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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 17.5.2018.

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W.P.(C) 5284/2015

BHARAT NATIONAL PUBLIC SCHOOL

..... Petitioner

Through: Mr. Amber Qamaruddin, Adv.

versus

**ASSISTANT DIRECTOR
OF EDUCATION (ACT.)**

.... Respondent

Through: Mr. Anuj Aggarwal, ASC, GNCTD
with Mr. Kanishk Rana, Adv. for R-1
Dr. Surya Kant Prasad, DEO Zone –
01, Directorate of Education,
GNCTD.
Mr. Vikram Jetly, CGSC for R-
2/UOI.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SHAKDHER

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RAJIV SHAKDHER, J. (ORAL)

1. This is a writ petition, which is directed against the orders dated 22.8.2013 and 21.8.2014 passed by the National Commission for Minority Educational Institutions (in short '*Commission*').

1.2 The first order was passed in case No.1660/2012, while the second order was passed in F. No.861/2014.

2. Broadly, the issue at hand, is that, the petitioner seeks issuance of a certificate with regard to its minority status. An application, for this purpose

was filed on 3.8.2012.

2.1 This application, on behalf of the petitioner school, was signed by, one, Mr. S.S. Khungar.

2.2 To be noted, this application is not available on record.

2.3 Mr. Jetly, who appears for the respondents, has placed a copy of the said application on record. Mr. Jetly says that he had requisitioned the record and, thus, obtained a photocopy of the same.

3. As is indicated above, the said application was dismissed by the Commission vide order dated 22.8.2013. The reasons given by the Commission for dismissal of the first application were, briefly, as follows:

(i) That the list of founding members, which was placed before the Commission, indicated that out of the 7 members, only 2 members belonged to the Sikh community. In other words, the majority of the members were not from the Sikh Community.

(ii) There was nothing on record to show or suggest that Mr. M.L. Gulati, Mr. K.L. Vig, Mr. Raj Pal, Mr. Surinder Arora and Mr. R.K. Batra who were the founding members of the petitioner school, had either resigned or had their membership terminated in accordance with the provisions of the Registration of the Societies Act, 1860.

(iii) The Commission goes on to say that in absence of any evidence, the members of the Managing Committee of the petitioner school could not have replaced the founding members of the society.

4. It is for these reasons, as elucidated above, the first application filed by the petitioner school in 2012 was rejected.

5. The record shows that the petitioner school took a second shot for grant of minority status and accordingly via the petitioner filed an

application on 4.2.2014. This application was also instituted under the signatures of Mr. S.S. Khungar. This application, however, was dismissed as withdrawn with liberty to pursue an alternative remedy before an appropriate forum, *albeit*, in accordance with law.

6. Being aggrieved by the decisions rendered by the Commission, the petitioner has preferred the instant writ petition under Article 226 of the Constitution.

7. Arguments on behalf of the petitioner have been advanced by Mr. Amber Qamaruddin, while on behalf of the respondent, submissions have been made by Mr. Vikram Jetly.

8. It is the contention of learned counsel for the petitioner school that the Commission went wrong in passing the impugned orders for the reason that the petitioner school, in fact, is controlled and managed by persons belonging to the Sikh Community. In this behalf, learned counsel for the petitioner has sought to demonstrate that out of the 7 original founding members, 4 had already died while one had resigned, when the first application was taken up for disposal by the Commission.

8.1 As to the members, who had passed away, learned counsel for the petitioner adverted to the death certificates appended to the writ petition. The record shows that the death certificates pertaining to Sh. Baldev Raj, Sh. P.C. Khungar, Smt. Sudesh Rani and Sh. Rajpal, have been filed.

8.2 Insofar as Mr. Ramji Das is concerned, counsel for the petitioner submits that he resigned on 2.11.1988.

8.3 The death certificates are appended as annexure P-4 to P-7 to the instant writ petition, while the resignation letter is appended as annexure P-3.

8.4 The argument, therefore, was that the only surviving persons out of

the founding members, that is, Smt. Harcharan Kaur and Sh. Swaranjeet Singh, belonged to the Sikh Community. Therefore, learned counsel said that on the given date, when the first order i.e., order dated 22.8.2013 was passed, only members who belonged to the Sikh Community controlled and managed the petitioner school.

9. Insofar as the second application is concerned, counsel for the petitioner says that even though the said application was filed and, thereafter, withdrawn, this step was taken as the petitioner school realised that in view of the fact that the first application had been rejected, the second application was, perhaps, not maintainable before the Commission, in view of the fact that under the National Commission for Minority Educational Institutions Act, 2004 (in short 'Act'), there was no power conferred on the Commission to review its earlier decision.

9.1 Learned counsel, thus, submits that the matter needs re-examination by the Commission in the light of what has been placed before this court by way of death certificates and resignation letter to which I have made reference hereinabove.

10. Mr. Jetly, on the other hand, resisted the writ petition, broadly, on the following grounds:

(i) There has been delay and laches in moving the court. According to Mr. Jetly, since the first application was dismissed as far back as on 22.8.2013, the petitioner ought to have moved the court immediately thereafter, especially, given the fact that it was aware that the Commission was not vested with power under the Act to review its earlier decision. The petitioner, in order to get over the period of delay, had filed the second application and having withdrawn the same, moved the instant writ petition.

This approach of the petitioner ought not to be countenanced.

(ii) There had been concealment of material facts by the petitioner, inasmuch as, while filing the second application, an impression was given that the petitioner had not approached the Commission on an earlier occasion. For this purpose, Mr. Jetly drew my attention to paragraph 5 of the second application.

