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

+ W.P.(C) 13480/2018 & CM Nos. 52440-52441/2018

THE INDIAN SCHOOL

..... Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv. with
Mr. Pramod Gupta, Ms. Huma
Mehfool, Ms. Vanshika Sethi and
Mr. Kabeer, Advs. for the petitioner

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Sanjoy Ghose, ASC, GNCTD
with Mr. Rhishabh Jetley, Adv. for
R-1 & 4
Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Santosh Kumar Tripathi,
ASC, GNCTD, Mr. Shikha Sharma
Bagga and Mr. PDT Acharya, Advs.
for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

19.12.2018

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The petitioner has filed present writ petition under article 226
Constitution of India seeking the following relief:

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- a) *Issue Writs of certiorari, order directions in the nature thereof calling for the records pertaining to the Petition against the Petitioner as entertained by the Committee on Petitions;*
- b) *Issue Writs of certiorari, order directions in the nature thereof for quashing of the Notices dated 30.11.2018 and*

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06.12.2018 and quashing and setting aside the forced visit and Meeting dated 10.12.2018 held at petitioner school and all the proceedings of Committee on Petition and orders issued by Respondent no. 4, emanating therefrom;

- c) Issue a Writ of Declaration or any other writ, order or direction declaring 2nd Proviso to Rule 204 of Rules of Procedure and Conduct of Business in the Legislative Assembly of the National Capital Territory of Delhi, 1997, as ultra vires and unconstitutional and, therefore, deserves to be struck down; and*
- d) Pass such other and further order which as this court may deem fit and proper in the facts and circumstances of the case."*

Mr. Sethi, learned senior counsel appearing on behalf of the petitioner submits that the complaint dated 16.05.2018 addressed to the Hon'ble Chief Minister of Delhi pertaining to the petitioner's school, challenging the fee increased by the school on account of the implementation of the 7th Pay Commission was forwarded to the Deputy Director of Education on 21.05.2018.

The school in turn responded to the allegations so levelled against the school by a communication dated 23.05.2018. Thereafter, there was exchange of various communications between the Directorate of Education and the school including seeking of documents from the school which were provided. The school also received an e-mail from the Deputy Director of Education, Zone-23 seeking clarification on 27 points and other queries which were raised on 09.07.2018. Meanwhile, the school filed a civil suit bearing CS (OS) No. 334/2018 against the complainants for defamation and damages. Notice was issued in the suit on 16.07.2018 and the next date fixed

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is in the month of March, 2019. The Section Officer of Directorate of Education, South District and other officials visited the school on 10.07.2018 and sought documents which were subject matter of the e-mail dated 09.07.2018. Despite time being sought, the officials had refused to leave the premises of the school till the documents were provided, in terms of communication issued a day earlier. The petitioner, thereafter, received what has been termed as an order dated 12.07.2018, issuing various directions including prohibiting the school from collecting any enhanced fee for the Academic Session 2017-18 and in case enhanced fee had been collected, an order of refund or adjustment was to be passed. The petitioner alleges various violations of the Delhi School Education Act, 1973 and the Rules framed thereunder by the respondents. The school, thereafter, filed a writ petition bearing no. 8077/2018 on 26.11.2018 wherein a limited stay to the extent of refund has been passed.

The petitioner also submits that between the period 03.12.2018 and 05.12.2018, the Deputy Director of Education vide its e-mail sought the compliance of the order dated 26.11.2018. The compliance was posted on the website by the school and revised fee circular was issued.

The petitioner school then received an e-mail from Deputy Director of Education, South Zone - 23 on 04.12.2018 at 11.55 am from the 'Committee on Petitions' for a meeting scheduled on the same day at 2 pm. The Principal of the school was first called to the office of Director of Education at 1 pm and then to attend the meeting at 2 pm. By a reply e-mail of the same date at

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12.46 pm, it was informed by the school that the principal of the school was in Ahmadabad. At 1.10 pm, another e-mail was received from the Deputy Director of Education calling upon the school to send Mr. K.S. Vaid to attend the meeting. Mr. Vaid reached the office of the Committee on Petitions and he was informed around 3.50 pm that since he had come late, no further deliberations could be undertaken. On 08.12.2018, being a second Saturday when the school was closed, notice (meeting/ inspection dated 6/7.12.2018) was received from the 'Committee on Petitions' who decided to conduct a visit of the 'Committee on Petitions' at the premises of the Indian School on 10.12.2018 at 9 am. It is alleged that this notice was circulated amongst the parents on social media even before the same was served on the school. The school on 08.12.2018 in response to the notice clarified that though the aforesaid notice mentioned about a hearing on 04.12.2018, no hearing as such had been provided to the school on the said date. Pendency of W.P. (C) no. 8077/2018 before the High Court was also brought to the notice of the Committee relating to the allegations made by some of the parents. It was also brought to the notice of Committee that not only the High Court was seized of the matter but partial stay was granted and also the Directorate of Education was seized of the matter and, thus, any action on part of the Committee would be barred under Rule 201 (iii)(a) of the Rules of 1997. The school addressed another email on 10.12.2018 to the Committee members giving reference to the order passed by Division Bench of High Court of Delhi where the subject matter of petition before the

