

(2014) 01 DEL CK 0073
In the Delhi High Court
Case No : LPA 30 and 31 of 2014

Action Committee Unaided Recognized Private Schools APPELLANT
Vs
Lt. Governor and Others
 Forum for Promotion of RESPONDENT
Quality Education for all Vs Lt. Governor of Delhi and Others

Date of Decision : 20-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi School Education Act, 1973 — Section 16(3) 22 3(1)

Citation : (2014) 206 DLT 731

Hon'ble Judges : N.V. Ramana, C.J;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : N.K. Kaul, Mr. P.D. Gupta, Mr. Kamal Gupta, Ms. Diya Kapur, Ms. Shyel Trehan, Ms. Manjira Dasgupta, Mr. Vibhor Kush, Mr. Abhishek Gupta, in LPA 30/2014, Mr. Rajiv Nayyar and Mr. Vedanta Varma, in LPA 31/2014, for the Appellant; Raju Ramachandran Ms. Zubeda Begum, Vivek Kumar Tandon, Ms. Sana Ansari, Ms. Vanessa Singh for R-1 and 2, Mr. Himanshu Bajaj, Ms. Saakshi Agrawal, Advocates for R-3/UOI, Mr. Ashok Agarwal, Khagesh B. Jha and Ms. Arushi Agarwal, Advocates for R-4, for the Respondent

Final Decision : Dismissed

Judgement

1. Both intra court appeals impugn the common order dated 10th January, 2014 of the learned Single Judge of this Court in W.P. (C) No. 177/2014 and W.P. (C) No. 202/2014 respectively preferred by the appellants, refusing to grant the interim relief sought by the appellants/petitioners, observing, "that any interim order of partial stay or substitution of the Government policy at this stage would create confusion and would be detrimental to the interests of the children as well as parents of the wards who are seeking admission", though directing the writ petitions to be heard at the admission stage itself and listing them for hearing on 11th March, 2014. Though the appeals came up before this Court for admission on 15th January, 2014 but since the counsel for the respondents appeared on advance notice, considering the nature of the controversy and with the consent

of the counsels, we finally heard the appeals.

2. The writ petitions from which these appeals arise were filed impugning the orders dated 18th & 27th December, 2013 of Hon"ble the Lt. Governor of Delhi.

3. The order dated 18th December, 2013 called the "Recognized Schools (Admission Procedure for Pre-primary Classes) (Amendment) Order, 2013" was issued by the Hon"ble Lt. Governor in exercise of the powers conferred by Section 3(1) of the Delhi School Education Act, 1973 read with Rule 43 of the Delhi School Education Rules, 1973 and amending the "Recognized Schools (Admission Procedure for Pre-primary Class) Order, 2007". Vide the said order dated 18th December, 2013, the Management Quota of 20% 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 27th December, 2013 merely extended the parameter of neighbourhood from 6 Km. as prescribed in the order dated 18th December, 2013, to 8 Km.

4. We may notice that the stand/counter affidavit of the respondents is not on record, neither in the writ petition nor in this appeal. However, owing to the process of admission to the schools, which we are informed ordinarily begins on 1st January of each year having already been delayed and having been now prescribed to begin on 15th January, 2014 and which date is now gone and the admissions are held up and any delay would ultimately result in not only delaying the admissions to the schools but consequently also the commencement of the academic year, it has been deemed appropriate to hear the counsels without counter affidavit.

5. The learned Single Judge having declined interim relief to the appellants, not for the reason of not finding a prima facie case in favour of the appellants/petitioners but for the reason that the interference in the admission process at this stage is likely to create confusion and would be detrimental to the interests of the children as well as parents of the wards who are seeking admission, we at the outset only asked the senior counsels for the appellants to address us as to what was the irreparable loss and injury to the appellants, who are a committee/fora of recognized unaided schools of Delhi and as to how the balance of convenience was in favour of granting interim stay of operation of the impugned orders dated 18th & 27th December, 2013 as is sought and which would result in admissions being made to the schools in accordance with the Admission Order 2007. However, notwithstanding our said query, the senior counsels for the appellant chose to address lengthy arguments spanning over nearly the entire day on merits of the case of the appellants.

