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

% *Decided on: 17th January, 2023*

+ **W.P.(C) 584/2023 with CM APPLs. 2281/2023, 2282/2023**

[REDACTED]

..... Petitioner

Through: Ms. Malka Asad, Ms. Sonal Singh, Advocates along with father of petitioner (M:8607396172)

versus

THE INDIAN SCHOOL & ANR. Respondents

Through: Mr. Pramod Gupta, Ms. Sanya, Ms. Utkarsha, Advocates for R-1/School (M:8057045450) Ms. Mehak Nakra, ASC(Civil) GNCTD with Mr. Karan Kapur, Advocate for R-2/DOE (M:9871144582)

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA
[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

1. The present writ petition has been filed with grievance that name of the petitioner child has been struck off from the school due to non-payment of fees and despite the fact that the petitioner is a student of Class 10th. The petition has been listed upon urgent mentioning since the Class 10th Board Examination (Practical Exams) are scheduled from tomorrow i.e. 18.01.2023, which constitute substantial

part of the upcoming final Class 10th Board Examination. Thus, the present petition has been filed with prayer for direction to the respondent No. 1 school to reinstate the petitioner as a student on its rolls and allow the petitioner child to sit in the upcoming CBSE Board Exams for Class 10th.

2. It is the case on behalf of the petitioner that the petitioner has been studying in the respondent No. 1 school since the Academic Year 2011-12. The petitioner has made all the past payments of the school fees in a time bound manner till before the onset of Covid – 19. Thus, the fees till January, 2021 has been cleared by the petitioner.

3. It is the case of the petitioner that due to the financial losses faced by his father, he was unable to clear the fees regularly after the pandemic lockdown. In view thereof, the respondent No. 1 school issued letter dated 29.08.2022 to the petitioner in regard to the pending fee amount of the petitioner along with recommendation of striking off the name of the petitioner from the rolls of the school. Further, the respondent No. 1 school also sent an e-mail dated 30.08.2022, wherein it again recommended striking off the name of the petitioner.

4. On receipt of the aforesaid e-mails, the petitioner's father approached the Directorate of Education (in short 'DOE') and made a representation dated 05.09.2022. He prayed to the DOE for direction to the school to allow the petitioner to attend his classes and not strike off the name of the petitioner from the roll of the school.

5. However, the respondent No. 1 school by letter dated 07.09.2022 informed the father of the petitioner that name of the

petitioner had been struck off from the rolls of the school. Thus, the father of the petitioner again approached the respondent No. 2 – DOE. Subsequently, the respondent No. 2- DOE issued a letter dated 12.09.2022 to the respondent No. 1 school requesting the school to roll back the names of all students whose names had been struck off from the rolls of the school due to delay/ non-payment of fees. The school was further requested to allow the students to continue their studies/ examination in the school.

6. Father of the petitioner also made a complaint to the Delhi Commission for Protection of Child Rights (in short 'DCPCR'). In response to the complaint, the DCPCR took cognizance of the matter and issued interim directions keeping in view the urgency of the situation. The DCPCR by its order dated 13.09.2022 directed that the school shall not bar any student from appearing in ongoing half-yearly exams, pending inquiry by the commission.

7. Subsequently, the respondent No. 1 school vide e-mails dated 14.09.2022 and 16.09.2022 permitted the petitioner herein to appear for the half yearly examinations and also allowed the petitioner to attend the classes.

8. Subsequently, however the name of the petitioner was again struck off by the school, which was informed to the petitioner vide e-mail dated 19.11.2022. It is submitted that after receipt of the aforesaid e-mail, the father of the petitioner made numerous attempts to request the school authorities to allow the petitioner to attend the classes. However, the respondent No. 1 school did not allow the petitioner to either attend the school, nor is now allowing the

petitioner to take the Class 10th Practical Board Examination commencing from tomorrow i.e. 18.01.2023.

9. Ms. Mehak Nakra, ASC(Civil) GNCTD appearing on advance notice submitted that the DOE has already written a letter dated 12.09.2022 to the school directing the respondent No. 1 school to roll back the names of all the students whose names had been struck off and allow the students to continue their studies in school as well as to allow them to sit for the examinations. Thus, she submits that the DOE is supporting the case of the petitioner in that the petitioner may not be barred from either attending the school or from appearing in the examinations.

10. At the outset, Mr. Pramod Gupta, Advocate appearing on advance notice on behalf of respondent No. 1 school has vehemently opposed the present petition. He submits that large amounts of sums towards fees are due and payable not only by the petitioner, but his sister also who passed out in the last Academic Session i.e. 2021-22. Learned counsel has handed over a chart showing the dues payable by the petitioner as well as his sister, amounting to a total of Rs.3,14,000/-. He submits that this amount which is due and payable from the petitioner and his sister is a large amount, which can fund the monthly salary of at least four teachers. The respondent No. 1 school is a private unaided school and it is not possible for the school to impart education if the students are not regular in payment of their fees.

