



2024 : DHC : 2786



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 16683/2023 and CM APP No. 67221/2023 and
12270/2024

MASTER VIHAN VATS Petitioner
Through: Mr. Vivek Kumar Tandon,
Mrs. Mamta Tandon and Ms. Prerna
Tandon, Advs.

versus

ADRIEL HIGH SCHOOL & ANR. Respondents
Through: Ms. Swati Surbhi, Adv. for R-1
Mr. Utkarsh Singh, Adv. 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)
21.03.2024

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The Facts

1. In accordance with the provisions of Section 12 of the Right of Children to Free and Compulsory Education Act, 2009 ("the RTE Act") read with the Orders and Circulars issued by the Directorate of Education (DoE) thereunder from time to time, the petitioner, a five year old boy applied, through his father, to the DoE, for admission to the entry Nursery/Pre-School level, for the 2023-2024 academic session. A computerized draw of lots was conducted by the DoE on 14 March 2023, following which the petitioner was allotted admission to Nursery/Pre-School in the Respondent 1-school. As the respondent-school refused to admit the petitioner despite the petitioner approaching it on several occasions, and as attempts to petition the

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W.P.(C) 16683/2023

Page 1 of 9



2024:DHC:2786



DoE and other authorities in that regard also proved futile, the petitioner has approached this Court under Article 226 of the Constitution of India, seeking a writ of mandamus directing the respondent-school to admit the petitioner as an EWS student in Nursery/Pre-school, in accordance with the outcome of the draw of lots conducted by the DoE.

2. At the time of issuing notice on 22 December 2023, this Court directed the respondent-school to grant admission to the petitioner, as an EWS student in Nursery/Pre-school on a provisional basis, subject to the outcome of the writ petition.

3. Following the passing of the above order dated 22 December 2023, the respondent-school filed Review Petition 10/2024, seeking its review and vacation. Two contentions were advanced by the respondent-school. The first was that, when the parents of the petitioner approached the respondent-school, consequent on the result of the draw of lots conducted by the DoE having been communicated to them, the respondent-school attempted to log on the web portal of the DoE on several occasions to admit the petitioner, but that the portal was inaccessible. The second was that the petitioner had not selected the respondent-school as one of his schools of preference to which he desired admission at the time of filling up his application for admission as an EWS student, but had selected, instead, only the Indraprastha Modern School, Sector 22, Rohini.

4. The respondent-school also filed, alongside, LPA 86/2024, challenging the interim order dated 22 December 2023 insofar as it

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W.P.(C) 16683/2023

Page 2 of 9



2024 : DHC : 2786



directed the respondent-school to grant provisional admission to the petitioner. By order dated 1 February 2024, however, the Division Bench dismissed the said LPA on the ground that Review Petition 10/2024 was pending, and also directed the school, consequently, to comply with the order dated 22 December 2023.

5. By order dated 28 February 2024, Review Petition 10/2024 was dismissed by this Court. It stands noted, in the said order, that the petitioner had, in the interregnum, admitted himself to the Swami Ramtirtha Public School. That factor was not, however, regarded as justifying a revisitation of the interim direction of provisional admission issued on 22 December 2023, as the Swami Ramtirtha Public School provided education only till Class VIII, and the petitioner had perforce to take admission only owing to the refusal, by the respondent-school, to admit him. The respondent-school was, therefore, directed to forthwith admit the petitioner.

6. The contentions urged in Review Petition 10/2024 do not, therefore, survive for further consideration.

7. The petitioner is, therefore, studying with the respondent-school, since then, as an EWS student and is now on the threshold of promotion to KG/Pre-primary.

Contentions of the respondent-School

8. While the DoE supported the case of the petitioner, Ms. Swati Surbhi, learned Counsel for the respondent-school initially sought to

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Date: 07.04.2024 22:55

W.P.(C) 16683/2023

Page 3 of 9



2024 : DHC : 2786



reiterate the submission that the petitioner had never opted for the respondent-school, but when the record indicated the position to be otherwise, did not pursue the contention. Even otherwise, said contention having been specifically raised in Review Petition 10/2024, against the dismissal of which no appeal was preferred, the respondent-school cannot be permitted to urge it all over again.

9. Ms. Surbhi also sought to submit that the respondent-school had in fact written to the DoE on 17 November 2022, seeking a reduction in the number of EWS seats to be filled by it. After the uploading of data by the DoE on its website on 13 January 2023 regarding the number of general and EWS seats available in various schools for the 2023-2024 academic session, the respondent-school had represented, against the data, on 28 January 2023. As both representations were before the computerized draw of lots, which took place on 14 March 2023, she submits that the outcome of the draw of lots cannot be thrust on her client. She further sought to submit that, while allotting the respondent-school to the petitioner, the DoE did not adhere to the “neighbourhood criterion”. Further, she submitted that, as the petitioner had not incorporated, in the petition, any prayer for interim relief, and had not filed any separate application seeking interim protection, this Court erred in directing the respondent-school to provisionally admit the petitioner. She relies, for this purpose, on the judgement of the Supreme Court in *Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi*¹.

