



2024:DHC:8201



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of Decision: 23rd October 2024**+ **W.P.(C) 26/2022 & CM APPL. 37764/2023****KULDEEP KUMAR & ANR.**

..... Petitioners

Through: Petitioner No.1 in-person.

versus

DIRECTORATE OF EDUCATION DELHI & ORS. Respondents

Through: Mr. Utkarsh Singh, Advocate for Mr. Santosh Kumar Tripathi, Standing Counsel (Civil) for R-1.

Mr. Arvind Nayar, Senior Advocate with Mr. Vedanta Verma, Ms. Apoorva Pandey and Mr. Rishabh Mishra, Mr. Shubhankar Choudhary and Mr. Shubham, Advocates for R-2.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**J U D G M E N T****ANUP JAIRAM BHAMBHANI J.**

By way of the present petition under Article 226 of the Constitution of India, the petitioners seek a direction to quash oral order dated 10.02.2020 and letter/order dated 02.03.2020 passed by the Vice-Principal of respondent No.2/St. Mark's Girls Sr. Sec. School, Meera Bagh, Delhi whereby petitioner No. 1 was informed that petitioner No.2's name has been struck-off the rolls of respondent No. 2 school *w.e.f.* 11.02.2020 for non-payment of tuition fee.

2. Petitioner No. 1 is the father of petitioner No. 2, who (latter) was admitted to respondent No. 2 school in Class : Nursery/Pre-School in



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the Academic Session 2019-2020. Respondent No. 1 is the Directorate of Education ('DoE'), which is the regulatory body that oversees the functioning of private unaided schools recognised by it in Delhi; and respondent No. 2 is one such school.

3. Notice on this petition was issued on 14.01.2022; whereupon counter-affidavit dated 28.03.2022 has been filed by respondent No.2; to which rejoinder dated 22.02.2023 has been filed on behalf of the petitioners. Counter-affidavit dated 21.03.2023 has also been filed on behalf of respondents Nos.1 and 3/Directorate of Education.
4. The court had first heard Mr. K.C. Mittal, learned counsel, and then Mr. Rahul Mehra, learned senior counsel who had appeared for the petitioners on earlier dates. Finally, at the stage when judgment was reserved, the petitioners have appeared in-person. Mr. Arvind Nayar, learned senior counsel has appeared on behalf of respondent No.2 school; and Mr. Utkarsh Singh, learned counsel has represented the DoE appearing on behalf of Mr. Santosh Kumar Tripathi, learned Standing Counsel (Civil) for the Delhi Government.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

5. It is the petitioners' case that petitioner No. 2 was admitted in respondent No. 2 school in the Academic Session 2019-2020 in Class: Nursery/Pre-School, when they were asked to pay a sum of Rs.46,000/- as provisional school fee; whereafter they have paid Rs.5,130/- as the monthly tuition fee from time-to-time.
6. It is argued that thereafter however, respondent No. 2 school has illegally increased its tuition fee from Rs. 5,130/- per month (which



was the prevalent fee structure in the Academic Session 2014-2015) to Rs. 7,700/- per month *w.e.f.* the Academic Session 2015-2016. In support of this contention, the petitioners have relied upon Fee Receipt (2019-20) dated 30.03.2019, which shows the tuition fee for the months of April, May and June as Rs. 23,100/- (*i.e.* Rs. 7,700/- per month). A copy of Fee Receipt (2019-20) dated 30.03.2019 is appended as Annexure P-3 to the petition.

