

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

Date of decision: 18th MAY, 2023

IN THE MATTER OF:

+ **LPA 408/2023**

CHETRANEKA SHRI (MINOR) Appellant

Through: Mr. Gautam Narayan, Ms. Asmita Singh, Mr. Harshit Goel and Ms. Akriti Arya, Advocates

versus

AYAN JORWAL (MINOR) & ORS. Respondents

Through: Mr. Sunil Gupta, Sr. Advocate with Mr. Kamal Gupta, Mr. Sparsh Aggarwal and Ms. Paridhi Bist, Advocates.

Mr. Santosh Kumar Tripathi, Standing Counsel for GNCTD with Mr. Arun Panwar, Ms. Aakriti Mishra, Ms. Mahak Rankwat, Mr. Pradyumn Rao and Mr. Utkarsh Singh, Advocates for R-3/DoE.

+ **LPA 409/2023**

THE MOTHER'S INTERNATIONAL SCHOOL Appellant

Through: Mr. Sunil Gupta, Sr. Advocate with Mr. Kamal Gupta, Mr. Sparsh Aggarwal and Ms. Paridhi Bist, Advocates

versus

AYAN JORWAL (MINOR) & ORS. Respondents

Through: Mr. Shivam Sharma and Mr. Balram, Advocates for R-1.

Mr. Santosh Kumar Tripathi,

Standing Counsel for GNCTD with
Mr. Arun Panwar, Ms. Aakriti
Mishra, Ms. Mahak Rankwat, Mr.
Pradyumn Rao and Mr. Utkarsh
Singh, Advocates for R-3/DoE.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

CM APPLs. 22924-25/2023 (Exemption) in LPA 408/2023
CM APPL. 22929/2023 (Exemption) in LPA 409/2023

Allowed, subject to all just exceptions.

LPA 408/2023 & CM APPLs. 22922-23/2023
LPA 409/2023 & CM APPLs. 22927-28/2023

1. Both the LPAs have been filed challenging the Judgment dated 17.04.2023 passed by the learned Single Judge in W.P.(C) 348/2023 whereby the learned Single Judge has allowed the writ petition. With the consent of the Parties, both the LPAs are being taken up together for final disposal.

2. For the sake of convenience, the facts of LPA 409/2023 are being referred to which reads as under:

- a) The Appellant/school is a recognised private un-aided school in Delhi. The Department of Education, GNCTD (DOE) issued a circular dated 21.11.2022 giving its schedule and guidelines for schools for admission in Entry Level Classes (below six years of age) for open seats other than EWS/DG/CWSN category seats in recognised private un-aided schools of Delhi for the academic year 2023-24.

- b) The Appellant/school subsequently brought out a notification dated 28.11.2022 giving the schedule and the guidelines for admission in Entry Level Classes for the academic year 2023-24. The relevant portion of the said notification issued by the Appellant/school which is necessary for adjudication reads as under:

"Criteria for admission:

1. Neighborhood (40 Points)

List of localities with points is attached.

Required valid Documents (Proof of Residence- any one) :

- i) Ration Card/ Smart Card issued in the name of parents (Mother/Father having name of the child).*
- ii) Domicile certificate of child or of his/her parents.*
- iii) Voter I-Card (EPIC) of any of the parents.*
- iv) Electricity bill/ MTNL Telephone bill/ Water bill/ Passport in the name of any of the parents or child.*
- v) Aadhaar card/ UID card issued in the name of any of the parents.*

2. Girl Child (10 Points): Select GIRL as gender. No documents required.

3. Sibling {30 Points}

The points will be awarded to the applicant only if his/her own brother/sister is studying in The Mother's International School."

- c) The father of Respondent No.1 (writ petitioner) applied for admission of Respondent No.1 in Class-I of the Appellant/School for academic session 2023-2024, under the 'Open Seat' Category. The Respondent No.1's father submitted the admission form online claiming total 70

points as per the criteria laid down by the School, i.e., 40 points under neighbourhood category and 30 points under sibling category, since the elder brother of the Respondent No.1 herein also studies in the Appellant/school.

