



2024:DHC:9086-DB



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

+ LPA 1139/2024 and CM APPL. 67926-28/2024

**SCHOOL MANAGEMENT OF RING MIDWAYS
SENIOR SECONDARY PUBLIC SCHOOL AND ANR.**

.....Appellants

Through: Mr. Kartik Jha, Advocate

versus

MRS. AZAD DEVI AND ANR.

.....Respondents

Through: Mr. Yeeshu Jain, ASC with Ms.
Jyoti Tyagi and Mr. Hitanshu Mishra,
Advocates for R2

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT (ORAL)

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21.11.2024

C. HARI SHANKAR, J.

1. This LPA under Clause 10 of the Letters Patent applicable to this Court challenges an ad interim order dated 17 September 2024 passed by a learned Single Judge of this Court in CM Appl. 47766/2024 in WP (C) 1706/2019.

2. WP (C) 1706/2019 is being heard by a learned Single Judge along with several other writ petitions involving disputes between the Ring Midways Senior Secondary Public School and various teachers and other employees employed in the School.



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3. During the pendency of the aforesaid writ petitions, by order dated 25 March 2019, the learned Single Judge directed that the bank accounts of the school be frozen as the learned Single Judge was *prima facie* of the view that the affairs of the school were being mismanaged, and no salaries were being paid to the teachers and other employees employed in the school. The order dated 25 March 2019 may be reproduced thus :

“On 19.02.2019, while accepting notice of the present petition, counsel for the respondent No. 2 submitted that the respondent No. 1- School neither comply with the directions passed by this Court nor by the Directorate of Education and to this effect, they filed the detailed counter affidavit in LPA No. 14/2019 pending for adjudication.

Accordingly, the Chairman of respondent No. 1- School was directed to personally remain present in the Court on the next date of hearing. Thereafter, the matter was taken up on 28.02.2019 and respondent No. 2 appeared and stated that Mr. Rambir Solanki is the President of the Society and with his consent, his son namely, Mr. Sandeep Solanki is collecting the fees from the students and accordingly, paying salary as per his wish, to the teachers and staff. Though, Mr. Ramesh Solanki was not party in the present petition, however, vide order dated 28.02.2019, he was impleaded as respondent No. 3 and accordingly, directed to remain personally present in the Court on the next date of hearing.

Today, Mr. Ramesh Solanki is not present, but Mr. Rambir Solanki is present and submits that he and his son has nothing to do with the School and they have no interference in the school and they do not enter in the school premises for any purpose.

Learned counsel for the petitioners submits that the respondent school is not allowing to enter the petitioners in school and perform their duties.

On 28.02.2018, Mr. Ramesh Solanki submitted that he had no role in stopping the petitioners to perform their duties.

Thus, neither Mr. Ramesh Solanki is taking onus of the affairs going on in the school, nor respondent No. 3, Shri Rambir



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Solanki.

It seems, either they have no role in the affairs of the school or acting very smartly just to hide so many things from the Court.

At this stage, I deem it necessary that at least let the petitioners attend the school and perform their duties so that study of students would not suffer. Accordingly, I hereby direct the SHO of Police Station Uttam Nagar to ensure that the petitioner shall join the duty tomorrow i.e. 26.03.2019 at 8 o'clock without hindrance and perform their duties.

Since respondent No. 2 and 3 said before this Court that they have nothing to do with the affairs of the school, therefore, the SHO shall ensure that neither Ramesh Solanki nor Rambir Solanki and their associates shall enter in the school, till further orders.

Since the respondent School is not paying salary to the petitioners, therefore, the Bank Account No. 1519012100000017 maintained in PNB, Kakrola Branch shall remain in-operative and no transaction shall be made in the said account.

The Deputy Director, Zone-18, District West (V) Vikas Puri shall look after the affairs of the school including collection of the fee from the students and thereafter, disburse the salaries of the petitioners proportionately. This arrangement shall remain in force, till further orders.

The copy of this order be sent to the Deputy Director mentioned above, the Deputy Commissioner of Police, Rajouri Garden and Branch Manager of the Bank who shall personally look into the matter and ensure that the directions passed by this Court be complied with.

