

\$~1

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

+ LPA No. 599/2015 & CM No. 19218/2015

Judgment pronounced on: January 06, 2017

SUNHILL PUBLIC SCHOOL

..... Appellant

Through: Mr. R.K Saini with Ms. Minal,
Advocates.

Versus

GOVT. OF NCT OF DELHI & ORS

..... Respondent

Through: Mr. Varun Nischal, Advocate for
R-1 to R-3.

Mr. Atul Kumar, Advocate for R-
4/CBSE.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. The present Letters Patent Appeal has been filed against the order dated 19.02.2015 passed by the learned Single Judge in W.P. (C) 7710/2013 whereby the petition was dismissed on the ground that the appellant did not conform to the land norms as per the requirements of section 4 of the Delhi School Education Act and Rule 50 and 51 of the Delhi School Education Rules, 1973.

2. 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DoE issued a show cause notice calling upon the petitioner to show cause why the recognition granted should not be withdrawn since the petitioner had failed to obtain the necessary land from DDA.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."

3. Mr. R. K. Saini, learned counsel appearing on behalf of the appellant strongly contended that the order passed by the learned Single Judge is wholly erroneous and contrary to the settled principles of law. The learned counsel submitted that there is no provision under the Delhi School Education Act, 1973 (hereinafter referred to as "the Act") and the Delhi School Education Rules, 1973 (hereinafter referred to as "the Rules") to withdraw the upgradation/recognition on any other grounds other than the grounds mentioned in the Act. He further submitted that the Directorate of Education can withdraw recognition of a school only when the conditions specified in sub-section (1) of section 4 or in Rule 50 of the Rules are not complied with by any recognized school.
4. The learned counsel for the appellant urged that the appellant school has complied with all the conditions of recognition as prescribed under section 4 of the Act without any exception and to the satisfaction of the Authorities. He also claimed the ground of parity and urged 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 thus, the issue of land cannot be taken as a cause of action for the withdrawal of recognition/upgradation of the appellant school.
5. The learned counsel for the appellant further contended that the Lt.

Governor vide order dated 14.06.2006 in case No. 23/06-CA set aside the order dated 01.04.2006 passed by the Directorate of Education proposing withdrawal of upgradation. In compliance of order dated 14.06.2006, the Directorate of Education issued a show cause notice on 25.09.2007 to which a detailed reply was filed on 10.10.2007 and thereafter, the respondents did not take any action against the school meaning thereby that it was satisfied with the reply dated 10.10.2007 of the school. Thereafter, the respondent issued a show cause notice again only on 13.06.2012 after sleeping over the matter and followed the alleged procedure after a gap of almost 6 years.

6. To substantiate his arguments, the learned counsel relied upon ***Bal Vikas Public School and Anr. vs. Govt of NCT of Delhi & Anr (C.W. No. 3838 of 2000)*** decided on 03.01.2003 and ***Glory Public School and Anr. vs. Lt Governor, Govt of NCT & Ors (C.W. 2126/2003)*** decided on 28.05.2003, wherein it has been categorically held that the new norms with reference to requirement of land were mere executive instructions and did not partake the nature of statutory Rules as envisaged in section 28(2) of the Act. It was further held that there is no legal sanction for making these executive instructions applicable retrospectively.

7. Reliance was also placed by the counsel for the appellant upon ***The Digamber Jain Society for Child Welfare (Regd.) vs. The Delhi Administration and others (C.W. No. 333 of 1977)*** wherein it was held that recognition cannot be revoked except in the manner as contemplated by section 4 and 6 of the Act.

8. On the converse, Mr. Varun Nischal, learned counsel appearing on behalf of the respondents No. 1 to 3 and Mr. Atul Kumar, learned counsel

appearing for respondent No. 4 disputed the contentions urged on behalf of the appellant and contended that the appellant has failed to comply with the conditions prescribed under sub-sections (1), (4) and (6) of section 4 of the Act and Rule 50 of the Rules.

9. The learned counsel for the respondents further contended that the recognition/upgradation was granted subject to certain conditions which also includes land norms and since the conditions were not complied with, the appellant school was liable to be derecognized. Further, no negative equality could be claimed by the appellant merely on the basis that no other school has been proceeded against for de-recognition, would not allow the appellant school to be continued to be recognized despite non compliance with the statutory conditions.

10. We have heard learned counsel for the parties and considered rival submissions and perused the material available on record.

11. Before dealing with the controversy, it would be necessary to refer to the relevant provisions of the Act. Relevant sub-clauses of section 4 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.*

xxxxxx

(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).

xxxxxx

(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."

12. Rule 50 of the Rules framed under the Act reads as under-

"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:-

xxxxxx

(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;

xxxxxx

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

13. Rule 51 of the Delhi School Education Rules, 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.

14. Rule 56 of Delhi School Education Rules, 1973 provides that if a school ceases to fulfill any of the requirement of the Act or any of the conditions specified in Rule 50 or fails to provide the facilities as stated under Rule 51, the recognition granted to such any school may be withdrawn. Rule 56(1) of the rules is reproduced hereinunder-

"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."

15. It is clear from the above provisions of law that requisite infrastructure and facilities is a pre requisite for recognition/upgradation to any private school and the recognition shall be withdrawn if the said conditions are not complied with.

16. To deal with the submission made by the learned counsel for the appellant that at the time of recognition i.e. 1996-1997, there were no land norms prevailing for grant of recognition. In this context, it would be relevant to mention para 21 of the impugned judgment which reads as under-

"21.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."

17. It is an undisputed fact that the appellant school was established in the year 1982 and upgraded to a secondary level school in the year 1986-87. Thereafter, the appellant school applied for senior secondary school status and was granted permission in the year 1996-97 subject to certain conditions. We find that it would not be correct to contend that there were no land norms prevailing during the period of 1996-97. It is evident from the record that the appellant was required to have an area of 750 sq. meters + 1 sq. meter for every student for being recognized as a senior secondary school. In the given case, Directorate of Education vide order dated 24.12.1999 affirmed that the land norms prescribed for a school to be recognized at the Senior Secondary level is a minimum area

of 3000 sq. meters. However, the appellant school is on a plot of land measuring 243.90 sq. meters, which is much less than the prescribed limit.

18. At this stage, it would be pertinent to set out the operative part of the order dated 17.12.1997 passed by the Lt. Governor, Delhi. The relevant para reads as under-

"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 proper plot of land allotted to them by the DDA so that they can move out of this difficult situation. I order accordingly."

19. In this backdrop, we are of the considered view that the appellant did not have the necessary infrastructure and yet had been granted recognition on the expectation that the appellant would secure the necessary plot of land. The appellant did not make any efforts to take necessary steps to acquire the proper plot of land for the said recognition.

20. In view of the above facts and circumstances, we see no reason to interfere with the judgment rendered by the learned Single Judge.

21. The appeal is accordingly dismissed.

SANGITA DHINGRA SEHGAL, J

CHIEF JUSTICE

JANUARY 06, 2017