6. The contentions of the senior counsels for the appellants on the aspect of prima facie case in favour of the appellants are:

(i) that the Division Bench of this Court vide order dated 4th September, 2006 in

LPA No. 196/2004 titled Rakesh Goel Vs. Montford School, also concerned with the admission of the tiny tots to nursery class in the schools, constituted an Expert Committee headed by Sh. Ashok Ganguly then Chairman of the CBSE to evolve a mechanism for having transparency in the process of admissions in pre-nursery classes and to eliminate the system of interviews;

(ii) that the Ganguly Committee after detailed discussions and deliberations with all stakeholders vide report dated 14th July, 2007 recommended the admission process to be based on several defined scientific, rational and tested criteria including of neighbourhood, alumni, sibling, single parent, management quota etc. and the schools were given the freedom to choose, emphasize and focus on any number of criteria and leaving 10% of the total seats to be allotted at the discretion of the Management;

(iii) that the Cabinet of Delhi after a meeting with the Delhi School Advisory Board constituted u/s 22 of the School Act, vide Resolution dated 3rd September, 2007 accepted the Ganguly Committee's recommendations with some modifications;

(iv) that the Directorate of Education (DoE), Government of National Capital Territory of Delhi (GNCTD) in their affidavit filed in LPA No. 196/2004 supra took a stand that the autonomy to the heads of private unaided schools as per Rule 145 of the School Rules has to be protected and for the reasons thereof, recommendation of the Ganguly Committee imposing a uniform set of criteria on schools cannot be accepted and each school should be allowed to define and adopt its own admission criteria, making a scheme out of a set of parameters so that their autonomy is ensured and that there should be no lottery system except to break ties;

(v) that the Division Bench of this Court also vide order dated 14th November, 2007 in LPA No. 196/2004 made certain suggestions;

(vi) that pursuant to the aforesaid, the Admission Order 2007 was issued as per which the schools were to develop and adopt a clear, well defined, equitable, non-discriminatory and unambiguous criteria for admission in the interests of the children including on the aspects of neighbourhood, background of the child, sibling, transfer case, single parent and management quota not exceeding 20% and were also given the option of fixing additional parameters though were required to stipulate a point system for each criteria/parameter; on 29th November, 2007 it was clarified that weightage assigned to the parameters/criteria adopted by the schools should not be heavily loaded in favour of a few parameters only; vide subsequent order dated 6th December, 2007, it was further clarified that there would be no upper limit/cap for points assigned by the school to any one parameter;

(vii) that the schools preferred SLP(C) No. 246317-18/2007 to the Supreme Court against the judgment in LPA No. 196/2004 supra, vide interim order in which the operation of the Admission Order 2007 which required the schools to

obtain prior approval of the DoE before finalization of admission criteria, was stayed and it was directed that it will be sufficient if the admission criteria adopted by the schools was sent to the DoE;

(viii) that upon promulgation of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 and issuance of Guidelines dated 23rd November, 2010 thereunder permitting schools to frame their own policy for admission under the RTE Act, W.P. (C) No. 8533/2010 titled Social Jurist Vs. Govt. of NCT of Delhi was filed in this Court impugning the said criteria; vide judgment dated 19th February, 2013 wherein, the provisions of the RTE Act and the Guidelines were held to be not applicable to admissions being made to 75% general category students of private unaided schools and which admissions were held to be governed by the Admission Order 2007;

(ix) that the Supreme Court vide judgment dated 6th March, 2013 disposed of SLP(C) No. 246317-18/2007 supra in view of the Guidelines dated 23rd November, 2010 supra having been framed;

(x) that the Division Bench of this Court vide order dated 25th September, 2013 in W.P. (C) No. 2463/2013 titled Social Jurist, A Civil Rights Group Vs. Lt. Governor of National Capital Territory of Delhi requested the Hon"ble Lt. Governor to consider the representation of Social Jurist for amendment of the Admission order 2007 within twelve weeks;

(xi) that the Hon"ble Lt. Governor, Delhi vide CM No. 16832/2013 in disposed of W.P. (C) No. 2463/2013 sought extension of time for disposing of the representation supra by at least eight weeks stating that the minutes of the meeting of the Delhi School Education Advisory Board could not be finalized and education being a transferred subject, the aid and advise of the Council of Ministers for framing any new policy should be there and since new Government of Delhi was in the process of formation, it was desirable that no order be passed without the aid and advise of the new Council of Ministers; the said application was listed before this Court on 18th December, 2013 when the same was adjourned to 8th January, 2014;

