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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 1752/2013

2nd December, 2013

ST. ANTHONYS GIRLS SR. SEC. SCHOOL THROUGH ITS MANAGER
& ANR. Petitioners

Through: Mr. M.P.Raju, Advocate.

VERSUS

GOVT.OF NCT OF DELHI & ORS. Respondents

Through: Ms. Zubeda Begum, Adv. for R-1 to
4.

Mr. M.P.Singh and Mr. R.L.Sharma,
Advs. for R-5 with Ms. Garima Arya,
R-5 in person.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Certain litigations arise for being decided by Courts because of obstinacy of government departments in refusing to follow the established legal position. This is one of such cases which has to be decided by the Courts on account of perplexing refusal of the Director of Education to legally correct itself in spite of being pointed out the correct position in law. This refusal bordering on unnecessary obstinacy which is

stated above arises from the applicability of the direct and categorical ratio laid down by a Division Bench of this Court in the case of *Queen Mary's School Thru its Principal Vs. U.O.I. 185 (2011) DLT 168 (DB)* holding that Rule 96 of the Delhi School Education Rules, 1973 as a whole does not apply to minority aided schools, and as para 14 thereof will show, that there can be no doubt whatsoever as to the ratio in the case of *Queen Mary's School (supra)* for the Director of Education to have passed the impugned order dated 26.12.2012 on a specious ground that the interview for selection was held in August, 2011 and the judgment of the Division Bench in the case of *Queen Mary's School (supra)* came to be passed subsequently on 21.11.2011. In case the Director of Education had taken appropriate legal advice at the time of passing of the impugned order dated 26.12.2012, possibly the impugned order would not have been passed. In fact the show cause notice dated 22.6.2012 itself ought not to have been issued because issuing of the show cause notice is well after the judgment was passed in the case of *Queen Mary's School (supra)* on 21.11.2011. I also note that the Director of Education has even in this writ petition through its pleadings, for reasons which this Court cannot fathom, continued with its unjustified stand and which is in face of the direct ratio of *Queen Mary's School (supra)* case, though it could surely have been guided better and correctly.

2. The issue in this case to be decided is limited, and which is that whether for appointment of a teacher, TGT (Sanskrit), by the petitioner school, and which is an aided school, is it necessary that there should be an advisor nominated by the Director of Education on its selection committee in terms of Rule 96(3) of the Delhi School Education Rules, 1973. This Rule 96(3) reads as under:-

“96. Recruitment.

- (3) The Selection Committee shall consist of:—
- (a) in the case of recruitment of the head of the school,:-
 - (i) the Chairman of the managing committee;
 - (ii) in the case of an unaided school, an educationist is nominated by the managing committee, and an educationist nominated by the Director;
 - (iii) in the case of an aided school, two educationists nominated by the Director, out of whom at least one shall be a person having experience of school education;
 - (iv) a person having experience of the administration of schools, to be nominated, in the case of an unaided school by the managing committee, or in the case of an aided school, by the Director;
 - (b) in the case of an appointment of a teacher (other than the head of the school:
 - (i) the Chairman of the managing committee or a member of the managing committee nominated by the Chairman;
 - (ii) the head of the school;
 - (iii) in the case of a primary school, a female educationist having experience of school education;
 - (iv) in the case of an aided school, one educationist to be nominated by the Director, and one representative of the Director;
 - (v) in the case of appointment of a teacher for any class in the middle stage or any class in the higher secondary stage, an expert

on the subject in relation to which the teacher is proposed to be appointed, to be nominated, in the case of an unaided school by the managing committee, or in the case of an aided school, by the Director.

- (c) in the case of an appointment of any other employee, not being an employee belonging to [Group-D]:
 - (i) the Chairman of the managing committee or a member of the managing committee, to be nominated by the Chairman;
 - (ii) head of the school;
 - (iii) a nominee of the Director;
 - (iv) in the case of an aided school, two officers having experience of the administration of school, to be nominated by the Director;
- [(d) in the case of an appointment of a Group 'D' employee;
 - (i) Chairman of the managing committee or a member of the managing committee nominated by the Chairman;
 - (ii) the head of the school.]

[(3-A) Notwithstanding anything contained in sub-rule (3), in the case of an aided minority school, the educationists nominated under paragraph (iii) of clause (a) of sub-rule (3), persons nominated by the Director under paragraph (iv) of clause (a) of sub-rule (3), educationists nominated under paragraph (iv) of clause (b) of sub-rule (3), an expert nominated under paragraph (v) of clause (b) of sub-rule (3), a person nominated under paragraph (iii) of clause (c) of sub-rule (3), officers nominated under paragraph (iv) of clause (c) of sub-rule (3), a person nominated under paragraph (iii) of clause (b) of sub-rule (3), shall act only as advisers and will not have the power to vote or actually control the selection of an employee.

