

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

% Judgment delivered on: 28.01.2014

+ **W.P.(C) 4423/2013**

RISHAN HASAN (MINOR)
THROUGH HIS MOTHER ... PETITIONER

VERSUS

GOVERNMENT OF NCT OF DELHI
AND ANR ... RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner: Mr. Sanjay Dubey, Advocate with father of the petitioner

For the Respondents: Mr. Rajshekhar Rao and Mr. Anirudh Wadhwa, Advocates for R-2

CORAM :-

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.

1. This writ petition has been filed by a mother of the ward, who is approximately 4 years and 5 months old. The mother belongs to a minority community. The mother is seeking admission of her ward in respondent no.2 school.

1.1 The learned counsel for the petitioner claims that the petitioner has wrongly been excluded by respondent no.2 school from admission to Nursery class. It may be relevant to note that the academic year, with which, one is dealing with, commenced on 01.04.2013 and is to end on 31.03.2014.

1.2 Pertinently, the petitioner had approached this court earlier, by way of a writ petition, which was numbered as: WP (C) 1326/2013. The

said writ petition was withdrawn with liberty to the petitioner to approach respondent no.2 school and, if necessary, approach this court, as advised. This order was passed by a single Judge in the said writ petition, on 09.04.2013.

1.3 Since, the petitioner could not have his grievances redressed by respondent no.2 school, he has approached this court once again for necessary and appropriate relief.

1.4 It may be relevant to note that pursuant to the writ petition having withdrawn, his parents did approach the Principal of respondent no.2 school on, 15.04.2013. I am also informed that a formal written representation was given to respondent no.2 school on, 17.04.2013.

1.5 As indicated above, the exercise did not bear fruit and, consequently, the petitioner had to approach this court, once again.

1.6 In the short interlude, that is, between the time the petitioner had first approached this court and the point in time when the instant petition was filed, the petitioner had in fact during the summer of 2013, filed an interlocutory application being: CM No.7061/2013 in the disposed of writ petition being: WP (C) 1326/2013. On that date, somehow the petitioner was not represented. The court dismissed the application on the ground that it was misconceived as no application could have been filed in a dismissed writ petition.

1.7 The captioned writ petition though, was filed on 15.07.2013.

1.8 It is not in dispute that the mother of the petitioner applied to get her ward admitted pursuant to a notice having been published by respondent no.2 school calling for submission of application forms by interested parents. This process commenced on 01.01.2013.

1.9 As per the schedule published by respondent no.2 school in this behalf, the last date for submission of forms was: 15.01.2013. The first

list was to be displayed on 01.02.2013 alongwith a “tentative” second list. The confirmed second list was slated to be displayed on 28.02.2013. The selectees were required to make payment of fee between 01.03.2013 and 04.03.2013. The academic session was to begin on 02.04.2013. I am told that the academic session did commence on the given date.

2. The aforesaid narration related to broad facts which are generally applicable to all persons similarly placed; as regards the petitioner, the following essential facts, need be noted :

- (i). that an application form was purchased and tendered by the mother of the petitioner on behalf of her ward;
- (ii). that the said application form was processed; and
- (iii). that in accordance with the policy in vogue, points were allocated to the petitioner against the application form tendered, as per the extant policy of respondent no.2 school.

2.1 The petitioner, is essentially aggrieved by the manner, in which the points have been allocated. There are four areas of concern, in so far as the petitioner is concerned, qua allocation of points. These being:

- (i). distance of the respondent no.2 school from the petitioner’s residence;
- (ii). points allocated for mother tongue;
- (iii). points allocated for cultural and linguistic integration; and
- (iv). Lastly, points allocated for contribution to community.

3. Mr. Rao, who appears for respondent no.2 school has drawn my attention to page 63 of the paper book, wherein a comparative chart has been incorporated. For the sake of convenience, the said chart is set out hereinbelow :-

S. No.	Criterion	Points claimed by petitioner	Points actually Scored
1	Neighbourhood	7	7
2	Siblings	0	0
3	First Born	10	10
4	Girl Child	0	0
5	Cultural and Linguistic Integration	10	0
6	Alumni of Cambridge School	0	0
7	Alumni of Schools in other States	4	4
8	Children with special needs	0	0
9	Compassionate Grounds	0	0
10	Parents contribution to community	10	6
	TOTAL	41	27

4. It is important to bear in mind that, this is a table, set out in respondent no.2 school's reply. The petitioner though, maintains his own stand with respect to the table. The difference in stands is articulated hereinafter:-

4.1 In so far as the distance criteria is concerned, it is dealt with under the heading : neighbourhood. Pertinently, against this criteria, the petitioner claims ten (10) points and not seven (7) points, as has been indicated by respondent no.2 school in the table. Mr. Rao joins issue and says that in the petition there is no such claim made. In other words, it is Mr. Rao's stand that the petitioner under the neighbourhood criteria, has not, claimed ten (10) points, as against, seven (7) points allocated to him.

