



2024:DHC:493



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 11828/2022 and CM Nos. 35243/2022 & 34280/2023**
MOUNT COLUMBUS SCHOOL Petitioner

Through: Mr. Kamal Gupta, Ms. Kriti Gupta, Mr. Sparsh Aggarwal, Mr. Manish Vashist & Mr. Nikhil Kukreja, Advocates.

versus

DIRECTORATE OF EDUCATION & ANR Respondents

Through: Mr. Santosh Kumar Tripathi, Standing Counsel with Mr. Arun Panwar, Mr. Pradyumn Rao, Mr. Utkarsh Singh, Mr. Kartik Sharma, Ms. Prashansa Sharma, Mr. Rishabh Srivastava & Ms. Nikita Vir, Advocates.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER
22.01.2024

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1. The petitioner is a private unaided recognised senior secondary school.

2. Section 20(1) of the Delhi School Education Act, 1973 ("the DSE Act") empowers the administrator to, in the event of his being satisfied that the Managing Committee of a school has neglected to perform any of the duties imposed on it by or under the DSE Act or any Rule made thereunder and that it is expedient in the interests of



2024:DHC:493



school education to take over the management of the said school, to do so, for a period of three years. However, the sub-section requires the administrator to, before doing so, provide a reasonable opportunity to the school to show cause against the proposed action of taking over the management of the school.

3. In *Managing Committee, Vidhya Bharti Girls School v. Directorate of Education*¹, a Division Bench of this Court held that the power to take over the management of a school vested only in the Hon'ble Lieutenant Governor as the administrator, and did not vest in the Director of Education (DOE).

4. On 13 September 2021, the DOE issued a show cause notice to the petitioner. The show cause notice alleged that various complaints had been received against the petitioner during the year 2006-07, following which a special inspection of the petitioner's premises was conducted under Section 24(2) of the Delhi School Education Rules, 1973 (DSE Rules), during which various discrepancies were noticed. The show cause notice also referred to certain complaints which had been received against the management of the school, in respect of which an earlier show cause notice dated 24 December 2018 had been served on the school, to which the school responded. The show cause notice dated 13 September 2021 set out various management and administration related discrepancies as well as financial and other irregularities in the functioning of the school which had allegedly come to notice on perusal of the allegations against the school and the

¹ 198 (2013) DLT 355 (DB)



2024:DHC:493



response of the school in that regard. The school was, therefore, directed to show cause as to why action under section 20(1) of the DSE Act read with Section 24(4)(c) of the DSE Rules, for taking over of the management of the school, be not initiated.

5. Given the fact that the allegations pertained to the incident which had taken place before considerable time in the past, the school requested for further extension of time to file reply to the show cause notice.

6. It was also prayed, in one of the replies dated 27 September 2021 that, after the school had filed its reply to the show cause notice, hearing be provided to the school by the Lieutenant Governor as the administrator who was the sole empowered authority to take over the management of the school.

7. On 3 November 2021, the DOE issued a communication to the school, informing the school that the Director (Education) had agreed to grant personal hearing to the school before any decision to take over its management was arrived at.

8. Mr. Kamal Gupta, learned counsel for the petitioner submits that the issuance of this communication indicates that the DOE was in agreement with the school that, before its management was taken over, an opportunity of personal hearing was required. However, he submits that there is no question of personal hearing being granted by any authority other than the Lieutenant Governor, as the administrator who alone could take a decision to take over the management of the



2024:DHC:493



school.

9. As it transpired, after the show cause notice was issued, the premises of the school were inspected once again by the officers of the Directorate of Education on 20 April 2022. The petitioner sought for being provided a copy of the inspection report prepared on the said date. That request was rejected by the DOE *vide* communication dated 14 June 2022.

10. It is in these circumstances that the petitioner has instituted the present writ petition before this Court. There are essentially two prayers made in the petition, though they have been divided into three. The first prayer is that the petitioner be provided a hearing by the Lieutenant Governor before any decision is taken on the show cause notice dated 13 September 2021. The second is that the petitioner be provided a copy of the inspection report dated 20 April 2022 and that, therefore, the decision of the DOE dated 14 June 2022, rejecting the petitioner's representation in that regard, be quashed and set aside.

11. During the pendency of these proceedings, the inspection report has been provided to the petitioner. As such, the prayers for being provided the said report and for setting aside the decision dated 14 June 2022 do not survive for consideration.

12. The only issue that remains to be considered is, therefore, whether the petitioner is entitled to an opportunity of personal hearing by the Lieutenant Governor before a decision is taken on the show cause notice dated 13 September 2021.



2024:DHC:493



13. I may observe that a coordinate bench of this Court has already addressed this issue in its judgment in *Kalka Public School v. Hon'ble Lieutenant Governor of Delhi*². In the said decision, the coordinate bench has specifically held, in an identical circumstance, and after considering the various decisions including judgments of the Supreme Court on the point, that as the decision to take over a running school is an extreme decision which entails civil consequences on the school, an opportunity of personal hearing before such decision is taken is an imperative. It also goes without saying that personal hearing can be granted only by the authority which is to take the decision. Law in this country does not envisage, or even tolerate, personal hearing being granted by Peter, where the decision is to be taken by Paul.

14. The Supreme Court has also, in *Swadeshi Cotton Mills v. U.O.I.*³, held that in appropriate cases, where civil consequences would result, the Court would read in the requirement of personal hearing and the *audi alteram partem* is imperative into statutory instructions even if the concerned provisions do not specifically so state.

15. Given the drastic nature of the action that is proposed in the show cause notice dated 13 September 2021, it is obvious that the authority who is empowered in this regard should necessarily provide a personal hearing to the petitioner before the said decision is taken.

² 2018 SCC OnLine Del 8857

³ (1981) 1 SCC 664



2024:DHC:493



16. This Court is completely in agreement with the enunciation of law on the issue in that regard by the coordinate bench in *Kalka Public School (supra)*.

17. In view of the aforesaid, the prayer of the petitioner deserves to be allowed. Accordingly, the Hon'ble Lieutenant Governor is requested to grant an opportunity of personal hearing to the petitioner before taking a decision on the show cause notice dated 13 September 2021. Needless to say, the personal hearing would be granted at the convenience of the Hon'ble Lieutenant Governor. It would be for the petitioner to make itself available on the said occasion. The petitioner would not be at liberty to seek any adjournment.

18. It also goes without saying that should the petitioner remain aggrieved by any decision that is taken in the show cause notice, the remedies as available in law stand reserved.

19. The writ petition is allowed in the aforesaid terms with no orders as to costs.

C.HARI SHANKAR, J

JANUARY 22, 2024

B.S. Rohella

Click here to check corrigendum, if any