



2024: DHC: 3629



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

+ **W.P.(C) 14728/2023 & CM APPL. 58590/2023**

SANDEEP

..... Petitioner

Through: Mr. Narendra Kumar Upadhyay,
Mr. Kuldeep Sharma, Mr. Udai Bhan
Sharma and Mr. Nand Kumar, Advs.

versus

THE PRINCIPAL DAV PUBLIC SCHOOL AND ORS

..... Respondents

Through: Mr. Yogesh Kumar, Adv. for
R-1

Mr. Utkarsh Singh, Adv. for Mr. Santosh
Kumar Tripathi, Standing Counsel for DoE
Mr. Anmol Panwar, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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03.05.2024

1. The petitioner belongs to the Economically Weaker Section (EWS). His child Lakshay is, therefore, a “child belonging to the weaker section” within the meaning of Section 2(e)¹ of the Right of Children to Free and Compulsory Education Act, 2009 (the RTE Act).

2. Respondent 1 is an unaided school and, therefore, falls within Section 2(n)(iv)² of the RTE Act.

¹ (e) “child belonging to weaker section” means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification;

² (n) “school” means any recognised school imparting elementary education and includes –
(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the



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3. Section 12(1)(c)³ of the RTE Act obligates the respondent school to admit, in class I, to the extent of at least 25% of the strength of that class, children belonging to the weaker section and the Disabled Group (DG) and to provide free and compulsory elementary education till its completion.

4. “Elementary education” is defined, in Section 2(f) as education from the first to the eighth class.

5. The proviso to Section 12(1)(c) states that, where a school specified in Clause 2(n) imparts pre-school education, the provisions of, *inter alia*, Section 12(1)(c) would apply for admission to such pre-school education.

6. Inasmuch as the entry level in Respondent 1 school is KG/Pre-primary, Section 12(1)(c) read with Section 2(n)(iv) and Section 2(f) obligate the respondent school to admit, in KG/Pre-primary, at least 25% of the strength of that class to children belonging to weaker section and disadvantaged group.

7. The protocol devised by the DoE, in order to effectuate Section 12 is contained in Circular dated 2 February 2023. As per the said

³ 12. appropriate Government or the local authority;
Extent of school's responsibility for free and compulsory education. –

(1) For the purposes of this Act, a school, -

(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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Circular, children belonging to EWS or DG categories are required to apply to the DoE for admission to entry level in schools. The DoE circulates the seat matrix of the various schools, containing the data relating to the number of general category and EWS/DG entry level seats which each school would be required to fill up in the ensuing academic year.

8. Schools are permitted to represent against the said data within a stipulated period of time. Failure of a school to represent within such period would entitle the DoE to treat the data as uncontested and to proceed to conduct a computerised draw of lots on the basis of the said data.

9. In that event, this Court has held, in case after case, including *Jai v. Directorate of Education*⁴, *Arpit v. Adriel High School*⁵ and *Deepak Raj v. The Principal Apeejay School*⁶, that the schools would be obligated to admit the students who are shortlisted for admission by the DoE and cannot refuse admission.

10. Where the student approaches the court during the academic year in respect of which the child has been shortlisted for admission, the Court, therefore, directs the respondent school to grant admission.

11. The present case falls within these parameters.

⁴ 2024 SCC OnLine Del 2437

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

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



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12. The petitioner Lakshay is a child belonging to the weaker sections within the meaning of Section 2(e) of the RTE Act. He applied, through his father, the petitioner, for admission to the entry level KG/Pre-primary class in 2023-2024. His application, along with others, was subjected to a computerised draw of lots by the DoE. In the outcome of the draw of lots, the petitioner was shortlisted for admission to the respondent school.

13. The respondent school having declined to admit the petitioner, the present writ petition has been instituted.

14. While issuing notice in this writ petition, this Court, by order dated 9 November 2023, directed the respondent school to grant provisional admission to the petitioner in KG/Pre-primary, subject to the outcome of the present petition.

15. In compliance with the said order, Lakshay stands admitted, albeit, provisionally, to KG/Pre-primary in the respondent school.

16. This case is squarely covered by the decisions passed by this Court in *Jai, Arpit* and *Deepak Raj*, in all of which this Court has allowed the writ petitions and directed the child in question to be granted confirmed admission by the respondent school as an EWS/DG category candidate and to continue to be educated as such candidate in accordance with the provisions of RTE Act.

17. Mr. Yogesh Kumar, learned Counsel for the respondent school,

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does not dispute, on merits, the applicability of the aforesaid decisions to the facts of the present case. He, however, submits that the petitioner is not entitled to relief as he has resorted to mis-statement as well as suppression of facts.

18. Qua the allegation of suppression of facts, Mr. Yogesh Kumar submits that the writ petition conceals the fact that, even prior to its being filed, the DoE had allotted the petitioner to the Bal Vidya Mandir, which was another school. This fact having been suppressed in the writ petition, Mr. Yogesh Kumar submits that the petitioner is not entitled to relief.