4.2 I may, at this stage only indicate that a perusal of the averments made in paragraph 3(ii), (iii), (iv), (vii) and (viii) of the petition would

show that, the petitioner strenuously put forth the fact that points with regard to the distance from the school have been wrongly denied to those children who, reside in areas comprising of persons belonging to the economically weaker sections of the society, even while these areas fall within the radius of 1 km. from respondent no.2 school. These areas being: Sarai Jullena, Bharat Nagar, Khizrabad, Tamoor Nagar, Zakir Nagar and Batala House.

4.3 To be noted, the petitioner is a resident of one such area, which is, Sarai Jullena.

5. The other two aspects, with respect to which, the petitioner has a grievance are those, which are set out in serial nos.5 and 10 of the table, covered under the heading: “cultural and linguistic integration” and “parents contribution to community”, respectively.

5.1 The petitioner has been allocated zero (0) points against ‘***cultural and linguistic integration***’, whereas the petitioner seeks allocation of ten (10) points. It is not in dispute that the school allocates five (5) points for each parent under this head. It is also not in dispute that under this head, the mother of the ward has been allocated three (3) out of a total of five (5) points, while the father has been given zero (0) points out of a total of five (5) points. Similarly, under the heading, ‘***parents contribution to community***’, which is a head, which is set out against serial no.10 in the table extracted hereinabove, the petitioner has been allocated six (6) points by respondent no.2 school, whereas the petitioner claims ten (10) points. It is, once again, not in dispute that out of a total of five (5) points, the father has been allocated three (3) points, while the mother has been given zero (0) points against a total of five (5) points.

5.2 Apart from the criteria set out in the table extracted hereinabove, Mr. Rao, has informed me that under the guidelines, which were then in vogue, which are encapsulated in the Recognized Schools (Admission Procedure for pre-primary class) Order 2007, the schools could provide for additional criteria, as well.

5.3 Accordingly, respondent no.2 school had incorporated an additional criteria for allocation of points on the basis of the mother tongue of each of the parents. Under this head, I am informed by Mr. Rao that each parent is entitled to five (5) points.

5.4 Under this head though, the parents of the petitioner have been awarded zero (0) points. Mr. Rao informs me that respondent no.2 school has in this behalf followed a consistent policy whereby, parents, whose mother tongue is either “Hindi” or “Urdu” are given zero (0) points, whereas those who speak, say for example: “Punjabi” or “Sindhi” are given one (1) point, while those who speak languages, such as, “Bengali”, “Kannada”, “Malyalam”, “Oriya” and “Assamese”, etc. are allocated five (5) points.

6. Therefore, what one has to examine really, in this case is, whether as per the criteria fixed by respondent no.2 school, the petitioner would have got through if the criteria was properly applied. It is not in dispute, as indicated above, and on perusal of the table extracted hereinabove, that the petitioner, has got twenty seven (27) points.

6.1 What also emerges from the pleadings is that, parents who have secured thirty one (31) points, their wards have secured admission to respondent no.2 school. As a matter of fact in paragraph 1 of the petition, it is averred that wards of parents, who have secured thirty one (31), thirty four (34), thirty five (35) and thirty eight (38) points have

secured admission. The petitioner claims and asserts that he should have been awarded forty one (41) points.

6.2 In the light of this assertion, I proceed to examine the validity of the claim made by the petitioner.

7. A perusal of the admission form would show that the mother, in the details furnished by her, has indicated her mother tongue to be 'Urdu'. Under the heading, other languages known, she has indicated that, she is, conversant with Hindi, Kannada and English. It has also emerged during the course of hearing and, I have not heard Mr. Rao say anything to the contrary that, the mother hails from Karnataka. As is well known, the spoken language, in that region is Kannada. Kannada is clearly the native language of the petitioner's mother.

