

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

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Date of decision: 2nd September, 2015

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W.P.(C) 5949/2015 & CM No.10781/2015 (for directions).

RAMESH NEGI

..... Petitioner

Through: Mr. Rajat Aneja & Ms. Chandrika Gupta, Advs.

Versus

GOVERNMENT OF NCT OF DELHI AND ORS. ... Respondents

Through: Mr. Naushad Ahmed Khan, Adv. for GNCTD.

Mr. Ramesh Singh with Ms. Megha Mukherjee & Mr. Anshul Gupta, Advs. for R-4.

Mr. R. Dhawan & Mr. B.S. Rana, Advs. for R-5.

Mr. Ashok Chhabra & Mr. Dinesh Madan, Adv. for R-6.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The petition seeks mandamus to the respondents no.1 to 3 Directorate of Education (DoE) of the Government of National Capital Territory of Delhi and to the respondent no.8 Chief Commissioner of Persons with Disabilities to ensure admission of his minor son born on 5th January, 2011 to the Preparatory (Prep)/ Nursery Class in either of the respondents no.4 to 7 Sanskriti School, Springdales School, Bal Bharati Public School Rajinder

Nagar or Delhi Public School, Mathura Road, under the category of Children With Special Needs (CWSN).

2. Notice of the petition was issued on 10th June, 2015 when the respondents no.4 to 7 Schools were also directed to inform the status of compliance with the Circular dated 10th February, 2015 of the respondent DoE and the respondent DoE was directed to ascertain the said information. Vide subsequent order dated 17th June, 2015, respondents no.4 to 7 Schools were further directed to in their respective counter affidavits clarify as to how and when the applications of the CWSN admitted to the respective Schools were received and admissions granted. Neither has anybody appeared for the respondent no.7 Delhi Public School, Mathura Road nor any counter affidavit has been filed on its behalf. Counter affidavits have been filed by the respondent DoE and the respondents no.4 to 6 Schools. The counsels were heard on 21st July, 2015 when it appeared that the right which was asserted by the counsel for the petitioner was under the Right of Children to Free and Compulsory Education (RTE) Act, 2009. Attention of the counsel for the petitioner was invited to the judgment of the Division Bench of this Court in *Social Jurist, A Civil Rights Group Vs. Government of NCT of Delhi* AIR 2013 Del. 52 referred to in *Forum for Promotion of*

Quality Education for All Vs. Lt. Governor, Delhi 216 (2015) DLT 80 to enquire whether not it was held therein that RTE Act is not applicable to Nursery classes or below the age of six years. It was as such enquired from the counsel for the petitioner as to how under the RTE Act mandate to the respondent DoE to ensure admissions in the Prep / Nursery class was sought. Upon the counsel contending that the petitioner was also invoking the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) (PWD) Act, 1995 it was enquired as to how the same could be invoked against the respondents no.4 to 7 unaided Schools. It was yet further enquired whether not as held by this Court in ***Forum for Promotion of Quality Education for All*** supra, the unaided schools in the matter of admission to Nursery classes have an absolute autonomy, which cannot be interfered with by the State by office orders / circulars which do not have any authority of law. On request of the counsel for the petitioner, hearing was adjourned. On 29th July, 2015 further arguments were heard and hearing concluded.

3. It is the case of the petitioner, that:-

(a) his son is suffering from Autism;

- (b) the Division Bench of this Court in ***Pramod Arora Vs. Hon'ble Lt. Governor of Delhi*** (2014) X AD (Delhi) 241 directed the DoE to take steps for admission of disabled children in Private Unaided Recognized Schools by issuing Guidelines therefor;
- (c) in compliance of the aforesaid direction, respondent DoE has issued the Circular dated 10th February, 2015 outlining the procedure for admission of CWSN in the selected schools;
- (d) the petitioner filled up Common Application Form, for admission in Entry Level classes in private unaided recognized schools having facilities for CWSN, prescribed by the respondent DoE vide Circular dated 10th February, 2015, opting for the respondents no.4 to 7 Schools; the petitioner independently also applied to the respondents no.4 to 7 Schools;
- (e) respondents no.4 to 7 Schools possess the facility / infrastructure to provide education to CWSN;
- (f) as per the Circular dated 10th February, 2015, the respondent DoE was to supervise the entire admission process of CWSN;

