IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: January 03, 2017
Judgment delivered on: March 20, 2017

\+ W.P.(C) 5784/2016, CM No. 23887/2016

ST MARKS SR SEC PUBLIC SCHOOL & ANR

..... Petitioners

Through: Mr. Akhil Sibal, Mr. Vedanta Verma, Mr. Vibhor Kush, Ms. Apoorva Pandey, Mr. Akhil Kumar Gola, Mr. Sanat Tokas & Mr. Prateek Gautam, Advs.

versus

DIRECTOR OF EDUCATION AND ORS ..... Respondents

Through: Mr. Gautam Narayan, ASC with Mr. R.A. Iyer, Adv. for DoE
Mr. Manish Garg & Mr. Hitesh Kumar, Advs. for parents

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by two Schools with the following prayers:-

(i) Allow the present petition and issue a writ, order or direction quashing the order passed by the respondent bearing number DE 15/Act-I/2016/9720-25 dated 16.06.2016"

(ii) Pass any order(s) as the Hon'ble Court may deem fit."

2. The respondent No.1 had filed its counter-affidavit. It is also noted that Ms. Rachna Dhanda and 127 other parents have filed an application under Order 1 Rule 10 CPC for impleadment and they have been impleaded as parties. The amended memo of parties was taken on record.

3. Mr. Akhil Sibal learned counsel for the petitioners would confine his arguments to directions (ii) and (iii) wherein it has been held that 15% additional increase in the tuition fee for the session 2015-16 for AC plants is illegal and the direction that no development fee shall be charged by the schools from the parents from the session 2015-16 onwards unless the amounts claimed under depreciation till 2014-15 are deposited by the Schools in separate account in nationalized bank.

4. On the first direction with regard to 15% additional increase in the tuition fee is concerned, it is his submission that as per the then prevailing Rules and in exercise of autonomy bequeathed to it by catena of decisions including ***Delhi Abhibhavak Mahasangh v. GNCTD and ors (supra),*** the petitioner Schools through its duly constituted Management Committee meeting in the presence of respondent no.2 representative and the respondent No.1 nominee, decided that in view of the extreme climate prevalent in Delhi and the high levels of pollution it was in the best interest of the students that an air conditioning plant be installed in the Schools. Thereby, with the consent of all the Members including the representative of respondent No.1 as well as the nominees of the parents, it was

unanimously resolved that in order to meet the running and maintenance cost of the air conditioning plant, the fee payable by the students shall be increased by an additional 15% from the academic session 2015-16 and as such the procedure contemplated under Section 17(3) of the Rules were complied and till the academic session of 2015-16 the pre approval from respondent No.1 for increasing the fees was not required.

5. It is contended that contrary to the observation of the respondent No.1 in the order dated June 16, 2016, the petitioner Schools have increased the tuition fee to meet the expenses incurred in maintaining and running the air conditioning system and in paying the electricity bills for the same, which are all recurring expenses in the nature of revenue expenses. Therefore, it has been wrongly stated that the petitioners are recovering the 'capital expenses' for installation of the air conditioning system from the said tuition fee. Thus the impugned order is cryptic on the face of it and is thus liable to be set aside. Mr. Sibal would submit that the reasoning given by the respondent No.1 in the order dated June 16, 2016 that the *"the installation of the air conditioning systems by the school is covered under the capital expenditure. Therefore the same can be made only through savings and not by demanding additional fee for this purpose as the society running the school is liable for providing capital assets of the school."* However, the said stand has been reversed by the respondent No.1 in their counter-affidavit that the said increase in tuition fee was in fact towards meeting the revenue expenditure and not towards capital expenditure. Therefore,

there is no iota of doubt that the 15% increase in the fee is not only legal but has been done while following the due process of law. Mr. Sibal would also state that the contention raised by the respondent No.1 in the impugned order and in the oral arguments that the electricity, running and maintenance charges on account of the air conditioning/heating plant are overheads and therefore, must be charged as annual charges is also incorrect and misplaced. He would rely upon the Duggal Committee Report wherein, according to him, the following has been stated:-

