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

Date of decision: 16th January, 2019

+ W.P.(C) 12133/2016

AKHIL DELHI PRATHMIK SHIKSHAK
SANGH

..... Petitioner

Through: Mr. P.S. Sridhar Raj, Adv.

versus

GOVT OF NCT OF DELHI AND ORS Respondents

Through: Ms. Mini Pushkarna, SC-North
DMC/R-1 with Ms. Swagata
Bhuyan and Ms. Shiva Pandey,
Advs.

Mr. Rakesh Mittal, SC-SDMC
with Ms. Yamini Mittal, Adv.
for R-2/SDMC

Mr. G.D. Mishra, SC-
EDMC/R-5

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T (O R A L)

1. This writ petition has been filed by an organisation going by the moniker “Akhil Delhi Prathmik Shikshak Sangh”, which purports to be a society, registered under the Societies Registration Act, comprising, *inter alia*, various teachers of schools run by the Municipal Corporation of Delhi and espousing their cause.

2. The writ petition ventilates a grievance against devolution, on teachers in government schools, of duties which are not linked to education, specifically opening of bank accounts of the children

studying in the school, linking of all such bank accounts with Aadhaar Cards and conducting house to house survey in order that the Ward Education Register required to be maintained by the “local authorities” under the Right of Children to Free Compulsory Education Act, 2009 (hereinafter referred to as the “RTE Act”), can be so maintained.

3. Apropos the first plank of the challenge, Mr. Sridhar Raj, learned counsel appearing for the petitioner, draws my attention to various circulars and instructions, issued by the Municipal Corporations, which require participation of the principals and teachers of the school in opening of bank accounts of the children studying therein and linkage of such bank accounts with the children’s Aadhaar Cards.

4. The submission of learned counsel is that these activities constitute no part of the duties of the principal and teachers, and could not, therefore, be cast upon them.

5. Apropos the second plank of the challenge of the petitioner, the contention of Mr. Sridhar Raj is that, under the RTE Act, the job of maintaining the Ward Education Register, and conducting a house to house survey for the said purpose, has been assigned to the “local authority”. He has drawn my attention to circulars dated 5th July, 2016; 14th July, 2016; 15th July, 2016, issued by the South Delhi Municipal Corporation (SDMC) and office orders dated 26th August, 2016 and 8th September, 2016, issued by the North Delhi Municipal

Corporation (NDMC). These communications deserve, in view of the challenge in this writ petition, to be extracted, *in extenso*, thus:

Circular dated 5th July, 2016, issued by the SDMC

“South Delhi Municipal Corporation
Education Department
Najafgarh Zone

No. D/DDE/NGZ/2016/1178

Date:5-7-16

All the S.I's are directed to ensure that data pertaining to Ward Education Register has been uploaded by the Principal of school on the concerned website of Dte. of Education GNCTD by 15th July 2016.

In this context, all the S.I's are also directed to take up the matter with concerned Principals of schools under their charge.

All the S.I's are also informed that any delay in this matter will cause great inconvenience in compilation of work.

Sd/-
Dy./Asstt. Director of Education
Najafgarh Zone”

Circular dated 14th July, 2016, issued by the SDMC

“SOUTH DELHI MUNICIPAL CORPORATION
EDUCATION DEPARTMENT
NAJAFGARH ZONE

No: D/DDE/NGZ/2016/1292

Date:14-7-16

Sub: Regarding completion of work pertaining to household survey Ward Education Register.

Ref: Meeting to be held with Secretary (Education) GNCTD on 18.07.2016.

In reference to the above noted subject, all the principals are directed to complete the work pertaining to household survey and Ward Education register immediately.

In this connection, the undersigned has already directed to all Sts/Principals vide office order no. D/DDE/NGZ/2016/in8 dated 08-07.2016 for completion of this work till 15.07.2016.

This may be treated has most urgent and complete the work on top priority.

