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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on- 13.04.2018
Date of Decision – 19.04.2018.

+ W.P.(C) 2990/2018 & C.M. No. Nos.11998/2018.

KAVYA PAL CHAUDHARY THROUGH HER FATHER
SHANTANU PAL CHAUDHARY & ORS Petitioners

Through: Mr.Khagesh B. Jha, Adv.

versus

GOVT OF NCT OF DELHI Respondent

Through: Mr.Sanjoy Ghose, ASC with
Ms.Urvi Mohan, Mr.Rhishabh
Jetley Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

JUDGMENT

1. Vide the present petition, the petitioners who claim to be children belonging to Economically Weaker Section (hereinafter referred to as 'EWS') category, seek a direction to the Respondent-Directorate of Education (hereinafter referred to as the 'DOE') to process their application in terms of Clause 7 of the notification dated 07.01.2011 issued by the DOE and ensure their admission in the Schools of their choice.

2. On 03.04.2018, when the matter was listed for preliminary hearing before this Court, Mr. Khagesh B. Jha, learned counsel for the petitioners, had contended that vide orders dated 17.01.2018 and 22.02.2018 in the case of *Justice for All v. Govt. of NCT of Delhi & Ors. [W.P(C) No. 9318/2017]*, a Division Bench of this Court had allowed all the applications of the Petitioners and had directed the

Respondent-DOE to process the application of the Petitioners for admission. Therefore, the Respondents were enjoined to process the applications of the Petitioners and grant them admission against the EWS seats in the Academic Year 2017-18.

3. Today, Mr. Jha, learned counsel for the Petitioners concedes that the Petitioners' application for admission in EWS category pertains to the Academic Year 2017-18.

4. It had been put to Mr. Jha, learned counsel for the Petitioners, as to how such a direction could be issued to the Respondent in view of the earlier decision dated 06.04.2018 of this Court in the case of ***Radha Krishnan and Ors. v. Bal Bharti Public School and connected matters [W.P(C) No. 11611/2017 and connected matters]***, wherein while following the decision dated 31.03.2017 of a Coordinate Bench of this Court in the case of ***Neeraj Kumar v. Venkateshwar Global School and Ors. [W.P(C) No. 7945/2016]***, it was categorically held that the applications for new admissions in the Academic year 2017-18 could not be entertained once the next academic year itself had started.

5. Mr. Jha submits that the date of 31st December, i.e. the last date for admission in entry level class, is not applicable to the facts of the present case, as the Petitioners had already filed their applications seeking admission in the school much prior to 31st December. He further contends that they had approached the Division Bench for directions to the Respondent to process their applications for admission in the month of December itself, and submits that the Division Bench had directed the Respondents to process the

applications of the Petitioners for admission as per the prescribed procedure under Right to Education of Children Act, 2009 in the private schools subject to the availability of seats.

6. Mr. Jha further submits that the orders passed by the Division Bench in the applications filed by the Petitioners herein in ***Justice for all (supra)***, and subsequently the order dated 21.02.2018 passed in the ***WP(C) No. 1225/2014***, wherein the Respondents were directed to process the pending applications for admission for the session 2017-18, entitles the Petitioners to have their applications for admission processed in accordance with law for admission in the recognized unaided private schools. He submits that, in view of the admitted position that the vacant seats are available in the schools in which Petitioners are seeking admission, there is no reason as to why the applications of the Petitioners cannot be processed as per Clause 7 of the notification dated 07.01.2011, which is still in operation, for the Academic Year 2017-18.

7. Mr. Jha submits that the decision of this Court in ***Neeraj Kumar (supra)*** holding that the last date fixed for admission of a student in a new class can only be on or before the 31st December of the Academic Year, amounts to amendment of Section 15 of the Right to Education Act, 2009 which has already been upheld by the Hon'ble Supreme Court in ***Society for Unaided Private Schools of Rajasthan v. Union of India [W.P.(C)No.95/2010]*** as also in ***Paramati Educational & Cultural Trust & Ors. v. Union of India [W.P.(C)No.416/2012]***.

