



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

+ **W.P.(C) 4855/1998**

ALL INDIA SIDDHARTHA INTERNATIONAL EDU.SOC
Petitioner
Through Mr. R.M. Sinha, Adv.

versus

LT. GOVERNOR & ORS Respondent
Through Mr. V.K. Tandon, Adv. for the
Respondent

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN

ORDER
25.05.2005

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The decision of the Directorate of Education declining permission to the Petitioner to close down the School it was running at 472-A, Bhol Nath Nagar, Shahdara, Delhi-110 032 is in question in this Petition. The difficulties in the path of the Petitioner, as explained by its learned counsel, started from the promulgation of the Vth Pay Commission. It is alleged that the School was unable to adhere to the pay scales recommended by the Vth Pay Commission. A decision was therefore taken to close down the School.

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Reliance has been placed on the Inspection Report dated 22.1.1998 from the Office of the Deputy Director of Education, District East, Rani Garden, Geeta Colony, Delhi. This Report starts with the following narration - "A Special Inspection of Vaishali International School was conducted on 9th Jan., 98 in pursuance of the order no. 19934 dated the 5th Dec., 97 of DE by a panel of officers appointed for the purpose and the team was asked to examine the accounts & financial records of last 5 financial years and scrutinise the following financial details...." . The Report considers the complaints of eight employees of the School and returns the opinion that these persons had been teaching prior to the issuance of their appointment letters. The Manager of the School, Mr. Bharti, has made a statement before the Special Inspection Team that the income of the School is not sufficient to meet the expenditure including the salaries of teachers after the implementation of the Vth Pay Commission. Mr. Bharti had further stated that he was ready to hand over the School to the Government to run, provided the rent of the School Building was paid. The observations of the Special Inspection Team is that the financial position of the School was not sound.

What can be safely assumed from the above is that the Petitioner's request for the closure of the School had already reached the Directorate. Otherwise there would have been scarcely any need to



appoint the Special Inspection Team. There can be no gainsaying that the question of the closure of the School was already actively in attention before January, 1998.

Attention is next drawn by learned counsel for the Petitioner to the letter of the Petitioner dated 31.7.1998 on the subject of the closing down of the School and the surrender of its recognition. The penultimate paragraph reads thus:

During the last two years, the Society is finding it difficult to run the school any more because of a number of disputes between the teachers and Management which has resulted considerable reduction in number of students. Due to decreasing number of students, at present enrolment of the student on the date mentioned above is nil and the income has decreased considerably and the society is aiding approximately Rs.one lakh per month. Now the society is not in a position to bear such a heavy amount. So the society has decided to close down the school/surrender its recognition with immediate effect under rule 46 of Delhi School Education Act and rules 1973.

The Addl. Director of Education (ACT) addressed a letter dated 3.9.1998 to the Petitioner in which the Petitioner was " directed to continue the school in accordance with the provisions of Delhi School Education Act and Rules 1973". The letter is notable for its brevity despite the gravity of the situation, and is reproduced below:-

Sub. : Closure of School.
Sir,

This is to refer your letter dated 31.7.1998 on the above noted subject. Your request has been considered by



the Director of Education and is rejected. You are therefore, directed to continue the school in accordance with the provisions of Delhi School Education Act and Rules 1973.

You are also directed to explain justification of expenditure under following heads along with relevant documents:

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<u>Expenditure Head</u>	<u>Expenditure during 1995-96</u>	<u>Expnd. during 1996-97</u>	<u>Expnd. during 1997-98</u>	<u>Page 3 of 6 Remarks</u>
Rent	36,000/-	18,000/-	2,40,000/-	Rent agreement speaks of payment of Rent 2000/- PM to the land lady who is incidently w/o Chairman of the society.
Examination expenses		34,000/-	97,775/-	--
Generator Expenses	2389/-	5,000/-	99,000/-	

Yours faithfully,

(N.S. Tolia)
Addl. Director of Education
(ACT)

Although it is palpably clear that the matter had been pending for several months in the Office of the Directorate of Education, it eventually penned a letter dated 26.11.2001 which reads as follows:-