Sd/-
Dy./Asstt. Director Education
Najafgarh Zone

AH Principals/Incharges

Copy for necessary action:-

1. All SIs
2. Office copy”

Circular dated 15th July, 2016, issued by the SDMC

“SOUTH DELHI MUNICIPAL CORPORATION
EDUCATION DEPARTMENT
NAJAFGARH ZONE

No: D/DDE/NGZ/201G/1310

Date:15-7-16

Sub: Regarding completion of work pertaining to household survey and Ward Education Register.

In spite of repeated directions & also directions given vide letter no. D/DDE/NGZ/2016/1178 dated 05.07.2016 & letter no. D/DDE/NGZ/1292 dated

14.07.2016. This has come to notice that the work regarding completion of work pertaining to household survey and Ward Education Register has not been completed till date of the following schools:-

1. Hasanpur
2. Pandwala Kalan
3. Ghasipura-II
4. Khadkhadi Raund
5. Raj Nagar
6. Indra Park-II
7. Mahavir Encl.-I

It is reiterated that the SIs concerned of the above schools are directed to get it completed the work today positively. So that appropriate report can be prepared.

This may be treated on most urgent time bound.

Sd/-

Dy./Asstt. Director Education
Najafgarh Zone

All Principals/Incharges

Copy for necessary action:-

1. All SIs
2. Office Copy”

Office Order dated 26th August, 2016, issued by the NDMC

“No: D/1899/APE/Plan/HQ/2016 Date: 26-08-2016

OFFICE ORDER

All Zonal DDEs/ADEs/SIs/Principals/Teachers are hereby directed to complete House Hold Survey and uploading of forms on the prescribed site upto 29.08.2016

positively. As per the census 2011, total House Holds to be covered in North DMC are 12.33 Lac but as per the report received from the Zones only 5,84,489 House Holds have been covered. This gap must be covered by 10.09.2016 no negligence will be accepted, as entire matter is under the supervision of Juvenile Justice Committee.

This issues with the approval of the Competent Authority.

S/d
ADE (Plan)

All Zonal DDEs/ADEs/Sis/Principals/Teachers

Copv for information to:-

1. Addl. Commissioner (Edn.),
2. Director (Edn.)”

“North Delhi Municipal Corporation
Education Department Centre: HQ
Floor, Civic Centre, Minto road. New Delhi-02

Office Order dated 8th September, 2016, issued by the NDMC

REMINDER

No. D/1897/ADE/Plan/Edu/HQ/NDMC

OFFICE ORDER

Date: 08/09/2016

In continuation of earlier letter vide No. D/1889/ADE/Plan/HQ/2016 dated 26.08.2016, all Zonal DDEs/ADEs/SIs/Principals/Teachers were directed to complete Household Hold Survey and uploadation of forms on the prescribed site ("www.edudel.nic.in) upto

29.08.2016 positively. As per the census 2011 total Households to be recovered in North DMC are 12.33 Lacs. However, the report received from the Zones indicate that only 5,84,489 Households have been covered. This huge gap must be covered upto 10.09.2016. No negligence will be accepted as the entire matter is presently being supervised by the Juvenile Justice Committee.

Director (Education)

All Zonal DDEs/ADEs/SIs/Principals/Teachers

Copy for information to:

1. Addl. Commissioner (Edn.)”

6. The contention of Mr. Sridhar Raj is that the duties of teachers stand exhaustively delineated in Section 24 of the RTE Act and Rule 21 of the RTE Rules and that these provisions viewed in conjunction, do not permit allocation of any duties to teachers other than those specified therein. Accordingly, he submits, teachers and principals of schools could not be asked to conduct house to house surveys or provide any other assistance towards maintenance of the Ward Education Register, which under the said Act and Rules, is the responsibility of local authorities.

7. Ms. Mini Pushkarna, learned counsel appearing for Respondent No.1 contends, *per contra*, that the aforementioned duties are only incidental and ancillary to the duty of imparting education, which is the primary duty of the teachers and principals. She relies on Section 27 of the RTE Act, which prohibits deployment of teachers for non-

educational purposes. She submits that the duties, with which the petitioner is aggrieved, are inextricably intertwined with the duty of imparting education and that, therefore, requiring the principal and teachers to perform such duties would not, in any manner, infract either the RTE Act or the RTE Rules.