- d) On 20.12.2022, Respondent No.1's father received an email from the School, wherein it was stated that the application form of the Respondent No.1 has been rejected for the reason that latest tuition fee receipt in support of the 'sibling criteria' had not been attached with the application form.
- e) Pursuant to the receipt of the aforesaid email, father of the Respondent No.1 wrote emails dated 21.12.2022 & 22.12.2022 to the School stating that his elder son is a student of the School, who had been admitted under the Disadvantaged Group (DG) Quota and, therefore, he did not have the tuition fee receipt.
- f) On 06.01.2023, the Appellant/School uploaded its list of all the applicants, along with points obtained by them wherein the Respondent No.1 was not granted the points under the 'sibling category'.
- g) Thereafter, a letter dated 11.01.2023 was issued by the Appellant/School to the parent of Respondent No.1 stating that Respondent No.1 has got 40 points and his name will be included in the draw of lots for filling the seats in the 'open category'. It was informed that against the 13 open seats for general category, 288 children have registered their names for admission in Class-I and out of 13 seats, 11 children have got 50 or more points and as per the admission criteria, have been selected for admission (subject to

verification of documents), 38 candidates have got 40 points, including the Respondent No.1 and remaining 02 seats shall be filled through a draw of lots out of the candidates who have got 40 points.

- h) The Respondent No.1 (Petitioner in the writ petition), thereafter, approached this Court by filing a writ petition being W.P.(C) 348/2023 contending that the Respondent No.1 is also entitled to get 30 points under 'sibling criteria' and failure to produce the tuition fee receipt could not be a criteria to deny requisite points under the 'sibling criteria' to the Writ Petitioner. The writ petition was vehemently opposed by the Appellant/school (Respondent No.3 in the writ petition) by contending that right to manage and administer a private educational institutional is a fundamental right under Article 19(1)(g) of the Constitution of India and the Delhi School Education Act and the Rules framed thereunder clearly confer the right of regulating the admission upon the head of a private un-aided school in Delhi. It was contended before the learned Single Judge that a candidate who is seeking admission under the Open General Category cannot be awarded points under the 'sibling category' on the ground that his sibling is studying in the same school and was admitted under EWS/DG Category. The contention of the Appellant/school was that only the students, whose siblings have been admitted under the 'open category', would be entitled to take the benefit of the points awarded under the 'sibling category'. It was submitted before the learned Single Judge that the classification of two categories i.e., one 'open/general category' and the other one 'EWS/DG category' is a valid classification and both the categories cannot be mixed together and,

therefore, a candidate who is deriving benefit for admission under the 'Reserved Category' cannot be permitted to take the benefit available to the other category. In short, the contention of the school is that if a student is admitted under the 'EWS/DG category' and then if his sibling applied in the same school under the 'open category', then the sibling of that student who applied under the 'open category' cannot be given benefit of the points under the 'sibling category' because that will amount to mixing seats reserved for 'EWS/DG category' under 'open category'. It was contended by the Appellant/school that if a student has been admitted under the EWS/DG category, then his/her sibling seeking admission under 'open category' cannot be allowed the benefit of marks awarded under the 'sibling category' for the reason that both categories are distinct and different from each other.

- i) The learned Single Judge by the Judgment impugned herein has rejected the contention of the Appellant/school stating that the procedure adopted by the Appellant/school is not rational and transparent. The learned Single Judge held that it is not in dispute that the elder brother of the Respondent No.1 (writ petitioner) is studying in the school and, therefore, the Respondent No.1 is entitled to be awarded the points under the 'sibling category'.
 - j) The Appellant/School, thereafter, has approached this Court by filing the LPA 409/2023 challenging the Impugned Judgment passed by the learned Single Judge.
3. Mr. Sunil Gupta, learned Senior Counsel appearing for the Appellant/School, submits that the school has got an indefeasible right to administer the school and lay down the criteria for admission in the school.

He submits that decision of the school to restrict the points available under 'sibling category' to such of those students who have been admitted in 'open category' is a valid differentia since the EWS/DG candidates are selected against the seats reserved only for EWS/DG candidates. He submits that till now the procedure adopted by the school has also been accepted by the Lieutenant Governor. He further submits that as far as the school is concerned, it does not matter who is getting admission in the school and that the school has nothing against the writ petitioner.