7.1 Therefore, in my view, though the mother may have indicated her mother tongue as: 'Urdu', what is plainly evident is that her mother tongue would be 'Kannada'. Though, technically, Mr. Rao may be right that respondent no.2 school would look to the contents of the form as it is; this argument may fail when, an issue such as this is placed before court for examination of its validity in accordance with law. I find it difficult to accept that, no points, should be allocated to the mother on this score even though it is clearly evident that her mother tongue, that is, her native language is 'Kannada'. As indicated hereinabove, for Kannada, it is the policy of respondent no.2 school to allot five (5) points. In my opinion, the respondent no.2 school should have corrected the obvious error on its own when brought to its notice.

7.2 But this apart, it is not as if, the petitioner, would fail to make the cut if, the mother is not allotted points for mother tongue; a fact which would get revealed as, I proceed further with my discussion.

8. This brings me to the other head, which is ‘cultural and linguistic integration’. Under this head, the mother has been given three (3) points, while the father has been given zero (0) points. The father in support of this criteria has appended a certificate of appreciation dated 11.12.2012, issued by a registered voluntary organization, by the name of Real Cause; which is indicative of the fact that, the father, had not only volunteered for the said NGO but also, that, he was a participant in the Mushaira-Kavi Sammailan of 2012, organized by the said NGO. The said NGO apparently organizes such conclaves, on the eve of the Independence Day, that is, on 14th August, every year, to enthuse people towards the goal of national integration. As per the said certificate, the father participated in the Kavi-Sammailan held on 15.08.2012, at the Galib Academy at Nizamuddin. Therefore, even if the father, was not allotted full points under this head, which are five (5) points, as per respondent no.2 school, he should have at least been allocated three (3) points under this head.

8.1 The reason, why I have come to this conclusion is that, the mother has been allocated three (3) points under this very same head, based on a certificate issued by the very same NGO for participating in the Kavi-Sammailan, held on the same date at the same venue.

9. This brings me to the other head, which is, ‘*parents contribution to community*’. Under this head, the father has been allocated three (3) points out of a total of five (5) points, whereas the mother has been allocated zero (0) points out of a total of five (5) points. The certificates on the basis of which points have been given, are the same certificates issued by the NGO Real Cause. The certificate of Real Cause bears out that the father, who is an advocate practising in the Supreme Court

has filed number of public interest litigations both in the Supreme Court and this court qua causes pertaining to Human Rights.

9.1 In so far as the mother is concerned, the certificate states that, she has participated in many legal literacy programmes and to achieve this end has ably assisted in mobilizing women, at different locations, in Delhi.

9.2 In addition to the above, the mother has appended a certificate dated 01.01.2013, issued by Development Links Foundation, which indicates that, she has worked as staff of the said organization; albeit on honorary basis.

9.3 Having regard to the above, I see no reason why the mother ought not to have been given, at least, three (3) points under this head.

10. I began by discussing the issue pertaining to distance between the petitioner's residence and respondent no.2 school, which is, covered under the neighbourhood criteria. Though, the petitioner was awarded seven (7) points, Mr. Dubey in his arguments has said that the petitioner ought to have been awarded ten (10) points, as the petitioner resides within a distance of 1 km. from the place where respondent no.2 school is located. Mr. Rao, however, contends to the contrary. His objection is not really with regard to the distance between the petitioner's home and respondent no.2 school but, to the effect that, this is not one of the grounds on which the petitioner had put forth its claim for being allotted forty one (41) points.

10.1 I have already dealt with this issue hereinabove. I may only re-state that the petitioner has raised this aspect, as an issue, in the petition. The question is: what is the distance between the place where respondent no.2 school is located and the place where the petitioner's home is situate? I may only note that by order dated 29.10.2013, this

court had, directed the Directorate of Education (D.O.E.) to verify this aspect and, file the necessary information, by way of an affidavit. D.O.E. was thus, required to report on the distance between respondent no.2 school and Sarai Jullena, New Delhi; which is where the petitioner resides. The order, in addition, also required the D.O.E. to set out by way of its affidavit, the distance between the location of respondent no.2 school and A Block, New Friends Colony (NFC) and the distance between respondent no.2 school and the location of other blocks in NFC. D.O.E., as directed, has filed an affidavit, which clearly establishes the following:

a)	Distance of the Cambridge Primary School from A block Gate, New Delhi is	0 K.m.
b)	Distance of the Cambridge Primary School from <i>other Blocks</i> , New Friends Colony is	0.70 to 0.90 km.
c)	Distance of the Cambridge Primary School from Sarai Jullena crossing, New Delhi	0.90 km.”

