

In Re: St. Michael'S School

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Court : Monopolies and Restrictive Trade Practices Commission MRTPC

Decided On : May-12-1993

Judge : A Varma

Appellant : In Re: St. Michael'S School

Judgement :

1. The difference of opinion between two learned Members (Mr. N. C.Gupta and Mr. Sardar Ali) on certain points had led to the reference of this matter before me. Mr. N. C. Gupta was for discharge of notice while Mr. Sardar Ali was of the view that the respondent should be directed to make reservations in favour of students belonging to different economic backgrounds.

2. Three issues were framed by the Commission in this enquiry. These were : (1) Whether the enquiry is not maintainable for the reasons given in the preliminary objections and also whether the Commission lacks jurisdiction to pass any order under the Monopolies and Restrictive Trade Practices Act or (2) Whether the respondent committed restrictive trade practices and/or monopolistic trade practice as alleged in the notice of enquiry (3) If the answer to issue No. 2 be in the affirmative, then whether the said restrictive trade practices and/or monopolistic trade practice is permissible under any gateways within the meaning of Section 38 of the Monopolies and Restrictive Trade Practices Act 3. There was no difference of opinion between the Members with regard to the first issue, both holding that the Commission did not lack jurisdiction to entertain the enquiry. On the second issue, however, the two Members differed in certain respects which shall be

adverted to below.

4. The facts leading to the enquiry have been elaborated by both members and I do not propose to repeat the same except to highlight some broad features.

5. St. Michael's School is a minority institution run and managed by the Delhi Catholic Archdiocese, a society registered under the Societies Registration Act. The school has a slab system of fees, charging varying amounts of fees from different groups of students classified on the basis of salary or income of their parents. Aggrieved by the system, the father of a student filed a complaint before the Commission alleging that the slab system of fees was a manipulation of prices or conditions of delivery so as to impose unjustified costs and restrictions on the consumers within the meaning of Section 2(o)(ii) of the Monopolies and Restrictive Trade Practices Act. The Commission got the complaint investigated by the Director-General (Investigation and Registration) who submitted a preliminary investigation report based on which a notice of enquiry was issued to the respondent.

6. Broadly stated the charges set out in the notice were that inasmuch as the school has transferred substantial amounts of money representing the surplus of the income earned by the school through collection of fees, it must be held to be realising unreasonable amounts of fees from the students thereby imposing unjustified burden on them. It was further pointed out that the slab system of fees is a manipulation of prices so as to impose unjustified costs on the students within the meaning of Section 2(o)(ii). It was said that charging different fees from the students for providing the same kind of service is discriminatory and, therefore, a restrictive trade practice.

7. The respondent categorically denied all these allegations asserting inter alia, that being a minority institution it enjoys a right guaranteed under Article 30 of the Constitution--that of establishing and administering the affairs of the school. In regard to the charge of unreasonable increase in fees, the respondent asserted that the Diocese has spent a huge amount--in excess of Rs. 36,47,000 on the establishment and maintenance of the school up to December, 1987, and that only a small part of it has since been received from the surplus of fees realised by the

school which is permissible under the laws regulating education in Delhi. As regards the slab system, the respondent strongly defended the same on the ground that it was pre-eminently just and proper being based on the very legitimate and salutary consideration, namely, fixing fees according to the income of the parents or guardians of the students. The allegations of manipulation of prices was also denied.

8. Both the Hon'ble Members are agreed that the increase in tuition Fees was not the result of any manipulation of service of imparting education, much less imposition of unjustified costs on the parents.

9. Coming now to the second issue on which the two Hon'ble Members have differed, the position is that Mr. Sardar Ali had divided the issue into four parts : (a) Whether increase in tuition fees, etc., for imparting education can be said to be unreasonable within the meaning of "monopolistic trade practice" as defined in Section 2(i)(iv)(b) of the Monopolies and Restrictive Trade Practices Act (b) Whether the aforesaid increase can be termed as restrictive trade practice under Section 2(o)(ii) (c) Whether the respondent was justified in transferring the surplus out of the fees collected by it to the Diocese (d) Whether the respondent is competent to charge fees from the students on a slab system 10. All the three parts (a), (b), (c) were answered by Mr. Sardar Ali in favour of the respondents holding with respect to part (a) that the charge of monopolistic trade practice was not established. Clauses (b) and (c) were taken up by the Hon'ble Member together and his conclusion was: "We are convinced after going through the evidence and other documents placed on record that the increase in tuition fees, etc., has not resulted in manipulation of services of imparting education on the part of the respondent school. There is, therefore, no question of unjustified costs on the parents by the school in such a case." 11. Mr. N. C. Gupta has agreed with the conclusions of Mr. Sardar Ali on all these three counts (a), (b) and (c). With respect, I entirely agree with the two Hon'ble Members on the conclusions reached by them on the first issue as well as the three aspects dealt with by Mr.

Sardar Ali under Clauses (a), (b) and (c) spelled out by him as above.

The difference between the two Hon'ble Members, however, arose in regard to the observations made and the inference drawn by Mr. Sardar Ali in regard to the question posed by him under Clause (d).

