

*Before Ranjit Singh, J.*

**JAGDISH AND OTHERS,—Petitioners**

**versus**

**STATE OF HARYANA AND OTHERS,—Respondents**

**C.W.P. No. 7178 of 2009**

31st August, 2010

*Constitution of India, 1950—Art. 226—Haryana School Education Rules, 2003—Rl. 152(1) & (2)—Allegation against aided schools of charging excess fee & donation found established by Enquiry Committee—Serious allegation regarding beating of a student for extracting fee also proved—State appointing SDM as administrator for school—Superintendent of Police directed to register a case against teacher and investigate aspect of conspiracy and connivance of respondents responsible for giving beating to student to extract fee—State directed to file affidavit disclosing date of taking over by Administrator the management of schools and result of investigation of criminal case.*

*Held*, that this Court found a serious allegation regarding the beating of the student for extracting fee. This, though was denied, but the student came before this Court to confirm the said fact. The allegations cannot be easily ignored. It is not understood as to how this has not attracted criminal action against the person responsible including the management, which seems to be a conniving party with the teacher in beating the student, who caused injury. It matters not if the said teacher has left the school. The respondent-Management and the school would claim that the teacher was made to leave because of this incident. It does not appear to be so. In any case, this would need to be enquired into. It is also to be seen if the teacher had acted on his own in beating the student to ask him to pay fee or it was on the dictates of the School, the Principal and the management. They have to be summoned for such purpose and are to be made accountable. Since beating of a student, that too to extract enhanced fee, cannot be taken lightly, the offence as revealing cannot be glossed over.

(Para 18)

Sanjiv Bansal, Advocate, *for the petitioners.*

Harish Rathee, Sr. DAG, Haryana, for the State.

Puneet Bali, Advocate, for respondent Nos. 6 to 9.

**RANJIT SINGH, J.**

(1) The School, which is a nursery for grooming the youth of the Nation, is seen acting in violation of even the Education Code and adopting bizarre methods to extract high/exorbitant fee and donations from students, who are not very well to do. The petition is by number of parents, who have approached this Court with the grievance that the respondent-Schools being run by Arya Partinidhi Sabha are cheating by charging high fee for which even no receipts are being given. The high fee so charged is being shown in the form of donation extracted forcibly, showing the receipts as such. Having failed in their complaints made to the authorities, the petitioners have approached this Court through the present writ petition.

(2) Seeing the state of affairs as projected in the writ petition, this Court, while issuing notice of motion, had directed the Director General of School Education, Haryana, to constitute a Committee of senior officers from the Audit Department to enquire into the conduct and affairs of the respondent-Schools and to file a report before the Court. To ensure that no record was destroyed, directions were issued to S.D.M., Narwana, to take in custody the relevant documents from the respondent-Schools. The enquiry was accordingly conducted, revealing various violations being committed by the respondent-Schools.

(3) The enquiry report was placed on record in June, 2009, which not only revealed mis-management by the Managing Committee but also the allegations made in the petition that donation and development charges were being collected from the students. The enquiry report would rather show that this fact was admitted by the Principal and Manager of Arya Senior Secondary School, Narwana that the donation and development charges were being collected from the students to pay salary to un-sanctioned staff etc. Similar was the position in Arya Kanya Maha Vidyalaya, Narwana, second school run by the Society, (respondent No. 7).

(4) As the hearing of the case progressed, strange and shocking state of affair started surfacing. The petitioners placed on record news item with a heading 'STUDENT GIVEN SEVERE THRESHING FOR FEE'. The news item carried a photograph of a student with a bandage on one eye. News item revealed that the student was given severe threshing by a teacher for recovery of fee and the student had suffered injury on that account on his eye. The student of 11th Class was, named Gulshan, aged 19 years, who was also hospitalized. As per the news, in the morning, Teacher Surinder Punia, in the school demanded Rs. 966 from Gulshan, who had not got the amount. Said Surinder Punia started beating the student, when blood started oozing from student's eye. The student suffered injury on his face and was taken to General Hospital for treatment.

