

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 9024/2011**

Decided on: 30.04.2012

IN THE MATTER OF

ARAAV PORWAL

..... Petitioner

Through: Mr. Pankaj Sinha, Advocate

versus

THE MOTHER INTERNATIONAL SCHOOL AND ANR.

..... Respondents

Through: Mr. Rakesh Agarwal, Advocate for R-1 and R-2/School.

Ms. Ruchi Sindhwani, Advocate with Ms. Bandana Shukla, Advocate alongwith Dr. Anand Singh Bisht, DEO, Zone-23.

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. This petition has been filed by the minor, Master Araav Porwal, through his father and natural guardian, Mr. P.S. Porwal, praying *inter alia* for directing respondents No.1 and 2/Mother's International School and respondent No.3/Director of Education, Govt. of NCT of Delhi, to implement the order dated 07.04.2011 passed by the Commissioner (Disabilities) on a complaint filed on 10.03.2011 regarding the non-admission of the petitioner, who is a hearing impaired child, in the Pre-Primary Class in the respondent No.1/school for the academic session 2012-13. The petitioner further seeks

directions to the respondents to grant him admission in the respondent No.1/school in accordance with law.

2. Briefly stated, the facts of the case are that the petitioner, Master Araav Porwal, being hearing impaired in both ears to the extent of 100% and thus a person with disability as defined under the Persons with Disability (Equal Opportunities, Protection and Full Participation) Act, 1995 (in short '**the Act**'), had applied through his parents to the respondent No.1/school on 05.01.2011 for admission in the Pre-Primary Class for the academic session 2011-12. It is an admitted position that the admission form issued by the respondent No.1/school is common to both, the general category as also the other categories, i.e., Economically Weaker Section (EWS) and students with disability. In the said form, enclosed as Annexure P-3 to the writ petition, in the column asking as to whether the applicant suffered from any disability, the answer given was in the affirmative and in another column asking as to whether the admission was sought in seats reserved for EWS of the society, the reply given was in the negative.

3. On 07.01.2011, the Director of Education, Govt. of NCT of Delhi, issued a Notification dated 07.01.2011 called the Delhi School Education (Free seats for Students belonging to Economically Weaker Sections and Disadvantage Group) Order, 2011. The definition clause of the aforesaid notification not only defines the term "child belonging to weaker section"

under Clause 2(c), but also defines the term "child belonging to disadvantaged group" under Clause 2(d). Some of the definition clauses are reproduced hereinbelow for ready reference :-

"2. Definitions – In this order, unless the context otherwise requires:-

- (a) **"Act"** means the Delhi School Education Act, 1973 (18 of 1973)
- (b) **"Class"** includes the entry level class such as pre-school or first class as the case may be.
- (c) **"Child belonging to weaker section"** means the child whose parents have total annual income of less than one lakh rupees from all sources and who have been staying in Delhi for the last three years.
- (d) **"Child belonging to disadvantage group"** means a child belonging to the Scheduled castes, the Scheduled tribes, the Other Backward classes not falling in the creamy layer, child with social needs and suffering from disability as defined in the Persons with Disabilities (Equal Opportunities, Protection and Full Participation), Act, 1996."

4. Clause 3 deals with free seats for students belonging to weaker section and disadvantaged group, and is reproduced hereinbelow :

"3. Free seats for students belonging to weaker section and disadvantaged group :

- (a) All Schools shall admit children in class one to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker sections and disadvantaged groups in neighbourhood and provide free and compulsory elementary education

till its completion : Provided that where such school imparts pre-school education, the provisions shall apply for admission to such pre-school education.

- (b) No separate or exclusive class or shift shall be arranged for imparting education to the students admitted against free seats mentioned in subparagraph (a).
- (c) No tuition fee or any other charges or fee or fund shall be charged from the student admitted against the free seat."

5. Clause 4 lays down the manner of admission against free seats.

Sub-clause (b) thereof is relevant and reads as below :-

"4. **Manner of admission against free seats** – (a) The school shall display the total number of seats, the free seats available at entry level, the date of submission of applications for admissions against free seats in entry level, the date(s) of display of list of eligible candidates for draw, date(s) of draw, date(s) of display of list of successful candidates, date(s) of display of waiting list, date(s) deposition of fees, last date of admission as per prescribed proforma **(Annexure-I enclosed)** on the notice board in the school and shall also notify the same to the concerned Dy. Director of Education by the **10th January, 2011 and thereafter by 31st December** of the year proceeding the academic year for which such admissions are being made.

- (b) Total number of seats at the entry level i.e. nursery or 1st Class as the case may be shall not be less than the total number of seats in any other class of the school."

