

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

Date of decision: 5th August, 2010.

+ W.P.(C) 4953/2010 & CM No.9804/2010 (u/S 151 CPC for interim directions)

% KUMARI UZMA BANO & ANR. Petitioners
Through: Mr. Ashok Agarwal & Mr. J.B. Prakash, Advocates.

Versus

GOVT OF NCT OF DELHI & ANR. Respondents
Through: None.

AND

+ W.P.(C) 4954/2010 & CM No.9805/2010 (u/S 151 CPC for interim directions)

KUMARI GULAFSHAH & ANR. Petitioners
Through: Mr. Ashok Agarwal & Mr. J.B. Prakash, Advocates.

Versus

GOVT. OF NCT OF DELHI & ANR. Respondents
Through: None.

AND

+ W.P.(C) 4974/2010 & CM No.9831/2010 (u/S 151 CPC for interim directions)

KUMARI RAKHI JAIN & ANR. Petitioners
Through: Mr. Ashok Agarwal & Mr. J.B. Prakash, Advocates.

Versus

GOVT. OF NCT OF DELHI & ANR. Respondents
Through: None.

AND

+ **W.P.(C) 4986/2010 & CM No.9848/2010 (u/S 151 CPC for interim directions)**

KUMARI FIRDOS & ANR.

..... Petitioners

Through: Mr. Ashok Agarwal & Mr. J.B. Prakash, Advocates.

Versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: None.

AND

+ **W.P.(C) 5178/2010 & CM No.10236/2010 (u/S 151 CPC for interim directions)**

MASTER AMIR KHAN

..... Petitioner

Through: Mr. Ashok Agarwal & Mr. J.B. Prakash, Advocates.

Versus

GNCT OF DELHI AND ANR

..... Respondents

Through: Mr. Somdutt Kaushik, Adv.

AND

+ **W.P.(C) 5191/2010 & CM No.10250/2010 (u/S 151 CPC for interim directions)**

KUMARI BARKHA YADAV

..... Petitioner

Through: Mr. Ashok Agarwal & Mr. J.B. Prakash, Advocates.

Versus

GNCT OF DELHI AND ANR

..... Respondents

Through: Mr. Somdutt Kaushik, Adv.

AND

+ **W.P.(C) 5192/2010 & CM No.10251/2010 (u/S 151 CPC for interim directions)**

KUMARI HINA KHAN **Petitioner**

Through: Mr. Ashok Agarwal & Mr. J.B. Prakash, Advocates.

Versus

GNCT OF DELHI AND ANR **Respondents**

Through: Mr. S.Q. Kazim, Adv. with Mr. Alim Mizaj, Mr. Haris Usmani & Mr. Mukul K. Singh, Advocates for R-1.

AND

+ **W.P.(C) 5194/2010 & CM No.10253/2010 (u/S 151 CPC for interim directions)**

KUMARI RIZWANA **Petitioner**

Through: Mr. Ashok Agarwal & Mr. J.B. Prakash, Advocates.

Versus

GNCT OF DELHI AND ANR **Respondents**

Through: Mr. Nawal Kishore Jha, Advocate for R-1.

AND

+ **W.P.(C) 5195/2010 & CM No.10254/2010 (u/S 151 CPC for interim directions)**

KUMARI BALOON **Petitioner**

Through: Mr. Ashok Agarwal & Mr. J.B. Prakash, Advocates

Versus

GNCT OF DELHI AND ANR **Respondents**

Through: Mr. Nawal Kishore Jha, Advocate for R-1.

AND

+ **W.P.(C) 5197/2010 & CM No.10255/2010 (u/S 151 CPC for interim directions)**

MASTER MOHD FAZIL

..... Petitioner

Through: Mr. Ashok Agarwal & Mr. J.B. Prakash, Advocates

Versus

GNCT OF DELHI AND ANR

..... Respondents

Through: Mr. S.Q. Kazim, Adv. with Mr. Alim Mizaj, Mr. Haris Usmani & Mr. Mukul K. Singh, Advocates for R-1.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. These writ petitions, have been preferred complaining that the petitioner/petitioners in each of the writ petitions has/have approached the School impleaded as respondent no.2 in each of the writ petitions, for admission but has/have been denied admission. All the said Schools are recognized schools within the meaning of the Delhi School Education Act, 1973 and are Government Schools. In some of the cases, it is stated that the Principal/Head of the school has refused admission inspite of the recommendation of the respondent no.1 Directorate of Education.

Admission is sought in various classes, all in or under Class VIII, except four petitioners who are seeking admission in Class IX. While in some cases admission is sought by transfer from schools outside Delhi, in other on account of having left education in between and in yet other on account of earlier school being till a particular class only.

