

**Holy Cross School and Others Vs State of Jharkhand and Others
 Sardar Patel Public School and Others Vs Jharkhand Education Tribunal and Others**

Court: Jharkhand High Court

Date of Decision: Aug. 18, 2009

Acts Referred: Jharkhand Education Tribunal Act, 2005 " Section 11, 13, 15, 9

Hon'ble Judges: Dhirubhai Naranbhai Patel, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

D.N. Patel, J.

W.P. (C) Nos. 5939 of 2008, 5940 of 2008, 5941 of 2008 3096 of 2009, 3151 of 2009, 3156 of 2009, 3158 of 2009 3160 of 2009, 3161 of

2009, 3162 of 2009, 3164 of 3165 of 2009 & 3166 of 2009.

1. In all the aforesaid writ petitions, it is submitted by the learned counsels for the petitioner(s) that without. giving any notice, an order has been

passed by the Jharkhand Education Tribunal dated 6th June, 2009, whereby, without receiving any complaint for these schools, stay has been

given for not to increase the fees by more than 15% and a Committee has been constituted by the Tribunal for all the schools within the State of

Jharkhand and, therefore, the impugned order dated 6th June, 2009 deserved to be quashed and set aside. They have also relied upon a decision,

rendered by this Court dated 28th August, 2007 in W.P. (C) No. 2876 of 2007 and other allied matters.

2. Learned counsels for the petitioner(s) submitted that, in fact, the Tribunal cannot treat a matter, pending before it, as a Public Interest Litigation

and cannot pass a general lump-sum order applicable to one and all the schools, in absence of any complaint and without giving any notice to the

petitioner(s), to the effect that the petitioners (schools herein) cannot enhance the fee structure. They have also relied upon Jharkhand Education

Tribunal Act, 2005 (in short the Act, 2005), especially Section 9 thereof and several other sections of the said Act, 2005.

3. They have also relied upon several decisions, rendered by the Hon"ble Supreme Court and submitted that the Tribunal has no power,

jurisdiction and authority to take decision relating to the fees, levied by the schools, as they are unaided privately managed schools, some of them

are even minority schools.

4. I have heard learned Counsel appearing on behalf of respondent No. 10, who has submitted that it is true that most of the petitioners-schools

are not given notices. Petition No. 2 in W.P. (C) No. 5939 of 2008 is giving a notice. Likewise in W.P. (C) No. 5941, except petitioner No. 3. all

the (sic) notices. It is also submitted by the learned Counsel for respondent No. 10 that the Tribunal has got all power, jurisdiction and authority to

fix or to limit the fees, being levied by the schools. It is also vehemently submitted by the learned Counsel for respondent No. 10 that the Tribunal

has all the power, jurisdiction and authority to constitute a Committee because the Tribunal is not a Cost Accountant or a Chartered Accountant

and, therefore, the Tribunal has constituted a Committee, so that able assistant may be given to the Tribunal. Nonetheless, no final decision has

been taken by the Tribunal and the impugned order is appellable one u/s 15 of the Act, 2005.

5. Learned Counsel appearing on behalf of the State of Jharkhand has submitted that as such order of State is not under challenge. It is also

submitted by the learned counsel, appearing on behalf of the State, that the whole matter is subjudice before the Tribunal and in W.P. (C) Nos.

5939 of 2008, 5940 of 2008 and 5941 of 2008 the petitioners-schools have challenged the decision, taken by the Government, which is in the

form of notification, whereby, their challenge is that the Government cannot interfere with the administration of the unaided minority schools. In rest

of the petitions ex parte order, passed by the Tribunal, is under challenge. Nonetheless, it is submitted that there ought to be complaint before

J.E.T. for a particular school and notice of hearing ought to have been issued to that school, against whom an order is passed.

6. In view of the aforesaid submissions, it appears that the Jharkhand Education Tribunal has passed an order dated 6th June, 2009, which has

taken in its sweep, all the schools within the State of Jharkhand, including the present petitioners, without receiving complaint for individual school

and without issuing any notice that they shall not increase their fee structure by more than 15% and a Committee has been constituted for all the

schools, so that the Committee and a detailed report may be given by the Committee to the Tribunal, so that final decision may be taken by the

Tribunal.