Analysis

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Date: 07.04.2024 22:55

W.P.(C) 16683/2023

Page 4 of 9



2024 : DHC : 2786



10. For the following reasons, this Court is convinced that the petitioner is entitled to relief:

(i) On 13 January 2023, the DoE had uploaded, on its website, the number of general category and EWS category seats available at the entry level in the respondent-school for the academic session 2023-24. It was clearly indicated, therein, that the respondent-school had a declared strength of 90, of which 67 seats were in the general category and 20 seats in EWS/DG category. All schools who found errors in the data uploaded by the DoE, were required to represent within five days, which was subsequently extended to ten days. No such representation was made by the respondent-school within the aforesaid period of ten days. There is, therefore, no error on the part of the DoE in proceeding on the basis of the data uploaded on its website.

(ii) Ms. Swati Surbhi had sought to contend that, initially, when data was invited by the DoE from the schools on 17 November 2022, the respondent-school had uploaded, *vide* a Google form, ten seats in the general category as the number of seats, against which it desired to admit students in 2023-24.

(iii) Mr. Utkarsh Singh submits that, if the school desired to size down the number of general category seats and, consequently, EWS category seats allocated to it, it had to prefer a representation in accordance with the procedure prescribed in

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1 (2010) 1 SCC 234
W.P.(C) 16683/2023

Page 5 of 9



2024 : DHC : 2786



that regard. He submits that there was no representation made by the respondent-school till 28 March 2023 which was the first representation seeking reduction of number of general category and therefore EWS category seats in the respondent-school. That representation was received after the extended period for submitting representation provided by the DoE on 13 January 2023, which expired on 23 January 2023.

(iv) In view of the fact that no formal representation for sizing down the number of general category or EWS category seats available in its institution was made by the respondent-school to the DoE till 28 March 2023, the DoE cannot be faulted for having proceeded on the premise that the respondent-school was agreeable to admit 67 general category seats in the 2023-24 academic year.

(v) I am also not in agreement with Ms. Surbhi's contention that, as no prayer for provisional admission was made by the petitioner in the writ petition, and no separate application for interim relief has been preferred, the Court could not have directed provisional admission to be made. Though Ms. Surbhi cited ***Bharat Amratlal Kothari***, her reliance is actually on paras 31 and 34 of the report in that case, which relied, in turn, on the earlier decision of the Supreme Court in ***Krishna Priya Ganguly v. University of Lucknow***². ***Krishna Priya Ganguly*** dealt with a situation in which there was no prayer for making admission at all in the petition filed by the students in the school and the only



2024 : DHC : 2786



prayer was for deciding the representation. In those circumstances, the Supreme Court held that the court not have *suo motu* directed provisional admission to be made. That situation cannot be analogised to a situation such as that in the present in which the main substantive relief in the writ petition is for granting admission to the petitioner.

(vi) As far back as in 1968, the Supreme Court has held, in ***I.T.O. v. M.K. Mohd. Kunhi***³, that the power of a court to grant relief includes within it all ancillary and incidental powers which are necessary to effectuate the power to grant the final relief. That decision has been followed by a Division Bench of this Court presided over by B. N. Kripal, J. (as he then was) in ***ITC Ltd v. UOI***⁴. Inherent, therefore, in the power to grant the final relief of admission is the power to grant provisional admission to the student. Though, ordinarily, a formal application to that effect is required to be filed, no jurisdictional error can be said to exist in the court granting provisional admission even if there was no formal prayer, or application, to that effect.

(vii) Ms. Surbhi also sought to contend that, while allotting the respondent-school to the petitioner, the neighbourhood criterion was not followed. This contention is without merit. The respondent-school was the first school in the list of schools which were chosen by the petitioner in the application filed for preferential admission as an EWS candidate. There is, therefore,



2024 : DHC : 2786



no error on the part of the DoE in allotting the petitioner to the respondent-school.

(viii) I am also not in agreement with the fact that, as the petitioner had, prior to her being granted provisional admission in the respondent-school, been already studying in the respondent-school and that fact having not been mentioned, provisional admission ought not to have been granted. In fact, this submission cannot even be available to the respondent, as the school preferred a review petition against the order of provisional admission which also stands dismissed, and against which no further appeal has been preferred.

(ix) Besides, the alternate school to which the petitioner took admission had to be taken only because the respondent-school illegally denied admission to the petitioner. Having illegally denied admission to the petitioner, the respondent-school can hardly seek to capitalise on its own fault by relying on the fact that the petitioner thereafter took admission in another school out of compulsion.

11. This case, therefore, is no different from several other cases in which this Court has been confirming the right of the children belonging to the EWS/DG category, to be admitted in schools shortlisted by the DoE consequent to computerised draw of lots conducted by it.

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W.P.(C) 16683/2023

Page 8 of 9



2024:DHC:2786



12. That right is sanctified. It flows from Article 21A of the Constitution of India and the provisions of the RTE Act. It cannot be compromised in any manner whatsoever.

Conclusion

13. For all the aforesaid reasons, the writ petition succeeds. The provisional admission as directed by this Court to the petitioner in the respondent-school is confirmed.

14. The petitioner shall be entitled to be continued to be educated by the respondent-school as an EWS candidate in accordance with the provisions of the RTE Act and the circular issued by the DoE in that regard.

15. The petitioner shall also be entitled to all facilities to which an EWS student is entitled.

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

C. HARI SHANKAR, J.

MARCH 21, 2024

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Click here to check corrigendum, if any

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W.P.(C) 16683/2023

Page 9 of 9