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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: March 31, 2017

+ W.P.(C) 9069/2016, CM No. 36734/2016

MASTER VANSI THROUGH FATHER RAVINDER KUMAR Petitioner

Through: Mr.K.B.Jha, Adv.

versus

VENKATESHWAR GLOBAL SCHOOL & ORS Respondents

Through: Mr.O.S.Soran, Adv. for R-1-2
Mr.Gautam Narayan, ASC with
Mr.S.Banerji, Adv. GNCTD along with
Mr.Shyam Behari, LA, Zone-13

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V.KAMESWAR RAO, J.

For orders, see W.P.(C) No.7945/2016.

MARCH 31, 2017/ak


V. KAMESWAR RAO, J

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: March 31, 2017

+ W.P.(C) 7945/2016 & CMs 7936/2017, 32976/2016

NEERAJ KUMAR

..... Petitioner

Through: Mr. N.K.Upadhyay, Adv.

versus

VENKATESHWAR GLOBAL SCHOOL AND ORS

..... Respondents

Through: Mr.Sanjoy Ghose, Ms.Pratishtha Vij,
Mr.Rhishabh Jetley, Advs. for R-2-4

+ W.P.(C) 9069/2016, CM No. 36734/2016

MASTER VANSI THROUGH FATHER RAVINDER KUMAR Petitioner

Through: Mr.K.B.Jha, Adv.

versus

VENKATESHWAR GLOBAL SCHOOL & ORS

..... Respondents

Through: Mr.O.S.Soran, Adv. for R-1-2
Mr.Gautam Narayan, ASC with
Mr.S.Banerji, Adv. GNCTD along
with Mr.Shyam Behari, LA, Zone-
13

+ W.P.(C) 9144/2016, CM No. 36997/2016

MASTER DEVANSI AHUJA THR MOTHER BHARTI AHUJA

..... Petitioner

Through: Mr.K.B.Jha, Adv.

versus

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VENKATESHWAR GLOBAL SCHOOL & ORS

..... Respondents

Through: Mr.O.S.Soran, Adv. for R-1-2
Mr.Gautam Narayan, ASC with
Mr.S.Banerji, Adv. GNCTD along
with Mr.Shyam Behari, LA, Zone-
13

+ W.P.(C) 10361/2016 & CMs 40720/2016, 7956/2017

MUKESH KUMAR

..... Petitioner

Through: Mr.N.K.Upadhyay, Adv.

versus

VENKATESHWAR GLOBAL SCHOOL & ORS.

..... Respondents

Through: Mr.Prashant Sivarajan, Adv. for Mr.Ankur
Chhibber, Adv. for R-1-2

+ W.P.(C) 10675/2016, CM Nos. 41829/2016 & 8667/2017

RAVI KUMAR

..... Petitioner

Through: Mr.Narendra Kumar Upadhyay,
Ms.Juhi, Advs.

versus

G D GOENKA PUBLIC SCHOOL AND ORS

..... Respondents

Through: Mr.Peeyosh Kalra, ASC with
Mr.Shiva Sharma, Ms.Sona Babbar,
Advs. for DOE (GNCTD).
Ms.Vijaya Singh, Adv. for R-1.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

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V. KAMESWAR RAO, J

1. Vide the present order, I shall dispose of five writ petitions being W.P.(C) 7945/2016, W.P.(C) 9069/2016, W.P.(C) 9144/2016, W.P.(C) 10361/2016 and W.P.(C) 10675/2016 as they involve common issue. The substantive prayer sought in all the writ petitions is that a direction be issued to the respondents to give admission to the minor petitioners/wards of the petitioners for the academic session 2016-2017. As the facts in each of the writ petition are at variance, I intend to narrate the facts of each writ petition and the stand of the respondents in their pleadings.

Writ Petition (Civil) No. 7945/2016

2. It is the case of the petitioner that the respondent No.1 had in the month of March 2016 displayed the vacancies for admission under EWS/Freeship category on public domain i.e the website of the Directorate of Education, Govt. of NCT of Delhi. On the basis of the said vacancies, the petitioner submitted an application to the office of the respondent No.1 for the admission of his ward Avish Rana in Class 1st in the session 2016-2017. In April, 2016 the petitioner visited the office of the respondent No.1 and he was given some forms. The petitioner filled up the forms and also paid the requisite fee but no receipt was given to the petitioner and this aspect has been informed to the office of the respondent No.2. After waiting for three weeks, the petitioner approached respondent No.1 when he was told that his application along with the papers are being sent to the relevant Committee of respondent No.1 School for approval, which may take

some days. The petitioner approached the respondent No.2 as well as the respondent No.1 but no response was given.

3. It is the case of the petitioner, he was informed by the officer of the respondent No.1 in the month of July 2016 that the respondent No.1 is not allotted/provided with land by DDA or any other Government agency, so the respondent No.1 is not responsible for admission under EWS/DG/Freeship category. The petitioner's case is that he suspects that the respondent No.1 has allotted seats in a non-transparent manner, which raise serious doubt over the admission process of the School. Just like the vacancies are being displayed in public domain on the website of the Directorate of Education i.e respondent No.3, in the same manner the finally selected list of wards, financial and social status of the parents of the wards and the admission criteria must also be displayed on the website of the respondent No.3. It is the case of the petitioner

that the issue of admission under EWS/DG/Freeship category is already a decided matter by this Court vide judgment dated November 24, 2014 in *W.P.(C) No. 4607/2013* in the case of *Justice for All v. Govt. of NCT of Delhi and Another*.

