

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) No.2140/2011

% Judgment delivered on: 11th May, 2011

Master Shikhar Gupta Petitioner.

Through: Mr. Aditya Aggarwal, Adv.

versus

Govt. of NCT of Delhi & Ors. Respondents

Through: Ms.Sonia Arora, for respondent No.1
Mr.Kamal Mehta,for respondent No.2.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J. Oral

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1. By this petition filed under Articles 226 & 227 of the Constitution of India, the petitioner seeks direction to

direct respondent No.1 to forthwith provide admission to the petitioner in the pre-school for the academic year 2011-12. Petitioner also seeks directions to direct the Directorate of Education to take action against respondent No.1 in accordance with law on account of failure on their part for not holding the draw of lots in accordance with the laid down rules of the Directorate of Education.

2. The short point involved for adjudication in the present petition is that the petitioner applied to the respondent no.2 school for admission for the academic year 2011-2012 in the category of "alumni", but was not selected. The grievance of the petitioner is that the draw of lots by which selection was made was not conducted in the presence of the parents of the applicants and thus alleging that there has not been any transparency in the selection process. Feeling aggrieved by the act of the respondent no.2 school the petitioner has preferred the present petition.

3. Mr.Aditya Aggarwal, counsel appearing for the petitioner submits that respondent-school clearly violated Rule No.19 of The Recognized Schools (Admission Procedure

For Pre-Primary Class) Order, 2007 which clearly provides draw of lots to be held in a transparent manner in front of parents or guardian and all the members of admission committee. Counsel has also placed reliance on the subsequent order dated 27th October, 2008 passed by the GNCTD which reiterated the same rule. Counsel has further placed reliance on the guidelines issued by Directorate of Education to contend that the same process has been adopted by Sarvodya Vidyalaya School i.e holding the draw of lots in the presence of the parents and guardians. Counsel for the petitioner further submits that the petitioner had applied to seek admission in the nursery as well as pre-primary under the alumni category and so far the pre-nursery class was concerned, for 36 seats there were total 112 applicants and for 14 seats for pre-primary there were 56 applicants and, therefore, if the draw of lots was fairly conducted by the school then the petitioner stood a fair chance of being selected. Counsel also states that the petitioner had applied for the last academic session 2010-2011 also but was not selected by the school. The contention

of the counsel for the petitioner is that in the face of the policy guidelines issued by the respondent/Directorate of Education, the petitioner has a legitimate expectation that the draw of lots would be held in the presence of the parents/guardians. In support of his arguments, counsel for the petitioner placed reliance on the judgment of the Jammu and Kashmir High Court in *Vikas Jandial and Ors vs. State of J & K, 2004(3)JKJ 66*.

4. Opposing the present petition, Mr.Mehta, learned counsel appearing for respondents 2-school submits that it is not the case of the petitioner that he was not considered for admission in the said nursery and pre-primary school. Counsel also submits that the draw of lots was held in the presence of the members of the admission committee consisting of two parents, one nominee of the Directorate of Education NDMC and the Head Mistress of the School. Counsel further states that the draw of lots was conducted by the respondent-school strictly in terms of the policy guidelines issued by the Directorate of Education. The learned counsel has also produced order dated 15.12.2010

issued by the Directorate of Education and the last para of the same, as per the counsel, would clearly show that the previous admission guidelines issued were superseded. Mr. Mehta has also invited attention of this Court to Clause 8 of the Recognized Schools (Admission Procedure for Pre-Primary Class) Order, 2007 wherein it is clearly stated that that there shall be no overall lottery system to select/short list a child for admission and limited use of lottery may however be adopted in case there is a tie amongst applicants. Counsel thus submits that under the said policy also it was not that the selection of all the students was to be made through a draw of lots but only in a case where there was a tie amongst students. Counsel thus states that this Clause 19(b) has to be read with clause 8 and the same would be applicable only where there is a tie between two candidates. Counsel thus states that clause 19 does not provide the holding of draw of lots for the entire selection and that too in the presence of parents or guardians. Counsel further reiterates that the earlier orders of 2007 and 2008 also stand superseded as fresh guidelines were issued by the

Directorate of Education through order dated 15.12.2010, and now the school has the liberty to frame its own criteria in compliance with the guidelines laid down in the said order dated 15.12.2010.