8. Mr. Rakesh Mittal, appearing for the SDMC, also seeks to oppose the claim of the petitioner and places reliance, in this context, on a communication, dated 28th January, 2008, issued by the Election Commission of India to all Chief Electoral Officers of States and Union Territories. Inasmuch as this communication would be dealt later in the course of this judgment, does not required to be reproduced *in extenso*.

9. I have heard learned counsel for the petitioner and the contesting respondents at length and considered the material on record.

10. It would be appropriate, first, to address the grievance of the petitioner, regarding the three communications, dated 5th July, 2016; 14th July, 2016, and 15th July, 2016, by the SDMC and the two Office Orders dated 26th August, 2016 and 8th September, 2016, issued by the North Delhi Municipal Corporation, which compel the teachers and the principals to conduct house to house surveys of the students, assist in the maintenance of the Ward Education Register prepared on the basis thereof and upload the details in that regard on the website of the Directorate of Education.

11. To my mind, this requirement is clearly in the teeth of the RTE Act and the RTE Rules.

12. Section 24 of the RTE Act reads thus :

“24. Duties of teachers and redressal of grievances-

(1) A teacher appointed under sub-section (1) of section 23 shall perform the following duties, namely:

(a) maintain regularity and punctuality in attending school;

(b) conduct and complete the curriculum in accordance with the provisions of sub-section (2) of section 29;

(c) complete entire curriculum within the specified time;

(d) assess the learning quality of each child and accordingly supplement additional instructions, if any, as required;

(e) hold regular meetings with parents and guardians and apprise them about the regularity in attendance, ability to learn, progress made in learning and any other relevant information about the child; and

(f) perform such other duties as may be prescribed.

(2) A teacher committing default in performance of duties specified in sub-section (1), shall be liable to disciplinary action under the service rules applicable to him or her:

PROVIDED that before taking such disciplinary action, reasonable opportunity of being heard shall be afforded to such teacher.

(3) The grievances, if any, of the teacher shall be redressed in such manner as may be prescribed.”

13. The word “prescribed” is defined, in clause “(1)” of Section 2 of the RTE Act, as meaning “prescribed by rules made under this Act”.

14. Rule 21 of the RTE Rules, which is titled “Duties performed by teachers” reads thus :

“21. Duties performed by teachers – –

(1) The teacher shall maintain a file containing the pupil cumulative record for every child shall be the basis for awarding the certificate for completion of elementary education.

(2) A teacher, in addition to the functions specified in clauses (a) to (e) of sub-section (1) of section 24, may perform the following duties :-

- (a) participation in training programmes;
- (b) participation in curriculum formulation, and development of syllabi, training modules and text book development.”

15. Inasmuch as Ms. Pushkarna has placed reliance on Section 27 of the RTE Act, the said provision may also be reproduced, as under :

“27. Prohibition of deployment of teachers for non-educational purposes –

No teacher shall be deployed for any non-educational purposes other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or State Legislatures or Parliaments, as the case may be.”

16. A conjoint reading of the above provisions leave no manner of doubt that the teachers and principals in schools, cannot be asked to perform duties which are outside the pale thereof. Section 24(1) delineates, the duties which are required to be performed by teachers.

17. It can hardly be argued that conducting house to house surveys and preparation of the Ward Education Register fall within clauses (a) to (e) of Section 24(1), as extracted hereinabove. Clause (f) of Section 24(1), which is in the nature of a residuary clause, requires teachers to “perform such other duties as may be prescribed”. As already noted hereinabove, the word “prescribed” takes one to the RTE Rules. The “prescription”, regarding duties to be performed by teachers, in that regard, to be found in Rule 21 (*supra*) of the said Rules, clearly contemplates teachers only maintaining files containing cumulative records of every child, participating in training programmes and participating in curriculum formulation, development of syllabi, training modules and text book developments.

18. Obviously, therefore, conducting house to house surveys or performing any other duties towards maintenance of the Ward Education Register fall outside the pale of Section 24 of the Act and Rule 21 of the Rules.

