

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

%

Date of decision: 14th October, 2015

+

W.P.(C) No.6925/2015

ATHARV DADHICH & ANR.

..... Petitioners

Through: Mr. Jinendra Jain, Mr. Ajay Jain, Mr. Abhishek Jain, Mr. Shashwat Bhardwaj & Mr. Kanwaljeet, Advs.

Versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Sachin Nahar, Adv. for R-1.
Mr. Kamal Gupta, Adv. for R-2.

AND

+

W.P.(C) No.7666/2015

MASTER YASH GUPTA (MINOR) THROUGH: HIS NEXT FRIEND & NATURAL FATHER SH. NITIN GUPTA...Petitioner

Through: Mr. Ashok Agarwal, Adv.

Versus

BAL BHARATI PUBLIC SCHOOL & ANR. Respondents

Through: Mr. Niti Jain, Adv. for Mr. Anuj Aggarwal, Adv. for R-2.
Mr. Kamal Gupta, Adv. for R-2.

AND

+

W.P.(C) No.7827/2015

PRATYUSH & ANR.

.....Petitioners

Through: Mr. Jinendra Jain, Mr. Ajay Jain, Mr. Abhishek Jain, Mr. Shashwat Bhardwaj & Mr. Kanwaljeet, Advs.

Versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Amit Singh, Adv. for R-1.

Mr. Kamal Gupta, Adv. for R-2.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The two petitioners viz. Atharv Dadhich and Sarthak Jha in W.P.(C) No.6925/2015, the sole petitioner in W.P.(C) No.7666/2015 and the two petitioners viz. Pratyush and Lakshay in W.P.(C) No.7827/2015 seek a direction to the respondent Bal Bharati School, Pitampura, Delhi to allow them to continue their studies in the said school. The two petitioners in W.P.(C) No.7827/2015 have additionally also impugned the order dated 6th May, 2015 of the Sub-Divisional Magistrate (SDM), Saraswati Vihar, Government of National Capital Territory of Delhi (GNCTD). In addition to the School, the Directorate of Education (DoE) of the GNCTD has been impleaded as a respondent in all the writ petitions.

2. W.P.(C) No.6925/2015 came up for admission on 29th July, 2015 when it was noticed; i) that the two petitioners therein had been admitted to the said School in the year 2014 in the Economically Weaker Section (EWS) category; ii) that they had been expelled from the said School owing to the findings of an inquiry conducted by the SDM, Saraswati Vihar and in which

inquiry it was found that the EWS certificates furnished at the time of their admission were fake, and, iii) an FIR in that regard had also been registered. Though in the said petition the report of the inquiry conducted by the SDM had not been impugned but still the counsel for the DoE of GNCTD was requested to produce the same. On the next date i.e. 4th August, 2015, a copy of the letter dated 6th May, 2015 of the SDM, Saraswati Vihar of the GNCTD to the School directing the School to cancel the admission to the said two petitioners for the reason of the same having been procured on the basis of fake / forged EWS certificates along with certain other annexures thereto was produced. It was observed in the order of that date that no error can be found in the action of the School of expulsion of the petitioners and the relief if any to the petitioners could be granted only in a properly constituted petition impugning the decision of the SDM. It was further recorded in the order that considering the fact that the petitioners were minors and the fault if any was of their respective fathers and that the seats so vacated by them would remain vacant and that the future of the petitioners may suffer irreparably, it was enquired from the counsel for the petitioners, whether the fathers of the petitioners were willing to pay all arrears of fee as paid by other students admitted to the General Category and

to continue to pay the said fee. The counsel for the petitioners stated that the fathers of the petitioners were so ready, subject to their right to challenge the decision of the SDM. The counsel for the DoE of the GNCTD appearing on advance notice also stated that he has no objection to the said course of action. Accordingly, notice of the petition was issued to the School.

3. It was thereafter that W.P.(C) No.7666/2015 was filed where the petitioner, identically placed as the petitioners in W.P.(C) No.6925/2015, in the petition itself offered to pay the entire arrears of fee and future fee at rates as paid by other students admitted to the General Category.