(xii) that notwithstanding the Hon"ble Lt. Governor having sought time to dispose of the representation of Social Jurist for amendment of the Admission Order 2007 on the ground of the new Government of NCT of Delhi being under formation, on 18th December, 2013 itself, the impugned order amending the Admission Order 2007 was issued;

(xiii) that the GNCTD has in the various affidavits filed in the proceedings aforesaid accepted the autonomy of the recognized unaided schools under the School Rules as per the dicta in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others,

(xiv) that the Admission Order 2007 was issued after widespread deliberations pursuant to the directions of this Court in LPA No. 196/2004 including after

considering the recommendations of the Ganguly Committee and the Delhi School Advisory Board; per contra, the same has been amended vide the impugned orders solely by the Hon''ble Lt. Governor without any consultation with the stakeholders and without even consulting the experts and without even the statutory body Delhi School Advisory Board being consulted;

(xv) that while under the Admission Order 2007, the schools had the autonomy to fix whatever admission criteria they deemed appropriate within the prescribed norms, vide the impugned orders the autonomy of the schools has been taken away by prescribing fixed admission criteria heavily loaded in favour of "neighbourhood";

(xvi) that the Ganguly Committee had frowned on the criteria of "neighbourhood" and had prescribed the same only as one of the criteria;

(xvii) that if the admissions were to be based solely on the criteria of "neighbourhood", there would be no homogeneity left;

(xviii) that there is no reason for the Hon''ble Lt. Governor to within a few days, change his mind; while seeking extension of time for deciding representation for amendment of the Admission Order, 2007, he gave the reason of it being prudent to await formation of new Govt. of NCT of Delhi but then issued the impugned amendment order without even waiting for the government formation;

(xix) that the impugned order is thus without jurisdiction, in violation of the fundamental rights of the recognized unaided schools and their management and amounts to taking away fundamental rights by executive action;

(xx) that the admissions in pursuance to the Admission Order 2007 were going on smoothly for the past five years and there is no reason for tinkering with the same and if at all it was felt that any of the schools were violating the spirit of the Admission Order 2007, the remedy was to take action against them and not to amend the Admission Order;

(xxi) attention is also invited to paras 41 and 42 of Modern School Vs. Union of India (UOI) and Others,

(xxii) that there is no reason to change the admission criteria;

(xxiii) that the criteria for admission should be left to the schools, as long as the same is transparent;

(xxiv) that the DoE in the affidavit filed in the year 2008 in the Supreme Court in SLP(C) No. 24622/2007 titled Forum for Promotion of Quality Education for All Vs. Rakesh Goel also had taken the same stand as is being taken by the appellants herein and supported the Admission Order 2007 and the autonomy of the schools in the matter of admissions as laid down in T.M.A. Pai Foundation supra;

(xxv) that the respondents even if of the view that the Admission Order 2007 is

to be amended ought to hold widespread consultation as done earlier and consult the Delhi School Advisory Board;

(xxvi) that the Educational Institutions are entitled to the Management quota and which entitlement has been upheld in the various judgments of the Supreme Court; the said Management Quota has to be protected and cannot be done away with as has been done by the impugned orders;

(xxvii) that the orders dated 23rd November, 2010 and 15th December, 2010 of the Govt. of India, Ministry of Human Resource Development and of the Govt. of NCT of Delhi respectively also admit of each school formulating its admission policy identifying the various categories based on principles that are fair, just and reasonable;

(xxviii) that the Attorney General also in his written submissions before the Supreme Court in W.P. (C) No. 95/2010 titled Society for Unaided Private Schools in Rajasthan Vs. Union of India had contended that with respect to 75% of the general category seats, the schools can formulate a policy for admission which evolves fair, and transparent criteria on rational, reasonable and just basis;

(xxix) that if the selections were to be made only on the basis of "neighbourhood", it will place all the applicants at par making the selection random.

