Parental choice wins

- *Prashant Narang*

In '*Forum for promotion of quality education for all v Lt. Gov. Of Delhi and Ors.*' Writ Petition no. 202 of 2014 (with WP 177/2014) decided on 28.11.2014, the learned Single Judge of the High Court of Delhi set aside the impugned office orders being violative of the fundamental right of the school management to maximum autonomy in day-to-day administration including the right to admit students as well as the fundamental right of children through their parents to choose a school.

By the said office orders, the Lieutenant Governor had directed that 75% nursery seats, i.e. after excluding 25% seats reserved for EWSD sections shall be admitted on the following basis:

- 70 marks for neighbourhood
- 20 marks for siblings
- 5 marks for parent/alumni
- And 5 marks for interstate transfers

ISSUE

Whether private unaided schools have the autonomy to admit students and the children through their parents have a right to choose a school in which they wish to study or whether the executive by way of an office order can impose a formula on the basis of which nursery admissions have to be carried out by such schools.

CONTENTIONS

The counsel for 'Forum for promotion of quality education for all' contended that freedom of schools/ tutor and child/ parent to choose one another constitutes autonomy of the school under Article 19(1)(g) and which needs to be preserved and protected under Article 21 of the constitution as well as Article 19(1)(a) and 19(1)(g). The impugned office orders are against public interest and contrary to principles of autonomy as enunciated in *TMA Pai Foundation and Others v. State Of Karnataka and Others* (2002) 8 SCC 481, as well as the Directive Principles Enshrined in Article 38 to 41, 45 and 46 and Fundamental Duties in Article 51A(9)(e), (j), (k) of the Constitution. He contended that the direct and inevitable result of the impugned neighbourhood rule was that now only the rich in the affluent localities would have exclusive access to good schools situated in the localities, whereas poor people staying in distant areas of Delhi stood excluded from the same. He also contended that the impugned office orders are also contrary to provisions of the Delhi School Education Act of 173 Delhi School Regulation Rules 1973 as well as RTE Act 2009. The impugned office orders over and above 25% reservation stipulated in RTE Act 2009 also provided for 5% staff quota and 5% girls quota as an additional/extra reservation contrary to Section 12 and 13 of RTE Act 2009. He also contended that the impugned office orders are in the breach of principles of natural justice and fair play as the Lieutenant governor has failed to give a hearing to all the stakeholders, at least to all those schools and associations who had been hurt by the Ganguly Committee.

Senior Counsel appearing for Action Committee Unaided Recognised Private Schools mainly contended that the impugned office orders are not only in violation of Rule 145 but also without jurisdiction as Section 3(1) and 16 of the DSE Act 1973 read with Rule 43 of the DSE Rules 1973 did not empower the administrator to overwrite Rule 145 which conferred power to regulate admissions upon the head of the recognised unaided school. Petitioners also stated that the neighbourhood concept had been considered and rejected by the Expert Ganguly Committee.

Neither any pleading were filed nor any arguments were advanced by the Social Jurist, though it had been impeded as a respondent on the first date of the hearing itself.

DECISION

The decision was based on three main arguments: (i) the admission guidelines violate autonomy of private educational institutions; (ii) office order is not a law under Article 19(6); (iii) neighbourhood criteria is contrary to parental choice. The Court held:

- Private unaided school managements have a fundamental Right under Article 19 (1)(g) to establish, run and administer their schools, including the right to admit students. Autonomy has also been recognised and conferred upon schools by Section 16(3) of the DSE Act 1973 and Rule 145 of DSE Rules 1973 which empowers the head of every unaided school to regulate admissions in the school or any class thereof. Right to establish an educational institution can be regulated, but such regulatory measure must in general be to ensure the maintenance of proper academic standards, atmosphere, infrastructure and prevention of maladministration by those in charge of the management. Right to impose conditions while granting recognition/affiliation cannot be used to destroy institutional autonomy. TMA Pai Foundation judgement is applicable to nursery admissions in private unaided non-minority schools. Article 21(a) and Article 15(5) of the constitution have no application to the present case.
- Restriction under Article 19(6) can only be by way of a law and not by way of an office order without any authority of law.
- There was no material to show that private unaided schools were indulging in any malpractice or misusing their right to admit students in pursuance to 2007 Notification.
- Except proviso to Section 12(1)(c), none of the other provisions of RTE Act 2009 apply to the nursery admission.
- Impugned office orders are contrary to guidelines issued by central government under section 35(1) of the RTE Act 2009.
- Section 3 of the DSE Act 1973 and Rule 43 of DSE Rules 1973 cannot be used to contradict or overrule a specific provision. Further Rule 15 of DSE Rules, 1973 cannot be interpreted to mean that the school has to be confined to the locality where it is situated.
- The point system introduced by the impugned office orders is neither procedurally proper not rational. No empirical study or mapping exercise was carried out with regard to availability of good quality schools in the neighbourhood of each colony. Even in the United States of America, the concept of neighbourhood school or distance does not apply to private unaided school. It applies only to public schools.
- Children through their parents have a fundamental right to choose school in which they wish to study under Article 19(1)a of the Constitution. Parental School Choice in its broadest sense

means giving parents the ability to send their children to the school of their choice. The school of choice often emphasise a particular subject or have a special philosophy of education. Also if parents are given freedom to choose the school that they prefer, good schools will attract more students and will expand whereas the not so good schools will lose the students and eventually close thereby schools will maintain their standards and will endeavour to raise their educational attainments in order to attract more students. Primary cause of nursery admission chaos is lack of adequate number good quality public schools. School choice gives families freedom to choose any school that meets their needs regardless of their location. This court is of the opinion that by increasing parental choice and by granting schools the autonomy to schools to admit students the autonomy of private schools could be ensured.

- Till the quality of all public schools is improved, the disparity between demand and supply will remain. This court was of the view that no office order or policy or notification or formula can resolve this disparity.

Social Jurist has filed an appeal before the Division Bench in the High Court of Delhi but this judgment has not been stayed.

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