

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

+ **W.P.(C) No. 8204/2011 & WP(C) 7170/2011**

% **10th September, 2013**

**1. WP(C) 8204/2011 & CM 18500/2011 (Stay), CM 5803/2012
(interim directions) & CM No. 6003/2012 (condonation of delay)**

LEELA GOVIND Petitioner
Through: Ms. Indrani Ghosh, Adv.

VERSUS

KERALA EDUCATION SOCIETY SR. SECONDARY SCHOOL
MANAGING COMMITTEE & ORS. Respondents
Through: Mr. Romy Chacko, Mr. Varun
Mudgal and Ms. Amrita , Advocates
for R-1 and 2.
Mr. Ashok Agarwal, Adv. for R-3.

2. WP(C) 7170/2011 & CM 17932/2011

KERALA EDUCATION SOCIETY Petitioner
Through: Mr. Romy Chacko, Mr. Varun
Mudgal and Ms. Amrita , Advocates
Versus

DIRECTOR OF EDUCATION & Ors. Respondent
Through: Ms. Sana Ansari, Adv. for Ms.
Zubeda Begum, Adv. for R-1 and 2.
Ms. Indrani Ghosh, Adv. for proposed
respondent
Mr. Ashok Agarwal, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)
WP(C) 8204/2011

1. By this writ petition, petitioner who is a teacher in the Kerala Education Society Senior Secondary School; represented by respondent no.1 (hereinafter referred to as 'respondent-school'); seeks issuing of appropriate writs or directions to challenge the appointment of respondent no.3 as the principal of the respondent-school. Before me, on behalf of the petitioner, challenge is laid to the appointment of the respondent no.3 as Principal by relying upon sub-Rules (3)(a)(iii) & (iv) of Rule 96 of the Delhi School Education Rules, 1973 read with Rule 96(4) to contend that the selection which has been made of the respondent no.3 is illegal because it falls foul of these provisions.

2. Before I refer to the facts of the case I must put on record that it is conceded before me that a minority school will have a right not to have a Departmental Promotion Committee (DPC) for appointment of a Principal, and the Principal can be appointed by a selection committee. In effect minority schools has been given a right to choose its own teachers and principals. I have had an occasion to consider this aspect in the judgment in the case of *Smitha Krishnan Vs. Directorate of Education and Ors.* in

W.P.(C) No.5990/2010 decided on 16.4.2013. Paras 2 and 3 of the said judgment are relevant and the same read as under:-

“2. Learned counsel for respondent nos. 2 and 3-Society has drawn my attention to the judgment of the Supreme Court in the case of *Sindhi Education Society and Anr. Vs. Chief Secretary, Govt. of NCT of Delhi and Ors. (2010) 8 SCC 49* in support of the proposition that since the respondent no.3 is a minority school, it has a complete right to appoint its teachers, subject of course to the qualifications which are prescribed by the Director of Education. Reliance is placed upon paras 102, 111 to 113 of the said judgment, which read as under:-

102. At this stage, at the cost of repetition, we may again refer to the judgment of this Court in T.M.A. Pai's case (supra), where in para 123, the Court specifically noticed that while it was permissible for the State and its educational authorities to prescribe qualifications of a teacher, once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of the teachers. Further, the Court specifically noticed the view recorded by Khanna, J. in reference to Kerala Education Bill, 1957 case (supra), and to clauses 11 and 12 of the Bill in particular, where the learned Judge had declared that, it is the law declared by the Supreme Court in subsequently contested cases as opposed to the Presidential reference, which would have a binding effect and said:

“123. ...The words 'as at present advised' as well as the preceding sentence indicate the view expressed by this Court in relation to Kerala Education Bill, 1957, in this respect was hesitant and tentative and not a final view in the matter.”

What the Court had expressed in para 123 above, appears to have found favour with the Bench dealing with the case of T.M.A. Pai (supra). In any case, nothing to the contrary was observed or held in the subsequent judgment by the larger Bench

111. A linguistic minority has constitution and character of its own. A provision of law or a circular, which would be enforced against the general class, may not be enforceable with the same rigours against the minority institution, particularly where it relates to establishment and management of the school. It has been held

that founders of the minority institution have faith and confidence in their own committee of body consisting of the persons selected by them. Thus, they could choose their managing committee as well as they have a right to choose its teachers. Minority institutions have some kind of autonomy in their administration. This would entail the right to administer effectively and to manage and conduct the affairs of the institution. There is a fine distinction between a restriction on the right of administration and a regulation prescribing the manner of administration. What should be prevented is the maladministration. Just as regulatory measures are necessary for maintaining the educational character and content of the minority institutions, similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration.

