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

+ LPA 123/2017 & C.M.No.6604/2017

**GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI AND ORS**

..... Appellants

Through: Mr.Sanjay Jain, ASG with Mr.Rahul Mehra, Sr.Standing Counsel, Mr.Gautam Narayan, ASC, Mr.R.Iyer, Ms.Rhea Verma, Ms.Adrija Thakur, Mr.Tushar, Advs.

Versus

**FORUM FOR PROMOTION OF QUALITY
EDUCATION FOR ALL AND ORS**

..... Respondents

Through: Mr.Sunil Gupta, Sr.Adv. with Mr.Vedanta Varma, Mr.Akhil Kumar Gola, Advs. for R-1 to 9.

Mr. Dhanesh Relan & Ms. Isha Garg, Advocates for respondent No.10/ DDA.

Mr. Amit Mahajan, CGSC with Mr. Sumit Misra & Mr. Nitya Sharma, Advocates for respondent No.11/ UOI.

Mr.Akhil Sachar, Adv. with Mr.Samarjit Patnaik, Mr.Rahul, Adv. for Shaurya Raj Pathnaik.

Mr.Parag P.Tripathi, Sr.Adv. with Ms.Manmeet Arora, Ms.Chand Chopra, Mr.Rishabh, Ms.Pavitra Kuar, Mr.Sarad K.Sunny, Advs. for the petitioners in W.P.(C) No.275/2017.

Mr.Amit Sibal, Sr.Adv. with Mr.Kamal Gupta, Ms.Tripti Gupta, Mr.Rahul Kumar, Advs. for Action Committee Unaided Recognized Private Schools.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

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ORDER
27.02.2017

Ms. G.ROHINI, CHIEF JUSTICE

1. The order under appeal dated 14.02.2017 came to be passed on the Miscellaneous Applications filed by the petitioners in W.P.(C) Nos.287, 272, 275 and 305/2017 whereby the learned Single Judge granted interim stay of the Recognised Schools (Admission Procedure for Pre-Primary Class) Amendment Order, 2017 vide Notification dated 07.01.2017 issued by the Government of NCT of Delhi, Directorate of Education.
2. Aggrieved by the same, the Government of NCT of Delhi filed the present appeal under Clause 10 of the Letters Patent.
3. W.P.(C) No.287/2017 was filed by "Forum for Promotion of Quality Education for All", a forum stated to be consisting of several private unaided recognised schools functioning in Delhi and other neighbouring States, seeking inter alia to quash the above said Notification dated 07.01.2017 (hereinafter referred to as the 'impugned Notification') by virtue of which it was made mandatory for the private unaided recognised schools of Delhi running on the land allotted by Delhi Development Authority (DDA) to admit the children in entry level classes on neighbourhood criteria in the manner specified therein.
4. The criteria for neighbourhood specified in the impugned Notification may be reproduced hereunder for ready reference:
 - "(a) Criteria for Neighbourhood
 - (i) Admission shall first be offered to students residing with 1 km of the school.

- (ii) In case the vacancy remains unfilled, students residing within 1 to 3 kms of the school shall be admitted.
- (iii) If there are still vacancies, then the admission shall be offered to other students residing within 3 to 6 kms of the school.
- (iv) Students residing beyond 6 kms shall be admitted only in case vacancies remain unfilled even after considering all the students within 6 kms area."

5. It may at the outset be mentioned that the above said requirement under the impugned Notification was restricted only to those schools running on the land allotted by DDA/other Government land owning agencies with the condition "shall not refuse admission to the residents of the locality" or "shall undertake to admit 75% of the students of the neighbourhood and from the locality in which the school is located" or any other similar condition for ensuring the admission in neighbourhood/locality.

6. It is not disputed before us that among the private unaided recognised schools of Delhi running on the land allotted by DDA/other Government land owning agencies, such condition of providing admissions to the residents of the locality or to the neighbourhood has been incorporated in the allotment letters issued to about 298 schools and thus the impugned Notification is applicable only to those 298 schools.

