

(2022) 09 DEL CK 0023

In the Delhi High Court

Case No : Civil Writ Petition No. 1901 Of 2015, Civil Miscellaneous Application
No. 3402 Of 2015

Birpal Singh

APPELLANT

Vs

Nutan Marathi Senior Secondary School & Ors

RESPONDENT

Date of Decision : 02-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 30, 30(1), 57(3), 226
Delhi School Education Rules, 1973 — Rule 10, 95, 96(3A), 97, 98
National Commissions For Minority Educational Institutions Act, 2004 — Section 2(f),
2(g), 10, 11(f), 57(3)

Citation : (2022) 09 DEL CK 0023

Hon'ble Judges : Chandra Dhari Singh, J

Bench : Single Bench

Advocate : Chandan Kumar, Romy Chacko, Sudesh K. Singh, Astha Gupta,
Shubham Singh

Final Decision : Dismissed

Judgement

Chandra Dhari Singh, J

1. The instant civil writ petition under Article 226 of the Constitution of India has been filed seeking appropriate writ, order, or direction for quashing the minutes of the Departmental Promotion Committee (hereinafter "D.P.C.") dated 19th December 2013, vide which Respondent no. 4 has been appointed as the Vice Principal of Nutan Marathi Senior Secondary School (hereinafter referred to as "School") on the recommendation of Respondent no.1 and Respondent no. 2.

FACTUAL MATRIX

2. The Respondent School is a government aided school under the Directorate of Education and is governed by the Delhi School Education Act and Rules, 1973 (hereinafter referred to as "DSEAR, 1973"). The Petitioner was appointed by the Selection Committee for the post of PGT (Maths) in the Respondent School on 15th July, 1994.

3. On 10th December, 2009, the post of the Vice Principal in the Respondent School fell vacant, as the then Vice Principal was promoted to the post of Principal. From December 2009 to May 2011, the post of the Vice Principal in the Respondent School was laying vacant. During this period, the Petitioner sent letters, representations, and reminders to the Respondents No. 1 to 3 to promote him to the said post. However, no decision was taken by the Respondent School regarding the promotion of the Petitioner to the said vacant post.

4. On 16th May, 2011, the office of the Respondent No. 3/Directorate of Education sent a letter to Respondent No. 1 and 2 directing the Respondent School to conduct the D.P.C. for the post of Vice Principal with effect from December 2009. On 21st January, 2012, a writ petition bearing W.P. (C) No. 502/2012 was filed by the Petitioner before this Court, wherein the Petitioner challenged the conduct of the Respondent School in not holding the D.P.C. for three years and praying for a direction in the nature of mandamus commanding the Respondents to hold the D.P.C. from 10th December 2009, when the post of Vice Principal fell vacant.

5. On 27th January, 2012, the Respondent School conducted D.P.C. meeting and the name of one Mrs. Binu Chaudhary was recommended for the post of Vice-Principal. The Respondent School also granted her relaxation in terms of Rule 97 of the DSEAR, 1973, as she was not a B. Ed. Degree holder in 2009, which was a requisite qualification for the said post, and appointed her on the post of Vice Principal.

6. On 16th November, 2012, the Respondent No. 3 vide its communication, rejected the said appointment of Mrs. Binu Chaudhary with retrospective effect as being in violation of Rule 97 of the DSEAR, 1973 and not being in accordance with the Recruitment rules. The communication dated 16th November 2012 was challenged by Mrs. Binu Chaudhary before this Court by way of filing W.P.(C) No 7562/2012.