4. The respondent No.1 School has filed a counter-affidavit, wherein it has been stated that the vacant seat for the admission under EWS/Freeship category was put on public domain on the website of the Directorate of Education in the month of March, 2016. It is denied that the petitioner submitted an application in its office for admission of his ward in Class I for the session 2016-2017 under the EWS/Freeship category. It is

also stated that the ward of the petitioner is not entitled to admission considering the fact that the distance of the house of the petitioner is more than 6 km whereas as per the guidelines of the respondent No.2 of neighbourhood criteria, the child/ward residing within the parameter of 6 km is to be admitted first. It is stated that in terms of the categorization EWS/DG students residing within 0-1 km shall be admitted first, condly those residing within 1-3 km, thirdly those residing 3-6 kms and lastly students residing beyond 6 kms shall be admitted only in case vacancies remain unfilled even after considering all students within six kms area. It is their case, the School has represented that the distance of the petitioner's house is more than 10 kms from the School, hence, the question of the admission of the petitioner does not arise since the School was already having nine applications for admission under the EWS category against four vacancies in Class-I and out of them, five applicants are claiming to be siding within the parameter of the guidelines i.e 6 kms.

5. It is averred by the respondent No.1 School that it has taken up the matter with the respondent No.2 for further issuance of direction on the subject matter to respondent No.1 vide letter dated May 2, 2016 and the respondent No.2 has categorically issued a letter dated May 25, 2016 that the applications for admission in Class I are to be submitted through online only whereas many applications are forwarded to School through drop box/post. It is also stated that respondent No.1 vide its letter dated May 31, 2016 forwarded all the details of the applications under EWS category, which were

received against these vacant seats in Pre-Primary (KG) and Class I but the respondent No.2 neither replied nor issued any guidelines. The School has denied that the petitioner has visited the School in the month of April, 2016. The School has denied that the admission has been done in a non-transparent manner. It is also the stand of the School that as per the guidelines, all such type of vacancies are to be filled up through respondent No.2/3 by submitting online application and as per the guidelines of the respondent No.2/3 and the said vacancies should be filled up and it is the responsibility of the respondent No.2/3 to issue guidelines. In the absence of any application to the respondent No.1 and the ward of the petitioner is neither a neighbourhood child nor has followed the guidelines, is not entitled to the admission.

6. A rejoinder to the counter-affidavit filed by the respondent No.1 has been filed.
7. Respondents 2 and 3 have filed a short affidavit. It is stated that in terms of provisions of Section 12(1)(c) of Right of Children to Free and Compulsory Education, Act, 2009 ("RTE Act") all the private unaided recognized Schools are bound to comply with such notifications/circulars issued by the Directorate of Education regarding admission under Economically Weaker Section/Disadvantage Group Category at their respective entry level classes Pre-School/Nursery, Pre-Primary/KG and Class I and the respondent No.1 Venkateshwar Global School being in the same category of the School is bound to comply such notifications/circulars. It is the stand of respondents 2 to 3 that in order to ensure a fair opportunity to the children belonging to EWS/DG sections of

society for admission in said Private Unaided Recognized Schools (except minority schools) vide circular dated December 29, 2015 issued guidelines for admission under EWS/DG category at the entry level classes against 25% seats reserved in Private Unaided Recognized Schools of Delhi for the session 2016-2017. For the Private Schools recognized under Delhi School Education Act & Rules, 1973, which includes respondent No.1/Venkateshwar Global School also, the respondents 2 and 3 devised a common online module for admissions under EWS/DG category at their respective entry level classes for the session 2016-2017. Through the aforesaid guidelines, the respondents 2 and 3 devised a common online registration form at the respondent department website for admission under EWS/DG category in all the concerned Private Unaided Schools recognized under the Delhi School Education Act & Rules, 1973 for the session 2016-2017. All such candidates who had applied online for EWS/DG category as per the circular dated December 29, 2015 guidelines were considered for admission through computerized draw of lot. The last date of online submission of application for such admissions in the said concerned Schools was January 22, 2016, which was later extended upto February 5, 2016 vide circular dated January 22, 2016 then upto February 9, 2016 vide office order dated February 6, 2016. At the initial stage of online admission process, all the concerned Schools were requested to provide their respective details online on the respondents 2 and 3 website regarding their respective entry level classes and number of EWS/DG category vacancies at the declared entry

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level classes of the School. The entry level class declared by the respondent No.1 for EWS/DG category admission for the session 2016-2017 is Pre-School/Nursery but did not declare KG/Pre-Primary and Class I as entry level and accordingly the respondent No.1 showed zero vacancies under EWS/DG category in class KG/Pre-Primary and Class I for session 2016-2017. The guidelines of the said circular explicitly states that

EWS/DG category admission in the entry level classes in the Private Unaided Recognized Schools can only be done by way of centralized online admission module devised by the respondents 2 and 3. The petitioner has not followed the said instructions contained in circular dated December 29, 2015. The respondents 2 and 3 also state that the respondent No.1 vide its letter dated June 23, 2016 informed the respondent department that the respondent No.1 have vacancies in Class I under EWS/DG category on account of cancellation of EWS/DG category admissions due to

e/forged EWS/DG category certificates and vacancies due to increase in General Category seats at the initial stage of online EWS/DG category admission process, there was no vacancy in the Pre-Primary/KG and Class I of the respondent No.1 School. When the vacancy arose later in the academic year, at that point of time, due to non availability of the online application for the Class I, the respondent department could not carry out the online process for filling vacant seats in Class I of the respondent No.1 School under EWS/DG category through computerized draw of lots.