(3B) Notwithstanding anything contained in sub-rule (3), the selection committee of a minority school shall not be limited by the number specified in the said sub-rule and its managing committee may fix such number.] ”

3. The Division Bench of this Court in the case of *Queen Mary's School (supra)* was exactly and specifically concerned with this very issue as to whether even though the nominee of the Director of Education has no power to vote because of sub-Rule 3-A of Rule 96; whether the Director of Education can still insist that in an advisory capacity, presence of a nominee of the Director of Education is mandatory in view of Rule 96 (3)(b)(v) of Delhi School Education Rules. Paras 14 and 16 of the judgment in the case of *Queen Mary's School (supra)* are relevant and they read as under:-

“14. In the year 1975, immediately after the decision in The Ahmedabad St. Xavier (supra) a Division Bench of this court, had occasion to consider the (pre-amended) Rule 96. The relevant portion of the discussion, in the judgment S.S. Jain Sabha (of Rawalpindi) Delhi v. Union of India, ILR (1976) Del 61 is as follows:

“27. This is also a part of the right of administration. Under rule 96 (3) the number of the members of Selection Committee is limited. Any such limitation may be placed only by the management.

Rule 96 (3) (a) (iii). - The presence of two educationists nominated by the Director will be of great help to the Selection Committee. But we hold that in regard to minority schools they will act only as advisers and will not have the power to vote or actually control the selection of employees. The minority schools are not bound to give preference to persons recommended by the Employment Exchange.

Rule 96 (3) (a) (iv). - The nominee of the Director will also act only as an adviser. The advisory capacity of the members nominated by the Director under clauses (iii) and (iv) of rule 96

(3) (a) in regard to minority schools may be made clear by appropriate amendment.

The same kind of amendment is called for in Rule 96 (3) (b) (iv) and (v). Clause (iii) of rule 96 (3) (b) will not apply to a minority school. Similarly, the nominees of the Director in clauses (iii) and (iv) in rule 96 (3) (c) will also act only as advisers.

It was therefore, recognized long ago that Rule 96 in its un-amended form impinged on the rights of minority aided schools, to recruit teachers; the Court, in the state of law, then existing, held that if nominees of the Director were permitted, they could only function in an advisory capacity. At the time, when the Court delivered its judgment, it was felt that participation, without voting rights, in the decision making process, was not intrusive. However, the argument of the Petitioners is that the choice of recruitment is an unfettered right, and subjected only to regulatory conditions such as fulfilling minimum educational and experience standards. The imposition of anyone in the recruitment process, in whatever capacity, is invasive. In this context, it would be useful to notice a recent judgment of the Supreme Court in *Brahmo Samaj Education Society v. State of W.B.*, (2004) 6 SCC 224, where it was held that:

“control cannot extend to the day-to-day administration of the institution. It is categorically stated in *T.M.A. Pai* (SCC at p. 551, para 72) that the State can regulate the method of selection and appointment of teachers after prescribing requisite qualification for the same. Independence for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution. The State can very well provide the basic qualification for teachers. Under the University Grants Commission Act, 1956, the University Grants Commission (UGC) had laid down qualifications to a teaching post in a university by passing Regulations. As per these Regulations UGC conducts National Eligibility Test (NET) for determining teaching eligibility of candidates. UGC has also authorised accredited States to conduct State-Level Eligibility Test (SLET). Only a person who has qualified NET or SLET will be eligible for appointment as a

teacher in an aided institution. This is the required basic qualification for a teacher. The petitioners' right to administer includes the right to appoint teachers of their choice among the NET-/SLET-qualified candidates.

8. Argument on behalf of the State that the appointment through the College Service Commission is to maintain the equal standard of education all throughout the State of West Bengal, does not impress us. The equal standard of teachers are already maintained by NET/SLET. Similarly, receiving aid from State coffers can also not be treated as a justification for imposition of any restrictions that cannot be imposed otherwise

The state's argument that the rule mandating the inclusion of nominees whose participation is minimal, and whose views are not binding, is a harmless rule, seems attractive. Yet, this court cannot lose sight of the fact that the basic right to recruit personnel of its choice, is that of the minority aided school management. If, as in the case of Rule 47 and Rule 64 (1) (a) and (e), the management cannot be dictated upon about the actual candidate, to be recruited by it, there is no rationale **why it should be made to suffer the participation of an outsider, whose presence is not wanted, in the first place, no matter whether that individual's views are not binding.** This view is fortified by Rule 98, (which deals with approval of appointment); it does not apply to aided schools, as is evident from Rule 98 (2) proviso (2). **Therefore, this Court sees no logic in the minority aided school being compelled to allow participation of nominee members in the selection committee,** even if their views or votes are not binding. For these reasons, it is held that minority aided schools are not bound to adopt the composition of the recruitment committees indicated in Rule 96; they are to adhere to the rules applicable to unaided minority schools, i.e., Rules 127-128.