7. The senior counsels for the appellants on the ingredients of irreparable loss and injury and balance of convenience, have contended:

(a) that the impugned orders break the back of Educational Institutions and the child admitted by the schools in this academic year will remain with the schools for 14 years;

(b) that the impugned orders take away the constitutional right of the appellants;

(c) that the academic session commences only in the month of April each year and the admission process can be deferred/delayed for one month and the writ petition can be disposed of finally within such time and no prejudice will be suffered by anyone by so deferring the admission process;

(d) that when the members of the appellants are in law entitled to select the students for admission, their such right cannot be taken away;

(e) that there will be no injury to the State if the same criteria as prevalent for the last five years is continued for another one year till the writ petitions are disposed of;

(f) that unless the impugned orders are stayed, the appellants shall be forced to admit and accept students against their will;

(g) that the impugned orders are a direct attack on the autonomy of the schools;

(h) that there is no balance of convenience in changing the admission process

during the pendency of the writ petitions as the same cannot be reversed.

8. Per contra, the senior counsel for the Hon"ble Lt. Governor has contended:

(I) that the impugned orders deal with admission to pre-primary school i.e. at the age of 3 to 6 years;

(II) that the judgment of the Supreme Court in T.M.A. Pai Foundation supra has to be seen in the context of the facts thereof; the said judgment is of a pre RTE Act era;

(III) that the RTE Act statutorily recognizes the concept of "neighbourhood";

(IV) that thus the deprecation even if any, of "neighbourhood" being the sole criteria for admission in the recommendations of the Ganguly Committee, is today of no value;

(V) that even prior thereto under Rule 50(ii) of the School Rules, no school was entitled to recognition or to continue to be recognized unless it serves the real need of the "locality"; thus the concept of neighbourhood exists in the School Rules itself;

(VI) that the schools are not entitled to profiteer and Management Quota leads to profiteering;

(VII) that the respondents were vide judgment dated 19th February, 2013 of this Court in W.P. (C) No. 8533/2010 supra expressly directed to re-visit the Admission Order 2007;

(VIII) that merely because the Hon"ble Lt. Governor had sought extension of time for re-considering/re-visiting the Admission Order 2007, did not mean that he was denuded of the power to re-consider;

(IX) that the Hon"ble Lt. Governor on his own, without the Council of Ministers being in place also, was/is competent to pass the impugned orders and it cannot be said that the same are without jurisdiction;

(X) that in fact this Court, on 18th December, 2013 when the said application for extension of time was listed, informed of the decision having already been taken and it was for this reason only that instead of extending the time, the application was simply adjourned to 8th January, 2014;

(XI) that the neighbourhood criteria, of within 8 Kms. distance from the school, provided a catchment area of 150 sq. Kms. enabling the schools to admit any student from the said 150 sq. Kmts. area; the same thus did not amount to curtailment of freedom or autonomy of the schools which remains unaffected;

(XII) that merely because the school has become famous, it cannot be heard to say that it will admit students not from its neighbourhood but resident 25 Km away;

(XIII) that the order has been passed considering the welfare of the child which is distinct from the aspirations of the parents; if the children are admitted to schools far away, they have to travel long hours to and fro, to their detriment and are forced to wake up much earlier than if were to attend a school in the neighbourhood/vicinity of their residence;

(XIV) that the argument of the impugned orders interfering with the autonomy of the schools is illusory inasmuch as there is no interference with the syllabus, recruitment of teachers etc. of the schools which provides enough autonomy to the schools;

(XV) that in fact the definition of neighbourhood was changed from 6 Km. to 8 Km. after hearing the schools;

(XVI) that if any glitches are found in the admission criteria as now introduced, the same will be subject to change;

(XVII) that there is no loss lest irreparable loss to the appellants so as to call for any interim relief;

(XVIII) that the impugned orders are in the interest of the children.

9. The counsel for Social Jurist which got impleaded as a respondent in the writ petitions, has invited attention to Section 13 of the RTE Act prohibiting the schools from collecting any capitation fee and from subjecting the child or the parents or guardians to any screening procedure. Attention is also invited to para 28 of Society for Un-aided Private Schools of Rajasthan Vs. Union of India (UOI) and Another, laying down that the RTE Act is child centric and not institution centric and it is contended that the want of the parents to have the child admitted to a far away school is not to be considered and only the interest of the child is to be seen. Attention is also invited to paras 33, 36.3, 48 and 59 of the said judgment to contend that the right to establish and administer an educational institution is not an absolute right and is subject to the other constitutional provisions and that the emphasis and focus in T.M.A. Pai Foundation supra was institution centric and not child centric and that too in the context of higher education and professional education where the level of merit and experience have to be given different weightage and it is argued that merit is not a criteria while admitting a child of the age of 3 to 6 years. It is yet further argued that the only loss to the schools is of illegal earnings and which cannot be taken into consideration.