8. The respondents 2 and 3 have stated that it is the responsibility of the School to

inform the respondents 2 and 3 well in time about the EWS/DG category vacancy position correctly so that the online applications could be called against the vacancies in Class I of respondent No.1 School. It is stated that the School which have taken fresh admission under General Category at various entry levels (Pre-School/Nursery, Pre-Primary/KG and Class-I) and did not declare the same at the beginning of the online EWS/DG category admission process for the academic session 2016-2017, the respondent Department has taken a policy decision that the EWS/DG category vacancies in proportion to the General/Open Category admissions done shall be added in respective entry levels during the next academic session 2017-2018. Vide circular dated December 8, 2016 the respondent Department conveyed the aforesaid policy decision to all the concerned Private Unaided Recognized School and all the concerned Schools, including the respondent No.1 School are bound to comply with the said policy decision. The respondent No.1 School by way of representation dated December 15, 2016 declared that the School has 14 vacancies in Pre-Primary/KG and four vacant seats in Class I under EWS/DG category. The respondent No.1 School has requested to add these vacancies in the online EWS/DG category admission process for the ensuing session 2017-2018 and the respondents 2 and 3 considered the request of the respondent No.1 School and as per the aforesaid policy decision, decided to carry forward 14 vacancies of Pre-Primary/KG class in Class I under EWS/DG category for the academic session 2017-2018. The respondents 2 and 3 justified the online admission process

being fair and transparent. It is also stated that online system has saved time and cost of going to various Schools and submitted various applications and then several further rounds till the admission takes place. The computerized draw of lots has checked malpractices to a large extent and has made the monitoring much more effective. Further, the Department cannot continue with the process of inviting fresh applications for the vacancies arising during the mid academic session and that is why the vacancies which are created in mid academic session are carry forward for the admission process of ensuing academic session. It is stated that the petitioner having neither applied for admission of his ward under EWS/DG category at entry level declared of the respondent No.1 School within the stipulated time nor did he apply for the same using the appropriate mode i.e online portal of the Directorate of Education, the petitioner having opted to seek admission by way of manual application in September, 2016, no cause of action lies against the respondents 2 and 3 and the instant writ petition be dismissed.

Writ Petition (Civil) 9069/2016

9. The present petition has been filed by Master Vansh a minor through his father, seeking admission in the respondent No.1 School in KG. It is the case of the petitioner that he belongs to Economically Weaker Section of the Society and the respondent No.1 School is a neighbourhood School to the petitioner. The School is situated on the land allotted by the DDA to the Society running the School and also under obligation to admit children belonging to Economically Weaker Section upto a maximum extent of

25% of the strength of the School. He would refer to the provisions of Section 12(1)(C) of the RTE Act, 2009. The Directorate of Education has notified admission Rules for admission under EWS category namely Delhi School Education (Free Seats for Children belonging to Economically Weaker Section and Disadvantaged Group) Order, 2011 and notified the manner of admission. All duties imposed on Government now lifted to parents and children. Now they have to apply for admission in the School and Schools have to organize draw of lots with priority to students residing in the neighbourhood, which is defined 1 km under the Rules of 2011. The household survey and identification of children belonging to EWS could take time so it could be an interim arrangement until government should complete duty imposed under Act but it failed even to start the duty under Act and continued the admission process until session 2015-2016 in the same manner. It is the case of the petitioner that on December 29,

15 the respondent No.1 notified guidelines for admission of EWS/DG category at entry level classes in Private Unaided Recognized Schools of Delhi for the session 2016-2017 and notified the online process of admission in the entry level classes in some of the schools including the respondent No.1 School and called for vacancy in the School. The petitioner would submit that the circular is void without any authority in the law and contrary to provisions of Section of RTE Act, 2009 and also contrary to statutory Rules for admission notified by the Lieutenant Governor of Delhi. The circular categorically mentions the closure of admission process by March 31, 2016. In

the online system respondent No.1 School filled up the vacancy only for first entry level class and no vacancy uploaded by respondent School for Pre-Primary class and no student applied for that class in the school despite there was vacancy in the school in Pre-Primary class. The circular states in clause (m) that after online system comes to end on March 31, 2016, the admission process shall continue as per manner notified in the notification dated January 7, 2011.

10. It is the case of the petitioner that his father came to know about EWS scheme and approached the respondent No.1 School for admission against the vacant seat on August 5, 2016. The respondent No.1 School refused to entertain the candidature of the petitioner and informed the father of the petitioner that he did not apply through online system, so the petitioner cannot get the admission in the School. The father of the petitioner approached the concerned Deputy Director of Education and searched for District Admission Monitoring Committee and help desk but nothing was in existence and even officers there refused to accept the application of the petitioner who also informed the father of the petitioner that he has missed an opportunity for admission of his ward. It is the case of the petitioner that on August 16, 2016 the father of the petitioner raised the grievance under PGMS to the Hon'ble the Chief Minister and the respondent Director of Education informed the petitioner that he has not applied for admission at the time prescribed for admission in the respondent No.1 School and hence his claim for admission cannot be entertained. The petitioner's case is that the School

or the Directorate never shown any vacancy in the respondent No.1 School in online system so there is no question to apply against vacancy which never notified. Now the respondents refused admission to the petitioner in the School on the ground that he has not applied in the same through online system.

