

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

% Date of Decision: 03.10.2013

+ **W.P.(C) 2829 of 2010**

FAITH ACADEMY Petitioner

Through: Ms. Jyoti Singh, Sr. Adv. with Mr. M.
Qayam-ud-Din & Ms. Majani Begum,
Advs.

versus

GOVERNMENT OF NATIONAL
CAPITAL TERRITORY OF DELHI & ORS. Respondents

Through: Ms. Zubeda Begum, Standing Counsel,
GNCTD with Ms. Sana Ansari, Adv.
Mr. Ashok Agarwal &
Mr. Khagesh B. Jha, Advs. for R-3.

+ **W.P.(C) 6689 of 2010**

FAITH ACADEMYPARENTS
ASSOCIATION (REGD.) Petitioner

Through: Mr. Ashok Agarwal &
Mr. Khagesh B. Jha, Advs.

versus

GOVERNMENT OF NATIONAL
CAPITAL TERRITORY OF DELHI & ORS. Respondents

Through: Ms. Zubeda Begum, Standing Counsel,
GNCTD with Ms. Sana Ansari, Adv.
Ms. Shobhana Takiar & Ms. Indrani
Ghosh, Advs. for the Director of
Education/R-2.

Ms. Jyoti Singh, Sr. Adv. with Mr. M.
Qayam-ud-Din & Ms. Majani Begum,
Adv. for R-4.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

Rule 59 (1) of the Delhi School Education Rules, 1973
(hereinafter referred to as 'the Rules) to the extent it is relevant reads as
under:

“59. Scheme of management of recognized schools – (1) The
scheme of management in relation to a recognized school shall
provide that:-

XXXX XXXX XXXX XXXX XXXX

(b) subject to the total number of members specified in
clause (a), every managing committee shall include the
following, namely:-

XXXX XXXX XXXX XXXX XXXX

(ii) one parent, who is a member of the Parent-Teachers'
Association of the school, constituted in accordance with such
instructions as may be issued by the Administrator, and is
elected by that Association.

XXXX XXXX XXXX XXXX XXXX

Provided that in the case of [a minority school], such
members of the managing committee, as are required by this
rule to be elected, may, instead of being elected, be nominated
by the society or trust by which such unaided minority school is
run.”

2. A circular dated 12.4.2010 was issued by the Director of Education, Delhi laying down guidelines for constitution of Parents-Teachers' Associations in aided/unaided school. The said instructions *inter alia* stipulate that the PTA shall comprise of two bodies (a) General Body and (b) Executive Committee. It further stipulates that all parents of the students shall be the members of the PTA and all teachers shall be its ex officio members. No parent can continue as a member or office bearer of PTA if his/her ward has left the school. The guidelines provide for elections of the Executive Committee to be held in the last week of April every alternate year. The General Body meeting is to held at least once a year.

3. The petitioner in WP (C) No.2928/2010 is a minority unaided school recognized by the Directorate of Education, Delhi. The petitioner in the said writ petition is aggrieved from the aforesaid circular dated 12.4.2010 and claims that the said circular is violative of Article 30 of the Constitution of India. The petitioner in the said writ petition is, therefore, seeking the following reliefs:

“(i) issue a writ, order or direction in the nature of Certiorari to respondent No.1 thereby quashing the impugned circular No.1913 dated 12.4.2010 issued by respondent No.1,

(ii) issue a writ, order or direction in the nature of Mandamus thereby directing the respondent No.1 to withdraw the impugned circular or to issue a clarification to the effect that the impugned circular No.1913 dated 12.4.2010 is not applicable to the minority unaided educational institution, i.e., the petitioner No.1 as per the provisions of Article 30 of the Constitution of India.

(iii) Issue a writ, order or direction in the nature of mandamus thereby directing the respondents to implement the provisions of Article 30 in the minority unaided schools or institutions.”

4. WP (C) No.6689/2010 has been filed by Faith Academy Parents Association (Regd.), seeking directions to the respondents in the said writ petition which includes Faith Academy School, petitioner in WP (C) No.2928/2010 to constitute a Parents-Teachers Association in the said school, in terms of the directions dated 12.4.2010 issued by the Directorate of Education, Delhi. The following are the reliefs claimed in the said petition:

“(i) Mandamus calling for the relevant records from the respondents and directing respondent Nos.1 to 3 to ensure that all the aided and unaided schools, including respondent No.4 herein, which have not yet constituted Parents Teachers Association (PTA, in short) in accordance with the directions/guidelines contained in the said order dated 12.04.2010 (Annexure: P-7) constitute the PTA with immediate effect within a time frame and to take stringent action in accordance with the Delhi School Education Act, 1973 (in short, Act) against those schools/their managements which fail to comply such directions. Further, to ensure that no aided/unaided recognized private school is allowed to constitute PTA and Management Committee which are not in accordance with the directions issued under the Act & the Rules.”

