



2024:DHC:5540-DB



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

+ **LPA 642/2024 & C.M. APPL. 40071-72/2024, C.M. 40784/2024**

THE LT GOVERNOR OF DELHI & ORS.Appellants

Through: Ms. Avnish Ahlawat, Standing
Counsel for GNCTD (Services)
along with Mr. Nitesh Kumar
Singh, Ms. Laavanya Kaushik,
Ms. Aliza Alam and Mr.
Mohnish Sehrawat, Advocates.

versus

**DELHI TAMIL EDUCATION ASSOCIATION (RETD)
THROUGH ITS SECRETARYRespondent**

Through: Mr. Romy Chacko with Mr.
Mayank Bhargava, Mr.
Kartikeye Dang, Mr. Varun
Mugdal and Mr. Adityaa Raju,
Advocates.

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Date of Decision: 22nd July, 2024.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been preferred under Clause X of the Letters Patent Act, 1866, assailing the judgment dated 28th May, 2024, passed by the learned Single Judge of this Court allowing the W.P.(C) 15276/2023 titled "*Delhi Tamil Education Association vs. Director of Education & Ors.*" filed by the respondent/Society holding that the respondent/Society is entitled to make appointments against the vacant

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posts of Principals and teachers in the schools run by it without prior approval of the DoE.

2. Ms. Avnish Ahlawat, learned standing counsel (GNCTD-Services) appears for the appellants. She submits that the learned Single Judge has completely overlooked the ratio laid down by the Supreme Court in ***SK. Mohd. Rafique Vs. Managing Committee, Conti Rahamania High Madrasah & Ors., 2020 SCC OnLine SC 4*** whereby after a detailed consideration of the judgments of the Supreme Court in the matters of minority aided institution including ***In Re. Kerala Education Bill, 1957, AIR 1958 SC 956; Rev. Sidhrajibhai Sabhai vs. State of Bombay, 1963 (3) SCR 837*** and constitutional judgment in the case of ***T.M.A. Pai Foundation vs. State of Karnataka, (2002) 8 SCC 481*** held that the rights of the minority institution under Article 30 (1) of the Constitution of India, are not unfettered. She submits that the right of minority institutions in selecting teachers is not absolute and cannot be above the law. She further submits that the State is enjoined to formulate regulations to regulate the procedure of selection of teachers. According to her, the learned Single Judge erred in not considering the judgment in ***Rafique*** (supra).

3. On facts, Ms. Ahlawat submits that as per their Circular dated 24th November, 2004, the Manager of the Management Committee of a school is to be a graduate. She submits that *vide* letters dated 12th September, 2000 and 19th October, 2000, the appellants had directed the seven schools of the respondent/Society to submit their individual Schemes of Management. According to her, despite such communication, the respondent/Society till date has not submitted its individual Schemes of Management. She submits that contrary to the



rules, the respondent/Society has appointed its Secretary as a Manager of all its seven schools. She submits that this is in violation of Rule 59(2)(r) of the Delhi Schools Education Rules, 1973 (hereinafter referred to as “DSE Rules, 1973”). She invites attention of this Court to the Memorandum of Association and Rules of the respondent/Society, particularly to Rule 14. As per the learned counsel, Rule 14 of the said Rules stipulates the constitution of a Management Committee of each school run by the respondent/Society. She submits that the said constitution is in alignment with the Scheme of Management as per Rule 59 of the DSE Rules, 1973. She submits that once the respondent/Society is aware of the Scheme of Management according to Rule 59 of DSE Rules, 1973 as also its own Rule 14, there is no reason why the Scheme of Management was not submitted by the individual schools. According to her, without the mandatory constitution of the Management Committee of each school, the request to proceed with filling up of vacancies to the post of Principal, Teachers and other staff cannot be acceded to by the appellants. This, according to Ms. Ahlawat, was fundamentally overlooked by the learned Single Judge while passing the impugned judgement.

4. Ms. Ahlawat also contends that the letter of request for filling up of the vacant posts was received from the respondent/Society through the Honorary Secretary conferring upon himself the post of Manager of the Schools which is also contrary to Rule 59(2)(r) of DSE Rules, 1973. She submits that Rule 59(2)(r) of DSE Rules, 1973, categorically prohibits the Manager of one school to also be designated as Manager of another school. She submits that the request letter dated 10th March, 2023, has been received from one Mr. Raju who claims to be the Manager of all the schools of the respondent/Society. This, according to



her, admittedly is a violation of the Rules resulting in the appellants rejecting the request of the respondent/Society *vide* its letter/communication dated 1st December, 2023.

5. She next refers to the letter dated 12th September, 2023, issued by the appellants citing anomaly in the functioning of one of the schools of the respondent/Society at Laxmi Bai Nagar, Delhi. She submits that in the said communication, it was categorically mentioned that no Scheme of Management in respect of the said school was made available. Simultaneously, attention of the said school was also invited to Rule 14 of the Rules of the association which required a Management Committee to run the school. It was also pointed out that Mr. Raju could not be the Manager of all the schools at the same time. She submits that though the said school was granted sufficient time to remove the anomalies pointed out, yet the said school failed in taking appropriate steps. She submits that it was this failure on the part of all the schools of the respondent/Society that culminated into the letter/communication dated 1st December, 2023.

