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

+ **W.P.(C) 4283/2024 and CM APPL. 17577/2024**

RAISINA BENGALI SCHOOL C R PARKPetitioner

Through: Mr. Anukul Raj, Ms. Nikita Raj, Mr.
Tushar Bhalla and Mr. Pratik Sharma,
Advs.

versus

**GOVT OF NATIONAL CAPITAL TERRITORY OF DELHI AND
ORS**Respondents

Through: Mr. Yeeshu Jain, ASC and Ms. Jyoti
Tyagi, Advs.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

12.11.2024

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1. The petitioner in the instant writ petition has sought for the quashment of the order dated 01.02.2024, whereby, the respondent-Government of National Capital Territory of Delhi had rejected the proposal of the petitioner-School seeking permission to fill up various vacant positions of teaching and non-teaching staff, as per the advertisement dated 09.01.2024.
2. The facts of the case would indicate that the petitioner is a linguistic minority-aided institution. The petitioner imparts education, particularly to the students of Bengali Community, upto Class XII. The petitioner-School is recognized by the Central Board of Secondary Education. Learned counsel appearing for the petitioner submits that despite various representations by the petitioner-School seeking approval to fill up the vacant positions, the respondent-Directorate did not take any positive steps and therefore, in order



to fill up as many as 38 vacancies of teaching and non-teaching posts, the petitioner-School issued advertisement dated 09.01.2024, whereby applications for the said vacant positions were called for through direct recruitment.

3. The aforesaid direct recruitment process of the petitioner-School came to be objected by the respondent-Directorate by way of the impugned communication dated 01.02.2024.

4. Learned counsel for petitioner submits that the respondent-Directorate does not have the requisite legal authority to interdict in the proposed appointments to be made by the petitioner-School. According to learned counsel, the controversy involved in the instant case stood settled by the decision of this Court passed in *Delhi Tamil Education Assn. v. Director of Education*¹. Learned counsel for the petitioner further contends that the decision passed in *Delhi Tamil Education Assn* had been affirmed by a Division Bench of this Court in the case of *Lt. Governor of Delhi v. Delhi Tamil Education Assn*². He submits that the impugned decision dated 01.02.2024, passed by the respondent- Directorate, if examined on the anvil of the aforesaid decisions, the same is clearly unsustainable.

5. Vehemently rejecting the submissions advanced on behalf of the petitioner-School, learned counsel appearing on behalf of the respondent-Directorate submits that the written submissions would clearly indicate that the petitioner-School has undertaken a large number of illegal financial transactions and there are multiple irregularities attributable to the Trust operating the petitioner-School. Learned counsel further draws the attention

¹ 2024 SCC OnLine Del 4158.

² 2024 SCC OnLine Del 5076.



of the Court to the order dated 08.03.2024, passed by a Division Bench in W.P.(C) 2862 of 2020, wherein certain financial mismanagements have been noted. Learned counsel further submits that if the manner in which the petitioner-School is operated is examined in right perspective, the same would indicate that the petitioner is engaged in mismanaging the Government fund. She indicates that since the petitioner-School is an aided school and receives funds from the Government, the petitioner-School and the society that operates the school stands answerable to the Government.

6. She further submits that the case of *Lt. Governor of Delhi v. Delhi Tamil Education Assn*, has been assailed by the respondent-Government before the Supreme Court. However, she submits that SLP has not been listed and therefore, as of now, the same stands registered as diary no.50120/2024. She therefore submits that awaiting the decision of the Supreme Court, at this stage, no interference is called for in the impugned order dated 01.02.2024.

7. I have considered the submissions made by the parties and perused the record.

8. The Court takes note of the decision passed by this Court in *Delhi Tamil Education Assn*. If the controversy involved in the said decision is considered, it would indicate that the petitioner, therein, was a linguistic minority institution. The institution therein challenged the authority of the Government in interdicting the direct recruitment sought to be made by the petitioner therein. Paragraphs 1 and 2 of the decision, which captures the controversy involved therein, reads as under:-

“1. The petitioner Delhi Tamil Education Association (DTEA) came into existence in 1923 as a vehicle to promote and propagate the Tamil language and the culture and ethos of the Tamils. The



DTEA runs seven schools with 6879 students. All the schools are admittedly aided linguistic minority schools.

