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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7728/2022 & CM APPLs. 23645/2022, 1909/2023

MISS AVANI SHUKLA THROUGH FATHER MR. ALOK
SHUKLA AND ANR. Petitioners

Through: Mr. Khagesh B. Jha, Adv.

versus

APEEJAY SCHOOL SHEIKH SARAI
AND ORS. Respondents

Through: Mr. H.L. Tikku, Sr. Advocate
with Ms. Yashmeet Kaur, Mr.
Anurag Ahluwalia, Mr. Rahul,
Advocates for R-1 to 3
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Mr.Santosh Tripathi, Standing
Counsel(Civil), GNCTD with
Mr. Utkarsh Singh, Advocates
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CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****03.07.2023****MINI PUSHKARNA, J.**

1. By way of the present writ petition, father of the petitioners is seeking admission of his children to respondent No.1 school situated in Sheikh Sarai, on the ground that the petitioners reside at Badarpur Saurabh Vihar and the school bus of respondent No.1 school situated at Sheikh Sarai, drops students at merely 100 meters of their residence.

2. Petitioner No.1 is studying in Class – 6 in the current academic session 2023-2024 in Saket Branch of the school, i.e., respondent



No.2. She is seeking transfer from respondent No.2 school, i.e., Saket Branch to respondent No.1 school, i.e., Sheikh Sarai Branch. Petitioner No.2, who is younger brother of petitioner No.1, is seeking admission in respondent No.1 school, i.e., Sheikh Sarai Branch in Class – 2 in the current academic session 2023-2024. The present petition was filed in April 2022, seeking transfer of petitioner No.1 from Saket Branch to Sheikh Sarai Branch in Class – 5 at that point of time. Similarly, admission of petitioner No.2 was sought in the Sheikh Sarai Branch of the school to Class – 1 in the academic session 2022-2023.

3. As per the facts detailed in the petition, parents of petitioner No.1 planned her admission to the respondent No.1 school in Sheikh Sarai in November 2017 for admission in Class – 1 in the academic year 2018 – 19. Since grandfather of petitioner No.1 was well known to respondent No.3, he approached respondent No.3. Subsequently, petitioner no. 1 took admission test in Sheikh Sarai School in January 2018 for seeking admission in Class – 1 in the academic session 2018-19. As petitioner No.1 was not able to procure admission in Sheikh Sarai Branch of the school, father and grandfather of petitioner No.1 approached the respondent No.3 Management Committee in April 2018. Considering that admission process in the Sheikh Sarai Branch of the school was already completed, father and grandfather of petitioner No. 1 were advised to admit petitioner No.1 to the Saket Branch of the school in Class – 1 for the session 2018-2019.

4. It is the case on behalf of petitioners that petitioner No.1 having no other option, accepted admission in the Saket Branch of the school, with the understanding that petitioner No.1 shall be transferred to the



Sheikh Sarai Branch of the school as per the commitment of the Management Society of the school. It is submitted that Chairperson of the respondent No.3 Society had assured confirmed admission of petitioner No.2 in the Sheikh Sarai Branch of the school. Further, petitioner No.1 was also granted 50% fee concession.

5. Subsequently, father of petitioner No.1 approached the school management in the academic year 2019-2020 for seeking transfer of petitioner No.1 from Saket Branch of the school to Sheikh Sarai Branch of the school and further sought fresh admission of petitioner No.2 in the Sheikh Sarai Branch of the school, as committed by the Chairperson of the Management Committee. Both the petitioners applied for admission in academic year 2019-2020 in Sheikh Sarai Branch of the school, however, to no avail. Petitioner No.1 was also asked to pay full fees as against the 50% concession in fees granted earlier.

6. It is the case on behalf of petitioners that petitioner No.2 once again applied for admission in both the Branches of the school, i.e., Saket as well as Sheikh Sarai in the academic session 2020-2021, however, he was denied admission.