10.2 Pertinently, the affidavit of D.O.E. is backed by a letter dated 03.12.2013 addressed by the Executive Engineer, PWD, Maintenance Division to the Deputy Director of Education (South).

10.3 Therefore, it is quite evident that the petitioner resides within 1 km. of respondent no.2 school.

10.4 Respondent no.2 school, however, contends that Block A in NFC is, located at 350 metres from respondent no.2 school. Block B in NFC is situate at, 550 metres; Block C in NFC is situate at, 600 metres; and lastly, Block D in NFC is located at, 850 metres.

10.5 It is also contended by respondent no.2 school that in so far as those, who reside in Block A of NFC are concerned, they are allocated,

fifteen (15) points, while those located in other Blocks of NFC are concerned, they are allocated ten (10) points. As regards those, who reside within 10 kms. of respondent no.2 school; they are given seven (7) points, whereas those who reside in South Delhi including NCR are given five (5) points. Applying this yardstick, it was contended that the petitioner was allocated seven (7) points.

10.6 A conjoint reading of the report filed by D.O.E. and the contentions advanced by respondent no.2 school would show that other blocks in NFC really fall within the distance of 700 metres (0.70 KM) to 900 metres (0.90 KM). This is clearly evident from the affidavit of D.O.E.

10.7 As per the affidavit of D.O.E., the petitioner resides at a distance of 900 metres (0.9 km.) Therefore, the petitioner, in one sense, is at par with those who reside in blocks other than Block A of NFC. In other words, the petitioner, should fall within the category of “other blocks”. Concededly, the points allocated for other blocks in NFC are ten (10). The petitioner, has been allocated only seven (7) points. The petitioner, would therefore, be entitled to an additional three (3) points.

10.8 Thus, having regard to the discussion with respect to the various criterias, set out above, I am of the view that the petitioner will be entitled to, at least, an additional nine (9) points, if not more, that is if, the points for mother tongue, are excluded. If, only these nine (9) points are added to the points already allocated to the petitioner, which are twenty seven (27), the petitioner would get a total of thirty six (36) points. If that be so, the petitioner would clearly have crossed the threshold and, therefore, ought to have been given admission.

11. I must refer to one other submission of Mr. Rao which is that the petitioner having participated in the selection process could not lay

challenge to the very same process only because he had failed to come through. In this behalf, Mr. Rao relied on the following judgments of the Supreme Court i.e., *Manish Kumar Shahi vs. State of Bihar & Ors. (2010) 12 SCC 576* and *Ramesh Chandra Shah & Ors. vs. Anil Joshi & Ors. (2013) 11 SCC 309*.

11.1 In my view, this submission is flawed for the reason that the petitioner in this case is not challenging the parameters provided by respondent no.2 school for selecting candidates, but instead, is challenging the application of the process or the criteria evolved by it. Therefore, the judgments cited by Mr. Rao in this behalf, will have no application, in the facts of this case.

12. Mr. Rao, at this stage says that the academic session for 2013-2014 is coming to an end and that there are no vacancies in the Nursery classes. Having regard to the circumstance that this is a second round of litigation which the petitioner has had undertaken; coupled with the fact that the petitioner, had approached this court within time, in as much as, he had filed his earlier petition on 26.02.2013 and, had approached this court once again; after failing to persuade respondent no.2 school, I am of the opinion that the petitioner cannot be deprived of the fruits of his labour. Respondent no.2 school should, therefore, in my view, accommodate the petitioner, in the ensuing academic year i.e., 2014-2015.

13. The writ petition is thus allowed, with a direction to respondent no.2 school to admit the petitioner in the academic year 2014-2015 upon fulfillment of requisite ministerial formalities connected with his admittance to Nursery class.

14. I may only clarify that the new notification dated 18.12.2013 issued by the D.O.E. will not be set up against the petitioner to deny him the benefit accorded by the directions issued by me hereinabove, as he had applied for admission in the academic year 2013-2014 and approached this court for the second time on 15.07.2013.

15. With the aforesaid directions in place, the writ petition is disposed of. However, parties are left to bear their own costs.

RAJIV SHAKDHER, J.

JANUARY 28, 2014
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