- (g) though the respondent no.4 Sanskriti School declared having reserved two seats in Preparatory (Prep) class for CWSN but till the filing of the petition had not taken any steps to fill the said seats;
- (h) similarly the respondents no.5 to 7 Schools also did not take any steps to fill up the seats for CWSN;
- (i) the respondent DoE has failed to take any action;
- (j) Section 26 of the PWD Act also provides for free education to every child with disability and for an endeavor to promote the integration of students with disabilities in normal schools;
- (k) the petitioner, on 7th April, 2015 lodged a complaint with the respondent no.8 Chief Commissioner of Persons with Disabilities which issued notice thereof to the respondents no.4 to 7 Schools;
- (l) the petitioner received a reply from the respondent no.5 Springdales School falsely stating that it had not received any application form from the petitioner;

- (m) the respondents no.4&5 Sanskriti and Springdales Schools also took a stand that the seats reserved for CWSN in their respective Schools had been filled up – however without giving any particulars thereof; the respondent no.6 Bal Bharati Public School also took the same stand; and,
- (n) the respondent DoE has failed to perform its duty as a Nodal Officer.

4. The respondent DoE in its counter affidavit has merely furnished the information collated by it as to the number of seats available for CWSN in the unaided schools in the Prep class and the status thereof.

5. The respondent no.4 Sanskriti School in its counter affidavit has pleaded that, (i) it is one of the Schools selected by respondent DoE for admitting children suffering from Autism; (ii) it had two seats under the CWSN category; (iii) while the petitioner submitted his application on 11th March, 2015 the two children ultimately granted admission submitted their applications on 27th February, 2015 and 11th March, 2015 respectively; (iv) the School evaluates and selects the applications on the basis that the admitees, despite having special needs would settle and benefit in an

integrated and inclusive set up, by evaluating the condition of the child to handle activities of daily living, adaptive behaviour, readiness for academics; (v) only those children who clear the said criteria are called for personal individual interaction to assess cognition, social-emotional and physio motor levels, to match with the curriculum being run in the School and interactions are held with the parents to have a consensus on the curriculum and specific requirements of the child; (vi) the petitioner's son on the basis of his medical records submitted with the application could not clear Level-I of screening (detailed reasons therefor are set out in para-6 of the Preliminary Objections but it is not deemed appropriate to record the same here); (vii) that on the basis of evaluation, two other children with CWSN were admitted; and, (viii) that there are no more seats available under the CWSN category.

6. The respondent no.5 Springdales School in its counter affidavit has pleaded that, (a) for admissions in the Academic Session 2015-16, three seats were meant for CWSN; (ii) eleven applications were received including from the three children ultimately admitted on 9th January, 2015, 5th January, 2015 & 8th January, 2015; (iii) no application was received from the Nodal Officer viz. respondent DoE; (iv) the number of applicants being

more than the number of seats, admissions were decided on the basis of draw-of-lots held on 4th February, 2015 in the presence of the representative of the respondent DoE and parents of the applicants – ten of the eleven applicant parents were present; (v) no objection was raised by the respondent DoE to the admission process adopted; (vi) the petitioner submitted his application only on 25th March, 2015, after the admissions were already over; (vii) now there is no vacancy; and, (viii) the petitioner was under an obligation to apply and/or ensure that his form is communicated to the School before the last date of receiving of applications but did not take any steps and got himself registered with the Nodal Officer also after the date prescribed therefor.

7. The respondent no.6 Bal Bharati Public School in its counter affidavit has pleaded that, (i) the total number of seats in the Prep class for Academic Session 2015-16 was 368 and of which 25% i.e. 92 were reserved as per the provisions of the RTE Act; (ii) a draw-of-lots for admission to the said seats was conducted on 2nd February, 2015 in the presence of the Observer appointed by the respondent DoE in which 92 children were provisionally selected and a waiting list of 46 prepared; (iii) the petitioner visited the School after 16th March, 2015 along with an application for admission of his

child and was informed that since his first two preferences were Sanskriti and Springdales Schools he should first disclose the status thereof; and, (iv) the petitioner thereafter did not turn up.

8. Though the petitioner has filed rejoinders to the counter affidavits of the aforesaid Schools but since during the hearing no reference was made thereto, need to advert to the contents thereof is not felt.

9. The counsel for the petitioner argued, that:-

A. the Division Bench in *Pramod Arora* supra devised a admission and reporting mechanism for the admission for CWSN in primary and 1st Grade i.e. Entry Level classes by directing the Government of NCT of Delhi:-

(i) to create a list of all public and private educational institutions catering to CWSN; and,

(ii) to create a Nodal Agency under the authority of the DoE for processing all applications pertaining to admission to CWSN;

B. the DoE in pursuance to the above got inspected 231 private unaided recognized schools to verify the facilities available for

CWSN and uploaded the details of the Schools on its website and also devised Common Registration Form for applying for admissions;

- C. even prior thereto, respondent DoE had issued an order dated 19th September, 2014 in this regard;
- D. the petitioner submitted his application to the respondent DoE on 5th March, 2015; and,
- E. with respect to the query raised in the hearing on 21st July, 2015 supra it was contended that the judgment of the Division Bench in ***Social Jurist, A Civil Rights Group*** supra though holds that RTE Act is not applicable to Prep / Nursery classes admission whereof is made before the age of six years but nevertheless refers to the proviso to Section 12(1)(c) thereof providing that where the School imparts pre-school admission it shall comply with the provisions of RTE Act for admissions to such pre-school education.