7. The petitioners also draw attention to the Fee Card for the Academic Session 2014-2015, which evidences the tuition fee for Class : 'Seedling' as Rs.5,130/- per month and Annual Charges as Rs.4,130/-. The petitioners allege that this fee-schedule was stapled on the school diary of petitioner No. 2 to "... ..avoid any confusion... .." in this regard.
8. The petitioners further contend, that respondent No. 2 school has itself admitted that there is a difference in the tuition fee charged from students who were admitted at the entry-level class *after* Academic Session 2015-2016. To substantiate the submission, the petitioners draw attention to the following narration in affidavit dated 08.05.2023 filed on behalf of respondent No. 2 school :

"8. That the Students who were admitted into the Respondent No. 1 School prior to 2015 are continued to be charged fees at the earlier rates, while those students who obtained admission in the Respondent No. 1 School 2015 onwards, are charged fees at the rate of Rs. 7,000/- per month. There is no bar that prevents the School from having two different fee schedules for students studying in different batches, as long as the School is not found to be engaging in commercialization or profiteering."

(emphasis supplied)



9. Though the petitioners do not dispute that petitioner No. 2 was admitted to respondent No. 2 school in the Academic Session 2019-2020 in the entry level class viz. Class: Nursery/Pre-School, *that is to say after the Academic Session 2015-2016*, the petitioners contend that the school cannot be permitted to charge different rates of fee from students studying in the same class, in the same batch, since according to the petitioners, that would be arbitrary, unreasonable and violative of Article 14 of the Constitution of India.
10. The petitioners point-out that *vide* order dated 29.03.2023 made in the present case, respondent No. 2 school was directed to file an affidavit detailing the tuition fees, annual charges, and the amounts being charged under other heads from each class starting from Class : Nursery till Class-XII; with a further direction that the school shall also indicate as to how the expenditure towards air-conditioning is being factored-in by the school in the amounts charged from the students. The petitioners draw attention to affidavit dated 08.05.2023 filed on behalf of respondent No. 2 school in compliance of the aforesaid order, where the school has said this :

*“7. It is submitted that the **Revenue Expenditure towards Running and Maintenance of Air Conditioning/Heating System is being factored in the Tuition Fee since the year 2015-16** since the inspection report was awaited, and directions pursuant thereto are yet to be issued by the DoE. The said expenditure constitutes two components of Interest & Depreciation which are pending adjudication by this Hon’ble Court in Review Petition 270 of 2018.”*

(emphasis supplied)



11. The petitioners accordingly argue, that the school cannot include air-conditioning charges in the tuition fee, since doing so is against the mandate of a Division Bench of this court in ***St. Marks Sr. Sec. Public School & Anr. vs. Director of Education & Anr. and another connected matter***,¹ in which the court has observed as follows :

“26. As per the Duggal Committee report, Tuition Fee is to be fixed so as to cover the standard cost of establishment including provision for D.A., bonus and all terminal benefits and also to cover all expenditure of revenue nature for the improvement of curricular facilities like Library, Laboratories, Science Fee and Computer Fee up to class X and examination expenses. The expenditure for running an Air Conditioning Plant does not qualify as expenditure covered by Tuition Fee. It is not directly related to curricular facilities.”

“27. By the Impugned order dated 16.06.2017, the D.O.E. has held that the Tuition Fee could not be increased for recovery of the expenditure for running the Air Conditioning Plant but permitted the Schools to recover the same by increase in Annual Charges, however for the year 2015 - 2016, the schools have not been permitted to charge the same they had already increased the Annual Charges. The schools had factored the expenditure for running the Air Conditioning Plant in the increase in Tuition Fee and not the Annual Charges. The effect of the D.O.E. order is that the schools would be unable to recover even the direct expenditure for running the Air Conditioning Plant.

“28. Once D.O.E. has accepted that the revenue expenditure for running the Air Conditioning Plant could be collected under the head Annual Charge, while declining the claim of the Schools under the head Tuition Fee, it should have permitted the Schools to increase the Annual Charge so as to cover the direct expenditure for running the Air Conditioning Plant.”

