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

Date of decision: 03rd JULY, 2023

IN THE MATTER OF:

\+ **W.P.(C) 5669/2023**

SOCIAL JURIST, A CIVIL RIGHTS GROUP ..... Petitioner

Through: Mr. Ashok Agarwal, Mr. Kumar Utkarsh, Mr. Manoj Kumar, Advocates

versus

GOVERNMENT OF NCT OF DELHI & ORS ..... Respondents

Through: Mr. Santosh Kumar Tripathi, Standing Counsel for GNCTD with Mr.Pradyumn Rao, Ms. Aakriti Mishra, Mr. Utkarsh Singh, Ms.Mahak Rankawat, Advocates for R-1 & R-2

Mr. Anurag Ahluwalia, CGSC with Mr.Tarveen Singh Nanda, GP for UOI

Ms. Avnish Ahlawat, Standing Counsel for GNCTD with Ms. Tania Ahlawat, Mr. Nitesh Kumar Singh, Ms.Palak Rohmetra, Ms. Laavanya Kaushik, Ms. Aliza Alam, Advocates for R-3

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SATISH CHANDRA SHARMA, CJ

1. The Petitioner, Social Jurist, A Civil Rights Group, is an organisation of lawyers and social activists has approached this Court by filing the instant

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Public Interest Litigation (PIL) for issuance of appropriate writ, order or direction directing the Respondents to expedite the finalization of Delhi School Education (Amendment) Bill, 2015, (*hereinafter referred to as* 'the Bill') which prescribes for prohibition of screening procedure in the matter of admission of children at pre-primary level (nursery/pre-primary) in schools.

2. It is stated that the Bill banning screening procedure in nursery admissions in schools, was prepared in the year 2015 and for the last seven years without any justification and against public interest, the Bill is hanging between Central Government and Delhi Government and is not being passed by the Respondents. It is stated that the delay in proceeding further acts contrary to the interest of children in the matter of admission to nursery/pre-primary in private schools and has resulted in arbitrary procedure being adopted by different schools in matters of admission of children at pre-primary level.

3. The Petitioner seeks to rely on the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (*hereinafter referred to as 'the RTE Act'*) to contend that in order to implement the provisions of the RTE Act, it was felt necessary to do away with the screening procedure for admission of children to nursery/pre-primary classes. It is stated that the Bill attempts to ensure that there is no discrimination amongst children in the matter of admission to the pre-primary classes and also endeavours to check commercialisation of education at the stage of admission of children to the schools.

4. The Petitioner states that in a reply dated 11.04.2023 from Respondent No.2 to a query under the Right to Information Act, 2005, it has

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been revealed that the Bill is pending between the State Government and the Central Government. The Petitioner also places reliance on a judgment of the Division Bench of this Court in Social Jurist, A Civil Rights Group v. Govt. of NCT of Delhi & Anr., **2013 (134) DRJ 529 (DB)**, wherein Division Bench of this Court has held that the Government must consider the applicability of the Right to Education Act to nursery classes as well.

5. The Petitioner also states that the Apex Court *vide* its Order dated 24.04.2023 in **W.P.(C) 333/2023** has held that the Governor must give assent to any Bill that is placed before him or return the Bill if it is not a Money Bill together with a message for re-consideration to the House or the Houses of the State Legislature and the expression given "as soon as possible" in Article 200 of the Constitution of India has a significant constitutional content and must be borne in mind by the constitutional authorities.

6. Heard learned Counsel for the parties and perused the material on record.

7. Article 196 to 201 of the Constitution of India deals with the legislative procedures regarding passing of Bills. Article 197 to 199 of the Constitution of India deals with Money Bills, which is not the subject matter of the present writ petition.

8. Article 200 of the Constitution of India deals with assent of bills, which reads as under:-

> *"200. Assent to Bills.- When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall*

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declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill."

9. Article 200 of the Constitution of India provides that when a Bill is passed by a State Legislature, it is presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds the assent therefrom or that he reserves the Bill for the consideration of the President for assent.

