

Supreme Court's double whammy for elite schools

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Recent judgements of the country's apex court are being interpreted as a huge blow to the managements of one-five star schools which have sprung up all over the country. Dilip Thakore reports

Despite the unanimously welcomed exit of Union minister of human resource development Dr. Murli Manohar Joshi who was hell-bent on rewriting history and social science textbooks to suit his mofussil predilections and superstitions, from Shastri Bhavan, New Delhi, the year 2004 has begun badly for the managements of India's estimated 7,500 'public' (i.e private, expensive, one-five star) schools. Across the country, an ominous current of apprehension is snaking through the usually well-furnished boardrooms of India's most well regarded secondary institutions of learning.

On January 20 the Delhi high court issued an order to the director of education of the Delhi state government to ensure that numerous privately promoted unaided schools in the national capital grant freeships and admit poor, under-privileged children equivalent to 25 percent of their enrollment into their classrooms, hitherto the exclusive preserve of the children of the capital's rich and famous. In a historic judgement in a PIL (public interest litigation) case *Social Jurist vs. Government of National Capital Territory of Delhi & Ors* (CW No.3156 of 2002), the court ordered the Delhi Development Authority (DDA) to take "appropriate action" against 265 "recognised, private unaided" schools in the Delhi region which had been allotted land (by DDA) at concessional prices on condition they reserve a 25 percent freeships quota for disadvantaged children, for breach of that condition.

This was only the first of the setbacks experienced by the managements of Delhi's top schools this year. On April 27 after hearing a PIL filed by the Delhi Abibhavak Mahasangh — a federation of parents associations — which alleged that 30 recognised schools in the capital had hiked their tuition fees unreasonably and were "indulging in large scale commercialisation of education", a three-judge bench of the Supreme Court of India heard several batched appeals against the director of education, the state and municipal governments by unaided schools alleging interference relating to tuition fees and maintenance of financial statements and accounts.

In *Modern School vs. Union of India & Ors* a majority judgement of the apex court (Chief Justice V.N. Khare, S.H. Kapadia J with Justice S.B. Sinha dissenting) upheld the right of the director of education of the Delhi state government to regulate tuition fees chargeable by private unaided schools. The court also prohibited the transfer of fees, funds or surpluses of one school to another or to its parent trust or society though it permitted school managements to collect reasonable sums (upto 10-15 percent of tuition fees) for capital expenditure to be credited into a separate development fund.

These two judgements (the Delhi high court's reservations judgement of January 20 was endorsed by the Supreme Court) are being interpreted as a huge blow, particularly to the managements of the growing number of one-five star schools which have recently sprung up all over the country. Though promoters and managers of the new generation of capital-intensive five star schools — some of which boast investments of Rs.50-100 crore — are putting forward a brave front and maintaining that the judgement is restricted to schools in the National Capital Territory of Delhi (i.e Delhi state government), they are well aware that most states of the Indian Union have enacted legislation similar to the interventionist Delhi School Education Act, 1973 which was exhaustively examined and upheld by the three-judge bench of the Supreme Court.

While acknowledging that "unaided educational institutions exercise a great autonomy as they, like any other citizen carrying on an occupation are entitled to a reasonable surplus for the development and expansion of the institution" as laid down in the historic 11-judge bench verdict of the Supreme Court in *TMA Pai Foundation vs. State of Karnataka & Ors* ((2002) 8 SCC 481), the majority judgement of the apex court in *Modern School vs. Union of India & Ors* delivered by Justice S.H. Kapadia on April 27, reiterated that "what is prohibited is the commercialisation of education". And reasoning that hitherto in "none of the earlier cases this court has defined the concept of reasonable surplus", Justice Kapadia speaking on his and Chief Justice Khare's behalf, upheld the right of the director of education to examine the books of accounts of every private unaided school to ensure they don't indulge in the commercialisation of education and to regulate their fee structures to ensure they earn only reasonable surpluses.

Though promoters and managers of private unaided schools across the country are apprehensive that the Supreme Court's latest fiat in the *Modern School Case* is likely to give a new lease of life to dreaded "inspector raj" and a blank cheque to petty government officials to harass institutional managements, social activists (prompted by middle class parents) who have been protesting steep annual increases in tuition fees and the collection of 'development funds', deposits and donations, are convinced that inspector raj is the lesser evil. "The Supreme Court's decision is a historic verdict and parents have won an important battle against exploitation. Most private schools are registered under the Societies Act 1861, which mandates that they have to be run on a no-profit basis. But totally contrary to the letter and spirit of the Act, they are intent upon making huge profits and are indulging in widespread exploitation and extortion. Our organisation has been fighting tooth and nail against them for not fulfilling their promise of admitting poor children and for charging exorbitant fees. Now finally with this court verdict our prayers have been answered," says Ashok Aggarwal, a Delhi-based lawyer and convenor of Social Jurist, the petitioner in the *Modern School Case*.