Renotify on 16.04.2019.”

4. The aforesaid order was challenged by the appellant, who was the petitioner in the writ petition, before the Division Bench of this Court in LPA 14/2019. The Division Bench, by order dated 3 May 2023 passed in the said LPA, noted that the amount of ₹ 1,42,29,060/- was lying frozen in five bank accounts in the name of the school and therefore, permitted the parties to move an application in the writ petitions seeking de-freezing of the accounts, so that teachers and staff

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could be paid.

5. In the meanwhile, on 10 May 2023, the Directorate of Education¹ took over the affairs of the school for a period of three years. Keeping in note this fact, the Division Bench, by a subsequent order dated 24 August 2023, reiterated the liberty granted to the parties to move an application for defreezing of the accounts of the school.

6. Consequent thereupon, the DOE moved CM Appl. 47766/2024 before the learned Single Judge for permission to defreeze the accounts so that the teachers and staff could be paid proportionately.

7. The learned Single Judge has on 17 September 2024 passed the order on the application which forms subject matter of the challenge in the LPA. Paras 4 and 5 of the said order read thus:

“4. All parties are sanguine that in the interest of the teachers/staffs of the School, this application deserves to be allowed so that the money can be released and some payments can come to the employees to tide over their financial crunch. Accordingly, with the consent of the parties, the following directions are passed:-

(a) Manager, Punjab National Bank, Kakrola Branch, New Delhi, shall de-freeze four bank accounts bearing Nos. 1519010103943157, 4684000100059559, 4684005500000044 and 1519012100000017;

(b) the bank shall transfer all the funds available in these accounts to bank account No. 4684002100002384, which is being operated by the new Management under the aegis of DoE; and

Signature Not Verified¹ “DOE” hereinafter

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(c) a responsible officer of the level of Deputy Director in DoE, under the supervision and guidance of the Director of Education, shall withdraw the amounts, save and except, an amount of Rs.30 lacs which will be retained in the account for day-to-day expenses required to run the School smoothly and disburse the same on a *pro-rata* basis amongst the School teachers and staff.

5. List the application on 26.11.2024 for further consideration.”

8. Clearly, therefore, the learned Single Judge has not disposed of the application but has merely passed an *ad interim* directions so as to protect the interests of the teachers and staff employed in the school. The application has been listed for further consideration on 26 November 2024.

9. We have our reservations on whether Letters Patent Appeal would at all be maintainable against such an order. The Supreme Court has, in its judgment in *Shah Babulal Khimji v Jayaben D Kania*², held that “whenever a trial Judge decides a controversy which affects valuable rights of one of the parties, it must be treated to be a judgment within the meaning of the letters patent.”

10. This Court has also recently examined the aspect of when an LPA could be maintained against such an *ad interim* order in its decision in *Shiv Prakash Katiyar v Jawahar Lal University*³, the relevant paragraphs of which we deem it appropriate to reproduce :

13. In *Krishan Avtar v Om Prakash Gupta*⁴, the expression “judgment” within the meaning of Clause XII of the Letters Patent

² 1981 (4) SCC 8

³ 2024 SCC OnLine Del 7339

⁴ (1981) SCC Online J&K 37



applicable to State of Jammu and Kashmir was held as implying “an order which effectively decide some right or liability in controversy between the parties to the main proceedings, irrespective of the fact whether such an order is final or made at any interlocutory stage”. In the context of Clause X of the Letters Patent, applicable to Nagpur, a Division Bench of High Court of Madhya Pradesh, in **Jagatguru Shri Shankaracharya Jyotish Peethadhiswar Shri Swaroopanand Saraswati v Ramji Tripathi**⁵ defined “judgment” thus:

“A ‘judgment’ within the meaning of clause 10 of the Letters Patent would have to satisfy two tests : First, the judgment must be the final pronouncement which puts an end to the proceeding so far as the Court dealing with it is concerned. Second, the judgment must involve the determination of some right or liability, though it may not be necessary that there must be a decision on the merits. But the adjudication of an application which is nothing more than a step towards obtaining a final adjudication in the suit, is not a judgment within the meaning of clause 10 of the Letters Patent. An order transferring a suit from one Court to another is not a ‘judgment, as it neither affects the merits of the controversy between the parties in the suit itself, nor does it terminate or dispose of the suit on any ground. It is only an application in a suit as a step towards determination of the controversy between the parties in the suit.”