(emphasis supplied)

¹ 2018 SCC OnLine Del 8977



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12. The petitioners therefore contend that expulsion of petitioner No. 2 from the school for non-payment of tuition fee at the rate of Rs.7,700/- is 'illegal'; and that respondent No. 2 should be directed to charge tuition fee only in the sum of Rs. 5,130/- per month, *as approved by the DoE for the Academic Session 2014-2015.*

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 2 SCHOOL

13. At the outset, Mr. Arvind Nayar, learned senior counsel appearing for respondent No. 2 school submits, that the present petition is barred by delay and laches, inasmuch as petitioner No.2's name was struck-off from the rolls of respondent No. 2 school *w.e.f.* 11.02.2020, and the petitioners were informed about the decision *vide* letter dated 17.02.2020; however, the present petition came to be filed only on 27.12.2021, *i.e.* more than 1 year and 10 months later.
14. Mr. Nayar submits, that there is no dispute with the fact that petitioner No. 2 was admitted in Class : Nursery/Pre-School in the Academic Session 2019-2020, knowing full-well what the tuition fee for the Academic Session was. However, the petitioners now seek to contend that the tuition-fee *ought to have been* charged as per the fee structure prevailing in Academic Session 2014-2015, *i.e.* the fee structure prevailing 04 years before they joined the school.
15. Learned senior counsel further contends, that when the petitioners did not clear the outstanding dues despite repeated reminders, which dues related to the period December 2019 upto February 2020, that is till the end of the Academic Session, the school had no option but to strike-off the name of petitioner No. 2 from its rolls. It is pointed-out



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however, that it must be appreciated that despite non-payment of fee, respondent No. 2 school did not strike-off the name of petitioner No.2 in the middle of the Academic Session and allowed her to complete the session, so that her academic year was not wasted. It is also argued that the fee structure based on which the petitioners were required to pay, has been prevailing since the Academic Session 2015-16 and no increase in the fee structure has been made by the school since then.

16. In support of the aforesaid contention, Mr. Nayar draws attention of this court to Letter dated 17.02.2020 written by the Principal of respondent No.2 school to the Deputy Director of Education (Zone-17) intimating the expulsion of petitioner No. 2 from their school. The relevant extract of the said letter reads as follows :

“Please take the reference of your office letter No. No.Z-17/2020/214 dtd. 14.02.2020 regarding representation of Mr. Kuldeep Kumar in r/o his daughter Pratibha Tiwari, a student of class Nursery (i.e. Preschool) vide Admn. No. 6313. We wish to submit that the name of the student has been struck off on 11.02.2020 due to non-payment of school dues since December 2019. She was admitted in the session 2019-20 in class Nursery by his father Mr. Kuldeep Kumar who was well aware of the fee structure of the school and has given undertaking in writing. (copy attached). The present fee structure is prevailing since the session 2015-16 and no increase in the fee structure has been made since then.

However, he has been reminded through various SMSs dated 20.09.19, 21.10.19, 31.10.19, 20.11.19, 02.12.19, 20.12.19 and 16.01.20 and office letter no. SMGS/2019-20/326/2092 dtd. 13.09.19, SMGS/2019-20/498/2264 dtd. 21.10.19, SMGS/2019-20/902/2659 dtd. 27.01.2020 and SMGS/2019-20/913/2669 dtd. 03.02.2020. The details of total amount deposited since April 2019



is attached herewith. The total amount due as on 10 February 2020 is Rs19283/-."

17. In response to the petitioners' contention that respondent No. 2 school has *illegally increased* the tuition fee, Mr. Nayar submits that the petitioners were well aware that the tuition fee of respondent No. 2 school was not Rs. 5,130/-, and *has remained at Rs. 7,000/- since Academic Session 2015-2016 till date*. In support of this submission Mr. Nayar draws attention to counter-affidavit dated 16.01.2019 filed by the DoE in another matter bearing W.P.(C) No. 2783/2018 titled *Vijay Malhotra vs. Director of Education & Ors.*, concerning the same school, where the DoE has said this :

"10. That the Petitioner had written to the Respondents No. 1 and 2 on 15.11.2017 (annexed as Annexure P20 in the main petition), the Respondents No 1 and 2 very diligently made an enquiry and put forth the reply of the Respondent school, which was duly communicated to the Petitioner stating that:-