7. It is submitted that father of petitioners has been regularly approaching both the branches of the school for admission of both the petitioners in the Sheikh Sarai Branch, as per commitment of earlier Chairperson of the Management Committee of the school. However, father of the petitioners has been harassed, manhandled and ill-treated by the Head of the school of both the branches of the school.

8. It is submitted on behalf of the petitioners that they are seeking admission in the Sheikh Sarai Branch of the school, as it is easy to



commute from their residence to the Sheikh Sarai Branch, in contrast to the Saket Branch of the school. Further, because of schooling of petitioner No.1 in the Saket Branch of the school, the family has to bear additional burden of living in a rented house in the vicinity of the school. Additionally, the building of the Saket Branch of the school is not safe as boundary wall of the said school collapsed badly, causing huge damage to the cars parked adjacent to the wall.

9. It is submitted that father of the petitioners had earlier filed a Civil Suit for admission of his children in Sheikh Sarai Branch of the school. The said suit was dismissed by learned Senior Civil Judge, Saket Court, Delhi. First appeal filed on behalf of the petitioners before District Judge, Saket Court, New Delhi was also dismissed

10. It is submitted that for academic session 2022-2023, the petitioners have now shifted to immediate neighbourhood of the Sheikh Sarai school. Thus, father of the petitioners approached Sheikh Sarai Branch of the school seeking form for registration in the school, as petitioners were entitled for admission in the school as first priority on the basis of neighbourhood definition of The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act). It is further the case on behalf of the petitioners that the school cannot refuse admission to the petitioners in view of the binding condition for admission to a child in the locality in terms of grant under the Government Grants Act. However, the Head of the school outrightly rejected to issue form to the father of the petitioners. The official website of the school shows admission notification only for entry level classes for the academic session 2022-2023. There is nothing in the school website about the admission of students for the classes above



entry level class. The petitioners have bonafide apprehension of backdoor admissions in the school in a non-transparent manner. Thus, the present writ petition has been filed with prayer for directions for granting admission to the petitioners in the Sheikh Sarai Branch of the school.

11. On behalf of the petitioners, it is contended that they are from the immediate neighbourhood of the Sheikh Sarai Branch of the school and the school cannot refuse their admission under the scheme of Nazul Land, that has been allotted to them under the Government Grants Act.

12. It is further submitted that petitioners are covered within the definition of 'child' as defined under the provisions of the RTE Act. Thus, they are entitled for first preference in the admission being 'child' from the neighbourhood and denial of admission by the respondent school amounts to not following the neighbourhood principle by the respondent school. It is submitted that there is no transparency in the admission process as followed by the school. Denial of admission by such process is an illegal denial of admission to the petitioners.

13. It is further contended that the Delhi Development Authority (DDA) has failed to perform its statutory duty to ensure compliance of Scheme of Nazul Land Rules and Master Plan of Delhi.

14. On behalf of the petitioners, following judgments have been relied upon:

I. Union of India & Anr. Vs. Jain Sabha, (1997) 1 SCC 164

II. Forum for promotion of Quality Education For All Vs. Social Jurist, A civil Right Group & Ors., SLP No.



24617/2007

III. *Forum for Promotion of Quality Education for All and Ors. Vs. DDA and Ors., 2017 SCC OnLine Del 6966*

IV. *Apeejay School Sheikh Sarai Vs. Directorate Of Education & Anr., Order dated 03.03.2022 passed in W.P. (C) 3644/2022*

V. *Social Jurist, A Civil Rights Group & Anr. Vs. Govt. of NCT of Delhi & Anr., 2013 (134) DRJ 529 (DB)*

VI. *Master Hridyansh through: Father Sh. Manish Pal Vs. The Haritage School Rohini & Ors, order dated 13.03.2019 passed in W.P. (C) No. 2666/2017*

15. On the other hand on behalf of the respondent No.3, Education Society of the respondent No.1 and 2 school, i.e., Sheikh Sarai and Saket Branch of the school respectively, an application, being *CM APPL. No. 1909/2023* has been filed challenging the maintainability of the present writ petition.

