

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-:-

C.W.P No. 19110 of 2017 (O&M)

Date of decision: 30.11.2018

Anhadpreet Singh

... Petitioner

Vs.

State of Punjab & Ors.

...Respondents

**CORAM: HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Ravi Kant Sharma, Advocate, for the petitioner.

Ms. Rameeza Hakeem, Addl. A.G., Punjab.

Mr. Kanwalvir Singh Kang, Advocate, for respondent No.2.

MAHESH GROVER, J. (Oral)

Petitioner – Anhadpreet Singh, being minor has preferred the present petition through his father. Grievance stems from the denial of admission to pre-nursery class by respondent No.2.

As many as hundred seats were available and according to the petitioner 25% ought to have been reserved for the economically weaker section as per the provisions of Right of Children to Free and Compulsory Education Act, 2009 (for short, 'the Act'). In fact the petition met with dismissal vide orders dated 11.09.2017 when this Court passed an order which we deem to appropriate to extract hereunder:-

“While we do not find any ground to interfere with the impugned order to the extent of denial of admission to the petitioner, merely because he is eligible and has applied, let notice of motion be issued for 21.09.2017 to examine, (i) whether the respondent-School is competent to reserve 15 seats

for old Yadvindrian; 15 seats for Siblings and 10 seats for Management?, (ii) what are the duties and responsibilities of the District Admission Monitoring Committee? and (iii) whether respondent No.3 is performing such duties and responsibilities in accordance with the legislative intent?”

It is only on account of the afore-stated order that this petition has remained alive.

Learned counsel for the State apart from referring to the guidelines available to the schools giving them unfettered powers to fill up 75% of the seats while putting 25% of the seats at the disposal of the economically weaker section under the Act, has contended that the provisions of the Act which the petitioner seeks to invoke are not even applicable in the matter of admission to the pre-nursery class. Reference has been made to the judgment of Delhi High Court reported as 2013(134) DRJ 529 (DB) **Social Jurist, A Civil Rights Group & Anr Vs. Govt. of NCT of Delhi & Anr.**, where the Court examined many issues and for the purpose of the reference the questions posed for determination are extracted hereunder:-

“i) Whether Right to Education Act applies to pre-school including nursery schools and for education of children below six years of age? And;

ii) Whether Right to Education Act applies to admission of children in respect of 75% of the seats apart from 25% of the seats for children covered under the definition given in Section 2(d) and 2(e) of the Act?”

The conclusion is uncapsulated in para Nos 30 and 31, which are also extracted below:-

“30. *Considering the provisions contained in Article 21-A of the Constitution and the scheme of the Right of Children to Free and Compulsory Education Act, 2009, as discussed earlier by us, there is no escape from the conclusion that as far as the private unaided schools referred in Section 2(n)(iv) of the said Act are concerned, the provisions of the Act, except the admission to the extent of 25% of the strength of the class, to the children belonging to the weaker sections and disadvantaged group, do not apply to the admissions made to the pre-elementary (pre school and pre-primary) classes of such schools. Consequently Section 13 of the Act which prohibits collection of capitation fee and adoption of any screening procedure also does not apply to the admissions made to the remaining 75% of the pre-elementary classes of unaided private schools.*

31. *The next question which then arises for consideration is as to how the admissions to the pre-elementary classes of private unaided schools shall be governed since the provisions contained in RTE Act do not apply to such admissions. As far as Delhi is concerned, it is Delhi School Education Act, 1973, which applies to all schools in the Union Territory of Delhi. “School” has been defined in Section (2)(u) of the said Act to include a pre-primary,*

primary, middle and higher secondary school, and also includes any other institution which imparts education or training below the degree level, but does not include an institution which imparts technical education. Therefore, the aforesaid Act applies even to private unaided schools in Delhi

Section 3(1) of the said Act provides that Administrator may regulate education in all the schools in Delhi in accordance with the provisions of the Act and the rules made thereunder. Rule 43 of Delhi School Education Rules, 1973 provides that the Administrator may, if he is of opinion that in the interest of school education in Delhi it is necessary so to do, issue such instructions in relation to any matter, not covered by these Rules, as he may deem fit. In exercise of the powers conferred upon him by Section 3(1) of the Act and Rule 43 of Delhi School Education Rules, 1973, Lieutenant Governor of Delhi has made an order called the Recognized Schools (Admission Procedure for Pre-Primary Class) Order, 2007 which applies to admissions made to pre-primary and pre-school (pre-elementary) classes made by all schools in Delhi, including private unaided schools. The said order, to the extent it is relevant, reads as under:-

“7. The school shall not conduct any interview of, or interaction with the child for whom admission is being sought. There shall also be no observation of the child either in formal or informal conditions. Similarly, the school shall not

conduct any interview of or interaction with the parent(s)/guardian(s). However, the school can have informal interaction with parent(s)/guardian(s) only with the purpose to ascertain the veracity and correctness of the documents/details which will be communicated to the parents(s)/guardian in writing in advance.

8. There shall be no overall lottery system to select/short list a child for admission. Limited use of lottery may however be adopted in case there is a tie amongst applicants.

14. The school shall develop and adopt criteria for admission which shall be clear, well defined, equitable, non-discriminatory and unambiguous. The school shall adopt those parameters which are in the best interests of children and are in line with its own philosophy, and these shall include the following:-

(i) Neighbourhood - It is in the interest of children that they are provided admission in a school nearest to their residence. The schools shall, therefore, give preference to children living in nearby areas. If the school is satisfied that a good and safe transport is available for a child, then, it may consider giving admission to such a child even if he/she lives at a place quite far off from the school. This is also important as distribution of schools is not uniform in the city.