19. It is trite that, where the field is covered by parliamentary legislation, one cannot look outside such legislation in order to justify the act of the administrative authority concerned.

20. Ms. Pushkarna has sought to contend that the maintenance of the Ward Education Register and conducting of house to house survey in that regard is a statutory responsibility and that, therefore, the teachers could not be said to be aggrieved if they were asked to participate in the said exercise. This submission, in my view, misses the wood for the trees. In this regard, clauses (d) and (e) of Section 9 of the RTE Act, which deals with “Duties of local authority” may be reproduced thus :

“9. Duties of local authority-Every local authority shall—

(a) provide free and compulsory education to every child:

Provided that where a child is admitted by his or her parents or guardians, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school;

(b) ensure availability of a neighbourhood school as specified in section 6;

(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

(d) maintain records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed;

- (e) ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction;
- (f) provide infrastructure including school building, teaching staff and learning material;
- (g) provide special training facility specified in section 4;
- (h) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;
- (i) ensure timely prescribing of curriculum and courses of study for elementary education;
- (j) provide training facility for teachers;
- (k) ensure admission of children from migrant families;
- (l) monitor functioning of schools within its jurisdiction; and
- (m) decide the academic calendar.”

21. Rule 10 of the RTE Rules, which is also relevant in this regard, and which deals with conducting of household survey and maintenance of the Ward Education Register, reads thus:

“10. Maintenance of records of children by the local authority-

- (1) The local authority shall maintain a record of all children in its jurisdiction, through a household survey, from their birth till they attain the age of 14 years.
- (2) The record, referred to in sub-rule (1), shall be updated annually.

(3) The record, referred to in the said sub-rule, shall be maintained transparently, in the public domain, and used for the purposes of clause (e) of section 9.

(4) The record, referred to in the said sub-rule shall, in respect of every child, include –

- (a) name, sex, date of birth, place of birth;
- (b) name, address, occupation of parent or guardian;
- (c) pre-primary school/anganwadi centre that the child attends (upto age 6);
- (d) elementary school where the child is admitted;
- (e) present address of the child;
- (f) class in which the child is studying (for children between the age of 6 to 14), and if education is discontinued in the territorial jurisdiction of the local authority, the cause of such discontinuance;
- (g) whether the child belongs to the weaker section;
- (h) whether the child belongs to a disadvantaged group;
- (i) whether the child requires special facilities or residential facilities on account of (i) migration and sparse population; (ii) age appropriate admission; and (iii) disability.

(5) The local authority shall ensure that the names of children enrolled in the schools are publicly displayed in each school.”

22. “Local authority” is defined, in clause (h) of Section 2 of the RTE Act in the following terms:

“(h) "local authority" means a Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local authority in any city, town or village.”

23. In these circumstances, learned counsel for the petitioner is right in contending that the RTE Act and the RTE Rules specifically cast a duty, of maintenance of the Ward Education Register and conducting of household survey for the said purpose, on the local authority and, do not contemplate participation of the principal and the teachers of the schools in that exercise. No doubt, the local authority could justifiably request for assistance from the principal and the teachers of the schools, so that the carrying out of the said exercise is facilitated, and so that the purpose thereof is contained. That would not, however, justify issuance by any of the Municipal Corporations, of directives, to the teachers and the principals to mandatorily carry out the said exercise, or even to assist or participate therein, under pain of punitive consequences for default, in any manner, as the impugned circulars dated 5th July, 2016; 14th July, 2016; and 15th July, 2016, issued by the SDMC and Office Orders dated 26th August, 2016 and 8th September, 2016, issued by the NDMC, purport and seek to do.

24. For these reasons, the challenge of the petitioner, to the requirement, in the afore-extracted circulars and notifications, issued

by the Municipal Corporations, of the principals and teachers, to carry out household/house to house surveys and maintain the Ward Education Register, is well taken and has necessarily to succeed. It is not open to any authority to ask the principals or the teachers of the schools to perform any duty outside the pale of Section 24 of the RTE Act read with Rule 21 of the RTE Rules.

