

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5019/2008

Date of order: August 20, 2008

AKHIL DILLI PRATHMIK SHIKSHAK SANGH
(REGD.)

..... Petitioner

Through Mr. Ranjit Sharma, Advocate

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through Mr. P.C. Chopra with Mr.S.K.
Mendiratta, Advocate for ECI.

Mr. N.Waziri with Mr. V.K. Tandon,
Advocate for GNCTD.

Ms. Maninder Acharya, Advocate for MCD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

ORDER

1. This petition filed by Akhil Dilli Prathamik Shikshak Sangh under Article 226 of the Constitution of India seeks the following relief:

“(a) Issue an appropriate writ quashing the directive of the respondent dated 25.4.2008 and similar other directives whereby the MCD teachers have been directed to carry out verification of voters I-card in addition to their normal duty of teaching which is contrary to general public interest and breach of fundamental rights of the children below 14 years of age.”

2. The question of deploying teachers employed in schools run by the state government or municipal corporations for work connected with the conduct of elections, including revision of electoral rolls in terms of the

Representation of the People Act 1950 ('RP Act 1950'), was considered by the Supreme Court in *Election Commission of India v. St. Mary's School (2008) 2 SCC 390*. The said decision was rendered in an appeal filed by the Election Commission of India against the judgment dated 11th August 2004 passed by this Court in WP (C) 1076 of 2003 in which a statement was recorded that the respondents Government of the National Capital Territory of Delhi ('GNCTD'), the New Delhi Municipal Council ('NDMC') and the Municipal Corporation of Delhi ('MCD') had accepted that the services of the teachers would be utilized for non-teaching purposes only on a day which was not a working day for the students. Before the Supreme Court it was contended by the Election Commission of India that under Article 324 (6) of the Constitution of India the Central Government and State Government have a duty to make available to the Election Commission of India adequate staff for the discharge of its functions and powers of superintendence, direction and control of elections under Article 324 of the Constitution. A reference was made to Section 29 of the RP Act 1950 which mandates that every local authority shall, when so requested by the Chief Electoral Officer of the State, make available to any electoral registration officer such staff as is necessary for the performance of the duties in connection with the preparation and revision of electoral rolls. It was observed by the Supreme Court that (*SCC, p.402*): "the question if the right to exercise franchise is an important one.... right to education is also no less important being a fundamental right." Thereafter the Supreme Court, while dismissing the appeal of the Election Commission of India, observed as under (*SCC, p.403*):

"33. We would, however, notice that the
Election Commission before us also

categorically stated that as far as possible teachers would be put on electoral roll revision works on holidays, non-teaching days and non-teaching hours, whereas non-teaching staff shall be put on duty any time. **We, therefore, direct that all teaching staff shall be put on the duties of roll revisions and election works on holidays and non-teaching days. Teachers should not ordinarily be put on duty on teaching days and within teaching hours.** Non-teaching staff, however, may be put on such duties on any day or at any time, if permissible in law.” (emphasis supplied)

3. The above judgment of the Supreme Court should have laid to rest any doubts whether teachers could be deployed for the work in connection with elections during school working days and hours. However, this petition by an association primary school teachers in Delhi suggests otherwise. Its genesis is in a communication dated 21st March 2008 written by the Chief Secretary, GNCTD to the Commissioner of MCD which reads as under:

“The Election Commission of India will hold the Assembly elections in December 2008 and has stressed on the need to appoint Booth Level Officers who are to function as the officials in the community who would regularly add and suggest names within the area of the polling booths. They would be compensated for doing the work which is normally done after office hours and on holidays. The shortage of officers for doing this work was discussed with the Election Commission and it is informed that the coverage of primary school teachers of MCD is fairly large and they could be inducted to function as Booth Level Officers. They would be compensated for doing the extra work after the teaching hours.

I shall be grateful if you kindly give a list of all the

teachers of which there are almost 15000 in the MCD, from the existing data base of the teachers. The list could be given to the Chief Electoral Officer (CEO) Ms. Satbir Silas, who give the names to the Deputy Commissioners who are Returning Officers. You may also like to issue order to the DEOs of MCD to cooperate with the Returning Officers/ Deputy Commissioners and give the names of the teachers who could be identified as Booth Level Officers. This is not a very tiring job since it is only for updation of the data which could be done after office hours and they would be suitably compensated for this work.”

