

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

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Date of decision: 31st January, 2012

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WP(C) 636/2012

FEDERATION OF PUBLIC SCHOOLS

..... Petitioner

Through: Mr. N.K. Kaul, Sr. Adv. with Mr.
P.D. Gupta & Mr. Kamal Gupta,
Advs.

Versus

GOVERNMENT OF NCT OF DELHI

..... Respondent

Through: Ms. Purnima Maheshwari, Adv. for
GNCTD.
Mr. Ashok Agarwal, Adv. as
Intervener.

AND

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WP(C) 40/2012

FEDERATION OF PUBLIC SCHOOLS

..... Petitioner

Through: Mr. N.K. Kaul, Sr. Adv. with Mr.
P.D. Gupta & Mr. Kamal Gupta,
Advs.

Versus

DIRECTOR (EDUCATION)

..... Respondent

Through: Ms. Purnima Maheshwari, Adv.
for GNCTD.
Mr. Ashok Agarwal, Adv. as
Intervener.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, THE ACTING CHIEF JUSTICE

1. W.P.(C) No.636/2012 is preferred on behalf of approximately 326 private unaided recognized schools functioning in Delhi impugning the Notification No.F.15(172)/DE/ACT/2011/7290-7304 dated 27.01.2012 issued by the Lieutenant Governor of Delhi in exercise of powers conferred under Section 35 and 38 of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) read with Sub-Rule 3 of Rule 10 of Delhi Right of Children to Free and Compulsory Education Rules, 2011 (hereinafter called Delhi RTE Rules). The petition also impugns Rule 10(3) of the Delhi RTE Rules. The petitioner alternatively has claimed that this Court should lay down Guidelines and pre-conditions for exercise of power under Rule 10(3) of the Delhi RTE Rules for extending the limits / area of “neighbourhood” as defined under the RTE Act and the Delhi RTE Rules.

2. The RTE Act was enacted in implementation of the mandate and spirit of Article 21A of the Constitution of India inserted vide 86th Amendment Act, 2002. Article 21A provides for free and compulsory education of all

children in the age group of 6 to 14 years as a Fundamental Right. To achieve this goal, Section 12(1)(c) requires private unaided schools, some of which in Delhi are represented by the petitioner to admit in Class-I , to the extent of at least 25% of the strength of that class, children belonging to Economically Weaker Sections (EWS) and disadvantaged groups in the neighbourhood and provide free and compulsory elementary education till its completion. Such Schools, under Section 12(2) of the RTE Act shall be reimbursed expenditure so incurred by them to the extent of per child expenditure incurred by the State or the actual amount charged from the child whichever is less. Since some Schools were already under obligation (as per the term of allotment of land to them) to provide free education to a specified number of children, the second proviso to Section 12 (2) provides that the Schools shall be not entitled to reimburse to the extent of the said obligation.

3. Though the RTE Act in Section 12 (supra) and also elsewhere uses the word “neighbourhood” but does not define the same. Such definition is however to be found in the Right of Children to Free and Compulsory Education Rules, 2010 (RTE Rules) which prescribe the limit of neighbourhood in respect of children in Classes-I to V as within walking

distance of 1 Km. and in respect of children in Classes VI to VIII as within 3 Kms. The Delhi RTE Rules also similarly prescribe the limits of neighbourhood as radial distance of 1 Km. from the residence of child in Classes I to V and radial distance of 3 Kms. from the residence of the child in Classes VI to VIII. Thus the private unaided schools members of the petitioner under the Act and the Rules aforesaid are required to admit children belonging to the EWS and disadvantaged groups in Class I to the extent of 25% of the strength and resident of within the limits of neighbourhood aforesaid.

4. The respondent through Director of Education, however vide order dated 16.12.2011 directed as follows:

“All schools shall ensure that no child under economically weaker sections and disadvantaged group is denied admission on neighbourhood / distance basis so long as the locality of the child’s residence falls within the distance criteria devised by the schools for the general category children.”

It being a common ground that the private unaided schools while admitting general category children does not follow the limits of neighbourhood as prescribed for the children from EWS and disadvantaged groups, the

aforesaid order mandated extending the limits of neighbourhood for the children belonging to EWS and disadvantaged groups.

5. The petitioner filed W.P.(C) 40/2012 impugning the said order and the learned Single Judge of this Court while issuing notice of the said writ petition, on the contention of the petitioner that the Director of Education could not have vide order aforesaid extended the limits of neighbourhood as prescribed in the Rules, as an *ad interim* measure stayed the operation of the same. The said writ petition is listed next before the learned Single Judge on 10.02.2012.

6. However, now the Notification dated 27.01.2012 (impugned in this petition) has been issued extending the limit of neighbourhood. Apparently, the said Notification has been issued to get over the challenge in W.P.(C) No.40/2012 on the ground of the Director of Education being not entitled to extend the limits of neighbourhood by an executive order.