7. On 1st November, 2013, both the W.P. (C) No. 502/2012 and W.P.(C) 7562/2012 came up for hearing and were jointly disposed of by the Coordinate Bench of this Court vide its common judgment dated 1st November, 2013, rejecting all the pleas and contentions raised by Mrs. Binu Chaudhary and directed the Respondent School to conduct a fresh D.P.C. within a period of six weeks for the post of Vice Principal with effect from December, 2009. The relevant portion of the order dated 1st November, 2013 is reproduced herein below: -

"In view of the above discussion, the writ petition being W.P.(C) No. 7562/2012 will stand dismissed. The communications of the Director of Education dated 19.10.2012, 8.11.2012, 16.11.2012 are upheld. The recommendation of the DPC dated 27.1.2012 for appointment of Ms. Binu Chaudhary as a vice-principal is illegal and hence quashed. The school in question M/s Nutan Marathi Senior Secondary School should now immediately conduct a fresh DPC within a period of

six weeks from today for appointment of a vice-principal w.e.f December 2009 in terms of the Director of Education's letter dated 16.5.2011. Accordingly, W.P.(C) No.502/2012 of Sh. Birpal Singh is allowed to the extent as stated above by directing conducting of the fresh DPC of the school and W.P.(C) No.7562/2012 of Ms. Binu Chaudhary is dismissed and interim orders passed by this Court in any of these cases will merge in the present judgment."

8. The abovementioned judgment by the Coordinate Bench of this Court has been challenged by Mrs. Binu Chaudhary in LPA No. 914/2013, which was dismissed vide order/judgment dated 17th March, 2016.

9. In pursuance of the directions given by the Coordinate Bench of this Court vide order/judgment dated 1st November 2013, the Respondent School conducted a fresh D.P.C. on 19th December, 2013 and the Respondent no. 4, Smt. Shubhada Bapat, was appointed as Vice Principal.

10. Aggrieved by the aforesaid decision of D.P.C., the petitioner herein has preferred this petition for quashing/setting aside of the minutes of D.P.C. dated 19th December, 2013.

SUBMISSIONS

11. Learned counsel appearing on behalf of the petitioner submitted that the name of the Respondent No. 4 has been recommended by the Respondent School for the post of Vice-Principal despite the fact that she is junior to the petitioner. The Respondent School took the ground that since it is a "Linguistic Minority Institution", therefore, Respondent No. 4 would be a better choice as she also belongs to the same "Linguistic Minority community".

12. It is vehemently submitted that the Respondent School is not a "Linguistic Minority Institution" and is just a Government Aided School with 95% of grant in aid coming from Respondent No. 3. It is further argued that the title of "Linguistic Minority Institution" has been adopted by the Respondent School without any recognition by any competent authority.

13. Learned counsel appearing on behalf of the petitioner submitted that under Section 2(f) of the National Commissions for Minority Educational Institutions Act, 2004 (hereinafter referred to as "NCMEI Act") for a community to be declared as "Minority", it has to be notified as such by the Central Government in the Official Gazette. Further, the said Act provides that under Section 2(g), "Minority Educational Institutions" can only be established and administered by a Minority duly notified by the Central Government in the Official Gazette.

14. It is further submitted that the Respondent School is not a "Linguistic Minority Institution" as it does not possess a "Minority" status certificate as granted by the Central Government under Section 10 of the NCMEI which is an essential element for any educational institution to enjoy the status of a "Minority Institution".

15. It is vehemently argued that the actions of the Respondent School are discriminatory and biased against the petitioner and it is apparent from the fact that on 27th January, 2012, a relaxation in terms of Rule 97 of the DSEAR, 1973 was granted by the Respondent School to a less qualified teacher i.e., Mrs. Binu Chaudhary. But, at that time also, being a senior most qualified person of the school the petitioner has been denied the opportunity for the post of Vice Principal. The appointment of Mrs. Binu Chaudhary has been cancelled by the competent authority as they found that the said appointment was contrary to the provisions of the DSEAR, 1973. Therefore, the order of the appointment of the Respondent no. 4 is bad in law, discriminatory and arbitrary in nature and is liable to be set aside.

16. Per Contra, learned counsel appearing on behalf of Respondent No.3/ Directorate of Education submitted that the Respondent No. 1 School is a recognized Linguistic Minority Aided school receiving 95% grant-in-aid from the Government of Delhi under the provisions of the DSEAR, 1973. The representatives/officials nominated by the Director of Education to the Selection Committee/D.P.C. of a minority aided school will act only as advisors and will not have the power to vote or actually control the selection of employees. It is submitted that the Directorate of Education has recognized the Respondent School as a "Linguistic Minority School."