11. The respondents 1 and 2 have filed their counter affidavit. It is the case of the said respondents that they have not shown any reluctance to implement the provisions of the RTE Act, 2009 and land allotment condition or ever did any act which is contrary to the guidelines/instructions of respondent No.3. It is stated that the respondent No.1 has only acted in accordance with the instructions issued by the respondent No.3 vide its letter dated November 18, 2015 and accordingly declared the vacancies in that particular module for the entry level class. They state that the respondent no.1 School only declared the seats in class nursery in accordance with the circular dated November 18, 2015, which clearly states that "*whenever any fresh admissions are made*" and School accordingly notified the vacancies in the Pre-School. However, School always declared the EWS vacancies in all other classes also as and when they occurred as per the guidelines of respondent No.3. It is also stated that as the instant matter pertains to the admission under EWS category in Pre-Primary for which the respondent No.3 has categorically instructed respondent No.1 School vide its letter dated May 25, 2016 that the application for admission in entry level classes are to be submitted through online only and the petitioner was not a single applicant to apply against those vacancies but

many other applications were also forwarded to the School by parents through drop box/post, which were declared by respondent School against cancellation of EWS admissions in the month of March/April, 2016. It is also stated that even before receiving the application of the petitioner, the respondent No.1 School received 34 applications through drop box/post till May 31, 2016 in Pre-Primary class and for which the respondent No.1 School approached the respondent No.3 to seek guidelines but no response was received. It is also stated that respondent No.3 vide its letter dated May 25, 2016 clearly stated that the application for admission in entry level classes are to be submitted through online only and since there were other applications received through drop box/post against vacancies which were declared in the month of March/April, 2016 on cancellation of EWS admissions in Pre-Primary class till May 31, 2016.

12. Respondent No.3 in its short affidavit has taken a similar stand, as has been taken by them in W.P.(C) No. 7945/2016. An additional affidavit was also filed by the respondent No.3 wherein it is stated that in terms of Clause 10 of the Notification dated November 7, 2011, the respondent No.3 is empowered to issue instructions/guidelines/clarifications to Schools so as to ensure effective implementation of the provisions of the Notification. In order to implement the provisions of the Notification, the respondent No.3 issued a circular dated December 29, 2015 so as to ensure a fair, uniform and transparent admission procedure and to maximize the opportunity for securing admission under EWS/DG category. From the aforesaid

circular, the respondent No.3 has devised a common online registration form, which can be accessed through the website of the respondent No.3. All such candidates who had applied online for EWS/DG category as per the circular were considered for admission through computerized draw of lots. For centralized online EWS/DG category admission process, the procedure followed is, all concerned Schools were directed to update their vacancy status of all entry level classes online on the respondent No.3's website; the declared vacancies were made public on the website and online module was opened for filling up the application form w.e.f January 1, 2016; the last date of filling up the form was February 09, 2016 after extension of date twice; thereafter first computerized draw of lots was conducted on February 15, 2016 and successful candidates were informed through SMS on their registered mobile number; the list of successful candidates were also displayed on the respondent No.3's website, thereafter second and third computerized draw of lots were conducted on May 24, 2016 and October 26, 2016 respectively against the remaining EWS/DG category vacancies after getting updates from the respective private unaided recognized schools. It is the case of the respondent No.3 School that it would be erroneous to apprehend that admission process is closed by the 31st March of the relevant academic year. The admission process remains open only for those applicants who had applied online.

13. On District Admission Monitoring Committee, it is the stand of the respondent No.3 that DAMC discharges its obligation as per the role defined in the Notification in

respect of manual admissions to all classes in Schools recognized under the RTE Act. However, the respondent No.3 in the interest of the school education in Delhi and in order to implement the provisions of the Notification, issued the aforesaid circular so as to ensure fair, uniform and transparent admission procedure and to maximize the opportunity for securing admission under EWS/DG category. It is the case of the respondent No.3 that with regard to admissions under the EWS/DG category, the role of DAMC comes into play after all online applications have been exhausted. It was submitted that the right of admission will first go to a candidate who had applied within the stipulated time period after having followed the procedure prescribed. It is stated that still there are thousands of such online applicants who have remained unsuccessful even after the third round of computerized draw of lots. Hence, the present petitioner has no right to be considered by-passing thousands of such unsuccessful applicants.

It is the stand of the respondent No.3 that if afterwards EWS/DG category vacancies arise in a particular entry level class (not declared at the beginning of online process), not owing to fresh general category admission, but due to any other bonafide reason such as attrition, cancellation of admission due to fake documents etc, then such vacancies should be carried forward to the next entry level class during the online admission process of next academic session. Therefore, the EWS/DG category vacancies of this nature, if any in Pre-School/Nursery, Pre-Primary/KG or Class-I shall be carried forward to Pre-Primary/KG, Class-I and Class-II respectively. Such carried

forward vacancies in Pre-Primary/KG and Class-I shall be filled through online admission process for the next academic session and carried forward vacancies in Class-II shall be filled by the concerned school themselves through manual admission process of next academic session. This decision has been taken in order to ensure that vacant seats are filled in a fair, uniform and transparent manner and to maximize the opportunity for securing admission under EWS/DG category. It is stated that Clause 10 of the Notification, empowers the respondent No.3 to issue guidelines/instructions for admissions under EWS/DG category in Private Unaided Recognized Schools of Delhi. On Public Grievance Monitoring System, it is stated that it ensures redressal of grievances in a fair and time bound manner. It has been evolved to ensure proper recording, tracking and monitoring of each and every grievance uploaded on the portal.

Writ Petition (Civil) No. 9144/2016

"6. This petition is also filed by a minor through his mother seeking admission in Class KG under EWS Category in the respondent No.1. The facts of this case are identical to the facts as noted in W.P.(C) No. 9069/2016 except that it is stated that on September 14, 2016, the mother of the petitioner came to know about the vacancy in the respondent No.1 School and approached the School for admission against the vacant seat. The respondent No.1 School refused to entertain the candidature of the petitioner and informed the mother of the petitioner that he did not apply through online system so the petitioner cannot get the admission in the School. The mother of the petitioner

approached the concerned DDE and searched for District Admission Monitoring Committee and help desk but nothing was in existence and even officers there refused to accept the application of the petitioner and she was informed by the officials that the petitioner has missed an opportunity of getting admission in the School. It is the case of the petitioner that his mother has sent representation dated September 29, 2016 to the Respondent No.1 School and Directorate of Education requesting them to admit the petitioner in the respondent No.1 School. The mother of the petitioner also requested the Chairperson of DAMC district north west B FU Block, Pitampura to forward the name of the petitioner in the respondent School but no response was received.