(ii) Background of the Child - Children from all social and economic backgrounds shall be equally considered for

admission. The school shall make a conscious effort to admit children with special needs or from vulnerable backgrounds.

(iii) Sibling - Generally, parent(s) or guardian(s) prefer that their children study in the same school. Therefore, the school may give preference to a child who has a sibling studying in that school.

(iv) Transfer Case: - Many parents or guardian are working in transferable jobs, in the government and other private sectors. The school may give preference to the child of such parent(s) or guardian(s).

(v) Single Parent i.e. divorced/ widow/ widower/ unmarried:- The School may give preference to admit child of such single parent.

(vi) Management Quota – School may have a management quota which shall not exceed twenty percent of the total seats available for admission in the class.

(vii) Minority-All minority schools can keep the minority status of the child seeking admission as a criterion.

Schools can also fix additional parameters but are required to stipulate a point system for each criteria/parameter

15. The admission criterion adopted by the school shall be made by managing committee and be finalized with the prior approval of the Directorate of Education. The final approval/disapproval shall be communicated to the concerned school within four weeks from the date of receipt of request

from the school concerned.

16. Every school shall make public the approved admission criteria adopted by it, on its website (where available), prospectus and Notice Board.

17. The school shall not change, alter or modify its approved admission criteria during the admission process in an academic session.

21. There shall be one year of pre-primary class in every school. A class of one year duration preceding this called pre-school may be set-up as a neighboring pre-school and the Education Department shall frame the guidelines in this regard, in consultation with experts. The schools which are already running pre-school class may continue to do so subject to the following conditions:

(a) Every child admitted to pre-school shall be of minimum three years by 31st March of the year in which admission is being sought;

(b) The schools shall frame their own guidelines for admission to pre-school class and the same criteria as for admission to the pre-primary level shall be adopted, until such time as the guidelines for pre-schools are framed;

(c) Any such school which has a pre-school class from the session commencing in April 2008, shall move those students to the pre-primary class for the session commencing in April 2009. After that, the final norms to be notified for the pre-

school class shall be followed.

Explanation: - For the purposes of this clause, the ages stipulated for entry into standard one, pre-primary class and pre-school class are the minimum ages and there is no bar to children older than the ages specified in this clause being given admission to these classes.

23. A copy of the adopted criteria as approved by Management Committee shall be submitted in the office of the concerned Deputy Director by 30th November, for approval/disapproval.

24. Every school shall furnish detailed information regarding admissions made in the pre-primary class, on the Reporting Form in Form II and District Deputy Director of Education shall put the same on the website of Education Department for public viewing.

25. A Monitoring Cell shall be constituted in each district under the Chairmanship of the District Deputy Director, who shall look into complaints regarding admission and shall also conduct regular inspections to ensure that the process is hassle free, objective and transparent.

26. Any non-compliance of the above Order shall be viewed seriously and necessary action shall be taken as per the provisions of the Delhi School Education Act & Rules 1973.”

It would thus be seen that the aforesaid order applies not only to the admissions made to pre-primary classes for which the child needs to have completed the age of minimum four years

as on 31st March of the year in which the admission is sought, but also to pre-school (nursery admissions) for admission to which a child needs to have completed the age of minimum three years as on 31st March of the year in which the admission is sought.

Learned counsel for the petitioner would then refer to para 43 to contend that the Court itself expressed a desirability of the provisions of the Act being made applicable on parity regardless of the class to which the admissions are to be made. Para-43 is also extracted hereunder:-

“43. Though we have held that Right to Education Act is not applicable to nursery schools, in our opinion there cannot be any difference yardstick to be adopted for education to children up to the age of 14 years irrespective of the fact that it applies to only elementary education. It is the right time for the Government to consider the applicability of Right to Education Act to the nursery classes as well, as in many of the States admissions are made right from the nursery classes and the children so admitted are automatically allowed to continue from Class-I. In that sense, the provisions of Section 13 would be rendered meaningless insofar as it prohibits screening procedure at the time of selection. Importance of education is per se applicable to every child right from admission to nursery classes till it completes the eighth standard. It is common knowledge that though there is obligation on the State to provide free and compulsory education to children and

the corresponding responsibility of the institution to afford the same, educational institution cannot be allowed to run as „Teaching Shops“ as the same would be detrimental to equal opportunity to children. This reality must not be ignored by the State while considering the observations made in this judgment. Hence, we only observe that to avail the benefit of the Right to Education Act to a child seeking for nursery school as well, necessary amendment should be considered by the State. We hope and trust that the Government may take the above observation in the right spirit and act accordingly

We are afraid that the impression gathered by the learned counsel for the petitioner is contrary to the language of the Court in para No.43 where it has merely expressed its pious desire but left it to the State to take a decision in this regard.

From the above it is clear that the claim of the petitioner is not capable of being enforced more particularly when the admission to the classes is already over. However, before parting with the order we think it proper to comment on the concerns raised by this Court in its order dated 11.09.2017 and to our mind since the guidelines permits the flexibility to fill up 75% seats in the manner as desired by the institution there would be no reason to comment on any preference that is given to the siblings of those who are erstwhile students of the school. In any case such a practice is available all over the world in best of the schools and universities. As far as question of having a Admission Monitoring Committee is concerned we have been informed that such a committee is already in place vide

notification dated 18.11.2015 and the Deputy Commissioner is incharge of the same. As far as question No.3 as noticed in the orders is concerned, nothing has been brought to our notice that the State has failed in its obligations in carrying out admissions.

Accordingly, the petition is disposed of but we leave it to respondent No.2 to consider the claim of the petitioner for admission to the class in which he may now be entitled provided that there is existing vacant seat and the Rules so permit.

(MAHESH GROVER)
JUDGE

November 30, 2018
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(LALIT BATRA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No