

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

Date of decision: 28th October, 2010.

+ W.P.(C) 2080/2010 & CM No.6071/2010 (u/S 151 CPC for directions)

% MOHD. ASIF KHAN & ORS. Petitioners
Through: Mr. Ashok Agarwal with Ms. Kusum Sharma, Advocates.

Versus

NAVYUG SCHOOL & ORS. Respondents
Through: Mr. B.B. Gupta with Mr. Mohit Nagar & Mr. Harsh Hari Haran, Advocates for R-1 & 2.
Mr. Satya Saharawat for Ms. Jyoti Singh, Adv. for R-3.
Ms. Zubeda Begum with Ms. Sana Ansari, Advocates for R-4.
Mr. Mohit Jolly, Adv. for R-5.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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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 the Digest? | yes |

RAJIV SAHAI ENDLAW, J.

1. The twelve petitioners seek a declaration that their wards/children are entitled to be considered for admission in Nursery class and class-I in the Navyug School of the New Delhi Municipal Council (NDMC) at Tilak Lane, Tilak Marg, New Delhi and seek a direction to the NDMC and the

said Navyug School for consideration of the wards of the petitioners for admission in the academic year 2010-11.

2. Notice of the writ petition was issued and a counter affidavit has been filed on behalf of Navyug Schools. No counter affidavit has been filed on behalf of the NDMC, Govt. of NCT of Delhi and Union of India but the counsels have been heard considering the urgency of the relief claimed and further considering that if the hearing of the writ petition was further delayed, it would become infructuous.

3. The petitioners claim to be residents of Mata Sundri Road and Minto Road areas of New Delhi. It is pleaded that the Navyug Schools are run by the Navyug School Educational Society which is fully financed, controlled and run by the NDMC. The petitioners claim that till the academic year 2008-09 their wards/children were being considered for admission to the aforesaid Navyug School. Wards/children of some of the petitioners other than the wards/children of petitioners whose admissions are claimed in the academic year 2010-11, were in the earlier years infact admitted to the said Navyug School. The petitioners claim that the said Navyug School w.e.f. academic year 2009-2010 started denying admission to the residents of Mata Sundri Road and Minto Road areas on the ground that on redrawing up of the various constituencies pursuant to Delimitation, the said areas had fallen outside of the New Delhi Parliamentary Constituency.

4. The petitioners contended that the denial by the aforesaid Navyug School to consider the wards/children of the petitioners for admission on the ground that their place of residence was now falling outside the New Delhi Parliamentary Constituency is illegal and arbitrary. The provisions of the Delhi School Education Act, 1973 and of Right of Children to Free and Compulsory Education Act, 2009, are also invoked in this regard.

5. The Navyug School Educational Society aforesaid in its counter affidavit has pleaded that one of the functions of NDMC is to provide education to the wards/children living in its jurisdiction; that in performance of this function, Schools including the Navyug Schools were established in the NDMC area; that the said Navyug Schools had always been admitting students living within the territory of the NDMC and/or New Delhi Parliamentary Constituency; that the NDMC is obliged to provide services only in the area within its jurisdiction; that in the Delimitation of New Delhi Parliamentary Constituency in the year 2008, the areas of Mata Sundri Road and Minto Road were taken out and certain other areas added to the said Constituency; that the petitioners have no vested right to get their children admitted to any particular School and are free to apply for and admit their wards/children to the Schools in their locality.

6. The only question which therefore arises for adjudication in this writ petition is whether the residents of outside NDMC area have a right to admission in the Schools run by NDMC in areas within its jurisdiction.

7. Though the argument of the counsel for the petitioners is that the Navyug Schools being an aided School are not entitled to so refuse to consider for admission students, resident of Delhi and cannot discriminate between residents of different areas in Delhi, but in my opinion, the question really for consideration is whether the petitioners have a right to have their wards/children considered for admission in any aided School, even if it not be an aided School closest to their residence. The counsel for the petitioners was also asked to address on the said aspect.

8. During the course of hearing relevant provisions of the following three legislations were noticed:-

A. **Delhi School Education Act, 1973 & Rules, 1973**

- (i) **Section 1(2)** - extending the said Act to the whole of the Union Territory of Delhi.
- (ii) **Section 2(a)** - defining “Administrator” as the Administrator of Union Territory of Delhi.
- (iii) **Section 2(d)** - defining an “aided School” as a recognized private School, which is receiving aid in the form of maintenance grant from Central Government, Administrator or a Local Authority or any other Authority designated by the Central Government, Administrator or a Local Authority.

The arguments proceeded on the premise that the Navyug Schools are aided Schools and thus the said question does not arise.