There's a similar lack of sympathy for the managements of elite private schools within the parents' community in the national capital. "It's quite ridiculous how private schools arbitrarily jack up their tuition fees year after year, throwing all norms of social justice to the winds. The managements of these schools are a mafia which has hapless parents and students at its mercy. They generate black money, don't pay income tax and extract

donations, all of which are illegal, anti-social practices," adds Vijender Gupta, president of the Abhivavak Mahasangh, a Delhi-based parents' organisation convened in 1997.

But even as Delhi's middle class parental community is celebrating the Supreme Court's judgement in the *Modern School Case*, there's a possibility that their victory may be pyrrhic. Because while adjudicating this case, the court also upheld the Delhi high court's order of January 20 directing the director of education to ensure that some 1,200 unaided schools which were allotted land at concessional prices fulfill their obligation to provide freeships to poor children upto 25 percent of the schools' enrollment. Most parents are not only opposed to this directive of the courts, but may well have to pay higher fees to cross-subsidise the education of poor students admitted into their children's schools.

Comments a senior counsel of the Supreme Court who spoke to *EducationWorld* on condition of anonymity: "Though Chief Justice Khare who retired in April was a disciplinarian who restored the reputation of the judiciary, he had too many obsolete socialist hang-ups. Thus in the *Islamic Academy Case* last year, he led a five-judge bench of the court in diluting the judgement of the 11-bench judgement of the Supreme Court in the historic *TMA Pai Foundation Case* of 2002 which restored the right of self-administration under Articles 30 and 19(i)(g) of the Constitution to unaided colleges of professional education. Now the majority judgement of a three-judge bench presided over by Khare in the *Modern School Case* deprives school administrations the right to self-governance and administration. Instead of passing strictures against the Central and state governments for perpetuating abysmal standards of teaching in government schools, the Supreme Court has approved inspector raj in well-managed private schools. Of course the Supreme Court judgement was quite right in upholding the Delhi high court's orders in the *Social Jurist Case* which was a contractual matter. But even in this case the schools should have been given an option to pay the current value of the land allotted to them in lieu of admitting poor children on freeships."

Undoubtedly there is some substance in this informed criticism of the "persistent socialist mindset" of the Supreme Court. The shackles imposed upon laudable private initiatives in school and professional education which were cut loose by the then liberal-reformist court presided over by Chief Justice B.N. Kirpal were swiftly reimposed by Khare in the *Islamic Academy Case* and most recently in the *Modern School* judgement. Regretably the court seems unaware of the ground reality that government officials and functionaries steeped in a time-hallowed tradition of venality are unlikely to provide the fair and just regulation of private schools mandated by the apex court.

Comments Mohina Dhar principal of the four-star CBSE-affiliated Amity International School, Delhi which has 3,000 students on its muster roll and runs the parallel Amitasha afternoon school for poor and under-privileged children: "Instead of levelling down the academic standards of private schools by foisting poor children upon them, why doesn't government raise standards of teaching and improve the infrastructures of MCD (Municipal Corporation of Delhi) and government schools? It could invite corporate funding into them or do whatever. By trying to raise the poor, isn't the government levelling down standards in private schools? Moreover how fair is this to the parents of

unaided school children who are paying high fees so that their children can study in better environments?"

Also in the matter of regulating tuition fees — a power which has been conferred by the Supreme Court upon the director of education of state governments — unsurprisingly the dominant opinion in unaided schools is that institutional managements together with parents' associations are the best judges of what are appropriate tuition fees. "Most of our parents appreciate that paying for quality education is an investment, not an expense. Therefore they understand that tuition fees have to be raised periodically if we are to provide contemporary education and maintain our infrastructure. This year we have raised our fees by 10 percent which is necessary because our entire curriculum is IT-based and each one of our 53 classrooms has at least one computer. This is a matter for parents and teachers to resolve. It's too much to expect of government servants," says R. Sandhu principal of Delhi's CBSE-affiliated Khaitan Public School (est. 1995) which has an aggregate enrollment of 1,700 students instructed by 50 faculty.