16. The counter-affidavit filed by the respondent Nos.1 and 2 would reveal that the stand is the same as was taken in W.P.(C) No. 9069/2016.

17. Insofar as the facts relatable to the petitioner are concerned, the petitioner has never submitted any application with the respondent No.1 School at any point of time. It is denied that the petitioner is residing at a distance of 500 meters from the respondent No.1 School. According to the respondent No.1, the distance is of 4 kms. It is also stated that EWS vacancies in KG and Class I were declared subsequent to the cancellation of few EWS admissions in the month of March/April, 2016 whereas the DoE asked the School to declare the EWS vacancy for entry level class in November, 2015 for the academic session 2016-17. Hence, the respondent No.1 School initially declared vacancies for closure in November, 2015 as fresh admissions were to be made

in Nursery only and subsequently in KG and Class I in following months in 2016. Subsequently, the vacant seats are under EWS category in KG and Class I were also displayed vide circular dated November 18, 2015. The respondent No.1 School has admitted that it has received application from the petitioner in the month of September 2016 and was subsequently advised as per the instructions of DoE, which were issued to school vide letter dated May 25, 2016. As a common stand taken by the respondent No.3 in its short counter-affidavit and additional affidavit, the same are not repeated for the sake of brevity.

Writ Petition (Civil) No. 10361/2016

18. The present petition has been filed by a parent of the child inter-alia seeking admission for his ward for the academic session 2016-2017. The averments in the writ petition, being identical to the one in W.P.(C) No. 7945/2016, the same are not repeated for the sake of brevity.

19. The respondent No.1 in its counter affidavit has stated, the petitioner has not submitted any application with the respondent No.1 within the period of competency of HOS for admission i.e August 31, 2016 but the application was submitted after the expiry of period of competency of HOS for admission i.e on September 22, 2016. It is also averred that the petitioner is not entitled to admission of his ward considering the fact that the distance of the house of the petitioner is more than 6 kms whereas, as per the guidelines of the respondent Nos.2 and 3 of neighbourhood criteria, the child/ward

residing within the parameter of 6 kms are to be admitted first. Preference need to be given to students belonging to EWS/DG category residing within 0-1 kms, secondly to those residing 1-3 kms, thirdly to those residing 3-6 kms and lastly students residing beyond 6 kms shall be admitted only in case vacancies remain unfilled even after considering all students within six kms area. It is stated that the petitioner's house is situated around 17 kms away from the School. Rest of the contents being same, the same are not repeated for the sake of brevity. Suffice to state, rejoinder has been filed to the counter-affidavit. A statement was given by the learned counsel for the respondents 2 and 3 on February 28, 2016 that the counter-affidavit filed in W.P(C) No.7945/2016 is adopted by the said respondents in this writ petition. Suffice to state, the stand of the respondents 2 and 3 is the same as reflected in short counter-affidavit filed in W.P(C) No.7945/2016.

Writ Petition (Civil) No. 10675/2016

20. This petition has been filed by a parent of the minor child namely Hemang for admission under EWS/Freeship category. It is averred in the writ petition that in April, 2016 the petitioner visited the office of the respondent No.1 and after going through all the details of the petitioner, the respondent No.1 gave some forms to the petitioner to be filled up. The petitioner filled up the forms and also paid the requisite fee but no receipt was given. That after some time, the respondent No.1 instructed the petitioner to wait for a few days for verification of documents. After waiting for few days, the petitioner

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was told by the respondent No.1 that fresh application along with papers are being sent to relevant Committee of respondent No.1 for approval, which can take some more days. Despite approaching respondent No.2, no satisfactory response was given.

21. Counter-affidavit has been filed by respondent No.1. It is stated that the respondent No.1 cannot directly take any application form from candidates for admission under EWS/DG category. Such applications are to be filled/submitted with the respondent No.3. The DAMC prepares cluster/zone wise vacancy data for fresh seats and otherwise names of the children to Schools where vacant seats are available for admission against seats following the principle of neighbourhood School. The respondent No.1 never received any application from respondent No.3/DAMC regarding the ward of the petitioner for admission under EWS/DG category. It is stated that the respondent No.1 received application of the ward of the petitioner from respondent No.3 for admission after completion of normal admission process under the EWS/DG category. It is also stated that instructions have been received from the respondent No.3 for taking admission in EWS/DG category on November 21, 2016 for admission of Vedansh Kumar, S/o Pawan Kumar. The admission is pending due to non-availability of caste certificate. As and when Mr. Pawan Kumar arranges the same, the admission formalities as prescribed in the guidelines will be completed. The respondent No.1 stated that the petitioner has never approached the said respondent for admission of his ward under any category. It is also stated that the name of the ward of

the petitioner does not appear on the list submitted with DAMC/respondent No.3 as the application for admission under EWS category was never received from respondent No.3 unlike in the case of other candidates.

22. No counter-affidavit has been filed by respondent No.3. In any case, the counter-affidavit, as filed in other writ petitions, is considered as the stand of the respondents in this petition as well.

