



2024:DHC:3161



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 5523/2024 & CM APPL. 22672/2024, CM APPL.
22673/2024, CM APPL. 22674/2024

ANKIT KUMAR THROUGH HIS FATHER SHYAM
SUNDAR KUMAR Petitioner

Through: Mr. Karan Luthra, Mr. Naman
Gowda, Advs.

versus

GOVERNMENT OF NCT OF DELHI & ANR..... Respondents

Through: Mr. Utkarsh Singh, Adv. for
Mr. Santosh Kumari Tripathi, SC for DOE
Mr. Yogesh Kumar, Adv. for R-2 School

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)
22.04.2024

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1. The petitioner in this case had applied, through his father, to the Directorate of Education (DoE), for admission as a student belonging to the Economically Weaker Section of Society (EWS) in class KG/Pre-primary for the academic year 2023-2024, on 9 February 2023. A computerised draw of lots was conducted by the DoE, consequent on which the petitioner was shortlisted for admission to the KG/Pre-primary class in the Respondent 2-school.

2. According to the averments in the petition, the respondent-



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school declined to admit the petitioner and, on representations made by the petitioner to the respondent-school and statutory authorities in that regard failing to elicit any favourable response, the petitioner has instituted the present writ petition.

3. The prayer of the petitioner in the writ petition is that a mandamus be issued to the respondent school to admit the petitioner as per the allotment made by the DoE on the petitioner's application.

4. Unfortunately, the 2023-2024 academic year is over. The allotment made by the DoE consequent on the computerised draw of lots was for the year 2023-2024.

5. The petitioner has not submitted any application for the year 2024-2025, and there is no allotment in his favour in any school as an EWS student for the 2024-2025 academic session.

6. I may note, here, that students who approached the Court seeking admission on the basis of an allotment made by the DoE consequent on the computerised draw of lots fall into three categories.

7. The first two categories relate to students who approach the Court during the academic year in respect of which the allotment is in their favour. Of these students, one category of students would be those in whose favour the court passes an interim order of provisional admission. The second category of students would be those in favour of whom there is no order of provisional admission, but the court



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passes an order reserving a seat for the student concerned in the class in respect of which the allotment has been made by the DoE.

8. In both these cases, even if the writ petition is taken up after the academic year is over, it is possible for the Court to direct admission of the student in the next academic year.

9. Take a student who applies for admission as an EWS candidate to KG/Pre-Primary class for the academic year 2023-2024. A computerized draw of lots is conducted by the DoE, in which her name is shortlisted for admission to KG/Pre-Primary, as the entry level class, in School X.

A. Petition instituted *during* the 2023-2024 academic session, but comes up for final hearing *after* the 2023-2024 academic session is over

10. School X refuses to admit the student, whereupon she institutes a writ petition before this Court, *before the end of the 2023-2024 academic session*. The writ petition, however, comes up for hearing after the 2023-2024 academic session is over.

11. In such a situation, the Court cannot, quite obviously, direct School X to admit the petitioner in the 2023-2024 academic session. Can the Court, then, direct the petitioner to be admitted in Class I (the next higher class) in the 2024-2025 academic session, *though the petitioner never applied for, and does not have in her favour, any*



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allotment by the DoE to Class I in School X for 2024-2025?

12. The issue is tricky, and decisions of learned Single Judges of this Court have not all been one way.

13. If the Court passes an interim order directing provisional admission of the student in accordance with the result of the DoE allotment, there is no difficulty, as the student would, during the pendency of the writ petition, also be entitled to progressive promotion to higher classes, of course subject to the outcome of the writ petition. If, therefore, the Court finds the denial of admission to the student by the school to be legally unsustainable, it can allow the writ petition by finally directing admission of the student in the class in which the student is studying, in School X, at that point of time, thereby making the interim order absolute.