10. The senior counsel for the appellants, in rejoinder, have argued:

(A) that the Management Quota has been recognized in para 66 of P.A. Inamdar and Others Vs. State of Maharashtra and Others,

(B) that there is Management Quota in Guru Gobind Singh Indraprastha University of the Govt. of Delhi and is thus not a dirty word;

(C) that if any of the schools, acting under the Admission Order 2007 have

misused their liberty, action ought to be taken there against instead of taking away the autonomy of all the schools;

(D) that as per the information of the schools, the Delhi School Advisory Board had recommended the continuance of the Admission Order 2007 for the current year also;

(E) that the DoE in the affidavits in earlier proceedings had discouraged the lottery system;

(F) that there is no harm in allowing more weightage to certain aspects;

(G) that no instance of a single school which may have misused the Admission Order 2007 has been given;

(H) that the Hon"ble Lt. Governor ought not to have rushed to change the Admission Order 2007 passed after detailed deliberations;

(I) that while defending the challenge to the Admission Order 2007, the DoE had contended that the same protected the autonomy of the schools but now the said autonomy has been killed.

11. The senior counsel for the Hon"ble Lt. Governor has denied the argument that the recommendation of the Delhi School Advisory Board was for continuation of the Admission Order 2007 and has stated his instructions to be that the Board has suggested some changes on the same lines as have been carried out in the Admission Order.

12. The counsel for Social Jurist has invited attention to para 53 of Unaided Private Schools of Rajasthan observing that T.M.A. Pai Foundation and PA. Inamdar supra are in the context of professional/higher education where merit and excellence have to be given due weightage and which tests do not apply to admission to class I of schools.

13. Though we have for the sake of maintaining the record faithfully reproduced hereinabove the lengthy arguments addressed but it cannot be lost sight of that the hearing is on the aspect of grant/non grant of interim relief only and not for disposal of the writ petitions of which the learned Single Judge is still seized of.

14. We had as aforesaid at the beginning of the hearing only enquired from the senior counsels for the appellants that even if we were to agree with the appellants, of having a good prima facie case, does the same entitle the appellants to the interim relief, for the grant whereof, traditionally the ingredients of irreparable loss and injury and balance of convenience have also to be satisfied. The Courts in (See Prabhjot Singh Mand and Others Vs. Bhagwant Singh and Others, and Ramniklal N. Bhutta and another Vs. State of Maharashtra and others,) have added the ingredient of public interest also and have held that interim relief can be denied even if the other three ingredients are in favour of the seeker thereof, if the grant thereof would be against public interest.

15. Save for contending that non-grant of stay of impugned orders would interfere with the autonomy of the recognized unaided schools which exists in the matter of admission also and that the child so admitted would remain in the school for ten years, no other argument in this respect has been raised. When we further asked the counsels as to how the schools would suffer, if instead of one child, another child is admitted inasmuch as the fee and other charges chargeable by the school, would not be different, and more so when admission is not merit based and there is to be no screening, no answer has been forthcoming.

16. It thus appears that the argument of autonomy of the school being affected by admission of one child against another child, cannot be said to be causing any irreparable loss or injury to the school. It also cannot be lost sight of that the admission, if any, would be only of one batch of students i.e. for the current academic year. Upon the appellants succeeding in the writ petitions and which we are confident would be disposed of before the commencement of the admissions for the next academic year, the autonomy of the schools in the matter of admission, even if affected by the impugned orders, would be restored. It is not as if, it will be gone for ever like chastity. Conversely, if the writ petitions were to fail and the orders impugned therein were to be upheld, grant of stay would for all times to come affect those who under the impugned orders may be entitled to admission to a school and who would be denied admission, if the operation of the impugned orders were to be stayed. (We do not accept the contention that the balance of convenience is in favour of the appellants as the State would suffer no loss by the grant of interim order. The State has issued the impugned orders for the benefit of the citizens of Delhi and the Courts at the time of grant of relief, cannot be unmindful of the effect of the interim orders on the persons affected thereby. The Supreme Court in *Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd.*, took note of the loss to the public at large by the delays in completion of public projects like road construction etc. and negated the argument that none suffers therefrom). Thus, qua such admission seekers, the grant of interim relief sought would be the grant of final relief in the writ petitions inasmuch as such persons would not be seeking admission in the following years.