17. Learned counsel appearing on behalf of Respondent No.3 further submitted that under Rule 98 of the DSEAR, 1973 and as per proviso to Sub-Rule (2) of the said Rule, the appointment of every employee in a minority aided school shall be made by its managing committee, which shall be the Appointing Authority thereof and shall not require the approval of the Director of Education.

18. It is further submitted that when D.P.C. was held on 19th December, 2013 by Respondent No.1 School to fill up the post of Vice-Principal, the nominees/officials of the Respondent no. 3 did not agree with the recommendations of the representatives/members of the Managing Committee of the Respondent No. 1 School, and were of the view that promotion to the post of Vice-Principal should be as per seniority amongst the eligible candidates as on December 2009, when the post became vacant. However, in accordance with Rules 95 and 98 of the DSEAR, 1973 and Memorandum dated 5th December, 2001 of the Directorate of Education, the representatives/officials nominated by the Director of Education to the Selection Committee/D.P.C. of a minority aided school will act only as advisors and will not have the power to vote or actually control the selection of employees.

19. Learned counsel appearing on behalf of the Respondents No. 1 and 2 submitted that pursuant to the order passed by this Court in W.P. (C) No. 502 of 2012 and W.P. (C) 7562 of 2012, a fresh D.P.C. was held by the respondent school on 19th December, 2013 and following candidates were considered by the DPC for the post of Vice Principal:-

- i. Mrs. Binu Chaudhary, PGT (Painting)
- ii. Mr. Birpal Singh, PGT (Maths)
- iii. Mrs. Shubhada Bapat, PGT (Hindi)
- iv. Mr. Gulshan Nagpal, PGT (Physics)
- v. Mrs. Aruna Pathak, PGT (Biology)

20. It is further submitted that after analysing the performance and track record of all the candidates and after discussion at length, D.P.C. unanimously recommended the name of Mrs. Shubhada Bapat for the post of Vice Principal, subject to the decision in LPA No.914/2013, pending before a Division Bench of this Court.

21. It is vehemently argued by learned counsel appearing on behalf of Respondents No. 1 and 2 that Respondent No.1 School is a Linguistic Minority School established and administered by the Linguistic Minority of Marathis and that the Department of Education has recognized the Respondent School as a Linguistic Minority School. It is further submitted that the Respondent School's name is also mentioned in the list of Minority Language Government Aided Schools issued by Department of Education. The Respondent School has already been declared a "Linguistic Minority Institution" by the State Government, therefore, the Respondent School is not required to approach any other forum for obtaining minority status.

22. It is submitted that as per Rule 96 (3-A) nominees of the Director of Education shall act only as advisors and they will not have the power to vote or actually control the selection of an employee. Under these circumstances, the selection has to be made by the representatives of the management in the Selection Committee and so any contrary opinion by the Government nominees has no relevance. It is vehemently submitted that there are no illegalities in the decision taken in D.P.C. held on 19th December, 2013. Hence, the instant writ petition is devoid of any merit and is liable to be dismissed.

FINDINGS AND ANALYSIS

23. Counter affidavit and rejoinder have been filed on behalf of the respective respondents and the petitioner, which are on record.

24. Heard learned counsel for the respective parties at length. At the outset, it is noted that in the background of the facts of the instant petition, two primary issues arise that need to be adjudicated by this Court:

- i) whether Respondent No.1 School is a "Linguistic Minority Institution" or not.
- ii) if so, whether representative of management in the Selection Committee can appoint staff of same linguistic minority bypassing the selection method of seniority.

25. It is evident that all the Respondents have taken a stance that the School is a "Linguistic Minority Institution", whereas the petitioner has vehemently opposed the same. The petitioner filed an application bearing ID No. 124 dated 4th April 2007 under the Right to Information Act, 2005, with the Office of Education-DDE (Central) seeking information with respect to the following questions: -

"1. Please provide me the name and the address of the competent authority who recognised the linguistic minority status to the school in Delhi.