- (iv) **Section 2(e)** - defining “appropriate authority”. In the case of Schools recognized by the municipality, the appropriate authority is that municipality.
- (v) **Section 2(f)** - defining “Delhi” as the Union Territory of Delhi.
- (vi) **Section 2(g)** - defining “Director” as the Director of Education, Delhi.
- (vii) **Section 2(l)** - defining “Local Authority”.

It is again not in dispute that NDMC is a Local Authority.

- (viii) **Section 2(t)** - defining “recognized school” as a School recognized by the appropriate authority.

It would thus follow that the recognition to the Navyug Schools established by NDMC is to be by the NDMC and not by the Directorate of Education.

- (ix) **Section 3** - empowering the Administrator to regulate education in all the Schools in Delhi in accordance with the provisions of the Act and Rules made thereunder.

There is no doubt that the Delhi School Education Act and the Rules framed thereunder apply to the Navyug Schools. The question however arises is whether there is anything in the Act or the Rules which obligates an aided School to consider for admission a student wheresoever he may be residing in Delhi or whether the aided School can be compelled to consider for admission, children residing outside the jurisdiction of the said Local Authority.

- (x) **Rule 131** - empowering the Director to regulate admissions to aided Schools.

This again in my opinion, is irrelevant for the controversy.

- (xi) **Rule 132** - prohibiting aided Schools from holding any test for admission to any class.

This again in my opinion, is irrelevant to the controversy at hand.

- (xii) **Rule 133** - empowering the Director to regulate the manner of admission. This Rule empowers the Director to prepare in each year a plan for admission of the students to the various classes in aided Schools in Delhi and prohibits the Managing Committee of an aided

School from refusing admission to any students who is assigned to that School under the admission plan.

Neither is it the case of the petitioners that under any plan prepared by the Director, the Navyug Schools are required to consider for admission, the students residing outside the jurisdiction of NDMC nor it is the case of the petitioners that admission of their wards/children to the Navyug School has been recommended by the Director.

The counsel for the respondent Director of Education has also stated that there is no such plan; he has also pointed out that no relief in the writ petition has been claimed against the Director of Education.

(xiii) **Rule 134** - since great emphasis was placed by the counsel for the petitioner on the said Rule, it is deemed appropriate to set out the same hereinbelow:

“134 - Admission to be without distinction - Admission of students in aided Schools shall be made without any distinction of religion, race, caste, place of birth, or any of them”

The counsel for the petitioners argued that refusal by the Navyug School to consider the wards/children of the petitioners for admission for the reason of their not

residing in the area of NDMC amounts to violation of the aforesaid Rule.

The counsel for the respondent Director of Education has argued that the said Navyug School has denied admission not for the reason of place of birth but for the reason of place of residence and thus Rule 134 is not applicable.

In my opinion also, Rule 134 will not apply. The expression “place of birth” is used in conjunction with religion, race, caste and has to take colour from them. The prohibition is against discrimination on the ground of caste and creed and thus discrimination on the ground of place of birth has to be such which is stigmatic and the said provision was not intended to come in the way of concept of neighbourhood School or to come in the way of a Local Authority refusing to give admission to students residing outside its jurisdiction.

(xiv) **Rule 144** - empowering the Director to issue directions relating to admissions to aided Schools.

As aforesaid neither is it the case of the petitioners that the Director of Education has issued any direction to the Navyug Schools to admit students even from the outside

the NDMC area nor have the petitioners claimed any relief against the Director of Education.

B. NDMC Act, 1994

- (i) The said Act extends to “New Delhi” only as distinct from the entire city of Delhi as the Delhi School Education Act and Rules framed thereunder extend.
- (ii) **Section 10** - vesting the Municipal Government of “New Delhi” in the NDMC.
- (iii) **Section 11** - defining the obligatory functions of NDMC which include the establishment, maintenance of and aid to Schools for primary education subject to such grants as may be determined by the Central Government from time to time.
- (iv) **Section 397** - it recognizes the power of the Central Government to issue directions to the NDMC in respect of subjects, curricula, text books, standards and method of teaching in Primary Schools vested in the NDMC or maintained wholly or partly by grants paid out by the NDMC Fund. Neither does the said Section cover “admission” to the Schools nor is it the case of the petitioners that any direction in regard to admission has been issued by the Central Government.

- (v) The First Schedule to the NDMC Act gives the boundaries of NDMC area.

The counsel for the petitioners admits that the Mata Sundri Road and Minto Road areas where the petitioners are residing, were never within the boundaries of NDMC.