4. Acting on the above letter the Commissioner, MCD supplied to GNCTD a list of primary school teachers who could be deployed as Booth Level Officer (‘BLO’) for the work of verification of voter identity cards. This list included female, male and disabled teachers. It is apparent that this was done essentially because there are around 15,000 teachers on the rolls of the MCD and they, therefore, constitute the largest percentage. Letters were issued to individual teachers placing their services as BLOs with the Election Commission of India. It was stated in each such letter issued by the Electoral Registration Officer (ERO) that during the duration of their tenure as BLO they would be under the disciplinary control of the Election Commission of India. One such letter dated 25th April 2008 has been enclosed to the writ petition and is in a standard format. It is this letter that is that is the subject matter of challenge in this petition.

5. It appears that in Delhi the work of verification of the voter I-cards had to be extended beyond 1st July 2008 i.e. beyond the date on which the schools reopened after the summer vacations. The MCD then informed the Chief Electoral Officer that “the teacher would be spared for the photo

electoral rolls programme after the school hours only.”

6. The grievance of the primary school teachers through the petitioner Association is that they have been put to great inconvenience by being deployed for the electoral roll work without availing a single day of the summer vacations and even thereafter. Over 9000 female teachers have been asked to carry out voter I-Card verification door-to-door in various colonies for more than 12 hours per day. In comparison, only 200 employees of the non-teaching staff have been deployed for such work. It is submitted that if they were expected to carry on the verification work after the school hours it would affect their health and the quality of their teaching would suffer. This in turn would be detrimental to the interests of students. Many of the female teachers have to travel considerable distances which makes it both unsafe and inconvenient for them.

7. The further grievance made is that the impugned order dated 25th April 2008 issued by the ERO did not offer any option to the teacher to decline such posting as BLO even if any of them was in some genuine personal difficulty. It is pointed out that there have been instances where mandatory orders were issued by the EROs to even disabled and female teachers threatening disciplinary action if they failed to report for duty.

8. In response to the notice issued to it by this Court, the Election Commission of India has filed an affidavit in which it states as under:

“9. As submitted above, the Election Commission requires the services of staff for carrying out the work of preparation of electoral rolls. It is for the Govt. and Local Authorities to provide such staff.

When the Chief Electoral Officer, Delhi experienced difficulty in getting the services of sufficient number of officials for performing the duties of BLO, the Election Commission discussed the issue with the Chief Secretary of Delhi on March 18, 2008. Thereafter, the Chief Secretary, Delhi vide his letter dated March 21, 2008, requested the Commissioner of MCD to provide to the Chief Electoral Officer, Delhi the list of teachers of MCD Schools who could be appointed as BLOs. **Neither the Election Commission nor the Chief Electoral Officer requested for providing the MCD Teachers for appointment as BLOs.** The teachers and the Delhi Government staff whose names were provided to the Chief Electoral Officer were appointed as BLOs.

10. As submitted above, **it is the function of the Central and State Government to decide as to which employees it should make available for election duty in terms of the request from the Commission.** In any case, the requirement of the Commission for staff for election duty is for a very short duration and is not likely to hamper studies in school if the teachers are appointed for work of revision of electoral roll or conduct of election. Further, considering that the Central and State government are bound under law to provide the staff for election duties from time to time, it is the duty of the said Governments to so arrange its affairs that in so deploying its staff the other constitutional duties of the said government do not suffer.” (emphasis supplied)

9. In addition it was stated before us by Mr. S.K. Mendiratta and Mr. P.C.Chopra learned counsel appearing for the Election Commission of India that as long as its requirement for adequate staff for the work of verification of electoral rolls was provided, the Election Commission of India would not insist that only teachers should be sent for such work. It is pointed out that in terms of the judgment of the Supreme Court in *St.Mary’s School*, further directions have been issued by the Election Commission of India on 20th January 2008 to all the CEOs of the different states in which it was, *inter*

alia, stated:

“4. Whenever the teachers are used as Booth Level Officers for the purpose of door-to-door verification, for finding out cases of photo mismatches in the photo roll etc., the same exercise shall be done during non-teaching hours and on holidays.