(5) Noticing this alarming state of affairs and on perusing the reply, the Court took serious cognizance of the entire issue on 14th July, 2010. Before issuing any further direction in this regard, the Court had considered appropriate to assure itself about the allegation and accordingly summoned the student to appear before it. The order passed on 14th July, 2010 reads as under :—

“.....In the meanwhile, the petitioners have raised some more grievances like the students, who are not paying donations etc. were harassed by adopting other means by not issuing Roll Nos. Even allegation of beating the students is also made and in this regard my attention has been invited to Annexure P-8 annexed with the petition. It is the news item with the heading “**the students are given severe beatings for the fee**”. The petitioners have also invited my attention to order dated 16th September, 2009 whereby the respondents-schools were directed not to force any student to pay any amount other than the permissible tuition fee. As per the counsel for the petitioners this practice still not ceased.

Counsel for the respondents-schools, however, not only denies but offer an undertaking that no donation etc. is being charged or will be charged. The further submission is that no one is being forced to give donation, but some people are voluntarily doing so. The pleas as projected are rather alarming. It is highly

objectionable, if the student going to school for studies is given beating for not paying donation. It would be highly illegal and it cannot be accepted or allowed.

Before proceedings in the matter or issuing any direction to the State to look into this aspect, I would prefer to assure myself in this regard and see if the allegation can be substantiated in any manner. Accordingly, directions are hereby issued to Gulshan, S/o Shri Suraj Bhan, aged about 19 years, studying in the Arya School, to come present in the Court to confirm if the allegations made in the present petition are true or not. It would be admissible and appropriate for the State to bring the student under its own arrangement and expenses.

Adjourned to 21st July, 2010.”

(6) Gulshan, the student, son of Suraj Bhan, came present before the Court on 21st July, 2010 and was identified as the same student, whose photograph had appeared in the newspaper. The student stated before the Court in clear terms that he was given beating by Surinder Punia, a Teacher, in connection with fee. He also disclosed that said teacher had left the School. The Court, at that stage, thought it appropriate to issue notice to respondent Nos. 6 to 10 to appear in person. Simultaneously, the counsel for the petitioners had pointed out that first 30 minutes each day were devoted by the School for collecting fee and the studies started only thereafter. Seeing this state of affairs, the Court issued direction that respondent Nos. 6 to 10 would cease to manage the affairs of the School immediately. The State was directed to ensure that the Administrator was appointed within 24 hours to look into the affairs of the School. In addition, the State was directed to place on record the compliance report within two days. Operative part of the order is reproduced below :—

“Pursuant to the direction issued by this Court on 14th July, 2010, Gulshan, son of Shri Suraj Bhan is present before the Court. He is the same person who is shown in the newspaper, Annexure P-8, which carries his photograph as well. Gulshan confirms that he was given beating and the photograph appearing in the newspaper is of his. He also states before the Court that he was given the beatings in regard to the issue of fee. When

questioned, he further discloses that the beating was given to him by Surinder Punia, who has now left the School. This position is unacceptable and cannot be allowed to continue.

Let notice issue to the Principal of the School as well as respondent Nos. 6 to 10 to appear in person before the Court. Said respondents would be informed by the counsel representing them before this Court and if any respondent is not represented by the counsel, State will ensure service of the notice on the said respondent. At this stage, Mr. Sanjiv Bansal further points out that as per his information, first 30 minutes each day are devoted for collecting fee and thereafter the study starts in school. The result of the investigation is already on record.

The State will ensure that respondent Nos. 6 to 10 cease to manage the affairs of the School immediately. The State will also ensure that the Administrator is appointed within 24 hours to look into the affairs of the School. The compliance report be given within two days.”

(7) The respondent-Schools and management filed a Letters Patent Appeal against the above interim direction issued by the Court on 21st July, 2010. The L.P.A., however, was disposed of on 23rd July, 2010 and the order appointing the Administrator was directed to be deferred till 28th July, 2010, which was the date fixed before the Court for further hearing of the petition. The order passed in the L.P.A., which has since been placed on record, is as under :—

“This appeal was mentioned and taken up today before lunch. The appellant was asked to produce the order dated 14th July, 2010 which was produced and perused after lunch.