10. The counsel for the respondent no.5 Springdales School and the respondent no.6 Bal Bharati Public School during the hearing re-affirmed the contents of their respective counter affidavits.

11. The counsel for the respondent no.4 Sanskriti School contended, that

- a) ***Pramod Arora*** supra was a Public Interest Litigation, in which none of the unaided schools or their association was impleaded as respondents;
- b) challenge in ***Pramod Arora*** was to the amendment w.e.f. 2012 to Section 2(d) of the RTE Act, including a child with disability in the definition of a “child belonging to disadvantaged group” and to the definition in Section 2(ee) of a "child with disability" and it was in that context held that the rights under Section 26 of the PWD Act were in no manner affected by the said amendment;
- c) the said judgment, though creating the respondent DoE as the Nodal Agency, vide para 61(b) vests the ultimate decision with the Schools and in para 61(f) provides that if any CWSN is unable to be placed in a School catering to his or her special needs, it is the responsibility of the DoE to ensure that the mandate under Section 26 of the PWD

Act is fulfilled by looking for an alternative – on the basis thereof it is argued that once the seats in the respondents Schools have been filled up, it is the duty of the respondent DoE to find an alternative placement for the child of the petitioner;

- d) as per para 62 of ***Pramod Arora***, the purpose of the Court devising the scheme was only to optimize the filling up of the seats for CWSN in the schools;
- e) as far as the respondent no.4 Sanskriti School is concerned, it had catered to CWSN even prior to 2012;
- f) the school is fully entitled to evaluate a CWSN for the purposes of admission in that category;
- g) though the Circular dated 10th February, 2015 *supra* required the petitioner to take a print out of the form filled up with the respondent DoE and to submit the same with the respective Schools with all relevant documents but the petitioner did not comply with the said requirement; he did not submit the requisite documents;

- h) the challenge in the writ petition is on the basis of the respondents Schools having not made any admissions in the CWSN category – once it is established that admissions have been made, the petition has to be dismissed;
- i) the petitioner, in the rejoinder filed has sought to change his stand by alleging the seats available in the Sanskriti School in the CWSN category to be four instead of two; it is explained that two of the seats are for Nursery class and for which the petitioner being overage is not qualified; and,
- j) the right of CWSN under the PWD Act against unaided Schools can be to the extent of 25% of the seats under the RTE Act only and no more; reliance in this regard is placed on para 59 of ***Pramod Arora***.

12. I have considered the rival contentions.

13. As far as the query raised in the hearing on 21st July, 2015 supra is concerned, on a re-reading of the judgment of the Division Bench in ***Social Jurist, A Civil Rights Group*** I am satisfied that the same cannot be read as negating the rights under the proviso to Section 12(1)(c) of the RTE Act whereby though the provisions of RTE Act are made applicable to children

between the classes I to VIII but if the School provides pre-school admission, it is required to abide by the provisions of the RTE Act while making admissions to pre-school classes. The same is essential inasmuch as unless the same is done, the School would not have any seats available for admission under the RTE Act at the stage of class-I. Reference by the counsel for the respondent no.4 Sanskriti School to ***Gajraj Singh Vs. State of U.P.*** (2001) 5 SCC 762 laying down that a doubt arising from reading of a judgment of the Court can be resolved by assuming that the judgment was delivered consistently with the provisions of law and therefore a course or procedure in departure from or not in conformity with statutory provisions cannot be said to have been intended or laid down by the Court, in this regard, is apposite.

14. At the same time, it is clear from a reading of para 59 supra of ***Pramod Arora Vs. Hon'ble Lt. Governor*** that the enforcement of the rights under Section 26 of the PWD Act against the unaided Schools is limited to 25% of the seats under the RTE Act and to no more.

15. That brings me to, whether the actions of the respondents no.4 to 7 Schools impugned in this petition are violative of the dicta in ***Pramod Arora***

supra or the order dated 19th September, 2014 or the Circular dated 10th February, 2015 issued in pursuance thereto.