16. It is submitted that the present writ petition is not maintainable as the respondents are not State within the meaning of Article 12 of the Constitution of India. Respondent No.3 is a society registered under the Societies Registration Act. There is no government control over the functioning and administration of respondent No.3. The respondents are private un-aided schools, and are not receiving any aid from the Govt. of NCT of Delhi.

17. It is further submitted that there is no public law element involved in the present writ petition. There is no fundamental right nor there is any public element involved in granting admission to the petitioners in the school branch of their choice. It is submitted that the desire of the petitioners for seeking admission in only one particular school is not a fundamental right of the petitioners.



18. It is further submitted that the present writ petition is otherwise also not maintainable for the reason that all questions of facts and law claimed by the petitioners, have already been considered in depth and entirety and adjudicated in Civil Suit and Appeal filed by the petitioners herein. The petitioners are estopped from re-agitating the same facts again before this Court under the garb of invoking the jurisdiction under Article 226 of the Constitution of India. The present petition is barred under the provisions of Section 11 of the Code of Civil Procedure, 1908 (CPC). It is, thus, prayed that the present writ petition be dismissed.

19. On behalf of the respondents, following judgments have been relied upon:

- i. Partha Gosh Vs. ICAI, 2017 SCC OnLine Del 10985*
- ii. Shubit Education Society Vs. Delhi Development Authority, 2017 LAWPACK (DEL) 61923*
- iii. Society for Un-Aided Pvt. Schools of Rajasthan Vs. Union of India, MANU/SC/0311/2012*
- iv. St. Mary's Education Society Vs. Rajendra Prasad Bhargava, (2023) 4 SCC 498*

20. On behalf of respondent No.4, Directorate of Education (DOE), it is submitted that DOE recognises the importance of maintaining the autonomy of schools in matters of admissions, fee fixation and general administration, as long as they do not violate any Rule, Regulation or Judgment. It is submitted that its role in processing of admissions in private schools is limited, except for admission of children belonging to Economically Weaker Sections (EWS) and Disadvantaged Groups (DG) at entry level classes, which are processed online. Private schools are responsible for processing their own admissions, except



for admissions processed by the department for the EWS/DG category.

21. Facts that emerge before this Court are that petitioner No.1 is a student of respondent No.2 school, i.e., Saket Branch of the school in question and seeking transfer to Sheikh Sarai Branch of the school. At the time of filing of the present writ petition, petitioner No.1 was a student of Class – 5 in the academic session 2022-2023. The petitioner No.1 is stated to be now studying in Class – 6 in Saket Branch of the school.

22. As regards petitioner No.2, he is seeking a new admission in Sheikh Sarai Branch of the school in question. At the time of filing of the writ petition, petitioner No.2 was seeking admission in Class – 2 in the academic session 2022-2023.

23. It is undisputed that petitioner No.1 is seeking transfer to respondent No.1 school and the petitioner No.2 is seeking admission in respondent No.1 school, in the General category.

24. At the outset, it is to be noted that the petitioners before filing the present petition, with similar prayer for seeking admission in the respondent school, in October 2020, filed a Civil Suit, being *CS No. 937/2020*, titled “*Avni Shukla and Another Vs. Apeejay School, Saket and Others*”. Both the petitioners herein were plaintiffs in the said suit. All the four respondents herein were arrayed as defendants in the said suit.

