



2024:DHC:3097



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

+ W.P.(C) 17672/2022 and CM APP No. 28119/2023  
MOHIT DABAS & ANR. .... Petitioners  
Through: Mr. N.K. Upadhyay, Mr. Udai  
Bhan Shankar, Advs.

versus

THE PRINCIPAL INDRAPRASTHA WORLD  
SCHOOL & ORS. .... Respondents  
Through: Mr. Kamal Gupta, Mrs. Tripti  
Gupta, Mr. Sparsh Aggarwal, Mr. Nikhil  
Kukreja and Mr. Karan Chaudhary, Advs.  
for R1/School  
Mr. Utkarsh Singh for Mr. Santosh Kumar  
Tripathi, Standing Counsel for DoE

**CORAM:**  
**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**J U D G M E N T (O R A L)**

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**15.04.2024**

1. The petitioners are brothers, belonging to the Other Backward Classes (OBC). Their daughters are Kavya and Bhumi respectively.

2. The petitioners applied, in 2022, for admission of their daughters Kavya and Bhoomi as Disadvantaged Group (DG) category students in the Respondent 1 School. Consequent to conduct of a computerized draw of lots by the Directorate of Education (DoE), both petitioners were shortlisted for admission to Nursery/Pre-School level in the respondent-school. Alleging that, though they approached the

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respondent-school, they were not granted admission, the petitioners have instituted the present writ petition before this Court for issuance of a writ of mandamus directing the respondent-school to admit the petitioners.

3. During the pendency of this petition, Bhoomi, the daughter of Respondent 2, has secured admission in another School and is not, therefore, pressing the present writ petition. The petition, therefore, survives only in respect of Petitioner 1 Mohit Dabas and his daughter Kavya.

4. While issuing notice in this writ petition, this Court had directed that two nursery/pre-school seats be kept reserved in the respondent-school so that, in case the petitioner were to finally succeed, the school would not seek to dispute their right to admission on the ground that 31 December 2022 had elapsed<sup>1</sup>.

5. During the course of arguments, however, Mr. Kamal Gupta, learned counsel for the respondent-school has raised a contention which makes it impossible for this Court to grant relief to the petitioner, as sought by her.

6. In the counter affidavit filed by way of response to the writ petition, a specific stand has been taken by the respondent-school that the petitioner never reported to the school. The circulars issued by the

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<sup>1</sup> (Following the judgement of a learned Single Judge of this Court in **Neeraj Kumar v. Venkateshwar Global School, MANU/DE/0880/2017**, which held that new admissions could not be made after 31 December 2022.)  
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DoE specifically fixed 14 October 2022 as the last date by which the shortlisted students were to report to the school for which they would found entitled for admission, failing which their admission would stand cancelled. The record reveals that, on 3 November 2022, the respondent school uploaded, on the website of the DoE, the status of the petitioner, stating that she had not reported to the school.

7. Mr. Upadhyay, learned counsel for the petitioner seriously contests this submission of Mr. Gupta. He submits that there was no reason why the petitioner would not report to the respondent-school after having been shortlisted for admission thereto.

8. This is a disputed issue of fact which a writ court cannot adjudicate. Moreover, it is seen that, unlike most such cases where the student, on being refused admission by the school, represents to the school as well as to the statutory authorities, including the DoE, not a single representation was addressed by the petitioner to any of the authorities, including the school, despite the school having allegedly refused to admit the petitioner. It defies logic that the petitioner could not represent to any authority if the respondent-school had indeed illegally refused to admit the petitioner, but had no difficulty in approaching the court.

9. The respondent-school, on the other hand, as far back as on 3 November 2022, which was over a month prior to the filing of the present writ petition by the petitioner, informed the DoE that the



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petitioner had not reported. The applicable instructions of the DoE are categorical that if a student does not report by the date fixed by the DoE in that regard, the candidature of the student would stand cancelled.

**10.** This Court had, in view of the aforesaid dispute, directed the DoE to conduct enquiry into the matter. Two affidavits have been filed by the DoE thereafter. In the first affidavit dated 11 July 2023, the DoE has agreed with the school that the petitioner had not approached in time and, therefore, has stated that the petitioner's candidature stood cancelled. In the second affidavit, however, the DoE has somewhat relaxed its stand and stated that the school had never informed the DoE that the petitioner had failed to report.

**11.** There is admittedly no procedure set in place by the DoE by which the school has to individually report to the DoE stating that the student had not reported despite having been shortlisted. In the present case, this information was conveyed by the school to the DoE on 3 November 2022. This assertion of Mr. Gupta is not disputed by the DoE, represented by Mr. Utkarsh Singh.

**12.** Besides, the allocation was for the year 2022-2023. That year is over. We are now in 2024-2025.

**13.** Mr. Utkarsh Singh sought to clarify, in law, that if an entry level EWS/DG seat is not filled, despite allocation having been made in that regard by the DoE, the candidate in question would retain a lien

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on that seat which would be carried forward to the next year. In the respondent school, the entry level class is Nursery/Pre-school. The proviso to Section 12(1)<sup>2</sup> of the Right of Children to Free and Compulsory Act, 2009 (“the RTE Act”) does not allow more than one entry level class in any school. As per the proviso, in the case of a school providing pre-school education, the entry level would be pre-school. The carried forward seat in KG/pre-primary or in any higher class would not therefore, be available to be filled through the open market, as EWS/DG seats are available for being filled from the open market under Section 12 of the RTE Act only at the entry level. The seat would, therefore, submits Mr. Utkarsh Singh, continue to remain unfilled in the name of the petitioner itself in view of the order passed by this Court on 23 December 2022 and if this court were so minded, the petitioner could be adjusted against the said seat.

**14.** Though I was initially inclined to consider this request favourably, unfortunately, there is no way any relief can be granted to the petitioner in view of the uncontroverted stand by the school that the petitioner had failed to report to the school till the last date fixed by the DoE in that regard. His candidature, therefore, stood cancelled.

<sup>2</sup> 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;
  - (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:

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15. In view thereof, the Court regrets that it cannot come to the aid of the petitioner.

16. Accordingly, the writ petition is dismissed.

**C.HARI SHANKAR, J**

**APRIL 15, 2024/yg**

*Click here to check corrigendum, if any*

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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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