16. This Court in ***Pramod Arora*** negated the challenge as aforesaid to the amendment of the year 2012 of Section 2(d) of the RTE, Act on the ground that the same by including a “Child with Disabilities” within the meaning of PWD Act in the definition of a child belonging to the disadvantaged group curtailed the rights under the PWD Act, by *inter alia* holding that Government of NCT of Delhi could within the reservation of 25% of the seats in Schools under the RTE Act provide for a further reservation for children with disability or CWSN. However neither was any percentage of any such reservation specified in the said judgment nor in the order / circular supra issued in pursuance thereto nor is it the case of the petitioner that there is otherwise any such reservation. It thus cannot be said that as of today the schools are required to reserve any percentage of seats out of 25% seats under the RTE Act for children with disability or CWSN; rather from a reading of the dicta in ***Pramod Arora*** it is evident that the facilities necessary for CWSN are available in certain schools only. It was for this reason only further held, that neighbourhood criteria cannot be applied for admissions under the CWSN sub category.

17. What prevailed with the Division Bench in *Pramod Arora* to provide for a Centralized Application Form for admission under the CWSN category and to appoint DoE as the Nodal Officer was the need to match the demand for schools for CWSN with the supply of seats in educational institutions(public and private) and to ensure that the legal rights under Section 26 of the PWD Act are not frustrated and the seats available in the CWSN category are utilized to the optimum. The judgment notices that all the schools do not have the facilities necessary for CWSN; it was felt that preparation of a list of such schools with the facilities available therein for different kind of disabilities and publication thereof on the website would facilitate the parents of such children. A reading of the judgment also shows that the purpose of the Centralized Application Form was to enable the respondent DoE to keep a track and build data of the seats available in different schools and the filling up thereof. It was perhaps felt that the same would also enable the parents to track the available seats. While doing so, the responsibility of forwarding the applications for admission submitted to the respondent DoE as a Nodal Officer, to the concerned school was entrusted to the respondent DoE. Further directions were issued to the

respondent DoE to design an appropriate admission mechanism to optimize the filling up of those seats having regard to the facilities available.

18. Though the order dated 19th September, 2014 and Circular dated 5th February, 2015 were issued in pursuance thereto but I am afraid did not carry the matter further. The order dated 19th September, 2014 is nothing but a repetition of the directions issued in the judgment. However in the Circular dated 10th February, 2015, the respondent DoE, in addition to requiring the Centralized Admission Form to be filled up, in Clause (3) prescribed as under:-

“(3) The application form filled up by the parents will be transferred online to the private school/s concerned as well as Dy. Director (IEDSS)/Nodal Officer. The parents/guardians may take a print out of the filled up application form/s sent to the school/s and hard copy of the same after affixing photograph of the child shall be submitted to school authority/ies concerned with all relevant documents to support their request for admission, for consideration.”

The same thus required the parents to take a print out of the filled up centralized application form and to themselves take it or send it to the School, affixing thereon the photographs of the child as well as the supporting documents.

19. Some of the respondents no.4 to 7 Schools have as aforesaid denied receipt of any application from the respondent DoE. The petitioner has not been able to establish that the application made by him to the respondent DoE on 5th March, 2015 was forwarded by the respondent DoE to the respondents no.4 to 7 Schools. The said schools claim to have, in any case, by then having already completed their admissions process. Neither the judgment nor the order / Circular mention any date for admission. The admission procedure otherwise prescribed for unaided schools for the year 2014-15 was set aside by this Court in *Forum for Promotion of Quality Education for All* supra and which judgment was applicable to the year 2015-16 also. It was held that the Schools have autonomy in the matter of admissions and which cannot be interfered with. The same would apply to admissions under the CWSN category as well.

20. I am of the opinion that the order/circulars aforesaid are misleading. It appears that there is no proper system in place for the respondent DoE to forward the centralized applications forms to the schools having facilities for CWSN. It is suggested that respondent DoE, required to be submitted with it, if for the following academic year unable to devise a foolproof system therefor, ought to clarify that the parents in addition to filing an application

with the respondent DoE are also required to approach the schools directly for admission.

21. Otherwise also, absolute discretion has been left to the unaided schools in the matter of admission. Though the petitioner approached this Court with the case of the schools having not made admissions under the said category but what has emerged is that all the schools indeed have made admissions. The challenge by the petitioner to the admissions made cannot be entertained in the absence of the parents of the children admitted; even otherwise, in accordance with the dicta of this Court in *Forum for Promotion of Quality Education for All*, there is no such right save under the RTE Act.

22. I am thus unable to find the petitioner entitled to any relief in law and dismiss the petition though with the hope that the respondents no.4 to 7 Schools if are able to accommodate the child would make best endeavour to do so.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 2ND, 2015/‘pp’ ..