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

+ **W.P.(C) 3669/2024**

**VIKRAM BAGHEL AS GUARDIAN OF LAKSHITA
BAGHEL**

..... Petitioner

Through: Mr. Aayush Agarwala, Adv.

versus

GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through: Ms. Nikita Vir & Mr. Prasansha
Sharma, Advs. for Mr. Santosh Kumar
Tripathi, Standing Counsel (Civil).

Mr. Aranya Moulick & Ms. Smridhi Babbar,
Advs. for R2/School.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (O R A L)

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12.03.2024

1. The petitioner is the father of Lakshita Baghel, a student belonging to the Other Backward Classes (OBC) and, therefore, a member of the Disadvantaged Group (DG) entitled to preferential admission to schools at the entry level under the Right of Children to Free and Compulsory Education Act, 2009.

2. In exercise of the right conferred by the said Act, the petitioner applied to the Directorate of Education (DoE) for admission of Lakshita in Class I for the academic session 2022-2023.

3. A computerised draw of lots was conducted by the DoE, in

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which Lakshita was found eligible for admission to the Respondent 2-school (hereinafter referred to as “the School”) as a DG category student in Class I for the academic session 2022-2023.

4. The School, on being approached, denied admission to Lakshita, whereafter the petitioner represented to the Delhi Minorities Commission and the DoE. What the petitioner did not do, unfortunately, was to approach this Court or seek judicial redress in any other manner.

5. The petitioner has allowed the academic year 2022-2023 as well as almost the entire succeeding academic year 2023-2024, to lapse without approaching the Court.

6. The present writ petition has been instituted now in March 2024 praying that the petitioner be admitted to Class 1 for the academic year 2024-2025.

7. It is obvious that this relief cannot be granted.

8. The right of a student belonging to the EWS/DG category for admission to entry level classes, emanates from the provisions of the RTE Act. Admission is age based. Depending on the age of the student, student may seek admission to an age-appropriate class for that academic year.

9. That apart, allotment under the EWS/DG category follows a strict protocol envisaged in the RTE Act and supplemented by various circulars issued by the DoE. The parent of the student concerned is



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required to apply to the DoE. The application is required to state the class to which the student aspires for admission as well as the academic year for which admission is sought.

10. The application is also required to indicate a list of schools, based on distance, in preferential order, to which the child desires admission.

11. As per the procedure evolved by the DoE, the DoE makes an assessment of the number of vacant seats available in that particular year at the entry level classes in various schools for accommodating EWS and DG category students. This data is normally made available in the public domain, and schools are invited to raise objections or comments thereto, if any, within a stipulated period. Failure, on the part of the schools, to raise any such objection, results in the DoE treating the said figures as correct and, on that basis, conducting a computerised draw of lots for deciding allotments of children for admission to various entry level classes in the EWS/DG category.

12. Once such allotment is made, a school cannot refuse to admit the student. This Court has taken a view in that regard in para 59 of its judgment in *Anjali Pandey v. Govt. of NCT of Delhi*¹. A detailed decision in that regard is also to be found in the judgment of the coordinate bench of this Court in *Rameshwar Jha v. The Principal Richmond Global School*²

13. The right of the student, however, flows from the allotment

¹ 2024 SCC OnLine Del 584

² (2023) 298 DLT 328



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made by the DoE in favour of that child to admission *to that particular class in the particular school* to which the child has been allotted for *that particular academic year*. In the absence of any allotment by the DoE for that year to that class in that school, a student cannot approach the Court and seek a direction to direct the school to admit the student.

14. The application submitted by the student (through her/his parents/ legal guardians), also the results of allotment issued by the DoE, clearly stipulate the class as well as the academic session for which admission is sought and granted.

15. Mr. Aayush Agarwala, learned counsel for the petitioner sought to submit that there can be no extinguishment of the right that vests in a child, once a computerised draw of lots is conducted by the DoE and allotment is made.

16. He refers me in this connection to Article 21A of the Constitution of India. He also submits that the Court can, in an appropriate case, mould relief to suit the circumstances.

17. On principle, there can be no dispute in the contentions of Mr. Agarwala. One does not have to go as far as Article 21A to trace the right of EWS/DG students for admission for education as said right is available even under the RTE Act. That right, however, is only a right to be educated till the age of 14. It is not a right to be educated in a school of one's individual choice.

18. The right to be educated in a particular school of one's choice

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arises only if the student concerned applies for admission to that school, among others, as an EWS/DG category candidate, to the DoE. As already noted, following the application and after inviting data from the schools, the DoE conducts a computerised draw of lots.

19. It is only if the student's name is allotted to the class and school of the student's preference consequent on the draw of lots that the student has right to admission to that class in that school, which can be enforced through a court of law.

20. The power of a Court to mould relief cannot be gainsaid. That principle, however, has no application whatsoever to the case at hand. The power to mould relief applies where a Court finds that the litigant before it is entitled to relief which has not been sought in the petition or proceedings but which, nonetheless, the interests of justice require the litigant to be granted. In such a case, the Court has the power, *ex debito justitiae*, to mould the prayer in the petition or the proceedings and grant relief to the litigants even beyond that sought.

21. For that, however, the litigant must be *entitled* to such relief. The power to mould relief cannot be so exercised as to grant relief to which the litigant has no entitlement; *ubi jus ibi remedium*³

22. The entitlement of an EWS/DG category to seek issuance of a writ of mandamus, directing the school to admit her, or him, to a particular class in a particular academic year arises only if the candidate has been allotted that particular class in that particular



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school consequent to a computerised draw of lots held by the DoE.

23. It is not in dispute that the DoE has not, by any computerised draw of lots or any other method, allotted the petitioner to Class I to the Respondent 2- school for the academic session 2024-2025.

24. No doubt, the petitioner did have an enforceable right for admission to Class I in the academic session 2022-2023. That right, however, has been allowed to go abegging. Not only did the petitioner not approach the Court in 2022-2023, the petitioner waited for one more academic year to lapse before approaching this Court seeking admission for the academic year 2024-2025 in Class I.

25. That, in my view, is not permissible.

26. In case the relief as sought were to be granted, it can also result in seriously inequitable consequences for others who may have enforceable preferential rights. There may hypothetically, be other DG category students who have actually applied for admission to Class I in the Respondent 2- school and been shortlisted by the DoE for the academic session 2024-2025. Each such shortlisted student would have a right to a seat in the Respondent 2- school as allocated by the DoE. The right of such students cannot be compromised to grant relief to the petitioner, who does not have any such right, as the petitioner has never been found entitled to admission to Class I to the Respondent 2- school for the academic year 2024-2025.

27. I have also taken the same view in earlier decision penned by



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me recently in W.P.(C) 2129/2024 (*Master Hitesh Verma v. DAV Public School & Anr.*).

28. For all the aforesaid reasons, this Court regrets that it is not in a position to grant any relief to the petitioner.

29. The writ petition is dismissed *in limine*.

30. At this juncture, Mr. Agarwala draws my attention to prayer (ii) in the writ petition which seeks a direction to the DoE to, if possible, allot the petitioner a neighbourhood school for the academic session 2024-2025 in an age-appropriate class.

31. Ms. Nikita Vir, learned counsel for the DoE submits that the DoE would take a suitable view in that regard keeping in mind the equities of the case.

32. *Dasti.*

C. HARI SHANKAR, J.

MARCH 12, 2024

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[Click here to check corrigendum, if any](#)