



2024:DHC:6605



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

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Reserved on: 27.08.2024***Pronounced on: 30.08.2024***+ **W.P.(C) 10649/2024 & CM APPL. 43844/2024 & CM
APPL. 47395/2024**

BABY AAYAT (MINOR) THROUGH MOTHER MS.

TANZEEM KHAN

.....Petitioner

Through: Ms. Monisha Handa, Advocate
(DHCLSC).

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY
OF DELHI AND ANR.

.....Respondents

Through: Mr. Divyam Nandrajog, Panel
Counsel for GNCTD/R-1.Mr. Ravi Singh Pawar,
Advocate for R-2.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The instant petition under Article 226 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 ('CPC') has been filed on behalf of petitioner seeking following prayers:

“...(a) Issue a writ, order or direction in the nature of mandamus directing the Respondent No. 2 to grant



admission to the Petitioner as per the List of Students qualified in EWS/DG/CWSN Draw of Lots Result 2024-25 on the basis of the Food security Card (SFC) of the maternal Grandmother of the Petitioner; and

(b) Issue a writ, order or direction in the nature of mandamus directing the Respondent No. 1 to ensure that the Petitioner is granted admission to the Respondent School as per the List of Students qualified in EWS/DG/CWSN Draw of Lots Result 2024-25 25 on the basis of the Food security Card (SFC) of the maternal Grandmother of the Petitioner; and

(c) Issue a writ, order or direction in the nature of mandamus directing the Respondent No. 2 School to accept the Income Certificate of the Mother of the Petitioner as and when the same is submitted; and

(d) Or in alternate, issue necessary directions to the Respondent No. 1 to ensure that the Petitioner be admitted in another neighbouring School at the earliest..”

2. The petitioner herein is about 6 years of age. The present petition has been preferred by petitioner, through her mother, seeking admission in Class I under EWS/DG category for the academic session 2024-25 in the respondent no. 2 school i.e. Diamond Public School, Delhi..

3. Brief facts of the case are that the respondent no. 2 is a private school which the petitioner was allocated by way of a computerized draw of lots held on 31.05.2024 under EWS/DG category. However, since the food security card has not been issued in the name of the parents of the child but in the name of the grandmother, the petitioner states that despite the mother of the petitioner approaching this Court for fulfilling the formalities for admission, respondent no. 2 School has refused to grant admission to the child on the aforesaid ground.



4. On the first date of hearing, after hearing arguments on behalf of all the parties, this Court had observed as follows:

“1. Learned counsel for the petitioner states that though the petitioner was granted admission in the respondent no. 2 – School, the petitioner has been denied admission on the frivolous ground that mother or father of the petitioner do not have a BPL/Food Security/Ration Card in their name.

2. Learned counsel for the respondent no. 2-School, on the other hand, states that the income document, which has been made the basis of fulfilment of eligibility guidelines for admission, under the EWS category, is the food security card issued to the maternal grandmother of the petitioner, even though the parents of the petitioner are living together as family. It is also stated that, as per para no. 11 (a) of circular dated 24.04.2024, issued by the DoE, the income certificate should have been applied by the parents of petitioner before submitting the application for admission, whereas the same was applied on 30.07.2024 by the petitioner’s mother, and she is yet to receive the Income Certificate.

3. It is thus stated by learned counsel that the respondent no. 2- School has no objection to admit the petitioner, even on the basis of the above-said Food Security Card of her maternal grandmother, provided that the DoE clarifies to the School, or gives an assurance, that on the basis of the Food Security Card of the maternal grandmother of the petitioner, the DoE will reimburse the School qua the admission of the petitioner under EWS/DG category.

4. In this Court’s opinion, the issue raised by the respondent no. 2 –School is not without merit. This Court, at this stage, notes that the parents of the petitioner are staying together as a family. As per the statement given by learned counsel for the petitioner, the petitioner’s father is working as a welder in Delhi. It is also not disputed that the parents of the child are living together. The documents also reveal that the Income Certificate was applied for, on 30.07.2024, by the mother of the petitioner, whereas the form for admission of the petitioner, under the EWS category, was filled up in the month of April, 2024.



5. Learned counsel for DoE, submits that he needs some time to seek instructions, as to whether, in the past, any other candidate has been granted admission, on the basis of Income Certificate of his/her grandparents, and the circumstances thereof.

6. This Court will understand reliance on such an Income Certificate in case the child is in the custody of his/her grandparents or there are other peculiar circumstances which warrant so, however, in the case as the present one, this needs to be clarified by the DoE.

7. Further, the School has not denied admission to the petitioner, provided its interest is also safeguarded, that on the basis of the above-said Income Certificate, the DoE will reimburse the School qua the present EWS admission, which is understandable.....”

5. Respondent no. 1 i.e. Directorate of Education [‘DoE’] has filed its counter affidavit on record.

6. Learned counsel for the petitioner states that despite allotment of the school in compliance with guidelines dated 06.04.2021, by the DoE, the School has not admitted the petitioner. It is stated that the petitioner has been denied admission on the frivolous ground that mother or father of the petitioner do not have a BPL/Food Security/Ration Card in their own name.