5. Whenever needed, the period for enumeration work may be extended for this purpose so that the enumeration work is carried out without hampering the teaching hours.”

10. On its part, the MCD in its affidavit has stated that it had to provide teachers for the work of revision of electoral rolls in compliance with the direction issued by the GNCTD on 21st March 2008. It is stated that the teachers who were attending the school in the first shift were being assigned electoral duties in the afternoon and vice-versa. Ms. Maninder Acharya, learned Standing counsel for the MCD further stated that it would be prepared to even offer non-teaching staff if the GNCTD did not insist that teachers alone should be deployed for the work of verification of electoral rolls.

11. It was urged by learned counsel for the petitioner at the hearing on 13th August 2008 that disabled and female teachers who are facing genuine difficulties should be spared from the work of door-to-door verification of electoral rolls. It was further submitted that no disciplinary action should be initiated against disabled and female teachers for not reporting for duty as BLOs. In the circumstances, on 13th August 2008 the following order was passed:

“1. Mr. Waziri, learned Standing counsel appearing for the GNCTD seeks further one week time to take instruction.

2. List on 20th August 2008.

3. If the disabled teachers and female teachers make an application for exemption, such application will be considered by the Election Commission of India and exemption will be granted in an appropriate case and the staff will be placed by the MCD.

4. It is also made clear that no further action will be taken in respect of show cause notice issued to any of the disabled teachers and female teachers till further orders.”

12. Today, Mr. Waziri, learned counsel for the GNCTD states that its request to the MCD that teachers should be deployed for the verification of electoral rolls was on account of their constituting the largest percentage of MCD employees. A chart has been placed on record to show that of the total number of BLOs appointed for the verification work, MCD teachers constituted 76.42%, the non-teaching staff of GNCTD around 20.67% and the rest were from the staff of the NDMC and the GNCTD. However, it is fairly stated by Mr. Waziri that in future the GNCTD is willing to deploy for any election or electoral roll work an adequate mix of both teaching and non-teaching staff of the MCD, NDMC and GNCTD so that a disproportionate burden of the work does not fall on the MCD teachers.

13. In regard to the question whether school teachers can be deployed for work in connection with the preparation or verification of electoral rolls, or any election related work, the judgment of the Supreme Court in *St. Mary School* is unambiguous and binding. It has been clearly held that “all teaching staff shall be put on the duties of roll revisions and election works on holidays and non-teaching days. Teachers should not ordinarily be put on

duty on teaching days and within teaching hours.” In other words teachers can be deployed for election related work only on non-teaching days, and only in exceptional circumstances should they be deployed for such work on teaching days and then again only beyond teaching hours.

14. We are told that the present work of verification of electoral rolls will definitely be completed in the NCT of Delhi by September 12, 2008. As far as the present grievance is concerned in the facts and circumstances noticed hereinbefore, this Court considers it expedient to direct that the interim order passed by this Court on 13th August 2008 will continue to operate till such time the verification exercise is complete.

15. As regards any similar deployment hereafter of the teachers employed with any of the respondents for any election related work or work in connection with the preparation or verification of electoral rolls, it is directed as follows:

(i) All the respondents will strictly abide by the judgment of the Supreme Court in *Election Commission of India v. St. Mary School*.

(ii) Every female teacher or disabled teacher facing some genuine difficulty should be offered an option of declining to be deployed for any election or electoral roll related work during teaching days and teaching hours. This will be on a case-by-case basis on an application by the concerned teacher. Obviously this should be done prior to finalizing the list of staff to be deployed for election related work.

(iii) When a request is made by the Election Commission of India to any of the respondents for staff for election or electoral roll related work, there

should be sufficient mix of teaching and non-teaching staff deployed so that a disproportionate burden work does not fall on the teaching staff. As far as is practicable, for the work related to elections or electoral rolls, the deployment of disabled teachers should be avoided.

16. With the above directions, this petition and the pending application stand disposed of.

CHIEF JUSTICE

S.MURALIDHAR, J

AUGUST 20, 2008
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