

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of judgment: 17.03.2009

+ W.P.(C) 7516/2009, C.M. No. 3562/2009

BABY ZAHRA

..... Petitioner

Through : Mr. S.D. Ansari, Advocate.

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through : Mr. Rajiv Nanda, Advocate.

Mr. Pradeep Mahajan, Advocate, for Resp. No.2.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers
may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be
reported in the Digest?

S.RAVINDRA BHAT, J. (OPEN COURT)

1. The petitioner claims to be aggrieved by an order made by the Directorate of Education on 06.03.2009 whereby his complaint that the admissions to the Mater Dei School, represented through the second respondent, was carried on in an opaque and non-transparent manner.

2. The facts briefly are that the petitioner applied for admission in K.G. (pre-primary) of the school. The latter indicated the procedure and after evaluation, the petitioner was selected for interview at S.No.162. She was called by the school along with her parents for interview on 14.01.2009 for scrutiny of documents. It is alleged that on 01.02.2009, when the petitioner's father went to school, he discovered that her name was not there. Being aggrieved, the petitioner had approached this Court on an early occasion through W.P. 6845/2009, relying upon a Government notification which had prescribed the procedure for admission to schools.

3. The representation was disposed of on 12.02.2009 stating that since the notification dealt with the procedure for admission to pre-nursery classes, the Court opined that the first

respondent, acting through the Directorate of Education should in the first instance, inquire into the matter and after considering the records and parties' contentions, issue such appropriate orders as were required in law.

4. Apparently, the Directorate of Education conducted an inquiry whereby it issued a Show Cause Notice on 25.02.2009 to the school. The school appears to have clarified and relied upon a certificate dated 13.02.2009 indicative of the fact whereby 166 candidates had secured same, i.e. 20 points as against 69 seats which were to be filled for the purpose. The total intake of the school at that level was 144; 40 earmarked for Christian minority, 25 allocated for siblings and 5 seats each for Management Quota and EWS Quota respectively. The balance available, therefore, is 69. The impugned order, after noticing the contentions of the petitioner as well as the explanation of the school recorded as follows:

"In the light of these facts, the school has requested that the draw of lots conducted on 31-01-2009 should not be set aside.

The school management and the petitioner were called in the office on 05-03-2009 at 10.00 AM. The school management intimated that a notice indicating date and time of draw of lots was put up on the notice board on 27-01-2009. They also submitted that the draw was conducted in fair and transparent manner. The petitioner submitted that the school management did not publicise the date and venue of the draw of lots.

On perusal of allegations, reply of the school and the guidelines issued by the Directorate, it is clear that the purpose of conduct of draw of lots in front of the parents was to ensure transparency in the process of draw of lots. The draw of lots was conducted by the Admission Committee, which comprises two parents from the school. The school conducted draw of lots in respect of 166 children having equal marks to pick up 69 children. It was clear that 97 children having equal marks could not get admission in the school. The school has already admitted all these selected children. The records and the circumstances do indicate that the draw of lots was conducted in fair and transparent manner. There is no reason to disbelieve the school management.

Since the draw of lots was held in the presence of two PTA members, who as representatives of parents must be relied upon to ensure that the draw of lots was held in the transparent manner, it can be inferred that there was no misconduct in the draw of lots held on 31-01-09.

In view of the above mentioned facts, I, Chandra Bhushan Kumar, Director of Education, uphold the selection of 69 children done through draw of lots on 31-01-09 in Mater Dei Convent School, Tilak Lane, New Delhi."

5. The petitioner contends through his counsel that the explanation provided by the school by issuance of the certificate is an after-thought and in any event contrary to the guidelines. It is contended that no transparent procedure was conducted, for determining who should fill 69 general/non-reserved vacancies whereby the concerned parents were never notified. Learned

counsel negated all the assertions in the certificate and submitted that the school's position was apparent from the fact that not 166 but 167 students had tied 20 points. It is apparent from the analysis of the selected candidates which has been produced as Annexure P-2 in these proceedings.