8. On the other hand Mr. Sanjay Ghose, learned assistant standing counsel for the Respondent, submits that the present writ petition filed

on 21.03.2018 is not maintainable, in view of the aforesaid decision of this Court in the case of **Neeraj Kumar** (*supra*), followed by the decision in the case of **Radha Krishnan** (*supra*), wherein it has been clearly held that the admission of a student to a new class in terms of the Delhi Right of Children to Free and Compulsory Education Rules, 2011, can be permitted only on or before 31st December of the academic year.

9. Having considered the rival contentions of the parties, I find that in view of my decision in **Radha Krishnan** (*supra*) as well as the decision of a Coordinate Bench of this court in **Neeraj Kumar** (*supra*), the present writ petition is not maintainable and the relief sought in the present petition is squarely barred by the aforesaid decisions of this Court.

10. I deem it appropriate to reproduce Paras 6 and 8 of **Radha Krishnan** (*supra*), which read as under: -

"6. Having considered the rival contentions of the parties, I find that the decision of this Court in Neeraj Kumar (supra), with which I respectfully agree, clearly bars grant of any relief to the petitioners at this stage. The question of granting admission to the petitioner's wards at this stage in the academic year of 2017-18, which has already ended, would be totally dehors the Scheme of the Rules and would in my view be counterproductive to the very purpose of reserving seats for children belonging to the EWS category.

8. Thus, while I find that the wards of the Petitioners cannot at this belated stage be granted admission in the academic session 2017-18, their apprehension that the unfilled EWS seats would be converted to

General Category, is wholly unfounded. In view of the categorical statement made by the learned counsel for the respondents, that the unfilled EWS seats of 2017-18 would be added to the EWS vacancies in academic session 2018-19 and would be filled only by EWS candidates, the provisions of Delhi Right of Children to Free & Compulsory Education Rules, 2011, would be duly taken care of and no prejudice of any kind would be caused to the eligible EWS candidates.”

11. It may also be useful to refer to Para 32 of **Neeraj Kumar** (*supra*), which reads as under:-

"32. Further in terms of the Rules of 2011, the extended period of admission is five months i.e 31st August of that year. No doubt, the said period is not a fixed period, inasmuch as a child can also be admitted thereafter, who shall be eligible to complete the studies with the help of special training as determined by the Head of the School. Such a period need to be a reasonable period and cannot be stretched till 31st March i.e the last date of the academic year as an admission made on the last date of the academic W.P.(C) 7945/2016 Page 36 of 36 year, presupposes the child did not have the occasion of learning/studies/training of that particular class till that date. It is expected that child need to achieve a particular level of learning/knowledge/training to progress to the next higher level/class so as to be at par with his peers/students of his age. The question is what should be that date. I note, Rule 5 of the Rules of 2011, which has been reproduced above, does indicate the minimum period of at least three months of training be given to a child. If that be so, an admission must take place on or before 31st December of the academic year, as from the date following that date i.e 1st January till 31st March of the academic year, the period is achieved. In the

cases in hand, the said period cannot be achieved at this point of time. So the prayer of the petitioners for grant of admission cannot be accepted on this ground as well, apart from the ground that the petitioners/wards of the petitioners have not submitted online application. The writ petitions are dismissed."

12. For parity of reasons, the present petition is dismissed alongwith the pending application. It is, however, clarified that the Respondent would be bound by their statement, as noted by this Court in the case of **Radha Krishnan** (*supra*) that the unfilled EWS seats of 2017-18 would be added to the EWS vacancies in academic session 2018-19 and would be filled only by EWS candidates, against which all the petitioners would be free to apply.

REKHA PALLI
(JUDGE)

APRIL 19, 2018
sr/mj