> *"The second category should comprise of "Tuition Fee". This should be so fixed, as to cover the standard cost of establishment including provision for D.A., bonus and all terminal benefits as mentioned under Section 10(1) of the Delhi School Education Act, 1973; as also all the expenditures of revenue nature for improvement of curricular facilities like library, laboratories, science fee and computer fee up to class X and examination expenses".*

6. According to him, in view of the above, the tuition fee has to be fixed so as to cover the standard cost of establishment and all expenditure of revenue nature for the improvement of curricular facilities. He states that it is an admitted case of the respondent No.1 itself that the 15% increase in the tuition fee was towards a revenue expenditure and moreover the air conditioning systems in all classrooms have been installed for an academic purpose, the running cost for the same is thus a revenue expense for the improvement of curricular facilities. The petitioner Schools have therefore rightly collected the running cost

and maintenance cost of the air conditioning system under the head of "Tuition Fee" and there is no other head under which the same could have been collected. Without prejudice, it is his submission that respondent No.1 has in its order dated June 16, 2016 stated that the running cost of the AC plants can be collected by the Schools under the head "Annual Charges". Therefore, assuming without admitting, even if the aforesaid is taken on the face of it, then as per the respondent No.1 the 15% increase has been charged under the wrong head of "Tuition Fee" and the same should have been charged under the head "Annual Charges", therefore the said increase can by no stretch of imagination be called as illegal but was merely irregular. Thereby a refund of the said increased amount, services of which have been availed by the student is unwarranted.

7. According to him, the Rule 177 relied upon by the respondents is not attracted as there has been no increase in tuition fee of the petitioner Schools to meet capital expenses on account of infrastructure. In fact, Rule 177(2) (b) and (c) specifically allows schools to provide the needed expansion of the school or any expenditure of a development nature, like the expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation. He would also state that the respondent No.1 has wrongly stated that there is an upper limit for increasing the tuition fee or the annual charges. According to him, there is no cap that has been provided in law or otherwise on increasing the annual charges or the tuition fee by a private

unaided school, subject to the caveat that there is no profiteering. He would strenuously argue that the increase in the tuition fee on account of increased revenue expenditure towards the running and maintenance of the AC/heating system is only a fraction of the total revenue expenditure incurred on this account and the entire revenue expenditure has still not been met by the said 15% increase in the tuition fee. He would state that contrary to what has been contended by the respondent No.1 even if interest on loan is not taken into account, the petitioner Schools are still in deficit and not profiteering.

8. Insofar as the third direction with regard to no development fee shall be charged till the amounts claimed are deposited by the School in separate account in nationalized Bank is concerned, Mr. Sibal would submit that the same is because of an erroneous interpretation of the provisions contained in the Act and the Rules as well as generally accepted accounting principles on the part of the respondent No.1. He would state, on a consolidated reading of the provisions contained under Section 18(3) along with Rule 173, 174, 175 and 177 and the law laid down by the Supreme Court in the case of ***Modern School v. Union of India (supra),*** it is clear that spirit of law requires a school to maintain only a single account i.e., "Recognized Unaided School Fund" which may also include other accounting heads. Therefore, as opposed to the direction issued by the respondent No.1, the mere requirement is that of maintaining of accounts of the depreciation reserve fund within the "Recognized Unaided School Fund" account, which as a matter of fact has already been

maintained by the petitioners in full conformity with the generally accepted accounting principles. Therefore, the respondent No.1 has gone beyond the ambit of the prescribed provisions of law and has directed the petitioner Schools to deposit an amount claimed under depreciation in a separate bank account in a nationalized bank for the collection of the development fee, which on the face of it, is purely based on surmises and conjectures. He would also submit that there is no requirement in law or otherwise for depreciation claimed to be deposited in a separate account in a nationalized bank. He would rely upon Para 20 and 21 of the judgment of the Supreme Court in ***Modern School v. Union of India (supra)***. He would support his submission by stating that whenever required, the Act and the Rules have specifically provided for the need of separate fund to be maintained and in specific situations, separate accounts to be maintained. In this regard, he would rely upon Rules 18, 20(6), 71, 74-85, 149(4)(c), 153, 169, 173(4), 175, 177.