14. Not all interlocutory orders are excepted from the category of “judgment” for the purposes of appeal under the Letters Patent. In the context of Clause XV of the Letters Patent of the Madras High Court, the Supreme Court held, in **Tamilnad Mercantile Bank Shareholders Welfare Association v S.C. Sekar**⁶ that “an interim injunction granted till disposal of the contempt petition would come within the ambit of the expression “judgment” for the purpose of Clause XV of the Letters Patent of the Madras High Court”.

15. In **Oriental Insurance Company Ltd. v Saraswati Bai**⁷, a Full Bench of the High Court of Madhya Pradesh held that “the word ‘judgment’ as used in Clause X of Letters Patent means a decision in an action whether final, preliminary or interlocutory which decides either wholly or partially, but conclusively insofar as Court is concerned, the controversy which is the subject of action”. In **Life Insurance Corporation of**

⁵ AIR 1979 MP 50

⁶ (2009) 2 SCC 784

⁷ 1994 SCC Online MP 199



*India v Sanjeev Builders Pvt. Ltd.*⁸, it was held that, for an order to be a “judgment”, it was not always necessary that it should put an end to the controversy or terminate the suit. An interlocutory order determining the rights of the parties in one way or the other would also be a “judgment”.

11. Nonetheless, we have heard Mr. Kartik Jha, learned counsel for the appellants on the merits of the challenge in this appeal. Mr. Jha’s main contention is that his client was not present when the application was taken up for hearing and that the observations in para 4 that all parties were sanguine regarding the order which came to be passed is not correct, as the management of the school whom he represents was never present when the case was listed. He is, however, unable to enlighten the Court as to whether notice on this application was received by his client.

12. We have, however, queried of Mr. Jha as to whether there is any error in the order passed by the learned Single Judge as would justify this Court interfering in the matter. In our opinion, the test which is to be applied while dealing with an interlocutory order passed by a learned Single Judge when it is carried in appeal to the Division Bench, has to abide by the following passage from the judgment of the Supreme Court in *Wander Ltd. v Antox India (P) Ltd.*⁹

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion

⁸ (2018) 11 SCC 722

⁹ 1990 Supp SCC 727



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is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.”

13. The discretionary order passed by the learned Single Judge is, therefore, ordinarily impervious to interference in appeal, unless manifests perversity or irreparable prejudice is shown to result as a consequence of the order.

14. In the present case, the learned Single Judge has kept the interim application filed by the School listed for further consideration on 26 November 2024, a mere five days hence. The interim directions which have been issued have only been issued so as to protect the interest of the teachers and staff of the school.

15. Mr. Jha, on being queried by the Court, does not dispute the position that the source of the funds from which the teachers and the staff of the school are to be paid is, indeed the bank accounts of the school, of which the impugned order directs defreezing.

16. It goes without saying that teachers and staff cannot be expected to work in school without pay. Any such exercise would partake of the character of unfair labour practice.



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17. We do not wish to make any further observations, as the learned Single Judge has listed this application for further consideration on 26 November 2024.

18. We see no reason to interfere with the impugned order which, according to us, is eminently wholesome and in the interests of the teachers and staff who are entitled to full protection of the law.

19. We, therefore, direct compliance, forthwith, with the order passed by the learned Single Judge. However, the compliance would abide by further orders to be passed by the learned Single Judge on the application when it is taken up for hearing.

20. Subject to the aforesaid limited caveat, the LPA is dismissed.

C. HARI SHANKAR, J.

AMIT SHARMA, J.

NOVEMBER 21, 2024/yg

Click here to check corrigendum, if any