(iii) Though the Commission was a necessary party, it had not been impleaded as a party to the present writ petition and therefore the action should fail.

11. I have heard learned counsels for the parties and perused the record. According to me, the first impugned order, i.e., the order dated 22.8.2013, proceeds on the basis that the majority of the founding members did not belong to the Sikh Community.

11.1 The facts, as detailed out above, would show that this finding may not be correct in view of the material which has been placed before the court. As per findings recorded in the order dated 22.8.2013, the founding members comprised of 7 members. These being Mr. Ramji Das, Mr. Baldev Raj, Mr. P.C. Khungar, Smt. Harcharan Kaur, Smt. Sudesh Rani, Mr. Swaranjit Singh and Mr. Rajpal. Out of these 7 members, Mr. Baldev Raj, died on 4.12.2007; Mr. P.C. Khungar said to have died on 24.4.1977; Smt. Sudesh Rani died on 30.4.1987; and Mr. Rajpal died on 6.11.2010. Apart from these four members, Sh. Ramji Das, according to the petitioner school, had resigned on 2.11.1988.

11.2 If these facts are correct and, for the moment, I have no reason to doubt the veracity of these assertions as they are backed by an affidavit filed on behalf of the petitioner school, then, clearly, since out of 7 founding

members, 4 had died and 1 member had resigned, the petitioner school was clearly controlled and managed at the relevant point in time by members of the Sikh Community.

11.3 As noticed above, the remaining 2 members, even according to the Commission belonged to the Sikh Community, these being: Smt. Harcharan Kaur and Sh. Swaranjeet Singh. Therefore, if this aspect is correct, then the Commission's order needs to be reversed.

11.4 Furthermore, as noted hereinabove, the Commission has observed that Mr. M.L. Gulati, Mr. K.L Vig, Mr. Surinder Arora and Mr. R.K. Batra were founding members; a finding which is, apparently, erroneous. According to the petitioner school, these persons were inducted as part of the management only in 1975. For this purpose, the petitioner school seeks to rely upon annexure P-2; which is, the amended Memorandum of Association and is dated 13.8.1975. Therefore, the record shows that the Commission appears to have committed an error in recording that the aforementioned persons were founding members.

11.5 Furthermore, the document appended as annexure P-10 shows that w.e.f. 2012, the entire body of the society apparently belongs Sikh Community.

12. Insofar as Mr. Jetly's submission that the petition should be dismissed on account of delay and laches is concerned, in my view, that by itself cannot lead to a situation where if the petitioner school is otherwise entitled to grant of minority status, the same could be denied to it, especially, keeping in mind the fact that a second attempt had been made to retrieve the situation, though, not in a manner which could lead to an efficacious result. The petitioner was, perhaps, wrongly advised to file a fresh application in

the teeth of the fact that the earlier application had already been dismissed by the Commission. The Commission, even according to Mr. Jetly, had no power of review vested in it and therefore, on the face of it, the second application was not maintainable. The fact that the second application was not maintainable does not take away from the petitioner school the effort that it made to retrieve the situation by filing a second application on 4.2.2014. This step was taken nearly 6 months after the rejection of the first application. The delay, in my view, is not substantial as was sought to be contended by Mr. Jetly. When aspects of delay and laches are examined, what needs to be seen amongst other things is whether the party concerned was indolent and would the condonation of delay prejudice the opposite party. In my opinion, on both counts, the petitioner would come through.

13. The other argument of Mr. Jetly is that there has been concealment of material facts by the petitioner, which is, that there was no disclosure of the fact that an earlier application had been filed with the Commission. This objection, to my mind, is untenable for the reason that a bare perusal of paragraph 2 of the second application would show that a response was sought as to whether or not the petitioner school had approached the competent authority. Under the Scheme of the Act, the petitioner school has the option to either approach the competent authority for establishing a Minority Educational Institution or can approach the Commission which has concurrent power under Section 11 (f) of the Act for grant of Minority Status. Therefore, all that the petitioner had indicated in paragraph 5 and the preceding paragraph was that no application had been filed with the authority i.e., the competent authority and therefore, none was pending.

13.1 To my mind, there was no concealment by the petitioner school as

was sought to be portrayed by Mr. Jetly.

14. The last submission of Mr. Jetly is that, the Commission ought to have been arrayed as party to the present case being a necessary party. In my opinion, this objection is also untenable for the reason that it is the Commission which has passed the impugned order and, therefore, the Commission could not have been called upon to defend its own order. There was, in my view, no need to array the Commission as a party to the present proceedings.

15. Thus having regard to the aforesaid discussion, I am inclined to set aside the orders dated 22.8.2013 and 21.8.2014. It is ordered accordingly.

16. The matter is remanded to the Commission for a fresh examination. The Commission will re-hear the petitioner school's authorised representative and examine the material which has been placed on record before this court. The Commission will grant a personal hearing to the petitioner school and/or its authorised representative. The Commission will also permit the petitioner school to place on record additional documents to establish its minority status. After hearing the concerned parties, the Commission will pass a speaking order; a copy of which would be furnished to the petitioner school. In case the petitioner school is aggrieved by the final determination made by the Commission, it will be at liberty to assail the same in the manner known to law.

17. The petition is, accordingly, disposed of in the aforementioned terms.

18. There shall be however, no orders as to costs.

19. Liberty is given to the petitioner school to file a copy of the writ petition along with annexures with the Commission. Since, this matter has been pending for some time, the Commission is requested to take up the

matter and dispose of the same as expeditiously as possible.

RAJIV SHAKDHER, J

MAY 17, 2018

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