4. Learned Counsel appearing for Respondent No.1 (writ petitioner) submits that Respondent No.1 is entitled to get points under the 'sibling criteria', as the only requirement under the said criteria as laid down by the School is that the brother or sister of the applicant should be studying in the School. It is submitted that no distinction is made between the sibling studying under Open/General Category or in Reserved Category viz. Economically Weaker Section (EWS); Disadvantaged Group (DG) and Children With Special Needs (CWSN) Category.

5. Learned Counsel appearing for the GNCTD has supported the case of the writ petitioner.

6. Heard learned counsels appearing for the Parties and perused the material on record.

7. A perusal of the notification dated 28.11.2022 issued by the school shows that a candidate who seeks admission in the school is entitled to 40 points depending upon the area where the candidate resides. Since the Respondent No.1 is residing in NCERT campus, 40 points have been allotted to the Respondent No.1 for staying in the immediate vicinity of the school.

8. The short question, therefore, arises for consideration is as to whether the Respondent No.1 (writ petitioner) is entitled to further 30 points on the ground that his elder brother, who had been admitted under the Disadvantaged Group (DG) Quota, is also studying in the school.

9. The admission schedule as brought out by the school *vide* notification dated 28.11.2022 does not indicate that the marks to be awarded under the 'sibling category' would be restricted only to those students whose siblings have secured their admission under the 'open category'. In the absence of such distinction, the school could not have introduced a fresh distinction after the admission procedure had started. Further, in any event, when a student is admitted in the school, he/she becomes a student in the school and it cannot be said that he/she continues to remain in a particular category. There is no difference in the nature of instructions that are imparted to the students in the 'EWS/DG category' and in the 'open category'.

10. The GNCTD by its Order bearing No. F/DE/15/1031/ACT/2007/7002 dated 24.11.2007 outlined broad guidelines as to how the procedure for admission in pre-primary classes should be followed by the recognized schools in all over Delhi. Though, Paragraph No.14 of the said Order has been extracted by the learned Single Judge in the impugned Judgment, the same is being extracted here once again and it reads as under:

"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.

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

11. A perusal of the abovementioned Circular dated 21.11.2022 issued by DOE, GNCTD, Notification dated 28.11.2022 issued by the School and the Order bearing No. F/DE/15/1031/ACT/2007/7002 dated 24.11.2007 issued by the GNCTD shows that once a child is admitted in the school then his/her siblings are entitled to get points under the 'sibling category' for the purposes of securing admission in the Entry Level Classes. In the absence of anything to indicate that the school is maintaining a separate class for 'EWS/DG category' and that a sibling of a student, who has been admitted under the 'EWS/DG category', will not be entitled to take benefit of points awarded under the 'sibling category', the same disentitles the school from raising such objections, more so in view of the fact that the admission procedure had already started.

12. Be that as it may, in view of the fact that the brother of the Respondent No.1 (writ petitioner) was admitted in the school under the 'EWS/DG category' and the father of the Respondent No.1 has sought admission for his second child in the same school against the 'open category', the Respondent No.1 cannot be deprived of points which are to be given under the 'sibling category'.

13. In view of the above, this Court does not find any infirmity in the Judgment passed by the learned Single Judge. Resultantly, the LPA 409/2023 is dismissed, along with pending application(s), if any.

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14. The Appellant herein was not a party to the writ petition being filed before the learned Single Judge.

15. The Appellant also claims to have secured 40 points in the draw of lots. It is stated that the Appellant has been placed at Serial No.1 in the

waitlist for admission to class-I in the general category. It is the contention of the Appellant that if the criteria for admission adopted by the school is accepted by this Court, she will get admission in the school.

16. The Appellant has no vested right for admission in the school. This Court in LPA 409/2023 has upheld the Judgment passed by the learned Single Judge by rejecting the appeal filed by the school.

17. In view of the above, this Court is not inclined to entertain the LPA 408/2023 filed by the Appellant. Resultantly, the LPA 408/2023 is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

MAY 18, 2023

S. Zakir/Urvi