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

*Date of Decision: 9<sup>th</sup> January, 2023*

+ **W.P.(C) 101/2023 and CM APPL. 343/2023, 344/2023**

**ACTION COMMITTEE UNAIDED RECOGNIZED PRIVATE  
SCHOOLS** ..... Petitioner

Through: Mr. Kamal Gupta, Mr. Sparsh  
Aggarwal & Ms. Paridhi Bist,  
Advocates (M-9560173511)

versus

**DIRECTORATE OF EDUCATION** ..... Respondent

Through: Mr. Gautam Narayan, ASC with Mr.  
Unmukt Gera, Advocate for GNCTD.

**CORAM:  
JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J.(Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner - Action Committee Unaided Recognised Private Schools (Regd.,) of Delhi. The said Society has been registered as of 19th May, 1998 and has as its members 671 private unaided schools in Delhi. Since the writ petition is seeking benefit for 671 schools, the Registry shall calculate the Court fee in respect of this writ petition and the Petitioners shall deposit the said Court fee within four weeks.
3. The grievance in this writ petition is against two circulars dated 24th November, 2004 and 17th November, 2022 by which the qualifications for

Managers of schools are being made compulsory by the Respondent - Directorate of Education, GNCTD (*hereinafter 'DoE'*).

4. The submission of Mr. Gupta, Id. Counsel appearing for the Petitioner is that vide circular dated 24th November, 2004, the guidelines for qualifications for the general body of the Society and the Manager was prescribed in the context of applications to be filed after the said date seeking approval of schemes of management.

5. It is his submission that this particular circular has never been enforced against private unaided schools especially if their respective schemes of management had already been approved by the DoE prior to the said date. It is his further submission that recently, vide circular dated 17th November, 2022, the said circular dated 24th November, 2004 is being sought to be enforced against all private unaided schools as also minority schools in Delhi and thus, the Petitioner is aggrieved by the same.

6. Reference is made by the Petitioner to Section 3 of The Delhi School Education Act, 1973 (*hereinafter 'DSE Act'*), Rules 43 and 50 of The Delhi School Education Rules, 1973 (*hereinafter 'DSE Rules'*) as also the scheme of the Act and Rules to argue the following:-

- i) That the Manager is not an employee of the school.
- ii) That in so far as private unaided schools are concerned, the DoE would not have the power to prescribe qualifications for Managers. The said power vests purely with the Managements of the respective schools.
- iii) Under the DSE Act and DSE Rules, only the qualifications of teachers can be prescribed by the DoE which is being complied with by all schools.

7. He relies upon the Constitution Bench's decision in *TMA Pai Foundation v. State of Karnataka, (2002) 8 SCC 481*, paragraphs 55 to 60 in order to buttress his submissions. His overall submission is that in so far as private unaided schools are concerned, since none of the funds for the running of the said schools is received from the Government, the management autonomy is to be recognised and cannot be interfered with in this manner.

8. Mr. Gautam Narayan, Id. ASC appearing for DoE submits that this very circular dated 24<sup>th</sup> November, 2004 has been upheld by the Id. Single Judge and the Division Bench of this Court in *Writ Petition Civil 4608/2013* titled *Satbharawan Arya Girls Sr. Sec. School & Anr v. Union of India & Ors.* and in the *LPA 196/2017* titled *Satbharawan Arya Girls Sr. Sec. School & Anr v. Union of India & Ors.* However, he concedes that these orders were passed in the context of aided schools.

9. Mr. Narayan, Id. ASC submits that several private unaided schools have been issued notices after 2004 to comply with the qualifications prescribed for the position of Manager and there has been no challenge to the said notices. On a query from the Court in so far as the schemes of management which are approved prior to the issuance of the 2004 circulars are concerned, he submits that this very issue has been framed as a question by a Id. Single Judge of this Court in *Writ Petition 11462/2021* titled *Delhi Aided School Management Association v. Govt. of NCT of Delhi & Anr.*

10. It is his submission that irrespective of whether the Manager is to be considered as an employee of the school or not, the qualifications for the Manager can be prescribed under the DSE Act and Rules which is evident from Sections 3, Section 27 and Section 28(1) of the 1973 Act as also Rule

43 of the 1973 Rules.

11. He further submits that the DoE's prescription of the qualification of a Manager would not constitute intrusion into the administrative autonomy of the private unaided schools in view of the powers vested in the DoE.

12. Mr. Narayan, Id. ASC has placed the compilation on record to submit that there are several instances where after 2004, the said circular has been sought to be enforced against private unaided institutions.

13. This Court has considered these very circulars in the context of schools which are minority educational institutions in *W.P. 8113/2021* titled *Kerala Education Society Delhi v. Director of Education, G.N.C.T.D* and *W.P. 17273/2022* titled *St. Martins Diocesan School Through Its Manager and Others v. Govt. of NCT of Delhi and Others*.

14. The present writ petition raises extremely important legal issues involving:-

- i) The power of the DoE under the Delhi School Education Act and Rules to prescribe qualifications for a Manager in respect of private unaided educational institutions and schools.
- ii) The question as to whether the said qualifications, if prescribed, can only be recommendatory in nature or can they be made mandatory in nature.
- iii) The question as to whether the autonomy of the educational institutions which are private and unaided in the context of the judgment in *TMA Pai Foundation (Supra)* would also be required to be considered by the Court.

15. The Court has considered the orders passed in the matters relating to minority institutions and is of the opinion that the legal issues would need to

be adjudicated. Accordingly, issue notice in the writ petition. Let a counter affidavit be filed within four weeks. Rejoinder, if any, be filed within four weeks thereafter. The DoE shall clarify as to whether the term '*recognised*' in 2004 circular would mean recognised only by the DoE or recognised from other parts of the country as well.

16. In the meantime, it is directed as under:

- a. In so far as schools whose schemes of management were approved prior to 2004 are concerned and no further approval is being sought by them in respect of the schemes of management, the Managers who are already functioning or who are appointed by these schools shall not be disturbed.
- b. However, in the case of Managers who may be newly appointed are concerned, the private unaided schools who are members of the Petitioner shall consider the qualifications which have been prescribed as they may be in the overall interest of the institutions. It is further clarified that in so far as the qualifications for such a Manager to be from a recognised institution is being concerned, the said recognition could be from any State and need not be a recognised institution only in Delhi as the same would also encourage experienced persons from other States to be employed by schools in Delhi.
- c. No coercive steps shall be taken against the private unaided schools if the qualifications of the Managers are not in accordance with the circular dated 24th November, 2004 read with circular dated 17th November, 2022 till the next date of hearing, as the same may impact lakhs of students studying in

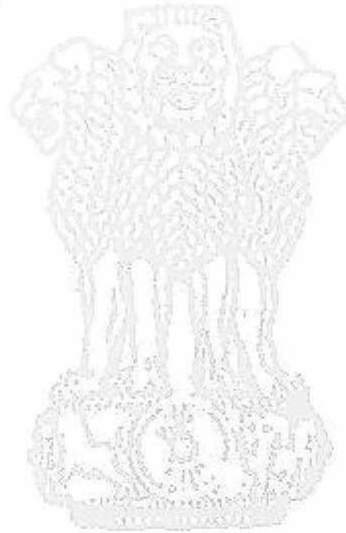
these schools.

17. Let the compilation, handed over to the Court, be placed on record.
18. List before the Registrar for completion of pleadings on 14th March, 2023.
19. List before the Court on 18th May, 2023.

**PRATHIBA M. SINGH  
JUDGE**

**JANUARY 9, 2023  
MR/hh**

HIGH COURT OF DELHI



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