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Directorate of Education Vs. Action Committee Unaided Recognized Private School

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Court : Delhi

Decided On : Dec-10-2014

Judge : G. Rohini

Appellant : Directorate of Education

Respondent : Action Committee Unaided Recognized Private School

Advocate for Pet/Ap. : Mr. P.P. Malhotra, Mr. Rakesh Khanna, Mr. Kamal Gupta, Mr. Arun Bhardwaj, Mr. Rishi Kapoor, Mr. Vedanta Verma, Mr. Ashok Aggarwal, Mr. Anurag Ahluwalia

Judgement :

$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + LPA No.781/2014 DIRECTORATE OF EDUCATION ..... Appellant Through: Mr. P.P. Malhotra, Sr. Adv. with Mr. V.K. Tandon, Mr. Pardeep Kumar, Mr. Yogesh Saini & Mr. Kartik Jindal, Advs. versus ACTION COMMITTEE UNAIDED RECOGNIZED PRIVATE SCHOOLS & ORS ..... Respondents Through: Mr. Rakesh Khanna, Sr. Adv. with Mr. Kamal Gupta, Adv. for R-1. Mr. Arun Bhardwaj, CGSC with Mr. Rishi Kapoor, Adv. for R-3/UOI. Mr. Vedanta Verma, Adv. AND + LPA No.769/2014 SOCIAL JURIST, A CIVIL RIGHTS GROUP ..... Appellant Through: Mr. Ashok Aggarwal, Adv. Versus ACTION COMMITTEE UNAIDED RECOGNIZED PVT. SCHOOLS & ORS ..... Respondents Through: Mr. Rakesh Khanna, Sr. Adv. with Mr. Kamal

Gupta, Adv. for R-1. Mr. Anurag Ahluwalia, CGSC for R4/UOI. Mr. Vedanta Verma, Adv. CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
1012.2014 % 1. Admit.

2. The counsels for all the respondents appear on caveat / advance notice and waive formal service of notice.

3. Considering the nature of the controversy, hearing is expedited.

4. List for hearing in the category of After Notice Miscellaneous Matters on 15th January, 2015.

5. The writ records be kept available. CM No.20128/2014 (for stay) in LPA No.781/2014 and CM No.19877/2014 (for stay) in LPA No.769/2014.

6. Both appeals impugn the judgment dated 28th November, 2014 of the learned Single Judge of this Court allowing W.P.(C) No.177/2014 preferred by the respondent no.1. Vide the same judgment, another writ petition being W.P.(C) No.202/2014 filed by Forum for Promotion of Quality Education For All and entailing identical issues as raised in W.P.(C) No.177/2014 was also allowed. The counsel for the appellant Directorate of Education (DoE), Government of National Capital Territory of Delhi (GNCTD) states that appeal against the judgment allowing W.P.(C) No.202/2014 is also under preparation and will be filed shortly. Be that as it may, the counsel for the said Forum for Promotion of Quality Education For All namely Mr. Vedanta Varma, Advocate also appears and we have heard him also.

7. W.P.(C) No.177/2014 and W.P.(C) No.202/2014 were filed impugning the orders dated 18th and 27th December, 2013 of Honble the Lt. Governor of Delhi. The order dated 18th December, 2013, called the Recognized Schools (Admission Procedure for Pre-primary classes) (Amendment) Order, 2013 (Admission Order 2013) was issued by Honble the Lt. Governor in exercise of the powers conferred by Section 3(1) of the Delhi School Education (DSE) Act, 1973 read with Rule 43

of the Delhi School Education (DSE) Rules, 1973 and amending the Recognized Schools (Admission Procedure for Pre-primary class) Order, 2007 (Admission Order 2007). Vide the Admission Order 2013, the 20% Management Quota in admission in any private unaided recognized school of Delhi under the Admission Order 2007 was done away with and fixed parameters and points for admission to a class at entry level of the school were laid down and the schools prohibited from fixing additional points other than the points specified. The subsequent order dated 27 th December, 2013 merely extended the parameter of neighbourhood from 06 k.m. as prescribed in the order dated 18th December, 2013 to 08 k.m.

8. The learned Single Judge, vide the impugned judgment has held:(i) that the Admission Order 2013, being an executive action, by prescribing a straight jacket formula for who can be admitted and who cannot be admitted to the entry level class in the school, not only takes away in entirety the choice / discretion of the management committees of such schools, set up without any aid from the State, in the matter of such admissions but also takes away the choice / discretion of students / their parents in selecting a school; (ii) that private unaided schools managements have a fundamental right under Article 19(1)(g) of the Constitution of India to establish, run and administer their schools, including the right to admit students. Reliance in this regard was placed on T.M.A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC481 (iii) that autonomy has also been recognized and conferred upon such schools by Section 16(3) of DSE Act and Rule 145 of DSE Rules which empower the head of every unaided school to regulate admissions in the schools or any class thereof; (iv) that the scope of reasonable restrictions permitted vide Article 19(6) to be prescribed vis-a-vis such right is confined to ensure maintenance of proper academic standards, atmosphere, infrastructure, prevention of mal-administration by those in charge of the management and does not extend to taking away the right to regulate admissions in the school; (v) that such restrictions under Article 19(6) can only be imposed by way of a law only and not by way of an executive action / Office Order, without any authority of law; (vi) that neither the DoE, GNCTD nor the appellant in LPA No.769/2014 had placed any material to show that private unaided schools were indulging in any mal-practice or misusing their right to admit students in pursuance to the Admission Order 2007; (vii) that the right to impose conditions while granting recognition /

