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

Date of Decision-21.02.2018

+ **W.P.(C) 1372/2018 & CM No.5713/2018 (for stay)**

MASTER TANMAY Petitioner

Through Mr.Amit Sibal, Sr.Advocate
with Mr.Deep karan Dalala,
Advocate

versus

SANSKRITI SCHOOL AND ANR. Respondents

Through Mr.Prashanto Chandra Sen,
Sr.Advocate with Ms.Udayan
Verma and Mr.Subhashree,
Advocates for Respondent
No.1.
Mr.Sanjoy Ghose, ASC with
Ms.Urvi Mohan, Advocate for
Respondent No.2.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J(ORAL)

1. Vide the present petition, the Petitioner, Master Tanmay, has sought a direction to the Respondent No.1-school to allocate the requisite points to him as per its Point-Based system and consider his candidature for admission to class Nursery in the Respondent no.1/school.

2. The case as set up in the petition is that the Petitioner a three years old boy, had applied for admission to class nursery as a General

candidate in the Respondent no.1/school for the academic year 2018-19 through his father and had submitted his online application on 03.01.2018 after filling all the mandatory columns therein. The admission in Respondent No.1-school was based on the petitioner's application, which was successfully accepted and a Registration Acknowledgement Receipt with registration no.1195 was duly issued to him. On 01.02.2018, the respondent no.1-school issued a list of the candidates who had applied for admission to the pre-school for the academic year 2018-19 and the petitioner's name was duly included in the said list of candidates. It is further claimed in the petition that there was no column or note in the said list against the name of the petitioner to show that the petitioner's application form was in any way incomplete. However, on 08.02.2018 when the final list of General candidates was issued by Respondent No.1/School, alongwith points allotted to them as per the Point-Based System, it transpired that the petitioner's name was not included in the said list even though according to the petitioner, he had the requisite points which would have entitled him to be placed in the said list. The petitioner has relied on the criteria published by respondent no.1/school to contend that as per the Point Based System he was entitled to be granted 55 points in total for being considered for admission in Nursery class in Respondent No.1-school. It is further contended that upon realizing that his name was missing from the final list of candidates published by respondent no.1/school on 08.02.2018, the petitioner's parents visited the school and also sent written communications followed by a legal notice to Respondent no.1-school, which have all remained

unanswered and it is in these circumstances the petitioner has approached this Court by way of present petition under Article 226 of Constitution of India.

3. On 13.02.2018, when the petition came up before this Court for admission, the learned counsel for parties were heard at some length, after which the learned counsel for Respondent No.1/School had sought time to obtain instructions and at his request the matter was adjourned to 20.02.2018. On 20.02.2018, the learned counsel for Respondent No. 1 school submitted that the school has already filed a counter affidavit and requested that the matter be decided on merits.

4. On the other hand, Mr. Sanjoy Ghose, learned counsel for the Respondent No. 2/Directorate of Education submitted that Respondent no.2 did not wish to file any counter-affidavit and prayed that the matter may be decided on the basis of pleadings already on record. Learned counsel for Respondent no.2 had, however, pointed out that Respondent No.1/ school had forwarded an application submitted by the Petitioner's father on 3rd January, 2018 to the Respondent no.2 for its approval. Vide the said application, the Petitioner's father has requested for a change of residential address as also for a change of category from EWS to General in respect of his elder son-Master Singham, who had been given admission in Respondent no.1/School under the EWS category in the academic year 2013-14. He submits that the said application is being examined by the Directorate of Education and a decision thereon will be taken after examining all the relevant documents.

5. In its counter-affidavit, the Respondent No.1/School has, while not denying the fact that the Petitioner's application had been duly received by them as also the fact that his name was also included in the list of candidates published by them on 01.02.2018, contended that upon scrutiny of documents the school had found that various columns in the application form had been left blank by the Petitioner, and, therefore, his application was not considered for inclusion in the final list issued by them on 08.02.2018. Interestingly, the counter-affidavit also categorically states that pursuant to the hearing held on 13.02.2018 before this court, the forms and documents were again scrutinized by school and at this stage, the school had now decided to re-examine the documents pertaining to the admission of the Petitioner's sibling, namely, Master Singham, a student of class 3-D of Respondent No.1 school, which is the basis for the Petitioner claiming 25 points prescribed for sibling criteria as per the Point-Based System.

6. In its counter-affidavit, the Respondent No.1/School has also averred that since they have now decided to re-visit the admission granted to the Petitioner's sibling in the academic year 2013-14 as also the fact that the application for change of his category from EWS to General was pending consideration with the Directorate of Education, the Petitioner could not be granted 25 points for the sibling criteria at this stage.