- A. *That the same issues arose previously in W.P. 2355/2015 and W.P. (C) 2435/2016.*
- B. ***The answering school had last fixed the fee for entry level in the academic year 2015** and the Petitioner had his son admitted in the year 2016 in grade 2, being aware of the fee structure of the Respondent school.*
- C. ***That no hike in the fee structure has been affected (sic) by the Respondent schools.***

(emphasis supplied)

18. Mr. Nayar accordingly submits, that as per the present fee structure of respondent No. 2 school, the tuition-fee payable by the petitioners remains as Rs. 7,000/- per month, which fee structure has been in place since 2015-16 till date. In view of the above, it is argued that petitioner No. 2, having been admitted to school in Academic Session



2019-2020, is required to pay the fee of Rs. 7,000/- and not Rs.5,130/, as incorrectly claimed by the petitioners.

19. For abundant clarity, learned senior counsel also clarifies, that though for the months of April, May and June 2019, the petitioners had paid tuition fee of Rs. 7,700/- per month, in view of the fact that the proposed increase had been rejected by the DoE, the school had duly adjusted the excess amount paid by the petitioners and the tuition fee for the later months has only been charged at Rs. 7,000/- per month. To substantiate the submission, Mr. Nayar has drawn attention to Letter date 27.01.2020 addressed by the school to petitioner No.1, and to Fee Receipt (2019-2020) dated 14.08.2019 relating to the months of July and August 2019, copies of which have been appended to the petition.

SUBMISSIONS ON BEHALF OF THE DoE

20. Mr. Utkarsh Singh, learned counsel appearing on behalf of Mr. Santosh Kumar Tripathi, learned Standing Counsel (Civil) for the DoE submits, that respondent No.2 is a *private unaided* school, recognized by the DoE, and is bound to comply with the provisions of the Delhi School Education Act, 1973 ('DSE Act').
21. Mr Singh submits, that the relevant rule relating to striking-off a student's name from the rolls of a school is Rule 35 of the Delhi School Education Rules 1973, which reads as under :

35. Striking off the name from the rolls.—

(1) The name of a student may be struck off the rolls by the head of the school on account of:



(a) non-payment of fees and other dues for 20 days after the last day for payment:

Provided that nothing in this rule shall apply in case students of class VIII and below, studying in Government or aided schools, or in schools run or aided by the appropriate authority, except where such students have attained the age of fourteen years;

(b) continued absence without leave for six consecutive days by a student who has attained the age of fourteen years.

(2) In the case of absence of any student who has not attained the age of fourteen years, from a school without leave for six consecutive days, the head of school shall intimate such absence to the parent or guardian of such student.

(3) In respect of payment of fees, however the head of the school may grant not more than 10 days' of grace in deserving cases on application by the parent or guardian.

(4) Notwithstanding anything contained in sub-rule (1), no student's name shall be struck off the rolls except after giving the parent or guardian of such student a reasonable opportunity of showing cause against the proposed action.

(emphasis supplied)

22. Mr. Singh submits, that no fee hike has been allowed to respondent No. 2 school by the DoE since the Academic Session 2015-2016. Counsel draws attention to Status Report dated 03.09.2023 filed by the DoE, summarising the fee structure proposed by respondent No. 2 school, and approved by the DoE, the relevant portion whereof reads as follows :

“3. That, in compliance of the directions of Hon'ble High Court the records related to the fee structure details submitted by the Respondent school under section 17(3) DSEAR, 1973 to the zonal office of Deputy Director of Education, Zone-17, District West



– B, (in short, DDE Zone-17) Vikas Puri, New Delhi may be summarised as under:-

Class	Session	Amount of Tuition fee (proposed)	Amount of Tuition fee actual charged
Pre-school/entry-level/seedling (Nursery)	2015-16	7000	7000
	2016-17	7000	7000
	2017-18	7700	7000
	2018-19	7700	7000*
	2019-20	7700	7000
	2020-21	7700	7000
	2021-22	7700	7000
	2022-23	7700	7000
	2023-24	7000	7000