17. It is not as if, the principles for grant of interim relief in the proceedings under Article 226 of the Constitution of India are different than under the Civil Procedure Code.

18. The Supreme Court, in:

(i) *Deoraj Vs. State of Maharashtra and Others*, held that the Court could grant interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice;

(ii) *State of Uttar Pradesh and Others Vs. Ram Sukhi Devi*, deprecated the practice of grant of relief only for the reason of prima facie case having been

made out, without being concerned with balance of convenience, public interest and a host of other considerations;

(iii) *Bombay Dyeing and Manufacturing Co. Ltd. Vs. Bombay Environmental Action Group and Others*, held that before an interim order is passed, the courts must consider the question as regards the existence of a prima facie case, balance of convenience as also the question as to whether the writ petitioners shall suffer irreparable injury, if the injunction sought is refused and have to strike a balance between the two extreme positions viz., whether the writ petition would itself become infructuous if interim order is refused, on the one hand, and the enormity of losses and hardships which may be suffered if an interim order is granted, particularly having regard to the fact that in such an event the losses suffered by the affected parties thereby may not be possible to be redeemed;

(iv) *Zenit Mataplast P. Ltd. Vs. State of Maharashtra and Others*, reiterated that for grant of interim relief in proceedings under Article 226 of the Constitution of India, all the three ingredients of prima facie case, irreparable loss and injury and balance of convenience have to be satisfied.

19. Neither is the present such a case where non grant of interim relief pricks the conscience of this Court or in our view results in injustice to the appellants nor have the counsels been able to satisfy us of any irreparable loss to the appellants by denial of interim relief. Rather, the counsels have argued on the premise that mere satisfaction that there is a prima facie case is sufficient for grant of interim relief and which is not the correct position in law as recently reiterated in *Best Sellers Retail (India) Pvt. Ltd. Vs. Aditya Birla Nuvo Ltd. and Others*, also. All the ingredients governing the grant or refusal of interim relief must co-exist and mere existence of prima facie case does not ipso facto justify the grant of interim relief. An interim relief will not be granted even though the seeker thereof might have an unbeatable/invincible prima facie case, if the other ingredients are not satisfied.

20. There is another aspect of the matter. The impugned orders concern education which is largely a policy decision. The settled position in law is that interference by the Courts in academic/educational matters even at the final stage lest at interim stage is minimal. The Supreme Court recently in *All India Council for Technical Education Vs. Surinder Kumar Dhawan and Others*, reiterated that the Courts are neither equipped nor have academic or technical backgrounds to take decisions in academic matters and if the Courts start doing the same, it will lead to chaos in education. It was further held that if it is a question of educational policy or an issue involving academic matters, the Courts should keep their hands off. It was yet further held that the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by the persons authorized to do so and that the Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or

wiser alternative is available; legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review. Similarly, in *University Grants Commission Vs. Neha Anil Bobde* (2013) 10 SCC 519 it was held that in academic matters, unless there is clear violation of statutory provisions, regulations or notification issued, Courts should not interfere.

21. Applying the aforesaid principles, it is not the case of the appellants that the Hon'ble Lt. Governor was not authorized to issue the impugned orders. Merely because the Hon'ble Lt. Governor a few days prior to issuing the impugned orders felt that any decision in this respect should await the formation of the government, does not take away from his power to issue such an order. Section 16(3) of the School Act prescribes that admission to a recognized school shall be regulated by rules made in that behalf. Rule 145(1) provides that the head of recognized unaided school shall regulate admissions thereto either on the basis of admission test or on the basis of result. Though the schools on an earlier occasion as aforesaid, challenged interference in their admission process but unsuccessfully and which led to the issuance of the Admission Order 2007. The schools though today wanting to retain/continue the said Admission Order unsuccessfully challenged the same also till the Supreme Court. This is a classic example of "Mind wants change every time but it is unwilling to change any time" Thus, it is no longer *res integra* that the admission to recognized schools can be regulated as was done by the Admission Order 2007. There may have been certain more play/freedom given to the schools under the said Admission Order than is available under the impugned orders. However, the same does not take away from the legal position that the respondents are under the School Act and Rules authorized and empowered to regulate admissions to the school.

