

GYAN MANDIR SOCIETY AND ANR.

v.

ASHOK KUMAR & ORS.

(Special Leave Petition (Civil) No. 21954 of 2009)

FEBRUARY 16, 2010

[J.M. PANCHAL AND T.S. THAKUR, JJ.]

EDUCATION/Educational Institutions:

Taking over/Shifting of School – Society running a school, allotted an alternative school site and asked to vacate the existing site – Society starting school at allotted site and the existing school taken over by NDMC on “as is where is basis” – Writ petition seeking absorption of teachers and adjustment of students of existing school on freeship basis in the new school of the Society – HELD: The view taken by the High Court that the society was obliged to absorb the teachers and the students from existing school, does not suffer from any error of law or jurisdiction to warrant interference in exercise of powers under Article 136 of the Constitution – However, the direction regarding free transportation to students from existing school locality to the new school does not have any contractual or other legal basis and is, therefore, deleted – Constitution of India, 1950 – Article 136.

CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 21954 of 2009.

From the Judgment & Order dated 20.7.2009 of the High Court of Delhi at New Delhi in L.P.A. No. 1307 of 2007.

Ashok Desai, Rohit Choudhary, B.R. Menon, Preeti Khewani, B. Vijayalakshmi Menon for the Petitioners.

A Sanjiv Sen, Prashant Kumar, Anuja Chopra for the Respondents.

The Order of the Court was delivered

ORDER

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T.S. THAKUR, J. 1. In this petition for special leave to appeal the petitioners call in question the correctness of an order dated 20th July, 2009 passed by a Division Bench of the High Court of Delhi whereby L.P.A. No.1307 of 2007 filed by the petitioners has been dismissed with costs assessed at Rs.75,000/- and directions issued by the learned Single Judge of the High Court in W.P.(C) No. 11778 of 2006 affirmed.

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2. The facts giving rise to the filing of the writ petition and the Letters Patent Appeal have been set out in detail by the High Court making it unnecessary for us to state them over again. Suffice it to say that W.P.(C) 11778 of 2006 was filed by the teachers employed with the petitioner society running a neighbourhood school at Tis January Lane, New Delhi falling within the NDMC area. With the allotment of an area measuring 2.284 acres at Sadiq Nagar in favour of the petitioner - society the temporary allotment made in favour of the petitioner's society at Tis January Lane came to an end on 31st of March, 1997. The society was accordingly asked to hand over the possession of the land but since the school was catering to the needs of about 500 students and several teachers had been employed by the society to impart education to the students, practical difficulties were encountered in handing over the site. After detailed deliberations and prolonged correspondence the NDMC offered to take over the school on "as is where is" basis. A letter to that effect was issued by the L&DO on 1st April, 2002. The possession of the school was pursuant to that letter handed over to the L&DO on 8th March, 2006, who on the same day delivered the possession of the school building to the NDMC.

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3. In the meantime the society filed Writ Petition (Civil) 17889-90 of 2005 seeking permission to construct a building for a senior secondary school at Sadiq Nagar over the site allotted in its favour. The High Court allowed that writ petition by its order dated 16th March, 2006. It is note-worthy that in the said proceedings the society had made a categorical statement that students studying in the Tis January Lane school can be accommodated by the society in the school being run by it at Andrews Ganj on freeship basis and if fees are charged, the same shall not be in excess of what they were paying in the Tis January Lane school.

4. W.P.(C) No.11778 of 2006 was at that stage filed by the teachers employed by the society for its Tis January Lane school in which they prayed for the following reliefs:-

(a) issue a writ in the nature of mandamus to respondent No.1 to cancel the allotment of the Sadiq Nagar site of school measuring 2.34 acres allotted to respondent Nos. 4 & 5 vide dated 27.08.1975;

(b) issue appropriate writ, orders and directions to the respondent No.3 to immediately and forthwith to take over the possession of the said Indian school/site from the respondent Nos. 4 & 5 and to seize all the records of the public school with freezing of the bank accounts of respondent No. 4 & 5;

(c) issue appropriate writ, orders or directions to respondent No. 3 to de-recognize the said public school at Sadiq Nagar, New Delhi and to make arrangements for shifting the existing school at Tis January Lane to the Sadiq Nagar site;

(d) issue appropriate orders/directions to respondent No. 3 to ensure the protection of the services of the petitioners and the payment of the arrears of their salaries at the earliest;

A (e) issue appropriate writ, order or directions for holding an enquiry under the direct supervision of this Hon'ble Court to fix the responsibilities of the concerned officials of the State whereby the Sadiq Nagar site of the school located at Josip Broz Tito Marg, New Delhi was
B misused for running a public school in the name and style of "Indian School" on the site allotted for shifting the existing Smt. R.K.K. Gyan Mandir Middle School from Tis January Lane, New Delhi and

C (f) issue such other writ, order/orders/directions, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in the light of the above averment and in order to secure the ends of justice for which acts the humble petitioners shall remain grateful to this Hon'ble Court.