23. Mr. N.K. Upadhyay, learned counsel appearing for the petitioners in writ petition (civil) no. 7945/2016, 10675/2016 and 10361/2016, apart from reiterating the facts of each of the writ petition filed by him, would submit that in terms of the Public Notice dated 16th April, 2016 wherein in the last Para it is stated that "*the parents may submit their applications DIRECTLY to the school concerned after verifying the vacancy position from the School. It may ALSO BE NOTED THAT NO ACTION WILL BE TAKEN ON SUCH APPLICATIONS in this Office*" to contend that the applications for admission were entertained by the Schools. That apart he would state that there is no transparency in the admission process against the seats which arose during the progress of the academic session because of attrition, cancellation of admission on account of submission of fabricated income certificate etc. He would rely upon the judgment of this Court in the case of *Justice for all v. Govt. of NCT of Delhi & Anr. in writ petition (civil) no.4607/2013 decided on 24th November, 2014* wherein it had directed the Delhi Government to devise a mechanism to ensure 25% reservation of poor children in play-

schools.

24. Mr. Khagesh Jha, learned counsel appearing for the petitioners in writ petition (civil) no. 9144/2016 and 9069/2016, apart from stating the facts of the writ petition would submit that under the provisions of Section 12 (1)(c) of the Right to Education Act, minor petitioners are entitled for priority admission under the provisions of the RTE Rules, 2011 read with DOE Notification dated 7th January, 2011. He states that there is a failure on the part of the Directorate of Education to ensure compliance of provisions of Section 6, 8, 9 and 12 (1) (c) of the said Act. According to him, the Schools situated on the DDA land, there is an obligation to admit 25% children from EWS category. He also states that in terms of the Notification dated 7th January, 2011, issue to implement section 12(1)(c) of Right to Education Act, all the burden for admission has been shifted to the parents to approach the Schools with various documents and there is provision of draw of lot if the number of applications are more than available seats in the Schools. The parents who could not secure the admission have to approach the District Admission Monitoring Committee for admission against free ships seats and there is a provision to forward the name of the deserving candidates to the private schools having vacancies. According to him as per the provisions of the Delhi School Admission Order, 2011, the Schools shall complete the admission process by their own on 31st March and the vacancy position shall be informed to the DAMC, which will forward the names of the candidates to the Schools for admission. He states

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that until the session of 2015-16, the respondent / Directorate of Education was implementing the provisions of Notification dated 7th January, 2011, but in the current session, the Directorate issued guidelines dated 29th December, 2015 which are contrary to the Right to Compulsory Education Act, Notification dated 7th January, 2011 and as such void. According to him, the circular dated 29th December, 2015 is applicable only for the first round of admission which shall be closed on 31st March and after that Clause (m) of Circular Admission shall continue as per Clause 7 of the Notification dated 7th January, 2011. He would also rely on the judgment of this *Court in Justice for All (supra)* to contend that Division Bench of this Court made strong observations that the children belonging to weaker sections has every little access to justice and they are not aware with the Scheme of EWS admission. He states that despite being allotted land at concessional rate, the failure on the part of the Directorate devising any mechanism for ensuring the compliance of the condition would amount to denial of the right to the weaker sections of the society.

25. On the other hand, learned counsel appearing for the Schools would reiterate the submissions as made in their counter-affidavit. In substance it is their submission that they are bound by the instructions issued by the Directorate of Education and have complied with the said provisions. Mr. Gautam Narayan, learned counsel appearing for the Directorate of Education and connected respondents apart from dealing with the facts of each case, would submit that in terms of the provisions of Section 12(1)(c) of

the Right to Education Act, all private unaided Schools are bound to comply with such Notifications / Circulars issued by the Director of Education regarding the admission under economically weaker sections / disadvantaged categories at their respective entry level classes, Pre-school / Nursery, Pre-Primary/KG and the Class-I. In order to ensure opportunity to the children for getting admission in EWS / DG category against 25% its at the entry level classes of the private unaided schools recognized under the Delhi School Education Act / Rules devised a common online module for the session 2016-2017 and accordingly a Circular dated 29th December, 2015 was issued for admission under EWS / DG Category in all the said Schools. Through the Circular a centralized online registration form was devised and all such candidates who had applied online for EWS / DG category as per the Circular dated 29th December, 2015 guidelines were considered for admission through computerized draw of lot. He states that in the academic session 2016-2017, the last date for online submission of applications of such admissions was 22nd January, 2016, which was extended twice, firstly up to 5th February, 2016 and 9th February, 2016. At the initial stage of online admission process, all concerned Schools were directed to provide the respective details online on the respondent / department's website regarding the respective entry-level classes and number of EWS / DG category vacancies at the declared entry-level classes of the School. The Circular provides that EWS / DG category admission in all three entry level classes in the private unaided re-cognized Schools can be done only by way of

School online admission module. He would also draw my attention to various provisions of the Act and the Rules and the Notification dated 7th November, 2011 to submit that in terms of the Notification dated 7th November, 2011, the Directorate of Education is empowered to issue instructions / guidelines / clarifications to Schools so as to ensure effective implementation of the Notification. It is in furtherance to complement the provisions of the Notification, the Circular dated 29th December, 2015 was ensured so as to have a fair / uniform and transparent admission procedure and to maximize the opportunity of securing the admission in EWS / DG category. He contests the plea of Mr. Jha that the Circular is ultra-virus to the notification and / or provision of the RTE Act. He also states that in the academic session 2016-2017, a computerized draw of lot was also held on 15th February, 2016, 24th May, 2016 and 26th October, 2016 respectively. He contests the stand of Mr. Jha that the admission process closed by 31st March of the relevant academic year. However the admission remains open only for those applicants who had applied online. He also refers to the Clause 7 of the Notification dated 7th January, 2011 which refers to District Admission Monitoring Committee and Clause 2 (1)(m) of the Circular dated 29th December, 2015. According to him, the DAMC discharges its obligations as per the roles defined in the Notification in respect of the manual admissions to all classes in Schools recognized under the RTE Act. However, the answering respondent in the interest of School education in Delhi and in order to implement the provisions of the Notification issued

the aforesaid Circular so as to ensure a fair, uniform and transparent admission procedure and to maximize the opportunity for securing admission under the EWS / DG Category by way of providing status of vacancies at a single point through answering respondent website. This is in exercise of power conferred under Clause 10 of Notification dated 7th January, 2011. He states that the roles DAMC comes into play when all online applications have been exhausted. In other words, the right to admission will first go to a candidate who had applied within the stipulated time period after having followed the procedure prescribed.

