



2025:DHC:3492



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Decided on 08.05.2025

+ W.P.(C) 12957/2024
ST ANTHONYS BOYS SECONDARY SCHOOLPetitioner
Through: Mr. Romy Chacko, Sr. Advocate
with Mr. Sachin Singh Dalal, Mr.
Akshat Singh, Advocates.

versus

DIRECTOR OF EDUCATION AND ORSRespondents
Through: Mrs. Avnish Ahlawat, SC with Mr.
N.K. Singh, Ms. Laavanya
Kaushik, Ms. Aliza Alam, Mr.
Mohnish Sehrawat, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J (ORAL)

CM APPL. 28105/2025 (for directions)

The petitioner has filed this application for permission to proceed with a recruitment process, which is the subject matter of the writ petition.

Since the issue involved in the application would dispose of the writ petition, the application is allowed, and the writ petition itself is taken on Board with the consent of learned counsel for the parties.

W.P.(C) 12957/2024

1. The petitioner – St. Anthony's Boys' Secondary School [“the School”] has challenged a memorandum issued by respondent No. 1 – Directorate of Education [“DoE”] dated 03.08.2024, directing it to



withhold its recruitment process and keep it in abeyance until further directions are received from the DoE.

2. The petitioner is an aided minority school, as certified by the National Commission for Minority Educational Institutions, *vide* certificate dated 21.06.2006.

3. The petitioner commenced the process of recruitment of teachers and other employees by a newspaper advertisement published on 08.07.2024. Being an aided institution, it thereafter applied for grant-in-aid by a communication dated 27.07.2024.

4. It is at this stage that the impugned memorandum dated 03.08.2024 was issued. It was contended that the Deputy Director of Education of the concerned District is required to sign the experience certificates of candidates, but no intimation to or concurrence of the Deputy Director had been obtained before issuance of the advertisement for recruitment. Further, prior approval or clearance for the recruitment had not been taken. The respondents also noted that a judgment of a Single Judge in *Delhi Tamil Education Association v. Director of Education and Ors*¹ had been challenged in an appeal² and that “*the matter will be decided after the outcome of the decision*” of this Court.

5. The decision of the learned Single Judge in *Delhi Tamil Education Association* has been placed on record. It concerns the process of recruitment in a linguistic minority school. In paragraph 41 therein, the learned Single Judge formulated the issue, as to whether the clearance from the DoE was necessary to fill the vacancies of teachers and

¹ W.P. (C) 15276/2023; decided on 28.05.2024 [hereinafter *Delhi Tamil Education Association*]

² LPA 642/2024.



Principal, or whether the vacancies could be filled without such clearance. After consideration of the Delhi School Education Act and Rules, 1973 [“DSEAR”], the Court recorded the following conclusions:

*“47.1 These provisions, even by themselves, would conclude the issue in controversy. The statutory position that emerges from Rule 98(2) read with the proviso thereto, juxtaposed with Rule 96 of the DSE Rules, is that the **vacant posts of principal and teachers in the schools run by the petitioner association can be filled by the managing committee of the petitioner association without prior approval of the Director.** Even if the selection committee, which selects the employees for appointment to the said posts, is required to include certain nominees of the DoE, those nominees perform a mere advisory role and do not participate in the actual exercise of selection of the persons to be appointed.*

*47.2 Even on the basis of the afore-noted provisions of the DSE Act and DSE Rules, therefore, **there can be no embargo on the petitioner filling up the vacant posts of principal and teachers in the schools run by it. No prior approval of the DoE is needed.** At the highest, all that can be said is that the selection committee which makes such appointments would require the participation of nominees of the DoE in accordance with the Rule 96(3)(a) and 96(3)(b) of the DSE Rules. Needless to say, the DoE would necessarily have to nominate persons as part of the selection committee, so that these posts can be filled.*

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*49.4.6 In any event that cannot constitute a legitimate ground on the basis of which the DoE can refuse the request of the petitioner to fill in the vacancies of Principals and Teachers in the schools run by it. **As no prior approval of the DoE is required, therefore, the decision dated 1 December 2023 is also unsustainable in law.***

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*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).”³*

³ Emphasis supplied.



6. Contrary to the contents of the impugned memorandum dated 03.08.2024, by the time it was issued, the Division Bench had, in fact, already disposed of the appeal against the aforesaid judgment. The judgment of the Division Bench in *The Lt. Governor of Delhi & Ors. v. Delhi Tamil Education Association (Retd) Through Its Secretary*⁴ has also been placed on record. The appeal was also decided against the DoE, *albeit* on slightly different grounds. The conclusions of the Division Bench are as follows:

*“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 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.”⁵*

7. DoE has thereafter taken the matter to the Supreme Court in SLP(C) 28295/2024. By order dated 06.12.2024, the Supreme Court dismissed the Special Leave Petition.

