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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 25th August, 2022

+ W.P.(C) 2042/2022 & CM APPLs. 5870/2022, 36860/2022

DR. HIMADRI DAS & ANR.

..... Petitioners

Through: Mr. Sanjay Ghose, Senior Advocate
with Ms. Shalini Sati Prasad, Ms.
Meher Tandon, Mr. Naman Jain, Ms.
Urvi Mohan and Mr. Rishabh Jaitly,
Advocates.

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY (NCT)
OF DELHI & ORS.

..... Respondents

Through: Mr. Gautam Narayan, ASC and Mr.
Rishikesh Kumar, ASC with Ms.
Sheenu Priya and Mr. Muhammad
Zaid, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The short question before the Court is whether a student who resides in Delhi but has completed his education from a school located in Gurugram, Haryana, can avail benefit of reservation available to 'Delhi students' for the purpose of college admissions.

2. Petitioner No. 1/ Dr. Himadri Das's son viz. Petitioner No. 2/ Sh. Hitesh T. Das, has completed his Class XII education from The Shri Ram



School, Gurugram [*hereinafter*, “**TSRS Gurugram**”]. He is stated to have studied in The Shri Ram School, Vasant Vihar, Delhi [*hereinafter*, “**TSRS Vasant Vihar**”] till Class V; however, from Class VI onwards, all students attended classes in another branch located in Gurugram, Haryana viz. TSRS Gurugram. Now, after completion of Class XII from such school, which is undoubtedly located outside the National Capital Territory of Delhi [“**NCT**”], Petitioner No. 2 is unable to avail benefit under the Delhi Diploma Level Technical Education Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitive Fee and Other Measures to Ensure Equity and Excellence) Act, 2007 [*hereinafter*, “**2007 Act**”], as a ‘Delhi student’, in terms of Section 3(g) read with Section 12(1)(b) of the Act.

3. Accordingly, Petitioners filed the instant petition seeking the following reliefs:

“(a) Issue a Writ in the nature of Mandamus and/or any other appropriate Writ/ Direction/ Order of like nature inter alia declaring Section 3(g) read with Section 12(1)(b) of The Delhi Diploma Level Technical Education Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-exploitative Fee and Other Measures to ensure equity and excellence) Act, 2007 as ultra vires the Constitution of India, to the extent it excludes students who are domiciled in Delhi but have completed/passed their Standard XII from the NCR region; and

(b) Issue a Writ of or in the nature of Mandamus, commanding the Respondents to give appropriate directions and issue guidelines/ clarification/ amendments and take such other action as may be deemed necessary for the purpose of the Representations submitted by the Petitioner No. 1; and/or

(c) Alternatively, issue a Writ of or in the nature of Mandamus, commanding the Respondents to give appropriate direction for amending the requirement under Section 12(1) (b) of the “Delhi Diploma Level Technical Education Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitive Fee and Other Measures to Ensure Equity and Excellence) Act, 2007”, to also include candidates that are residents of Delhi and have the requisite documents



mandated for obtaining a domicile certificate in Delhi to ensure uniformity, fairness, and equity and to attain the objective of the said 2007 Act; and/ or

(d) Pass an ad-interim, ex-parte directions and/or order/s in terms of the prayer above; (...)"

Prayer '(a)':

4. Since prayer '(a)' laid a challenge to the vires of Section 3(g) read with Section 12(1)(b) of the 2007 Act, the petition was originally listed before a Division Bench of this Court. However, on 13th July, 2022, Mr. Sanjoy Ghose, Senior Counsel for Petitioners, on instructions, withdrew such challenge, and thus the instant matter came to be placed before the undersigned.

5. As per Mr. Ghose's request, prayer '(a)' is treated as deleted. In fact, in the opinion of the Court, nothing really survives for consideration. However, Mr. Ghose argues otherwise and the Court has heard him at length on the other prayers, along with Mr. Gautam Narayan, Additional Standing Counsel for the Respondents.

Prayer '(b)':

6. With regard to prayer '(b)', it must be noted that *vide* order dated 28th July 2022, Petitioners, on request, were referred to Respondent No. 2 [Director, Directorate of Higher Education, GNCTD] for the possibility of an administrative resolution to their concerns. Petitioners filed a representation dated 01st August, 2022 – which was considered and declined by Respondent No. 2 *vide* minutes of meeting dated 04th August, 2022. It was, *inter alia*, held that the 2007 Act, (i) does not deal with 'domicile' or



‘residence’ of the student, but rather, the ‘physical location’ of the school, and, (ii) leaves no scope for discretion to be exercised by the concerned authorities. Accordingly, as of today, Petitioners’ prayer seeking issuance of a direction to Respondents to deal with their representations and issue guideline(s)/ clarification(s)/ amendment(s), already stands redressed.

Prayer ‘(c)’:

7. With regard to the alternate prayer ‘(c)’, Mr. Ghose argues that the 2007 Act ought not disqualify students who are residents of Delhi, who have passed the ‘qualifying examination’ [*i.e.*, Class XII examinations] from a school located outside of Delhi but within NCR, from availing the benefits [as elucidated under Section 12(1)(b)] available to a ‘Delhi candidate’ [as defined under Section 3(g)].