25. The petitioners in the said plaint referred to and relied upon the provisions of RTE Act. The reliefs claimed in the said suit were as under:



“i) pass the final decree to secure admission of both the plaintiffs in respondent no.2 school as per the oral commitment of Lt. Dr. Satya Paul and Ms. Sushma Paul Berlia;

ii) to pass order of declaring the admission process through screening students adopted by both the respondent schools for the years 2020-21 as unlawful and in violation of RTE Act, 2009 and per contra Juvenile Justice Act.

iii) To pass an order directing the respondent schools to conduct draw of lots every year from now for admission of students in all the classes in the presence of parents and representatives of Directorate of Education duly recorded through video conferencing in the interest of justice and to prevent commercialisation of education.

iv) to pass any other order or direction against the violation of various laws by the respondents this Hon'ble court deems fit on the basis of above-mentioned facts and circumstances of the case.

v) award the cost of the suit in favour of the plaintiff and against the defendants against the damage caused to the loss of crucial years of learning of the plaintiffs and subject to cruelty to juveniles under Juvenile Justice Act...”

26. The aforesaid suit was dismissed by the Id. Civil Judge, Saket Courts vide judgment dated 07.11.2020. The petitioners challenged the said judgment by filing an appeal being RCA No. 04/2021. The said appeal was also dismissed by the Id. Additional District Judge (ADJ) – 01 (South East), Saket Courts, New Delhi vide judgment dated 14.12.2021.

27. It is also pertinent to note that some of the grounds raised in the present writ petition and the aforesaid appeal, RCA No. 04/2021 are



verbatim the same. Thus, ground numbers E, F, G and H of the present writ petition are exactly the same as raised in ground numbers G, H, I and J of the aforesaid appeal.

28. Perusal of the Judgment dated 07.11.2020 passed by the learned Civil Judge and Judgment dated 14.12.2021 passed by the learned ADJ manifests that various questions of facts and law as claimed by the petitioners have been adjudicated in the civil suit as well as the appeal filed on behalf of the petitioners. The subject matter of the claim as raised by the petitioners has been heard finally and conclusively determined in the civil suit and the appeal as aforesaid. In view thereof, the petitioners are estopped from re-agitating the same facts before this Court in the garb of invoking the jurisdiction under Article 226 of the Constitution of India. Once the petitioners have exhausted their remedies, they cannot revive their challenge by filing the present writ petition.

29. The petitioners have sought to justify the present writ petition on the ground that the suit that was filed in the year 2020 was for enforcement of contractual obligations to admit petitioners in Class – 1 and Class – 3, while the present writ petition is filed for admission of the petitioners in compliance of conditions of Government Grant and that the suit and petition are for different cause of action. It is further contended on behalf of the petitioners that they were residing at a different place in the year 2020, when the civil suit was filed. Now, the petitioners are residing hardly at 100 meters from the school and that the school cannot refuse the admission to residents of the locality. The aforesaid contentions, as raised on behalf of the petitioners, are totally erroneous and are liable to be rejected. The



present writ petition is clearly barred by Principles of Constructive *Res judicata*, which provides that if a plea could have been taken by a party in a previous proceeding between the same parties, then such a plea cannot be permitted to be taken against the same party in a subsequent proceeding with reference to the same subject matter.

30. Delineating the Principles of Constructive *Res judicata*, this Court in the case of ***Partha Ghosh and Anr. Vs. Institute of Chartered Accountants of India & Ors.***¹, held as follows:

“19. In *Amalgamated Coalfields Ltd. v. Janapada Sabha Chhindwara* : 1963 (1) Suppl. SCR 172, the Supreme Court had referred to the rule of constructive *res judicata* and observed as under:—

“This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive *res judicata* is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy to which we have just referred.”

20. In *State of Uttar Pradesh v. Nawab Hussain* : (1977) 2 SCC 806 : AIR 1977 SC 1680, the Supreme Court considered a case where the respondent, Nawab Hussain, a Sub Inspector of Police in Uttar Pradesh was dismissed from service by the Deputy Inspector General of Police pursuant to disciplinary proceedings. He filed a writ petition challenging the disciplinary proceedings, inter alia, on