6. Learned counsel for the petitioner states that despite the aforesaid order promulgated by the Govt. of NCT of Delhi, vide Notification

dated 7.1.2011, respondent No.1/school refused to grant admission to the petitioner under the "Disadvantaged Category". Consequently, on 1.3.2011, a Civil Rights Group submitted a representation on behalf of the petitioner to the respondent No.2, Principal of the respondent No.1/school, requesting her to consider the case of the petitioner for admission in Pre-Primary class in the academic session 2011-12 on the ground that his case had not been considered under the Disadvantage Category at all. As respondents No.1 & 2/School did not act on the representations made on behalf of the petitioner, a complaint was filed by the father of the petitioner in the Court of the Commissioner for Persons with Disabilities. The said complaint came to be decided by the Commissioner (Disabilities), vide order dated 7.4.2011, wherein it was observed that respondents No.1 & 2/school were under an obligation to admit the petitioner in the Disadvantaged Group in the light of the Notification dated 7.1.2011 and it was further observed that the representatives of the Department of Education, Govt. of NCT of Delhi, had also confirmed that they had separately written to the respondent No.1/school to admit the petitioner. Accordingly, the respondents No.1 & 2/school were directed to take necessary steps for the admission of the petitioner.

7. Upon receipt of the aforesaid order, respondents No.1 & 2/school dispatched a letter dated 13.4.2011 to the Commissioner (Disabilities)

stating *inter alia* that no such order could have been passed against an unaided private school under the Act and that the respondent No.1/school would take up the matter separately with the Director of Education, Govt. of NCT of Delhi, in accordance with law.

8. In the counter affidavit filed by the respondent No.3/Department of Education, Govt. of NCT of Delhi, it is stated that the department had written a letter dated 28.3.2011 (Annexure R-3/1) to the respondent No.1/school to admit the petitioner, which was followed by a letter dated 15.6.2011 (Annexure R-3/2) addressed by the Education Officer to respondents No.1 & 2/school enclosing therewith a copy of the order dated 7.4.2011 passed by the Commissioner (Disabilities), but instead of admitting the petitioner, respondents No.1 & 2/school wrote back a letter dated 8.7.2011 reiterating the stand taken by them before the Commissioner (Disabilities) that the Act was not applicable to unaided private schools.

9. As regards the stand of respondents No.1 & 2/school, it is averred in the counter affidavit that the petitioner had sought admission to the Pre-Primary class for the academic session 2011-12 under the general category and the admission criteria under the general category was on points basis and that the petitioner had secured only 30 points. It is further averred that the total number of seats that were available under the general category for Pre-Primary Class were 32. Out of 573 candidates, who had

applied in the general category, 28 candidates had secured 45 or more points as per the admission criteria and were admitted. Thereafter, 28 candidates had secured 40 points each. Since the number of seats available were only 4, the said remaining 4 seats were filled up by holding a draw of lots from the 28 candidates, who had secured 40 points each. However, the name the petitioner was not included in the draw of lots as he had secured only 30 points. Respondents No.1 & 2/school further stated that it has admitted 15 students in the category of EWS, and the name of the petitioner was not included in the said category as he had not made any request for admission under the said category. It is also averred that the entry level in respondent No.1/school is Pre-School level and not Pre-Primary level and that is another reason as to why the petitioner is not entitled to seek admission in the school in the Pre-Primary level.

10. Counsel for the respondents No.1 & 2/school states that in the next academic session 2012-13, the petitioner had applied for admission to Class-I in the category of Disadvantaged Group. In the said session, the total number of seats in the said category for Class-I were 10. Respondent No.1/school had received 26 applications against the 10 seats in the said category and it had admitted all the 10 candidates who had their residence within a radius of 1 Km. from the school, in accordance with the guidelines laid down in the Circular dated 13.2.2010 issued by the respondent

No.3/Director of Education, Govt. of NCT of Delhi. He submits that as the residence of the petitioner was not within a radius of 1 Km. from the school, he could not succeed in getting admission in the academic session 2012-13 as well.

11. On the last date of hearing, submissions were made by the counsel for the petitioner that while filling up the admission form and submitting it to the respondent No.1/school, the father of the petitioner had clarified that the admission of the petitioner was not being sought under the category of seats reserved for the "Economically Weaker Sections" of the society and he had also indicated that the child suffered from a disability as defined under the Act, and therefore he was automatically entitled for being considered under the 25% quota of seats reserved not only for the EWS applicants, but also for children belonging to Disadvantaged Group as defined under Clause 2(c) & (d) of the Notification dated 7.1.2011.