2. It is *inter alia* the case of the counsel for the petitioners that such denial of admission is in violation of The Right of Children to Free & Compulsory Education Act, 2009 (RTE Act). The said Act has been promulgated to provide for free and compulsory education to all children of the age of six to fourteen years. Section 3(1) thereof, vests in every child of the age of six to fourteen years, a right to free and compulsory education in a neighbourhood School till completion of elementary education. Elementary education is defined in Section 2(f) as education from first to the eighth class. School has been defined in Section 2(n) as a recognised school imparting elementary education, including a school established, owned or controlled by the appropriate Government or local authority or an aided school receiving aid or grant from Government or local authority or a school belonging to specified category or even an unaided school. Section 6 of the Act mandates the Government and local authority to establish within each neighbourhood, schools for carrying out the provisions of the Act and where such Schools are not there, gives a time frame of three years for establishment of such schools. Sections 8 and 9 deal with duties of

Government and local authority. Section 10 imposes a duty on parents and guardians to admit or cause to be admitted his/her child or ward to an elementary education in a neighbourhood School. Section 12 imposes an obligation on the School established, owned or controlled by Government or local authority with which we are concerned to provide free and compulsory elementary education to all children admitted therein. Section 14 provides for determination of age and Section 14(2) provides that no child shall be denied admission for lack of age proof.

3. Notices of the petitions were issued and since academic session has begun, to avoid delays, personal presence of concerned official of respondent no.1 Directorate of Education of Govt. of NCT of Delhi directed.

4. The Deputy Director of Education, Mr. B.D. Kaushik is personally present in the Court today. He states that none of the Govt. Schools will deny or have denied admission to any of the students seeking admissions in the said schools. The counsel appearing for the respondent no.2 Schools has also made a statement to the said effect. The counsel for the respondent no.2 Schools however states that in some of the cases, the Principals/Head of the Schools have required the petitioners/their parents to furnish the 'Transfer Certificate' and/or have sought to verify the said Transfer Certificate and which has led to a false impression of the schools denying admission.

5. Rule 139 of the Delhi School Education Rules, 1973 provides that no

student who had previously attended any recognized School, shall be admitted to any aided school unless he produces a Transfer or School Leaving Certificate from the school which was last attended by him.

6. The counsel for the petitioners contends that upon sweeping changes having been brought about by the RTE Act, the same would supercede any provision contrary thereto in the Rules aforesaid and admission cannot be denied by insisting on Transfer Certificate. In my opinion, such general proposition cannot be accepted. While the RTE Act is intended to ensure elementary education, it is the School Act & Rules which concern better organization and development of School Education. The provision for a Transfer Certificate in the Rules is intended for the aided school to which admission is sought to satisfy itself as to till what class the student seeking admission has studied and what was the result of the student for the class last attended. Moreover, I find that Section 5 of the RTE Act while providing for Right of transfer to other School, itself in sub Section (3) mandates the issuance of a transfer certificate though proviso thereto does away with the delay in producing Transfer Certificate as a ground for delaying or denying admission in other School. Thus it cannot be said that owing to the RTE Act, the Rule 139 for Transfer Certificate has become redundant or that the School to which admission is sought cannot demand a Transfer Certificate.

7. Rule 139(2) provides that where a student seeks admission to an aided

school on the basis of a Transfer Certificate granted by a school in any State or Union Territory other than Delhi, such Certificate is required to be sent for verification and countersignature of the Head of the school in which admission is sought, to the Education Authority of the district in which the School from which Transfer Certificate was obtained is situated. It further provides for provisional admission in the meanwhile. This Rule thus cannot be said to be contrary to the RTE Act. The Rule is also found to be intended for the School to which admission is sought, satisfy itself as to in which class the admission is to be granted.

8. It is thus clarified that the Schools to which the petitioners have sought admission though would be entitled to comply with the provisions of Rule 139 and seek verification of Transfer Certificate but in the meanwhile provisionally admit the child. If upon such verification, any ambiguity/discrepancy is found or clarification deemed necessary, the School shall intimate the parents of the petitioners concerned of the same in writing. If the said ambiguity remains or the Transfer Certificate submitted remaining unverified, the child shall be treated as one who has not previously attended any recognized school and dealt with as mentioned herein below.

9. The counsel for the petitioners has contended that in some of the cases the petitioners have not studied in any recognized or Govt. School. The provision with respect thereto is made in Rule 141 of the Delhi School

Education Rules, 1973. In such case the parent or guardian is required to give full history of the previous education of the child and to furnish an affidavit on non-judicial stamp paper duly attested to the effect that the child had not attended any recognized school till then. Though Sub Rule (2) of Rule 141 provides for the Head of the school to which admission is sought, to in consultation with the Zonal Education Officer arrange for a test in such cases to determine the suitability of the student for admission to the class in which the admission is sought, the counsel for the petitioner contends that Section 4 of RTE Act is contrary thereto and thereunder admission has to be granted to the child in a class appropriate to his/her age. The contention of the counsel for the petitioner is thus that even if the child aged about 13 years has not previously studied in any recognized school and seeks admission to say, Class-VII in which others of his/her age are studying, the School is obliged to admit the student to Class-VII only and not to any lower class. He further invites attention to the proviso to Section 4 of the RTE Act which provides for special training to be given to such students on admission in such class. The counsel further invites attention to Section 2(o) of the RTE Act defining “screening procedure” to contend that the holding of a test as provided for in Rule 141(2) (supra) would be a screening procedure which is prohibited under Section 13 of the RTE Act.

