



2024:DHC:3859



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 14013/2023****BABY SAMAYRA & ORS.**

..... Petitioners

Through: Ms. Prerna Tandon, Adv. for  
Mr. Vivek Kumar Tandon, Adv.

versus

**DARBARI LAL DAV  
MODEL SCHOOL & ANR.**

..... Respondents

Through: Mr. Yogesh Kumar, Adv. for  
R-1Mr. Utkarsh Singh, Adv. for Mr. Santosh  
Kumar Tripathi, SC (C) for the DoE**CORAM:****HON'BLE MR. JUSTICE C.HARI SHANKAR****JUDGMENT (ORAL)**

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**08.05.2024****W.P.(C) 14013/2023**

1. This case deals with five children belonging to the Economically Weaker Section (EWS) and, therefore, constituting the “weaker section” for the purpose of Section 12(1)(c)<sup>1</sup> of the Right of Children to Free and Compulsory Education Act, 2009 (the RTE Act)

<sup>1</sup> 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.

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and as defined in Section 2(e) thereof.

2. There is no dispute about the fact that, in the Respondent 1 school, Nursery/Pre-school was the entry level class. Section 12(1)(c) of the RTE Act obligated the respondent school, therefore, to reserve at least 25% of its seats in Nursery/Pre-primary for EWS candidates.

3. Seats reserved for EWS candidates in Nursery/Pre-school in 2022-2023 in the school, which remained unfilled, were carried forward to KG/Pre-primary in the year 2023-2024. This principle of carry forward stands affirmed by this Court in a number of decisions including *Siddharth International Public School v. Motor Accidents Claim Tribunal*<sup>2</sup>, rendered by a Division Bench.

4. There are five petitioners in this writ petition. All five petitioners applied to the DoE through their respective parents for admission as EWS students for the academic year 2023-2024. The respondent school was one of the schools selected by the petitioners for such admission.

5. Petitioners 1, 4 and 5 applied for admission to the Nursery/Pre-school class, whereas Petitioners 2 and 3 applied for admission to KG/Pre-primary.

6. The DoE conducted a computerized draw of lots, which found all the five petitioners eligible and entitled to admission to the



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respondent school. Petitioners 1, 4 and 5 were found eligible for admission to Nursery/Pre-school, whereas Petitioners 2 and 3 were found eligible for admission to KG/Pre-primary.

7. As the respondent school did not admit any of the petitioners, they jointly instituted the present writ petition, seeking a mandamus to the respondent school to admit them.

8. While issuing notice of this writ petition on 20 October 2023, the respondent school was directed to grant provisional admission to Petitioners 1, 4 and 5 in Nursery/Pre-school. No order of provisional admission or reservation of any seat was, however, passed in respect of Petitioners 2 and 3.

9. It is an accepted position that, in compliance with the order dated 20 October 2023, Petitioners 1, 4 and 5 have been granted provisional admission to Nursery/Pre-school in the respondent school.

10. The case of all the petitioners stands covered by the decision of this Court in *Ankit Kumar v. GNCTD*<sup>3</sup>. The case of Petitioners 1, 4 and 5 would be covered by para 13 of the said decision, whereas the case of Petitioners 2 and 3 would be covered by para 15 thereof. The said paragraphs read thus:

“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

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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.

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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.”

11. Following the principle laid down in para 13 of *Ankit Kumar* – which was earlier expounded by this Bench in *Jai v. Directorate of Education*<sup>4</sup>, *Arpit v. Adriel High School*<sup>5</sup> and *Deepak Raj v. The Principal Apeejay School*<sup>6</sup>, Petitioners 1, 4 and 5 would be entitled to admission to the respondent school and to regularization of the provisional admission already granted to them.

12. Petitioners 2 and 3, however, would not be entitled to admission to the respondent school as there is neither any order for provisional admission nor any seat reserved for them in KG/Pre-primary. The

<sup>4</sup> 2024 SCC OnLine Del 2437

<sup>5</sup> Order dated 30 April 2024 in WP (C) 2848/2024

<sup>6</sup> Order dated 3 May 2024 in WP (C) 14843/2023



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seats, which were allotted to them by the DoE, therefore, remained unfilled and, once the 2023-2024 academic session came to an end, Petitioners 2 and 3 could not further seek to benefit from the computerized draw of lots undertaken by the DoE. The said seats in fact form part of the common pool of carry forward seats in Class I in the respondent school and Petitioners 2 and 3 would have to compete with all other EWS students, who seek admission to the said class.

**13.** As such, this writ petition is disposed of in the following terms:

(i) Provisional admission granted to Petitioners 1, 4 and 5 *vide* order dated 20 October 2023 is confirmed and made permanent. The said petitioners would be entitled to continue to be educated by the respondent school as EWS students and would be entitled to all such facilities and amenities to which such students are entitled including text books, uniforms and the like.

(ii) The prayer of Petitioners 2 and 3 for being granted the benefit of admission consequent on computerized draw of lots conducted by the DoE is declined. However, said petitioners would be at liberty to apply for being considered as EWS students in Class I in the academic year 2024-2025 and to include, if they so choose, the respondent school in the list of schools to which they are aspired to seek admission. Such application if submitted, would be processed and dealt with by the DoE in accordance with law.

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14. There shall be no order as to costs.

**C.HARI SHANKAR, J**

**MAY 8, 2024**

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*Click here to check corrigendum, if any*

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