affiliation cannot be used to destroy institutional autonomy; (viii) that the judgment of the Supreme Court in T.M.A. Pai Foundation supra is applicable to nursery admissions in private unaided non-minority schools; reliance in this regard, besides on T.M.A. Pai Foundation, is also placed on P.A. Inamdar Vs. State of Maharashtra (2005) 6 SCC537 Society for Unaided Private Schools of Rajasthan Vs. Union of India (2012) 6 SCC1and on Pramati Educational & Cultural Trust (Registered) Vs. Union of India (2014) 8 SCC1 (ix) that the except the proviso to Section 12(1)(c), none of the other provisions of Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) apply to nursery admissions; reliance in this regard is placed on a judgment of Division Bench of this Court in Social Jurist, A Civil Rights Group vs. Govt. of NCT of Delhi 198(2013) DLT384 (x) that the Admission Order 2013 is contrary to Guidelines issued by the Central Government under Section 35(1) of the RTE Act; (xi) that Section 3 of the DSE Act and Rule 43 of the DSE Rules cannot be read to overrule Section 16(3) and Rule 145; (xii) that the points system introduced vide the Admission Order 2013 is neither procedural, proper nor rational; and, (xiii) that children through their parents, under Article 19(1)(a), have a fundamental right to chose a school in which they wish to study; reliance in this regard is placed on the judgment dated 6 th March, 2014 of the Supreme Court in Civil Appeals No.51665190/2013 titled State of Karnataka Vs. Associated Management of (Government Recognized-Unaided-English Medium) Primary and Secondary Schools. Resultantly, the Admission Order 2013 of Honble the Lt. Governor has been quashed with regard to 75% general nursery seats in the private unaided schools of Delhi.

9. The appellants seek interim stay of the judgment, contending that the judgment if allowed to stand would come in the way of the admissions to nursery classes in unaided recognized schools of Delhi for the Academic Year 2015 and which process is likely to begin soon.

10. We have heard the counsels for the appellants as well as the counsels for the respondent.

11. We at the outset wondered whether it would be appropriate for us, entertaining a Letters Patent Appeal, to at this preliminary stage to grant interim stay of the

operation of a detailed judgment of the learned Single Judge of this Court giving as many as thirteen reasons/ grounds aforesaid for quashing the Admission Order 2013. Ordinarily the same is not to be done, unless the Appellate Court finds no reasoning to have been given by the learned Single Judge or the reasoning given is prima facie found to be perverse and unsustainable. Else, the settled principle is that once a Single Judge of this Court has for reasons which appear to be well founded, struck down an executive action, such executive action should not be allowed to operate during the consideration of the appeal thereagainst. We may notice that at least the Division Benches of the High Court of Punjab & Haryana, High Court of Gauhati and the High Court of Bombay in Major Jagjit Singh Vs. Kartar Singh MANU/PH/0288/1973, Naren Talukdar Vs. The Publication Board MANU/GH/0189/2011 and Sulochana Daulatrao Thakare Vs. Sangam Shikshan Sanstha 2004(4) Bom. C.R. 488 respectively have held that an intra court appeal under Letters Patent is not to be mistaken as an ordinary appeal and that the jurisdiction thereunder against a judgment of a Writ Court under Article 226 is narrower than that of the Writ Court. It was further held relying on Milkhiram (India) Pvt. Ltd. Vs. Chamanlal Bros. AIR 1965 SC1698that the judges hearing the LPA have no jurisdiction to entertain any appeal merely because they do not agree with the plausible view taken by the learned Single Judge on the basis of cogent material before him unless it is perverse or patently illegal.

12. The matter being still at large, we consider it suffice to state that we prima facie do not find the reasons given by the learned Single Judge to be perverse or totally unsustainable.