10. Section 2(o) defines the screening procedure as the method of selection for admission of a child, in preference over another. I am unable to

accept the contention of the counsel for the petitioners that the holding of a test as prescribed in Rule 141 (2) would be a screening procedure which is prohibited under the RTE Act. The test under Rule 141(2) is intended only to determine the class in which the student is fit to be admitted, depending upon his past learning and capacity to learn. The student while participating in the said test is only giving a test of his own ability and is not competing with any other child or for admission in preference over another. Rule 132 of the Delhi School Education Rules, 1973 also, while prohibiting test for admission, permits a test as in Rule 141(2).

11. In my view, admitting a child as aforesaid in Class-VII merely because others of his age are studying in that class even though he may not have the acumen or capacity to cope with course or curriculum of Class-VII would be contrary to spirit of the RTE Act of ensuring completion of at least elementary education for each child and rather detrimental thereto. If a child is unable to cope with the demands of a class to which he is admitted he is more likely to abandon his education.

12. The counsel for the petitioners however has rightly pointed out that if such a child is admitted to say Class-I, the same would also be equally detrimental inasmuch as a child of 13 years would be embarrassed in attending Class-I along with students much below his age.

13. The procedure provided in Rule 141(2) of the Head of the School to

which admission is sought in consultation with the Zonal Education Officer to assessing the class to which a child should be admitted is found to be appropriate. They will in such a test assess that the child is able to cope with the demands of the class to which he is admitted and is not embarrassed in front of his peers and remains interested in pursuing the education further; may be such a child can be admitted, if not to Class-VII, to Class-VI or Class-V.

14. The counsel for the petitioners however contends that if such an interpretation is taken, the first proviso to Section 4 of RTE Act will become redundant. In my opinion, no. Even though the child may be admitted to class below that in which others of his age are studying, the child is still likely to require the special training mentioned in the said proviso. I may also add that there does not appear to be any maximum age limit for admission to any particular class and the School Act or the Rules do not provide any class in relation to age. The counsel for the petitioners has rather shown the explanation to Rule 21 of the Recognized Schools (Admission Procedure for Pre-Primary Class) Order, 2007 which only provides the minimum age for admission and expressly provides that there is no bar for older children to getting admission for Pre-school Class or Pre-primary Class or Class-I. For this reason also it cannot be said that there is any law or Rule connecting a class to age. The expression “in a class appropriate to his or her age” in Section 4 of RTE ACT cannot be read as

“in a class to which others of his age are studying” and it shall remain open to the head of the School to which admission is sought to, in consultation with the Zonal Education Officer determine the Class to which such student should be admitted.

15. It is thus directed that qua the petitioners who are seeking admission to the respondent Schools without previously attending any recognized Schools, the Head of Schools, in exercise of powers under Rule 141 (2) and in consultation with the Zonal Education Officer shall assess the child to determine the suitability for admission in a particular class and in the light of what has been laid down hereinabove.

16. The counsel for the respondents has also contended that several of the petitioners instead of choosing the school in the proximity of their residence are seeking admission to distant schools. The counsel for the petitioners though controverts the same but states that if any other school closer in proximity is pointed out, admission thereto will be accepted.

17. The counsel for the petitioners has also stated that besides the petitioners herein, there are about 1000 other children who are also being similarly denied admissions. To prevent this Court from being inundated with similar petitions, the Deputy Director of Education present in the Court is directed to, upon being approached by such children, deal with them also on the same lines as discussed hereinabove. The counsel for the petitioners

further states that out of the aforesaid number, about 400 are children with disabilities. He further points out the judgment dated 16th September, 2009 of the Division Bench of this Court in W.P. (C) No.6771/2008 titled ***Social Jurist, A Civil Rights Group Vs. GNCTD*** wherein it was held “It is made clear that no disabled child shall be refused admission in any of the schools either run by the State Govt. or the local bodies”. The Deputy Director of Education states that such students shall also be dealt with in accordance with the said judgment of the Division Bench. I may also draw attention to the proviso to Section 3(2) of the RTE Act in this regard.

18. With the aforesaid directions, the writ petitions stand disposed of. No order as to costs.

Copy of this order be given *Dasti* under the signature of the Court Master.

**RAJIV SAHAI ENDLAW
(JUDGE)**

5th August, 2010
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