12. Taking into consideration the aforesaid stand of the counsel for the petitioner, the respondents No.1 & 2/school was directed to file an additional affidavit clarifying *inter alia* the criteria that had been adopted by the school for admission of the 15 children in the EWS category for the academic session 2011-12.

13. A perusal of the additional affidavit dated 25.4.2012 filed by the respondents No.1 & 2/school does not throw any light on the criteria that

was adopted by the school to fill up the 15 seats reserved under the EWS category. The only averment made in the affidavit is that the said 15 seats were filled up by holding a draw of lots from amongst the candidates who had applied for admission in the EWS category and upon scrutiny, it was found that 21 applicants met the eligibility criteria and accordingly their names were included in a draw of lots held on 10.2.2012. As per the result of the draw of lots held by the school, 15 candidates were declared successful for admission in the EWS category, whereas the names of the remaining six candidates were waitlisted. Out of the 15 successful candidates, one candidate did not come forward to take admission and resultantly the said seat was offered to a wait-listed candidate as per seniority. Thus, it is averred that the respondent No.1/school had admitted 25% candidates in the EWS category.

14. This Court has heard counsels for the parties and examined their respective submissions. There can be no ambiguity as to the manner in which free seats for students belonging to the EWS category and the disadvantaged groups to the extent of 25% of the strength of that class were required to be filled up by the respondents No.1 and 2/school for the academic session 2011-12. Further, the term, 'child belonging to weaker section' has been defined in Clause 2(c) and the term, 'child belonging to the disadvantaged group' has been separately defined in Clause 2(d) of the

aforesaid Notification dated 07.01.2011. In the light of the aforesaid definitions, respondents No.1 & 2/school cannot be heard to state that a child with special needs and suffering from a disability, as defined under the Persons with Disability Act, is not entitled for being considered under the disadvantaged group.

15. It is not denied by the counsel for respondents No.1 & 2/school that for the academic session in question, 25% of the strength of the Pre-Primary class was filled up by the school from the EWS category without giving admission to any child belonging to the disadvantaged group. The error, if any, in overlooking the contents of the application form of the petitioner lies at the door of the respondents No.1 & 2/school. It is not as if the admission forms for the general category students were different from those meant for students who had applied to the school in the category of weaker section or the disadvantaged group. The admission forms of the school are common to all. However, under the head of "Other Details" there are a number of columns, one of which pertains to students having any disability and another pertains to students claiming admission under the category of EWS of the society. The petitioner had duly filled up the former column by stating 'Yes' against the question as to whether the student had any disability. It was therefore incumbent upon the respondents No.1 & 2/school to have diligently perused the form and after scrutinizing the same

as per the rules applicable, taken necessary steps to include the name of the petitioner in the list drawn up for filling up 25% seats of the strength of that class and thereafter, hold the draw of lots. The application of the petitioner was not processed by the respondent No.1/school with due caution. Instead, the school has taken a stand that the application of the petitioner was considered under the general category, which itself is a clear admission of its mistake in failing to include his name in the disadvantaged group, when this information was available in the admission form of the child.

16. Further, for the respondents No.1 & 2/school to claim that the entry level in the school is Pre-School level and not Pre-Primary level, by seeking to rely upon Clause 4 (b) of the aforesaid Notification, would not be of any assistance for the reason that even as per the school, it had carved out 25% of the strength of the Pre-Primary level class and had admitted in the said class, students from the EWS/disadvantaged group. Having done so, the respondents No.1 & 2/school cannot invoke the provisions of Clause 4(b) of the Notification dated 7.1.2011 to claim that "entry level" means nursery or 1st class. Rather, the Court has been informed by learned counsel for respondents No.1 & 2/School that the school had decided to carve out 25% of the strength, not only at the Pre-School level but also at the Pre-Primary and at the Class-I level, for admitting students belonging to the EWS/disadvantaged group.

17. The last objection taken by the respondents No.1 & 2/school is with regard to the maintainability of the petition on account of delay on the part of the petitioner in approaching the Court. Learned counsel contends that the present petition was filed by the petitioner as belatedly as on 20.12.2011 whereas the academic year had commenced much earlier and, therefore, the same ought to be dismissed on the ground of delay and laches.

18. The delay in approaching the Court has been well explained by learned counsel for the petitioner, who submits that the father of the petitioner had initially approached the respondents No.1 and 2/school directly but having failed to elicit any response from the school, he was compelled to approach the Commissioner (Disabilities) for appropriate relief and even though, respondent No.1/school had participated in the said proceedings, it failed to implement the order dated 7.4.2011 passed by the aforesaid authority by granting admission to the petitioner in the Pre-Primary class.