26. Having heard the learned counsel for the parties, the only issue which arises for consideration is that the prayer as sought for by the petitioners in this petition is liable to be granted when the petitioners have not applied through online for admission in terms of circular issued by the Director of Education on 29th December, 2015. I may only state here, in none of the petitions, the petitioners have challenged the Circular dated 29th December, 2015.

27. The stand is that the said circular shall hold good for those admissions made uptill March 31, 2016 and not against the vacancies, which may arise after that date because of attritions, cancellation of admissions on account of submission of fabricated certificates etc. In other words, the admission against those seats need to be made on the basis of manual application by the School concerned. Such a plea is not appealing for the reason, the stand of the Directorate of Education on the objective to introduce

online system to ensure a fair, uniform, and transparent admissions under EWS/DG category, can't be overlooked. As stated above, the petitioners have not submitted online applications. In the absence of applications and also a challenge to the circular dated December 29, 2015 it must be held that till such time, the online applications are exhausted, the petitioners/wards of the petitioners have no right to seek admission on the strength of a manual application.

28. Insofar as the plea of Mr. Upadhyay and Mr. Jha that admissions must continue throughout the academic year till March 31, 2017 (in this case) by relying on clause 7(d) of Notification dated January 7, 2011, Rule 13 of Delhi Right of Children to Free and Compulsory Education Rules, 2011 and clause 2(m) of circular dated December 29, 2015 is concerned, to answer the issue and the plea urged, it is necessary to reproduce some of the provisions as referred to by the counsel for the parties during arguments.

"Section 12. Extent of school's responsibility for free and compulsory education: (1) For the purposes of this Act, a school,-

(a) specified in sub-clause (i) of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein;

(b) specified in sub-clause (ii) of clause (n) of section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.;

(c) specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent. of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:

Provided further that where a school specified in clause (n) of section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.

(2) The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

(3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be.

Section 15 of RTE Act, 2009 No denial of admission:

A child shall be admitted in a school at the commencement of the academic year or within such extended period as may be prescribed: Provided that no child shall be denied admission if such admission is sought subsequent to the extended period:

Provided further that any child admitted after the extended period shall complete his studies in such manner as may be prescribed by the appropriate Government.

Delhi Right to Children to Free and Compulsory Education Rules, 2011

5. Special Training. — (1) The School Management Committee of a school owned or managed by the Government or the local authority shall identify children requiring special training and organise such training in the following manner, namely:-

- (a) the special training shall be based on specially designed, age appropriate learning material, approved by the academic authority specified in sub-section (1) of section 29 of the Act;
- (b) the said training shall be provided in classes held in the premises of the school or in classes organised in safe residential facilities;
- (c) the said training shall be provided by teachers working in the school, or by teachers specially appointed for the purpose;
- (d) the duration of the said training shall be for a minimum period of three months which may be extended, based on periodical assessment of learning progress, for a maximum period not exceeding two years.

(2) The child shall, upon induction into the age appropriate class after special

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training continue to receive special attention by the teacher to enable him/her to successfully integrate with the rest of the class, academically and emotionally.

10. Admission of children belonging to weaker section and disadvantaged group. — (1) The school referred to in clauses (iii) and (iv) of clause (n) of section 2 shall ensure that children admitted in accordance with clause (c) of sub-section (1) of section 12 shall not be segregated from other children in the classrooms nor shall their classes be held at places and timings different from the classes held for the other children.

(2) The school referred to in clauses (iii) and (iv) of clause (n) of section 2 shall ensure that children admitted in accordance with clause (c) of subsection (1) of section 12 shall not be discriminated from the rest of the children in any manner pertaining to entitlements and facilities such as text books, uniforms, library and information and communication technology facilities, extra-curricular activities and sports.

(3) The area or limits of neighbourhood specified in sub-rule (1) of rule 6 shall apply to admissions made in accordance with clause (c) of subsection (1) of section 12.

Provided that the Government may, for the purposes of filling up the requisite percentage of seats for children referred to in clause (c) of sub-section (1) of section 12 extend these limits of neighbourhood from time to time.

(4) The Government may prescribe the procedure for admission of children under clause (c) of sub-section (1) of section 12 by official notification issued from time to time.

13. Extended period for admission. — (1) Extended period of admission shall be

five months from the date of commencement of the academic year of a school.

(2) Where a child is admitted in a school after the extended period, he or she shall be eligible to complete studies with the help of special training, as determined by the head of the school.

Provisions of Notification dated January 07, 2011

4(j) In case the number of applications for admission against the free seats is below the number of seats available, admission shall be made from the available applications and the vacant seats shall be renotified for inviting further applications and also be notified to DAMC.

4(k) The School shall furnish all such details as mentioned in paras (a), (c), (f), (g), (h) and (i) regarding free ship seats on its website and also on official website of Directorate of Education giving all details **through the link provided by the department on the same day or latest by next very day of the such events.**

7(d) The DAMC shall prepare cluster/zone-wise vacancy data for free-seats and shall forward the names of children to schools where vacant seats are available, for admission against free-seats, following the principle of neighbourhood school.