¹2017 SCC OnLine Del 10985



the ground that he was not afforded reasonable opportunity to meet the allegations against him and such action taken was malafide. The said writ petition was dismissed. He then filed a suit challenging his order of dismissal, inter alia, on the ground that he was appointed by the Inspector General of Police and, therefore, the Deputy Inspector General of Police was not competent to dismiss him from service. This ground was not urged by him in the writ petition filed earlier and the Allahabad High Court was of the view that the suit filed subsequently was not barred by the principles of res judicata or constructive res judicata. However, the Supreme Court found that view to be erroneous; the Supreme Court held that the subsequent action was clearly barred by the principle of constructive res judicata and the High Court had erred in taking a contrary view.

xxx xxx xxx”

31. Courts have deprecated the act of re-agitation of the same issue. It has been held that even if the said re-agitation may or may not be barred as *res judicata*, but if the same issue is sought to be re-agitated, it amounts to an abuse of the process of the court. Thus, in the case of ***Shubit Education Society Vs. D.D.A.***², it has been held as follows:

“6. Having heard learned counsel for parties, this Court is of the opinion that in view of the judgment of the learned Single Judge in W.P.(C) 2360/2006 and that of the Division Bench in LPA 724/2012, it is not open to the petitioner to re-agitate an issue which has attained finality.

7. The only difference between the old writ petition being W.P.(C) 2360/2006 and this petition is that the petitioner has quoted certain instances which according to it are similar to the petitioner. DDA has denied the contention of the petitioner. This argument

² 2017 SCC OnLine Del 7379



was not raised in the earlier writ petition or LPA though the same could have been raised in that writ petition. Thus, it is not open to the petitioner to raise this ground in the present writ petition on the grounds of constructive res judicata.

8. In *N.D. Qureshi v. Union of India*, 2008 (13) DRJ 547, a Division Bench of this Court of which the present Bench was a party has observed as under:—

“12. Moreover, from the above narrated facts, it would be apparent that the petitioner has been re-litigating for a considerable number of years. In our view on the principle of res judicata and re-litigation the petitioner is even barred from raising new pleas for the same old relief. The Hon'ble Supreme Court in *K.K. Modi v. K.N. Modi*, reported in (1998) 3 SCC 573 has held that it is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. This re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court. The Hon'ble Supreme Court has further held that if a spurious claim is made in a case, it may also amount to an abuse of process of the court. In our view, frivolous or vexatious proceedings amount to an abuse of the process of the court especially where the proceedings are absolutely groundless-like in the present case.”

(emphasis supplied)

xxx xxx xxx”

32. There is another aspect of the matter. In the present case, admission is being sought under the General category. Thus, the provisions of RTE Act have no applicability in so far as the facts of the present case are concerned. In respect of a private un-aided school in Delhi, the obligation cast under RTE Act is to grant admission to



students under Economically Weaker Section (EWS)/Disadvantaged Group (DG) category as per the allotments made by the DOE. The said obligation is with respect to admission under the EWS/DG category at entry level classes, which in the case of respondent No.1 school is Class Nursery. Thus, the present being a case of admission under the General quota, the school has the autonomy in matters of admission.

33. Holding that maximum autonomy should be given in the administration of private un-aided institutions, Division Bench of this Court in the case ***Manju Sipayya Vs. Directorate of Education and Others***³, has held as follows:

“25. Law is well-settled that maximum autonomy should be given in the administration of private unaided institutions as presence of Government interference in the Administration of such Institutions will undermine their independence. In the case of TMA Pai Foundation (supra), the Hon'ble Supreme Court held:

“55. ...There, necessarily, has to be a difference in the administration of private unaided institutions and the government-aided institutions. Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions...”

xxx xxx xxx”

34. Supreme Court in the case of ***T.M.A. Pai Foundation Vs. State of Karnataka***⁴, has recognised the autonomy of private institutions to

³2019 SCC OnLine Del 10867

⁴(2002) 8 SCC 481



admit students of their choice and autonomy of administration.