The grievance of the appellant in this appeal in respect of the impugned order is regarding the appointment of Administrator. Learned counsel for the appellant has averred that Annexures A-2 to A-4 to the appeal were not placed before the learned Single Judge who is seized of the matter.

After hearing learned counsel for the parties, we are of the view that since the learned Single Judge is seized of the matter, it would be just and appropriate that the order passed by the learned Single Judge to the extent of appointment of Administrator is deferred till 28th July, 2010, subject to further orders to be passed by the learned Single Judge after Annexures A-2 to A-4 are placed before the learned Single Judge.

Mr. Bali appearing on behalf of the appellant states that reply to the Civil Misc. Application shall be filed before the next date of hearing with an advance copy to the counsel appearing on behalf of the petitioners.

A copy of this order be given *dasti* to learned counsel for the appellant under the signatures of Bench Secretary. With the above directions, the appeal stands disposed off.”

(8) The copy of the Letters Patent Appeal is not available on record. However, the counsel representing the parties made allegations and counter allegations in regard to the grounds pleading in the L.P.A. to urge that attempt was made to mislead the L.P.A. Bench by the respondent-appellants.

(9) When the case came up for hearing on 28th July, 2010 before this Court, the respondent-Schools and management were represented by another counsel, who had not appeared on their behalf earlier. The counsel for the private respondents made reference to various documents, which were not on record. On his request, the case was adjourned to enable him to place the said documents on record.

(10) Additional documents in the form of Annexures R-13 to R-20 have, thus, been placed on record of the case and also reply on behalf of respondent Nos. 6 to 10, who had been directed to appear in person.

(11) The petitioners have also filed additional documents, Annexures P-11 to P-13. Both the counsel are heard.

(12) The counsel appearing for the respondents submits that Gulshan, son of Suraj Bhan may not stand by the version earlier given by him that he was given beating in connection with the payment of fee/donation etc.

This assertion is contrary to the proceedings recorded before this Court wherein the statement of the student was recorded, when he was summoned to appear in person. No submission against the judicial record can be accepted. The counsel apparently is relying on an affidavit given by the brother of the student. It is obvious that the respondent-School and management have approached the student or his brother and so the affidavit has come on record. This affidavit cannot mean much and would not be relevant in any manner except for showing that this was an attempt on the part of management to win over the student or to otherwise allure him to relent. Such a conduct on the part of the respondents is not worth appreciation. An affidavit from the elder brother of the student is obtained and placed on record, wherein he has deposed that his brother, Gulshan, had made a complaint in hurry and due to misunderstanding. It is then mentioned in the affidavit that the injuries suffered by his brother were not in connection with the payment of fee and that he had no complaint against the School. Obviously, this is a procured document. How the respondent-Management of the School has got this affidavit, is not disclosed. Why would brother of the student come forward to give this affidavit? In any event, this affidavit would be meaningless as the student who had suffered the injury, had appeared before the Court to record his version and his brother is in no position to contradict the same as he was not the one present at the scene when the incident took place leading to the injuries. It is the version of the student which would be relevant and material. This act on the part of the management is certainly an attempt to over-reach the Court and is to be taken as interference in the administration of justice for which they can even be made answerable. Ignoring the same, other aspects of the case may now be considered.

(13) The petitioners, on the support of additional documents now placed on record, would urge that the Schools and management-respondent had not only made an attempt to mislead this Court but has misconducted themselves by placing misleading information before the Letters Patent Bench. Reference is made to the documents, which were placed by the respondents with the L.P.A. i.e. Annexures A-1 to A-5. It was pleaded before the L.P.A. Bench, on the strength of these documents (Annexures A-1 to A-5), that the show cause notice was issued to the respondents (appellants) as to why the management of the School be not taken over and Administrator appointed. The respondent-management had filed reply

to the said show cause notice. As per the averment, this show cause notice was withdrawn after considering the reply. On this basis, it was pleaded in the L.P.A. that there was no need for a drastic step to appoint the Administrator, as was ordered by this Court and this was projected as the main plank of attack to the order impugned in the L.P.A.