112. Every linguistic minority may have its own social, economic and cultural limitations. It has a constitutional right to conserve such culture and language. Thus , it would have a right to choose teachers, who possess the eligibility and qualifications, as provided, without really being impressed by the fact of their religion and community. Its own limitations may not permit, for cultural, economic or other good reasons, to induct teachers from a particular class or community. The direction, as contemplated under Rule 16(1)(b), could be enforced against the general or majority category of the government-aided schools but, it may not be appropriate to enforce such condition against linguistic minority schools. This may amount to interference with their right to choice and, at the same time, may dilute their character of linguistic minority. It would be impermissible in law to bring such actions under the cover of equality which in fact, would diminish the very essence of their character of status. Linguistic and cultural compatibility can be legitimately claimed as one of the desirable features of a linguistic minority in relation to selection of eligible and qualified teachers.

113. A linguistic minority institution is entitled to the protection and the right of equality enshrined in the provisions of the Constitution. The power is vested in the State to frame regulations, with an object to ensure better organization and development of school education and matter incidental thereto. Such power must operate within its limitation while ensuring that it does not, in any way, dilutes or impairs the basic character of

linguistic minority. Its right to establish and administer has to be construed liberally to bring it in alignment with the constitutional protections available to such communities.” (emphasis added)

3. A reading of the aforesaid paras shows that a minority institution has complete right to choose the teachers it wants to appoint subject of course to the requirement of qualifications as prescribed by the Director of Education.”

3. Therefore, in view of the ratio of the Supreme Court in the case of *Sindhi Education Society and Anr. Vs. Chief Secretary, Govt. of NCT of Delhi and Ors. (2010) 8 SCC 49*, it could not be disputed that a minority school has a complete right to choose its own teachers and the State has no right to interfere in the selection of the teachers or the principal by the minority school.

4. Two arguments are urged on behalf of the petitioner. First argument is on the basis of sub-Rules 96(3)(a)(iii) & (iv) of the Delhi School Education Rules, 1973 as is stated above, and the second argument is that selection procedure is faulty because the petitioner was not called for the interview.

5. In order to appreciate the arguments urged it is necessary to reproduce the relevant sub-Rules of Rule 96, and the same read as under:-

“96. Recruitment.

(2) Recruitment of employees in each recognised private school shall be made on the recommendation of the Selection Committee.

(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;

[(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.]

(4) Nomination of any educationist or expert as a member of the Selection Committee shall be made out of a panel prepared for the purpose by the Advisory Board.”

6. In the present case, Selection Committee of the school consisted of four persons, namely, the Chairman, two Principals of two schools and one Educationist. Let me reproduce the relevant Minutes of Meeting dated 27.8.2011 which records the selection of the respondent No.3

as it would be relevant to decide both the submissions urged on behalf of the petitioner:-

“MINUTES OF THE SELECTION COMMITTEE MEETING HELD ON 27TH AUGUST 2011

AT KERALA EDUCATION SOCIETY SENIOR SEC. SCHOOL, SHRIMAT MADHAV RAO SCINDIA MARG, NEW DELHI-110001

1. A meeting of Staff Selection committee was held on 27 August 2011 at 3 p.m. for conducting interview for the post of Principal, in the school premises. The following members were present

- a. Adv. K.P. Toms Chairman of the Selection Committee
- b. Sister Ivy Principal, St. Anthony Senior Secondary School, Hauz Khas
- c. Mrs. Padmaja Menon Principal, The Lotus Schankger Public School Badarpur

d. Mr. Sanal Edamaruku Educationist

2. Hon'ble High Court of Delhi in WP (C) 5047/2011 has directed the Director of Education, Govt of NCT of Delhi to take steps for the appointment of the Principal. It is relevant to mention here the judgment pronounced by the Hon'ble High Court of Delhi in WP (C) 530/2011 & CM 10028/2008 with WP (C) 7015/2008 & CM 13504/2008 dated 24.10.2008, wherein Column No.8 of the Recruitment Rules for the post of Principal and Vice Principal has been struck down and the mode of selection has been clearly stated to be by selection amongst persons who have offered their candidature.

3. Director of Education, Govt. of NCT of Delhi and Dy. Director of Education (C/ND), Jhandewalan, New Delhi were requested to send their representatives as required vide Rule 96(3) (a) (iii) & (iv) of DSEAR 1973 for conducting the SSE vide letter No.KES/2011-12/510 dated 12.8.2011. KER/2011-12/519 dated 18.8.2011 and KES/2011-12/523 dated 20.8.2011. However, no representative from the Directorate of Education or Dy. Director of Education (C/ND) reported to the school on the stipulated date and time. Hence, the selection committee consisting of members as mentioned in para 1(a) to (d) decided to continue the proceedings as stipulated vide Dte of Education Aided School Cell Circular F/S/ASC/90/25279-25528 dated 30.5.1990.

4. Delhi Employment Exchange was requested to send the list of candidates meeting the eligibility criteria for filling up the post of Principal vide request ID No.2011000777. Employment Exchange vide email dated 26.7.2011 had intimated that no candidates are available in their data bank, who are fulfilling the requisite eligibility criteria.

5. Advertisements were published in Hindustan Times (English) on 1.3.2011 and Malayala Manorama (Malayalam) on 24.3.2011 notifying the vacancy of the post of Principal. A total of 14 applications were received in response to the advertisements. Out of 14 candidates, only 05 candidates were found to be meeting the eligibility criteria and were called for interview.