7. The impugned Notification was challenged in W.P.(C) No.287/2017 on various grounds including that the same is violative of Articles 14, 19(1)(g) and 21-A of the Constitution of India as well as Section 12(1)(c) of the Right to Education Act, 2009. The very same Notification has also been

challenged in three other writ petitions, namely, W.P.(C) Nos.272/2017, 275/2017 and 305/2017 filed by some other schools, parents and children. The Miscellaneous Applications filed in all the writ petitions for stay of the impugned Notification were heard and disposed of together by the learned Single Judge by order dated 14.02.2017. Though the Government of NCT of Delhi preferred only one appeal against the said order dated 14.02.2017 (against W.P.(C) No.287/2017), since the order under appeal is a common order in four writ petitions, we directed the appeal papers to be furnished to the counsels who appeared for the petitioners in the other writ petitions also and the counsels for all the parties were heard at length.

8. Shri Sanjay Jain, the learned ASG appearing for the appellants/Government of NCT of Delhi while drawing our attention to the specific conditions incorporated in the allotment letters by DDA that the schools would not refuse admission to children residing in the neighbourhood and that they would grant admission to the extent of 75% of seats to children residing in the neighbourhood, vehemently contented that having accepted the allotment subject to the said condition which was also incorporated in the lease deeds, the petitioner schools cannot now claim immunity from the obligation of providing admission on the basis of the neighbourhood criteria. Placing reliance upon *Modern School v. Union of India & Ors.*; (2004) 5 SCC 583 and *Action Committee Unaided Recognised Private Schools v. Directorate of Education, Delhi & Ors.*; (2009) 10 SCC 1, it is submitted by the learned ASG that the schools which are running on the land allotted by DDA are bound to comply with the terms of allotment.

9. To substantiate his contention that the impugned Notification which has been issued in the best interest of the children and to subserve the interests of the locality has legislative sanction, the learned ASG has drawn the attention of this Court to (i) Para 14 of the Recognised Schools (Admission Procedure for Pre-Primary Class) Order, 2007 which provides that the school shall develop and adopt criteria for admission which are in the best interest of children (ii) Section 3 of the Delhi School Education Act, 1973 (DSE Act) which empowers the Lt.Governor of National Capital Territory of Delhi to regulate education in all the schools in Delhi and (iii) Section 16(3) of DSE Act read with Rules 43, 44 and 50 of Delhi School Education Rules, 1973. It is also pointed out by the learned ASG that "education" which has been incorporated in List-III of Schedule-VII of the Constitution of India is the State subject and therefore, there cannot be any dispute about the power and authority of the appellant to issue the impugned Notification.

10. It is vehemently contended by the learned ASG that "neighbourhood criteria" in respect of admission procedure for pre-primary classes in the recognized schools in Delhi in fact is ingrained in the DSE Act, 1973 itself as well as the Orders and Rules made thereunder.

11. It is further submitted that the impugned Notification which has merely defined what is neighbourhood criteria cannot be held to be arbitrary or illegal since the criteria specified has been in terms of the directions issued by the Division Bench of this Court in W.P.(C) 636/2012 and batch dated 31.01.2012 titled ***Federation of Public Schools v. Government of***

NCTD. The directions that were issued in the said case for implementation of the neighbourhood criteria are as under:

"(i) Admission shall first be offered to eligible students belonging to EWS and disadvantaged group residing within 1 Km. of the specific schools;

(ii) In case the vacancies remain unfilled, students residing within 3 kms. of the schools shall be admitted;

(iii) If there are still vacancies, then the admission shall be offered to other students residing within 6 kms. of the institutions;

(iv) Students residing beyond 6 kms. shall be admitted only in case vacancies remain unfilled even after considering all the students within 6 kms. area."