7. Arguing for the Petitioner, Mr Amit Sibal, learned Senior counsel submits that the Petitioner's father had submitted the online application form after duly filling all the mandatory columns and was thereafter issued a Registration Acknowledgment Receipt. Mr.Amit

Sibal, learned Senior Counsel for the petitioner submits that the petitioner's father has filled the application form and after duly filling in all the requisite information and once the said form was accepted, he received the registration number from the school clearly showing the successful submission of form on 03.01.2018 at 6:26 p.m and was also duly allotted a registration number. He submits that since the Petitioner was never informed about any defect in the admission form, which was successfully registered, as also the fact that his name was included in the list of candidates issued by Respondent no.1/School on 01.02.2018, the Petitioner was entitled to be considered for admission as per the criteria mentioned in the circular issued by the school itself.

8. Learned Senior Counsel has also drawn my attention to the admission criteria published by the school which is available on the website of the school and contends that as per the parameters mentioned therein, the Petitioner was entitled to get 55 points in total. He submits that since the petitioner is a resident of a place which falls within the distance criteria of 0-8 Kms, he was entitled to get 30 points for the same and also entitled to get 25 points for the sibling criteria as his elder brother Master Singham is admittedly a student of the Respondent no.1/School from the academic year 2013-14.

9. Mr.Sibal further submits that once the respondents are unable to dispute the fact that the petitioner had submitted information to show that the petitioner was falling in the category of 0-8 kms distance criteria and his sibling was presently a student of the school, there was no reason for the Respondent No.1/School not to allot him points as per their own admission criteria. He further submits that the plea of

the respondents that the petitioner's application was not considered as it had been found that there were certain blank columns therein, is merely an afterthought. He submits that the petitioner had duly filled in all the mandatory columns which were distinguishable by the use of an asterisk on the said columns and in any event once the form has been successfully accepted by the Respondent no.1-school, it was not open for the school to subsequently contend that the application form was not considered due to non-filling of all the columns therein.

10. Mr.Sibal further submits that a perusal of the counter affidavit in itself shows that merely because the petitioner's father had now in view of his increased income, decided to submit an application for change of category of his elder son-Master Singham from EWS to General category, the respondents could not contend or presume that the admission of the petitioner's sibling namely Master Singham was in any way vitiated or based on fraudulent documents as sought to be contended by Respondent No.1/School. He submits that the respondents have not even shown any prima facie evidence in support of their bald plea that the admission of the petitioner's sibling was vitiated in any manner. Mr.Sibal has laid great stress on the fact that when the petitioner's sibling Master Singham was admitted in the Respondent no.1/School in the year 2013, the Petitioner's parents had submitted all the necessary documents issued by public authorities which have been in possession of the Respondent No.1/school for the last five years and no dispute in respect thereof had been raised till the filing of the present petition.

11. He thus contends that at this stage, the petitioner was entitled to be allotted 25 points on the ground of sibling criteria and the respondents could not refuse to allot the said 25 points to him on the ground that the school had now after a period of 5 years decided to once again scrutinize the documents submitted by the petitioner's parents at the time of his sibling's admission in the year 2013.

12. Mr.Sibal further contends that as per the admission criteria issued by the Respondent No.1/School it was incumbent upon the Respondent No.1-school to allot 55 points in total to the petitioner and, accordingly, include his name in the final admission list issued on 08.02.2018 and then call his parents for verification of all the original documents. He submits that the stage of verification of original documents would arise only after the name of the petitioner was included in the final admission list and in case at that stage any of the documents furnished by the petitioner were found to be incorrect or altered, the Respondent No.1/School would be entitled to cancel the admission of the Petitioners. The contention of Mr.Sibal, thus is that the respondent no.1 could not refuse to allot 25 points to the petitioner only on the ground that the application for change of criteria of his sibling from EWS category to General category was pending. He further submits that the Respondent No.1/School has ignored the fact that the petitioner would be entitled to get 25 points on account of sibling criteria irrespective of the category in which his sibling falls.

13. Opposing the writ petition, Mr.Sen, learned Senior Counsel for the Respondent No.1/School submits that since the application form filled by the petitioner was incomplete, the action of Respondent

No.1/School in not considering his application for admission was fully justified. He draws my attention to the application form, copy whereof has been placed on record, to contend that certain vital information like the official telephone no., designation and service of the parents, had been deliberately omitted from the form. He also draws my attention to the official telephone no. which had been recorded as '0000123456'. He further submits that in view of the fact that the petitioner's father had submitted an application for change of category in respect of the petitioner's sibling on 03.01.2018 i.e. the very same day on which the petitioner had applied for admission in the school, the Respondent No.1/School was fully justified in wanting to once again scrutinize the documents in respect of the petitioner's sibling. He further submits that in such circumstances, when the admission of the petitioner's sibling Master Singham, based on which the petitioner was claiming 25 points, has become doubtful, the Respondent No.1/School could not be faulted for not allotting the said 25 points to the petitioner, at this stage.