14. Even if the Court passes an interim order not directing provisional admission, but directing reserving of a seat in KG/Pre-primary for the petitioner, and the writ petition is taken up after the academic year 2023-2024 is over, the Court may nonetheless be in a position to finally direct the school to grant admission to the student in Class I for the academic year 2024-2025. This is because the unfilled KG/Pre-primary EWS seats in the school for the academic year 2023-24 would be carried forward to the year 2024-2025. If, among those seats, the Court has already reserved a seat for the petitioner in KG/Pre-primary in 2023-2024, that seat would remain reserved for the petitioner among the carried forward seats of 2023-2024. That seat



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would not, therefore, be available to the general EWS applying public for admission. As that seat would remain reserved in the petitioner's name in Class I for the year 2024-2025, the Court is empowered to finally direct the school to admit the petitioner in class I against that seat in 2024-2025.

15. If, however, there is neither any interim order of provisional admission or directing reserving of a seat for the petitioner passed by the Court, then, after the academic year is over, the right of the student to be granted admission to the school would perish with the coming to an end of the 2023-2024 academic year. The petitioner would not have any seat allotted by the DoE in her favour in Class I in the school for 2024-2025. Further the unfilled seats in Kg/Pre-primary in 2023-2024, even if carried forward, would then be available for all EWS students who seek admission in class I for the academic year 2024-2025, as no seat has been reserved for the petitioner under any interim order of the Court. It would be unfair, therefore, to deny such EWS applicants for the 2024-2025 academic year one seat merely because there was an allotment in KG/Pre-primary in 2023-2024 in favour of the petitioner which did not fructify. That seat, even if carried forward, would be available for being filled by all EWS students who would have to apply and compete in the computerised draw of lots held by the DoE.

16. This position would apply, equally, where the petitioner has approached the Court, on the basis of an allotment to KG/pre-primary by the DoE for 2023-2024, but after the 2023-2024 academic year is



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over. The present petitioner falls in this last unfortunate category. Though the petitioner was allotted a seat by the DoE in its computerised draw of lots for 2023-2024 in the respondent-school, the petitioner did not seek to enforce that right, by approaching this Court, in the 2023-24 academic year, during which alone the right subsisted.

17. Accordingly, the seat in the respondent school, which was allotted in favour of the petitioner by the DoE would now be carried forward to Class I in the respondent school. As that seat has not been reserved in favour of the petitioner by any order passed this Court, the seat would be available along with all other carried forward seats in class I in the respondent school to be filled by the entire pool of EWS students who seek admission to class I.

18. Needless to say, the petitioner would also be at liberty to apply as an EWS student in class I for the academic session 2024-2025 with the DoE.

19. In case such an application is made in accordance with the procedure prescribed in that regard, the case of the petitioner would be considered along with all other students in accordance with the law.

20. Mr. Luthra, learned Counsel for the petitioner, had sought to place reliance on the judgment of a Coordinate Bench of this Court in *Shivank Mathur v. Directorate of Education*¹.

¹ 2023 SCC OnLine Del 1283



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21. That case is, however, distinguishable on facts. In that matter, the petitioner approached the Court in 2022, for admission against the academic year 2022-2023 and the writ petition was taken up and decided on 28 February 2023, much before the end of the 2022-2023 academic year. The Court was, therefore, in a position to direct that the petitioner be granted admission in accordance with the decision of the computerised draw of lots conducted by the DoE for the 2022-2023 academic year.

22. However, as the 2022-2023 academic year was drawing to a close, the Court deemed it appropriate to direct the petitioner directly to be admitted to the class I in the academic session 2023-2024.

23. That case is, therefore, clearly distinguishable from the present in which the petitioner has approached this Court after the end of the academic session in respect of which allotment has been made in the petitioner's favour by the DoE.

24. The petitioner cannot, therefore, obtain any relief on the basis of the judgment of the Coordinate Bench of this Court in *Shivank Mathur*.

25. This writ petition is therefore disposed of by declining the relief to the petitioner as sought by him, but reserving liberty with the petitioner to apply in 2024-2025 as an EWS student to the DoE. Any such application, if made, would be considered on its own merits.



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26. Miscellaneous applications also stand disposed of.

C. HARI SHANKAR, J.

APRIL 22, 2024

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Click here to check corrigendum, if any