12. Much reliance has also been placed upon the decision of this Court dated 19.01.2016 in W.P.(C) No.4109/2013 titled ***Justice for All vs. GNCTD and Ors.*** in which following the ***Modern School vs. Union of India (supra)***, the Directorate of Education (DoE) was directed to ensure the compliance of the term if any in the letter of allotment regarding the increase of the fees by all the recognized unaided schools which are allotted land by DDA, to substantiate the contention on behalf of the appellant that all the unaided schools which are functioning over the land allotted by DDA on concessional rates subject to certain conditions are bound to comply with the said conditions.

13. We have also heard Shri Sunil Gupta, Sh.Parag P.Tripathi and Shri Amit Sibal, the learned Senior Counsels who appeared for the respondents/writ petitioners.

14. It is not in dispute that even prior to the impugned Notification, the neighbourhood criteria was being taken care of by all the unaided recognized schools of Delhi by giving preference to children living in nearby areas in terms of Para14(i) of the Recognized Schools (Admission Procedure for Pre-Primary Class) Order, 2007 which reads as under:

"(i) Neighbourhood - It is in the interest of children that they are provided admission in a school nearest to their residence. The schools shall, therefore, give preference to children living in nearby areas. If the school is satisfied that a good and safe transport is available for a child, then, it may consider giving admission to such a child even if he/she lives at a place quite far off from the school. This is also important as distribution of schools is not uniform in the city."

15. We have also taken note of the fact that in the report of Ganguly Committee, a Committee of Experts constituted by this Court by order dated 04.09.2006 in LPA No.196/2004, it was opined that neighbourhood cannot be taken as the sole criterion for deciding the admission in view of the uneven distribution of schools in different localities of Delhi. It was observed that in the absence of a systematic school mapping in Delhi, it is not advisable to establish a very restrictive pattern in terms of distance. The relevant paragraph from the final report of the Ganguly Committee may be reproduced hereunder for ready reference:

"Final Report

3.7 Neighbourhood as the sole criterion for deciding the admission

.....The committee had stated in its earlier report that the neighbourhood criterion could be adopted as one of the criteria with some flexibility to provide for the uneven distribution of schools in different localities in Delhi. Further, in the absence of

a systematic school mapping in the capital, it is not advisable to establish a very rigid pattern in terms of distance. So the committee had stated that a beginning could be made in this regard and in due course of time a road map for the evolution of a common school system may be developed.

Therefore, in the present circumstances it would not be fair to have neighbourhood as the sole criterion to decide admission. The changing social pattern and increased mobility away from crowded areas to the suburbs on newly developing colonies must also be kept in view. Above all, if the admission process rests on only one criterion, in schools that receive a large number of applications, discriminating between registered children and making a selection would become difficult.

Moreover, in the absence of an effective discriminating yardstick, draw of lots would become necessary at the initial stage itself. The committee has already stated that it is not healthy to resort to lottery system involving a very large number of children. On account of the above reasons it is healthy to have an admission process that involves multiple criteria.

3.9 Neighbourhood

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Though the general context of the goals of education should suggest a movement towards the common school system, the committee feels that the weightage points for neighbourhood criterion can not be increased by a big margin. The reason is that Delhi, as a city, reflects the culture of homogeneous social groups and it is not healthy to give unduly high weightage for neighbourhood which might discourage intermingling of children from different social and economic backgrounds. It would go against the principle of diversity and heterogeneity. At the same time, taking into consideration the positive response to neighbourhood policy from majority of stakeholders, it would be appropriate to slightly increase the weightage to this criterion.

Another aspect that engaged the attention of the committee was the distance differentials under this parameter. There is a need to

increase the upper distance limit from 10 km to 15 km in order to provide for greater opportunities to children residing in underserved areas of Delhi. The decision to consider applications from 'non-Delhi areas' (Gurgaon, Faridabad, Ghaziabad etc.) for the purpose of admission may be left to the discretion of each school. Immediate neighbourhood would be defined as areas within 3 km radius, and children coming from these areas would get the maximum weightage point of 30.

It is also suggested that children coming from areas that are beyond 15 km may also be considered but no additional points are given. Thus the neighbourhood criterion would be fine tuned with some inbuilt flexibility and some scope for exercising discretion in the hands of the schools.”