11. He further submits that since the DCPCR issued orders against the school, the respondent No. 1 school was constrained to approach

this Court by way of a writ petition, *W.P.(C) No. 16940/2022* titled as '*The Indian School vs. Delhi Commission for Protection of Child Rights and Ors.*'. It is submitted that the said petition is still pending and is now listed on 22.03.2023.

12. Learned counsel for respondent No. 1 further draws the attention of this Court to e-mail dated 31.08.2022 received from the father of the petitioner, wherein it is stated that tuition fees qua the petitioner had been paid by his father from April, 2022 to August, 2022. By way of the said e-mail, father of the petitioner assured the school that due to some financial issues, payment of fees was delayed and that he shall pay rest of the fees as soon as possible. Thus, it is submitted that despite the assurance given to the school, the petitioner has not paid the upto date fees of the school, resulting in huge arrears due and payable to the school. The school has further been constrained to file a suit for recovery in the District Court, Saket against father of the petitioner for the amounts payable to the school.

13. Learned counsel for respondent No. 1 school also draws the attention of this Court to Rule 35 of Delhi School Education Rules, 1973 (in short 'DSER') to contend that the name of the petitioner has been struck off in exercise of the power as envisaged under Rule 35 of the said Rules. As per Rule 35 of DSER, 1973, the name of a student may be struck off the rolls by the Head of the school on account of non-payment of fees and other dues.

14. Learned counsel for respondent No. 1 relies upon order dated 27.05.2022 passed by Division Bench of this Court in *W.P.(C) No. 8466/2022*, wherein it has been categorically held that Rule 35 does

not impinge upon the operation of the Right to Education (RTE) Act. In the said judgment, Division Bench of this Court has held that the petitioner therein is free to take admission in a Government school, if he cannot afford to pay the fees of the private unaided school.

15. Similarly, learned counsel for respondent No. 1 also relies upon order dated 23.02.2022 in W.P.(C) No. 3330/2022 and order dated 06.09.2022 in W.P.(C) 3858/2022 passed by Coordinate Benches of this Court, wherein this Court has directed the parents of the petitioners therein to make payment towards the outstanding fees by way of monthly instalments or payment of lumpsum amounts.

16. I have heard the learned counsels for the parties. With the consent of the parties, the matter is taken up for final disposal.

17. Education has been held to be essentially a charitable object, a kind of service to the community. Supreme Court in the case of ***T.M.A. Pai Foundation vs. State of Karnataka, 2002 SCC OnLine SC 1036*** has held as follows:

“20. Article 19(1)(g) employs four expressions viz. profession, occupation, trade and business. Their fields may overlap, but each of them does have a content of its own. Education is per se regarded as an activity that is charitable in nature (see State of Bombay v. R.M.D. Chamarbaugwala [AIR 1957 SC 699 : 1957 SCR 874]). Education has so far not been regarded as a trade or business where profit is the motive. Even if there is any doubt about whether education is a profession or not, it does appear that education will fall within the meaning of the expression “occupation”. Article 19(1)(g) uses the four expressions so as to cover all activities of a citizen in respect of which income or profit is generated, and which can consequently be regulated under Article 19(6). In Webster's Third New International Dictionary, at p. 1650, “occupation”

is, inter alia, defined as “an activity in which one engages” or “a craft, trade, profession or other means of earning a living”.”

18. Thus, a child cannot be made to suffer and not be allowed to attend classes or barred from taking examinations in the middle of an academic session on the ground of non-payment of fees. Education is the foundation, which shapes the future of a child and which in turn shapes the future of the society in general. Therefore, not allowing a student to take examinations, especially the Board Examinations, would be infringement of the rights of a child akin to Right to Life as guaranteed under Article 21 of the Constitution of India. Supreme Court has expanded the rights under Article 21 of Constitution of India and education is certainly one of the important rights which would be encompassed under right to life. In furtherance of the same, Article 21A of the Constitution of India provides for Right to Education, wherein the State has been ordained to provide free and compulsory education to all children of the age of 6 to 14 years.

19. Supreme Court in the case of ***Bandhua Mukti Morcha vs. Union of India and Ors., (1984) 3 SCC 161*** has held as follows:

“10. It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullin case [Francis Coralie Mullin v. Administrator, UT of Delhi, (1981) 1 SCC 608 : 1981 SCC (Cri) 212] to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse,

opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State — neither the Central Government nor any State Government — has the right to take any action which will deprive a person of the enjoyment of these basic essentials.”