35. Similarly, in the case of ***Forum for Promotion of Quality Education for All Vs. Lt. Governor of Delhi & Ors.***⁵, it has been held as follows:

“114. From the aforesaid discussion, it is apparent that private unaided recognized school managements have a fundamental right under Article 19(1)(g) of the Constitution to maximum autonomy in the day to-day administration including the right to admit students. This right of private unaided schools has been recognized by an eleven judge Bench of the Supreme Court in T.M.A. Pai Foundation (supra). Subsequently, a Constitution Bench of the Supreme Court in P.A. Inamdar (supra) has held that even non-minority unaided institutions have the unfettered fundamental right to devise the procedure to admit students subject to the said procedure being fair, reasonable and transparent. Even, in 2014, another Constitution Bench of the Supreme Court in Pramati Educational & Cultural Trust (Registered) (supra) reiterated that the content of the right under Article 19(1)(g) of the Constitution to establish and administer private educational institutions, as per the judgment of this Court in T.M.A. Pai Foundation, includes the right to admit students of their choice and autonomy of administration.

115. The concept of autonomy has also been recognized and conferred upon schools by the DSE Act and Rules, 1973. Rule 145 of DSE Rules, 1973 states that the head of every recognised unaided school shall regulate admissions in its school. Consequently, the private unaided schools have maximum autonomy in day-to-day administration including the right to admit students.

xxx xxx xxx”

⁵2014 SCC OnLine Del 6650



36. As noted above, admissions in the present case are sought under the general category. Holding that the RTE Act fixes the responsibility of private un-aided schools for admission from the neighbourhood to only 25% and that too for the weaker sections, in the case of ***Forum for Promotion of Quality Education for All and Ors. Vs. DDA and Ors.***⁶, this Court has held as follows:

“85. This Court is of the prima facie view that Section 12(1)(c) of RTE Act fixes the extent of responsibility of a private unaided school for admission from the neighbourhood to only twenty-five per cent and that too, for the weaker sections, leaving free the remaining seventy-five per cent seats to be filled up by the school with children living within or outside its neighbourhood. This seems to be an incentive to entrepreneurs to establish more and more private unaided schools. The relevant portion of Section 12(1)(c) of RTE Act reads as under:—

“12. Extent of school's responsibility for free and compulsory education.-(1) For the purposes of this Act, a school,-

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(c) specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent. of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion.

Provided further that where a school specified in clause (n) of section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.”

⁶2017 SCC OnLine Del 6966



(emphasis supplied)

86.

87. Further, the prima facie view that neighbourhood intake is limited to twenty-five per cent of the students is in consonance with the Government of India, Ministry of Human Resource Development, Department of School Education and Literacy's guidelines dated 25th July, 2011 wherein it is stated as under:—

“Guidelines dated 25th July, 2011

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(c) all unaided and ‘specified category’ schools, namely Kendriya Vidyalaya, Navodaya Vidyalaya, Sainik schools or any other school having a distinct character as specified by notification by the State Government/UT, shall admit and provide free and compulsory education to at least 25% of the annual class I intake (or pre-primary section as the case may be) children belonging to weaker sections and disadvantaged groups in the neighbourhood. Such schools will be the neighbourhood school only to the extent of admission of 25% of the class I intake (or pre-primary section as the case may be) annually in respect of children from disadvantaged groups and weaker sections in the neighbourhood of the school. For the remaining children in aided, unaided and specified category schools the neighbourhood criterion does not apply. Such schools shall be reimbursed expenditure in accordance with section 12(2).

(emphasis supplied)

xxx xxx xxx”

37. Moreover, it cannot be said that the petitioners have any vested or fundamental right in securing admission in one particular school or branch of the school, as per their choice. The desire of the petitioners in seeking admission in only one particular school is not a fundamental right as provided by the constitution of India. Further,



there is no public duty cast on private un-aided schools that it must grant admission to every child who desires to take admission therein, as long as the admission criteria followed by the school is not arbitrary or unreasonable.

38. In view of the aforesaid detailed discussion, no merit is found in the present writ petition, the same is accordingly dismissed.

**(MINI PUSHKARNA)
JUDGE**

JULY 03, 2023

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