9. Without prejudice, he would also state that the respondent No.1 has failed to appreciate that a depreciation reserve fund has been maintained by the petitioner schools as is evident from the audited balance sheet from the year 2014-15 onwards and that the annual return has been filed with the respondent No.1 in compliance with Rule 180 of the Delhi School Education Rules, 1973. Without prejudice to the rights and contentions in this writ petition, he would state, in compliance of the impugned order of the Directorate, an amount of depreciation reserve fund has now been increased to Rs.1,58,74,628/- and

Rs.1,21,92,707/- respectively. He would also rely upon the balance sheet of the year 2015-16 reflecting the aforesaid conformity. According to him, the direction of the respondent No.1 not to collect development fee without depositing the aforesaid amounts in separate accounts in a nationalized bank, on the face of it, is purely based on surmises and conjectures and need to be set aside.

10. On the other hand, Mr. Gautam Narayan, learned counsel appearing for the respondent No.1 would submit that the petitioners impose levies from students under the following three heads:-

(i) Tuition Fees.

(ii) Development Fees (15% of the tuition fees);

(iii) Annual Charges (10% of the tuition fees).

11. It is his submission that once tuition fee is increased, the consequence is that there will be corresponding increase in the development fees and the annual charges. In the present case, the petitioners have in addition to following the practice of imposing an annual increase of 10% in tuition fees in the academic session 2015-16 also sought to impose an additional 15% increase in tuition fees on the ground that this is required for defraying the electricity charges incurred on account of the air conditioning plant installed by it in the year 2015, thereby seeking to increase the tuition fees by 25% over the previous year. The direct consequence of the said imposition, without even drawing reference to any provision of the Act or Rules, is that there would be a cascading increase in both the development fees

and annual charges and the increased tuition fees for 2015-16, would become the benchmark for any future increase in the tuition fees. Without prejudice to his aforesaid submission, he would state that in terms of the provisions of the Act of 1973, the Rules made thereunder and the orders issued by the respondent No.1 from time to time, it is clear that income derived from fees by unaided schools can be utilized only towards (i) educational purposes; (ii) income from fees is to be utilized for defraying expenses on account of fees and allowances and benefits to employees, expenses on account of needed expansion of the school or of a development nature and savings which may remain thereafter, is permitted to be utilized for meeting capital/contingent/other educational expenses as specified. The expenses regarding expansion/of a developmental nature cannot be by way of an inordinate increase in fees. He would state that tuition fees can inter alia comprise of expenditure of a revenue nature concerning curricular activities. He would refer to order dated December 15, 1999 (at page 435) and order dated February 11, 2009 (at page 430). He would also state that the annual charges are levied to meet revenue expenses not included in tuition fee, facilities, expenses on playgrounds, sports equipment, gymnasium, cultural and other co-curricular activities as distinct from curricular activities. He had also submitted income from other charges and payments, levied is to be utilized only for the purpose for which the same were collected. He makes a reference to Section 18(4)(b) and Section 176 in that regard.

12. According to him, even assuming 15% of the tuition fees applicable in 2015-16, is required to defray expenses on account of electricity charges, these, being in the nature of a revenue expense, do not fall in the categories mentioned above and clearly cannot be defrayed from collections under the head of tuition fees and can be recovered only under the head of annual charges being 'overheads'. He would refer to Para 3-4 of the additional affidavit dated July 13, 2016 of the petitioners wherein they have admitted of recovering cost of servicing the loan taken for the air conditioning unit also as part of the "Tuition Fees" from the parents, which according to him is inadmissible.

