

A D.A.V. COLLEGE MANAGING COMMITTEE THROUGH
REGIONAL DIRECTOR

v.

LAXMINARAYAN MISHRA & ORS.

(Civil Appeal No. 4556 of 2014)

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APRIL 16, 2014

[R.M. LODHA AND SHIVA KIRTI SINGH, JJ.]

C *Education – Private unaided educational institutions –*
Appellant / DAV Public Schools operating in the State of
Odisha – Fees levied by such schools – Plea for revision in
fee structure – Plea of appellant that existing fee structure
required upward revision in view of their liability to implement
D *Commission – On directions of Supreme Court, report*
submitted by Fee Structure Committee, Odisha headed by
retired Judge of High Court – Objections raised by some
parents (respondents) against the report and
E *recommendations of the Fee Structure Committee – Held: No*
merit in objection with regard to competence or expertise of
the Fee Structure Committee – No good reason to take
exception to the fee structure recommended by it – Supreme
F *Court re-assured by the Committee's Report that appellant*
and institutions represented by it have been allowed only
reasonable profit to which they are entitled under law – Further,
the State of Odisha did not raise any objection to
recommendations of the Fee Structure Committee – Appellant
and the concerned educational institutions represented by it
entitled to revise their fee structure with immediate effect as
G *per recommendations of the Fee Structure Committee –*
Orissa Education Act, 1969.

Education – Private unaided educational institutions –
Fees structure – Claim for revision of fees – Need for

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expeditious disposal – Held: If a private educational institution has met all the requirements of obtaining NOC 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 – 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.

Vide the impugned judgment, the High Court held that the appellant / DAV Public Schools operating in the State of Odisha, although private unaided educational institutions, were covered by the provisions of the Orissa Education Act, 1969 and hence the fees levied by such schools were 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.

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 issued direction to the appellant to make an application for fixation of fee structure of the school before the Fee Structure Committee, Odisha headed by Justice K.P. Mohapatra, Retired Judge of High Court of Orissa. The Committee submitted its Report to this Court.

On behalf of the respondents, who are some parents aggrieved by the proposal to revise the fees, various

A objections were raised against the Report and
recommendations of the Fee Structure Committee.
According to them, such Committee had no statutory
base and did not have the expertise or the competence
to suggest fee structure for DAV schools in the State of
B Odisha. It was also urged that the objections raised on
behalf of parents before the Committee were not given
due discussion and significance.

Allowing the appeal and disposing of the petitions,
C the Court

HELD:1.1. The objections highlighted before the Fee
Structure Committee were not at all substantial and they
were dealt with appropriately by the Committee. There is
also no merit in the objection with regard to competence
D 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 counsel for the parties
and no one raised any objection. The facts and figures
available on record and those considered by the
E Committee make it clear that there is no good reason to
take exception to the fee structure recommended by the
Fee Structure Committee, Odisha through its Report
dated 2.5.2013. [Páras 9] [613-B-C, G-H]

1.2. In the facts of the case, this Court is re-assured
F 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
G to revise their fee structure with immediate effect as per
recommendations of the Fee Structure Committee,
Odisha dated 2.5.2013. It is further clarified that the
existing Managing Committee as constituted under the
CBSE bye-laws shall continue to manage the concerned
H 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. [Para 12] [614-A-D] A

2. The concerned authorities are cautioned 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. 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. In the present case, only some individual parents 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, 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. [Para 13] [614-E-H; 615-A-B] B
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4556 of 2014.

From the Judgment and Order dated 06.09.2011 of the High Court of Orissa at Cuttack in Writ Appeal No. 387 of 2011. G

WITH

Contempt. Petition. (C) Nos. 232 & 7 of 2013 in C.A. No. 4556 of 2014.

Abhishek Manu Singhvi, Pallav Shishodia, Anand Varma, H

A Tarun Patnaik, Ashis Goel, Shekhar Kumar, Rajesh Prasad
Singh, Ajit Pudasery, A. Deb Kumar, M. K. Sahoo, P. K. Dhal,
Subhasis Pattnaik, Y. Lokesh, R. Pathak, Sudharsh Menon,
Rana Mukherjee, Merusagar Samantaray, Anand, Rajshree N.
Reddy, Kasturika Kaumudi, Shibashish Misra, Sudarsh Menon
B for the appearing parties.

The Judgment of the Court was delivered by

SHIVA KIRTI SINGH, J. 1. Leave granted.

C 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.
D 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
E 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
F not be justified by the appellant that it is commensurate with
the facilities provided to the students.

G 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 :

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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.

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(i) The petitioner shall submit its complete account of income and expenditure with detailed figures to the Interim 2 Committee constituted under the impugned judgment within two weeks from today.

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(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.

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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.

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

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

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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

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A 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
B 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
C 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.

D 5. Before advertng 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
E 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
F 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
G 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
H 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 prorata 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."

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

B 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.

F 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

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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. A

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. C
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%. D

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. E

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. F
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A 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
B 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
C 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
D 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
E 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
F 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
G 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.
H It is not possible to assess the injury caused to the schools nor

is it possible to award any compensation by allowing revised A
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 B
in allowing this appeal. Contempt petitions and other pending
petitions shall stand disposed of. The appeal is allowed as
indicated above. No costs.

Bibhuti Bhushan Bose

Appeal allowed & Petitions disposed.