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'Committee on Petitions' a writ petition was already pending. It is alleged that despite the objections so taken, the committee acted in an extremely high handed manner and its conduct was very rude and dictatorial and went ahead with conducting of inspection of the school from 9.30 am to 03.30 pm. The Committee summoned school employees, questioned the principal, questioned EWS students, inspected the building and threatened the electrician and staff with imprisonment and strict legal action, summoned the SHO, warned the counsel who tried to represent the Principal, took his identity card and video graphed the same. After spending six hours in the school, directed the Deputy Director of Education to initiate stringent actions against the school.

Mr. Sethi contends that the genesis of the entire exercise was when the request of the concerned MLA was not acceded to and a student of Class 11 was not given pass marks in the Academic Session of 2017-18 in the Psychology paper held on 12.02.2018 in which she failed. It is alleged that she was given a re-test on 12.03.2018, in which she again failed. School was approached by her mother, grandparents and the MLA to promote her to class 12th. The Principal had requested that it would not be possible to single out one child for preferential treatment as there were other children similarly placed. It is also submitted that the student had filed W.P.(C) 3849/2018 seeking five grace marks and promotion to class 12th in this Court, when the school fairly agreed to provide another opportunity to her to appear in the compartment examination without the same being treated as a precedent. Unfortunately, even in the re-test, she failed and secured only 15 marks. It is

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alleged that on 28.06.2018, an officer of the Directorate in South Zone -23 asked for the question paper and evaluated the answer sheet of the said student on 16.07.2018 and she was awarded 25 on 70 in the examination by the department . Thereafter, an application for transfer certificate was moved and a new transfer certificate of class 11 was issued on 17.07.2018, signed by Deputy Director of Education, Zone-23.

It was contended that the Committee had also enquired about the status of the said case. It has been submitted before us that the Delhi School Education Act, 1973 and the Rules framed thereunder govern the functioning of private unaided recognised schools in Delhi and Rule 201 (iii)(b) of the '*Rules of Procedure And Conduct of Business in the Legislative Assembly of the National Capital Territory of Delhi*' specifically provides that scope of the Committee does not include matters with respect to which remedy is available under law.

In this backdrop, Mr. Sethi has strongly urged before this Court that the proceedings initiated by the Committee be stayed.

Mr. Nandrajog, learned senior counsel appearing on behalf of the Committee refutes the submissions so made by the petitioner and contends that the Committee is well within its right to look into the complaint received by an ordinary citizen. It is submitted that the officers of various departments including Directorate of Education were not performing their statutory duty and thus, the committee has taken upon itself to carry out the inspection and examine the complaint against the school. It is contended that

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the committee has strictly followed the due process and followed the principles of natural justice. The Committee had afforded every opportunity to the school to explain its stand. He further submits that in any case, the report is only recommendatory in nature and thus, the petition is premature. Mr. Nandrajog further submits that based on the inspection, the Committee would seek comments from the school and grant them reasonable opportunity of atleast 15 days to furnish their response and a hearing would be granted before the final report is submitted. He also submits on instructions, that the Committee would not be required to visit the school again neither there would be any necessity for the Principal or the Manager to be present before the Committee, except for a hearing based on the inspection report.

Mr. Sethi submits that the officials of the Directorate of Education and other statutory bodies are being pressurized to take action against the school without following the due process of granting a show cause notice, hearing and passing of an order.

As far as the submission of Mr. Sethi pertaining to influencing and pressurizing the officials is concerned, Mr. Nandrajog submits that the allegations are baseless and unfounded. In case the Committee finds that the officials are not performing their statutory duties, they would take action against the officials but they have not and will not pressurize any official of any statutory body and will allow them to perform their duty by affording opportunity of hearing to the respondent as per law.

We have heard the learned counsel for the parties.

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Binding the respondent to the stand taken in Court, issue notice to the respondents to show cause as to why the petition be not admitted. Counter affidavit be within four weeks and rejoinder thereto, if any, be filed within two weeks thereafter.

List on 13th February, 2019.


G.S.SISTANI, J


JYOTI SINGH, J

DECEMBER 19, 2018

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-After notice
-CIA not filed