8. The judgment in *Delhi Tamil Education Association*, therefore, holds the field. The impugned memorandum was premised only on the basis (*albeit* erroneously) that the LPA against the judgment of the learned Single Judge was pending. This basis has since been negated, as the judgment has been affirmed by the Division Bench, and the SLP has been dismissed.

⁴ LPA 642/2024; decided on 22.07.2024.

⁵ Emphasis supplied.



9. Ms. Avnish Ahlawat, learned Standing Counsel for the respondent, draws my attention to the judgments of the Supreme Court in *Sk. Mohd. Rafique v. Managing Committee, Contai Rahamania High Madrasah and Ors.*,⁶ and *State of Uttar Pradesh and Ors. v. Principal Abhay Nandan Inter College and Ors.*⁷ to contend that the scope of regulation by the DoE, even in respect of minority institutions, is wider than contemplated in the judgment of *Delhi Tamil Education Association*.

10. As far as this aspect is concerned, I am of the view that such contention is not open to the DoE. The submissions of the DoE, based upon *Rafique* and *Abhay Nandan Inter College*, are both noted by the learned Single Judge in *Delhi Tamil Education Association* as mentioned below:

“49.3.4 Mr. Jain seeks to submit that opening sentence in para 31 of the decision in Abhay Nandan Inter College itself eviscerates the distinction between an aided minority institution and aided nonminority institution. Para 32 goes on to observe that an aided institution is expected to comply with the conditions subject to which aid is granted. Para 33 further observes that “haze between a minority and non-minority institution is no longer in existence.

49.3.5 The reliance by Mr. Yeeshu Jain on these observations of the Supreme Court is, however, myopic. The decision goes on, in express terms, to approve the principle, in T.M.A. Pai that the regulatory power of the State over aided minority institutions does not extend to compromising on right of the minority to establish and administer the institution. The principle that grant of aid can also not be subjected to conditions which prejudices the said right also finds approval in para 34 of Abhay Nandan Inter College. In para 33, the Supreme Court has relied, inter alia, on para 42.1 of its earlier decision in Sk. Mohd. Rafique in which the Supreme Court reiterated the observation in T.M.A. Pai that the right to appoint staff, teaching and non-teaching, and the right to take disciplinary action against the staff were among the essential incidents to establish and administer an educational institution.

⁶ (2020) 6 SCC 689; decided on 06.01.2020 [hereinafter *Rafique*]

⁷ (2021) 15 SCC 600 [hereinafter *Abhay Nandan Inter College*]



49.3.6 *The judgment in Abhay Nandan Inter College cannot, therefore be regarded as diluting the principles contained in Frank Anthony Public School Employees' Association, Malankara Syrian Catholic College and Sindhi Education Society.*"

In fact, the judgment of the Division Bench also refers to the DoE's reliance on *Rafique*.

11. In view of the above, the petitioner's challenge to the memorandum dated 03.08.2024 must be sustained.

12. Mr. Romy Chacko, learned Senior Counsel for the petitioner, on the other hand, relies upon a subsequent Division Bench judgment in *Kiran Jain v. Govt. of NCT of Delhi and Ors.*⁸, which, according to him, restricts the scope of regulation concerning recruitment by minority educational institutions. Ms. Ahlawat submits that this judgment was also carried to the Supreme Court in SLP(C) 25294/2024. While the Supreme Court declined to interfere with the Division Bench judgment, she points out that it left open the issue concerning the validity of the DoE's circular dated 26.02.2014 prescribing a marking scheme and evaluation process for recruitment of teachers.

13. However, I am of the view that the aforesaid issue does arise for determination in this writ petition. The challenge of the petitioner herein is against the memorandum dated 03.08.2024, which is not predicated on compliance or non-compliance with the 2014 Circular.

14. As before the Division Bench in *The Lt. Governor of Delhi & Ors. v. Delhi Tamil Education Association (Retd) Through Its Secretary*⁹, Mr. Chacko undertakes on behalf of the present petitioner that the School will

⁸ LPA 691/2019; decided on 10.10.2023

⁹ Supra (note 4).



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strictly follow the provisions of the DSEAR, insofar as they are applicable, while carrying out the proposed recruitment. He submits that the matter has reached emergent proportions, as the School now has twenty-one vacancies out of a total faculty strength of thirty-six.

15. In view of the above, the writ petition is disposed of by setting aside the memorandum dated 03.08.2024. The petitioner is, thus, permitted to proceed with recruitment, pursuant to the advertisement issued on 08.07.2024 and/or by issuing a fresh recruitment advertisement, but subject to the submission recorded above, to proceed strictly in accordance with the applicable provisions of DSEAR.

16. Needless to say, if the DoE finds that there is any other non-compliance by the School, this judgment will not preclude it from taking steps in accordance with law, subject to the petitioner's rights and remedies.

17. All pending applications also stand disposed of.

PRATEEK JALAN, J

MAY 8, 2025
'Bhupi/SD'