5. Ms. Sonia Arora, counsel appearing for the Directorate of Education, respondent No.1 states that the latest guidelines were issued by the Directorate of Education, by the order dated 15.12.2010 and the same is applicable to the case of the petitioner. Counsel also submits that in the said order there is no requirement to issue any notice to the parents before holding draw of lots.

6. I have heard learned counsel for the parties.

7. The grievance raised by the petitioner in the present petition is that he had applied for admission in respondent no.2 school at the entry level/ pre school for the academic year 2011-2012, but he was not selected for admission in the category of 'children of alumni' for the academic year 2011-2012 and even his non-selection in the previous academic year 2010-2011 has been attributed by the petitioner to the alleged arbitrary conduct of the respondent

school. The conduct complained of by the petitioner is that the school did not send any intimation to the parents and guardians including that of the petitioner to hold a draw of lots in their presence. Such an act on the part of the respondent school has been dubbed as illegal, arbitrary and in violation of Rule 19 of the Recognized Schools (Admission Procedure for Pre-primary Class) Order, 2007-2008 and also the guidelines issued by the Directorate of Education. Counsel for the petitioner has taken a stand that the petitioner had a very fair chance of getting admission in the category of alumni either in the nursery class or pre-primary class as in the said category there were limited applicants.

8. During the course of arguments, the counsel has not denied the fact that the draw of lots for admission in the nursery and pre-primary level was held by the school and the same was held in the presence of members of the Admission Committee. Counsel has also not disputed the fact that in the Admission Committee there was due representation of the parents as there were two members representing the

parents of the students in the said committee. The counsel also has not disputed the fact that no other parents had raised any dispute so as to challenge the draw of lots held by the school to grant admission in the nursery and pre-primary level for the academic year 2011-12.

9. It is also not in dispute that the Order dated 15.12.2010 issued by the GNCT of Delhi, Directorate of Education would be applicable to govern the admission in the school for nursery and pre primary level for the academic year 2011-12. A perusal of the order dated 15.12.2010 issued by the Directorate of Education clearly reveals that the said order on admission guidelines supersedes the previous orders issued by the Directorate of Education on the same subject. In the face of this latest order dated 15.12.2010, the reliance placed by the counsel for the petitioner on the previous orders issued by the Directorate of Education in the year 2007-2008 will be of no relevance. Under this latest order for admission to 75% of the seats in the General Category each school was required to formulate its own policy and the criteria to be formulated by the

school should be in terms of the objectives of the school and the same can include sibling, transfer case, single parents and alumni. As per the said order dated 15.12.2010, each school was required to submit its own admission policy to the Directorate of Education which should be in conformity with the various guidelines as issued by the Directorate of Education vide their order dated 15.12.2010, which guidelines in fact are based on the guidelines issued by the Ministry of Human Resource Development, Government of India through their Circular dated 23.11.2010.

11. Based on the abovesaid order dated 15.12.2010, the respondent no.2 school formulated a policy where 20 percent of the seats were reserved for the children of the alumni, giving due consideration to double alumni and more than one generation alumni. It is however not the case of the petitioner that the respondent school has not conducted the draw of lots to grant admission in the nursery and pre-school level for the academic year 2011-2012. It is also not the case of the petitioner that the said draw of lots was not held in presence of members of the Admission Committee which

comprised of two representatives from the parents of the students. It is also not the stand of the petitioner that there has been any bias or prejudice against the petitioner of the respondent school due to which the petitioner was not granted admission. Thus, in the face of all these admitted facts it is difficult to accede to the contention of the counsel for the petitioner that the respondent school did not undertake the process of draw of lots in a transparent and fair manner.

12. It is undoubtedly true that the petitioner applied for two consecutive sessions in the alumni category hoping to get admission in the same school as his father studied. It is understandable that the parents want their children to get the same quality education and value system that they got from the same established educational institution, besides the emotional attachment that they have with their alma mater and consequently the schools also have a moral responsibility for the wards of their old students, for which this special category of alumni has been created. But to expect that the children of every alumni would get admission

in the school is a far fetched proposition and the petitioner cannot be allowed to seek relief alleging the whole process to be arbitrary and not in consonance with the guidelines issued in this regard. The right to education is undoubtedly a fundamental right of every citizen of the country today and no authority can deprive any child of the same, but at the same time it cannot also be used as a weapon to allege capriciousness or arbitrariness on the part of the school or other authorities.

13. In the light of the aforesaid, this court does not find any merit in the present petition and the same is accordingly dismissed.

May 11, 2011

KAILASH GAMBHIR, J