

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

Reserved on: 18.12.2013

Pronounced on: 17.04.2014

+ LPA 511/2003, C.M. APPL. 1150/2003, 1151/2003, 9082/2010, 4957/2013, 4958/2013 & CRL.M.A.6269/2010

SHIVALI SHIKSHA SANSTHAN SOCIETY & ANR. Appellants

Through: Sh. Suhail Dutt, Sr. Advocate with Sh. Vikas Tiwari and Sh. Azhar Alam, Advocates with appellant in person.

Versus

THE ADMINISTRATOR, NCT OF DELHI AND ORS.....Respondents

Through: Sh. Rajiv Bansal, Ms. D. Ray Chaudhury and Ms. Swati Verma, Advocates, for DDA.

Ms. Avnish Ahlawat with Ms. Latika Choudhary, Advocates, for Director of Education.

Sh. Rakesh Tiku, Sr. Advocate with Sh. Prakash Gautam, Sh. Vivek Ojha and Ms. Jayati Dutta, Advocates, for Resp. No.4.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT

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1. The appellant (hereafter referred to as "*the Society*") impugns the judgment and order of the learned Single Judge, dismissing its petition [W.P. (C) 6413/2001] as well as the order of 30.05.2003, rejecting its Review Petition. The Society had challenged the allotment of land to the fourth respondent (hereafter referred to as "*the Jain Society*") at Mayur Vihar.

2. The Society had claimed that the allotment made to the Jain Society was contrary to the guidelines and importantly that the latter,

i.e. the Jain Society was ineligible as it did not possess an Essentiality Certificate (EC) – a necessary prerequisite for such allotment. The Society's contention in this regard further was that the Jain Society's claim that it was a minority institution and thus entitled to the Rights guaranteed under Article 30(1) of the Constitution, was not substantiated.

3. The appellant Society had been granted an EC on 30.05.1989, after which it established Bharat Bharti Public School at Shakarpur, Delhi. This was recognized by the third respondent (hereafter called "*the Director of Education*") on 21.03.1991. The Society, on 05.06.1997 sought sponsorship for allotment of land for middle school at Mayur Vihar area. Complaining that the application had not been dealt with, the Society had approached the Court by initiating W.P.(C) 6413/2001. On 10.12.2001, it was informed about the rejection of its application due to the fact that it did not possess a valid EC for the relevant area. The Society claims that the EC was granted to it later, but during the pendency of the Writ Petition, and the sponsorship was thereafter granted on 25.11.2002. The Jain Society had, in the meanwhile, on 24.08.1998, applied for sponsorship of land for allotment of senior secondary school, which was granted on 26.06.2000. At that stage, the EC was not insisted upon by the respondent authorities, who accepted Jain Society's explanation that it was a minority institution. On the basis of the Sponsorship Certificate, allotment was recommended on 29.03.2001 to the Jain Society, of land in Mayur Vihar Phase-III in the East District, for the construction

of a middle school. The sponsorship letter of 26.06.2000 was for allotment of land at Senior Secondary School at Dilshad Garden in District North East. The Society had contended in the writ proceedings that the area of the school had been changed from senior secondary to middle school and that District North East was changed to District East solely on the basis of the Jain Society's affidavit dated 19.03.2001.

4. The learned Single Judge, in the impugned judgment, rejected the three contentions urged on behalf of the Society. The appellant Society had urged that the Jain Society could not be treated as minority institution and consequently the EC was necessary before its application could be considered. The learned Single Judge relied upon the judgment of a Division Bench of this Court in *S.S. Jain v. Union of India*, ILR 1976 (2) Del 161 as well as a subsequent Division Bench ruling in *Jain Samnopasak Sr. Secondary School v. Delhi Administration and Anr.*, 2006 (6) SLR 193, and held that the Jain community, especially the Digambar Jain community to which the nominated Society belonged, was entitled to be treated as a minority and thus entitled to minority status. The Single Judge also relied upon the respondent's affidavit given in another unrelated proceeding, i.e. W.P.(C) 2110/1996, which had clearly stated that the fourth respondent – Jain Society – was a minority institution. On the strength of this finding, the learned Single Judge further held that the requirement of an EC was not binding on minority institutions. As to the last aspect, i.e. the change in area and Zone, leading to arbitrary

allotment of land to the fourth respondent, it was held that the position of the respondents that the area applied for as well as the area where the allotment was in fact granted fell within the same Zone, i.e. District East and consequently there was no violation of policy. Learned Single Judge further noticed that several complaints had been addressed to the Delhi Development Authority (DDA), the second respondent, on the question of sponsorship in respect of one Zone and allotment in the other as well as other irregularities, which had been enquired into and found to be baseless.