12. On a perusal of the observations made by Mr. Sardar Ali, it seems apparent that he sees no objection in the slab system of fees in itself co-related as it is to the economic resource or income of the parents of the students. He, however, questioned the motives of the respondent institution in working out the system. Thus, in paragraph 7 of his order he observed : "It has been stated that charging lesser fee from comparatively financially weaker Sections of the society cannot be a restrictive trade practice or fall within the mischief of the Monopolies and Restrictive Trade Practices Act. No doubt providing qualitative education to the rich and poor alike without any distinction based on economic status/caste/creed and colour, can be prejudicial to the public interest. However, the Commission has to examine whether the respondent is acting on the scheme honestly and sincerely or it is taking advantage under the garb of the slab system, which is affecting the public interest." and this conclusion is founded on no more than the circumstance that while the number of students falling in the top slabs is increasing over the years, there is a downward trend in the number of students belonging to the lower categories.

13. I entirely agree with Mr. N. C. Gupta that in making these observations and comments against the respondent attributing motives and mala fides to the respondent regarding the introduction of the slab system, Mr. Sardar Ali has travelled beyond the scope of the enquiry.

At no stage in the enquiry was the respondent called upon to meet any charge of mala fides or lack of good faith in introducing the scheme.

Indeed, as mentioned above, the slab system of fees based on economic resources or income of the parents is a step in the right direction, being just and equitable under which a student is called upon to pay fees according to his parents' income. If anything, the system advances, rather than impedes a laudable social objective of making education available to all concerned--to the rich and poor alike--with no distinction as to caste, creed or colour. In any case, there being

not the slightest hint in the notice of enquiry of mala fides against the respondent no finding could be recorded against the respondent on the supposition that the slab system was manipulation designed to perpetrate discrimination against the economically weak.

14. Coming now to the aspect on which brother Sardar Ah has founded his observations and conclusions, namely, the increase in the number of students falling in the higher groups, it seems to us that a bare glance at Table 'A' set out in his order would show that, firstly, the number in the higher categories has not shown any significant or abnormal increase, indeed in some higher groups, the number of such students has decreased (slab 4, for example), and in the second place, the mere fact that the number in the lowest categories has gone down or dwindled could not ipso facto be attributed to any manipulation on the part of the school or any aberration in the slab system. The institution had not increased the fees for the lower slabs, and if, in spite of this, the number of students in the lower categories has gone down, the cause must be traced to some other factors and not to any defect in the system or even manipulation on the part of the institution.

15. In any case, the respondent not having been called upon to meet the charge that it has manipulated the fees in such a way as to reduce the number of students coming from poorer background, no finding could be recorded against the respondent on this score.

16. Further, the Hon'ble Member has observed that the respondent should make reservations of seats for students falling in different slabs and directed that the prospectus of the school must indicate reservation of specified number of seats in each particular slab.

17. I do venture to think that the issue of reservation unrelated to any charge falling upon under the Monopolies and Restrictive Trade Practices Act, is entirely outside the scope of the Monopolies and Restrictive Trade Practices Act. The learned Member has not indicated how the question of reservation could be related to the charges framed against the respondent in the notice of enquiry. That being so, the directions issued to the respondent do not appear to be justified.

18. Reservation of seats in an educational institution which is neither aided nor otherwise an instrumentality of the State, is a highly vexed question, and, is, in any case, wholly beyond the purview of the present enquiry, particularly, when the school happens to be a minority institution enjoying rights guaranteed under Article 30 of the Constitution.

19. With great respect to the learned Member, therefore, I do not agree that any directions should be issued to the school to carve out reservation in favour of students falling under different slabs and notifying the same in the prospectus or notice boards.

20. Coming to the supposed flaw in the top slab meant for students belonging to the business community, legal or medical profession "and as such the higher income group", Mr. Sardar Ali has observed that this is clearly bad inasmuch as it leaves a discretion in the hands of the respondent. There may be doctors or lawyers, says the learned Member, whose income is less than Rs. 4,000 and yet their wards shall have to pay higher fees just because they are professional people, while a Government servant having the same salary will have to pay less.

21. With great respect, I am unable to agree. The top slab itself indicates that in the opinion of the school, businessmen, lawyers and doctors are men belonging to the higher income group. This is apparent from the words "and as such higher income group" occurring in the top slab. The school may be right or it may be wrong in supposing that the income of every lawyer or physician or businessman would be above Rs. 4,000 per month. But on that account the bona fides of the school in carving out a special category for higher income group comprising businessmen or professional people cannot be doubted or questioned, particularly in view of the unchallenged fact that where the parents belonging to the category of doctors and lawyers satisfy the school that their income is less than Rs. 4,000, they are fitted in the appropriate lower slabs. This also confirms that the top slab is not based on social status. It is based on income like all other slabs.

22. That being so, I see no defect in the slab just because professional people have been placed in the top slab. As mentioned above the categorisation was based on the general assumption--which cannot be said to be far wrong--that by

and large members of these professions must be earning at least Rs. 4,000 per month. That is why, if and when people falling in this group and earning less than Rs. 4,000 approach the school, the school grants them relief and fits them in the appropriate slab.

23. To sum up, I agree with Mr. N. C. Gupta as to the order proposed by him but regret my inability to share the opinion expressed or implicit in the order proposed by my learned brother, Mr. Sardar Ali. I also do not agree with the directions proposed by him.

24. In view of the foregoing discussion and the opinion expressed by Mr. N. C. Gupta (with whom I agree) in his order dated the 6th November, 1992, the notice of enquiry is discharged without any order as to cost.

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