2. 4 posts of Principal and 108 posts of teacher, out of 374 sanctioned posts in the petitioner's schools, are presently vacant. The petitioner has addressed numerous representations to the respondent Directorate of Education (DoE) for grant of clearance to fill in the said posts. Various clarifications were sought by the DoE from the petitioner which, too the petitioner provided. On finding that the DoE was still not granting clearance to fill in the vacant posts in the petitioner's schools, the petitioner has instituted the present writ petition. The petitioner seeks issuance of an appropriate writ, either declaring that the petitioner does not require clearance of the DoE to fill up the vacant posts of Principal and teacher or, in the alternative, directing the DoE to provide the necessary clearance post haste."

9. The Court, in paragraph 41, has framed the question with respect to the aspect as to whether the clearance of the DoE is at all required to fill up the vacancies of the teachers and Principals or whether the School can proceed to fill vacancies without clearance from the DoE. In paragraph 50 of the said decision, the same stood in following terms:-

"50. It is accordingly held that the petitioner is entitled to make appointments against the vacant posts of Principals and teachers in the schools run by it without prior approval of the DoE. The Selection Committee would, however, be constituted in accordance with the Rule 96(3)(a) of the DSE Rules in the case of Principals and 96(3)(b) in the case of teachers, subject to the role of the nominees of the DoE being restricted in terms of Rule 96(3-A)."

10. It is, thus, seen that the Co-ordinate Bench of this Court unequivocally made it clear that the petitioner, therein, was entitled to make appointments against the vacant posts of principal and teachers without prior approval of the DoE. However, in the said decision, the Court directed a Selection Committee to be constituted in accordance with Rule 93(3)(a) of the DSE Rules in the case of principals and 96(3)(b) in the case of teachers, subject to the role of the nominees of the DoE being restricted in terms of Rule 96(3-A).



11. Having considered the aforesaid enunciation of law, this Court is of the considered opinion that the same legal position is applicable to the controversy involved in the instant writ petition and accordingly, it is directed that the respondent-Directorate has no authority to interdict the process of appointment through direct recruitment subject to compliance of the DSE Rules.

12. However, at this stage, the Court also takes note of the enunciation of the law laid down in *Queen Mary's School v. U.O.I*³, where the Court was called upon to consider the applicability of various rules of Delhi School Education Rules, more specifically Rule 96 and 98 in the context of aided minority educational institutions.

13. In paragraph No.21, the Court has held that even minority-aided schools are not bound to adopt the composition of the recruitment committees indicated in Rule 96. The schools were directed to adhere to the Rules 127-128, which are applicable to unaided minority schools. The said paragraph reads as under:-

“21. The state's argument that the rule mandating the inclusion of nominees whose participation is minimal, and whose views are not binding, is a harmless rule, seems attractive. Yet, this court cannot lose sight of the fact that the basic right to recruit personnel of its choice, is that of the minority aided school management. If, as in the case of Rule 47 and Rule 64(1)(a) and (e), the management cannot be dictated upon about the actual candidate, to be recruited by it, there is no rationale why it should be made to suffer the participation of an outsider, whose presence is not wanted, in the first place, no matter whether that individual's views are not binding. This view is fortified by Rule 98, (which deals with approval of appointment); it does not apply to aided schools, as is evident from Rule 98(2) proviso (2). Therefore, this Court sees no logic in the minority aided school being compelled to allow participation of nominee members in the selection committee, even if their views or votes are not binding. For these reasons, it is held

³ 2011 SCC OnLine Del 4884



that minority aided schools are not bound to adopt the composition of the recruitment committees indicated in Rule 96; they are to adhere to the rules applicable to unaided minority schools, i.e., Rules 127-128.”

14. Let the aforesaid legal position be also strictly adhered to by the petitioner in the instant case.

15. With respect to the submission made by learned counsel for the respondent regarding various financial irregularities attributable to the petitioner-School is concerned. Needless to state that the same does not relate to the controversy in the present *lis*. Moreover, the impugned order also does not speak about the said aspect.

16. It is further observed that the respondent-Directorate cannot venture into the alleged financial irregularities of the petitioner-School in the instant writ petition. The Court can, at best, observe that the respondent-Directorate and the respondent-Government are at liberty to take appropriate recourse against the petitioner-School with respect to any of the alleged irregularities, in accordance with law.

17. With the aforesaid directions, the present petition stands disposed of.

18. All pending applications are also disposed of.

PURUSHAINDR KUMAR KAURAV, J

NOVEMBER 12, 2024/DPA