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

Date of decision: 24th May, 2012

+ **CM APPL. 6833/2012 (for directions) in W.P.(C) 8434/2011**

SOCIAL JURIST

..... Petitioner

Through Mr Ashok Agarwal, Advocate with Mr.
Khagesh B. Jha, Advocate.

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through Ms. Ruchi Sindhawani, Additional
Standing Counsel with Ms. Bandana
Shukla, Advocate for GNCT of Delhi.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

A.K. SIKRI, ACTING CHIEF JUSTICE

CM 6833/2012 (of the petitioner for directions) in WP(C) 8434/2011

1. This writ petition filed in public interest, for enforcement/implementation of certain facets of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act), was disposed of after issuing requisite directions and ensuring compliance thereof. Liberty was however granted to the petitioner to approach this Court again in case any of the

grievances survived or the directed remedial steps were not taken by the Director of Education (DOE).

2. One of the directions issued was to ensure filling up, before the commencement of the summer vacations, of the vacancy the 25% seats required to be reserved by each school for children belonging to weaker sections and Dis-advantaged group. The said time was subsequently, on application of DOE, extended to end of June, 2012.

3. The petitioner has now filed this application bringing to the notice of this Court the order dated 18.5.2012 of DOE. The said order defers the direction for filling up of vacant seats under the EWS and Dis-advantaged category in classes other than pre-school and pre-primary, till receipt of clarifications sought by DOE from the Ministry of Human Resource Development, Government of India. The counsel for the petitioner urges that such deferment would delay the admission to other classes, till beyond the beginning of the academic session and will lead to the seats remaining vacant for the current academic year.

4. The DOE in its status report dated 9.5.2012 filed before this Court had inter alia stated as under:-

“The two issues which have arisen after perusal of this data are:-

- (1) The proviso of Section 12(1) (c) have been found to be implemented in isolation without reading the main provision in many cases, thereby having the result that many schools have not ensured 25% EWS and Dis-advantaged group category seats at levels beyond pre-school upto class-1 for schools where pre-school is the first class of entry. The clarification on this issue is required.

- (2) The second issue is that whether the provision of 25% EWS and Dis-advantaged group category seats shall be on the strength of the class or new admissions only. This is because where 25% provision has not been adhered to in previous year and to make up for previous year deficiency, more than 25% provision will be required to be kept for admission to make the EWS & Dis-advantaged category strength at 25% of total seats for this academic year.

These issues are being referred to Ministry of Human Resources Development, Government of India and their opinion is being sought so that the RTE Act can be complied with in letter and spirit.

As regards, the EWS seats which were declared by the Private Schools to be vacant (with respect to which the earlier Status Report was filed), admission process is being carried out in a phased manner and Office Order 05.05.2012 was issued in continuation of Order dated 28.04.2012 and vacancies in respect of those 512 schools (6721 vacant seats) where the school starts from class 1 were displayed on 07.05.2012. The admission to pre-school and pre-primary classes for schools starting with pre-schools and pre-primary class respectively will be covered in the next phase. The admission process for other classes would be started on receipt of clarification from Ministry of Human Resources Development, Government of India.”

5. The counsel for DOE states that clarification has not been received from the Ministry as yet. She states that either direction be issued to the Ministry to expeditiously render the clarifications sought or this Court may clarify the position.
6. However, what we find is that the Union of India or the Ministry are not a party to this petition. It is thus not possible to give any direction in their

absence. However, to avoid any delays in admission we have ourselves heard counsels on the said aspect and deem it appropriate that this Court, to eliminate delays, renders the clarification which is immediately required.

7. The counsel for the DOE has drawn our attention to Sec. 12 of the RTE Act dealing with “Extent of school’s responsibility for free and compulsory education” under Chapter IV titled “Responsibilities of Schools and Teachers”. It is stated that Sec. 12(1) (c) read with Sec.2(n) of the RTE Act requires unaided schools not receiving any kind of aid or grant from the Government or local authority to admit children belonging to EWS/Socially Dis-advantaged Group to the extent of 25% in class 1st and if also imparting pre-school education, at the pre-school level; that such schools are interpreting the said provision to mean, that they are obliged to admit students belonging to EWS and Dis-advantaged Group at entry level only and not at any other level, even if making admission at any other level also; that clarification in this regard is sought from the Ministry.

8. Having regard to the provisions of the RTE Act read with Delhi School Education (Free Seats for Students Belonging to Weaker Sections and Dis-advantaged Group) Order, 2011, we are of the opinion that the first of the aforesaid issues on which clarification is sought, hardly calls for any clarification. Para 4(b) of the 2011 Order inter alia provides that the total number of seats at the entry level i.e., the nursery or the first class as the case may be, shall not be less than the total number of seats in any other class of the school.

9. Thus, as per the aforesaid provision, the admission in a school has to be

at one level only whether at pre-school, pre-primary or class 1st and the school is not entitled to increase the number of seats in any class beyond entry level. The aforesaid para 4 (b) is intended to prevent the unaided schools from defeating the provisions of RTE Act by restricting the number of seats available for admission at entry level, when reservation of 25% as aforesaid is provided, and making admissions in classes above entry level, at which stage no reservation is provided. The schools are thus required to reserve 25% of the seats for the EWS and Dis-advantaged Group category at the time of making admissions whether in pre-school, pre-primary or class 1st. Though the schools as aforesaid if admitting students at pre-school level are not entitled to make fresh admissions to any classes beyond that stage, but we clarify even if they are doing so they are again required to reserve for and admit the students belonging to EWS and Dis-advantaged Group category at that stage as well. We thus clarify:

- (a) Those schools which are imparting pre-school education shall provide for 25% admission to children belonging to EWS and dis-advantaged groups at pre-school level;
- (b) Those schools which do not have pre-school education and are admitting children in class 1 will provide 25% reservation to children belonging to weaker section and dis-advantaged groups at that level;
- (c) Those, schools which have pre-school education and are making fresh admission in pre-primary and class-1 will have to conform to 25% reservation at all levels wherever fresh

admission are there.

10. We would also like to point out that this interpretation given by us is in consonance with the judgment dated 12.4.2012 of the Supreme Court in Writ Petition (C) No. 95/2010 and the connected petition titled “*Society for Un-aided Private Schools of Rajasthan Vs. UOI.*”

11. As far as the second issue aforesaid is concerned, we are of the opinion that since there is no urgency to the same, it is best to leave it to the decision of the Ministry. We, however expect the Ministry to take up the matter at the earliest possible. DOE to communicate this order to the Ministry.

12. With this clarification, the apprehension expressed by the applicant is taken care of and the Director of Education shall be in a position to complete the admission process by 30th June, 2012, the date already fixed.

CM stands disposed of.

Copy of this order be given dasti to the learned counsel for the parties under the signatures of the Court Master.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

MAY 24, 2012

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