6. It is contended by the petitioner that the school, though an unaided minority one is still under an obligation to comply with the requirements of the admission notification which mandated a fair and transparent procedure, has violated the same by adopting an opaque and non-transparent procedure where parents were excluded from consideration of alleged procedure; was relied upon which found favour with the Directorate, the respondent school is in fact violating mandate of law.

7. The Court has considered the submissions and contentions. The Notification in this case was issued on 24.11.2007; it contains the *Recognized Schools (Admission Procedure for Pre-primary Class) Order, 2007*. It obliges the recognized schools to display information related to proposed admissions, by Rule 5. It also mandates that the schools shall use Standardized Registration Form prescribed in the rules. Rule 8 mandates that there should not be overall lottery system to select or shortlist a child. Rule 10 obliges schools to display four lists on the website and notice board on different dates, i.e. 1st February, for the first and second lists; 28th February for the third list and 15th March for the fourth list. Rule 19 outlines the functions of the Admission Committee, which includes conducting of draw of lots, if required, in a transparent manner in front of parents/guardians and all members of Admission Committee. Rule 22 stipulates every school to furnish a soft copy and hard copy of the information as per Clause 5 of the order duly signed by the Principal concerned, by 30th November presumably indicating the number of seats vacant and the manner in which they are offered.

8. A substantially similar order was notified on 27.10.2008. The only difference was that in the case of Rule 4 here mandated that there would be no overall lottery system to select/shortlist children provided that limited use of lottery system could be used in the case of a tie among applicants. Para/Rule 14 of the 2008 order is substantially similar to para 19(b) in as much as it empowered the Admission Committee to conduct the draw of lots "if required" in transparent manner in the presence of concerned parent, guardian and all members of Admission Committee.

9. In this case, the preceding narrative would show that out of a total of 144 seats available for admission, the unreserved quota was 69. Concededly, more than 69 candidates had been

shortlisted. 251 applicants had approached the school of whom it is alleged that 167 were shortlisted by the petitioner. The procedure adopted and found to be in accordance with the order by the respondents was that in order to determine who among the shortlisted candidates were entitled to be admitted to the 69 vacant seats, a draw of lots was conducted on 13.01.2009 by the Admission Committee. The school concededly did not involve the parents, as is apparent from the order. In that sense, the petitioner's grievance cannot be brushed aside. The question is whether non-involvement of the candidate's parents itself would invalidate the entire selection process by which 69 seats were filled.

10. The petitioner contends that the respondents' determination of eligible candidates, to be considered for 69 vacancies as 166 was an erroneous assumption and 167 such candidates were available. Perhaps, the petitioner is right on that front. However, the Court cannot be unmindful of the fact that the admission concerned an unaided school and that too, a minority school. The mandate of the order – which is not in the form of a rule is that a fair and non-arbitrary procedure has to be adopted. The school's point of view is that in order to resolve the tie among those eligible candidates exceeding 69, a draw of lots was conducted under the aegis of the Admission Committee which comprised of two members of the Parent-Teacher Association. The membership of the Admission Committee which conducted the draw of lots has also been indicated in the impugned order; independently a certificate dated 13.02.2009 has been produced. It discloses that there were two parent representatives and two management representatives. Keeping these considerations in mind, the Court is of the opinion that the irregularity – if one may choose to call it so – of not informing the parents; previously of the draw of lots and ensuring that presence has to be viewed in the larger context of the facts of the case. The Department has indicated that out of the 166 students who had secured a tie, none except the petitioner has approached the Court. This indicates that at least 96 of the parents of students of unsuccessful in the draw of lots were satisfied as to the fairness. That apart, order has to be seen from the overall point of transparency and rigid obligations; the Court is of the opinion that overall ends to ensure some semblance of transparency and fairness even while directing compliance with the right of the management to admit the students. Keeping these in mind the aspect of arithmetics, in the opinion of the Court would lead to the conclusion that the entire procedure was tainted. The acceptance of the petitioner's contention would lead to startling results whereby the entire admission process has to be set aside which would hardly be

in the public interest.

11. Taking the facts into consideration and in view of the above reasons, the relief claimed cannot be granted.

12. The writ petition and the accompanying application are accordingly dismissed.

**S. RAVINDRA BHAT,
JUDGE**

**MARCH 17, 2009
'ajk'**