

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

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Date of Decision: 19.08.2013

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W.P.(C) 5172/2013 & CM 11625-26/2013

BIRLA VIDYA NIKETAN SCHOOL & ANR

..... Petitioner

Through: Mr. A.K. Singla, Sr. Adv. with Mr. Deepak R.
Dahiya, Advs.

versus

GOVT. OF NCT OF DELHI & ANR

..... Respondents

Through: Ms. Zubeda Begum, Standing Counsel for
respondents

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The only issue involved in this petition is as to whether for the Academic Year 2013-14, the petitioner was required to admit 75 students or it could admit 44 students, as has been done by it, in the category of the children belonging to EWS/Disadvantaged Groups.

Vide notification number F.15(172)/DE/Act/2010/7792-7806 dated 28.2.2012 issued in exercise of the powers conferred by the sub-section (1) of Section 3 of the Delhi School Education Act, 1973 (18 of 1973) read with rule 43 of the Delhi School Education Rules, 1973 and under the provisions of Right of Children to Free and Compulsory Education Act, 2009, the Lt. Governor of the National Capital Territory of Delhi is amended the Delhi School Education (Free Seats for students belonging to Economically Weaker Section and Disadvantaged Group), 2011. The amended order provided that the 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 highest number of seats in the entry class in the previous three academic years. Thus, in view of the mandate of the said order, the number of students, to be admitted to the entry level class in a school in Delhi, during the academic year 2013-

2014, could not be less than highest number of seats at the entry level in the years 2010-2011, 2011-2012 and 2012-2013.

2. The petitioner before this court admitted 300 students at the pre-school level for the year 2010-2011. Therefore, the petitioner was required to admit 300 students at the entry level, for the academic year 2013-2014. The petitioner, however, admitted only 175 students for the academic year 2013-2014.

3. In exercise of the powers conferred by sub-section (1) of section 3 of the Delhi School Education Act, 1973 (18 of 1973) read with rule 43 of the Delhi School Education Rules, 1973 and under the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and in supersession of Order No.F/DE/15/ACT/2006/424 dated 25.1.2007 or any other order issued in this regard, the Lt. Governor of NCT of Delhi made an order called Delhi School Education (Free Seats for students belonging to Economically Weaker Sections and Disadvantaged Group), Order, 2011. The said order to the extent it is relevant reads as under:

‘(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.

Xxx

(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.

Xxx

8. The schools providing free and compulsory elementary education under Right of Children to Free and Compulsory Education Act, 2009 shall be reimbursed by the Government to the

extent of per-child-expenditure incurred by the State Government and Local Authorities or the actual amount charged from the child, whichever is less, as per section 12(2) of RTE Act, 2009.”

4. The petitioner was thus required to admit 25% students from EWSs/Disadvantaged Group, meaning thereby that it had to admit not less than 300 students out of which 25% i.e. 75 were necessarily to belong to EWSs/Disadvantaged Groups. However, the petitioner admitted only 175 children for the academic year 2013-2014, out of which 44 seats were provided to the students coming from EWSs/Disadvantaged Group, so as to give 25% of the total intake to such categories.

5. Vide order dated 17.7.2013, the Education Officer in the Office of Directorate of Education referring to the notification dated 28.2.2012, directed as under:

“Total number of seats at the entry level i.e. Nursery or class-I as the case may be, shall not be less than the Highest number of seats in entry class in previous three academic years” previous three academic years and as per your undertaking dated 10.4.2013 maximum no. of seats in class I (Entry Level) is reflected 300 in Academic session 2010-2011. Being 300 the maximum no. of seats during the last three sessions (2010-2011, 2011-2012, 2012-2013) 25% free seats (EWS/Disadvantage) is worked out as 75).

As per your understanding only 44 students have been given admission under free seats in class Pre-Sch. so there are 31 vacant seats available for EWS/Disadvantaged Group.

District South has received 86 registration forms for class pre-Sch-(Entry level) in respect of your school which are enclosed for carrying out proceedings of admission (IInd phase) as per guidelines of DOE.

You are further directed not to send these registration forms back to Distt. South by any means, otherwise it will be assumed that you are intended to defy the directions of RTE Act as well as directions of DOE which is violation of the terms of recognition.

In non-compliance of RTE Act and directions of DOE action deemed fit will be initiated against the school without any further reference.”

6. The notification dated 28.2.2012 was not challenged by the petitioner and the admissions for the academic year 2013-2014 were held, during the validity of the said

notification. Though the petitioner is now seeking quashing of the notification dated 28.2.2012, to the extent, the schools are required to fill up the not less than the highest number of seats in the entry class in the previous three academic years, no such challenge can be entertained at this stage when, the admission for the academic year 2013-2014 were made without taking any steps to challenge the said notification. Moreover, considering that the school admitted 300 students at the entry level for the academic year 2010-2011 and in fact had admitted much more students for the academic year 2009-2010, it cannot be accepted that the petitioner-school does not have the requisite infrastructure including the faculty members to impart education to 300 students for the academic year 2013-2014. Even otherwise, I find no legal infirmity in the notification requiring the schools to admit not less than the highest number of students admitted for the last three academic years, at the entry level.

7. One of the purposes behind issuing the said notification was to give adequate representation to the children belonging to EWSs/Disadvantaged sections of the society, in the private schools and the Government wanted to ensure that the schools do not reduce the number of such students by taking recourse to reducing the overall admissions, to the entry class. Considering the objective behind this stipulation, the said amendment cannot be said to be arbitrary, unfair or unreasonable nor does it contravene any statutory provision.

8. It goes without saying that the petitioner, if it so decides can admit, students from other categories so as to fill up 300 seats at the entry level during the academic year 2013-2014. If this is done, the representation of the students belonging to EWSs/Disadvantaged Group would also remain at 25%. In any case, even if the petitioner does not admit students from other categories for the academic year 2013-2014, the number of students belonging to EWSs/Disadvantaged Group cannot be restricted to 44 on the ground that the percentage of such students should not exceed 25%. Reducing the total intake to 175 during the academic year 2013-2014 is petitioner's own creation for which, the students belonging to EWSs/Disadvantaged Group cannot be made to suffer. In any case, there is

no illegality in the ratio of the students belonging to EWSs/Disadvantaged Groups being more than 25%, the requirement being to have a minimum ratio of 25% for such students.

For the reasons stated hereinabove, I find no merit in the writ petition and the same is hereby dismissed. There shall be no orders as to costs.

V.K. JAIN, J

AUGUST 19, 2013

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