5. In its counter affidavit in WP (C) No.2928/2010 respondent No.1/Government of NCT of Delhi has defended the circular dated 12.4.2010 and it is claimed that the said respondent has no intention to impinge upon the rights conferred upon the petitioner by Article 30 of the Constitution of India. It is also pointed out in the counter affidavit that the writ petition does not specify any particular paragraph of the said circular dated 12.4.2010 as violative of Article 30 of the Constitution of India.

6. Rule 43 of the Rules reads as under:

“43. Power to issue instructions – The Administrator may, if he is of opinion that in the interest of school education in Delhi it is necessary so to do, issue such instructions in relation to any matter, not covered by these rules, as he may deem fit.”

It would, thus, be seen that Rule 43 of the aforesaid Rules empowers the Administrator of Delhi to issue any instructions in relation to any matter which is not specifically covered by the Rules as he may deem appropriate. The aforesaid power of the Administrator under Rule 43 of the Rules has been delegated to the Director of Education, Delhi. Thus, the circular dated 12.4.2010 is nothing but instructions issued by the Administrator of Delhi through its delegate, in terms of the powers conferred upon him by Rule 43 of the aforesaid Rules.

7. There is no specific Rule in Delhi School Education Rules dealing with the constitution of the Parents-Teachers Association in a school. Therefore, the Administrator, in exercise of the powers conferred upon him by Rule 43 above, was competent to issue the aforesaid circular dated 12.4.2010, prescribing the constitution of the PTA and the manner in which the elections to the Executive Committee of the PTA shall be held in each school. No exception to the said instructions has been issued under Rule 3 can be taken unless it is in conflict with any specific provisions of Delhi School Education Act, 1973 or Delhi School Education Rules, 1973. On a conjoint reading of Rule 59 with instructions issued in exercise of the powers conferred upon the Administrator by Rule 43, it becomes quite clear that the Parents-Teachers Association in a school including a minority school is to be set up, its Executive Committee is to be elected and meetings are to be held

in terms of the instructions dated 12.4.2010. The learned senior counsel for the petitioner states that their concern is with respect to election of a parent in terms of Rule 59 (1) (b) (ii) to the Managing Committee of the school and since the proviso to the said Rule expressly empowers the society or the trust by which the unaided minority school is run, to nominate a parent to the Managing Committee of a school, instead of such a parent being elected by the Parents-Teachers Association, she contends that the PTA in a minority school should not hold any election for nominating a parent to the Managing Committee of the petitioner-Society. As noted earlier, the instructions dated 12.4.2010 do not provide for election of a member of the Managing Committee by the Parents-Teachers Association. In any case, in view of the proviso to Rule 59, as extracted hereinbefore, if the society or the trust which is running a minority school makes such a nomination obviously the Parents-Teachers Association of the school would have no competence to elect one of the parents to be a member of the Managing Committee of the school. However, except to this limited extent, the circular dated 12.4.2010 needs to be fully implemented by the petitioner-society as well.

8. The learned counsel appearing for the respondent-Government of NCT of Delhi submits that in the writ petition there is no reference at all to Rule 59 of the Delhi School Education Rules and, therefore, no contention with reference to the said Rule should be entertained during the course of hearing. This, to my mind, makes no difference for two reasons – firstly the instructions dated 12.4.2010 itself do not deal with an election of parent to be the member of the Managing Committee of the school and secondly any argument based upon the statutory Rule can

certainly be entertained even if there is no reference to the Rule in the pleadings. Since in view of the proviso to Rule 59 (1) of Delhi School Education Rules, the PTA of a minority school would have no competence to elect a parent to be a member of the Managing Committee of the school, in case a parent who is a member of the PTA is nominated by the society or trust which runs the minority school, to be a member of the Managing Committee, the legal position needs to be made clear so as to avoid any dispute in future in this regard.

9. For the reasons stated hereinabove, both the writ petitions are disposed of with the direction that the circular dated 12.4.2010 shall be made applicable, to the minority school being run by the petitioner in WP (C) No.2928/2010 but the Parents-Teachers Association of the school would not be competent to elect one of the parents to be a member of the Managing Committee of the school in case such a parent is nominated by the society which runs the school to be a member of the Managing Committee. No order as to costs.

OCTOBER 03, 2013
b'nesh

V.K. JAIN, J.