2. Whether the Directorate of Education consider the Nutan Marathi Sr. Sec. School, (Govt. Aided) Paharganj, New Delhi as 'the Linguistic Minority'.

3. If yes, please provide me all the relevant approved document which confirmed the Linguistic minority status of the Nutan Marathi Sr. Sec School, (Govt. Aided) Paharganj, N. D. As per rule/guidelines issued by the above asked authority in point.

4. Latest approved scheme of management of Nutan Marathi Sr. Sec. School, (Govt. Aided) Paharganj, New Delhi-55 with the approval letter issued by Act branch, Date of Edn, Delhi."

The reply to the above-stated queries by the Office of Education was as follows: -

"1. No Separate status is provided for linguistic minority but it is the Scheme of Management (SOM) which is approved by the Directorate of Education. If SOM envisage the clause of linguistic minority then automatically the SOM is approved.

2. As per information on record in case of Nutan Marathi Sr.Sec. School, Paharganj, New Delhi , its SOM has been approved but there is no mention of Minority Status. Therefore, Nutan Marathi School, cannot be regarded as Minority Institution in respect of language or religion.

3. NA in view of point No. 2.

4. Copy of SOM provided by school is enclosed herewith."

26. The Respondent no. 3/Directorate of Education filed an additional affidavit in compliance of the directions of the Court vide order dated 10th September, 2018. The relevant portion of the said Additional Affidavit is reproduced below for proper adjudication of the issue no. 1 i.e. whether the Respondent School is a "Linguistic Minority Institution":-

"2. At the outset it is respectfully submitted that the Respondent/School is claiming that it is a linguistic minority school. In this connection it would be pertinent to refer the provisions of Rule 10 of Delhi School Education Rules 1973 which provide as follows:-

Rule 10. Any linguistic minority which intends to set up school with the object of imparting education in the mother tongue of such linguistic minority, shall be entitled to do so and shall be entitled to receive grant-in-aid if the other

conditions with regard to the grant -in-aid are fulfilled by such school:

3. It is further submitted that the powers of Hon'ble Administrator under rule 10 of Delhi School Education Rules are further delegated to Director of Education vide notification dated 4-09-2001.(ANNEXURE-R-3/1).

4. That, the Director of Education vide a notification dated 7-12-2001 had issued certain instructions to all the Religious and Linguistic Minority Schools functioning under the Directorate of Education and the name of Nutan Marathi Sr. Sec. School finds mention at Sl. 16 under District Central of the Directorate of Education, Govt of NCT of Delhi (ANNEXURE-R-3/2).

5. That, in pursuance of the Circular dated 7-12-2001 the Respondent No.1/ School is a Minority Educational Institution and the school is being considered as Linguistic Minority accordingly and accordingly the Answering Respondent had filed its counter affidavit in July 2015 and para 5 of the said affidavit states that the Respondent No. 1 School is a recognized Linguistic Minority Aided School receiving 95% Grant-in-aid from the Government of Delhi.

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7. It is also added that the Govt of India had enacted National Commission for Minority Educational Institution 2004 and the Commission has been empowered to issue a Minority Certificate to Minority Educational Institutions. The National Commission vide its order/judgement dated 3-5-2018 in the case of Gifted Education and Research (GEAR) Foundation vs the Commissioner Department of Public Instruction Govt of Karnataka has clarified as under:-

Para 6 The Central Government has notified 06 communities as Minority Communities viz Muslims, Christians, Sikhs, Buddhists, Zoroastrians (Parsis) and Jains. No Linguistic Minority has been notified by the Central Government till date. As such, only six minorities are covered under the NCMEI Act. It is crystal clear that the Linguistic Minorities are outside the purview of the Commission, as such, the Commission did not entertain any application from any Linguistic Minority and dismissed the petition on the sole ground.