(14) Precisely, these were the lines of submissions now made before this Court by the counsel appearing for the respondents. In contrast, the counsel for the petitioners submits that the respondent-Schools and management had concealed the fact that the show cause notice, which was issued and referred to above for appointment of Administrator was challenged by them through Civil Writ Petition No. 12252 of 2010. This writ petition was dismissed on 14th July, 2010 and order in this regard is placed as Annexure P-12. It is pointed out that the counsel appearing for the respondent-management and Schools had given up their challenge for quashing the show cause notice. This is so recorded in order dated 14th July, 2010 passed by this Court and the relevant part thereof is as under :—

“Any direction issued in regard to quashing of enquiry report or show cause notice or of a penalty etc. would be a direct conflict with the order passed by this Court in C.W.P. No. 7178 of 2009. This prayer, accordingly, cannot be entertained. In fact, the counsel for the petitioners during the course of arguments gives up this part of the prayer. He however, strenuously presses his grouse for directing the State to conduct a thorough enquiry in regard to the remaining schools who are adopting the similar course and are cheating the students, who are studying in such schools. It would be appropriate for the petitioners at the first instance to file a representation by way of demand before the State or before a competent authority like the Director School Education Board for holding such an enquiry. Obviously, there are large number of schools in the State and it would be appropriate for the petitioners to point out those schools where any violation is taking place on the lines as is found in the petitioners-schools. In case, no action is taken on such a demand, if raised, they would be at liberty to take any appropriate proceeding thereafter.

Dismissed.”



(15) The counsel for the petitioners, thus, is justified in saying that an attempt was made to mislead the L.P.A. Bench by not placing this fact on record and so also the order passed by this Court. Once the challenge to the show cause notice was given up by the respondent-management and Schools, it did not lie in their mouth to urge before the L.P.A. Bench that the show cause notice, seeking appointment of Administrator had been withdrawn because of the reply filed by the respondent-management and Schools. The action pursuant to the enquiry had followed because of a direction issued by this Court and as such, any order passed in regard to the show cause notice would have certainly been in direct conflict with the earlier order passed by this Court.

(16) Reference is then made to a letter dated 3rd June, 2010 issued by the official respondents, which was also not brought to the notice of the L.P.A. Bench through this letter, the District Education Officer, Jind, was directed to prepare a separate report regarding irregularities found at the time of enquiry conducted by the official respondents. Copy of this letter is now placed on record as Annexure P-13. This letter is in continuation of a letter dated 25th May, 2010 placed with the L.P.A. as Annexure A-4. From this, the counsel for the petitioners would point out that the order of appointment of the Administrator has been withdrawn to enable the Managing Committee to conduct the election within two months. This in no manner meant that the private respondents have been exonerated of the serious irregularities and the misconduct, which had surfaced during the enquiry. The letter, Annexure P-13, was statedly within the knowledge of the private respondents, as this was referred to in another writ petition, where challenge was made to the election process and which was also dismissed and against which, the private respondents filed L.P.A. Thus, a subtle attempt is clearly seen on the part of the respondents either to mislead the Court or at any rate, an attempt to approach the Court with hands which are not clean. The private respondents, thus, may be denied any relief only on this ground.