16. It may also be added that by order dated 18.12.2013 issued by Lt.Governor of Delhi, the Recognized Schools (Admission Procedure for Pre-Primary Class) Order, 2007 was sought to be amended. The said amendment included fixation of parameters and points for admission to a class at entry level of the school in which 70 marks for neighbourhood were sought to be incorporated. The said amendment dated 18.12.2013, i.e., Recognized Schools (Admission Procedure for Pre-Primary Class) (Amendment) Order, 2013 was quashed by order dated 28.11.2014 in W.P.(C) No.202/2014 titled ***Forum for Promotion of Quality Education for All vs. Lt.Governor of Delhi and Ors.*** observing that the same is violative of the fundamental right of the school management to maximum autonomy in day-to-day administration including the right to admit students as well as the fundamental right of children through their parents to choose a school. With regard to neighbourhood criteria for which 70 marks were sought to be fixed under the Amendment Order, the learned Single Judge held:

"122. Consequently, in the opinion of this Court, children should have the option to go to a neighbourhood school, but their choice cannot be restricted to a school situated in their locality. This Court is unable to appreciate that a student's educational fate can be relegated to his position on a map.

123. This Court is of the view that the neighbourhood concept was better taken care of by private unaided schools, both in terms of the guidelines laid down in the Ganguly Committee Report as well as under the earlier Admissions Order, 2007 inasmuch as graded/slab system was followed in all schools wherein the person living closet to the school was given the maximum marks and yet the right of every child living anywhere in Delhi to seek admission in a reputed school was not foreclosed."

17. Though the appeal being LPA No.781/2014 preferred by DoE against the said order is pending, the Division Bench by order dated 10.12.2014 declined to grant the stay and dismissed CM No.20128/2014.

18. The learned ASG appearing for the appellant would submit that the impugned Notification in no way runs contrary to the above noted orders of this Court since the impugned Notification would be applicable only to the 298 schools which were allotted DDA land and whose allotment letters contained a specific clause as to admission of students of the same locality. It is also stated that in the light of the decision of the Supreme Court in ***Modern School vs. Union of India (supra)***, the DoE has to ensure compliance of the conditions in the allotment letters and therefore the said 298 schools functioning over the land allotted by DDA have been rightly directed to make admissions in terms of the neighbourhood criteria specified in the impugned Notification.

19. We are unable to agree with the submission of the learned ASG. As rightly observed by the learned Single Judge, there is stark difference between giving a preference on the ground of neighbourhood in terms of some extra points and in making rigid limits of neighbourhood as the sole criteria for admission.

20. It is no doubt true that the schools functioning over the land allotted by DDA are bound to comply with the terms and conditions stipulated in the allotment letter/lease deed including the condition "shall not refuse admissions to the residents of the locality" or "shall undertake to admit 75% of the students of the neighbourhood". However, the question as to whether the fixation of limits of neighbourhood under the impugned Notification would amount to making the neighbourhood concept as the sole criteria for admission which was already held to be bad by this Court in view of uneven distribution of schools in different localities of Delhi, needs deeper consideration after ascertaining the present situation of school mapping in Delhi. Therefore, we are of the view that the learned Single Judge has rightly stayed the impugned Notification till the disposal of the writ petitions.

21. Admittedly, the admission process has already commenced. Since the issue relates to admission of the children in entry level classes, if the impugned Notification is allowed to be acted upon, it would lead to irreversible situation and in case the impugned Notification is ultimately quashed, the consequences would be very complex and serious. Instead, we are of the view that the implementation of the impugned Notification which seeks to regulate the admissions in only 298 schools can await the final result

of the writ petitions.

22. Hence, we do not find any justifiable reason to interfere with the order under appeal.

23. Appeal is accordingly dismissed.

24. However, we request the learned Single Judge to dispose of the main writ petitions as expeditiously as possible. We also make it clear that the observations/findings in our order as well as the order under appeal being prima facie in nature shall not come in the way of deciding the main writ petitions.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

FEBRUARY 27, 2017

kks/pmc