8. That the Hon'ble Supreme court of India in the case of Sisters of St. Joseph of Cluny vs State of West Bengal & Ors in Civil Appeal No. 3945/2018 wherein has observed as under:-

Article 30 of the Constitution of India grants a Fundamental Right to all minorities whether based on religion or language to establish and administer educational institutions of their choice. The powers under Section 11 (f) read by itself would clothe the NCMEI with the power to decide any question that may rise with regard to the right to establish and/or to administer educational institution by a minority. The power does not stop there. It also includes the power to declare such institution as a minority educational institution which is established and administered as such, so that it can avail of the Fundamental Right guaranteed under Article 30 of the Constitution.

9. A bare perusal of the judgement would make it clear the NCMEI is the Competent Authority to grant certificate to Minority Educational Institution (Religious and Linguistic Both) but the NCMEI has not issued any certificate to any Linguistic Minority Institution so far by reason of the fact that none of the Linguistic Minority has been notified by the Central Government as Linguistic Minority.

10. It would be pertinent to state that prior to NCMEI Act 2004 there was no statute regulating the Minority Institutions and the DoE vide circular dated 7-12-2001 was considering certain schools as Minority on the basis of their apparent visibility.

11. In view of the facts stated above it is submitted that the DoE has no option except to abide by its own circular dated 7-12-2001 wherein Respondent No. 1/ School finds mention as a Linguistic Minority School at Sl. No. 16 of District Central..."

27. On perusal of the affidavit filed by Respondent No.3/Director of Education, it becomes apparent that the institution is listed as a "Linguistic Minority Institution" in its 'list of recognized institutions as Linguistic Minority' and is also considered so as per circular dated 7th December, 2001 issued by Respondent No. 3. Therefore, the Petitioner's version that the institution had never been given the minority status is not supported by the record available. Therefore, the answer of the issue no. 1 is affirmative.

28. The case of Respondent No. 1 School is that it is a Minority Institution and is therefore entitled to appoint its own teachers dehors the procedure applicable to other institutes governed by the Rules. The backdrop in which the Respondent-School is claiming to be a "Linguistic Minority Institution" is that Marathi speaking community is a 'linguistic minority' in the State of Delhi.

29. Learned counsel appearing on behalf of petitioner has vehemently argued that no recognition has been taken by the Respondent School from the NCMEI. As per the NCMEI Act, it is clear that the Commission is enforced to grant "Minority" status only to the Religious Minority Educational Institutions and not to "Linguistic Minority Institutions".

30. The arguments of the petitioner that for a community to be declared as "Minority" has to be notified as such by the Central Government in the Official Gazette and should possess a Minority status certificate as granted by the Central Government under Section 10 of the NCMEI is without any merit and has no force.

31. Article 30 of the Constitution of India upholds the rights of minority communities to establish and administer educational institutions of their choice. It ensures the rights of minorities which should be preserved. "Minority" as defined under Article 30(1) of the Constitution of India reads as under:

"All minorities, whether based on religion or language, shall have the right to

establish and administer educational institutions of their choice.”

32. The rights of Minority Institutions are protected under various specialized legislations and are also backed by assurance of enforcement. Being part of their rudimentary rights, the rights of Minority Institution are invested with sanctity and a position higher than that of the ordinary law and, consequently every legal provision or executive action must conform to the mandates implied for the welfare of the community.

33. The Hon’ble Supreme Court has observed in the case of T.M.A. Pai Foundation vs. State of Karnataka, (2002) 8 SCC 481, elaborating on the meaning and intent of Article 30 of the Constitution of India, the then Hon’ble Chief Justice further observed as follows:

“12. The real reason embodied in Article 30(1) of the Constitution is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is in the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separate. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole.”

34. The Hon’ble Supreme Court in the case of State of Kerala vs. Very Rev. Mother Provincial, AIR 1970 SC 2079 has observed and held as under:

"8. Article 30(1) has been construed before by this Court. Without referring to those cases it is sufficient to say that the clause contemplates two rights which are separated in point of time. The first right is the initial right to establish institutions of the minority's choice. Establishment here means the bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, founds the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection.”