(17) It is noticed that the Court in this case has acted by assuring itself of the allegation made in the petition. At the very first instance, the Court had directed an independent officer to carry out the investigation and further action followed only when serious irregularities were noticed. There was not only finding of mismanagement by the Managing Committee

but allegations of charging excess fee and donation etc. were also found established. On the basis of the admissions made before the Enquiry Committee carrying out the enquiry, the Committee had concluded as under :—

“On the perusal of record, it is concluded that donation receipts as annexed at P-5 and Admission Fee Receipts as annexed at P-6, enclosed with the Civil Writ Petition No. 7178 of 2009, have actually been issued by the school management of the concerned school and thus charged exorbitant and illegitimate donations from the students and parents of students. Only 12 receipts of fees and 12 receipts of donations have been issued by Arya Sr. Sec. School, Narwana. From the close comparison and scrutiny of the receipts, it is evident that receipts issued on account of fee is as per legitimate charges but simultaneously receipts for exorbitant fee on the pretext of Development Charges/donation have been issued to the same students or parents of the students. Similarly 30 fee receipts and about 64 donation receipts have also been issued by the school management of Arya Kanya Mahavidyala, Narwana but the excess fee in the shape of donations have been collected from the students of both the Institution. It is also admitted by the school managements that Fee and donation receipts are issued only on demand to students/parents and donation and development charges have generally been collected from all the students to meet with the expenditure on account of salary of unsanctioned staff, to meet the other expenses such as computer lab., generator, water cooler, maintenance of building and to pay 25% management share of the salary of sanctioned staff. It is mentioned here that a charging of exorbitant fee on the pretext of donation is violation of Rule 152(1) & (2) of Haryana School Education Rules, 2003, which is reproduced as under :—

152(1) “No aided school shall levy or collect any donation compulsorily from any student or any parent or guardian of any student.”

- (2) "No aided school shall collect any donation through its students for the aid of teachers or for any fund for the aid of teachers."

Some petitioners and some local residents of the area have stated before the Enquiry Committee that the school management is charging excess fees on the pretext of donation from their children and they have not paid the donation voluntarily. So after going through the available relevant record, Committee is of the view that the submissions made by the petitioners in Civil Writ Petition No. 7178 of 2009 and complaints of some parents of students regarding charging of exorbitant fee is proved on the basis of record and it is an admitted fact that the school managements are charging exorbitant fees on the pretext of donations etc. from the students and no proper receipts are being issued to the students in this regard. It is also proved that the managing Committee of both the Schools have not been constituted as per constitutions of their societies and the same have not been approved by the department."

(18) Not only this, this Court found a serious allegation regarding the beating of the student of extracting fee. This, though was denied, but the student came before this Court to confirm the said fact. The allegations cannot be easily ignored. It is not understood as to how this has not attracted criminal action against the person responsible including the management, which seems to be a conniving party with the teacher in beating the student, who caused injury. It matters not if the said teacher has left the school. The respondent Management and the school would claim that the teacher was made to leave because of this incident. It does not appear to be so. In any case, this would need to be enquired into. It is also to be seen if the teacher had acted on his own in beating the student to ask him to pay fee or it was on the dictates of the School, the Principal and the management. They have to be summoned for such purpose and are to be made accountable. Since beating of a student, that too to extract

enhanced fee, cannot be taken lightly, the offence as revealing cannot be glossed over.

(19) Taking cognizance of the same, direction would issue to the Superintendent of Police, Jind to register a case against Mr. Surinder Punia, who was earlier working as a Teacher in the School. The Investigating Officer would further investigate the aspect of conspiracy and connivance on the part of respondent Nos. 6 and 8 to 10 and hold them accountable, if it is found that they were also aware and, thus, responsible for beating to the student to extract fee. On his own, the teacher would have no interest to beat a student for the purpose of extracting fee, unless the management had so desired him to do. Accordingly, the respondent-management and Principal of the School cannot escape responsibility and may have to be held accountable. The Investigating Officer would not ignore this facet of the case.

(20) The official respondents had placed on record an order dated 23rd July, 2010, appointing S.D.M. (c), Narwana (Jind) as Administrator for both the Schools for one year with immediate effect.

(21) In order to confirm that this order has been implemented, the State counsel is directed to file affidavit to confirm that the Administrator has taken over in terms of the order and is functioning. The State would also disclose the date with effect from the Administrator has taken over the management of both the Schools. The result of investigation of the criminal case, which is to be registered, will be placed on record before this Court within a period of two months from today.

(22) The case shall stand adjourned to 17th November, 2010 to ensure monitoring of the further progress of the investigation.