C. The Right of Children to Free and Compulsory Education Act, 2009

- (i) **Section 3** – confers upon every child of the age of six to fourteen years a right to free and compulsory education in a neighbourhood School till completion of elementary education.
- (ii) **Section 6** - imposes a duty on the appropriate Government and the Local Authorities to establish within such area or limits of neighbourhood as may be prescribed, Schools where they had not been so established within a period of three years from the commencement of the Act.
- (iii) **Section 9** - provides for the duties of the Local Authorities as NDMC is. **Clause (a)** thereof while imposing a duty on the NDMC to provide free and compulsory elementary education to every child clarifies that where a child is admitted in a School other than a

School established by the Authority, the said child or his parent shall not have a right to reimbursement of expenditure incurred on elementary education of the child in other School. **Clause (b)** imposes a duty on the Local Authority to ensure availability of a neighbourhood School. **Clause (e)** is relevant and important for present purpose. It imposes a duty on a Local Authority to “ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction”.

It thus follows that the Local Authorities as NDMC are required to fulfill obligation qua children residing within its jurisdiction only.

Clause (l) imposes a duty on the Local Authority to monitor functioning of Schools within its jurisdiction.

- (iv) **Section 35(3)** - empowers the Local Authority to issue guidelines and directions to the School Management Committee regarding implementation of the provisions of the Act.
- (v) Rule 6 of the Rules framed under the Right to Education Act defines neighbourhood as within a radius of one

kilometer for children from classes I to V and of three kilometers in respect of children in classes VI to VIII.

9. On a conspectus of the aforesaid provisions of law, it appears that the obligation of NDMC which has established the Navyug Schools is qua only those residing within the limits of its jurisdiction and not qua those residing outside NDMC areas. NDMC is well within its rights to contend that the students within its jurisdiction being sufficient or more than the capacity of the Schools established by it, it will not consider for admission, students living outside its jurisdiction. Establishment and running of Schools needs money. NDMC has its own budgets and finances. If an obligation is imposed on NDMC to provide education even to those residing outside its jurisdiction, it can upset the budgets of NDMC; while it is obliged to provide education within its jurisdiction and can thus not refuse admission to any child within its jurisdiction, the additional obligation to also provide education to those not living within its jurisdiction cannot be imposed.

10. The counsel for the petitioners faced with the aforesaid, contended that the finances to the NDMC are provided by the Central Government or the Delhi Government only. The counsel for the respondent NDMC refuted the said contention. There is no basis for the rival contentions in the pleadings. Without elaborating further on the subject, it cannot be said that the residents of the NDMC area do not make any contribution to the finances of the NDMC. The property tax and other similar taxes paid by the NDMC

area residents to the NDMC add to the budget of the NDMC. The residents of the NDMC areas can certainly demand that their contributions to the finances of the NDMC should not be spent on providing services as of education to those residing outside the limits of NDMC and who have a right to claim such services from their respective municipality.

11. We are today faced with a situation where the city of Delhi is divided into NDMC, MCD, Delhi Cantonment Board and at times, even DDA zones/areas. There is often a comparison of the functioning of the two municipalities and the services provided by them. If the arguments of the counsel for the petitioners were to be accepted that NDMC has an obligation to provide education to children residing outside its jurisdiction also, it cannot end at that. The residents of one area would then also be entitled to demand that roads constructed by the other municipality are better and the other municipality should be directed to construct roads in their area also. The same cannot be permitted.

12. I am unable to find any such right being created under the Right to Education Act also. The only right thereunder is to admission in a School in the neighbourhood; such neighbourhood would necessarily mean the neighbourhood within the municipality in which the residence is situated. In the present case the counsel for the petitioners admits that there are other aided Schools closer to the residence of the petitioners than the Navyug School in question. The desire of the petitioners for admission in the said

Navyug Schools is perhaps because of better standard of education being maintained in the Navyug Schools than in the other Schools closer to the residence of the petitioners. However, the said desire does not constitute a right under any of the legislations aforesaid.

13. The counsels for the Director of Education and the Navyug Schools and NDMC have also contended that since the petitioners are claiming admission to Nursery Class and Class-I, the Right to Education Act is not applicable. They have also contended that the admission sought at the pre-school level are also not within the purview of the Delhi School Education Act. The said arguments have been controverted by the counsel for the petitioners. However, in view of the findings returned above, it is not deemed necessary to adjudicate the said aspects.

14. I have enquired from the counsel for the respondent Navyug Schools and the NDMC as to why the admissions to the Schools established by NDMC are being given to students residing outside the NDMC areas but within the New Delhi Parliamentary Constituency. The counsel states that since large part of the New Delhi Parliamentary Constituency is in the NDMC area, the said benefit has since beginning been extended to the entire New Delhi Parliamentary Constituency i.e. to the residents beyond the NDMC area also. He could however not give any legal justification for the same. However the challenge in this regard is for a resident of the NDMC area to make and does not fall for adjudication in the present case. All that

can be said is that the said aberration even if any on the part of the NDMC would still not create a right in favour of the petitioners.

15. The writ petition therefore fails. The petitioners being the residents of outside the NDMC area, are found to have no right for consideration for admission to a School in an NDMC area.

The writ petition is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

28th October, 2010
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