35. In Secretary, Malankara Syrian Catholic College vs. T.Jose &Ors., (2007) 1 SCC 386, the principal question that arose for consideration was whether right to choose a Principal is part of the right of a minority institution under Article 30(1)

of the Constitution. The Hon'ble Supreme Court held that:

"19. The general principles relating to establishment and administration of educational institution by minorities may be summarised thus:

(i) The right of minorities to establish and administer educational institutions of their choice comprises the following rights:

(a) to choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;

(b) to appoint teaching staff (teachers/lecturers and Headmasters/Principals) as also non-teaching staff, and to take action if there is dereliction of duty on the part of any of its employees;

(c) to admit eligible students of their choice and to set up a reasonable fee structure;

(d) to use its properties and assets for the benefit of the institution.

(ii) The right conferred on minorities Under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-a-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation, etc. applicable to all, will equally apply to minority institutions also.

(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, Regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), Regulations to prevent exploitation or oppression of employees, and Regulations prescribing syllabus and curriculum of study fall under this category. Such Regulations do not in any manner interfere with the right Under Article 30(1).

(iv) Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/lecturers by adopting any rational procedure of selection.

(v) Extension of aid by the State does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State to ensure proper utilisation of the aid, without however diluting or abridging the right Under Article 30(1).

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27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognised as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by T.M.A. Pai [(2002) 8 SCC 481] . Having regard to the key role played by the Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/ Headmaster is also covered by State aid will make no difference.

28. The appellant contends that the protection extended by Article 30(1) cannot be used against a member of the teaching staff who belongs to the same minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers belonging to the same community, senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited to head the institution, provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions.

29. Section 57(3) of the Act provides that the post of Principal when filled by promotion is to be made on the basis of seniority-cum-fitness. Section 57(3) trammels the right of the management to take note of merit of the candidate or the outlook and philosophy of the candidate which will determine whether he is supportive of the objects of the institution. Such a provision clearly interferes with the right of the minority management to have a person of their choice as head of the institution and thus violates Article 30(1). Section 57(3) of the Act cannot therefore apply to minority-run educational institutions even if they are aided."

36. In N. Ammad vs. Emjay High School, (1998) 6 SCC 674, the Hon'ble Supreme Court has held as has been reproduced as under: -

"12. Counsel for both sides conceded that there is no provision in the Act which enables the Government to declare a school as a minority school. If so, a school which is otherwise a minority school would continue to be so whether the Government declared it as such or not. Declaration by the Government is at best only a recognition of an existing fact. Article 30(1) of the Constitution reads thus:

"30. (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice."

13. When the Government declared the School as a minority school it has

recognised a factual position that the School was established and is being administered by a minority community. The declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration. Therefore, we are unable to agree with the contention that the School can claim protection only after the Government declared it as a minority school on 2-8-1994.”

37. The notification/circular dated 4th September, 2001 issued by the Directorate of Education, Government of NCT of Delhi, reads as under:-

“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI

DIRECTORATE OF EDUCATION

OLD SECRETARIAT ; DELHI - 110054

No.F.DE/Act/27/PB/Delegation/2001/4863-92 Dated : 4-9-2001

CIRCULAR

Enclosed chart spells out the statutory powers of Director. Regional Directors, Deputy Directors and Education Officers.

All the concerned officers may please take note of this for necessary action.

(GYANENDRA SRIVASTAVA)

DIRECTOR OF EDUCATION

Ecl : As above.

All Regional Directors/

Deputy Directors of Education

Directorate of Education

Delhi

No.F.DE/Act/27/P3/Delegation/2001/

Dated :

Copy along with a copy of the chart referred to above for information to:

1. Secretary to Minister of Education, Govt. of NCT of Delhi.
2. PS to Secretary (Education, Govt. of NCT of Delhi).

(GYANENDRA SRIVASTAVA)

DIRECTOR OF EDUCATION

End : As above.

(1)

(2)

(3)

(4)

(5)

(6)

(7)

Rule 8(2)

Granting of permission to impart education in some or all subjects through the medium of any language other than Hindi at the Sr.Secondary stage.

The Administrator

The Director of Education

Regional Directors

Rule 8(3)

Opening of new classes, sections schools for imparting education in their mother-tongue to the students whose mother-tongue is not Hindi at the Sr.Secondary stage

The Administrator

The Director of Education

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Rule 10

Refusing permission to open aided minority schools if sufficient number of such schools are available.