7. It also appears from the impugned order dated 6th June, 2009 that the Tribunal will pass a final order after receiving a report from the

Committee. Looking to the provisions of the Act, 2005, especially Section 9 thereof, and also looking to the provisions of Sections 11 and 13 of

the Act, 2005 and also looking to the fact that neither there is any complaint for particular school nor any notice was given to these schools and a

lump-sum general order has been passed by the Tribunal dated 6th June, 2009 for the aforesaid petitioners-schools. Petitioner No. 2 of W.P.(C)

No.5939 of 2008 and similarly petitioner Nos. 1, 2, 4, 5 and 6 of W.P. (C) No.5941 of 2008 have been given notices. Thus, except for these

petitioners, rest of the petitioner has not been issued any notice by the Tribunal. No complaint has been filed from any complainant against the

aforesaid schools, before the Jharkhand Education Tribunal and it has been stated in the order dated 6th June, 2009 that ""15% slab will be

applicable to all other private aided and affiliated schools of the State, as almost all the schools of this State have arbitrarily hiked the fees in this

academic year"". Thus, there is a prima facie case in favour of petitioners. Balance of convenience is also in favour of petitioners. It is submitted by

counsel for the State that there are approximately 3000 schools in State of Jharkhand. Therefore, if the J.E.T. will wait for report to come from the

Committee, it will take several months and meanwhile academic year or years, can also be over. Payment of increased salary and other

expenditure continued during these years. School might be required to even close down due to unbearable difference for months together. Thus,

irreparable loss will be caused to the petitioners, if the stay, as prayed for, is not granted.

8. In view of these facts and reasons, I hereby stay the operation, implementation and execution of an order 6th June, 2009, so far as the aforesaid

petitioners-schools are concerned, as there is no complaint against them and no notice has been issued by the Jharkhand Education Tribunal. So

far as W.P. (C) No. 5939 of 2008 is concerned, stay is given to petitioner No. 1 and so far as W.P. (C) No. 5941 of 2008 is concerned, the stay

is given to petitioner No. 3 and in rest of the writ petitions, in favour of all the petitioners the stay has been given, because none of these schools

has been served with any notice nor the Jharkhand Education Tribunal has received any complaint, so far as these petitioners-schools are

concerned.

9. So far as rest of the petitioners in rest of the writ petitions are concerned, it is submitted by the learned Counsel that notices have been issued to

many of the petitioners and they are appearing before the Jharkhand Education Tribunal. It is stated by the learned counsel, appearing on behalf of

Jharkhand Education Tribunal," that the matters in which the notices have been issued, final decision will be taken as expeditiously as possible.

10. On the aforesaid assurance, learned Counsel for the petitioners submitted that they will cooperate with the hearing and they expect that the

Tribunal will take up the hearing on day to day basis, so that they may not lose their fees even if they succeed before the Tribunal and in such

case, the remedy will be the worst than the deceased and, therefore, it is submitted by the learned Counsel for the petitioners, who are served with

the notices, that let the Tribunal be given a direction that a decision may be taken within ten days and they are ready for day to day hearing, without

any adjournment. Let a suitable direction be given to the Jharkhand Education Tribunal to dispose of the matters in which the notices have been

issued, so that the schools may know the final outcome of the fee structures of their schools and the legitimacy of their claim. It is suggested by the

learned Counsel for the petitioners that if the Tribunal has the wish, anxiety and zeal to render justice to those schools, to the Committee can be

called for or the Tribunal on its own can look into the income and expenditure figures, future development plan etc. This suggestion will be

considered by the Tribunal.

11. Learned Counsel appearing for the petitioners-schools in W.P. (C) Nos. 5939, 5940 and 5941 all of the year 2008, submitted that the

Tribunal has no power, jurisdiction and authority even to appoint Committee. Even this is the submission of all the learned counsels for the

petitioners. As these matters are kept alive before this Court and as the matters are still going on, the issues, which are raised by the petitioners, are

kept open.

12. The matters are adjourned on 14th September, 2009.

W.P. (C) No. 3098 of 2009:

Mr. Ananda Sen, learned Counsel for the petitioner, submitted that the Management of D.A.V. College Managing Committee has filed this writ

petition on behalf of the colleges/schools, run by the petitioner. They are more than sixty in numbers. But, looking to the objection, raised by the

learned Counsel for the respondents, they will file separate petitions in respect of each school and thus, this petition may be permitted to be

withdrawn. Liberty may be reserved with the petitioner-Managing Committee to file separate writ petitions.

Permission, as sought for, is granted, and liberty is given to the individual schools under the petitioner-Managing Committee to file separate writ

petitions and this writ petition is allowed to be withdrawn, without entering into the merits of the case.