*Explanation:- *As per order of Respondent DoE dated 17.10.2017, all schools running either on private land or DDA/L & DO allotted land has given (sic) liberty to increase fee without condition to seek prior sanction of Directorate of Education. In view of the same direction Respondent school enhanced tuition fee from 7000/- per month to 7700/- per month @ 10% in session 2018-2019, but the same order was withdrawn by Respondent DOE on 17.04.2018. Hence the Respondent school again decreases (sic) the enhanced tuition fee to Rs. 7000/-, hence ultimately there is no fee hike.”*

(emphasis supplied)

23. In view of the above, Mr. Singh submits that no fee hike has been allowed to respondent No. 2 school by the DoE since Academic Session 2015-2016; and admittedly, petitioner No. 2 in the present case took admission in the Academic Session 2019-2020 in Class :



Nursery/Pre-School, for which year the tuition fee payable was Rs.7000/- per month.

DISCUSSION & CONCLUSIONS

24. After examining the facts and circumstances of the case, considering the position taken by the DoE, and having reviewed the approved fee structure of respondent No. 2 school as detailed in status report dated 03.09.2023, the following inferences can be drawn :

24.1. It is not disputed that petitioner No. 2 joined the school in the Nursery/Pre-school class in the Academic Session 2019-2020. The petitioners have themselves filed on record a fee receipt dated 30.03.2019 which shows that they paid a total of Rs.23,100/- as tuition fee for the months of April, May, and June 2019, which means a monthly tuition fee of Rs. 7,700/-. There is no material to show that the school had declared, or that the DoE had approved, tuition fee of Rs. 5,130/- per month for that Academic Session; and, on point of fact, the fee-card cited by the petitioners to show that the tuition fee was Rs.5,130/- per month *relates to the Academic Session 2014-2015*.

24.2. The DoE status report also reveals that though respondent No.2 school had proposed a monthly tuition fee of Rs. 7,700/-, for Academic Session 2018-19, the DoE ultimately allowed the school to charge only Rs. 7,000/- per month; and that this fee structure has consequently remained unchanged since the Academic Session 2015-2016. Therefore, respondent No. 2



school was obligated to adjust the tuition fee paid by the petitioners to reflect a charge of only Rs. 7,000/- per month, despite the petitioners having paid Rs. 7,700/- per month for April, May and June 2019.

- 24.3. As explained by learned senior counsel appearing for the school, requisite adjustment has already been made by the school and the documents placed on record show that the school has only charged Rs. 7,000/- per month as the monthly tuition fee.
- 24.4. Furthermore, as per Rule 35 of the Delhi School Education Rules, 1973, if fees are not paid within 20 days of the due date, the school is *entitled* to remove a student's name from its rolls, although the Head of the school can extend the time for payment, but the grace period also cannot be more than 10 additional days. The rule further stipulates that students cannot be removed without giving to the parents a reasonable opportunity of being heard in relation to the proposed action. However, in this instance, the petitioners have not provided any valid reason for failing to pay the approved monthly fee of Rs.7,000/- *other than* asserting that the tuition fee for the Nursery/Pre-school class for Academic Session 2019-20 onwards *should have been* Rs. 5,130/- per month.
- 24.5. Given that the DoE approved tuition fee for the relevant Academic Session was Rs. 7,000/- per month and there is no material to support the petitioners' claim that it was Rs. 5,130/-, the court finds no grounds to grant to the petitioners an



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opportunity to contest the removal of petitioner No. 2 from the school rolls.

25. As a sequitur to the above discussion, the court does not agree with the petitioners' assertion that they were not liable to pay Rs. 7,000/- per month, nor does it find that the action of respondent No. 2 school of removing petitioner No. 2 from its rolls due to non-payment of tuition fee from December 2019 to February 2020 was illegal or even unjustified.
26. In light of these circumstances, the present petition is dismissed.
27. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J.

OCTOBER 23, 2024

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