13. However there are other far more weighty factors which guide us to refuse such interim stay.

14. Admissions to nursery classes in such schools, prior to the Admission Order 2013 were governed by the Admission Order 2007 supra which had come into being under the supervision of a Division Bench of this Court in LPA No.196/2004 titled Rakesh Goel Vs. Montfort School decided vide order dated 4th September, 2006. Under the Admission Order 2007, the schools were to develop and adopt a clear, well defined, equitable, nondiscriminatory and unambiguous criteria for

admission in the interest of children, including on the aspects of neighbourhood, background of the child, sibling, transfer of case, single parent and management quota not exceeding 20%, and were also given option of fixing additional parameters though were required to stipulate a point system of such criteria, but not heavily loaded in favour of few parameters only. The schools were required to obtain prior approval of DoE for finalization of admission criteria. Subsequently, vide interim order in SLP (C) No.2463-18/2007 thereagainst, it was directed that it will be sufficient if the admission criteria adopted by the schools was sent to the DoE. However the said SLP was subsequently disposed of in view of certain subsequent developments, without commenting on the judgment dated 4th September, 2006 supra of the Division Bench of this Court.

15. The Admission Order 2007 governed the nursery admissions in Delhi till the Academic Year 2013 when vide Admission Order 2013 the same was sought to be changed for admission to nursery classes in the Academic Year 2014.

16. The respondent no.1 / writ petitioner and Forum for Promotion of Quality Education For All being the petitioner in W.P.(C) no.202/2014, during the pendency of the writ petition from which this appeal arises had sought interim stay of the Admission Order 2013 contending that the same took away their autonomy in the matter of admission. The said applications for interim relief were dismissed by the learned Single Judge vide order dated 10th January, 2014. LPAs No.30 and 31/2014 were preferred thereagainst and which were dismissed vide judgment dated 20 th January, 2014 of the Division Bench of this Court. What primarily prevailed with the Division Bench of this Court for refusing interim stay of the Admission Order 2013 was the fact that the matter was not found to be as such causing irreparable loss and injury. It was observed that it mattered not as to who was admitted to the schools and as far as the autonomy of the schools was concerned, the same though would be taken away qua admissions in one academic year, would stand restored in the event of the petitions being allowed. It was also noticed that the number of admission seekers is much more than the seats available in schools and which leads to elaborate planning on the part of the parents of children of arranging for admission and any uncertainty in the rules of admission causes grave prejudice to the parents body.

17. SLP (C) No.2106/2014 and SLP (C) No.2113/2014 preferred thereagainst were dismissed vide order dated 31st January, 2014.

18. In our opinion, the factors which weighed with the Division Bench of this Court at the time of refusing interim stay of the Admission Order 2013 applies with equal force at this stage also, when the learned Single Judge has quashed the said Admission Order 2013 and the DoE is in appeal. The essential ingredients of balance of convenience and irreparable loss and injury are absolutely lacking in the applications for interim relief.

19. The senior counsel for the DoE however contended that the Admission Order 2013 is for the benefit of the citizens of Delhi in as much as the same enables the children to get admission in neighbourhood schools. He has rather contended that the nursery admissions in the year 2014 having been allowed to be made as per the Admission Order 2013, be so allowed to be made for the Academic Year 2015 also and if the appeals are ultimately dismissed, w.e.f. the Academic Year 2016, the Admission Order 2007 earlier in vogue can be restored.

20. There is however a sea change in position since the Division Bench of this Court on 20th January, 2014 had refused to grant interim stay of the Admission Order 2013. The Admission Order 2013 has since then been held to be ultra vires the DSE Act and the DSE Rules and the fundamental rights of the Management Committees of the schools and of the parents of the admission seeking students. Once a Judge of this Court has after hearing arguments spanning over several months held so, we would not be justified, in the facts and circumstances of the case, to allow a state of affairs which has been found and declared to be illegal, to continue even for a day more, without finding a very strong prima facie case and which at this moment, we do not.

21. The senior counsel for the DoE has otherwise built his case on the provisions of the RTE Act. However a Division Bench of this Court in Social Jurist supra has already held the provisions of the RTE Act to be not applicable to nursery schools and / or to admission to seats in excess of 75%. The senior counsel contends that the said judgment of the Division Bench of this Court is erroneous and a Special Leave Petition preferred thereagainst is pending consideration. However on

enquiry it is informed that there is no stay thereof by the Supreme Court. Again, at this preliminary stage, the doctrine of precedent requires us to abide by the earlier judgment of the Division Bench of this Court.

22. The counsel for the appellant in LPA No.769/2014 has also relied extensively on certain portions of the order/judgment dated 20th January, 2014 supra. He however forgets that what is expressed therein was on a prima facie view of the matter. Since then the writ petition filed by the respondent no.1 has been allowed. Reliance on the said passages is thus misconceived.

23. We reiterate that the only effect of non-grant of the interim stay sought would be that instead of one child another child may be admitted to the nursery classes in some of the unaided recognized schools of Delhi. To us, at this stage, all children are equal and we do not find this to be a ground for us to grant any interim stay. Resultantly the applications are dismissed. CHIEF JUSTICE RAJIV SAHAI ENDLAW, J DECEMBER10 2014 pp

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