



2024:DHC:1046



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 14703/2023****KARTIK KUMAR(MINOR) THROUGH HIS
FATHER OM PRAKASH**

..... Petitioner

Through: Mr. Arkaneil Bhaumik and Mr.
Shashwat Kabi, Advocates with Mr. Om
Prakash in person

versus

DIRECTORATE OF EDUCATION & ANR. RespondentsThrough: Mr. Santosh Kumar Tripathi,
Standing Counsel (Civil) GNCTD with Mr.
Arun Panwar, Mr. Pradyumn Rao, Mr.
Utkarsh Singh, Mr. Kartik Sharma, Ms.
Prashansa Sharma and Mr. Rishabh
Srivastava, Advocates for R-1/DoE.
Mr. Yogesh Kumar, Advocate for R-2.**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****J U D G M E N T (O R A L)**

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06.02.2024

1. The petitioner is before this Court as he has been denied admission by the Kulachi Hansraj Model School, Ashok Vihar ("the school", hereinafter), as an economically weaker section (EWS) candidate in a computerised draw of lots held by the Directorate of Education (DoE).

2. The Right of Children to Free and Compulsory Education Act (RTE Act) was enacted in 2009. Section 3(1) of the RTE Act entitles



every child of the age of six to fourteen years, including every “child belonging to disadvantage group” as defined in clause (d) and “child belonging to weaker section” defined in clause (e) of Section 2 to free and compulsory education in a neighbourhood school till the completion of his or her elementary education. “Elementary education” is defined, in Section 2(f), as meaning “education from first class to eighth class.

3. Section 35(2) of the RTE Act enables the appropriate government to issue guidelines and give directions to the local authority or the school management committee regarding the implementation of the provisions of the RTE Act. There is no doubt that the “appropriate government”, as defined in Section 2(a) of the RTE Act is, in respect of schools situated in Delhi, the GNCTD.

4. In exercise of the power conferred by Section 35(2) of the RTE Act, read with Section 3(1) of the Delhi School Education Act, 1973 (the DSE Act) and Rule 43 of the Delhi School Education Rules, 1973 (the DSE Rules), the Hon’ble Lieutenant Governor issued notification dated 23 July 2018, amending the Delhi School Education (Free Seats for students belonging to economically weaker sections and disadvantaged group) Order 2011 (“the 2011 DSE Order” hereinafter) by substituting clause 3 (a) therein. The substituted clause 3(a) of the 2011 DSE Order required all schools falling within Section 2(n)(iii) and (iv) of the RTE Act to admit children, in class I, “to the extent of at least 25% of the strength of that class”, from children belonging to economically weaker sections or disadvantaged groups (DG) in the



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neighbourhood, and to provide free and compulsory education till its completion, as per Section 12(1)(c) of the RTE Act.

5. Section 2(n)(iv) includes all unaided schools. The Respondent 2-school, being an unaided recognised school, falls within Section 2(n)(iv) of the RTE Act. The 2011 DSE Order, therefore, applies to it.

6. On 9 July 2021, the DoE issued a Circular noting that several complaints had been received by it regarding schools refusing to admit students belonging to the EWS/DG category, even if they were shortlisted for admission, on the pretext that a corresponding number of general category students had not been admitted.

7. The circular, therefore, directed all unaided recognised schools to grant admission to all eligible EWS/DG students allotted to them through computerised draw of lots. In case any school desired any exemption from this requirement on the ground that there were fewer general category students admitted than its strength permitted, the school had to seek permission in that regard from the concerned DDE, after following the stipulated procedure in that regard. The Circular also cautioned all private recognised unaided schools that non-compliance therewith would invite strict action as per the RTE Act and the DSE Act and DSE Rules, 1973.

8. On 13 January 2023, the DoE issued a circular annexing the vacancy position for EWS/DG students at the entry level in all schools, as submitted by the Deputy Director of Education (DDE), for



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verification and comment in case there was any discrepancy.

9. On 2 February 2023, the DoE issued another circular containing guidelines for admission of EWS/DG and students with disabilities as defined in Rights of Persons with Disabilities (RPWD) Act 2016, at entry level classes (pre-school/nursery, pre-primary/KG and Class-I) in private unaided recognised schools for the 2023-24 academic session.

10. The circular set out the admission schedule which was required to be followed.

11. On 15 January 2023, the DDE wrote to the school, seeking, from it, *inter alia*, the data relating to the number of EWS/DG vacancies available at the entry level in the school.

12. On 17 January 2023, the school wrote to the Deputy Director of Education (DDE), stating that it had been unable to admit sufficient number of students in the general category in its pre-school class and, therefore, praying that the number of general category students may be treated as reduced from 349 to 300 and, *proportionately, the EWS category of seats be reduced from 116 to 100.*

13. The said letter may be reproduced, in *extenso*, thus:

“Date: 17.01.2023

Deputy Director of Education,
Directorate of Education,
District North-West (B),
FU Block, Pitampura



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Delhi-110088.