20. A child’s future cannot be allowed to be spoiled and blemished by barring him/ her from taking examinations, especially at such a crucial juncture. In the context of Indian Society, Class 10th and Class 12th Board Examinations are vitally important and critical, having decisive repercussions and bearing on the future of a student.

21. At the same time, a school which is run as a private unaided school cannot be forced to continue with a child who is unable to pay fees, having taken admission in the general quota and not under the Economically Weaker Section (EWS) or Disadvantaged Group (DG) quota. The constitutionality and validity of Rule 35 of DSER, 1973, which authorises the Head of the school to strike off the name of a student from the rolls of the school on account of non-payment of fees, has not been struck down by any Court of law.

22. Division Bench of this Court in the case of ***Master Divyam Bhateja through father Mr. Vinod Bhateja vs. Bhai Parmanand Vidya Mandir and Ors.***, MANU/DE/2900/2022 in W.P. (C) 8466/2022 by order dated 27.05.2022, while rejecting the challenge to the vires of Rule 35 of DSER, 1973 has held as follows:

“9. Given the independent and distinct framework of Delhi School Education Act and the Rules framed thereunder, and the

RTE Act and the rules framed thereunder, there can be no question of Rules 35 and 167 of Delhi School Education Rules impinging upon the operation of the RTE Act. The RTE Act guarantees the right to education. However, it nowhere provides that the said right can be unconditionally enforced against a private unaided school. The petitioner is free to take admission in a government school if he cannot afford to pay the fee of the private unaided school. If he is entitled to admission in the EWS category, he may apply under that category to seek waiver of the school fee. If the claim of the petitioner were to be allowed, it would mean that even a private unaided school would not be able to charge any fee even though they have to meet all their expenses from their own resources and accretions. This is completely untenable.

10. Likewise, the impugned Rules 35 and 167 of Delhi School Education Schools do not impinge upon or affect in any manner the operation of Sections 75 of Juvenile Justice Act. The said provision has been enacted in a completely different context.....”

23. Therefore, the rights of a child to education has to be balanced with the rights of the school under the DSER, 1973. If the petitioner is unable to pay the fees of the school, the petitioner certainly does not have a right to continue education in the school in question. However, the petitioner cannot be tormented in this manner in the middle of the academic session. The academic year of the petitioner cannot be allowed to be wasted, since the current academic session is almost at its end. Further, it is also pertinent to note that the petitioner is currently in Class 10th, for which registration with the CBSE for appearing in Class 10th Board Examination has already taken place. Therefore, at this juncture, the petitioner cannot be directed to take admission in a new school, when the current academic session has

almost ended and the Board Examinations are round the corner. Not allowing the petitioner to take up the Board Examinations would put the petitioner at a great hardship and the petitioner would suffer irreparable harm if he is not allowed to take up the examination. Therefore, considering the facts and circumstances of the present case, it is deemed expedient that the prayers as made in the present writ petition are allowed and the petitioner child is permitted to take the Class 10th Board Examinations.

24. However, it is noted that the petitioner has approached this Court at a belated stage despite the fact that name of the petitioner had been struck off by the school firstly by way of letter dated 07.09.2022 and subsequently, by way of letter dated 19.11.2022. This Court deprecates the conduct of the petitioner in approaching this Court at the eleventh hour, when the Practical Board Examinations are to commence from tomorrow onwards.

25. Nevertheless, taking a compassionate and sympathetic view, considering the fact that the petitioner is a minor child studying in Class 10th and the Academic Year of the petitioner will be wasted in case this Court does not intervene in the matter, it is directed that the petitioner child shall be allowed by the respondent No.1 school to take up the Practical Board Examinations of Class 10th commencing from tomorrow i.e. 18.01.2023. Further, the school shall also issue the Class 10th CBSE Roll Number to the petitioner to enable the petitioner to take up the Class 10th Board Examinations. The school shall also allow the petitioner child to attend any classes/ special classes that may be held by the school for imparting education to the children for

appearing in Class 10th Board Examinations.

26. However, in order to balance the equities, it is considered imperative that the petitioner pays some amount towards the fees payable to the school. In the facts and circumstances of the case, since it has been expressed on behalf of the father of the petitioner that the family is undergoing financial constraints, it is directed that the petitioner shall pay an amount of Rs.30,000/- to the school within a period of four weeks from today on account of the dues payable to the school towards the fees.

27. The present writ petition is disposed of in the aforesaid terms along with all the pending applications.

JANUARY 17, 2023

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MINI PUSHKARNA, J

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