13. With regard to the directions for depositing the amount in the Development Fund is concerned, he would state that no material has been placed on record by the petitioners to establish that collections under the head 'Depreciation Reserve Fund' are being deposited in a 'Development Fund Account' which is mandated in terms of order dated December 15, 1999 and February 11, 2009. According to Mr. Narayan, the spirit of the direction is to promote transparency in the matter of maintenance of accounts and do not cause any prejudice to the Schools. He would vehemently state that the specific averment in the counter-affidavit on behalf of respondent No.1 in Para 8.38.5, 8.38.8 have not been specifically denied in the rejoinder affidavit. He states that the averment in the additional affidavit dated July 13, 2016 by the petitioners that they have maintained a depreciation reserve fund is as vague as possible, inasmuch as there is no assertion that the collection

under this fund or investments made there from are being deposited in a separately maintained development fund account. He would support the impugned order dated June 16, 2016 and seeks dismissal of the writ petition.

14. Mr. Manish Garg, Advocate who appears for the parents has adopted the arguments of Mr. Narayan and seeks dismissal of the petition.

15. Having heard the learned counsel for the parties, including Mr. Manish Garg, Adv. for the parents to decide the issues raised in the present petition, it is necessary to reproduce the relevant paragraphs of the judgment of the Supreme Court in the case reported as ***(2004) 5 SCC 583 Modern School v. Union of India and Others and connected appeals***, being Para 17, 21 and 25.

> *"17. In the light of the judgment of this Court in the case of Islamic Academy of Education (supra) the provisions of 1973 Act and the rules framed thereunder may be seen. The object of the said Act is to provide better organization and development of school education in Delhi and for matters connected thereto. Section 18(3) of the Act states that in every recognized unaided school, there shall be a fund, to be called as Recognized Unaided School Fund consisting of income accruing to the school by way of fees, charges and contributions. Section 18(4)(a) states that income derived by unaided schools by way of fees shall be utilized only for the educational purposes as may be prescribed by the rules. Rule 172 (1) states that no fee shall be collected from any student by the trust/society running any recognized school; whether aided or unaided. That under rule 172(2), every fee collected from any student by a recognized school, whether aided or not, shall be collected in the name of the school. Rule 173(4) inter alia states that every Recognized Unaided School Fund shall be deposited in a nationalized bank. Under rule 175, the accounts of Recognized Unaided School Fund shall clearly indicate the income accruing to the school by way*

of fees, fine, income from rent, income by way of interest, income by way of development fees etc. Rule 177 refers to utilization of fees realized by unaided recognized school. Therefore, rule 175 indicates accrual of income whereas rule 177 indicates utilization of that income. Therefore, reading section 18(4) with rules 172, 173, 174, 175 and 177 on one hand and section 17(3) on the other hand, it is clear that under the Act, the Director is authorized to regulate the fees and other charges to prevent commercialization of education. Under section 17(3), the school has to furnish a full statement of fees in advance before the commencement of the academic session. Reading section 17(3) with section 18(3)&(4) of the Act and the rules quoted above, it is clear that the Director has the authority to regulate the fees under section 17(3) of the Act.