7. DoE, through its counter affidavit, states that since the Food Security Card has been issued in the name of maternal grandmother of the petitioner, even though the petitioner is residing with her own parents, the income certificate thus has to be of the parents and not of the grandparents. In this regard, learned counsel for DoE, however, admits that there is some ambiguity in the relevant rules.

8. Learned counsel for the petitioner, on the other hand, states that since there may be ambiguity in the rules of DoE, the benefit of



the same must be extended to the petitioner and therefore, the petitioner be granted admission in the respondent no. 2 School.

9. This Court has **heard** arguments addressed by both the parties, and has gone through the material placed on record.

10. The question which arises for adjudication by this Court is as to whether in the present case, where the petitioner is residing with her parents and the parents are happily residing with each other, the Food Security Card of the maternal grandmother of the child i.e. petitioner can be relied upon as a document for the purpose of taking admission under EWS/DG category.

11. In this regard, it will be important to note that as per Clause 6 of Notification No. 15(172)/DE/Act/2010 dated 07.01.2011, the documents required for seeking admission for EWS/DG category are as under:

“...(a) For the admission of child belonging to weaker sections **Income-Certificate issued by a revenue officer not below the rank of Tehsildar or BPL Ration Card (yellow coloured) or AAY Ration Card (Pink coloured) shall be considered as proof of income:**

Provided that the **parents of the child** belonging to weaker section shall submit a self-declaration of annual income on an affidavit every year for continuation of free seat in the school once admitted against free seat. However, no student shall be expelled or debarred from the school in case of non-submission of above mentioned documents without the prior approval of Director (Education), Dte. of Education, GNCTD.

(b) For the admission of child belonging to disadvantaged group a certificate issued by a revenue officer not below the rank of Tehsildar or any other competent authority, in the name of child or **his/her parents** shall be considered



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(c) The school shall not consider any other document except any one of the following documents, as proof of residence: -

- (i) Ration card issued in the name of parents (mother/father having name of the child)
- (ii) Domicile certificate of child or of his/her parents.
- (iii) Voter I-card of any of the parents
- (iv) Electricity bill/MTNL telephone bill/water bill/Passport in the name of any of the parents or child..."

12. This Court's attention has also been drawn to a circular dated 24.04.2024 issued by respondent no. 1/DoE which has a reference to submission of the documents by the parents of the candidates.

13. In this Court's opinion, since the rules of the DoE itself make it clear that the 'parents' of the child belonging to weaker sections had to submit a self declaration of annual income on an affidavit every year for continuation of free seat in the school once admitted against free seat, it is clear that the income which is to be considered, for the purpose of giving admission to a candidate under EWS/DG category, has to be biological parents. Clause 6 of Notification dated 07.01.2011 also further lays down that the certificate issued by Revenue Officer not below the rank of Tehsildar has to be in the name of child or 'his parents' which can be considered for the purpose of giving admission under EWS/DG category. Thus, in this Court's opinion there is no ambiguity even in the rules, and when Clause 6 of Notification No. 15(172)/DE/Act/2010 dated 07.01.2011 is read, it is clear that for securing admission on free seat, the income certificate has to be of the parents of the child.



14. The Food Security Card in the present case is admittedly of maternal grandmother of the petitioner on the basis of which admission has been sought under EWS/DG category. To reiterate, the petitioner herein is staying with her parents and therefore, the Food Security Card of the maternal grandmother will not be the relevant document, with regard to the income of the parents of the petitioners, for securing admission under EWS/DG category.

15. In case such an approach is adopted by a court of law, it can be misused as the parent of the child, who may have higher income will file income certificates or food security cards of grandparents, maternal or paternal, to seek admission under EWS/DG category for their children, depriving those parents who belong to low income or disadvantaged groups.

16. Further, the argument of the learned counsel for the petitioner that since the policy of Delhi Government is a beneficiary policy, the same has to be read to the advantage of the child, is of no help to the petitioner in the facts and circumstances of the case, since this Court does not find ambiguity of such a nature in the relevant rules, which may persuade this Court to pass a direction that despite there being rule regarding income certificate of the parents to form the basis of deciding whether a child belongs to EWS/DG category or not, this Court should add its own interpretation or add to the clause, any other relationship, so as to widen the scope of Clause 6 of Notification dated 07.01.2011.

17. Needless to say, this policy which has been drafted for the benefit of the children, whose parents belong to economically weaker



or disadvantaged groups, and thus they should be given the advantage of the policy which has been drafted specifically for them. In this regard, this Court is of the opinion that those who do not, in reality, fall under this category, should not be allowed to misuse the same by filing income certificates of their relatives only for the purpose of being covered under EWS/DG category.

18. Therefore, in view of the above discussion, this Court finds no merit in the present petition.

19. However, learned counsel for the petitioner, after conclusion of arguments, submitted that the father of the petitioner has now obtained a certificate of income in his name. In this Court's view, it is an admitted fact that the said certificate has been obtained after filing of the present petition and therefore, in that case, the petitioner and her parents, may as per law and procedure, apply afresh for the draw of lots for securing admission under EWS/DG category, in future.

20. Accordingly, the present petition, along with pending applications, if any, stands dismissed.

21. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 30, 2024/zp