Sub: Online Admission Process under EWS/DG and Children with Disabilities Category at Entry Level of the Private Unaided Schools to Delhi *for the Ensuing Academic Session 2023-24*

Dear Sir,

Reference to Circular No. DE/15/(1025)/PSB/2022/355-361 dated 13.01.2023 regarding subject cited above, as per Annexure~1, the General Category students shown are 349 General Category Students and 116 EWS Students.

In this connection this is to inform you that for the last 2-3 years the school is not able to fill up seats of Pre School of general category. Further, during session 2022-23, the school called all registered candidates through emails, telephone calls, school notice board and school website etc. i.e. 2200 students for Pre School admission but till date the school is not able to fill up the 290 general seats and still there are 2-3 withdrawal applications received daily.

Various letters were sent to Dy. Director of Education, Zone-11, Delhi and PSB Branch to reduce the seats of EWS admission vide our letter Nos. 6816/21 dated 19.07.2021, No. 6953/21 dated 15.12.2021 and No. 6993/22 dated 19.02.2022 186/22 dated 02.05.2022 but no reply have been received till date.

Further, please find enclosed the admissions made by the School in the general category and in the EWIS category, as against the declared/sanctioned seats, during the past 3 years, in the entry-level classes are enclosed (Format 1). List of selected candidates for Pre School Admission for the session 2022-23 are also enclosed.

It is therefore requested to update the General Category seats from 349 to 300 *and EWS Category Seats from 116 to 100* in Annexure 1.

Thanking you,

Yours faithfully
Principal

CC to: The Dy. Director (Education), DOE, PSB Branch,
Old Secretariat, Delhi-110054”



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(Emphasis supplied)

14. Though Mr. Yogesh Kumar, who appears for the school, sought to submit that the request for treating the number of EWS category seats available in pre-school as 100 was made on the basis of the number of general category students who had been admitted to pre-school in 2022-23, this contention cannot be accepted.

15. Mr. Yogesh Kumar himself acknowledges that the letter dated 17 January 2023 was written pursuant to the request dated 15 January 2023 from the DoE to the school, calling upon the school to forward the details of the number of EWS seats available with it for the year 2023-2024. It was in response to this application that the letter specifically states that, *for the academic year 2023-24*, the number of pre-school seats available for admission of EWS students be treated as 100 instead of 116.

16. It is an acknowledged position, in the counter affidavit filed by the school, the school had – before admitting the petitioner pursuant to interim orders passed by this Court in the present case – admitted only 71 EWS Pre-School students in the 2023-2024 academic year. As such, *the School had clearly not admitted EWS students to the extent of the EWS vacancies available with it at the pre-school level for 2023-2024, as communicated to the DoE on 17 January 2023.*

17. The justification for seeking a dismissal of the petitioner's claim, in the counter affidavit of respondent school, is that the school



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was able to admit only 205 general category students in 2023-24.

18. That, in my considered opinion, may not constitute a justifiable ground to reject the petitioner's claim, *inter alia* for the reason that it was the respondent-School who had, in response to the request made by the DoE on 15 January 2023, requested the DoE to treat the number of EWS vacancies available with it at the pre-school level as 100. It was on that basis that the computerised draw of lots was conducted by the DoE, and the petitioner's name shortlisted for admission to the respondent-School. The petitioner's name having been shortlisted on the basis of the data provided by the respondent-School itself, the school could not have legitimately refused to admit the petitioner.

19. I have also taken a view, in *Anjali Pandey v. GNCTD*¹ that, if, on the basis of the information provided by a school, the DoE conducts a computerised draw of lots, the school is thereafter bound to offer admission to the students, who, as per the draw of lots, are allocated that particular school. It cannot lie in the mouth of the school, thereafter, to refuse admission on the ground that it was not able to admit a proportionate number of general category students.

20. In any event, in the present case, this issue does not really arise as *the allocation of the petitioner to the respondent school was on the basis of the number of seats communicated by the respondent school itself to the DoE in its letter dated 17 January 2023 extracted supra.*



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21. This Court has already directed the petitioner to be admitted provisionally to the respondent school. The petitioner has thereafter been provisionally admitted and is presently studying with the respondent school.

22. In view of the aforesaid discussion, the petitioner shall continue to study with the respondent school as an EWS student in accordance with the mandate of the RTE Act and the associated statutes.

23. The writ petition is accordingly allowed, with no order as to costs.

C. HARI SHANKAR, J.

FEBRUARY 6, 2024

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