found to be attending the school till date. The Managing

Committee failed to comply with directions of the Directorate, thus violating Rule 50 (xviii) of DSEAR-1973.

- The School shows 500 students at its strength whereas the actual enrolment counted physically during the inspection (including absentees) is 327 only. The purpose of showing falsely inflated strength is to illegally obtain / retain posts of teachers and other staff. Surprisingly, the school retains 39 sanctioned posts for a meagre strength of 327.
- The enrolment of the school has been declining. As per the data supplied by the school, it was 642 in 2005-06 which today has been reduced to 327.
- Students of almost all the classes from VI to XII complained (in writing) that donation was charged compulsorily, at the time of admission. The amount of compulsory donation ranged from Rs.4100/- to Rs.12,100/-.
- Instead of one admission register the School maintains four. During scrutiny of these registers, it was observed that there are lots of cuttings and over-writings and these were not even attested by the Head of School. Some of the pages were even left blank without any entry.
- Sh. R.C. Sharma, manager of the school, does not possess the qualification as laid down in order No.DE 15(Act)/2004/SDM/8464-8513 dated 19-10-2004 of the Directorate.
- The manager of the school did not co-operate with the inspection team. He also levelled false allegations against the team.
- The school management has not been maintain the cash books and the audited balance sheets for the last five years.

- The school has got the school magazine printed which contains some objectionable photographs in advertisements. The School management has earned money from the advertisements without caring that the photos are not in good taste for the children.
- In addition, the students also gave, in writing, the following grievances to the members of the visiting inspection team:
 - a) School does not provide any books.
 - b) Library has not been opened for quite some time. Later, the management also accepted that the library was not functional between 30-11-2003 and 16-02-2009.
 - c) There is hardly any water facility.
 - d) Toilets remain dirty. Cleaning of school has to be done by students.
 - e) There is no Science Lab.
 - f) There is no computer education in the school.
 - g) School is charging Rs.90/-, including Rs.30/- to PTA, per quarter.
 - h) School is also charging Rs.100/- as Annual Charge.
 - i) Rs.30/- is separately being charged for I-Card, so on and so forth.

19. The senior counsel for the petitioner in W.P.(C) No.2756/2008 of course controverts that no proper opportunity was given before the take over order or that the principles of natural justice were not complied with.

20. The counsel for the petitioner in W.P.(C) No.5367/2013 responds that the take over order is the result of the complaints of the petitioner in W.P.(C) No.2756/2008.

21. I do not feel the need to adjudicate on the aspect whether there is a breach of procedure prescribed in law and / or of principle of natural justice in passing the order of take over of the School because it is evident from the aforesaid facts that the affairs of the School are in a mess. The School is funded to the extent of 95% by the GNCTD and the counsel for the GNCTD on enquiry states that as against 327 students earlier found studying in the School as against the capacity of 500, now 770 students are studying in the School. Moreover the period for which the School was taken over by the impugned order is already nearing expiry and the decision whether the said period of take over is to be extended is awaited.

22. W.P.(C) No.5367/2013 has thus become infructuous and is dismissed on this ground also.

23. The senior counsel for the petitioner in W.P.(C) No.2756/2008 states that while relegating the parties to the Civil Courts / arbitration, it be directed that the management of the School till then would continue to vest with the DoE.

24. The counsel for the petitioner in W.P.(C) No.5367/2013 opposes.

25. The aforesaid question is not to be considered by this Court and is in the domain of the DoE. All that can be observed is that if the DoE decides

to extend the period for take over of the School, it will be open to both the parties in the civil proceedings / arbitration to which they are being relegated to make applications for interim relief. I say so because the presence of the DoE would also be necessary in the said suit to determine which of the Scheme of Management i.e. relied upon in one petition or the other petition is the approved Scheme of Management and the presence of the DoE in the said suit is also necessary for compliance of the judgment / award to be ultimately passed in the said proceedings.

26. W.P.(C) No.2756/2008 is thus disposed of relegating the parties to the civil proceedings / arbitration.

27. I have enquired from the counsels whether they are agreeable to arbitration. While the senior counsel for the petitioner in W.P.(C) No.2756/2008 under instructions states that the petitioner therein is agreeable, the counsel for the petitioner in W.P.(C) No.5367/2013 states that he will need to obtain instructions.

28. The parties, if so desire, may within one month enter into an agreement agreeing to an arbitrator and in which case the disputes aforesaid can be resolved expeditiously and which expediency is in the interest of the School. All parties are expected to take decision in this regard showing due

regard to the better management of the School and to which they have no other right but as trustees.

No costs.

RAJIV SAHAI ENDLAW, J.

JANUARY 07, 2016
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