



2024:DHC:1491



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

+ **W.P.(C) 9386/2023**

BABY AFIA NOOR

.... Petitioner

Through: Mr. Vivek Kumar Tandon, Ms.
Prerna Tandon and Mr. Darshnik Narany,
Advs.

Versus

MAHARAJA AGARSEN ADARSH

VIDYALAYA SCHOOL & ANR.

..... Respondents

Through: Mr. B.S. Malik, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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23.02.2024

1. The petitioner applied, through her father, for admission to the pre-primary class in the Respondent 1-school as a student belonging to the Economically Weaker Section (EWS), in accordance with Circulars dated 13 January 2023 and 2 February 2023 issued by the Directorate of Education (DoE), GNCTD.

2. After obtaining details from various schools regarding the number of EWS seats available with them, the DoE conducted a computerized draw of lots on 14 March 2023. The petitioner was found entitled to be admitted to the pre-primary class as an EWS student in the Respondent 1-school (hereinafter referred to as “the School”).

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3. The school, however, refused to admit the petitioner. Representations made by the petitioner to the School as well as to the DoE and other authorities having elicited no favourable response, the petitioner has approached this Court by means of the present writ petition under Articles 226 and 227 of the Constitution of India, seeking issuance of a writ of mandamus to the School to admit the petitioner to the pre-primary, class as allotted by the DoE consequent to computerized draw of lots, conducted on 14 March 2023.

4. There are other prayers in the writ petition which are essentially in the nature of prayers *in rem*, which Mr. Tandon does not press.

5. During the pendency of these proceedings, this Court, by order dated 20 December 2023, directed the petitioner to be provisionally admitted to the pre-primary class in the School. In compliance with the said order, the School has provisionally admitted the petitioner to the pre-primary class.

6. I queried of Mr. B.S. Malik, learned Counsel, who appears on behalf of the school, as to whether the School was willing to treat the admission granted to the petitioner as regular. He answers in the negative and submits that, though the petitioner had indeed been shortlisted on the basis of a number of seats as communicated by his client to the DoE, the actual number of admissions against the general category, which the School was able to make in the academic year 2023-24, was less than the figure which was communicated to the DoE. Inasmuch as the School has admitted 25% of the *actual* number of children belonging to general category, whom they could admit to



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the pre-primary class in the academic year 2023-24, Mr. Malik's contention is that the petitioner cannot be admitted as an EWS category student.

7. I have considered this issue at some length in my decision in **Anjali Pandey v. State¹**. Para 59 of the said decision reads thus:

“59. There is, however, another side to the proverbial coin. The DOE, each year, invites data from schools and works out the number of EWS/DG students which the school would have to admit to remain in compliance with the mandate of the RTE Act. The schools are given time to verify the data and report any errors to the DOE. If any school desires exemption, it can also apply to the DOE in that regard as per the procedure envisaged, setting out the reasons for its request. *If, however, a school has neither chosen to seek exemption, nor reported any error to the DOE in respect of the computation of EWS/DG vacancies in a particular year within the time provided by the DOE in that regard, it would be bound to admit the student(s) who, as per the computerized draw of lot that follows, are allocated to its rolls. It cannot, then, turn round and question the computation, by the DOE, of the number of EWS students that it would have to admit that year.*”

(Emphasis supplied)

8. The view expressed by me in para 59 of my decision in **Anjali Pandey** has also been expressed by the other Benches of this Court, notably by a coordinate Bench in **Rameshwar Jha v. The Principal Richmond Global School²**.

9. The extant position in law is, therefore, that once a school communicates the number of general category and EWS seats available with it for being filled in an ensuing academic year to the DoE, and the DoE, on that basis, conducts a computerized a draw of lots, the School is bound to admit the EWS students who are, on the

¹ 2024 SCC OnLine Del 584

² 298 (2023) DLT 328



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basis of the said computerized draw of lots, found eligible for admission to its portals. The school cannot then turn around and say that as the actual number of general category students, which it could ultimately admit, was less than the strength of general category seats communicated by it to the DoE, there should be a proportionate reduction in the number of EWS students which it can admit for that year and, on that basis, reject to admit students who, on the basis of the data provided by the school itself, have been shortlisted for admission.

10. In the event a school is unable to admit a number of general category students which constitutes the strength of its class, it would be for the School to apply to the DoE in accordance with the prescribed procedure in that regard for sizing down the number of EWS students which it would have to admit. In the event that such application is considered and allowed by the DoE – as was the case in *Anjali Pandey* – the school would legitimately be able to seek the benefit of such decision. Otherwise, in the absence of any revisitation, by the DoE, of the number of seats worked out by it for admission to the school in question, the school would be bound by the outcome of the computerized draw of lots conducted by the DoE.

11. In the present case, the DoE has, in its counter affidavit, clearly stated that a computerized draw of lots was conducted on the basis of the number of seats communicated by the school as available with it for being filled from general and EWS students for the 2023-24 academic session. Mr. Malik, too, very fairly does not dispute this position. He only submits that the actual number of general category



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students, who were ultimately admitted, turned out to be less than the strength communicated to the DoE, in respect of which a representation was made by the School to the DoE *sometime in January 2023*. That, however, cannot, in any way, detract from the result of the computerized draw of lots which had been conducted, on the basis of the data provided by the School to the DoE, *almost a year prior thereto, on 14 March 2023*.

12. The petitioner is undoubtedly entitled to the benefit of the computerized draw of lots which was conducted on 14 March 2023, on the basis of which she was found eligible to be admitted to the pre-primary class in the School.

13. The provisional admission granted to the petitioner in the pre-primary class in the School is, therefore, regularized. The petitioner would be entitled to be imparted education by the school as an EWS candidate in accordance with the provisions of the Right to Education Act and the various circulars, guidelines and other instructions issued by the DoE in that regard. All entitlements, as are, in law, available to EWS students, would be available to her.

14. The writ petition stands allowed in the aforesaid terms.

C.HARI SHANKAR, J

FEBRUARY 23, 2024

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