Sub. : CWP 4855/98 All India Sidhartha International Educational Society v/s L.G. and Others

Sir,

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Kindly refer to your letter addressed to the director of Education in the above case regarding instructions of the director of Education to be conveyed to the Hon'ble High Court whether the department can take over the school "Vaishali International School, Bhola Nath Nagar or not. In this connection it is submitted that :

The Director can take over the school only in the following situations : -

1. When the Managing Committee or the Manager of any school has neglected to perform any of the duties imposed on it by or under the Delhi School Education Act, 1973 such as:

(a) if the management of the school defaults the teachers by payment to them less salary while showing full in record in contravention to the provision of section 10(1) of the Act or

(b) if the management terminates the services of teachers in contravention of the provision of rule 105 of DSER 1973 and section 8(2) of the Act or

(c) if there lies no properly constituted managing committee in terms of the rule 59(1) (b) of DSER 1973 or

(d) The managing committee of the school is not maintaining the accounts in accordance with rule 176 & 177 of DSER 1973.

2. As per provisions of the section 20 of the DSER 1973 the duration of the taken over period is three years, there after, special permission is to be sought on year to year basis from the Administrator.

On the basis of the above provisions of the DSERA, 1973 Vaishali International School, Bhola Nath Nagar, Delhi (which was run by All India Sidhartha Educational Society) can not be taken over by the Director of Education as :

(1) the management has already closed down the school and there is no student on roll, irrespective of the fact that the D.E. has not accorded his approval for closing down the school under rule 46 of DSER, 1973.

(2) The premises in which the school was running has been sold on power of Attorney and another unrecognised school in the name of MBM International School has been running in this premises.



(3) Because the school Vaishali International was a public School (unaided), the Director of Education, Govt. of NCT of Delhi is under no obligation to secure the job opportunities for the teachers and other staff members who are/were working in that school and the total responsibility lies with the erstwhile management for the payment of dues to the teachers.

(MRS. REKHA JAIN)
DY. DIRECTOR OF EDUCATION
DISTT. EAST

In this conspectus I am convinced that the above mentioned Order cannot be sustained in law. In the first place the Director was already aware of the fact that the School had closed down. No reasons have been given for the refusal to grant permission to close down the School. One of the reasons possibly could have been non-payment of salaries of the teachers/employees. Learned counsel for the Petitioner states that all the dues of the teachers/employees were cleared upto 31.7.1998. This statement is strongly opposed by learned counsel appearing for the Teachers. In any event this dispute is not stated to be one of the reasons for declining approval. Instead, all that the Directorate of Education has called for the details regarding expenditure on rent, examinations and generator. Whenever a statutory authority is called upon to take a decision, its order has to be self-contained and self-explanatory. The impugned Order of the Directorate



of Education, regretfully, does not meet these standards.

It has been suggested that the case be remanded back to the Directorate for taking an informed decision in accordance with law. That will only delay the proceedings further. It is stated that the teachers/employees have not been paid their dues and the matter has been languishing for several years. In these circumstances I consider it appropriate to look into the question of approval of closure under Section 46 of the DSEAR. There is a controversy as to the dues of the teachers/employees which, had it been addressed at that particular time, may have been easily answered. Unfortunately, this has not been done. The only conceivable solution is that an imprimatur may be given to a situation which has already, undoubtedly, occurred, that is, the closure of the School in July, 1998. It is accordingly held that the School shall have been deemed to have been closed with effect from the passing of these Orders. Learned counsel for the Petitioner states that it would put the Petitioner in jeopardy in case the deemed approval granted by this Court is not related back to at least July, 1998. In view of the strong opposition of the teachers/employees a decision on this vexed issue would require a consideration of facts which are presently strongly disputed. This cannot appropriately be done in writ proceedings. In the event that the teachers/employees who have filed Writ Petitions in this Court are advised to initiate action for recovery of



their dues from this date or any date earlier thereto, the Petitioner shall have the right to plead and thereafter prove that the School had closed down on 31.7.1998.

Writ Petition stands disposed of in these terms.

A handwritten signature in black ink, appearing to read 'Vikramajit Sen'.

VIKRAMAJIT SEN, J

MAY 25, 2005

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