5. The appellant Society argued that the impugned judgment failed to consider its rights for allotment of land in Mayur Vihar despite pendency of its claim in that regard for about 7 years. It was urged that the reason given for rejection of its request for allotment was plainly contrary to the existing policy. Learned counsel highlighted that the allotment to the Jain Society likewise flies in the face of the prevailing policy. The appellant Society also reiterated its argument that the Jain Society was disentitled to the benefits and privileges under Article 30(1) and consequently its allotment was illegal having not been backed by any EC. Learned counsel also highlighted that the EC and sponsorship had been obtained by the appellant Society subsequently on 25.02.2002.

6. The respondents argue that the appellant Society's claim in Writ Petition was limited to the alleged wrongful allotment of land to the Jain Society. At the relevant time, when the appellant's application for allotment was considered, it did not hold a valid EC. That it obtained

sponsorship subsequently in 2002 could not confer on it any right to challenge an allotment validly made to the Jain Society in 2001. It was argued that Jains being concededly a minority community were entitled to the rights under Article 30(1) of the Constitution.

7. The Jain Society submits, in addition, that the appellant Society lacks *locus standi* to challenge the allotment made to it, given that its Sponsorship Certificate was issued in 2002, thus making it ineligible when the Jain Society's allotment took place.

8. The first issue, i.e. validity of allotment made in favour of the Jain Society, in this Court's opinion, has to be answered in favour of the respondents. *S.S. Jain* (supra) and subsequent decisions clearly establish that Jains are a minority entitled to claim the right under Article 30(1). The appellant did not, in the course of its pleadings or documents, demonstrate how the Jain Society was not a minority educational institution. Its attempt was to rely on some noting on the Directorate's file doubting the Jain Society's status. That is insufficient to substantiate the allegation about the Jain Society not being a minority institution, especially when the Directorate had deposed in these and other writ proceedings that the Jain Society was a minority institution. Furthermore, Rule 44, which mandates EC as a pre-condition for starting schools, is inapplicable to minority institutions.

9. On the second question, i.e. wrongful denial of allotment to the appellant, reliance was placed in this regard on the EC issued to the Society on 30.05.1989. But that certificate was used by the appellant

Society to establish its middle school (Bharat Bharti Public School) which was recognized in 1991. The Society itself nowhere clearly avers, either in the writ or the appellate proceedings as to whether any EC, apart from one granted on 30.05.1989, was issued. Even the application made by it in the present case does not annex or rely upon a subsequent EC; what is actually placed on the record along with the application is a copy of the old EC of 30.05.1989. In the relevant column, i.e. No.3, the application states, “Yes, EC enclosed”. What is enclosed, however, is a copy of the original EC dated 30.05.1989. This position was reiterated in all the documents on the official file. Even the Land Allotment Committee (LAC) which considered the appellant Society’s application took note of the old EC. In these circumstances, when the Society’s application was considered by the LAC on 07.11.2001, the minutes of the decision in that regard in the meeting recorded (at pages 175/C to 183/C), i.e. a copy of the minutes of meeting of the Directorate of Education, rejected the request for allotment. The following reasons given by the LAC are extracted below:

“5.1 Shivali Shiksha Sansthan:

The Society was granted EC for running a school for I to VIII in Shakar Pur area on 30.5.89. The Society is running a middle school Bal Bharti Public School at U-107, Shakar Pur extension which has been recognized by the Directorate of Education. The Society has made an application for land at Shahadara, Near Surajmal College, Patpar Ganj Societies and Mayur Vihar areas despite the fact that the society does not have valid EC under rule 40 of DSER for these areas. As per the

decision of the last LAC meeting allotment of land will be made where valid EC is available. Director (Lands) DDA informed that land is not available at Shakarpur Ext. Since the society does not have a valid EC for the relevant areas where land is sought the request for allotment of land cannot be sponsored. The society may apply for a fresh EC and approach the LAC again.”

10. It is evident from the above that from the time when the consideration of the appellant Society’s case took place, the authorities were of the opinion that a valid EC did not exist. The appellant’s own averments demonstrate that it obtained Sponsorship Certificate later on 25.11.2002. By then, the allotment of land at Mayur Vihar was already made in favour of the Jain Society.

11. There is no infirmity or arbitrariness in this action of the DDA and the Directorate of Education.

12. Before parting with the case, this Court cannot but help noticing that the appellant’s case throughout was that the fourth respondent was ineligible and could not have been allotted land. It never claimed – either in the writ petition or in the review or even in the appeal – that the rejection of its application was not supported by policy or was arbitrary. Of course, some faint attempt was made in the grounds to urge that the denial of allotment was wrongful. However, the supporting material was completely lacking. A highly belated attempt to seek amendment of the petition was made after the final hearing had commenced by filing an application. The entirety of circumstances in this case, however, do not warrant exercise of jurisdiction of such an extraordinary nature as to allow or permit the amendment of pleadings

almost 12 years after the original writ petition was filed, especially having regard to the nature of materials existing on record in the official files pertaining to the appellant and the Jain Society which were called for at the time of hearing.

13. For the foregoing reasons, it is held that the appeal lacks in merit. It is accordingly dismissed along with pending applications without any order as to costs.