6. All the five candidates, who turned up for the interview were assessed based on their academic qualification, administrative skills, working experience etc. The Staff Selection Committee recommended the name of Mr. Santosh Kumar N. at S.No.2 for the selection of Principal in pursuance of relevant recruitment rules.

PANEL FOR THE POST OF PRINCIPAL

S. No.	Name of candidates	S.No. of list	Position
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1.	Mr. Hari Kumar	4	2 nd
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2.	Mrs. Vijural Francy	3	3 rd
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This panel is valid for six months

Adv. KP Toms	Mr. Sanal Edamaruku
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Chairman	Educationist
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Member

Mrs. Padmaja Menon

Sister Ivy

Principal

Principal

The Lotus Shankger Public School

St. Antony Sr. Sec. School

Badarpur

Hauz Khas

Member

Member"

7. It also is the common case of the parties that Director of Education with respect to selection of teachers and principals in minority schools has issued a notification dated 30.5.1990. This notification dated 30.5.1990 reads as under:-

“Amended Procedure for filling up the vacancy in Aided Schools

In supersession of all the previous orders, the Managing Committees of all the Govt. Aided Schools in Delhi are hereby informed that it has been decided as follows:

(i) Clearance to fill up any vacancy may be presumed to have been given if no communication to the contrary is received by the Manager with “one calendar month” from the date on which the written request for clearance is received in the concerned District.

(ii) Selection Committee constituted under Rule 96 DSER, 1973 may meet and select candidates for appointment without nominees to the Director under Rule 98(3) (a), (iii) or 98 (3)(i), (iv) and (v) or 98(3) (c) (iv) of the DSER, 1973 as the case may be, if no communication of names of nominees of Director is received by the Manager within “two weeks” from the date on which the written request for names of such nominees is received in the concerned District.”

8. A conjoint reading of the provisions of sub-Rules 96(3) (a) (iii) & (iv) alongwith notification dated 30.5.1990 shows that if the Director of Education does not respond to the request of the school in sending the necessary nominees being the Educationist and an expert in administration, then, the effect is that the Selection Committee can still meet and go ahead with the selection without the nominees of the Director of Education. In this case, the school had sent a letter to the Director of Education dated 10.8.2011 (copy filed in connected W.P.(C) No.7170/2011) by which the respondent-school asked for the requisite nominees of the Director of Education as per sub-Rule 96(3)(a)(iii) & (iv). Admittedly the only response by the Director of Education vide its letter dated 25.8.2011 was that the respondent-school was directed to hold a DPC i.e the names of the nominees were not sent. Since there is no requirement to a minority school to have a DPC for selecting a principal, therefore, the effect is that the Director of Education has failed to send the nominees within two weeks. Hence the notification dated 30.5.1990 comes into play that the Selection Committee can meet without the nominees of the Director of Education. There is no doubt that there is no requirement of nominees of Director of Education forming part of the Selection Committee because Sub-Rules 3-A and 3-B of Rule 96 make it clear that even if nominees would have been part of the WPC 8204/2011 & 7170/2011

Selection Committee, they would only act as observers and they have no right to vote or being a part of the selection process by giving their views. Accordingly, a conjoint reading of the relevant sub-Rules of Rule 96 read with notification of the Director of Education dated 30.5.1990 shows that there is no illegality in the Selection Committee meeting dated 27.8.2011 which appointed the respondent No.3 as the principal of the respondent-school.

9. So far as the second argument which is urged on behalf of the petitioner is concerned, the same is also without any substance because admittedly the petitioner did not respond to the advertisement which was published, and reference to which advertisement is found in para 5 of the Minutes of the Meeting dated 27.8.2011. Surely, a person can only be considered if a formal application is filed pursuant to the advertisement. It is only when the application is filed pursuant to the advertisement for being considered in the selection process that such candidate would be called. I cannot agree with the argument of the petitioner that since the petitioner had given a representation to the school way back on 5.8.2010 for being considered to the post of Principal, that representation can act in substitution of an actual application which is required to be given pursuant to the advertisement calling for candidates for being appointed as Principal of the

school. There is no requirement in law that a school must scan all its past records to find out representations made by persons for being appointed as Principal and such representations thereafter should be automatically considered as applications pursuant to advertisements which were issued.

10. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.

W.P.(C) No.7170/2011

11. In view of the above judgment dismissing the W.P.(C) No.8204/2011, this writ petition would stand allowed and the order of Director of Education dated 16.9.2011 will stand quashed and whereby the appointment of respondent No.3 in W.P.(C) No.8204/2011, namely Sh. Hari Kumar as Principal by the school was set aside. Sh. Hari Kumar is also respondent No.3 in this petition.

12. Writ petition is therefore allowed as aforesaid, leaving the parties to bear their own costs.

SEPTEMBER 10, 2013

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VALMIKI J. MEHTA, J.