The Administrator

The Director of Education

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Rule 10

Refusing to give aid to a linguistic minority school imparting education in a language other than the language of such linguistic minority

The Administrator

The Director of Education

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-

Rule 11(1)

Establishing Science Centres

The Administrator

The Director of Education

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Rule 11(2)

Making arrangement for sharing of facilities at the Science Centres

The Administrator

The

Director of Education

-

-

Rule 12(1)

Establishing workshops

The Administrator

The Director of Education

-

-

Rule 12(2)

Making facilities for sharing of facilities at the workshops

The Administrator

The Director of Education

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Rule 13

Providing adult education centres, Bal Kendras, Balwadis, education of drop-

outs and literacy

centres.

The Administrator

The Director of Education

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Rule 14

Providing for multiple entry of students in schools.

The Administrator

The Director of Education

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Rule 15

Provision of part- time education, functional literacy and adult education.

The Administrator

The Director of Education

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38. As per the aforesaid notification/circular dated 4th September, 2001 issued by the Directorate of Education, Government of NCT of Delhi, the Respondent School is recognized as "Linguistic Minority Institution". According to Rule 10 of the DSEAR, 1973, the Directorate of Education is the appropriate authority to allow the setting up of a "Linguistic Minority Institution". Therefore, there is no illegality in the aforesaid notification dated 4th September, 2001 issued by the Directorate of Education, Government of NCT of Delhi, recognizes the Respondent School as "Linguistic Minority Institution".

39. It is right to conclude that decision of appointment of a teacher is part of the regular administration and management of the school. A linguistic minority is entitled to conserve its language and culture by constitutional mandate.

40. With respect to issue no. 2, it is pertinent to reproduce Rule 97 and 98 of the DSEAR, 1973:-

"97. Relaxation to be made with the approval of the director: -

Where the relaxation of any essential qualification for the recruitment of any employee is recommended by the appropriate selection committee, the managing committee of the school shall not give effect to such recommendation unless such recommendation has been previously approved by the Director.

98. Appointing authority: -

(1) The appointment of every employee of a school shall be made by its managing committee.

(2) Every appointment made by the managing committee of an aided school shall, initially, be provisional and shall require the approval of the Director;

Provided that the approval of the Director will be required only where Director's nominee was not present in the Selection Committee/DPC or in case there is difference of opinion among the members of the Selection Committee:—

Provided further that the provision of this sub-rule shall not apply to a minority aided school.”

It is evident from the DSEAR, 1973 that management of a minority aided school is free to choose any person as the staff or the Head of the institution, provided he or she fulfils the qualification laid down by the State. As a result, issue no. 2 is decided in the favour of the respondents.

CONCLUSION

41. The emerging position is that once the management of the Minority Educational Institution makes a conscious choice of a qualified person from the “Minority community” to lead the institution, either as a Vice Principal or Principal, then Court cannot go into the merits of the choice or the rationality or propriety of the process of choice. In that regard, the right under Article 30(1) is absolute.

42. Every linguistic minority may have its own social, economic and cultural limitations. It has a constitutional right to conserve such culture and language. Thus, it would also have a right to choose teachers, who possess the eligibility and qualifications, as provided, without really being influenced by the fact of their religion and community and the same can be done by the process defined by the school management. Linguistic and cultural compatibility can be legitimately claimed as one of the desirable features of a linguistic minority in relation to selection of eligible and qualified teachers.

43. As per the discussions above, the Respondent School is “Linguistic Minority Institution” and therefore, the selection of Vice Principal made by the School is not contrary to the settled law. Therefore, there are no reasons to interfere in the impugned D.P.C. held on 19th December, 2013.

44. Due to the aforementioned observations and law laid down by the Hon’ble Supreme Court, this Court does not find any merit in the instant writ petition.

Accordingly, the instant writ petition stands dismissed.

45. Pending application also stands disposed of.

46. The judgment be uploaded on the website forthwith.