21. In the light of the above observations, we are required to analyze rules 172, 175, 176, 177 and 1973 rules. The above rules indicate the manner in which accounts are required to be maintained by the schools. Under section 18(3) of the said Act, every recognized school shall have a fund titled "Recognised Unaided School Fund". It is important to bear in mind that in every non-business organization, accounts are to be maintained on the basis of what is known as 'Fund Based System of Accounting'. Such system brings about transparency. Section 18(3) of the Act shows that schools have to maintain Fund Based System of Accounting. The said Fund contemplated by Section 18(3), shall consist of income by way of fees, fine, rent, interest etc. Section 18(3) is to be read with rule 175. Reading the two together, it is clear that each item of income shall be accounted for separately under the common head, namely, Recognized Unaided School Fund. Further, rule 175 indicates accrual of income unlike rule 177 which deals with utilization of income. Rule 177 does not cover all the items of income mentioned in rule 175. Rule 177 only deals with one item of income for the school, namely, fees, Rule 177 (1) shows that salaries, allowances and benefits to the employees shall constitute deduction from the income in the first instance. That after such deduction, surplus if any, shall be appropriated towards, pension, gratuity, reserves and other items of appropriations enumerated in rule 177 (2)and after such appropriation the balance (savings) shall be utilized to meet capital expenditure of the same school or set up another school under the same management. Therefore, rule 177 deals with application of income and not with accrual of income. Therefore, rule 177 shows that salaries and allowances shall come out from

the fees whereas capital expenditure will be a charge on the savings. Therefore, capital expenditure cannot constitute a component of the financial fees structure as is submitted on behalf of the schools. It also shows that salaries and allowances are revenue expenses incurred during the current year and, therefore, they have to come out of the fees for the current year whereas capital expenditure / capital investments have to come from the savings, if any, calculated in the manner indicated above. It is for this reason that under Section 17(3) of the Act, every school is required to file a statement of fees which they would like to charge during the ensuring academic year with the Director. In the light of the analysis mentioned above, we are directing the Director to analyse such statements under section 17(3) of the Act and to apply the above principles in each case. This direction is required to be given as we have gone through the balance-sheets and profit and loss accounts of two schools and prima facie, we find that schools are being run on profit basis and that their accounts are being maintained as if they are corporate bodies. Their accounts are not maintained on the principles of accounting applicable to non-business organizations / not-for-profit organizations.

25. In our view, on account of increased cost due to inflation, the management is entitled to create Development Fund Account. For creating such development fund, the management is required to collect development fees. In the present case, pursuant to the recommendation of Duggal Committee, development fees could be levied at the rate not exceeding 10% to 15% of total annual tuition fee. Direction no. 7 further states that development fees not exceeding 10% to 15% of total annual tuition fees shall be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipments. It further states that development fees shall be treated as Capital Receipt and shall be collected only if the school maintains a depreciation reserve fund. In our view, direction no.7 is appropriate. If one goes through the report of Duggal Committee, one finds absence of non-creation of specified earmarked fund. On going through the report of Duggal Committee, one finds further that deprecation has been charged without creating a correspondence fund. Therefore, direction no.7 seeks to introduce a proper accounting practice to be followed by non-business organizations / not-for-profit organization. With this correct practice being introduced, development fees for supplementing the resources for purchase, upgradation and replacements of furniture and fixtures and equipments is justified. Taking into account the

cost of inflation between 15th December, 1999 and 31st December, 2003 we are of the view that the management of recognized unaided schools should be permitted to charge development fee not exceeding 15% of the total annual tuition fee."

16. Insofar as the direction No.2 in the impugned order dated June 16, 2016 is concerned, as noted above, the Director of Education has held that 15% additional increase in tuition fee for the session 2015-2016 by the Schools for air conditioning system is illegal and liable to be refunded / adjusted. There is no dispute that the Schools have installed the air conditioning system. The air conditioning systems have been financed through a loan from a financial institution. The electricity charges are being claimed, under the head tuition fee. There is also no dispute that the respondent no.1 is authorized to regulate the fee and other charges. The tuition fee in terms of the order dated February 11, 2009 and also order dated December 15, 1999, shall be so determined so as to cover the standard cost of establishment including provisions of DA, bonus etc. and all terminal benefits as also the expenditure of revenue nature concerning the curricular activities as distinct from co-curricular activities. The installation of air conditioning system cannot be termed to be connected with curricular activity and co-curricular activity. That apart the capital expenditure has to come through savings from the tuition. It is not the case of the petitioners that it is on account of savings that they have funded the air conditioning system. If that is so, the expenses incurred for electricity charges for running the air conditioning system cannot be by way of increase in tuition fee. It is immaterial if defraying of electrical bills is in the nature of revenue

expense but still, cannot be qualified to be met by way of increase in tuition fee, at least in the facts of this case.