19. To top it all, respondents No.1 and 2/school did not pay any heed to the advice given by the respondent No.3/Director of Education, Govt. of NCT of Delhi, calling upon it to consider the case of the petitioner and submit an action taken report. This was followed by an order dated 15.6.2011 passed by the Director of Education requiring the respondent

No.1/school to submit a status report as to the action taken by it pursuant to the order dated 7.4.2011 passed by the Commissioner (Disabilities) and if not, the reasons for non-compliance thereof.

20. Instead of complying with the directions of the Commissioner (Disabilities), the respondents No.1 & 2/school took an obdurate stand that the provisions of the Act were not applicable to unaided private schools. This stand is belied upon a perusal of Clause 2(d) of the Notification dated 07.01.2011, whereunder the term, "child belonging to the disadvantaged group" includes children belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes not falling in the creamy layer, and children with special needs and suffering from disability as defined in the Persons with Disability Act, and Clause 2(g) defines the word "School" to mean as school as defined under Section 2(n)(iii) and (iv) of the Right to Education Act, 2009 and the respondents No.1 and 2/school clearly falls in the said definition. The delay on the part of the petitioner in approaching the Court is therefore well explained and found to be for just and sufficient reasons. In any case, unlike civil proceedings, in writ proceedings, each and every day's delay is not to be explained by the petitioner as long as the Court is satisfied that the petitioner has approached the Court within a reasonable period and the delay is condonable. Therefore, there is no reason whatsoever to non-suit the petitioner for allegedly approaching the Court

belatedly, more so, when the respondents No.1 & 2/school has adopted a recalcitrant stand of refusing to grant admission to the petitioner in the teeth of the directions issued by two authorities, i.e., Commissioner (Disabilities) and respondent No.3/Director of Education, Govt. of NCT of Delhi and has remained in a denial mode even during the present proceedings.

21. The approach of the respondents No.1 and 2/school flies in the face of the very aim and object of the Right to Education Act, 2009 and the Delhi School Education (Free seats for Students belonging to Economically Weaker Sections and Disadvantage Group) Order 2011 and its conduct amounts to frustrating the rightful aspirations of children like the petitioner herein, who is disabled being 100% hearing impaired and whose parents had expressly stated in the admission form that they had sought the admission of their ward in the category of "children belonging to the disadvantaged group". If there was any oversight in processing the petitioner's application, then it was purely attributable to the respondents No.1 and 2/school and none else. The blame lies squarely at the door of the respondents No.1 & 2/school and it cannot be permitted to shirk its responsibility now and seek refuge in the argument that the academic year in question having passed, the petitioner cannot be granted any relief in this petition which has been rendered infructuous. The aforesaid stand of the school if accepted, would make a mockery of a well intentioned beneficial

piece of legislation and undo all the good that is intended to be achieved through it.

22. The Court would have appreciated if even in the course of the present proceedings, respondents No.1 & 2/school would have shown some grace and conceded that having erred in misinterpreting the Notification dated 7.1.2011 and failing to consider the petitioner in the category of the disadvantaged group, it was willing to make amends by offering to admit the petitioner in Class-I in the academic session 2012-13. But no such gesture has been made by the School. Instead, it has chosen to stick to the same stand as taken by it before the Commissioner (Disabilities) and respondent No.3/Director of Education, which remains unsubstantiated in law.

23. It also does not lie in the mouth of the respondents No.1 & 2/school to first refuse to implement the mandate of the Act and the Rules framed thereunder and then raise a specious plea of delay and laches when the school is itself responsible for failing to act as per law and thereafter refusing to implement the directions issued to it by two authorities. Having discussed the merits of the case as above, it is observed that the Court is not persuaded by any of the submissions made on behalf of respondents No.1&2/school to justify declining admission to the petitioner. Nor has the passage of time made the present petition infructuous. It is therefore, deemed appropriate to mould the relief sought by the petitioner by allowing

the present petition and directing the respondents No.1 & 2/school to grant admission to the petitioner in the academic session 2012-13 in Class-I. As the studies in class-I have commenced from 2.4.2012, the respondents No.1 & 2/school is directed to communicate the requisite formalities to be completed by the parents of the petitioner within a period of one week from today. Upon completion of the said formalities, the petitioner shall be admitted to Class-I by the respondents No.1 and 2/school within one week therefrom.

24. The petition is allowed with costs of ₹10,000/- imposed on the respondents No.1 & 2/school, which amount shall be adjusted in the school fee to be deposited by the petitioner at the time of his admission. Only after adjusting the costs from the school fee, shall the respondents No.1 & 2/school be entitled to demand any further amounts from the petitioner towards the school fee or on any other head.

APRIL 30, 2012
rkb/sk/anb

(HIMA KOHLI)
JUDGE