

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

% **Date of decision: 9th July, 2015.**

+ **W.P.(C) 2778/2015 & CM No.4979/2015 (for interim directions)**

MASTER SHIVRAJ SINGH THROUGH:

FATHER SH. YUDHVIR SINGH

..... Petitioner

Through: Mr. S.K. Sharma, Mr. Prayas Aneja,
Mr. Rahul Sharma and Mr. Puneet
Relan, Advs.

Versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Gursharan Singh, Adv. for R-1.
Mr. Rajiv Nayar, Sr. Adv. with Mr.
Kamal Mehta, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner, an applicant for admission to the Pre-School / Primary Classes in the respondent No.2 Modern School, Vasant Vihar, New Delhi, in the academic year 2015-2016, has filed this petition seeking a mandamus to the respondent No.1 Directorate of Education (DoE), Govt. of NCT of Delhi (GNCTD) to ensure that the admission policy / criteria and guidelines framed by the respondent No.1 DoE and as uploaded by the respondent No.2 School on its website, are implemented in true sense and spirit and seeking a mandamus to the respondent No.2 School to so admit him. A direction is also sought to the respondent No.1 DoE to take action against

the respondent No.2 School of de-recognition, for violating the admission criteria.

2. It is the case of the petitioner, (i) that as per the admission criteria uploaded by the respondent No.2 School on its website in December, 2014-January, 2015, 25% of the seats were reserved “for sibling”; (ii) that the petitioner falls in the said category, as his elder sister has been studying in the respondent No.2 School in IInd Class and accordingly applied for admission in the said category; (iii) that it was further provided in the admission criteria declared that the unfilled seats in the Sibling Quota shall be offered to the Alumni Quota; (iv) however, the name of the petitioner did not find mention in the list of students admitted; (v) that on making enquiries, it was learnt that the respondent No.2 School did not make admission as per the admission criteria declared and of the said 25% seats equal to thirty seats reserved for Sibling Category, diverted 29 seats by artificially creating a Double Sibling Category and Alumni Sibling Category, leaving only one seat for admission in the Sibling Quota.

3. It is the contention of the counsel for the petitioner that if a draw of lots of all the applicants who had applied in the Sibling Category, for all the thirty seats had taken place, the petitioner had a 40% chance of admission.

However, since the respondent No.2 School diverted six of the said seats to the Double Sibling Category and twenty three of the said seats to Alumni Sibling Category, leaving only one seat for the applicants in the Sibling Category, who did not meet the Double Sibling Category or who did not have an alumni sibling, the chances of the petitioner of admission were literally reduced to 'NIL'. It is contended that the respondent No.2 School, without notice, could not have so changed the criteria. It is argued that the respondent No.2 School has acted *mala fide* and indulged in favouritism.

4. I have at the outset invited the attention of the counsel for the petitioner to the judgment of a learned Single Judge of this Court in ***Forum For Promotion of Quality Education For All Vs. Lt. Governor of Delhi*** 216 (2015) DLT 80 concerned with the question, whether private unaided schools have the autonomy to admit students and whether the children through their parents have a right to choose a school in which they wish to study and whether the executive, by way of an office order, can impose a formula on the basis of which nursery admissions have to be carried out by such schools. It was held, (a) that private unaided recognized school managements have a fundamental right under Article 19(1)(g) of the Constitution to maximum autonomy in the day to day administration,

including the right to admit students, though the right to administer does not include the right to mal-administer; (b) that restrictions cannot be imposed by way of office orders and that too without any authority of law; (c) that restrictions can be imposed only by way of law enacted by the Legislature and not by issuing a circular or a policy decision; (d) admittedly, no law in this regard exists; (e) that the Government cannot impose a straight jacket formula of admission upon the schools under the guise of reasonable restriction and that too without any authority of law. Accordingly, the office order of the respondent DoE of the GNCTD purporting to regulate the admissions, was quashed.

5. It has further been brought to the notice of the counsel for the petitioner that though an appeal being LPA No.781/2014 titled ***Directorate of Education Vs. Action Committee for Unaided Recognized Private Schools*** against the aforesaid judgment is pending consideration before a Division Bench of this Court but vide judgment dated 10th December, 2014 of the Division Bench, the application for stay of operation of the said judgment was rejected.

6. It has thus been enquired from the counsel for the petitioner that in the aforesaid prevalent state of law, how can this Bench, which is bound by

the dicta of the Co-ordinate Bench, interfere with the criteria followed by the respondent No.2 School for admission.

7. The counsel for the petitioner has fairly admitted that he is not aware of the aforesaid judgment. Though he stated that he, after going through the same and if needs to contend anything, will mention the matter but has not reverted.

8. Though it is not argued but I may add that the action of the respondent No.2 School impugned in this petition would not, in my view, amount to mal-administration, within the meaning of the judgment aforesaid.

9. The counsel for the respondent No.1 DoE has also stated that in the face of the aforesaid judgment, DoE has minimal role.

10. The senior counsel for the respondent No.2 School of course contends that there is no departure from the admission criteria published, inasmuch as Double Sibling and Alumni Sibling are also a component of the Sibling Category. It is further pointed out that since this Court vide order dated 27th March, 2015 had restrained further admissions against Sibling Category, one seat in the Sibling Category is lying vacant.

11. The counsel for the petitioner in rejoinder has contended that a draw

of lots ought to have been held of all the applicants in the Sibling Category, whether Double Sibling or Alumni Sibling and if the respondent No.2 School intended to have sub-categories of Double Sibling and Alumni Sibling, it ought to have prescribed so in the admission criteria. It was further stated that the petitioner, in the draw of lots for one seat only, would hardly have a chance of admission.

12. I am afraid, in the light of the dicta aforesaid, no relief to the petitioner is possible. The petition is accordingly dismissed.

13. Axiomatically, the stay of admission earlier granted stands vacated. The admission to the seat(s), if any vacant in view of the said interim order, be now filled up in accordance with the admission criteria / law forthwith.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 09, 2015

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