



2024:DHC:4280



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 15299/2023****GAURAV KUMAR AS GUARDIAN OF
KAVYANSH**

..... Petitioner

Through: **Mr. Aayush Agarwala, Adv.**

versus

GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through: **Mr. Arun Panwar for Mr.
Santosh K. Tripathi, Standing Counsel for
R1
Mr. Yogesh Kumar, Adv. for R2 School****CORAM:****HON'BLE MR. JUSTICE C.HARI SHANKAR****JUDGMENT(ORAL)****20.05.2024**

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1. This writ petition deals with right of admission of Kavyansh, the son of the petitioner, as a student belonging to the Economically Weaker Section of society (EWS) in Nursery/Pre-School for the year 2023-2024.

2. Section 12(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "the RTE Act"), read with the proviso thereto¹, stipulates that schools falling

¹ 12. **Extent of school's responsibility for free and compulsory education. –**

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

(a) specified in sub-clause (i) of clause (n) of Section 2 shall provide free and compulsory elementary education to all children admitted therein;



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within the definition of Section 2(n)(iv)² of the RTE Act are required to admit, in Class I, or to any lower entry level class in which the school may be providing education, children belonging to the weaker sections and to the disadvantaged group to the extent of at least 25% of the strength of that class. “Child belonging to the weaker section” is defined in Section 2(e) of the RTE Act as a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government by notification. There is no dispute about the fact that Kavyansh qualifies as a “child belonging to the weaker section” within the meaning of Section 2(e) and is therefore entitled to the benefit of Section 12(1)(c) of the RTE Act read with the proviso thereto.

3. The Respondent 2-School provides pre-school education from the Nursery/Pre-School level. By operation of the proviso to Section 12(1)(c), the respondent-school is required to admit at least 25% of students in its Nursery/Pre-School entry level from children belonging to the EWS/DG category.

4. The DoE has, by a series of circulars and administrative instructions, set out the procedure by which such admissions are to be

(b) specified in sub-clause (ii) of clause (n) of Section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent;

(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.

“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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made. The child belonging to the weaker section is required to apply, through her, or his, parents for admission to the entry level class in the ensuing academic year and to suggest a choice of schools in which the child desires admission. The DoE uploads, on its website, the seat matrix of all the schools, reflecting the number of seats which the schools are required to fill in various classes, including entry level, from children belonging to the EWS/DG category. The schools are provided an opportunity to represent against any discrepancies in the said data within a stipulated period. In the event of the school not representing within such period, this Court has held in a slew of decisions including *Jai v. Directorate of Education*³ and *Arpit v. Adriel High School*⁴, that the school is bound by the outcome of the computerized law of lots conducted by the DoE and cannot refuse to admit the students.

5. The present case is squarely covered by the ratio of the said decisions.

6. The petitioner applied to the DoE for admission of his son Kavyansh as an EWS category student in Nursery/Pre-School for the 2023-2024 academic session. A computerized draw of lots was conducted by the DoE. On the basis of the data provided by various schools, the seat matrix of the various schools was uploaded by the DoE on its website and it does not appear that the respondent-school represented against the said seat matrix within the time provided by

appropriate Government or the local authority;

³ 2024 SCC OnLine Del 2537

⁴ 2024 SCC OnLine Del 3152

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the DoE in that regard. Resultantly, a computerized draw of lots was conducted by the DoE and the petitioner was found entitled for admission to Nursery/Pre-School in the respondent-school.

7. As the school declined to admit the petitioner, the present petition has come to be filed.

8. During the pendency of these proceedings by order dated 29 November 2023, this Court directed the respondent-school to grant provisional admission to Kavyansh in Nursery/Pre-School in 2023-2024 as a EWS category student. The said provisional admission stands granted. Kavyansh is, therefore, today studying in the respondent-school as an EWS category student. As of today, Kavyansh would be entitled to be promoted to KG/ Pre-Primary.

9. Following the decisions of this court in *Jai* and *Arpit*, the provisional admission granted to Kavyansh in Nursery/Pre-School in the respondent-school, as directed by the interim order dated 29 November 2023 passed by this court, is regularized and made permanent. Kavyansh is, therefore, entitled to be educated by the respondent-school as an EWS category student in accordance with the mandate of the RTE Act.

10. Needless to say, Kavyansh would also be entitled to all facilities to which an EWS category student is entitled including textbooks, uniform and the like.

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11. This writ petition stands allowed in the aforesaid terms with no orders as to costs.

C.HARI SHANKAR, J

MAY 20, 2024/yg

Click here to check corrigendum, if any

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