25. There is, however, one caveat to these stipulations, which is to be found in Section 27 of the RTE Act, on which Ms. Pushkarna places reliance. The said provision, which has also been extracted hereinabove *in extenso*, prohibits deployment of teachers for non-educational purposes other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament. Inasmuch as the said clause is a prohibitive clause, it cannot be treated as diluting the mandate of Section 24 of the Act in any manner. The said clause prohibits deployment of teachers for non-educational purposes other than those specifically contemplated therein, and cannot, therefore, be treated as an empowering provision, empowering the Municipal Corporations to direct principals and teachers to carry out duties outside Section 24 of the RTE Act.

26. Section 27 also answers the contention of Mr. Rakesh Mittal, appearing for the SDMC. The circular dated 28th January, 2008, on which Mr. Mittal places reliance, specifically contemplates involvement of teachers to duties relating to elections, which is

statutorily permitted by Section 27. As such, the said circular cannot come to the aid of the respondents in any manner.

27. Coming, now, to the challenge of the petitioner regarding the various instructions requiring principals and teachers to participate in the opening of bank accounts of children and linking of the said bank accounts to their Aadhaar cards, Ms. Pushkarna is undoubtedly justified in contending that the purpose of this exercise is salutary, and would aid in ensuring that the legitimate financial dues are not denied to the children. Though, *stricto sensu*, requiring teachers and principals to participate in this exercise would also probably, fall outside the pale of Section 24 of the RTE Act and Rule 21 of the RTE Rules, the exercise is such as would necessarily require the assistance of the teachers and principals in that regard. To the extent, therefore, the instructions require the principals and the teachers to assist in opening of bank accounts of the children and ensure that the bank accounts are linked to the Aadhar Cards, (though it may be a moot point as to whether the said requirement of linkage to the Aadhaar Card would survive after the judgment of the Supreme Court in *Justice K.S Puttaswamy v. Union of India, 2018 SCC OnLine SC 1642*) is concerned, there can be no objection requesting for the assistance from the teachers and the principals in that regard. It is clarified, however, that this requirement would not empower the authorities to take disciplinary measures against the principals or teachers for failure to comply with such requests.

28. Regarding the challenge of the petitioner relating to opening of bank accounts of the children and linkage of those bank accounts of the children to their Aadhaar Card, nothing more is required to be said.

29. This Court is constrained to take judicial notice of the fact that there is a prevalent practice, in recent times, of schools assigning, to teachers, duties and tasks not remotely connected to imparting of education. This, in the opinion of this Court, is impermissible and unconscionable in equal measure. Education is a serious affair, and teachers are justifiably regarded as discharging divine duties, nourishing and nurturing the minds of tomorrow. Single-minded devotion, and blind pursuit of excellence, must guide every educator. It is no less than an affront, therefore, to belabour teachers with tasks which deflect, detract and distract, from the noble task of imparting education.

30. This writ petition is, therefore allowed in the following terms:

- (i) Notification nos. D/DDE/NGZ/2016/1178 dated 5th July, 2016, D/DDE/NGZ/2016/1292 dated 14th July, 2016 and D/DDE/NGZ/2016/1310 dated 15th July, 2016 issued by the SDMC and Office Orders Nos. D/1899/APE/Plan/HQ/2016 dated 26th August, 2016 and D/1897/ADE/Plan/Edu/HQ/NDMC dated 8th September, 2016 issued by the North Delhi Municipal Corporation, insofar as they require the principals or the teachers to conduct household survey and participate in preparation of the Ward Education Register, are quashed and set aside.

(ii) Regarding the challenge to the stipulation, requiring the teachers to aid in opening of the bank accounts of the children is concerned, it is clarified that while the authorities would be justified in requiring assistance of the principals and teachers of the schools in this respect, the requirement shall not be treated as mandatory, or as the basis for proceeding against the principals and teachers for non-rendering adequate assistance in that regard.

31. There shall be no orders as to costs.

JANUARY 16, 2019
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C.HARI SHANKAR, J



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