7. Mr. N.K. Kaul, Senior counsel for the petitioner has contended that once the definition of neighbourhood is to be understood in the same manner as applicable to students of general category, it would mean that there is no distance prescribed at all and even the children belonging to the EWS and disadvantaged group who are residing at far away places would have to be

admitted by the private unaided schools. He contends that the same is not only violative of the Rules aforesaid but also goes against the very scheme of the Act. Our attention is drawn to the report of April, 2010 of the Committee on Implementation of the RTE Act and to the 213th Report on the RTE Bill of the department related Parliament Standing Committee of Human Resource Development and which report was presented to the Rajya Sabha. Therefrom, it is pointed out that concerns and apprehensions were expressed about the distance / time for commutation and need was felt to define neighbourhood appropriately to also ensure access to education within reasonable reach of children. It is also contended that admission in far way schools may lead to high dropout rate. The senior counsel for the petitioner contends that the Notification aforesaid and Rule 10(3) of the Delhi RTE Rules (which enables the Government to for the purposes of filling up the requisite percentage of seats reserved for children of EWS and disadvantaged groups extend the limits of neighbourhood from time to time) in exercise of powers whereunder the same has been issued are *ultra vires* the RTE Act, the RTE Rules as well as the Delhi RTE Rules and the spirit of neighbourhood school.

8. We have at the outset enquired as to what is the cause of action or the reason for the private unaided schools to be aggrieved from the Notification aforesaid or the extension of the limits of neighbourhood; it is not in dispute that the said private unaided schools under the Act and the Rules aforesaid are obliged to fill up 25% of the seats in Class I and / or at the entry level if below Class I from children belonging to EWS and disadvantaged groups – it should not matter to the School whether such children are residing within a distance of one kilometer or more. The grievance if any should be of the children and/ or their parents for the inability of the Government, inspite of legislation, being unable to provide schools within the neighbourhood as defined.

9. Though the senior counsel for the petitioner has been unable to show as to how the private unaided schools are affected, he has contended that being a stakeholder, they are interested in compliance of the laws. It is argued that the Notification and the exercise of power under Rule 10(3) of the Delhi RTE Rules to the extent of doing away rather than extending the limits of neighbourhood is bad.

10. We are however of the view that the paramount purpose is to provide access to education. Whether for that access, the child is to travel within 1

Km. or more is secondary. It is apparent from the executive order of the Director of Education and the Notification aforesaid that if the obligation on the private unaided schools to admit children belonging to EWS and disadvantaged groups is limited to those children only, who are residing within a distance of 1 Km. from the school, the same may result in a large number of such children even though willing for the sake of acquiring education to travel more than 1 Km. being deprived thereof for the reason of there being no seats in the school within their neighbourhood. It may also result in several of the private unaided schools who do not have sufficient number of such children within their defined neighbourhood allocating the seats so remaining unfilled to the general category students.

11. In the circumstances, we at the instance of the private unaided schools who are not found to be aggrieved from the Notification aforesaid not inclined to entertain W.P.(C) No.636/2012 challenging the same.

12. We also find that the problem already stands answered by a formula devised by the Division Bench of this Court in its judgment dated 30.05.2007 in W.P.(C) No.3156/2002 titled *Social Jurist Vs. Govt. of NCT of Delhi*. No doubt that writ petition was filed before the RTE Act had been enacted. However, the issue was almost identical in nature. The said

judgment was rendered in a public interest litigation mandating the Schools who had been allotted land on concessional rates to give admission to children belonging to EWS. The issue of distance / neighbourhood had also arisen for consideration while dealing with the said aspect and the following solution was devised:

“Admission shall be first offered to eligible students from poorer sections residing within 3 kilometers of the institutions. In case vacancies remain unfilled, students residing within 6 kilometers of the institutions shall be admitted. Students residing beyond 6 kilometers shall be offered admission only in case the vacancies remain unfilled even after considering all students within 6 kilometers area.”

13. We are of the opinion that the criteria aforesaid can be adopted for the purpose of admission under the RTE Act and the Rules aforesaid. The petitioner also, as aforesaid in the alternative has sought guidelines from this Court. We are also of the view that the RTE Act being comparatively recent, and hiccups being faced in implementation thereof, considering the laudable objective thereof, it becomes the bounden duty of this Court to ensure that

such hiccups do not defeat the purpose of its enactment. After hearing the counsel for the respondent GNCTD, we direct as under:

- (i) Admission shall first be offered to eligible students belonging to EWS and disadvantaged group residing within 1 Km. of the specific schools;
- (ii) In case the vacancies remain unfilled, students residing within 3 kms. of the schools shall be admitted;
- (iii) If there are still vacancies, then the admission shall be offered to other students residing within 6 kms. of the institutions;
- (iv) Students residing beyond 6 kms. shall be admitted only in case vacancies remain unfilled even after considering all the students within 6 kms. area.

14. The senior counsel for the petitioner has stated that as per the Schedule for admission announced earlier, the admission process is to close soon. He seeks extension thereof, to enable the private unaided schools to make admission in accordance with the guidelines aforesaid.

15. We find merit in the aforesaid contention. Since the clarification / guidelines aforesaid has been issued now we are confident that further two

weeks time shall be allowed to the schools to complete the admission process.

16. However, finding that the executive order dated 16.12.2011 earlier issued and which has been stayed in W.P.(C) No.40/2012, we have with the consent of the counsels taken that writ petition also on our board today. The counsel for the petitioner admits that upon issuance of the Notification challenged in W.P.(C) No.636/2012, W.P.(C) No.40/2012 has become infructuous.

17. Accordingly, W.P.(C) No.636/2012 is disposed of in terms of above and W.P.(C) No.40/2012 is disposed of as infructuous.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

JANUARY 31, 2012

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