REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4556 OF 2014
[Arising out of S.L.P.(C)No.31659 of 2011]

D.A.V. College Managing Committee
Through Regional Director .....Appellant

Versus

Laxminarayan Mishra & Ors. .....Respondents

WITH

Contempt Petition(C)No.232 of 2013
In
C.A.No. 4556 of 2014
[Arising out of S.L.P.(C)No.31659 of 2011]
AND
Contempt Petition(C)No.7 of 2013
In
C.A.No. 4556 of 2014
[Arising out of S.L.P.(C)No.31659 of 2011]

JUDGMENT

SHIVA KIRTI SINGH, J.

1. Leave granted.

2. This Appeal is directed against judgment and order dated 6.9.2011 whereby the Orissa High Court dismissed, amongst other appeals, Writ Appeal No.387 of 2011 preferred by the appellant herein and upheld judgment and

order of a learned Single Judge in W.P.(C)No.5326 of 2009 etc. pronounced on 27.6.2011. The High Court has held that DAV Public Schools operating in the State of Odisha, are although private unaided educational institutions, but are covered by the provisions of the Orissa Education Act, 1969 [hereinafter referred to as 'the Act of 1969'] and hence the fees levied by such schools are subject to policy decisions of the State Government and their Managing Committee should conform to the requirements of the Act of 1969 read with relevant Rules of 1991. The fee structure revised by the concerned schools was not approved by the State Government and the High Court held against the appellant that revision of the fee structure could not be justified by the appellant that it is commensurate with the facilities provided to the students.

3. Apparently, this Court agreed with the contention of the Appellant that existing fee structure required some upward revision in view of appellant's case that it had decided to implement the higher pay scales as recommended by the 6th Central Pay Commission and hence after notice upon the respondents, this Court passed the following interim order on 11.5.2012 :

> "
> .....
> Subject to the petitioner's filing an undertaking in the Registry of this Court within one week from today that from the month of June, 2012, the petitioner shall implement the pay-scales as recommended by the 6th Pay Commission, following pro tem ad hoc arrangement is made subject to the final outcome in the Special Leave Petition.
>
> (i) The petitioner shall submit its complete account of income and expenditure with detailed figures to the Interim

Committee constituted under the impugned judgment within two weeks from today.

(ii) Within three weeks of receipt of the accounts from the petitioner, the Interim Committee will examine and evaluate the impact on the financial burden on the petitioner's schools by implementation of the recommendations of the 6th Pay Commission. The Interim Committee shall, accordingly allow the rise in the fee.

Needless to say that the determination of rise in fee by the Interim Committee shall be uninfluenced by the impugned judgment and also without prejudice to the contentions of the petitioner in the Special Leave Petition.

Before taking any decision, the Interim Committee shall hear the representatives of the petitioner and parents' association (respondent Nos.1 to 5 herein).

We also direct that until further orders, the existing Managing Committee, as constituted under the CBSE bye-laws, shall continue.

....."

4. After extending the time granted to the Interim Committee for taking the required decision, this Court was ultimately informed by learned counsel for the State of Odisha that the Interim Committee was not in a position to analyse properly the financial implications/financial statements and other documents submitted by the DAV authorities and, therefore, this Court, by order dated 22.3.2013, deprecated the changing stand of the State of Odisha but accepted its prayer made in I.A. No.9 of 2013 and issued a fresh direction to the appellant to make an application for fixation of fee structure of the school before Fee Structure Committee, Odisha headed by Justice K.P. Mohapatra, Retired Judge of High Court of Orissa and the Committee was requested to submit its Report to this Court within a time frame. The

Committee was allowed further time on 22.4.2013. The receipt of the Report from the Committee was noted by this Court on 8.5.2013 and order was passed to make available copy of the said Report to the Advocates on Record on both the sides.

5. Before adverting to the submissions of the parties with regard to Report of the Fee Structure Committee dated 2.5.2013, the decks must be cleared by noting, at the outset the submission of Mr. Abhishek Manu Singhvi, Sr. Advocate for the appellant that since the appellant is in dire and urgent need of obtaining a judgment at the earliest in respect of revised fee structure which the schools could adopt even as per recommendation of the Fee Structure Committee, it was prepared to give up the issue whether such private unaided schools, as represented by the appellant, are to be governed by the Act of 1969 and Rules made thereunder or are required to follow the guidelines issued by the Central Board of Secondary Education (CBSE) to which they are affiliated. However, he prays to record that the said issue is left open to be decided in future, if occasion arises for the same. We record accordingly. Therefore, the only surviving issue as per his submissions is whether a fee increase needs to be allowed for the DAV schools in Odisha to meet their liability due to implementation of 6th Central Pay Commission pay scales which had been admittedly introduced in these schools w.e.f. 1.6.2012. The corollary requiring answer would be if the fee is to be increased, what should be the quantum or structure.

6. We have been taken through the No Objection Certificate issued from the Office of the Director of Secondary Education, Orissa, Bhubaneshwar to one of the DAV schools, which is an annexure to the Special Leave Petition. *Inter alia,* it provides that the Managing Committee should allow scale of pay to the teachers at par with the Government school teachers and it should follow the regulation/bye law of the CBSE New Delhi prescribed from time to time. Three other conditions are not relevant to the issue at hand. We have also been taken through a Resolution of 1996 by the Government of Odisha, Department of School and Mass Education dated 23.9.1996. The Resolution contains guidelines to be followed before according No Objection Certificate / recommendation to private educational institutions. Paragraph 4 of that Resolution relates to fees and reads thus :

"4. Fees –

(i) Fees and charges should be commensurate with the facilities provided by the institution. Fees should normally be charged under the heads prescribed by the Department of School and Mass Education. No capitation fee or any voluntary donations for gaining admission in the school or for any other purpose should be charged/collected in the name of the school. In case of such malpractices the Government may take drastic action leading to withdrawal of No Objection Certificate of the school.

