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

+ **W.P.(C) 16498/2023**

APEEJAY EDUCATION SOCIETY REGD & ANR..... Petitioners

Through: Mr. Sanjeev Ralli, Sr. Adv. along
with Mr. Shubham Yadav and Mr.
Ravi Kant Yadav, Advs.

versus

MUNICIPAL CORPORATION OF DELHI & ORS..... Respondents

Through: Mr. Manu Chaturvedi, SC along with
Ms. Devika Singh Roy Chowdhury,
Advs. for MCD.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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16.02.2024

CM APPL. 9640/2024 (filed on behalf of petitioner for directions)

1. The applicant seeks *status quo* as regards construction of Fixed Compacting Transport Station ("FCTS") next to the Petitioner School.
2. It is noticed that an elaborate order was passed by this Court on 20.12.2023 whereby a *prima facie* opinion has been expressed in the following terms:-

"8. Having heard learned counsel for the parties, for the present, I do not consider it appropriate to grant an order of stay of construction of the FCTS facility. The issue of solid waste management in the city requires appropriate facilities to be constructed at various locations. In the present case, the fact that an open dhalao was existing near the petitioners' school is admitted in paragraph 20 of the writ petition itself, although it is contended that it was of a much smaller size than the proposed FCTS and somewhat further away from the entry gate of the school. The photographs reproduced above, *prima facie* show that the proposed FCTS facility would, in fact, be a more hygienic and environment friendly facility than the pre-existing dhalao.

9. The judgment of the NGT relied upon by Mr. Ralli appears to be



passed in the context of dumping enclosures/dhalaos. One of the contentions which found favour with the NGT was that the garbage is “likely to be retained for days together” at the site in question. In contrast, Mr. Chaturvedi states upon instructions from Mr. Rajeev Ranjan Jha, Executive Engineer, MCD, there would be no open garbage at the FCTS side, and that the entire compactor would be transported to the waste to energy site when filled, which is likely to be approximately three times a day. The adoption of FCTS facilities in place of open garbage dhalaos, thus prima facie appears to address this concern to some extent.”

3. Thereafter, the petitioner filed an LPA against the said order which was disposed of vide judgment/order dated 31.01.2024 in the following terms :-

“1. Present Letters Patent Appeal has been filed by the appellant-petitioner challenging the order dated 20th December, 2023 passed by the learned Single Judge in W.P.(C) No.16498/2023, whereby notice of the subject writ petition was issued but the learned Single Judge declined to grant any interim stay against construction of Fixed Compactor Transport Station ("FCTS") next to the appellants-school.

2. Learned senior counsel for the appellants states that the construction of FCTS ought to be stayed as it exposes students to serious health hazards and unhygienic conditions. He states that the FCTS site has been chosen without application of mind and by ignoring the norms under Development Code framed under MPD- 2021 and Construction Bye Laws 2016. He states that the learned Single Judge failed to consider the unhygienic, environmentally harmful and polluting site conditions which will prevail once FCTS in question becomes operational with a daily dumping capacity of about 10000 Kg. (approximate storage capacity of FCTS) of untreated municipal waste/garbage immediately adjoining the boundary wall of the appellants-school.

3. Learned senior counsel for the appellants points out that vide order dated 04th April, 2022 passed in WP (C) No.5529/2022 titled ‘Nadira Sarkar v. NDMC’, this Court had restrained the NDMC from setting or operating the FCTS facility.

4. Learned standing counsel for the MCD, who appears on advance notice, states that the respondents are only implementing Solid Waste Management Rules, 2016 and SDMC Solid Waste Management Bye-Laws, 2017. He states that the FCTS is being constructed at the same site where there exists a dumping site/open dhalao. He submits that the facts in the case of Nadira Sarkar v. NDMC (supra) are not similar inasmuch as in the said case, FSTC facility was being set-up within the school premises.

5. In rejoinder, learned senior counsel for the appellants disputes the fact that the FCTS is being erected at the same site where open dhalao



exists.

6. Having heard learned counsel for the parties, this Court is *prima facie* in agreement with the submission advanced by learned counsel for the MCD that the FCTS is being constructed in accordance with the Solid Waste Management Rules, 2016 and SDMC Solid Waste Management Bye-Laws, 2017.

7. This Court is also in agreement with the view of the learned Single Judge that the proposed FCTS would be more hygienic and environmental friendly than the existing open dumping site/dhalao, whether at the same place or in the immediate neighbourhood. Even otherwise, the construction of the FCTS at the proposed site is subject to further orders in the writ petition.

8. The order passed in the case of *Nadira Sarkar v. NDMC (supra)* is also distinguishable as in the said case, FSTC was proposed to be constructed within the school premises. In the present case, the proposed FSTC is being constructed outside the school premises.

9. Consequently, this Court finds no reason to interfere with the impugned order dated 20th December, 2023. Accordingly, the present appeal along with the applications is dismissed. However, this Court clarifies that its observations in the present appeal are tentative and the parties are at liberty to raise all their submissions and contentions before the learned Single Judge-who shall decide the same uninfluenced by any observation in this order.”

4. In view of the aforesaid, this Court is not inclined to grant any interim relief at this stage, particularly since there has been no change in circumstances warranting a different view.

5. It has already been clarified *vide* order dated 20.12.2023, that the construction of Fixed Compacting Transport Station (“FCTS”) at the proposed site will be subject to further order/s in the writ petition.

6. In the circumstances, the instant applicant stands dismissed.

CM APPL. 9641/2024 (filed on behalf of petitioner seeking to place additional affidavit on record)

7. This is an application filed on behalf of the petitioner seeking to place on record additional affidavit 13.02.2024 and annexure thereto.

8. Considering the averments made in the application, the same is



allowed.

9. The additional affidavit dated 13.02.2024 and annexures thereto, are taken on record.

10. Application stands disposed of.

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11. Counter affidavit is stated to have been filed on behalf of the respondent *vide* Diary No. E-440155/2024, however the same is not on record. Let the same be brought on record before the next date of hearing. A copy thereof be also supplied to the learned counsel for the petitioner.

12. Learned counsel for the petitioner is at liberty to file reply/response within a period of 4 weeks. Rejoinder thereto, be filed within a period of 2 weeks thereafter.

13. List on 20.03.2024.

SACHIN DATTA, J

FEBRUARY 16, 2024/AT