Circular dated December 29, 2015

2(i) After completion of admission process, each school shall sent information /details regarding the number of filled and vacant seats under EWS & DG category at Entry Level Classes to the Chairman of the District Admission Monitoring Committee/Deputy Director of Education of district concerned by 1600 hours on 07-04-2016. Simultaneously, the details shall also be provided on

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the online module available on this Directorate's website: www.edudel.nic.in. All DDEs of the districts shall compile the said data (Number of filled and vacant seats of EWS/DG Category) zone-wise and forward the same to Act-I Branch on 13.04.2016 for taking further necessary action.

2(m) The admission to such vacant seats of EWS/DG Category is an ongoing process which may continue throughout the academic year and the District Admission Monitoring Committee has been empowered to get filled such vacancies and can take steps as per the directions contained in sub-clause (d) of this Directorate's notification No.15 (172)/DE/Act/2010/69 dated 07/01/2011 and Rule 13 of Delhi Right to Education Rules, 2011."

29. Section 15 of the Right to Education Act contemplates, a child shall be admitted in a School at the commencement of the academic year or within such extended period as may be prescribed. Even though, this part of the Section contemplates an extended period to be prescribed but first proviso to the Section stipulates that no child shall be denied admission if such admission is sought subsequent to the extended period. The second proviso also give an indication with regard to admission during the extended period by stipulating that the child shall complete studies in such manner as may be prescribed by the Appropriate Government.

30. The Appropriate Government has prescribed in terms of Rule 13 of the Delhi Right of Children to Free and Compulsory Education Rules, 2011, the extended period to be five months from the date of commencement of the academic year of a School i.e

31st August and it also contemplates a situation that if a child is admitted in a School after the extended period, he shall complete the studies with the help of a special training as determined by the Head of the School. At the same time, the very Rules does vide Rule 10(4) prescribe the procedure for admission of children under clause (c) of sub-section 1 of Section 12 by official Notification issued from time to time. The Notification dated January 7, 2011 issued under sub-section 3 of the Delhi School Education Act, 1973, Rule 43 of the Delhi School Education Rules, 1973 and Right to Education Act, 2009 stipulate in case the number of applications for admission against the free seats are below the number of seats available, admission shall be made from the available applications and the vacant seats shall be renotified for inviting further applications and also be notified to DAMC. Suffice to state, this provision of the Notification dated January 7, 2011 does refer to District Admission Monitoring Committee and the role of DAMC is filling up the free seats. It contemplates, if any free seats shall remain unfilled and the DAMC which is required to prepare cluster/zone wise vacancy data for free seats shall forward the names of children to Schools where vacant seats are available for admission against free seats. This aspect is also clarified by clause 2(l) of circular dated December 29, 2015, which reads as under:-

2(l) After completion of admission process, each school shall sent information /details regarding the number of filled and vacant seats under EWS & DG category at Entry Level Classes to the Chairman of the District Admission Monitoring Committee/Deputy Director of Education of district concerned by 1600 hours on 07-04-2016. Simultaneously, the details shall also be provided on

the online module available on this Directorate's website: www.edudel.nic.in. All DDEs of the districts shall compile the said data (Number of filled and vacant seats of EWS/DG Category) zone-wise and forward the same to Act-I Branch on 13.04.2016 for taking further necessary action.

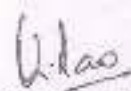
31. The plea of Mr. Upadhyay and Mr. Jha if looked from the perspective of the above provisions is appealing and shall hold good only if the number of applications are less than the seats available. In other words, after all the applicants have been given admission still some seats have remained unfilled. As noted above, it is the stand of the Directorate of Education that the draw of lots were held on February 15, 2016, May 24, 2016 and October 26, 2016 respectively and there are still thousands of online applicants who have remained unsuccessful even after the third round of computerized draw of lots. In view of such a stand of the respondent No.3 that the number of applications far exceeds the seats available, surely the parents/applicants who have submitted application online and who have not got admission cannot be overlooked for vacancies arisen later during the academic session.

32. Further in terms of the Rules of 2011, the extended period of admission is five months i.e 31st August of that year. No doubt, the said period is not a fixed period, inasmuch as a child can also be admitted thereafter, who shall be eligible to complete the studies with the help of special training as determined by the Head of the School. Such a period need to be a reasonable period and cannot be stretched till 31st March i.e the last date of the academic year as an admission made on the last date of the academic

year, presupposes the child did not have the occasion of learning/studies/training of that particular class till that date. It is expected that child need to achieve a particular level of learning/knowledge/training to progress to the next higher level/class so as to be at par with his peers/students of his age. The question is what should be that date. I note, Rule 5 of the Rules of 2011, which has been reproduced above, does indicate the minimum period of at least three months of training be given to a child. If that be so, an admission must take place on or before 31st December of the academic year, as from the date following that date i.e 1st January till 31st March of the academic year, the period is achieved. In the cases in hand, the said period cannot be achieved at this point of time. So the prayer of the petitioners for grant of admission cannot be accepted on this ground as well, apart from the ground that the petitioners/wards of the petitioners have not submitted online application. The writ petitions are dismissed.

1 Nos. 7936/2017 (for stay) and 32976/2016 (for stay) in W.P.(C) 7945/2016
CM No. 36734/2016 (for direction) in W.P.(C) 9069/2016
CM No. 36997/2016 (for direction) in W.P.(C) 9144/2016
Cst Nos. 40720/2016 (for stay) & 7956/2017 (for stay) in W.P.(C) 10361/2016
CM Nos. 41829/2016 (for direction) & 8667/2017 (for stay) in W.P.(C) 10675/2016

Dismissed as infructuous.


V. KAMESWAR RAO, J

MARCH 31, 2017/ak