19. Mr. Yogesh Kumar further submits that learned Counsel for the petitioner incorrectly stated before this Court, on 9 November 2023, that the Bal Vidya Mandir was a pre-primary school. He submits, on the basis of documents that he has placed on record, that the school, in fact, provides education till Class XII.

20. Mr. Upadhyay, learned Counsel for the petitioner, submits that the statement that the Bal Vidya Mandir was a primary school was made by him as per the instructions received by him from his client.

21. In dealing with these cases, the court has to be conscious of the fact that the petitioners, as well as the children involved, are people belonging to disadvantaged background. They are normally people of very straitened financial means, and one cannot treat their case as one would treat a case of a person who is well off and aware of his rights



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and liabilities.

22. On merits, there is no dispute that the present case is fully covered by the decisions in *Jai, Arpit* and *Deepak Raj*.

23. On the aspect of suppression of fact, it may be true that the petitioner was admitted to Bal Vidya Mandir prior to the filing of the writ petition. The admission to the Bal Vidya Mandir was apparently made because the respondent school illegally declined to grant admission to the petitioner.

24. Mr. Yogesh Kumar submits that the respondent school had, in fact, represented to the DoE against the number of EWS seats identified by the DoE in the data uploaded by it on 13 January 2023 within the period of 5 days provided in that regard, on 18 January 2023. In the said representation, it is stated that the respondent school requested that the number of seats be reduced.

25. Mr. Utkarsh Singh submits that the reduction that was sought was only in respect of entry level Nursery/Pre-school seats for 2023-2024. The seat against which the petitioner's son was allotted the respondent school was a seat in KG/Pre-primary which was not an entry level seat, as the entry level in the respondent school was Nursery/Pre-school. The seat against which the petitioner's son was accommodated, submits Mr. Utkarsh Singh, was one of the 10 carry-forward seats which arose as a result of the default on the part of the respondent school in filling up the allotted number of EWS seats in

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Nursery/Pre-school in 2022-23.

26. Mr. Utkarsh Singh is correct. The representation dated 18 January 2023 addressed by the school is for reduction of the number of seats at the entry level for the academic session 2023-2024. The request was, therefore, for reduction of EWS/DG category seats to be filled in by the respondent school at the nursery/pre-school level in 2023-2024.

27. No reduction of the number of carried forward seats in KG/Pre-primary was sought by the respondent for the ensuing academic year 2023-24. The carry forward seats for KG/Pre-primary in 2023-24 represents the number of entry level Nursery/Pre-school seats which were allotted by the DoE to the respondent school in 2022-23 and which remained unfilled. The respondent school never sought reduction of the number of carry forward seats in KG/Pre-Primary in its representation dated 18 January 2023, though said seats were also indicated in the seat matrix data uploaded by the DoE on 13 January 2023.

28. There is also no representation on record seeking reduction of entry level nursery/pre-school seats identified by the DoE in the respondent school in 2022-2023, though that would hardly make a difference, as the respondent school never sought reduction of the number of carry forward seats in KG/Pre-primary indicated by the DoE in the data uploaded by it on 13 January 2023.

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29. Insofar as the allegation of suppression of facts is concerned, the Supreme Court has, in its judgment in *SJS Business Enterprises Pvt Ltd v. State of Bihar*⁷ dealt with situation in which the suppression of fact disentitles a writ petitioner to the relief. The following passages from the said decision may be reproduced thus:

“13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. *But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken [R. v. General Commrs. for the purposes of the Income Tax Act for the District of Kensington*⁸ .”

(Emphasis supplied)

30. Thus, it is only a suppression of fact which, if disclosed, would have altered the conclusion of the case, which could disentitle such a party to relief from the Court.

31. The right of the petitioner's son to admission to KG/Pre-primary in the respondent school flows from the provisions of the RTE Act read with the outcome of the computerised draw of lots conducted by the DoE.

32. The fact that, as the respondent school did not comply with the outcome of the computerised draw of lots conducted by the DoE, the petitioner had to obtain admission in another school, cannot in any way divest the petitioner of his right qua the respondent school. This

⁷ (2004) 7 SCC 166

(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)



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fact, therefore, even if not mentioned in the writ petition, cannot disentitle the petitioner to relief.

33. The petitioner has, in any case, been granted provisional admission in the respondent school thereafter as per the interim order passed by his Court.

Conclusion

34. In view of the aforesaid, the petitioner is entitled to the relief sought in this writ petition.

35. The provisional admission granted to the petitioner in the respondent school is accordingly regularised. The petitioner's son would be continued to be provided education by the respondent school as an EWS candidate in accordance with the provisions of the RTE Act and would also be entitled to benefits and amenities to which such students are entitled.

36. The writ petition stands allowed in the aforesaid terms with no orders as to costs.

C. HARI SHANKAR, J.

MAY 3, 2024
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[Click here to check corrigendum, if any](#)

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