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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision : 07.01.2020

+ W.P.(C) 13582/2019 & CM 54919/2019

SH. DEVESH GUPTA

..... Petitioner

Through: Mr.Rakesh Kumar Khanna, Sr.
Adv. with Mr.Arun Vohra, Mr.S.N.Pandey,
Ms.Vaishali Gupta, Advs.

versus

RAMJAS FOUNDATION AND ORS.

..... Respondents

Through: Mr.R.Y.Kalra, Adv. for R-1-2.
Ms.Hetu Arora, Sethi, Mr.Siddharth
Agarwal, Mr.Abhimanyu Verma, Advs. for
R-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner challenging the Minutes of Meeting dated 05.12.2019 of the respondent no.1-Ramjas Foundation replacing the petitioner as the Chairman of the respondent no.2, that is Ramjas School, Anand Parbat, New Delhi, with immediate effect.

2. The learned senior counsel for the petitioner has placed reliance on the Scheme of Management of the respondent no.2 school, which *inter alia* provides that the Managing Committee

of the School shall constitute of not more than 21 members, of which 13 members including the Chairman and the Honorary Secretary shall be nominated by the Ramjas Foundation. He further submits that though there is no provision for removal of the Chairman in the said Scheme of Management, Clause 6 of the Scheme provides that the Honorary Secretary can be removed by the Managing Committee only with the approval of the 75% majority of the total elected Members of the Managing Committee of the respondent no.1 Foundation. He submits that such Scheme of Management having been framed under Section 5 of the Delhi School Education Act, 1973 (hereinafter referred to as 'Act') read with Rule 59 of the Delhi School Education Rules, 1973 (hereinafter referred to as 'Rules'), the petitioner could not have been removed from his position as a Chairman of the respondent no.2 without following the due process of law. He submits that the removal of the petitioner was not preceded by any Show Cause Notice or enquiry. The same has been passed in the gross violation of Principles of Natural Justice.

3. On the question of maintainability of the present petition, he places reliance on the judgment of this Court in ***Master Vibhu Kapoor vs. Council of Indian School Certificate Examination & Anr.*** AIR 1985 Delhi 142 as also of the Supreme Court in ***Janet Jeyapaul vs. SRM University & Ors.*** (2015) 16 SCC 530, to contend that as the respondents are

performing public function of imparting education, a writ would be maintainable against the respondents for enforcement of the rights of the petitioner.

4. On the other hand, the learned counsel for the respondents, placing reliance on the judgment dated 07.01.2016 passed by this Court in WP(C) No.2756/2008 titled ***Pt. Shradha Ram Trust Committee & Ors. vs. Directorate of Education & Ors.***, submits that the remedy of the petitioner, if any, would be either in form of filing of an appeal under Clause 23 of the Constitution of the respondent no.1 or a Civil Suit. He submits that the Writ Petition would not be maintainable in the facts of the present case. He further submits that the respondents are not taking any aid from the Government and in any case, the petitioner being a nominated/elected Member of the respondent no.1 Foundation, could have been removed by the Foundation at any time.

5. I have considered the submissions made by the learned counsels for the parties.

6. In the present case, the petitioner is admittedly, an elected member of the respondent no.1 Foundation in the Managing Committee of the respondent no.2. It is not shown from any Rule or the Constitution of the respondent no.1 Foundation that there is any embargo on the removal of the nominated/elected members to the Managing Committee of the respondent no.2. These in any case, will be matters of private right of the

members of the Foundation, which in my opinion, cannot be agitated in form of a Writ Petition under Article 226 of the Constitution of India.

7. I may herein note that even Rule 59 (2) (d) of the Rules provide some kind of security of tenure only to the member of the Managing Committee who is a parent or teacher of the School and not to the persons who have been nominated/elected by the Society or the Trust by which the school is running. Rule 59(2)(q) of the Rules, in fact, provide that the Managing Committee shall be subject to the control and supervision of the Trust or the Society by which such school is run.

8. In ***Ramakrishna Mission & Ors. v. Kago Kunya & Ors.***, MANU/SC/0413/2019, the Supreme Court has reiterated that even if a body discharges a public function in a wider sense, there is no public law element involved in the enforcement of a private contract of service. The Supreme Court further held as under:

“33 Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in K K Saksena (supra) this Court held that when an employee is a workman governed by the Industrial Disputes Act, 1947, it constitutes an exception to the general principle that

a contract of personal service is not capable of being specifically enforced or performed.”

9. In ***Master Vibhu Kapoor (supra)***, the Court was considering a petition filed by a student of the school and found that the public nature and the function discharged by the first respondent therein was so impregnated with governmental character that the first respondent therein had to be regarded as an authority within the meaning of the term in Article 226 of the Constitution. The Writ Petition also sought enforcement of such public function.

10. In ***Janet Jeyapaul (supra)***, the Writ was filed by a Senior Lecturer against the respondent University. The Court in fact, distinguished cases where the Writ was filed for seeking *mandamus* of enforcement of positive obligation of a public nature as against enforcement of the private rights.

11. In the present case, in my opinion, as the right sought to be enforced by the petitioner would not be relatable to the public duty or discharge of any “public function” of respondent nos.1 and 2, the present petition would not be maintainable.

12. The present petition is therefore, dismissed leaving it open to the petitioner to agitate his rights in accordance with the law in form of an appropriate remedy.

13. Any observation made in the present order would not in any manner prejudice the rights of the petitioner in such proceedings.

NAVIN CHAWLA, J

JANUARY 07, 2020
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