17. That apart, the submission of Mr. Sibal that the stand of the respondent no.1 that electricity and maintenance charges are overheads, must be charged as annual charges is incorrect and misplaced by relying on the recommendations of the Duggal Committee is concerned, the Duggal Committee held tuition fee to comprise expenditure of revenue nature for improvement of curricular facilities like library, laboratories, science fee etc. The recommendation does not include air conditioning system, nor as stated above, it qualifies as curricular activity or co-curricular activity. It has been rightly held in the impugned order that the charges for electricity bill can be claimed under the head annual charges as the same cannot be included in tuition fees, and overheads, nor it is expenses on play ground, sports equipment, cultural activities etc. and also on co-curricular activities.

18. The plea of Mr. Sibal alternatively that instead of tuition fee, the petitioners could have claimed; the charges under the head annual charges, and as such the action cannot be called as illegal, is concerned, the same does not appeal to this Court, more so when there is a finding in the impugned order that the schools have already increased annual charges in the session 2015-2016. The school could not have further claimed the electricity charges under the head annual charges. The submission of Mr. Narayan that the increase in tuition fee has a cascading effect on, development fee, Annual charges, and, the tuition fee of the

next academic session is appealing. I find no illegality in direction No. 2.

19. As regards direction No.3 is concerned, I would like to refer to direction No.7 in Oder dated December 15, 1999 and direction No. 14 in order dated February 11, 2009, which I reproduce as under:

> *Direction No.7 Development fee, not exceeding ten per cent of the total annual tuition fee may be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipment. Development fee, if required to be charges, shall be treated as capital receipt and shall be collected only if the school is maintaining a Depreciation Reserve Fund, equivalent to the depreciation charges in the revenue accounts and the collection under this head along with and income generated from the investment made out of this fund, will be kept in a separately maintained Development Fund Account.*
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> *Direction No. 14 Development fee, not exceeding 15% of the total annual tuition fee may be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipment. Development fee, if required to be charged, shall be treated as capital receipt and shall be collected only if the school is maintaining a Depreciation Reserve Fund, equivalent to the depreciation charges in the revenue accounts and the collection under this head alongwith and income generated from the investment made out of this fund, will be kept in a separately maintained Development Fund Account."*

20. From the perusal of the above directions, it is clear that schools are permitted to levy development fee only if they maintain Depreciation Reserve Fund equivalent to the depreciation charges in the revenue accounts and the collection under this head along with income generated from investments made out of this fund are kept in a separately maintained Development Fund Account.

21. That apart in Para 27 of the judgment in ***Modern School v. Union of India (Supra)***, the Supreme Court had approved the direction No. 7 as appropriate. The Supreme Court, has in Para 27 gave directions over and above the directions given by the Director of Education in its order dated December 15, 1999. If that be so, the plea of the petitioners that no other account except Recognized Unaided School Fund under various accounting heads / funds need to be maintained is rejected. The underlying object of direction Nos.7 and 14, is to promote transparency in the matter of Accounts. I agree with the submission of Mr. Narayan, that no prejudice is caused to the School if such an Account is maintained.

22. In view of the above, the plea of Mr. Sibal that the Depreciation Reserve Fund has been maintained by the petitioners School as evident from the audited balance sheet from the year 2014-15 onwards, is not appealing and rejected. His submission, the fund has been increased to Rs.1,58,74,628/- and Rs.1,21,92,707/- in compliance with the order of the Director of Education also does not appeal to this Court. I do not see any merit in the writ petition. The same is dismissed. No costs.

CM. NO. 23887/2016 (for Stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

MARCH 20, 2017
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