14. Mr.Sen, learned Senior Counsel relies on the judgments passed by this Court in ***Monika Kaushik v. Government of NCT of Delhi & Ors.*** reported as (2003) 103 DLT 693 & ***Md.Abrar Alam v. Jamia Hamdard & Anr.*** reported as 2006(4)SCT767(Delhi) in support of his plea that once the petitioner submitted an incomplete application form, the respondents were fully justified in rejecting the same. Mr.Sen, also places reliance on judgments passed by the Hon'ble Supreme Court in ***S.P.Chengalvaray Naidu v. Jagannath & Ors.*** reported as (1994) 1 SCC 1 and ***Inderjit Singh Grewal v. State of Punjab & Anr.*** reported

as (2011) 12 SCC 588 to contend that where a person gets an order in his favour by playing fraud, the said order cannot be sustained in the eyes of law and he, therefore, submits that since the admission of the petitioner's sibling was tainted with fraud, the petitioner was not entitled to get admission.

15. Before dealing with the contentions raised by the parties, it would be appropriate to refer to admission criteria which is reproduced as under:-

“Sanskriti School
Dr. S. Radhakrishnan Marg
Chanakyapuri, New Delhi -110021

Admission Criteria

a. Parameters for children belonging to the Govt. Category

1. As per the orders of Hon'ble Supreme Court of India in SLP(C) 35077/2015 dated 21/01/2016, the four sub-Categories for eligibility in Government category, in order of priority are as follows:

- All India Service Officers coming on transfer to Delhi on Central Deputation under the Central Staffing Scheme.
- Indian Foreign Service Officers coming to Delhi to man the posts in the Ministry of External Affairs.
- Other eligible Central Service Officers (Group A) on transfer to Delhi under the Central Staffing Scheme.
- Officers from the Defence and other officers coming to Delhi on transfer

2. Children with Sibling studying in Sanskriti School will be given preference.

b. Parameters for children belonging to the General Category

Criteria	Points
1. Distance will be calculated as per the Distance and Area table	0 to 30
2. Sibling studying in Sanskriti School	25
3. Parent, an alumni of Sanskriti School	25
Total	80

Distance & Area Distances will be calculated as per the Distance and Area table

Distance	Area	Points
0 – 8 km	AIIMS ,Anand Niketan, Bapa Nagar,Bharti Nagar,All areas in Chanakyapuri, Dhaula Kuan, Dhaula Kuan Enclave I & II, Moti Bagh North &	30

	South, Nanak Pura, Netaji Nagar, Satya Niketan, Shanti Niketan, West End, Akbar Road, Delhi Cantt., Prithiviraj Rd., R.K.Puram, Aurangzeb Rd. and adjoining areas, Sarojini Nagar Baba Karak Singh Marg, Green Park, Golf Links, I.I.T, Khan Market, Kidwai Nagar East & West, Laxmibai Nagar, Lodhi Estate, Lodhi Colony, Meena Bagh, Munirka, Naraina Vihar, New Rajinder Nagar, Rabinder Nagar, Safdarjung Enclave, Subramaniam Bharti Marg, Vasant Vihar, I.N.A, Jorbagh, JNU Campus, Anand Lok, Kaka Nagar, South Extension I & II, Pandara Rd., Pandara Park, Shahajahan Rd, Humayun Road,	
Above 8 km upto 10 km	Gulmohar Enclave, Gulmohar Park, Hauz Khaz, Hauz Khaz Enclave, Karol Bagh, W.E.A, Old Rajinder Nagar, S.D.A, S.D.Enclave, Mansingh Road, Andrews Ganj, Barakamba Rd., Chemsford Rd., Defence Colony, Panchkuan Rd, Sansad Marg, Sarvapriya Vihar, Sarvodaya Enclave, Sunder Nagar, K.G. Marg, Niti Bagh, Nizamuddin East & West, Sujan Singh Park, Rajouri Garden, Raja Garden, Mansarovar Garden, Kirti Nagar, Tagore Garden, Janak Puri (Aditi Apartment, DESU Colony (C4,C5,Bharti College), Uday Park, Inderpuri, Vasant Kunj (B9, B10, B11, C1, C2, C3, C4, C5, C6, C7, C8, C9, B1, B2, B3, B4, B5, B6, D3, D4, D6, D7, D8)	20
Above 10 km upto 12 km	Patel Nagar, Janpath, Panchsheel, Panchsheel Enclave, Panchsheel Park, Dr. Zakhir Hussain Marg, Geetanjali, Sadiq Nagar, Subash Nagar, Punjabi Bagh Club, Janak Puri (C1,C2), Vasant kunj (D1,D2, Sector A Pocket C)	15
>12 km	Other Areas not included in this table	0

c. **Age Criteria:** - The child should have completed 3 years on or before 31st March, 2018.