D 5. A Single Bench of the High Court allowed the above writ petition by its order dated 20th September, 2007 with the following directions :-

E (1) The Respondent Nos. 4 and 5 shall ensure that the Petitioner Nos. 2 to 16 are accommodated appropriately in its unaided school, i.e. Indian School, within four weeks from today; the said teachers shall be absorbed on permanent basis; their salary, allowances and other conditions shall
F be preserved with continuity of service. The arrears of 5% contribution for the last one year, payable to the petitioner Nos.2 to 16, shall be paid by the society within 6 weeks, to them. This shall be over and above the Rs.1,00,000/- amount volunteered to
G be paid by the society, as a good will gesture to them. That amount too shall be paid, if not already paid.

H (2) Simultaneously, the said respondents shall take steps to effectuate their statement about

assimilating all the existing students (from the aided school in the Tis January Lane) in the Indian school, on "freeship basis". The said students shall not be required to pay any amount over and above what has been paid by them all this while. A

(3) The society and fourth respondent shall ensure that the students of the aided school are given free transportation to the unaided school, and back to the Tis January Lane area as long as the students of the aided school study in the Indian school. It shall do all things necessary to meaningfully assimilate such children in the Indian school. B C

(4) The GNCT shall ensure compliance with the above directions; if necessary, it shall sanction additional sections, wherever required in the unaided school, to accommodate the influx of the students from the aided school as well as teachers and employees from there. It shall continue to preserve and protect the status of the petitioner employees as employees of an aided school. D E

(5) A status report disclosing due compliance with the above directions, and action taken in that regard shall be filed within 6 weeks, before this court, by the fourth and fifth respondents, and GNCT. F

6. Aggrieved by the above order the society preferred Letters Patent Appeal No.1307 of 2007 which has been as noticed earlier dismissed by the Division Bench of the High Court by the order impugned in this petition with costs assessed at Rs.75,000/-. G

7. When the matter came up before this Court on 16th December, 2009, Mr. Desai, learned senior counsel for the petitioners made a statement that the petitioner society was prepared to absorb all the students and the teachers employed H

- A for the school at Tis January Lane, New Delhi, from the next academic year, provided the students and the teachers were willing to join the petitioners-school. Mr. Sen, learned counsel appearing for the NDMC was also granted time to seek instructions as to whether the NDMC was prepared to absorb the teachers.

8. Pursuant to the above direction, Mr. Sen submitted at the bar that while the NDMC is willing to accommodate students, who are not willing to join the Indian School of the petitioner society it has no legal obligation what so ever to absorb the teachers who were employed by the petitioner society for running the school at Tis January Lane. It was argued that since the teachers had themselves not prayed for any direction from the High Court for absorption in the service of NDMC, there was no question of issuing any direction to that effect especially when the same would go beyond the prayer made in the writ petition. It was submitted that the High Court had rightly concluded that the society was obliged not only to adjust the students but also the teachers employed in connection with the running of the school at Tis January Lane.

9. There is in our opinion considerable merit in the submission of Mr. Sen. The High Court has after a careful consideration of the matter correctly held that the society was obliged to absorb the teachers and the students from Tis January Lane. The view taken by the High Court does not suffer from any error of law or jurisdiction to warrant interference by this Court in exercise of its powers under Article 136 of the Constitution. In fairness to Mr. Desai, we must mention that even he did not pursue the challenge to the orders passed by the High Court in so far as the same directs the society to adjust and absorb the students and teachers from the Tis January Lane school. All that Mr. Desai argued was that direction No.3 issued by the learned Single Judge and upheld by the Division Bench of the High Court was totally beyond the scope of writ petition inasmuch as there was neither any prayer in the petition

regarding grant of free transportation to the students from Tis January Lane nor was there any legal justification for the issue of any such direction. He urged that this Court could delete the said direction and dispose of the present petition. A

10. Mr. Sen, learned counsel appearing for the NDMC had no objection to that course of action. Even otherwise, we are of the view that the direction regarding free transportation to students from Tis January Lane to the Indian school does not have any contractual or other legal basis to support the same. According to the petitioner society also the school is not providing any transportation to the students nor is there any obligation to do so. Be that as may be, whether or not free transport should be offered to students who may be adjusted in the Indian school was never the matter in issue before the High Court or in the writ petition filed by the teachers. The students were also not parties to the proceedings either individually or collectively. That being the position, we are of the view that direction No.3 issued by the learned Single Judge and affirmed by the High Court needs to be deleted and is accordingly deleted. We may however clarify that this order would not prevent the students from seeking appropriate redress in appropriate proceedings before the competent Court or authority and claiming free transportation to and fro Indian school established by the petitioner society. In any such proceedings the prayer regarding transportation shall be examined uninfluenced by the observations made in this order. Beyond the modification indicated above we see no reason what so ever to interfere with the orders passed by the High Court. The petition is, with the above observations, disposed of. No costs. B
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R.P.

Petition Disposed of.