6. *Per contra*, Mr. Romy Chacko, learned counsel appearing for the respondent/Society on advance notice straightaway invites our attention to the rejoinder filed by the association before the learned Single Judge. In particular, he draws attention to pages 969-976 of the present paper book, to demonstrate that contrary to the submissions made on behalf of the appellants, the constitution of the Management Committee by way of a resolution was clearly delineated from the year 2021 through till the year 2024. He submits that when the said document was already placed on record, such submissions would be irrelevant and of no consequence. That apart, he invites our attention to various paragraphs



of the impugned judgment to substantiate the contention that all the relevant documents proving existence of Managing Committee of the schools run by the respondent/Society were actually taken note of by the learned Single Judge before rendering his opinion in favour of the respondent/Society.

7. Learned counsel for the respondent/Society submits that the schools run by the respondent/Society are under stipulation not to make selections except in accordance with the Rule 96 (3) of the DSE Rules, 1973.

8. We have heard the learned counsel for the parties, perused the impugned order and records available.

9. Though Ms. Ahlawat, learned standing counsel for the appellants has argued on various aspects of the matter including questioning the judgment of the learned Single Judge on the anvil of purported violation of ratio laid down by the Supreme Court in *Rafique (supra)*, we note that the actual controversy lies in a narrow compass. In that, the only issue which needs consideration is the letter/communication dated 1st December, 2023. In order to appreciate the controversy before us, it would be apposite to extract the letter/communication dated 1st December, 2023, hereunder:-

**“GOVT. OF NCT OF DELHI
DIRECTORATE OF EDUCATION
OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION
DISTRICT-SOUTH WEST-A, C-4, VASANT VIHAR,
NEW DELHI**

FNo.DE/DDE/SW-A/Z-19/2023/1018-1019 Dated: 01.12.2023

Sub: Regarding recruitment of Principal/teaching staff/other staff in DTEA schools regarding.



2024:DHC:5540-DB



*It is to inform you that proposal for filling up of 52 vacant posts through direct recruitment in DTEA schools has been rejected by the Director of Education **as there is no managing committee in the schools of DTEA.***

Sd/-
(Dr. Sanjay Chaturvedi)
DDE (SW-A)

To
The Secretary
Delhi Tamil Education Association (Regd.)
Lodhi Estate, New Delhi-110003

FNo. DE/DDE/SW-A/Z-19/2023

Dated:

Copy to:

1. DDE (ASB), Directorate of Education, Old Sectt.
Delhi – 110054

Sd/-
(Dr. Sanjay Chaturvedi)
DDE (SW-A)”

(emphasis supplied)

10. A plain reading of the contents of the aforesaid letter/communication makes it apparent that the proposal of the respondent/Society for filling up 52 vacant posts through direct recruitment in its schools was rejected on the ground of the schools not having a Management Committee. Other than that, there is no other ground or reason discernible from the reading of the said communication. It is trite that State cannot be permitted to enlarge or enhance the scope, import or purport of its order/communication subsequently by any other means. This principle has been crystallized by the Supreme Court in ***Commissioner of Police, Bombay vs. Gordhandas Bhanji, AIR 1952 SC 16***, which was also followed in ***Mohinder Singh Gill vs. Chief Election Commissioner, (1978) 1 SCC 405***. The relevant paragraph of ***Mohinder Singh Gill*** (supra) is extracted hereunder:-

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“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in **Commr. of Police, Bombay v. Gordhandas Bhanji**:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

11. This principle has consistently been followed by the Supreme Court in various judgements uptill **United Air Travel Services vs. Union of India, (2018) 8 SCC 141**. It is thus a well settled principle of law and forms doctrine of *Stare Decisis*. Thus, other than the issue of absence of a Management Committee in the schools run by the respondent/Society, this Court need not delve upon the issues/submissions made by learned counsel for the appellants.

12. Since we have already opined that the appellants are bound by their ground raised in the letter/communication dated 1st December, 2023 whereby the proposal of the respondent/Society for filling up vacant posts was rejected, we would now examine as to whether the conclusions drawn by the learned Single Judge on this aspect were on the basis of documents on record.



13. We find that alongwith the rejoinder, the respondent/Society had filed the resolutions constituting the Management Committee of various branches of the schools run by the respondent/Society. We also find that the appellants had not objected to such documents which are on record. Infact, we find that the learned Single Judge in para no. 49.4.3 has not only taken note of the fact that each of the respondent's schools has an independent Management Committee but also noted that the appellants had not disputed the said position. In such an admitted situation, we are unable to appreciate the contentions and submissions raised on this ground by the appellants. It is apparent that there are documents establishing that each of the schools of the respondent/Society does have its Management Committee. Thus, the arguments of the appellants on this aspect are rejected.

14. So far as the submission of the appellants that there cannot be one person playing the role of a Manager in more than one Managing Committee is concerned, it is apparent that the same could be termed to be a procedural irregularity at best. This contention too has been carefully examined by the learned Single Judge in para no. 49.4.5 of the impugned judgement. We also note that the learned Single Judge has given liberty to the appellants to take appropriate action in accordance with law and the prescribed procedure. We concur with the reasoning rendered by the learned Single Judge in this regard.

15. In view of the aforesaid analysis, we too hold that the letter/communication dated 1st December, 2023, is unsustainable. However, we bind the respondent/Society to the statement made by Mr. Romy Chacko, learned counsel on the issue of strictly following the provisions of Rule 96 (3) of DSE Rules, 1973. We also reiterate the



2024:DHC:5540-DB



directions passed by the learned Single Judge in para no. 50 of the impugned judgement.

16. In view of the aforesaid analysis and findings, we find no reason, much less any cogent reason to interfere with the impugned judgment passed by the learned Single Judge. Resultantly, the present appeal is dismissed without any order as to costs.

17. Pending applications also stand disposed of.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J.

JULY 22, 2024/ms/rl