d. Once the admission list is declared, concerned parents will be called for verification of ORIGINAL documents.

e. Attested photocopy of Birth Certificate Issued by the Local Municipal Authority.

f. Attested photocopy of proof of residence (any two). (MTNL Bill / Passport / Unique Identity Card (Aadhaar Card) / Electricity Bill / Water Bill / Voter I – card). If any of the above required information / document is incorrect / altered, the school will cancel the admission.”

16. Upon consideration of the rival contentions of the parties, I find that the following undisputed facts emerge from the record and as also from the submissions of the parties:

i. The first undisputed fact is that the petitioner's application form was successfully accepted by the Respondent No.-1/School and a Registration Acknowledgment Receipt was duly issued to the petitioner.

ii. The second undisputed fact is that as per the address given by the petitioner in the application form his residence falls within 0-8 kms distance criteria as per which he is entitled to be allotted 30 points.

iii. The third undisputed fact which emerges is that the petitioner's elder brother Master Singham has been a student of the said school for almost the last five years and till the filing of the present petition neither had his admission ever come under any clout nor was it ever alleged that the said admission was based on any fraudulent document. In fact, it is interesting to note that the respondents have themselves stated in the counter affidavit that it is only after filing of the present petition that the respondents have started examining the documents relating to the admission of the petitioner's elder brother in the school. Till date no infirmity has been pointed by any of the respondents in the documents of the petitioner's sibling.

- iv. The fourth undisputed fact being that at this stage, respondent no.2 is only examining the application of the petitioner's father submitted for change of category of the petitioner's sibling from EWS to General.
- v. The fifth undisputed fact is that the petitioner's sibling is a student of the Respondent No.1/School and, therefore, as per the admission criteria prescribed by the Respondent No.1/School, the petitioner is entitled to be allotted 25 marks on the ground of sibling criteria as per the Point Based System. However, at this stage it may be noted that it was only after the petition was listed for hearing that the respondents have started taking the plea that they are carrying out a scrutiny of the documents relating to the admission of the petitioner's sibling.
- vi. The sixth undisputed fact being that in the application form, the petitioner had not only filled up most of the columns but had duly provided the information regarding the category in which he is applying, distance from school, address, name of the sibling, mobile no. & e-mail address of his father. The only unfilled columns in the application form relate to Adhaar Card, designation, service and organization and the official telephone number of his parents.

17. In view of the aforesaid undisputed facts, in my opinion, only two issues arise for consideration in the present case. The first issue which arises for my consideration is as to whether, in view of the admitted facts that the Application form submitted by the Petitioner contained all the vital information required for consideration of his

Application, Respondent No.1/School was justified in declining to consider the Application at the final stage. Even after repeated queries, the Learned Senior Counsel appearing for Respondent No. 1 has been unable to point as to what is the material information that the Petitioner is alleged to have omitted to provide. I find that the only columns which were not filled by the Petitioner pertain to the Aadhaar Card and the details of the organisation and designation of the Petitioner's father. No doubt, the Petitioner was expected to fill the columns relating to these queries also but keeping in view the explanation given by the Learned Senior Counsel for the Petitioner that the Petitioner's father was self employed, I am of the view that the failure of the father of the Petitioner to fill up the said columns cannot be said to be material omissions. It may be noted that since the Petitioner had admittedly provided information about the name of his parents, sibling and address, mobile number and email address of his father and, therefore, it is evident that the application form contained all the material particulars needed for allotting points to the Petitioner in terms of the admission criteria of the Respondent No.1/School.

18. It needs no re-iteration that every omission by a candidate cannot be fatal and it is the nature of the omission which has to be considered by the authorities before deciding as to whether said omission is sufficient to reject the candidature of a candidate. Reference may be made to the decision of a Division Bench of this court in WP(C) 4829/2017 tiled as ***Union of India v Sumit Kumar*** wherein this court held that not every omission committed by the candidate would have the consequence of his answer sheet being

rejected. I deem it appropriate to reproduce paragraph 21 of the judgment:

“21. Thus, it is clear to us that not every omission committed by a candidate would have the consequence of his answer sheet being rejected, or being awarded „zero“ marks. It would depend on the nature of the omission committed by the candidate. The candidates for the examination in question are mere school pass-outs. If there has been a failure on the part of a candidate to fill up the column relating to the medium/ language in which the answer sheet has been written, the same is not such a significant omission, as could not have been remedied by the personnel of the Petitioner itself.”