8. Before delving further into this issue, it would be apposite to extract Section 3(g) read with Section 12(1)(b) of 2007 Act, which are as follows:

Section 3(g):

““Delhi candidate” means a candidate who has appeared or passed the qualifying examination from a recognised school or institution situated in Delhi;”

Section 12(1)(b):

“Eighty five percent of the total seats, except the management seats, shall be allocated for Delhi students and the remaining fifteen percent seats for the outside Delhi students or such other allocation as the Government may by notification in the official Gazette, direct;”

9. Mr. Ghose makes the following submissions in furtherance of the afore-noted argument:



- 9.1. Petitioner No. 2 took admission in TSRS Vasant Vihar and attended the same till class VI, but was attending TSRS Gurugram after class VI only due to its policy. Section 3(g) of the 2007 Act ought to be interpreted in a manner which recognises that Petitioner No. 2 had taken admission in TSRS Vasant Vihar, since it would be covered under the said provision as a “*school or institution situated in Delhi*”, and thereby, Petitioner No. 2 would be eligible to seek benefit of reservation under the 2007 Act.
- 9.2. Section 12(1)(b) of the 2007 Act uses the term ‘Delhi students’ instead of ‘Delhi candidate’, and Petitioner No. 2 should be considered a ‘Delhi student’ given that: (i) he is a domicile of Delhi; (ii) he initially took admission in TSRS Vasant Vihar – which is located in Delhi; (iii) he gave his ‘qualifying examination’ from the Gurugram branch of a school that located in Delhi. Petitioner No. 2 has been deemed ineligible to avail the benefit of reservations in light of the lone fact that he completed his Class XII in TSRS Gurugram in NCR. This is contrary to the intent of the 2007 Act and the Court should read down the said provisions and extend benefit of reservation to all such students who were required to attend classes in a branch located outside Delhi, but within NCR. This would not only benefit Petitioner No. 2, but also a large number of students who face the same predicament and lose out on the benefits extended to a ‘Delhi candidate’. Mr. Ghose further submits that in order to prevent misuse, the Court may extend such benefit only to those students who were required to attend classes in schools which conduct senior classes from a location outside the territorial scope/ operation of the



2007 Act and limit its applicability to satellite towns adjoining the NCT of Delhi i.e., within NCR.

10. Mr. Narayan controverts the Petitioners' submissions contending that 'Delhi candidate' has been defined in clear and unambiguous terms under Section 3(g) of the 2007 Act and there is thus no scope for any other interpretation of 'Delhi students' under Section 12(1)(b) of the 2007 Act. He places reliance on the decision of the Supreme Court in *Anant Madaan v. State of Haryana and Ors.*,¹ wherein the reservation criteria requiring students to have studied in 'Classes 10, 10+1 and 10+2' in recognised institutions in Haryana, among others, was upheld since there was no total reservation on the basis of residential or institutional preference. Reliance is also placed upon a judgment of the Division Bench of this Court in *Vivekananda Institute of Professional Studies v. Govt. of NCT and Anr.*,² wherein it was held that courts exercising judicial review have limited power to acknowledge policy and its legislative implementation. The said judgment further cites a decision of Supreme Court,³ holding that: (i) States are entitled to make laws providing for reservations; (ii) the manner and discretion insofar as the decision is concerned vests with States and; (iii) the same would not be ordinarily open to challenge when it passes the test of reasonableness.

11 The Court has heard the submissions advanced by counsel for the parties. The language of Section 3(g) of the 2007 Act is clear and

¹ AIR 1995 SC 995.

² W.P.(C) 3420/2016 dated 29th October, 2018.



unambiguous. The term ‘Delhi candidate’ means a candidate who has appeared for or passed the qualifying examination from a recognised school or institution which is situated in Delhi. In the present case, Petitioner No. 2 has cleared his qualifying examination (*i.e.*, Class XII examinations) at TSRS Gurugram and would not be eligible as a ‘Delhi candidate’, and thus, cannot avail the benefit under Section 12(1)(b) of the 2007 Act. TSRS Gurugram is not just a branch located outside the NCT of Delhi, as put forth by Mr. Ghose, but rather, a separate school recognised by the State Government of Haryana which falls under the ambit of the Education Department, Government of Haryana. The determining factor to avail the benefit is the geographic location of the school providing the pass certificate of the qualifying examination, as opposed to the domicile of the student. Although the term ‘Delhi student’ which appears in Section 12(1)(b) of 2007 Act is not specifically defined or equated to the term ‘Delhi candidate’; however, the reference to ‘Delhi student’, in the said provision, in the context of the instant statute, can have only one meaning *i.e.*, ‘Delhi candidate’. If the legislature had intended any other meaning, the same would have been defined therein. This court cannot give a meaning to the said term which is not specified in the said statute.

12. There is merit in the contention of the counsel for Respondents *qua* the limited scope of judicial review in matters of policy and legislation, and implementing the same with respect to reservation. It is well-settled in law that Courts, while exercising judicial review, cannot entrench into the area earmarked for legislative bodies. The Courts can declare and interpret law,

³ *NTR University of Health Sciences v. G. Babu Rajendra Prasad*, (2003) 5 SCC 350.



remove an apparent lacuna, or fill-in gaps, when there is ambiguity in the statute. However, such is not the case here. Significantly, this aspect also cannot be ventured into by this Court in light of withdrawal of the challenge *qua* constitutional validity of the said provisions of the 2007 Act. Once the challenge was given up, the validity has to be presumed, and there can then be no scope to read down the provision or restrict its applicability in order to extend benefit of reservations as a matter of interpretation of the statute. This power of interpretation, if it were to be exercised at all, could only have been done by the Division Bench while examining vires of the provisions. This Court cannot read down the said provision without first declaring it as *ultra vires*, which cannot be done at this stage. Considering the foregoing, the Court does not find merit in the argument raised by the counsel for Petitioner.

13. On the basis of the above-noted reasons, the Court is not inclined to exercise powers under Article 226 of the Constitution of India to grant the reliefs sought in the present petition.

14. Dismissed, along with pending application(s).

SANJEEV NARULA, J

AUGUST 25, 2022

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(Corrected and released on 31st August, 2022)