10. The proviso to Article 200 of the Constitution of India provides that if the Governor after the presentation of the Bill to him for assent, returns the Bill together with a message to the House/Houses for reconsideration of the Bill or any specified provisions thereof and, in particular, he can also

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consider desirability of introducing any such amendment as he may recommend in his message. Till the assent is not granted, the legislative process is not completed. It is well settled that Courts cannot issue a writ of *mandamus* to the Governor directing the Governor to pass the Bill and it is always for the Governor to give his assent or withhold his assent to any Bill however desirable the legislation may be.

11. The High Court of Allahabad in Chotey Lal v. The State of Uttar Pradesh & Ors., **AIR 1951 All 228,** has observed as under:-

> *"**15**. Article 200 of the Constitution lays down that after a bill has had a passage through both Houses of the Legislature of the State, it shall be presented to the Governor & that it shall be open to the Governor to declare at that stage that either he assents to the bill or that he would withhold assent therefrom or that he reserves the bill for the consideration of the President. What the Governor will do is a matter which is peculiarly within his discretion. So, in exercising it, he will no doubt feel bound to act on the advice of his Ministers. His constitutional advisers are the Chief Minister & the other Ministers who form the State Cabinet what is ordinarily termed "the Govt. of the day". Courts of law have no jurisdiction to enquire into or control the nature of the advice tendered by the Chief Minister or the Cabinet or a Minister to the Governor in regard to a proposed piece of legislation. This principle is so well established that no authority is needed in support of it.*
>
> *xxx*
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> ***19**.... In enacting Article 13(2) the Indian Constituent Assembly has merely laid down the limits to which legislation can go & does not authorise the Courts to*

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interfere with that, legislation before its will has been ascertained.

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***32**. As pointed out already, the limitation on the power of a Court to issue a writ or direction to a Legislature in connection with the tatter's proceedings arises from the provisions of the Constitution (Articles 105 & 194), & from the inherent powers possessed by the Legislature as discussed above. Legislative enactments which take away or abridge the rights conferred by Part III of the Constitution can only be declared void after they have been made & that is the only remedy in such cases for the enforcement of the rights conferred by Clause (2) of Article 13. I have no doubt that we have no power to issue the writ or direction prayed for."*

12. The Apex Court in State of Jammu & Kashmir v. A R Zakki & Ors., **1992 Supp (1) SCC 548**, has observed as under:-

*"**10.** In our opinion there is considerable merit in this submission. A writ of mandamus cannot be issued to the legislature to enact a particular legislation. Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation. Section 110 of the J & K Constitution, which is on the same lines as Article 234 of the Constitution of India, vests in the Governor, the power to make rules for appointments of persons other than the District Judges to the Judicial Service of the State of J & K and for framing of such rules, the Governor is required to consult the Commission and the High Court. This power to frame rules is legislative in nature. **A writ of mandamus cannot, therefore, be issued directing the State Government to make the rules in accordance with the proposal made by the High Court**."* (emphasis supplied)

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13. We agree with the view taken by the High Court of Allahabad. It is not proper for this Court to issue any kind of writ to the Governor and interfere in a legislative process whether to accept or reject a Bill within any timeframe. It is not proper for a High Court while exercising its jurisdiction under Article 226 of the Constitution of India to direct a Governor who is a constitutional authority to set a timeframe in matters which come purely within the domain of the Governor. In the considered opinion of this Court, even though the Bill has been passed by the House, it is always open to the Governor to agree or to send the Bill back to the House and this Court ought not to pass a writ of *mandamus* directing the Governor to act by passing a writ.

14. A perusal of the above judgments shows that after the Bill had a passage through the House of Legislature of a State, it is presented to the Governor and it is for the Governor to declare at that stage whether he gives assent or he withholds the assent or refers the Bill to the President for assent. What the Governor does is peculiarly within his discretion and, exercising his discretion, he cannot feel bound on the act and advice of his Ministers. Courts cannot control or interfere in this procedure and cannot direct the Governor or pass a writ to the Governor to grant assent or desist from granting assent. Article 200 of the Constitution of India within its fold indicates that the Governor must as soon as possible after the presentation of the Bill to him for his assent either return the Bill together with a message to the House/Houses to reconsider the Bill or any specified provision thereof.

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15. In view of the fact that *mandamus* as prayed for cannot be granted, the writ petition is rejected as not maintainable, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

JULY 03, 2023
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