16. In view of the above discussion, we hold and declare that Rules 47, 64 (1) (b), (e) and 96 of the Delhi School Education Rules, are inapplicable to aided minority schools. Rule 64 (1) (g) is held inapplicable to the extent that it mandates such schools to fill the posts "without any discrimination or delay as per the Recruitment Rules prescribed for such posts"; it is clarified that the managements of such aided minority schools shall adhere to

the Recruitment Rules, and other general norms, to the extent they prescribe qualifications, experience, age, and other such criteria, for appointment (as they are regulatory).

4. In my opinion, a very elementary and cursory reading of these aforesaid paras of the judgment of the Division Bench of this Court in the case of ***Queen Mary's School (supra)*** leaves no manner of doubt that it is the very issue which is called for decision in this case which was decided in ***Queen Mary's School (supra)*** and it was held that although in view of the earlier judgment of the Division Bench in the case of ***S.S.Jain Sabha (Of Rawalpindi) Delhi Vs. Union of India, ILR (1976) 2 Del 61*** presence of an advisor was found to be necessary, however, in view of the judgment of the Constitution Bench of the Supreme Court in the case of ***The Ahmedabad St. Xaviers College Society Vs. State of Gujrat, AIR 1974 S.C. 1389***, even the formal presence in an advisory capacity of the nominee of the Director of Education is not required on the selection committee, and Rule 96 as a whole itself does not apply to minority unaided schools.

5. In view of the above, the impugned order dated 26.12.2012, which has only been passed on the ground that the judgment in the case of ***Queen Mary's School (supra)*** was passed on 21.11.2011 whereas interviews were held earlier in August 2011 and the Managing Committee

meeting finalized selection also earlier as on 11.8.2011, quite clearly gives a misconceived reason for passing of the impugned order. It is trite that judgments declare the position of law and there does not arise any issue of the judgment in *Queen Mary's School (supra)* case having to be applied 'prospectively'.

6. In spite of the categorical ratio of the judgment of a Division Bench in the case of *Queen Mary's School (supra)*, learned counsel appearing for respondent nos. 1 to 4 i.e Director of Education and Govt. of NCT of Delhi again sought to argue before me that as per Rule 96 (3)(b)(v), there is no harm in having an advisor appointed by the Director of Education in the selection committee for appointment of teachers by the minority unaided school, however, such an argument if allowed, would fly in the face of the direct ratio in the case of *Queen Mary's School (supra)* and is accordingly rejected. Also, I do not think any benefit can be derived from paras 2 and 107 of the Supreme Court judgment in the case of *Sindhi Education Society &Anr. Vs. The Chief Secretary, Govt-NCT of Delhi (2010) 8 SCC 49* as is sought to be argued by counsel for respondent nos.1 to 4 inasmuch as the issue with respect to non-applicability of Rule 96 as dealt with by the Division Bench of this Court in the case of *Queen Mary's School (supra)* was not the issue before the Supreme Court in paras 2 and 107 of the WPC 1752/2013

judgment in *Sindhi Education Society (supra)* which are relied upon for continued unfounded insistence as regards the requirement of an advisor to be appointed by the Director of Education in a selection committee of a minority unaided school, notwithstanding the unambiguous ratio of *Queen Mary's School (supra)*.

7. Learned counsel for respondent nos. 1 to 4 also tried to argue that the school had accepted the requirement of Rule 96(3)(b)(v) of an advisor as appointed by the Director of Education inasmuch as petitioner-school itself requested by means of its letter dated 24.5.2011 for appointment of an expert, and therefore, the school is argued to be estopped from claiming that no advisor should be appointed. Even this argument urged on behalf of the respondent nos. 1 to 4 is quite clearly meritless because there cannot be estoppel against law once law is that no advisor is required after the judgment of the Division Bench in the case of *Queen Mary's School (supra)*. The Director of Education, as already stated above, in fact ought not to have issued a show-cause notice dated 22.6.2012 questioning the appointment of respondent no.5- Garima Arya, by the selection committee and managing committee of the petitioner-school. After all, when the show-cause notice dated 22.6.2012 was issued by the Director of Education the judgment in the case of *Queen Mary's School (supra)* had

already been passed on 21.11.2011. Therefore, it cannot be urged on behalf of the Director of Education that the petitioner-school is allegedly bound by the principle of estoppel and that in spite of categorical ratio of *Queen Mary's School (supra)* the Director of Education is still entitled to appoint an advisor in the selection committee in terms of Rule 93(3)(b)(v) of the Delhi School Education Rule, 1973.

8. In view of the above, the writ petition is allowed. The impugned order dated 26.12.2012 is quashed. Respondent no.5-Ms. Garima Arya would be entitled to be appointed as TGT (Sanskrit) of the petitioner-school in terms of the decision as recorded in the Minutes of Meeting of the petitioner-school dated 11.8.2011. Necessary orders in this regard be now passed in four weeks. Since in spite of clear-cut law binding the Director of Education as per the judgment in the case of *Queen Mary's School (supra)*, petitioner has yet been forced to approach this Court and has had to incur expenses, the writ petition is therefore allowed with costs of Rs.25,000/- payable by the Director of Education to the petitioner-school.

DECEMBER 02, 2013
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VALMIKI J. MEHTA, J.