22. It has also not been argued by the counsel for the appellants that consultation with the Delhi School Advisory Board though statutory is mandatory before issuance of such an order. Thus, merely because the impugned orders do not record the same to be in consultation with the said Board, cannot also be a ground at least at this stage to stay the operation thereof.

23. We have also enquired from the senior counsels for the appellants as to how deprivation for admission through the Management Quota causes loss to the schools. The schools are not entitled to charge any capitation fee or any excess amount from the students admitted through the Management Quota also. Though Management Quota has been recognized in several judgments but in relation to admission to professional courses, where merit is a criteria. It is not so here. We are thus not satisfied of any loss lest irreparable loss to the appellants from being denied admission to 20% of the seats through Management Quota also.

24. We had during the hearing enquired from the senior counsel for the respondents, whether not the emphasis on neighbourhood is likely to lead to the applicants with the same points being much more than the seats available and how the admission would be governed then. The senior counsel replied that the

same will then have to be on the basis of lottery.

25. Though the senior counsels for the appellants, upon it being pointed out that the paragraphs relied upon of *Modern School supra*, are of the minority view, withdrew reliance on the said judgment but we may notice that the majority view in the said judgment also held that a balance has to be struck between autonomy of schools and measures to prevent commercialisation of education. The impugned orders appear to be a step in that direction. The Supreme Court in para 61 of the majority judgment in *T.M.A. Pai Foundation supra* has also observed that in schools, there is no merit based selection.

26. We may notice that Chapter XII of the School Rules containing Rules 131 to 145 deals with admission to recognized schools. Though Sub-rule (1) of Rule 145 provides that the head of every recognized unaided school shall regulate admissions thereto but Sub-rule (2) thereof makes the Rules 131 to 144 providing for admission to aided schools, applicable to unaided schools also subject to the provisions of Sub-rule (1). Rule 134 provides for admissions to be without any distinction of religion, race, caste, place of birth or any of them and Rule 144 enables the Director to issue instructions with regard to any matter not covered by any Chapter relating to admissions. The said two Rules appear to be not inconsistent to Sub-rule (1) of Rule 145 and to be thus applicable to recognized unaided schools also. Again *prima facie*, it appears that while the Admission Order 2007 contained the possibility of the school making distinction in the matter of admission, on the grounds prohibited under Rule 134, the amendments thereto prevent the possibility of such distinction/discrimination. Similarly, it appears that the DoE is empowered to issue instructions to unaided schools also relating to admissions thereto.

27. We therefore are of the view that the appellants have not been able to satisfy us of any irreparable loss and injury to them from the non-grant of the interim order sought.

28. We are further in agreement with the learned Single Judge that any interference at this stage would create confusion and would be detrimental to the interests of children as well as parents of the wards who are seeking admission. Significantly, the impugned orders are not challenged by the parents who appear to have welcomed the same. As aforesaid, the process for admission to the said schools has already been delayed and the date fixed of 15th January, 2014 for commencement thereof for the current academic year has also passed. Though the counsels for the appellants have argued that the writ petitions thus can be disposed of within a month's time but the said argument loses sight of the history of such litigations which are known to have on each aspect travelled upto the Supreme Court. Notice can be taken of the fact that though residences in Delhi are spread over the NCR region but the School Act and the Rules are applicable only to the Schools in Delhi and not to the schools in the areas of NCR situated in the State of Uttar Pradesh and Haryana. Notice can also be taken of the fact that the number of admission seekers is much more than the seats

available in the schools. The same leads to elaborate planning on the part of the parents of the children, for arranging for admission if not got in one school into another and any uncertainty in the rules of admission is likely to cause grave prejudice to the parents' body. We are thus of the opinion that the interim relief sought by the appellants does not pass the anvil of the fourth ingredient of public interest also.

29. Though undoubtedly the Hon''ble Lt. Governor issued the impugned orders without waiting for formation of the new GNCTD but the GNCTD, by defending the challenge to the impugned orders, has shown its support therefor.

30. We reiterate that we have had to give the aforesaid detailed reasoning only for the detailed arguments addressed before us even though in the absence of the counter affidavit of the respondents and we thus clarify that any observation herein would have no bearing on the final adjudication of the matter.

31. There is no merit in these appeals, which are dismissed. No costs. During the pendency of these appeals, the process of admissions was kept in abeyance. The GNCTD to now forthwith notify the new date for commencement of admission process.