(ii) In case a student leaves the school for such compulsion as transfer of parents or for health reason or in case of death of the student before completion of the session prorate return of quarterly / term / annual fees should be made.

(iii) The school should consult parents through parents' representatives before revising the fees. The fees should not be revised during the midsession."

The instructions of CBSE are also to the effect that the school should consult the parents' representatives before revising the fees.

7. Objections have been raised against the said Report dated 2.5.2013 by other respondents but not the State of Odisha. Learned senior counsel for the appellant Dr. Singhvi has taken us through the said Report to point out that the Committee has given adequate opportunity of hearing to both the sides and on a proper analysis of the relevant facts which included academic standards of the schools, quality of performance of the students in the CBSE examination and the financial statistics, it has calculated and recommend average fee per child per month for the concerned DAV schools in the State of Odisha. From the Report as well as proceedings of the sub-committee headed by a chartered accountant and annexed as Annexure I to the Report it was shown that the Committee took note of the principles governing fee structure of private unaided educational institutions as emerging from different judgments of this Court including 11-Judge Bench judgment in the case of **T.M.A. Pai Foundation & Ors.** V. **State of Karnataka & Ors.** (2002) 8 SCC 481, to allow only 10% profit above the actual expenses over per child as a reasonable return to the institution and the parents' representatives were also associated with such exercise of fee fixation.

8. On behalf of respondents, who are some parents aggrieved by the proposal to revise the fees, Mr. Pallav Shishodia, Sr. Advocate raised various objections to the Report and recommendations of the Fee Structure

Committee. According to him, such Committee had no statutory base and the State of Odisha had constituted the Committee only for recommending fee structure in technical educational institutions and, therefore, the Committee could not have the expertise or the competence to suggest fee structure for DAV schools in the State of Odisha. He also urged that the objections raised on behalf of parents before the Committee were not given due discussion and significance and the recommended fees are much higher than what was suggested or claimed by the schools themselves in the year 2009 for the purpose of implementing recommendations of the 6th Central Pay Commission.

9. On a careful perusal of the various objections highlighted before the Fee Structure Committee, we find that the objections were not at all substantial and they have been dealt with appropriately by the Committee. We also find no merit in the objection with regard to competence or expertise of the Fee Structure Committee, Odisha. This Court entrusted the task in question to the Committee out of necessity in the presence of learned counsel for the parties and no one raised any objection. The only objection which required some thought was that in 2009 the proposed fee hike was of 50-57% based upon requirement for payment of salaries as per recommendations of 6th Central Pay Commission whereas on the basis of income and expenditure figures and relevant information for the year 2012-2013, the Committee has recommended revised fees which for some schools are alleged to be in the vicinity of increase of about 200%.

10. In the aforesaid context it was successfully explained on behalf of the appellant that in 2009 the fee increase was calculated on the basis of 22% D.A. prevalent at that time but the average D.A. in 2012-13 had increased to 72.25%. Further, due to lapse of three years, the annual increments of 3% would add to a total of 9%. The combined effect would be an increase of more than 200% of the original 2009 fees. It was also pointed out that increase in fees, as recommended by the Committee, ranges only from 46% to 119% for different schools over and above the present unrevised fee structure.

11. On carefully going through the facts and figures available on record and those considered by the Committee, we find no good reason to take exception to the fee structure recommended by the Fee Structure Committee, Odisha through its Report dated 2.5.2013.

12. Since the larger issue of law has been given up by the appellant and the same has been left open, we are not required to go into the same. In the facts of the case, we are re-assured by the Committee's Report that the appellant and institutions represented by it have been allowed only reasonable profit to which they are entitled under law. Hence, it is directed that the appellant and the concerned educational institutions represented by it shall be entitled to revise their fee structure with immediate effect as per recommendations of the Fee Structure Committee, Odisha dated 2.5.2013. We further clarify that the existing Managing Committee as constituted under the CBSE bye-laws shall continue to manage the concerned schools.

If the competent authority feels the necessity, it may proceed to make changes in the Managing Committee as per law and requirements of CBSE, after giving due notice and opportunity of hearing to the affected persons/Committee.

13. Before parting with the matter, we would like to caution the concerned authorities that if a private educational institution has met all the requirements of obtaining No Objection Certificate and affiliation etc. then its claim for revision of fees should be considered expeditiously on permissible parameters. Objections, if any, should be entertained only from the parents' representatives and not from individual parents. An individual may at times be reckless and may harm the educational prospects of all the students of the school. If a claim for revision of fees is stalled for long due to meritless objections, it can affect academic standards on account of disgruntled staff and teachers who may even quit the institution for want of appropriate salary and perks. Such state of affairs with regard to the concerned schools has been highlighted on behalf of the appellant. The selected parents' representatives, on the other hand, are expected to be more responsible as a body. In the present case, only some individual parents have prevented the schools from realising revised fees since 2009. It is not possible to assess the injury caused to the schools nor is it possible to award any compensation by allowing revised fees to be realised from any earlier date such as 1.6.2012 as prayed on behalf of the appellant. However, it is satisfying to note that the State of Odisha has not raised any objection to the

recommendations of the Fee Structure Committee, Odisha and, therefore, there is no legal impediment of any substance in allowing this appeal. Contempt petitions and other pending petitions shall stand disposed of. The appeal is allowed as indicated above. No costs.

.....J.
[R.M. LODHA]

.....J.
[SHIVA KIRTI SINGH]

New Delhi.
April 16, 2014.