19. Even otherwise, once it is an admitted fact that the Respondent No. 1 school had itself included the Petitioner's name in the list issued on 01.02.2018 and no defect in his application was ever pointed out to him either before 01.02.2018 or thereafter, I am of the view that the approach of the Respondent No.1/School in rejecting the Petitioner's application form while issuing the final list on 08.02.2018 while allotting points to the candidates was wholly unfair and unjust. I cannot also lose sight of the fact that the Parents of the Petitioner belong to the strata of the society where they are barely able to meet their ends as the Petitioner's father was, admittedly, in the EWS category when the Petitioner's sibling had taken admission in the Respondent No.1/School. I am of the view that the Respondent No.1/ School was expected to take a more compassionate and holistic view of the matter specially keeping in view the fact that they were well aware that the Petitioner's sibling had been granted admission in the EWS category on the basis of documents issued by public authorities, which have remained uncontroverted till date. Reliance may also be

placed on the judgment of the Supreme Court in ***Charles K. Skaria and Ors. v. Dr. C. Mathew and Ors.*** reported as [1980] 3 SCR 71, wherein the Supreme Court has observed in Para 24 that:-

“24. It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanizes the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and government orders from public offices.....”

20. The second issue on which great stress was laid by the Learned Senior Counsel for Respondent No. 1, relates to the admission of the Petitioner's sibling Master Singham in the same school in the year 2013. The Learned Senior Counsel contends that since an application has been made on behalf of the Petitioner's father for changing the category of the Petitioner's sibling from 'EWS' to 'General', it becomes apparent that there was some infirmity in his admission. In fact, the Respondents have, while trying to create a doubt in the documents relating to admission of the Petitioner's sibling, not denied the fact that as on date, he continues to be a student of the Respondent No.1/ School. The issue, however, which needs to be considered is that till date the Respondent No. 1 has not found any infirmity in the documents submitted by the Petitioner's parents at the time of

admitting the Petitioner's sibling in the Respondent No. 1/ School and merely because after the filing of the present Writ Petition, Respondent No.1/School has decided to once again scrutinize the documents which has remained in its possession for the last 5 years it cannot refuse to allot the prescribed 25 points on account of the sibling criteria to the Petitioner especially when till date nothing has been pleaded by Respondent No. 1 to show that the admission of the Petitioner's sibling was obtained by fraud or on the basis of incorrect documents.

21. I am also of the view that merely because the Petitioner's father has now made an application for change of category of petitioner's sibling would not mean that their admission can be doubted in any manner. In case the Petitioner's father now feels that with the change of his financial circumstances he no longer belongs in the EWS category, it cannot be contended that he is debarred from applying for a change of category of his ward when the facts actually warrant a change of category.

22. Since admittedly the Respondent No. 1 has till date not found any infirmity in the documents filed by the Petitioner's father either at the time of admission of the Petitioner's sibling in 2013 or thereafter, I fail to appreciate how the admission obtained by the sibling of the Petitioner can be used as a ground to hold back the admission of the Petitioner and, hence, also find that the judgments relied upon by the Learned Senior counsel for Respondent No.1/School are also not applicable.

23. The Writ Petition is accordingly allowed with the direction to Respondent No.1 to allocate 30 points to the Petitioner as per the point based system by considering the distance criteria noted hereinabove and also allot him 25 points on account of his sibling studying in the same school. It is needless to say that the admission of the Petitioner would be subject to the parents submitting original documents and in case any information provided by the petitioner is found to be incorrect or any infirmity is found in the submitted documents, it would be open to Respondent No.1/School to cancel the admission of the Petitioner. Keeping in view the contentions raised by Respondent No. 1 regarding the documents submitted by the Petitioner's parents at the time of seeking admission of the Petitioner's sibling it is further directed that in case, for any reason, the said admission is cancelled, the 25 points allotted to the Petitioner would also be liable to be withdrawn and the admission of the Petitioner would also be liable to be cancelled. It is however, made clear that this court is not expressing any opinion on the right, if any, of Respondent No. 1 to cancel the admission of the petitioner's sibling after following due procedure as per law.

24. The Writ Petition is allowed in the above terms with no order as to costs.

(REKHA PALLI)
JUDGE

FEBRUARY 21, 2018/sr