4. The two petitioners in W.P.(C) No.7827/2015 are also identically placed as the petitioners in the other two writ petitions.

5. The counsel for the School on 26th August, 2015 informed that it was not as if the seats vacated by the petitioners would remain vacant. It was stated that the said seats would be filled up with EWS candidates only and the process for which had already been commenced. It was yet further stated that if the School was to take back the petitioners, even though agreeable to pay the requisite fee, in such a situation, would be exceeding the maximum capacity otherwise fixed for each class, affecting the academic and educational efficacy of the School. This Court in the order of that date

also observed that EWS seats could not be ordered to be converted into a paid seat, to accommodate the petitioners. The counsel for the DoE of the GNCTD also on that date stated that the petitioners / their fathers having indulged in illegality were not entitled to any discretion.

6. Counter affidavits have been filed by the School and the GNCTD in W.P.(C) No.6925/2015. The counsels for the petitioners were heard on 27th August, 2015 and judgment reserved. During the hearing, it was also informed that the petitioner No.2 Sarthak Jha in W.P.(C) No.6925/2015 is not covered by the order dated 6th May, 2015 of the SDM but the School on its own inquiry has found that the EWS certificate on the basis of which he was admitted to be fake. The counsel for the petitioners admitted that the EWS certificate on the basis of which admission was sought, is indeed forged.

7. Though as aforesaid, during the hearing of the petitions it was at one time felt that the petitioners, if ready to pay fee at normal rates, should be allowed to continue their studies in the same School but on further consideration I am of the view that such a direction in the facts of these cases is not called for. The counsel for DoE of GNCTD was correct in his contention that the petitioners / their fathers from their own conduct have

disentitled themselves from any equitable relief. Though my heart still cries for the petitioners who are of very raw age and dependent upon their parents / guardians for their well being but the fact remains that granting of such relief with such considerations will ultimately benefit the parents of the petitioners who as per the material presently on record have themselves indulged in illegality in the matter of admission of the petitioners to the School. I say so without going into the aspect of challenge if any to the report of the SDM because the actions of the parents of the petitioners of agreeing and / or offering to pay the fee of the School at the normal rates is itself reflective of their not belonging to the EWS category and being not entitled to admission under the said category. At this tender age at which the petitioners are, it is their parents who are more anxious about getting them admitted to a particular school and the petitioners are not old enough to distinguish one school from another. The counsel for the DoE of GNCTD during the hearing rightly pointed out that it is not as if the petitioners upon being expelled from the said School would remain without education. It was stated that the petitioners have a right under the Right of Children to Free and Compulsory Education (RTE) Act, 2009 to be admitted to the government / municipal school in their neighbourhood. Allowing the

petitioners to continue in the School, in my opinion, would send a wrong signal / message and encourage others to indulge in such practices under the belief that even if they are to be caught in future, they have to, at best, pay monetarily.

8. The counsel for the petitioners in one of the petitions faced therewith argued that the parents of the petitioners were not to blame for the fake / forged certificates and in fact the management of the School had collected full charges from them as from other students and had itself admitted the petitioners in the EWS category by forging the EWS certificates.

9. However the said argument cannot be gone into in writ jurisdiction.

10. As far as the challenge made in W.P.(C) No.7827/2015 to the report of the SDM is concerned, in my view, once it is admitted that the EWS certificates are fake / forged and it is the stand that the forgery was not by the parents but by the School, no fault can be found with the report of the SDM to the extent of holding the EWS certificates to be fake / forged and also to the direction to the School to expel the petitioners. The petitioners, if not belonging to EWS category, cannot continue their education in the said category blocking a seat belonging to the said category to the detriment of those in fact belonging to the said category and especially when the seats so

vacated by the petitioners are capable of being filled up with genuine EWS candidates. The question, whether the EWS certificates were forged by the parents of the petitioners or by the School authorities themselves is to be determined in an appropriate proceeding where witnesses can be examined and cross-examined.

11. In order to accommodate the petitioners, the maximum limit on the number of students in each class fixed by the School cannot be permitted to be exceeded, affecting the academic standards and to the detriment of the other students of the School.

12. There is thus no merit in the petitions.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 14, 2015

‘gsr’